

主論文の要約

論文題目 : Misleading Advertising Regulation in Uzbekistan: Analysis of Legal Standards

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論文内容の要約 :

An advertisement provides flow of commercial information from manufacturers to consumers, which consequently effects on consumers` choice regarding a product. Therefore, each manufacturer tries to persuade consumers about product characteristics, but the persuasive information can become deceptive when manufacturer attempts to manipulate consumers. Since such advertising creates unfair advantages for its distributor and misleads consumers affecting their purchasing decision, the government has to regulate it by setting legal standards concerning deception.

Analysis of the problem background shows that Uzbekistan is not satisfied with current regulation of misleading advertising because legal standards provide administrative interests rather than competitors and consumers concern. Historically, Uzbekistan did not have any experience in advertising regulation during Soviet Union period. After gaining independence, the chosen Uzbek Model for Market Transition has also failed to regulate misleading advertising. Therefore, recently signed main document for future perspective – the Strategy for Further Development of Uzbekistan in 2017-2021 – determines to change the regulatory approach. However, the analysis of theoretical framework shows that the reason of entangled legal requirements for improper advertising is misunderstanding and misimplementation of the Commercial Speech Doctrine and Consumerism issues. Thus, the research aims to make clear and understandable deception concept by analyzing its theoretical and structural framework in order to use deception type of improper advertising more actively in practice of Uzbekistan.

Chapter II of the research provides fundamental information analysis on legal requirements for misleading advertising to understand common and different nature of legal requirements in jurisdictions affected Uzbek law. The deception standard was originated in the USA according to which an advertising statement invokes regulation if it likely misleads consumers acting reasonably under the circumstances by affecting their purchasing decision. Accordingly, there are three main legal requirements for misleading advertising regulation: “deception + reasonable consumer + materiality = regulation”. The EU follows this common nature of legal requirements, however Russia

and Uzbekistan design its own but very strange framework so-called improper advertising. Hence, the legal concept of improper advertising contains legal requirements unrelated to deception such as non-content regulation and substantiation standard in addition to deception standard. Furthermore, the chapter provides interdisciplinary analysis of legal and non-legal theories to show that there are economic and cognitive theories behind legal regulation, which has an impact on the development of legal requirements.

Chapter III of the dissertation concentrates on analysis of the USA as a country which generates theoretical and legal framework for misleading advertising. For the first time, Traditional Deception Standard (1914) focused only on deception without examining its affects on reasonable consumer. Later, the adoption of Consumer Bill of Rights established key principles of consumerism and public policy concerning advertising regulation. Consequently, the Federal Trade Commission (FTC) chairman Miller`s Standard for Deception (1983) changed traditional deception standard by adding requirements such as materiality of representation and reasonable consumer, which eventually developed the current FTC Policy Statement on Deception. Finally, the chapter analyzes recent discussions on “Prior Substantiation Doctrine” and concludes that external factors such as substantiation standard has started to affect on misleading advertising regulation.

Chapter IV provides features of improper advertising regulation in the Russian Federation. The Commercial Speech Doctrine is implemented as constitutional principle of information freedom, however Federal Advertising law gives priority to the public health rather than commercial speech protection. The Russian Advertising Law implemented legal standards from the EU directive concerning misleading advertising, but did it in a wrong way. When Russian Duma designed legal concept for improper advertising, it put external element such as non-content regulatory standard into the legal framework without understanding the nature of Commercial Speech Doctrine. The analysis of practice shows that even though the Federal Antimonopoly Service (FAS) attempts to use general impression principle to identify a meaning of advertising, such evaluation of advertising content still relies on reliability standard which requires to substantiate advertising claims with relevant documents.

Chapter V demonstrates regulatory approach on improper advertising in Uzbekistan by critically analyzing relevant concepts and legal standards as well as their application in practice. In Uzbekistan, the legal concept of improper advertising contents irrelevant legal standard such as non-content regulation and substantiation standard, which the legislature added as a result of misunderstanding Commercial Speech

Doctrine and Consumerism issues. Even though Commercial Speech Doctrine suggests to apply content-based regulation as a method against deception, the legislature of Uzbekistan wrongly implemented non-content regulation concerning misleading advertising. The reason for this is miscomprehension of Consumerism issue on how much information should be provided to consumer, instead the legislature understands it as how much advertising should be provided. Therefore, the Parliament implemented the legal standard for restriction on time, place and manner of advertising to control excessive amount of advertising. Furthermore, the concept of improper advertising contains also the loophole such as “violation of other legislative requirements”, which is interpreted as substantiation standard in practice. The chapter concludes that the practice still suffers from superiority of such external factors and lack of voluntary compliance program, which makes co-regulation very weak and enforcement inefficient.

Based on these findings, the research suggests to make deception concept more clear by separating deception standard from existed external factors so that the enforcement authority will be able to use deception standard more actively in practice. From theoretical perspective, the research proposal requires comprehensive approach that takes into account not only providing balance of competing interests in advertising regulation and theories behind them, but also impacts of external factors on regulation of improper advertising. Moreover, the research recommends to enforcement body to make more concentration on deception rather than external factors in order to use deception standard more actively in practice. Since same problems have appeared in Russia and the CIS countries, the research proposal can be applied to these countries as well. The future agenda of the research opens up new perspectives for academic discussions regarding regulation of misleading advertising in the CIS countries in terms of how to deal with new types of deceptive selling tactics.