

# LEGAL AND REGULATORY FORBIDDANCES IN THE FIELD OF INTERNATIONAL ADVERTISING

Silvia PUIU, Junior Assistant  
University of Craiova

**Keywords:** regulations, advertising, international, global, diversity

**Abstract:** International advertising can be better described as a multicultural advertising, because it passed national borders for a long time. In a greater or smaller extent, the world became the market of most of the corporations, either they have their headquarters in USA, or in other states.

The key of a successful advertising is the concept of placing the consumer on a central position. The firms operating from the perspective of managing businesses in advantageous way for the consumer will gain a lot. The firms involved in advertising are permanently facing with the risky situation of being against the rules referring to advertising. Besides the laws and official regulations having advertising as object, firms consider public opinion should be also taken into account.

The majority of big firms agrees that advertising should be honest and respect the law. Only thinking and acting in this manner, a firm can be successful on a long term, otherwise they can be profitable on the short run, but with negative effects on the image and reputation of a firm, on the long run, the effects being more disastrous in the case of a firm operating internationally.

## 1. Introduction

As we pass from a country to another, international firms involved in advertising are facing with a great system of laws and regulations often contradictory. Problems regarding personal intimacy, the advertising addressed to children and restraints to the advertising of tobacco are global subjects of discussion. For example, Belgium forbids the entire tobacco advertising, Greece and Sweden have great restraints on the advertising addressed to children and a lot of countries have different restraints in the distribution of personal data in commercial aims.

In a global economy, it's more and more important for firms to make efforts in order to have their advertising in accordance with local regulations, ideas presented also in the book of Russell Thomas and Lane Ronald – „*Klepner's Advertising Procedure*” in which we find numerous examples of legislation in the field of international advertising.

The central aspect in the regulation of advertising is to offer enough liberty of action to the companies in order to create interesting messages to bring both sales and profit, in parallel with the assurance that these messages are presented in a way that allows the consumers to make buying decisions in a scientific manner. Advertising that leads you into error is not only incorrect, but also wrong from a commercial point of view. Most of the products depend on the frequency of the transactions to survive. When the advertising that leads you into error creates unreasonable expectations to the consumers, it's unlikely that the product will register future sales.

## **2. Advertising regulations for the protection of the intimacy right, children and companies in European Union and United States of America**

### **The intimacy right**

A person has the right to have his/her intimacy protected against the use of his/her own image in an advert without his/her permission. Laws vary from country to country, but each state has a legislation that regulates the right to intimacy of an individual. In many fields, the use of a person's name or photo, without his/her previous approval, represents a crime.

As laws vary a lot, the firms involved in advertising will be, normally, extremely cautious in the use of a personality's name or image. Usually, a firm involved in advertising or an agency will never use a model, a personality or an image without having the legal permission.

### **Children's protection**

In countries from West, and especially in the countries from European Community, there is at present a very dynamic debate on children's protection against negative effects of the advertising companies. The arguments brought are the following ones:

- advertising impairs the parents' authority;
- advertising encourages young people who don't have the intellectual ability to protect themselves from psychological manipulations to negative actions: the consumption of alcoholic beverages, tobacco, unhealthy food, sexual relations at a short age;
- advertising leads to a materialistic philosophy.

The classification of children as a heterogeneous market raised questions among some groups, regarding the information and the ethics of advertising aiming the audience. Advertising assertions that might be appropriate for adults might not be proper for children.

The questions regarding advertising for children have few easy answers. Many critics consider that no type of advertising should be aimed to children. For these people, only a total forbiddance of this kind of messages would be adequately. Nevertheless, taking into account the economic support that mass-media benefit from advertising, it's rather unlikely that such a forbiddance will ever be allowed. It's absolutely necessary that all involved parties (mass-media, the advertising firms, the parents and some groups of private interests) cooperate in order to ensure that advertising for children is adequate. Firms must be extremely cautious regarding the contents of advertising messages addressed to children, in order not to create an unfavorable image among audience.

