

FAIR ADVERTISING AS A CONDITION FOR THE EXISTENCE OF FREE MARKET OF GOODS AND SERVICES

Oksana Cherkasova

Abstract

This research paper contains the economic and legal characteristics of such social institution as advertising. It is common knowledge that advertising acts as an essential tool for market promotion, increasing the sales volume and it also contributes to the development of competition.

However, advertising will help consumers only if it is reliable and fair. The author of the research, guided by the logical methods of analysis and synthesis of information, aims to study advertising in terms of its ethics in the conditions of fair competition among business representatives.

The progressive development of Russian economy leads to an increase in competition among entrepreneurs, and as a result, there is a constant increase in the volume of the advertising market, emergence of new advertising forms and growth of breaches of advertising legislation at the same time. Thus, the role of legal regulation of advertising increases and there is a need to analyze the practice in the application of Russian legislation on advertising, make recommendations for its improvement. Therefore, the main problems connected with the suppression of unfair advertising and suggested ways of solving them both from an economic and from a legal point of view are brought out in this research.

Keywords: fair advertising, market of goods and services, entrepreneurs.

JEL Code: B 10, D 41, K 42.

Introduction

Fair advertising, one of the most important conditions for the existence of the free market of goods and services, has become an integral part of social relations. Yet, every year more and more competitors appear, more difficulties for businesses arise, and the dynamics of events

increase. All this complicates companies' mass communications, making newspaper advertising insufficient for retaining their competitive positions. Companies have to be inventive to create new advertising forms and resort to innovative solutions in advertising and communications with consumers. In addition, over the past decade Russian companies have been increasingly entering the international market; some of these companies have become transnational. The government objective is to create favourable conditions for increasing Russian exports to foreign countries' markets, which suggests the need for economic transformations and for aligning Russian advertising legislation with other countries' legislation. The above factors determine the relevance of this research and its specific objectives. The aim of the study is to formulate and substantiate theoretical approaches and practical recommendations for the creation of a favourable competitive environment in advertising, and, consequently, a free market of goods and services. To achieve this aim, the following objectives are set: to analyse the historical prerequisites for the emergence and development of advertising as an economic phenomenon, to determine the criteria for fair and unfair advertising in accordance with the Russian legislation, to analyse the existing problems in the field of advertising and possible ways to solve them.

1 Research methodology

This study used the system of methods commonly applied in economics and legal science. Fair advertising was examined from the perspective of consumers' and competitive agents' interests using the method of information analysis and synthesis. This eclectic method allowed the author to evaluate the prospects of those involved in entrepreneurial activities historically, economically and legally. Having analysed the criteria for distinguishing between fair and unfair advertising, the author logically concludes that there are certain problems. The method of systemic and structural analysis allowed the author to find possible ways of resolving the existing conflicts.

2 The historical aspect of the development of advertising as an economic and social phenomenon.

The first simple forms of advertising such as ornaments and inscriptions on stones appeared before our era, in Ancient Greece and Ancient Egypt. These advertisements were generally very simple and informative. A little later, heralds walked along the streets of ancient

cities singing promotional songs. However, the formation of ancient culture and advertising activities was significantly influenced by the appearance of book printing.

The development of market relations and mechanised production led to an increasing estrangement of men in the world of work. It is under these conditions that commerce was established and became a complex mechanism serving production and the needs associated with it. As a result, by the middle of the 18th century, first the local, and then the national and international market offered so many different products that commerce became increasingly dependent on the consumers' awareness of the goods offered by sellers (Starykh & Ukhenova, 2015).

In ancient Russia peddlers were the creators and virtuoso first performers of amusing oral advertising. According to a legend, a famous merchant dynasty founder Savva Morozov carried his own goods, beautifully decorated laces and ribbons, on foot, from the village of Zuev, a hundred miles from Moscow: he left before dawn, and in the evening was already at the doors of rich houses in Moscow with his goods. His goods were so competitive, that soon buyers came to meet him trying to be the first to take the goods.

The rapid development of advertising in Russia started in the late 19th - early 20th century. Newspapers featured a huge number of advertisements offering various goods and services. The understanding of advertising as a necessary economic tool was so profound that a Russian 19th-century entrepreneur L. H. Metzel, the founder of the first newspaper advertising agency in Russia, conveyed it in the world-famous slogan: "Advertising is the driver of commerce".

At the beginning of the 20th century, the development of science and technology, and all the transformations concerning the methods of transferring information to huge and dispersed audiences with the help of print media, radio, cinema, television, video equipment, computers and the Internet, had a huge impact on the development of advertising, both in Russia, and abroad. Russian advertising at the time was original and unique. Taking into account the characteristics of the Russian mentality, such as spirituality, sensitivity, sentimentality, compassion, and loyalty to friendship, the advertisers who worked in the Russian market avoided aggressive elements in advertising.

