

MISLEADING ADVERTISING - VARIOUS DISGUISES IN VIETNAM

It is difficult to question the various benefits that advertising can bring about. Enterprises need advertising to launch or popularize their products on the market. Thanks to advertising, consumers get access to more information before deciding to enter into actual purchases or uses of services. However, together with the increasing density of their appearance on the media, advertising are also taking various disguises. Occasionally, they became tools for enterprise to engage in unfair competition practices and infringe upon consumers' interests.

Misleading advertising or deceptive advertising is the use of false or misleading statements in advertising. These also include comparative advertising, which is often unilaterally done by one supplier of certain type of goods and services without being based on proven, scientific evidences. Because misleading advertising is capable of deceiving and perceptually misleading people into commercial transactions which they don't have to, many governments in the world have put in place regulations to take control of this. In Vietnam, regulations on misleading advertising for the purpose of unfair competition practices are stated in the Commercial Law, the Ordinance on Advertising, and the Competition Law 2004. However, the current legal framework is quite general in nature, ranging from forbidden behaviours to redressal methods, failing to give explicit explanation to consumers and enterprises who are subject to the purview of these legal regulations.

Comparative advertising and the battle of brands

Comparative advertising is an advertisement in which one's own product or service is compared with a competing product and service for the express purpose of showing why the competitor is inferior to the product naming it. This type of advertising is often between branded products. According to the Competition Law of Vietnam, directive comparative advertising is illegal and forbidden by law. For example, Trung Nguyen coffee was accused of unfair competition practices when comparing their own brand G7 with three-dimensional Red Cup brand of Nestle. Another example is the case of Viettel gaining advantages by making a comparison with VNPT regarding subscription fares, which was also considered as having violated the Law.

In fact, comparative advertising is not a new phenomenon as it was first recognized in the 1970s. Currently in the world, there are great differences amongst countries' regulations in this regard. In Vietnam and several other developing countries, this type of advertising is directly banned. The argument is that the less-known brand tends to make use of the name of more famous brands by means of comparison. Even in case their statements are right, they are executing trademark infringement. Whereas, it is considered legal (while abiding by certain guidelines and restrictions related to misleading indications) in Europe, the United States, Canada, Australia and other developed countries. The US Federal Trade Commission (FTC) even asserted that comparative advertising is "a source of important information to consumers and assists them in making rational purchase decisions", and it "encourages product improvement and innovation, and can lead to lower prices in the marketplace".

Misleading advertising in terms of prices and consumer confidence

Consumers most often complain about prices given in advertisements. It is easy to mislead consumers since they generally are not able to compare the prices before and after the advertisements, and they are unaware of the real former prices the advertisers refer to. The advertisement gives the impression that the new prices are advantageous. This kind of misleading advertisement is unfair and manipulates the consumers' choice. Currently, this type of misleading advertising is getting more and more diversified and unidentifiable to consumers. One can list some most popular forms as follow:

Hidden fees and surcharges

Service providers often tack on fees and surcharges that are not disclosed to the customers in the advertised price. One of the most notable is for “cheap airfare service”. The service is offered by many low fares airlines such as Jetstar, Tiger Airways, AirAsia to attract customers. These advertisements, for example saying that “With 25 USD, you can afford a journey to Singapore/Thailand”, are entirely different from reality. The real price is much higher with many additional fees and surcharges such as airport tax, fuel charge, service fees...which are undisclosed in the advertisements.

Inflated price comparison

For comparative efficiency, advertisers can inflate the "regular" price in order to create the impression that the sale price is very low. The intent is obviously to mislead consumers into thinking that they are saving money by purchasing the "on-sale" item or service by advertising a large-percentage "discount". Some computer companies tend to inflate their old price in comparison with current price. The explanation may be such parts as computer memory, hard drives, memory cards, USB drives, and other items tend to fall in price quickly.

Buy X, get Y free

With this type of false advertising, consumers are lured that more is better. Some attractive promotional programs such as “Buy 1 get 1”, “Buy this get this” or “50-70% off” really mislead consumers. So what is the truth behind? By increasing the price of an item five times than original price, “Buy 5 get 1” program is offered while still keeping the same profit line. In some other cases, the free product is of lower quality than the originally purchased item, or its value a greatly overstated. Often, buy-one-get-one "deals" are simply an excuse to use the word "free" in advertising. The item may simply be "50% off" or "half price", or the shopper may actually be forced to buy at least two, or even in multiples of two. Because the shopper must buy something first, the "free" item is not truly gratis. In addition, the quality of this free product must be low.