For example, in USA advertising and food industries announced on November 15 in 2006 major initiatives for limiting advertisements at junk food for children. Among these changes there is an agreement between ten of the greatest producers of food and beverages, including General Mills, McDonald's and Coca-Cola that could promote a healthy food and life style in at least half of the adverts addressed to children under 12.

In European Union, there are also restrictions regarding the advertising for children. So, in Greece the advertising for toys is forbidden between 7 am and 10 pm, and in case of toys with a violent content the advertising is totally forbidden. In Great Britain restrictions are more generally, being forbidden only the advertisements affecting children in a psychologically, morally way or those exploiting their innocence.

On the other hand, there are also countries considering that advertising shouldn't be forbidden, because it prepares the children for living in a consumption society. It's case of France, but also of Spain that consider restrictions on advertising are undemocratic.

### **Comparative advertising**

A sale technique often used is that of comparing a brand with its rivals. There is a series of approaches on comparative advertising, each with its advantages and risks. Despite of its popularity, comparative advertising continues having also revilers. People criticizing this technique consider that a product should base rather on its own advantages, than on the comparison with other brands.

Detractors of comparative advertising indicate two main problems linked to the way in which the public perceive the use of this technique. First, it appears the problem of the popularization of the competitors. By mentioning the names of other brands, there is a risk that many consumers remember the advertisement, but not necessarily the details of the comparison. If it's not carefully carried off, a firm involved in advertising can simply determine the raise of the level of notoriousness of a competitor's brand. Even in the cases in which consumers don't make any confusions, they can consider comparison offers credibility to competitors.

Another reason for being cautious with comparative advantage is the risk of being perceived by the audience as incorrect. If it's not carefully made, comparative advertising may create a boomerang effect and can gain advocates for the criticized brand. This effect is a potential danger in the case of comparison approaching unrelated or common differentiation elements.

Besides these problems related to the way in which the audience sees comparative advertising, the firms involved in advertising and their agencies may have juridical problems, if their advertisements are erroneous and they cannot bring proves of their superiority to the brand of comparison. According to the laws from some countries (for example Lanham Law in USA), companies can initiate a process in order to stop the adverts in which false asertions on their products are made. The naming of the competitors either directly or through implication is without risks neither for the agency nor for clients. If a competitor can demonstrate that he suffered damages (for example a fall in the market share) as a consequence of an unfair or incorrect comparison, he can get compensations of a few millions of dollars, according to this Law.

### **3. Restrictions regarding the advertising to some specific products within the European Union**

In the European Union all countries bring under regulation the products being the object of advertising. Among them we can highlight the so-called "sensitive products" that are restricted starting from the control of advertisements to the forbiddance of entire advertising.

Among the products carefully observed I can mention tobacco products, medicines and alcohol beverages.

#### **Tobacco products**

French Law from January 10, 1991 introduced a global forbiddance regarding tobacco advertising: "*any direct or indirect propaganda or advertising on tobacco or tobacco products as also their free offering is illicit.*" The interdiction is general and refers to any form of communication having directly or indirectly the aim of promoting tobacco products in the French market. As a consequence, advertisements to tobacco or tobacco products are forbidden no matter their support is.

German Law indicates that "*advertising to cigarettes, tobacco products similar to cigarettes and products needed for the production of cigarettes is forbidden at radio and television.*"

In Great Britain, the transmission of adverts through television for tobacco products is forbidden. This applies also to the products or services that don't contain tobacco, but whose names are part of the same brand of a tobacco product.

### **Medicines**

In France, there is permitted only the advertising for those medicine that don't need a medical prescription, those that are not included in the national medical assurance system and whose sale licenses don't specify any restrictions regarding to advertising, because of a potential risk of the medicine for the public health. Any advertisement for a medicine should be followed by a caution message to go to a doctor if symptoms persist.