In the early years of Soviet era a specific advertising style was developed - "Russian avant-garde" – with the contribution from such recognized artists as K. Malevich, V. Tatlin, L. Lisitsky. The Russian poet V. Mayakovski won the highest award during the international advertising exhibition in Paris. He gave his own definition of advertising based on the prevailing conditions: "Advertising is an industrial and commercial promotional campaign."

Yet, it is believed that the overall professional level of advertising in our country during the Soviet era was extremely low. Advertisements were primitive: "Drink tomato juice" or "Take Aeroflot planes."

The restoration of the market economy in Russia in the late 80s of the 20th century marked a new stage, the rebirth of advertising: it began to develop quickly.

Nowadays, in the modern Russian economy, advertising is one of the essential conditions for the existence of a free market of goods and services, an integral part of social relations.

Fair and reliable advertising is one of the most important conditions for the existence of a free market. Being an economic phenomenon on the one hand, and a legal phenomenon on the other, advertising activities involve a number of problems, some of which will be considered in this study.

3 Unfair advertising as a manifestation of unfair competition

According to Russian legislation, unfair advertising is one of the types of inappropriate advertising, namely: advertisements that contain inaccurate, incomplete, or inconsistent comparisons of the advertised goods with those produced by other manufacturers or sold by other sellers; advertisements that defame a company's, including a competitor's, business reputation; advertising that promotes a product whose advertising is prohibited in the medium, place or at the time, advertising such products under the guise of advertising another product whose trademark/logo is identical or is similar to the extent of potential confusion with the trademark/logo of the goods the relevant requirements and restrictions apply to, or in the guise of advertising the manufacturer or seller of such products; advertising that is a manifestation of unfair competition in accordance with the anti-monopoly laws.

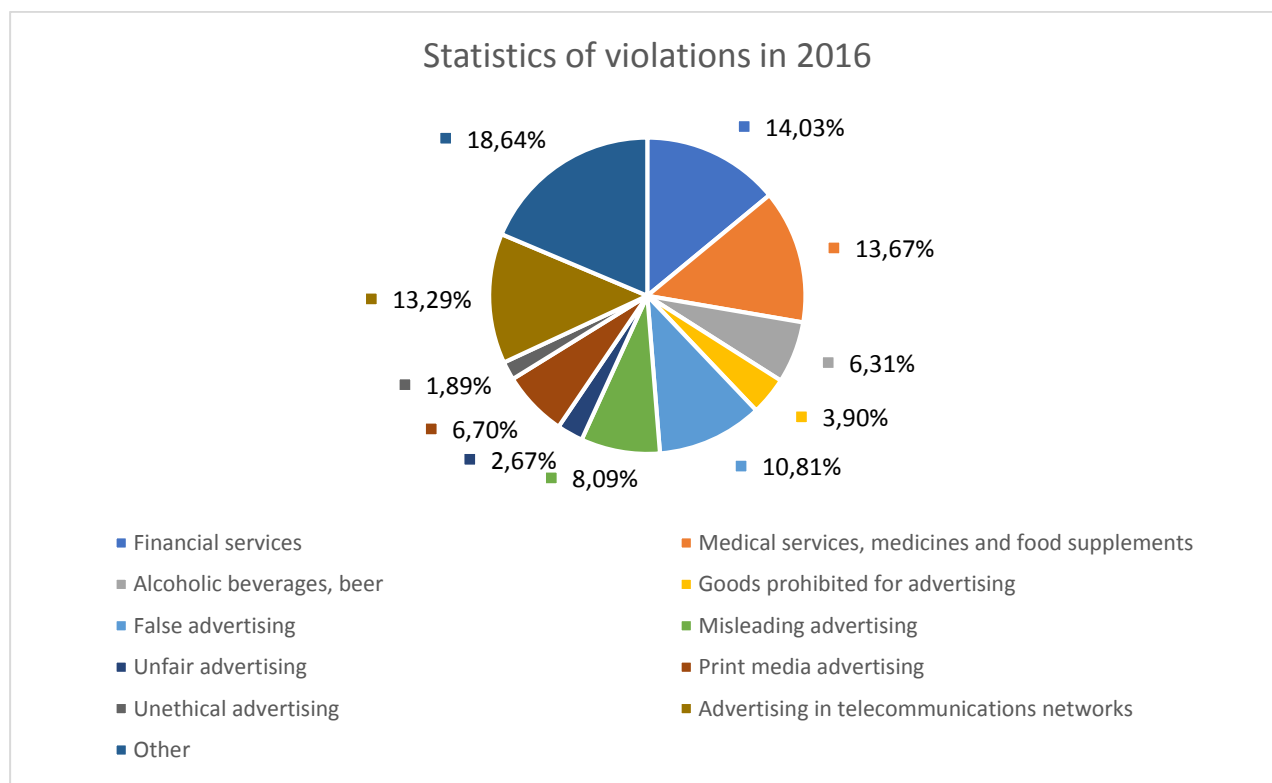
Economic processes in Russia do not allow determining whether a business is "fair" or "unfair" without correlating the two concepts - unfair competition and unfair advertising, which is reflected in the legislation (Grigoriev, 2015). Both terms, fixed in legislation, seem to have a similar purpose – to facilitate the development of free markets for goods and services while respecting the principle of fair competition.

