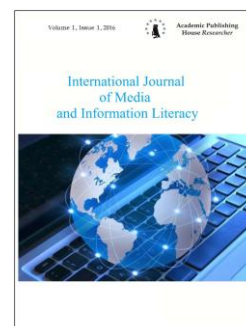


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Published in the Slovak Republic  
International Journal of Media and Information Literacy  
Has been issued since 2016.  
E-ISSN: 2500-106X  
2020, 5(2): 176-183

DOI: 10.13187/ijmil.2020.2.176  
[www.ejournal46.com](http://www.ejournal46.com)



## Legal Ways to Counteract Institutional Deformations in Advertising in the Media Space

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### Abstract

This article examines the phenomenon of advertising as one of the activities, without which it is impossible for society to move along the path of progress in the conditions of transformation and modernization of all spheres of human life and society. The influence of advertising on the active sphere of life is indistinct, since it not only boosts production, consumption and services, but also manipulates public consciousness and shapes certain behavioral models. A goal of advertising as an information technology is to influence the individual, group or mass consciousness. On the other hand, law as a general social regulator can interfere in the sphere of advertising. In this context, law as a regulator of public relations in general and advertising in particular is aimed at ensuring that consumers receive reliable information about the advertised goods, services or works. The law establishes requirements for the content of advertising, as well as the methods, forms of its placement and distribution. The study of the relationship between advertising and law is aimed at searching for areas of lawful and illegal behavior in order to determine the legal ways to counteract institutional deformations in advertising.

**Keywords:** advertising, advertising activities, legal regulation of advertising activities, media.

### 1. Introduction

The current development stage of advertising activity in Russia is distinguished by the appearance of new forms of its implementation, a variety of types, methods and genres. On the one hand, acting as a marketing tools, on the other hand, being an independent branch of the economics, advertising fosters competition, encourages the sale of goods and services, thus making social production more efficient. However advertising is frequently challenged due to the unethical aspects and their impact on the consumer.

Endowing the advertising object with a special semantic load and turning it into a kind of fetish, referring it to a certain type of behavior or attitudes, thereby advertising activity participates in the formation of social reality. At the same time, the idea inherent in advertising is often potentially a socially risky phenomenon, which leads to deformations of the basic foundations of advertising activities and may entail not only property losses, but also social disorientation of its consumers. The danger of advertising activity is associated both with the inability to accurately predict the possible reaction of consumers to the figurative and symbolic series of an advertising product, and with the fact that the use of various creative and marketing technologies often leads to the emergence of effective forms of advertising, but not fully compliant with legislation, which can

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lead to destructive consequences for a person, his psyche, as well as for society as a whole. These problems require effective legal regulation and determine the relevance and social significance of this study.

This research is relevant because there is a need to clarify and introduce into scientific circulation a number of fundamental theoretical definitions and positions. Also, the presented scientific work is of an applied nature, focusing on the search and identification of special risks of advertising activities, and, in addition, on the disclosure of legal methods to counter negative institutional deformations in advertising.

## **2. Materials and methods**

The methodological basis of the study is the concept of a neoclassical metaparadigm, based on a combination of principles and attitudes of classical and non-classical science, in addition, activity, riskological, structural-functional approaches and the theory of creativity are used. The use of a risk-based approach to identify possible social risks in the implementation of advertising activities has become necessary, since in modern pro-Russian society, in the world as a whole and in the media space, advertising activities are often associated with potential threats.

The definition of key research concepts became possible thanks to the use of the activity approach. To study more deeply the functional side of advertising, its dysfunctions that cause destructive risks, perhaps with the help of functional and structural analysis.

The possibility of using a set of heterogeneous concepts and theories in the study of the legal regulation of advertising activity made it possible to apply the principle of scientific historical objectivity, as well as to test the methods of comparative and structural-functional analysis, theoretical modeling.

## **3. Discussion**

To study the essence and concept of risk as a sociological category, the theoretical studies of V.I. Zubkov were used, who determined the penetration of social people into all social relations. In connection with this feature, the legal regulation of risky public relations should be carried out taking into account the coordination of the significant interests of all subjects (Zubkov, 2005: 23-24).