Bait-and-switch

A bait-and-switch is an offer of a service or product at a very low price, with little or no intention to sell said service or product as advertised. If available at all, this low price is accomplished by lowering standards on the advertised product, such as guarantees, credit terms, or quality, thereby making it undesirable. Another method is to offer a "limited quantity" deal, with only a few of the advertised product per store. Once the consumer is in the store, sales personnel will try to coax him or her to purchase a different and more expensive product because they do not want to leave empty handed. This behavior is only legal if it is evidenced that there is a disclosure of the limited quantity available.

Introductory offers/Free trial

An introductory offer or "free trial" is an offer for an ongoing service that is valid for a limited period. After this period, the price or terms of the agreement change, often without further notice to any consumers that have accepted the initial offer.

The most common form of this is service bundling such as cable TV, satellite TV, Internet services, or software versions. The intent is to get consumers to get used to the service before raising the prices. For instance, HTVC was advertised with many attractive channels to get consumers into contract. In fact, the contract, not mentioning the name of the channel, already included a very detailed program and the acceptance certificate with sufficient channels. They do not even mention which channel is for free, which channel is paid services.

The fee gradually went up and the quality reduced which causing great displeasure among consumers.

Introductory offers are also very common for credit cards. Many Vietnamese consumers were taken by surprise when receiving bank notice in which the Forex Markup Fee applied to their current foreign exchange transactions had been increased up to several tens of times.

"Going out of business" sales

Recently in Hanoi, there is a bloom of fashion shops advertising "marked-down on clearance sale". A significant number of consumers favour these goods, from exported goods in stock to second-hand goods, both high and low quality. In fact, this type of sales has been nothing new in the world, especially in the context of global crisis. In reality, the real price has been already doubled (if marked-down to 50% off) and quadrupled (for a 75%-off price). Therefore, the liquidator's prices at the closing stores may be even higher than sale prices at retail stores.

Occasionally, stores will advertise such a sale with no intention of going out of business. By utilizing advertisement with titles such as "going out of business", "store closing", "liquidation sale" or "bankruptcy sale" a message of urgency and "dumped" prices is conveyed -- when in reality the business has no plans on closing its store or going out of business. In many cases, it turns out that the store only wants to get rid of the products before they are out of date or spoilt.

Units of sale and pricing

Another trick is to make the unit of pricing smaller than the mandatory unit of sale. One example is airlines, where a one-way price is quoted, even though it is impossible to get a one-way ticket for that price, and the flyer is instead forced to pay for a two-way ticket. Similarly, loudspeakers are often quoted as single units, even though the buyer is forced to buy a pair. In telecom circles, this is known as bundling, where customers are forced to buy two or more of pay TV, landline telephony, mobile telephony, and Internet access in order to get the advertised price, and are otherwise charged more.

Non-sale advertisements

Some stores will use advertisements, which show products that are not even on sale at all. Since the great majority of advertising is for sales, this often misleads the consumer into thinking that the items are at a special price, when in fact they are not. Wal-Mart and others with "everyday low prices" are known for engaging in this, especially during the Christmas rush. In Vietnam, many newly established enterprises advertise their vacancies and attractive remuneration, as a ways of making their name public. In fact, they have no intention of recruitment at all.

In conclusion, this type of misleading advertising for the purpose of unfair competition in Vietnam and in the world is quite diversified in nature and numerous which might not have been dealt with in this article. In all these cases, the intermediate benefits to consumers are small whereas the long-term consequences are big. Consumers will eventually lose their confidence in advertising. This will make both advertising less persuasive to consumers, which in turn would harm the violating business, as well as the business community in general. It is a fact that the regulations on misleading advertising in the Vietnam Competition Law are still general, causing it hard to regulate the various disguises of advertising in reality. Therefore, it is essential that more detailed implementation regulations should be provided in this regard in order to create a fair business environment for business and consumers.