

Shortages and Countermeasures of the Legal Regulation of Contemporary China's Comparative Advertisement

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Abstract. Due to the good characteristics of comparative advertisements, it receives more and more favor with the advertisement designers and advertisers. However, the shortages of comparative advertising are also obvious in China, such as ambiguous concept, low legislative level and inadequate supervision. This paper firstly introduces the concept of comparative advertisement, then expounds the current situation and shortages of the legal regulation of comparative advertisements, and finally gives the corresponding countermeasures to provide some references for the related researchers.

Concept of Comparative Advertisement

As the differences in history, geography, culture and ideology, the choice of legislation mode is different. The definition of comparative advertising in different countries and regions is not the same. "The Council of the European Union on misleading advertising and comparative advertising directive" second provisions: "comparative advertising means the explicit or implicit reference to competitors or competitors of the goods or services of advertising." And the comparative advertising bill "the explanation is: any advertising no matter in what way, or directly, or indirectly, or in some implicit allusion means, involving their competitors, or mentioned the products and provide the services that constitute the comparative advertising. Practitioners in the United States defined it as: "the same type of goods listed in the name, or to enable consumers to recognize and indicate the name of two or more companies or enterprises to be more and give comparative advertising of goods more than a specific function." And in 1979 the U. S. Federal Trade Commission the on comparative advertising policy statement provides: in this policy statement, comparative advertising is a brand of optional objectively measurable characteristics or price comparison, and according to the name names, description or other distinguishing letter information can identify other brand advertising.

In the mainland of China, due to the lack of the laws and regulations of comparative advertising provisions, theory is still a lack of authority to the definition of comparative advertising definition, but there are also some fairly representative point of view, such as comparative advertising is "use a variety of media of the advertised product or service with other products and services of comparative advertisement". The author believes that with the above-mentioned countries and regions of the laws and regulations and China's theory and practice. The definition of the legal concept of comparative advertising, should pay attention to the following points: first, to compare the ad itself is a neutral legal term, it cannot be limited in the range of legal or illegal; second, the object is the product or service, not involving competitors; third, comparative object that product or service belong to the same competitive field; finally, the key of advertisement is whether to have

the effect, and is not the direct or indirect comparisons. Based on this, the author thinks, comparative advertising is that advertisers use a variety of media, through direct or indirect way, other products and services in the field of their own products or services and competing for the same comparison, to illustrate the advantages of their own products or services, trying to win all the subjective identity and crowding out competitors advertising.

Related Laws of Comparative Advertisement

In China's existing legal norms, there is no clear description of the form and characteristics of comparative advertising. In 1994, the "advertising law" was enacted to regulate the advertisement to ensure the fair competition order. From then on, the operators should abide by the principle of good faith. "Advertisement law" on the advertising authenticity requirements, Article 3 of the law provisions: "advertisement shall be true, lawful, and in compliance with the requirements of the construction of socialist spiritual civilization"; and Article 4 Provisions: "shall not contain false information, not to cheat and mislead consumers"; at the same time, the requirements for use in advertising data, research results with high accuracy. On advertising regulation to actively regulate economic activities, therefore, "advertisement law" Article 12 provides banned commercial demeaning behavior, advertising may not belittle the other production operators of goods or services "; the article 21 also provides" advertising campaign in shall not carry out any form of unfair competition ".

Advertising can make use of text, sound, image and color and other elements of the combination to express the characteristics of the product, so that the form is rich in change to reflect the unique product concept, so as to achieve the purpose of marketing. Therefore, in an illegal comparative advertising, suffering from the loss is not only is highlight the specific products, based on comparative advertising special form of expression, are more likely to damage other trademarks and trade names reflects the business reputation and product reputation. Therefore, in the use of trademarks involved in comparative advertising, you can use the trademark law to protect the rights to maintain a fair competitive environment.

Contemporary China's Comparative Advertisement

Ambiguous Concept. China's laws and regulations are not directly in the concept of comparative advertising. Advertising scholar advocate that comparative advertising is an advertising technique is in the advertisement expressly pointed out competitors or brand competition has three characteristics: two or more than two brands are compared; on products of single trait or multiple characteristics compared; facts and objective information in advertising appeal is implied, clear indication or is the demonstration of propaganda. Advertising, the use of comparative advertising skills, basically want to reach a correlation or the effect of the opposite sex, through the comparison of advertising in the consumer's perception of re positioning. Legal scholars think, comparative advertising is advertisers in the advertisement will be in the same field yourself and others business goods or the provision of services are compared to illustrate the advantages of their goods or services to the exclusion of others ad. Although different areas have a certain understanding of the comparative advertising, there is no law on a unified concept to form a consensus.

Low Legislative Level. In the legislation of our country and a common phenomenon is the administrative regulations, local regulations and departmental rules developed and the number is several times more than the total number of laws adopted by the National People's Congress. This

shows that our country is now mainly rely on the administrative departments and other laws and regulations, regulations and policy documents, rather than the state legislature enacted laws to govern the country. And the low level of legislation brought about problems, not only is the apparent lack of legislation of the seriousness and authority, stability, including traces of departmental interests, local interests everywhere, the maneuver to shirk responsibility for the phenomenon is more prominent. In our country at present there is no specific legislation on comparative advertising, current involves comparing the advertising law is not much, and its provisions and too simple, in the advertising law, only a few, in the criminal law and the competition law and trademark law is rare. The vast majority are scattered in the State Council, issued by the State Administration for Industry and Commerce. The legislative level is not high, and the legal effect is low.