The purpose of advertising is to draw attention to the most attractive product features. Consumers' interests include obtaining the most detailed information about goods or services in order to make the right choice. The inevitable conflict of interests between entrepreneurs,

who in their intention to attract buyers show goods only from the best side, and consumers, who need full and accurate information, is in many cases the cause of unfair advertising.

In 2016, the antimonopoly authorities examined about 20 thousand facts indicating violations of the Russian Federation legislation on advertising; in 2015 about 21 thousand such facts were investigated. The statistics of violations according to the Federal Antimonopoly Service of the Russian Federation are shown in Figure 1.

Fig. 1 Statistics of violations in 2016.



Source: author's own data

4 Shortcomings of legal regulations in advertising

As mentioned above, the progressive development of the Russian economy leads to increasing competition among entrepreneurs and, as a result, to the constant expansion of the advertising market and the emergence of new forms of advertising. At the same time, there is a marked growth in the number of advertising legislation violations. Consequently, the role of the legal regulation of advertising activities is growing and the need arises to analyse the practice of applying legislation, to make recommendations for its improvement.

The principle of the market participants' fair behaviour is one of the fundamental principles of the Russian law: business entities that do not observe it automatically violate the law. Consequently, we can conclude that advertising not complying with the requirements of

reliability and fairness inevitably results in unfair competition and violation of consumer rights and legal interests. This gives rise to a number of legal conflicts, some of which will be considered below.

4.1 *"Product placement"*. Product placement is one of the techniques of hidden advertising (embedded marketing) that promotes certain brands and products through appearances in films, illustrations, TV shows, and other media. A perfect example of "product placement" are the first James Bond films: featuring premium car models, expensive watches of various real brands, and, later, cell phones significantly increased sales of advertised brands. Today, the technique that has already proved its effectiveness is widely used in almost all major television projects.

Product placement constitutes an amply used tactic in a marketer's Integrated Marketing Communications roster. Its merits in circumventing negative attitudes to advertising and in integrating brand values in sociocultural narratives in TV and cinematic filmic discourses have been repeatedly stressed. The analysis of the discourse of desire that unravels in a flirting sequence from the blockbuster movie Hitch demonstrates that although the concerned brand (Martini) is minimally visible in the analyzed scene, yet it attains to appropriate as part of its core DNA in "stealth" mode the above characteristics of desire by demarcating the cultural field of flirtation. The offered cultural analytic addresses this idiosyncratic product placement mode by drawing on Lacanian psychoanalysis and multimodal discourse analysis (Rossolatos, 2017).

In the European Community, featuring branded goods in entertainment TV shows has become a popular marketing strategy. To guarantee fair communication and consumer rights protection, European media are currently obliged to disclose the presence of a brand in their television shows (Loes & Markie, 2016).

Recently, as the general public has taken a greater interest in healthful lifestyles, the mass media became the public's core informant on health and medical information. However, serious violations of the broadcasting review regulations have occurred in health and medical broadcasting programs. In fact, many problems stem from the lack of expertise and ethics of physicians. Therefore, a more thorough verification of health and medical information and the selection of the physicians to appear on broadcasting is needed. In 2015, the Korean Medical Association established the Guidelines on promotional mass media appearances by physicians in order to reduce these problems (Kim, 2016).

In Russian cinema industry hidden advertising (60%) is mostly for food products. The problem is that according to Russian legislation, such hidden advertising *is not considered advertising* at all: article 2 of the federal law "On Advertising" states: "references to a product,

its individual features, its manufacturer or seller organically integrated into works of science, literature or art do not belong to the category of advertising". This leads not only to the market for this type of advertising not taken into account in statistical calculations, but also to the fact that unscrupulous advertisers use product placement to promote goods whose advertising is restricted.

The Federal Service for Supervision of Communications, Information Technology and Mass Media and the Federal Anti-monopoly Service received complaints about the creators and distributors of "Viy", a film released in 2014. The film features hidden advertisements for alcoholic products of the "Khortytsia" brand, whose name was repeatedly mentioned during the film, and one of the shots showed this registered trademark. The film itself is rated "12+", and the creators tried to exculpate themselves by proving that "Khortytsia" is just a well-known geographical name.

