

Advertisements Law of the People's Republic of China

Adopted at the 10th session of the standing committee of the Eighth National People's Congress on October 27, 1994, promulgated by Order No. 34 of the President of the People's Republic of China on October 27, 1994, and effective as of February 1, 1995.

Chapter I General Provisions

Article 1 This law is formulated to regulate advertising activities, to promote the sound development of the advertising sector, to protect the lawful rights and interests of consumers, to maintain the social and economic order, and to let advertisements play an active role in socialist market economy.

Article 2 Advertisers, advertising agents and advertisement publishers engaged in activities relating to advertising within the territory of the People's Republic of China, shall abide by this law.

In this Law: "advertisement" is defined as any commercial advertisement which a supplier of goods or services pays for, to introduce their goods or services whether directly or indirectly through the media in all its forms to Public at large;

"advertiser" is defined as any legal person, other economic organization or individual, who with the purpose of the sales of commodity or services, designs, produces and publishes advertisements either directly or acting through agents;

"advertising agent" means any legal person, other economic organization or individual who acts as an agent in the design and production of advertisement,

"advertisement publishers" means any legal person or other economic organization who publishes advertisements no behalf of advertisers or advertising agents.

Article 3 Advertisements must be factual and lawful, and comply with the principles of advancing socialist culture and ideology.

Article 4 Advertisement must not contain any information which is false and or misleading so as to deceive the consumers.

Article 5 Advertisers, advertising agents and publishers engaged in advertising activities shall act according to law and administrative regulations in a spirit of fairness and integrity.

Article 6 The administration departments for industry and commerce of the people's governments at or above the county level shall in relation to advertising activities be the control organs and act in a supervisory capacity.

Chapter II Contents of Advertisements

Article 7 The contents of advertisements shall lead towards the physical and mental health of the people, promote the improvement in quality of goods and services, protect the lawful rights and interests of consumers, comply with social morality and professional ethics, and safeguard the dignity and interests of the state.

Advertisements may not contain any of the following:

1. the national flag, national emblem or national anthem of the People's Republic of China,
2. the names of state organs or names of staff of state organs,
3. such words as the "state-level", the "highest-level" or the "best",
4. matters hindering social stability or endangering the safety of life or property, or harming the public interest,
5. matters hindering the public order or violating good social customs,
6. pornographic, superstitious, horrid, violent or unpleasant matters,
7. ethnic groups, racial, religious or sex discrimination matters,
8. matters hindering environmental and natural resources protection, and
9. matters that are prohibited by laws and administrative regulations.

Article 8 Advertisements may not impair the physical and mental health of minors and the disabled.

Article 9 Statements in advertisements of the performance, origin of production, use, quality, price, producer and manufacturer, valid term and promise, and service's items, manner, quality, price and promise of the goods advertised shall be clear and explicit.

An advertisement, in which gifts are incentives in promoting the sales of goods or providing services, shall state the type and quantity of gifts to be given free.

Article 10 Data, statistical information, investigation and survey information, digest and quotes used in an advertisement shall be factually true and accurate, and their sources mentioned.

Article 11 An advertisement involving patented goods or patent methods shall clearly indicate the patent number and type of patent.

Products which have not been patented shall not be passed off as being pretended.

The use of unsuccessful patent applications or those which have been terminated, nullified or invalidated in advertisements is prohibited.

Article 12 An advertisement may not belittle the goods or services of other producers and manufacturers or operators.

Article 13 An advertisement shall be distinguishable, and make consumers identify it is an advertisement.

The mass media may not publish advertisements in the form of news reports. An advertisement published through the mass media shall bear the advertisement mark to distinguish it from new items so that consumers may not be misled.

Article 14 Advertisements relating to pharmaceutical and medical apparatus and instruments may not contain the following:

1. unscientific information, statements or promises on their efficacy;
2. the rate of cures or efficacy;
3. comparing efficacy and safety with other medicines and medical apparatus and instruments',
4. the name or image of a medical research unit, academic organization, medical unit or expert, doctor or patient-, and 5. any other information as may be prohibited by laws and administrative regulations.