The theoretical basis of the study was the conceptual developments of scientists in the field of advertising, including in the digital space (Buckingham 2019: 14-16).

The object of this study was the possibility of the existence of society in a deformed information and communication space, as well as ways out of this situation.

The purpose of the study is related to the settlement of two conflicting processes: firstly, with the need to ensure freedom of speech, press, access to information, its use and distribution, and secondly, with the exclusion of unreliable and unfair advertising as a risk factor influencing subsequent deformations in advertising (Martínez-Costa et al., 2019: 19-28).

Advertising is a complex and multifaceted study, it is viewed as art, industry, communication, product of professional activity, organizational structure, the process of selling a product or broadcasting information to a consumer, etc. (Perlado-Lamo-de-Espinosa et al., 2019: 103-112).

The concept of advertising is studied and determined by scientists from various fields of humanitarian knowledge, therefore its content differs depending on the goals and specifics of a specific branch of science. The definition of the general concept of advertising, with which all researchers will agree, is difficult, since it is reflected in the diverse studies of economists, sociologists, philosophers, marketers, lawyers, culturologists, philologists, linguists, psychologists.

Russian researcher Shvecov I.V. believes that "from all the variety of scientific approaches, one can single out a pragmatic approach that emphasizes the economic importance of advertising, and a cultural approach, when advertising is viewed as a socio-cultural phenomenon associated with a variety of areas. human activities" (Shvecov, 2009: 52). Currently, the definition of the concept of "advertising" from a socio-cultural and economic standpoint prevails.

In modern science in various sources, the concept of advertising is investigated in the narrow and broad sense of the word.

In a narrow sense, advertising is perceived as information with specially defined characteristics, distributed in the form of a specific advertising product. Advertising in a broad sense is not only information, but also a multifaceted, diverse activity that unites its subjects, objects, actions of subjects, within which the creation, publication and broadcasting of advertising

information is carried out. That is, through the dualistic nature of the main categories - communication and activity – advertising can be defined not only as a result of creative activity aimed at attracting consumers, but also as a synthetic activity (Sedlakova, 2017: 114-128).

The essence of advertising as active communication is reflected in the creation of an aesthetic valuable product, and the implementation of the principle of productivity within the framework of the activity approach pursues the goal of economic efficiency (Tkachenko, 2009: 5). In this regard, the terms "advertising", "advertising information", "advertising activities" are often used as close in meaning or equivalent.

Today advertising has begun to be actively used as a tool for social and political technologies, focusing the attention of society on certain urgent problems and shaping the attitude of society towards these problems. Advertising assists in the diffusion of cultural values, national priorities and, as an element of the environment, permeates all fields of public life. However, at the same time, advertising can have both a conscious and subconscious influence on members of society using the emotional, sensual, irrational sphere of the consumer, without taking into account the arguments, logic and existing attitudes (Hobbs, Tuzel, 2017: 1-11).

In order to obstruct freedom of choice, manipulate public consciousness, human behavior when creating advertising, unfair methods and techniques of influence can be used. These include various forms of hypnosis, suggestion, imitation, psychological and social attitudes, infection, persuasion (Hobbs et al., 2018: 152-168).

Such not completely honest methods of influence include the effect of "25 frames", show technologies, neuro-linguistic programming, psychological stereotypes, etc. (Koszembar-Wiklik, 2016: 18-31).

The use of theoretical works made it possible to conclude that in the modern communication media space of Russia, advertising is a complex phenomenon, multifaceted in function and structure, it is possible to define it as a social institution, a method of communication, art, technology and as a special type of social activity.

Increasingly, modern advertising technologies are evaluated as a tool to influence public and personal consciousness in order to manipulate it. To achieve this goal, virtual images can be created that are actively introduced into the consumer environment using dubious social models, while universal values can be destroyed.

It should be borne in mind that advertising opportunities include not only direct impact, but also changes in traditional stereotypes of behavior, ethics and culture. As a result of the influence of Relama, there is a transition from satisfying various needs to the formation of these needs, while advertisers do not always comply with generally accepted ethical standards. With the use of the latest technologies, influencing the physiological needs of a person, relying on violence, advertising can have a destructive effect on the norms of traditional morality, disorient subjects in social reality. Accordingly, there is a need for the correct legal regulation of advertising that harms public interests and socially significant relations. Today there is a special legal regulation of advertising activities, which is maximally aimed at protecting society.