It is obvious that this legal loophole allows unfair advertisers to bypass current norms, restrictions and bans. The technique of product placement could be introduced into legislation and could be termed "indirect advertising". This term would help to further differentiate between product placement and hidden advertising banned by the law. This would also allow all the existing requirements and restrictions to be extended to this advertising type. In addition, such advertising activities could be accounted for, and bring additional funds in the form of taxes.

4.2. In the modern economic space, the problems with legal regulation of electronic commerce, where unfair advertising is common, are becoming increasingly important. Especially acute today is the issue of accountability for the quality of information provided by the seller. Practice shows that the purchase of goods on the Internet is prone to numerous violations of the law.

In the United States, the issue of the lack of specific regulations of advertising on Internet banners, the lack of criteria for how accurate the advertising information on the Internet is, compared to the real characteristics of medicines, has been raised several times. The content analysis conducted by American researchers revealed that not all advertisements for medicines provide full information about the associated risks and side effects. Most pharmaceutical companies' advertisements only focus on neutral qualities, not on risk factors (Adams, 2016).

The rising use of digital media in the last decade, including social networking media and downloadable applications, has created new opportunities for marketing a wide range of goods and services, including alcohol products. The evidence indicated that exposure to marketing through digital media was associated with higher levels of drinking behavior; that

the marketing activities make use of materials and approaches that are attractive to young people and encourage interactive engagement with branded messaging; and there is evidence that current alcohol marketing codes are being undermined by alcohol producers using digital media (Lobstein, 2017).

Another example is search engine advertising, an important tool for the development of e-commerce, where well-known brands are commonly used inappropriately: entrepreneurs include in the text of advertisements the keywords - copyright protected trademarks - the rights to which belong to competitors. In Russia the problem of intellectual property rights infringement in search engine advertising has arisen relatively recently. Therefore, the legal practice is ambiguous and is only establishing itself. Meanwhile, EU courts are beginning to impose on advertisers the responsibility not only to make sure that no other trademarks are part of their advertisements, but also that the keywords are used appropriately, do not mislead users or confuse them regarding the relationship of the advertiser with the trademark owners, and do not attempt to obtain unreasonable advantages due to their competitors' reputation.

However, the legal status of the search engine as an advertising distributor remains unclear. On March 23, 2010, the European Court of Justice in its resolution on joined cases N C-236/08 - C-238/08 indicated that the Internet referencing service providers, Google in particular, are considered to be information intermediaries when they provide advertising services through the AdWords platform (Perevalov & Blinov, 2014).

As for the civil legislation of the Russian Federation, search engines risk being held liable for exclusive rights violations in search engine advertising. Thus, legal measures can be applied to them together with the main violator if after receiving a written claim from the copyright holder about the infringement of intellectual property rights they do not take the necessary timely and sufficient measures to stop the infringement. Here, search engines act as informational agents (Bychkova, 2016).

4.3. Discounts on goods are another area for unfair competition and a problem that requires special attention. Russian legislation mentions discounts on goods when defining the indicators of unreliable (deceptive) advertising: the information about discount rates that does not correspond to reality is considered unfair advertising. Meanwhile, the practice of unfair use of discounts can significantly affect consumers' rights and legitimate interests. One example is the practice of granting conditional discounts: discounts presented in advertising can be obtained only on additional conditions, not obvious to the consumer at the time of perceiving advertising information that attracts their attention. Another example is offering a limited quantity of goods at reduced prices in order to attract attention to a company: according to the

current legislation, advertising is considered unfair only if the declared period of discounts is not observed, the size of discounted stock is not stipulated. The Law on Competition considers the actions of the advertiser an act of unfair competition, but the practical application of legal norms causes difficulties. Not regulated by the law are unfair liquidation sales, when the information about such sales is only used to attract attention. In Italy and Spain the law clearly stipulates the conditions and procedures for such sales, the basis for them being only the end of commercial activity, selling the business (Batrova, 2016).

Thus, the provision of discounts in retailing is virtually not regulated by the Russian legislation, and the norms of antimonopoly and advertising legislation do not provide for the preventive influence on market participants and create preconditions for unfair competition and violation of consumer rights and legitimate interests.

Conclusion

Inappropriate advertising, including unfair and unreliable advertising is a manifestation of unfair competition. As the statistics show, violations of advertising legislation in various areas of business in Russia are very common. This affects mainly the interests of goods and services consumers. Fair advertising is a necessary condition for the existence of a free market of goods and services: therefore, eliminating gaps in advertising legislation, closing the existing legal loopholes, is the prime objective.

Competent legal regulation, conscientious behaviour of goods and services providers, and well-established law enforcement practice in advertising, will enable Russian advertisers and advertising distributors to achieve a higher level of quality complying with the international standards in this area.

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Contact

Oksana Cherkasova
Ural Federal University
620002, Ekaterinburg, 19, Mira street
E-mail: o.v.cherkasova@urfu.ru