Article 15 The contents of advertisements for pharmaceuticals must conform to the standard instructions approved by the public health administrative department under the State Council or public health administrative departments of provinces, autonomous regions and municipalities directly under the Central Government.

Advertisements for therapeutic pharmaceuticals which are to be used on physicians' advice as directed by the State must be marked "purchase and use on physician's prescription."

Article 16 Special pharmaceuticals such as anesthetic, narcotic, psychotropic, toxic and radioactive drugs may not be advertised.

Article 17 Advertisements for agricultural chemicals may not contain the following:

1. claims of its safety such as non-toxicity or non-harm- lessness,
2. unscientific affirmations or promises indicating its ef- fectiveness;
3. characters, words or pictures that violate the regula- tions on the safe use of agricultural chemicals; and
4. such other matters which are prohibited by law and administrative regulations.

Article 18 The publication of advertisements relating to tobacco or tobacco products through radio, cinematography films, television, newspapers, magazines or periodicals is prohibited.

Erecting or placing advertisements for tobacco or tobacco products at public places such as waiting rooms, cinemas, theaters, conference halls and sports stadiums and gymnasiums is prohibited.

Advertisements for tobacco or tobacco products must contain This warning: " Smoking is harmful to your health".

Article 19 The contents of advertisements for foods, alcoholic drinks or cosmetics must comply with the conditions in the relevant hygiene license and no medical jargons or words may be used so as to confuse them with pharmaceuticals.

Chapter III Advertising Activities

Article 20 Advertisers, advertising agents and advertisement publishers shall, in their advertising activities, enter into written contracts with their clients, stipulating explicitly each party's rights and obligations.

Article 21 No advertiser, advertising agent or advertisement publisher may make unfair competition of any form in their advertising activities.

Article 22 An advertiser, either by itself or through an agent, to design, produce or publish advertisements to promote the sales of goods or to provide services shall act within its business scope.

Article 23 An advertiser shall, in commissioning the design, production and publication of advertisements, appoint an advertising agent or advertisement publisher with legal business status.

Article 24 An advertiser shall, in designing, producing and publishing advertisements either by itself or through agents must provide true, lawful and valid documentation as follows:

1. business license and other papers and documents related to production and qualification for operation,
2. documents and papers issued by quality certification organs for the content of goods to be advertised,
3. other documents and papers to confirm the truth of the content of advertisement.

Where, pursuant to the provisions of Article 34 of this law, publishing of an advertisement requires to be examined by the relevant competent administrative departments, relevant documents and papers of approval shall also be provided.

Article 25 Any advertiser or advertising agent shall, if using the names or images of others in advertising, obtain in advance their written consent, and if using the names or images of persons with incapacity for civil action or with limited capacity for civil action, obtain in advance the written consent from their guardians.

Article 26 Those engaged in the advertising business shall have the required professional and technical personnel and production equipment, register their company or advertising business according to law, and only after that, may they engage in advertising activities.

The advertising business of radio stations, television stations, newspaper or magazine and periodical publishing units shall be handled by their own departments specialized in advertising, and registration of their additional advertising business shall be made according to law.

Article 27 Advertising agents and advertisement publishers are to check relevant documentation and to examine and verify the contents of advertisements in accordance with law and administrative regulations. Shall an advertisement with untrue matters or is without the required documentation, no advertising agent may not provide services in designing, producing and serving as agent and no advertisement publisher may not publish such advertisement.

Article 28 Advertising agent and advertisement publishers, according, to relevant state regulations, shall establish and perfect the system on acceptance registration, examination and verification, and keep management record of their advertisement businesses.

Article 29 Advertising charges shall be reasonable and made known to the public, the charging standards and measures shall be registered with the administrative departments in charge of price and industry and commerce for record.

Advertising agents and advertisement publishers shall make public their charging, standards and measures.

Article 30 Advertising publishers shall provide true information on media coverage, audience rate and circulation to advertisers and advertising agents.

Article 31 Where goods or services are prohibited by laws and administrative regulations from being produced and manufactured, such goods or services shall not be advertised and no advertisement therefor shall be designed, produced and published.