Inadequate Supervision. Twenty-seventh provisions of the advertising law of our country, advertising operators, advertising publishers based on the laws and administrative regulations to examine the relevant documents, to verify the contents of the advertisement. Advertising on the content is not real or proof of incomplete documents, advertising operators may not provide design, production, agency services, and advertising publishers shall not be released." The provisions of Article 34 "by radio, film, television, newspapers, periodicals and other media release drugs, medical devices, pesticides, veterinary drugs and other goods advertising and legal and administrative regulations should be reviewed other advertising, must be before it is released in accordance with the relevant laws and administrative regulations by the relevant administrative departments for the advertising content review; uncensored, shall not be released." According to this, we can know, the administrative authorities of our country mainly of four kinds of commercial advertising to implement the examination prior to the release, review of other advertising is mainly released by the advertisement operator and advertisement, and they in practice, interest driven, very little role to review, as the administrative authority, later found, to investigate and deal with, a lot of the time, has caused against the results of the. At the same time, the administrative authorities in the process of review, due to the uneven quality of the staff, the understanding of different, the results of the review will be different. This has led to the lack of effective supervision mechanism in our country.

Countermeasures of Legal Regulation of Contemporary China's Comparative Advertisement

Clarify Legal Concepts. China's existing legislation does not clearly define the meaning of comparative advertising, the author believes that should be incorporated into the legal concept of "advertising law", a clear legal status. In reference to the theoretical basis and practical basis of the United States and the European Union legislation defined, the author combines the actual situation in our country of comparative advertising make the following definition: "comparative advertising is by way of express or implied, in a competitive market mentioned opponent of the commodity or service, or is itself for the competitors, in a comparative way illustrate the difference between each other in the characteristics, function, or price, in order to influence audience understanding and a rational purchase decision of the propaganda model." This give up eating for fear of choking attitude not only to promote the rampant false industry brand monopoly, reduce the space of free competition, more exploitation of the relevant public access compared to the exact information of the public welfare. Laws have to do is not confined comparative advertising is used in the form, but to the regulation of comparative advertising applicable legal standards, for direct comparison objective, true, be proved to be effective and "best in class" to describe the word advertising language, it should be subject to legal protection. Especially in on top terminology of comparative

advertising norms to change the conservative thinking traditional to want to prove their own character, must be exhausting effort to build a considerable strength, China should uphold this concept, and strive to do their best, applied to made in China to compare the top advertising law amendment and perfection of, admitted best describe the legal status of Chinese words, to promote the development of comparative advertising.

Enhance Legislative Level. The legislative system of our country should be a multi-level legislative system under the unified leadership of the central government. Local legislation only local authorities a level, local administrative organs no legislative power, so cannot be counted as a legislative level; some comrades think although the provisions of the provincial government may enact regulations, but this is only the right to develop, but the same cannot be said of legislative power. China consumer associations should give full play to collective strength using new technology to establish corresponding information transmission platform, information transfer, dispute processing office, open up the channels of the supervision and management of the consumer, consumer complaints. Given the public the corresponding supervision, management, criticism, prosecution and corresponding rights, opinions or recommendations published in the bulletin board, consumer information specified in the relevant areas of factual criticism is not illegal, unreasonable of comparative advertising to enhance the legislative level.

Strengthen Self-discipline and Supervision. The regulation of the industry self-regulatory organization is through the operation of the internal organization mechanism, adjusting the behavior of the main body of the advertisement, maintaining the good order of the organization, and coordinating with the legal norms. By the advertising industry to manage their own advertising activities, to follow the self-discipline of self-discipline, self-regulation, self-management, the adjustment is more targeted, professional and effective. Advertising industry in the United States more mature development of the advertising industry, the United States were independently developed internal rules and guidelines, in the adjustment of the legal use of comparative advertising has played a significant role. To construct a relatively scientific and rational self-discipline norms, clear comparative advertisements, the applicable conditions and the detailed rules for the implementation of, can be illegal comparative advertising list and formulate related standards and so on; target advertising to make detailed provisions, to effectively guide the advertisement main body behavior.

We should do a good job in advertising review and supervision and management of advertising, such as the advertising review and supervision of the Department of supervision and management of the division of labor. We should further improve our existing passive type, the advertising supervision and management system, strengthen government supervision of the initiative, further divided the advertisement examination organ and advertising supervision and management departments to the division of authority and the formation mechanism of mutual restraint. Prior examination focuses on the qualification examination of the main body of the advertisement; to strengthen the Examination Obligation of the advertisement subject and the administrative department; to promote the formation of the combination mechanism of the advertisement subject self-discipline and the administrative department. Post review advertising focuses on the legal review and investigated for illegal and administrative authorities should at any time for the supervision and management, strict liability law. It can set up a complaints and reports system to reveal the drawbacks of illegal comparative advertising timely and effectively.

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