The definition of law as a source of social regulation of advertising activity is based on the scientific works of M.V. Baranova (Baranova, 2010: 65), E.G. Belousova and I. Vasilenkova (Belousova, Vasilenkova, 2006: 231). Other works investigate the features of regulatory and legal regulation and self-regulation of advertising activities in the markets of the corresponding product. (Kirillovykh, 2013: 48; Ovchinnikova, 2008: 129; Pankratov, 2008: 254).

The works of E.A. Mamonova, I.V. (Mamonova, 2008: 174), Nekrasova reflect the main forms of advertising information, features of their legal regulation (Nekrasova, 2007: 54-57). Separate studies analyze different forms and types of legal liability of subjects of advertising activities for violation of advertising legislation (Pimenov, 2006: 75).

Among the existing public regulators of advertising activities, legal norms (law) occupy a special place along with the norms of morality, religion, traditions, customs, aesthetic prescriptions, linguistic rules, sanitary and technical norms, since it is the legal impact that presupposes the presence of authoritative principles, the obligation to fulfill and coercive influence with punishment if necessary.

It is legal norms that determine the specifics and form special requirements for the content of certain types of advertising, methods of placement and broadcasting, establish the specifics of the legal status of subjects of advertising activity (advertisers, manufacturers and distributors). These

norms presuppose the possibility of state control, self-regulation rules, as well as a mechanism of legal responsibility. A particularly valuable element of normative acts is the establishment in them of the fundamental principles of advertising activities aimed at preventing and suppressing unfair competition and unreliable advertising.

The modern legal system has the property of formal rationality and consists of logically related legal norms. Based on this system, the circumstances of objective reality correlate with the norms of legislation and their legal qualification is carried out.

This methodology makes it possible to identify in Russian law general approaches to advertising, including:

- the inadmissibility of the presence in advertising of materials that promote enmity and hatred for national, political, ethno-confessional and other reasons;
- provision of unfair competition and monopolistic activity;
- protection of political, economic and social interests of the state, society, individual.

The law as a social regulator of advertising activity is aimed at obtaining reliable information about the advertised product by consumers. The legislation, acting as a guarantor of the observance of the rights of subjects, ensures a balance of diametrically opposed interests of customers, manufacturers, distributors and consumers of advertising, defining requirements for content, methods of placement, forms of advertising. In accordance with the principle of freedom to receive and disseminate information, the requirement to improve legislation based on dynamically developing public relations, the need to suppress unfair competition and unreliable advertising, the role of law as a universal social regulator of advertising is determined. It is the legislation that is able to restrict the freedom of advertising and ensure the impossibility of its use for the purposes of information extremism and terrorism, protecting national interests and ensuring the security of the state. In this regard, the law on advertising contains specific goals and objectives of the legal regulation of advertising activities ([Russian Advertising Law, 2006: 2](#)).

At the same time, the situation on the advertising market is not fully controlled, since certain aspects of advertising activities are still outside the scope of legal influence. This gap is filled in by judicial practice, which is forced to also regulate advertising. The subjects of litigation, reflected in the judicial practice, most often become disputes between advertisers and persons distributing advertising, about agreements concluded between them that contain violations of the law. Quite often, the courts are considering disputes about the protection of the rights of individuals and legal entities, their business reputation from violations due to the dissemination of advertisements in the media containing defamatory information that does not correspond to reality. In the practice of arbitration courts, disputes are widespread about the violation of the terms of contracts between the subjects of advertising activities, about the dismantling of advertising structures in respect of which the term for their placement under contracts has expired. Such a variety and complexity of disputes presupposes a high level of legal practice on the part of judges, which implies real lawmaking by the judiciary in the decision-making process.

In accordance with the law on advertising, the subject of its regulation includes both social relations arising between participants in advertising activities (advertiser, advertising producer, advertising distributor) related to the production, placement and distribution of an advertising product, and those relations that arise as a result of its impact on consumers of advertising. Since the images shown in advertising are aimed not only at stimulating interests in personal items, but also at forming attitudes towards public goods, the rights and interests of citizens and organizations, the relations arising in this connection should also be subject to legal regulation ([Russian Advertising Law, 2006: 2](#)).