Article 32 No outdoor advertisement may be erected or placed in any of the following areas:

1. traffic safety facilities or traffic signs and marks,
2. where the use of public utility facilities, traffic safety facilities or traffic signs and marks may be affected or obstructed,
3. obstructing people's livelihood or production of goods, or damaging the appearance or environment of cities,
4. construction control areas of the state organs, cultural relics protection units or scenic sites; and
5. where the people's governments at or above the county level have designated such areas as are prohibited from outdoor advertisements being erected or placed.

Article 33 The people's governments at or above the county level are, by organizing relevant departments such as advertising supervision and control, urban construction, environmental protection and public security, to plan and institute measures for the control of erection and placing of outdoor advertisements.

Chapter IV Advertisement Examination

Article 34 With respect to advertisements for such pharmaceuticals, medical apparatus and instruments, agricultural chemicals or veterinary drugs, which are published through the radio, cinematography film, television, newspaper, magazine, periodical and other media, and other advertisements which, as provided by law and administrative regulations, are subject to examination, the relevant competent administrative departments (hereinafter referred to as the advertisement examination organ) must examine and inspect, prior to their publication, the contents of advertisements in accordance with the relevant law and administrative regulations; no such advertisement which is not examined and approved may be published.

Article 35 An advertiser shall, when applying for advertisement examination, submit relevant documentation to the advertisement examination organ according to law and administrative regulations.

The advertisement examination organ shall, pursuant to law and administrative regulations, make a decision for examination.

Article 36 No unit or individual may counterfeit, alter or transfer the document containing the decision on the advertisement examination.

Chapter V Legal Responsibility

Article 37 Where, in violation of the provisions of this Law, false and misleading publicity on goods or services is made by using an advertisement, the advertising supervision and control organ shall order the advertiser to stop publishing of the advertisement and to use an amount equivalent to its advertising expenses to publish a correction to counter the influence generated by the false and misleading advertisement, and impose on the advertiser a fine of not less than the amount of its advertising charges but not more than an amount equal to 5 times the said charges; confiscate the advertising charges of the advertising agent and advertisement publisher responsible and impose upon them a fine of not less than the amount of its advertising charges but not exceeding five times the amount of its advertising charges; and in a serious case, prohibit them, according to law, from carrying on advertising businesses, Where the act constitutes a crime, it shall be investigated according to law.

Article 38 Where, in violation of the provisions of this Law, publication of a false and misleading advertisement affects consumers, there by causing an infringement and damages to their lawful rights and interests who purchase the goods or accept the service, the advertiser shall be liable civilly in law whilst the advertising agent and advertisement publisher, who have knowledge of or are deemed to have such knowledge of the falsity of the content of the advertisement, but continue to design, produce and publish it, shall be jointly liable according to law with the advertiser.

The advertising agent or advertisement publisher, who fails to provide the real name and address of the advertiser, shall bear full civil responsibility.

A social organization or other organizations, which recommend goods or services to consumers in a false and misleading advertisement and consequently causes infringement and damage to the lawful rights and interests of consumers, shall also bear joint responsibility in law.

Article 39 Where publishing of an advertisement violates the provisions of Article 7, Paragraph 2 of this law, the advertising supervision and control organ shall order the advertiser, advertising agent and advertisement publisher, which are responsible for the advertisement, to cease publication of the advertisement and to publish a correction, confiscate their advertising charges, and impose a fine of not less than the amount of its advertising charges and not less than five times the amount of its advertising charges; and in a serious case prohibit them, according to law, from carrying out any advertising businesses. Where the act constitutes a crime, it shall be investigated according to law.

Article 40 Where publishing of an advertisement violates the provisions of Article 9 to Article 12 of this law, the advertising supervision and control organ shall order the advertiser, advertising agent and advertisement publisher, which are responsible for the

advertisement, to cease publication of the advertisement and to publish a correction, confiscate their advertising charges, and may impose a fine of not less than the amount of its advertising charges and not more than five times the amount of its advertising charges.

Where publishing of an advertisement violates the provisions of Article 13 of this law, the advertising supervision and control organ shall order the advertisement publisher to publish a correction, and impose a fine of not less than 1,000 yuan and not more than I 0,000 Yuan.