In Germany, medicine advertisements are brought under a special regulation called HWG that forbids the adverts for the medicines available only with medical prescription and those aimed for insomnia treatment, psychic dysfunctions or influencing the mental condition. The transmission of advertisements should be followed by a warning placed at the end of the message on a neutral background, with readable characteristics and read loudly: *"for information about risks and secondary effects please read the instructions inside the box and advise with your doctor or pharmacist."*

### **Alcoholic beverages**

In EVIN French Law there is presented a list with the communication means that can be used in direct or indirect advertising to alcoholic beverages, without being forbidden and these are: written adverts in papers and magazines ( with the exception of those publications aimed to youngsters), outside advertising and private broadcasting stations. The transmission of adverts to alcoholic beverages containing more than 1.2% alcohols by volume at television is forbidden.

In Great Britain, television advertising for alcoholic beverages is allowed only with the following conditions: it doesn't have to suggest that alcohol leads you to social success or that refusing to drink means weakness; it doesn't have to associate the consumption of alcohol with boldness, imprudence, courage, violence or with an inadequate behavior in the society; it doesn't have to suggest that alcohol can contribute to body, psychic or sexual success or that it helps you to pass over the loneliness or boring moments or other problems you have; it also doesn't have to suggest that alcoholic beverages have healing characteristics or may be used as an analgesic, a stimulant or a sedative; there are not permitted referrals to the buying of more drinks (this restriction doesn't apply to the beverages with a low concentration in alcohol, that is 1.2% alcohols by volume or less); adverts don't have to show personalities of whose example might be followed by minors or that present an interest on them; children don't have to be seen or heard in ads and persons appearing in advertisements must be or look like being at least 25 years old; ads don't have to present great price reductions that might encourage excessive consumption of alcohol.

### **Restrictions on food advertising**

In Great Britain, Advertising Professionals' Institute is fighting against the last initiative of the Government - the total forbiddance of TV ads to the food rich in fat, salt and sugar. At present, there are regulations regarding the transmission of the adverts to this kind of food during or around the programs for children. But Great Britain is not the only country that initiates laws regarding the advertising for food rich in salt, sugar and fat. In France, the advertising campaigns for agro alimentary products will be followed by warnings similar to those written on the cigarette packs in order to warn the

consumers about the dangers represented by the excessive consumption of salt, sugar and fat.

In Romania, the Audio-Visual National Council demanded that the MDM percent (mechanical deboned meat) should be mentioned in advertising to liver pâté and other similar products that use MDM and also required the mention of the percent of natural concentrate and sugar in the ads to sodas, juices and other alimentary foods.

These are only a few examples of the multitude regulations in international advertising area. For most companies, the development of an international position is much more than an option; it's a necessity because the developed economies from the United States and Europe can't offer any more the level of the growth and expansion the firms need. Besides this, sales in the main developed countries are realized in a great extent on the basis of brands' change, rather than as a result of real growth. The opportunity of being successful abroad offers rewards that will motivate firms to take on great risks.

In the nearby future, it's obviously that the firms involved in international economic affairs will have to fight against the numerous regulations in advertising sometimes contradictory and in a permanent change if they want to be successful in their operations on the international market.

## BIBLIOGRAPHY

1. Bradley, F. (2001) - *International Marketing*, Teora Publisher, Bucharest
2. Kotler, Ph. (1997) - *Marketing Management*, Teora Publisher, Bucharest
3. Pop, N. Al. ( 2001) - *International Marketing*, Uranus Publisher, Bucharest
4. Popa, I. (2002) - *International Commercial Transactions*, Economic Publisher, Bucharest
5. Popescu, I.C. ( 2001) - *Marketing Communication*, Uranus Publisher , Bucharest
6. Pricop, M. (2001) – *Globalization and the firm's strategy*, Efficient Publisher, Bucharest
7. Puiu, A. (1999) - *International Management*, Economic Independence Publisher, Constantin Brâncoveanu University
8. Russel, T., Lane, R. (2000) – *Klepner's Advertising Procedure*, Teora Publisher, Bucharest
9. Sasu, C. (1998) – *International Marketing*, Polirom Publisher, Iași