Unfair and unreliable advertising is prohibited at the legislative level, however, in the modern Russian media space, examples of just such low-quality advertising are widespread, which demonstrates the presence of institutional deformations in advertising. These factors have a negative impact on the participants in advertising activities, which leads to their financial losses, the emergence of risks of negative perception of the advertising product, aggression of consumers of advertising images, etc.

The following can be singled out as examples of the possible appearance of institutional deformation:

- application of methods of manipulation of consciousness, psyche and subsequent behavior of consumers, as well as latent negative impact on their subconsciousness;

- violation of the causal relationship between the displayed image, the further model of behavior and the result obtained as a result of the consumption of the advertising product;
- unjustified endowment of an advertising product with additional properties that characterize its advantages in relation to other similar goods;
- justification of unethical advertising content by originality, creativity, creativity, etc.

In the cases under consideration, legal regulation is necessary in order to prevent the creation of conditions that can become a factor in the deformation of advertising activities.

The correct distinction between bona fide and credible advertising from inappropriate advertising product is often the subject of controversy and disputes between lawyers and advertisers. Deception in advertising is understood as unreliable images that mislead the consumer about the properties and characteristics of the product, as well as manipulate his mind, form beliefs that do not correspond to reality. Also, an advertisement that contains: a plausible statement about the advantages of the advertised product relative to other similar products, however, not being such, will also be referred to as unreliable; knowingly incorrect information that generates erroneous beliefs, etc.

It should be understood that the presence of these institutional deformations in advertising can cause not only moral harm, but also quite tangible material harm, therefore, for example, the law only allows advertising of medicines and medical services, and an indication of any medicinal properties of other products is prohibited.

Legal regulation of advertising has a number of specific functions, among which the following can be distinguished:

- streamlining relations between subjects of advertising activities, protecting the rights and interests of advertisers, advertising producers, advertising distributors and consumers of an advertising product;
- Establishment and enforcement of regulatory grounds for the dissemination of information, excluding violations of the law, or their suppression;
- promotion of the norms of business turnover and protection from unfair competition in the field of advertising;
- creation of conditions for receiving reliable and bona fide advertising, protection from inappropriate, hidden advertising;
- ensuring the activities of self-regulatory organizations in the field of advertising, etc.

These functions are legislatively consolidated in the form of established prohibitions on use:

- foreign words and expressions that can lead to distortion of the meaning of the advertising message;
- swear words, as well as obscene and offensive images;
- images of medical workers, if this advertisement is not related to the provision of medical services;
- content that demonstrates the attributes and the process of smoking, drinking alcohol;
- indications that the object of advertising is approved by state authorities, etc.

In order to prevent institutional deformations in advertising activities, the Federal Law "On Advertising" also provides for bans on:

- placement of advertisements in textbooks, notebooks, diaries intended for schoolchildren;
- posting information prohibited for distribution in childcare facilities or at a distance of less than 100 meters from them;
- interruption of information content by advertisements with increased volume;
- distribution of hidden advertising, which has an unconscious effect on the consciousness of consumers.

The use of official state (coat of arms, flag, anthem), religious symbols, objects of cultural heritage of the peoples of the Russian Federation and included in the World Heritage List is also regulated by the law on advertising. At the same time, all the above provisions do not apply to censorship, since they do not imply total state control over advertising activities. Note that according to the Constitution of the Russian Federation, censorship in Russia is prohibited.

#### **4. Results**

Thus, in order to counteract institutional deformations in advertising, the production, placement and distribution of advertising must comply with the requirements of Russian



legislation. However, advertising producers in pursuit of vivid, memorable images, the original embodiment of a creative idea, violate the established prohibitions, ignoring legal restrictions or using legislative gaps. The following are examples of such deformations:

- the use of special writing techniques (small print, original style) when specifying essential information;
- deliberately misleading consumers by substituting concepts, distorting images, incorrect comparisons used in advertising;
- the use of destructive appeals, obscene images that attract the attention of consumers with extraordinary formulations and images;
- an indication of imaginary scientific research, clinical trials, testifying to the advantages of the object of advertising;
- the use of creative technologies, which are essentially unethical advertising.