Article 41 Where, in violation of the provisions of Article 14 to Article 17 and Article 19 of this law, an advertisement for pharmaceuticals, medical apparatus and instruments, agricultural chemicals, foods, alcoholic drinks or cosmetics is published, or, in violation of the provisions of Article 31 of this law, an advertisement is published, the advertising supervision and control organ shall order the advertiser, advertising agent and advertisement publisher, which are responsible for the advertisement, to publish a corrections or to cease publication of the advertisement, confiscate their advertising charges, and may also impose a fine of not less than the amount of its advertising charges and not more than five times the amount of its advertising charges; and in a serious case is, prohibit them, according law, from carrying on any advertising businesses.

Article 42 Where, in violation of the provisions of Article 18 of this law, an advertisement for tobacco or tobacco products published through radio, cinema pictures, television, newspaper, magazine or periodical, or an advertisement for tobacco or tobacco products is erected and placed in a public place, the advertising supervision and control organ shall order the advertiser, advertising agent and advertisement publisher, which are responsible for the advertisement, to cease publication of the advertisement, confiscate their advertising charges, and may impose a fine of not less than the amount of their advertising charges and not more than five times the amount of its advertising charges.

Article 43 Where, in violation of the provisions of Article 34 of this law, the publication of an advertisement is not subject to examination and approval from the advertisement examination organ, the advertising supervision and control organ shall order the advertiser, advertising agent and advertisement publisher, which are responsible for the advertisement, to cease publication of the advertisement, confiscate their advertising charges, and impose a fine of not less than the amount of their advertising charges and not more than five times the amount of their advertising charges.

Article 44 Where an advertiser furnishes false and misleading documentation, the advertising supervision and control organ shall impose a fine of not less than 10,000 yuan and not more than 100,000 yuan.

Where any person counterfeit, alters or transfers documents containing the decision of an advertisement examination, the advertising supervision and control organ shall confiscate its illegal gains and impose a fine of not less than I 0,000 yuan and not more than I 00,000 yuan. Where the act constitutes a crime, it shall be investigated according to law.

Article 45 Where an advertisement examination organ has made an examination and grants approval for the illegal contents of an advertisement, the person directly in charge and other persons directly responsible shall be subject to administrative penalties imposed by their units, superior organs or administrative supervisory departments according to law

Article 46 Any member of an advertising supervision and control organ or advertisement examination organ, who neglects his or her duty, abuses his or her office or practices favoritism or other irregularities, shall be subject to administrative penalties, Where his or her act constitutes a crime, it shall be investigated according to law

Article 47 An advertiser, advertising agent or advertisement publisher, who, in violation of the provisions of this law, commits any of the following acts, shall be civilly liable in law.

1. advertising which impairs the physical and mental health of minors or the disabled,
2. passing off patents to which the said persons are not entitled,
3. belittling commodities or services of other producers and manufacturers or operators,
4. using the names and images of others in advertising without consent; or
5. other infringements of the lawful rights and interests of others.

Article 48 A party concerned who is dissatisfied with an administrative penalty decision may, within 15 days from the date of receiving notice of the penalty decision, apply for a reconsideration to the next higher organ of the organ which made the administrative penalty decision; the party may, within 15 days from the date of receiving the notice of the penalty decision, also directly file a suit in a people's court.

The reconsideration organ shall, within 60 days from the date of receiving the application for reconsideration, make a reconsideration decision thereon. A party concerned which is dissatisfied with the reconsideration decision may, within 15 days from the date of receiving the reconsideration decision, file a suit in a people's court. If the reconsideration organ fails to make a reconsideration decision within the time limit for reconsideration, the party may, within 15 days from the date of expiration of the reconsideration, file a suit in a people's court.

In the event of a party concerned failing both to apply for a reconsideration or to file a suit in a people's court within the time limit, and to comply with a penalty decision, the organ which made the penalty decision may apply to a people's court for enforcement.

Chapter VI Supplementary Provisions

Article 49 This Law shall come into force as of February 1, 1995. Should any provision related to advertising in any other laws and regulations prior to the coming into force of this Law be in effect and is inconsistent with any of the provisions of this Law, this Law will prevail.

(In case of any discrepancy between the English translation and the Chinese text, the Chinese text shall prevail.)