Determining the legal ways to counteract institutional deformations in advertising, it is necessary to highlight the general directions of improving the legal regulation of this area and propose specific measures for optimizing advertising legislation that contribute to the leveling of potential risks. The general directions include:

- combination of interests of subjects of advertising activity and the state, legal and moral norms, cultural and historical traditions;
- protection of professional rights of advertisers, advertising producers, advertising distributors and the creation of a civilized advertising market;
- taking into account the communicative essence of advertising while ensuring the interests of all participants in advertising relations;
- active promotion of the norms of business turnover in the field of advertising;
- participation of subjects of advertising activities in the development and implementation of draft laws regulating the advertising business;
- development and protection of business interests and contacts of specialists in the field of advertising, marketing and public relations at the national and international levels;
- ensuring the proper implementation of the rules for collecting and disseminating information on cases of violation of the law on advertising;
- timely optimization of legal support in accordance with the trends in the development of new advertising technologies while maintaining freedom of creativity.

As specific measures to optimize advertising legislation in order to counteract its institutional deformations, the following can be distinguished:

- 1) advertising must be distributed in Russian or the language of the peoples of the corresponding subject of the Russian Federation and only for goods and services that have passed licensing or certification; be recognizable and understandable without special knowledge;
- 2) advertising must not be inauthentic, knowingly false, unfair, unethical, hidden; encourage consumers to engage in unauthorized, dangerous and criminal activities; violate someone else's exclusive rights; apply to goods that are prohibited for circulation;
- 3) it is necessary to strictly observe the regulatory requirements and established prohibitions governing the features of advertising in accordance with its types, methods of distribution in various media, as well as specific content for certain categories of consumers (minors);
- 4) establish a ban on indicating that the advertised object has additional characteristics of the preferential property, if they are a mandatory requirement for these goods;
- 5) it is necessary to legislate the provision on the inadmissibility of references to the conduct of scientific, laboratory research as a factor demonstrating the advantages of the advertised object (except for medical services and medicines), if the conduct of these studies is a prerequisite for their introduction into circulation;
- 6) the legalization of the concept of "unethical advertising" by returning the corresponding norm to the law on advertising, as well as the creation and regular updating of a single dictionary of abusive and obscene words and expressions in the Russian language, will help to level the practice of replacing creativity with unethical advertising product;
- 7) extend the effect of the law on advertising to information that is placed on a product or its packaging and can be perceived as advertising when using mosaic technology in the design of goods;

8) private prohibitions on referring to images of minors in advertising do not apply to the prohibition of their textual, visual or sound use when advertising goods and services not intended directly for them. Therefore, in order to minimize the risks of manipulating the minds of consumers with the help of children's images, we propose to establish a complete ban on the use of images of minors in advertising.

## 5. Conclusion

Citizens' confidence in legal institutions allows public authorities to ensure the effectiveness of the functioning and improvement of social relations in the media space, including in the field of advertising. The socially regulatory role of law, which constantly needs updated information on the state and trends in the development of legal awareness and behavior of the population, promotes the use of legal mechanisms for making practical management decisions.

The modernization of the Russian advertising legislation cannot be considered unsuccessful, proceeding only from the presumption that not all the gaps and shortcomings have been eliminated, while new risks and institutional deformations in advertising have emerged. Just as it is impossible to satisfy simultaneously the interests of all persons, it is impossible to provide an example of an ideal normative legal act that equally suits representatives of all strata of society, nationalities, professions, races, genders, etc.

In addition, a normative act that corresponds to the current state of social relations, the development of state and legal institutions, the theory and practice of its application, after a certain time may become unacceptable. However, this does not mean that scientists can not take part in improving the legislative framework, on the contrary, they should actively contribute to the search for solutions to emerging problems, challenges and threats, which is one of the main tasks of science.

The implementation of the legal methods of counteracting institutional deformations in advertising activities indicated in the study is aimed not only at eliminating them, but also at optimizing the practice of consumers receiving reliable, conscientious, ethical advertising, with the aim of its adequate impact on public relations in the media space.

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