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Advertising relations

Considering that advertising is the engine of trade around the world and of markets competition efficient development, every country has relevant legislative requirements to advertising of certain types of goods, works and services. Ukraine is no exception in this regard. Provisions on advertising in Ukraine are enshrined in numerous legal acts, in particular in the specialized Law of Ukraine “On Advertising”.

All economic entities shall be obliged to adhere to legislative requirements on advertising as their breach may cause considerable damage, including penalties imposed on the economic entity acting as an advertiser, an advertising producer or a distributor.

13.1. Advertising and advertising activities

The legislation of Ukraine provides a definition of advertising as information about a person or a product distributed in any form and in any way in order to promote awareness among advertising consumers and support their interest to certain persons or goods. Based on this definition, any goods, work or services comprising the trademark image, slogan or sign that economic entity wants to make available to the public shall be considered as advertising.

Parties to advertising relations in Ukraine are: an advertiser, an advertising producer, an advertising distributor and a consumer of advertising.

An advertiser is a customer of advertising, organizing the production of advertising and its further distribution. An advertising distributor is a person performing distribution of advertising. A consumer of advertising in turn is an uncertain circle of persons who are advertising addressees.

Foreign economic entities that have an official representation or a branch in Ukraine are the participants of advertising relationships, and can be both advertisers and advertising producers or distributors. The requirements of advertising legislation are applicable to such economic entities.

Basic requirements to advertising, requirements to advertising for advertisers, advertising producers, and advertising distributors are enshrined in the Law of Ukraine “On Advertising”.

13.2. Language of advertising

Pursuant to the Law of Ukraine “On Principles of the State Language Policy”, advertisements, messages and other forms of audio and visual advertising products shall be performed in Ukrainian or in another language, selected by an advertiser.

It should be realized that some territories of Ukraine are home to the vast majority of consumers of advertising speaking a language other than Ukrainian, therefore, according to such statistical information, the advertiser may distribute advertisements in this area in the language spoken by a large part of the population of the area (a regional language or a language of minorities). Subtitling of advertising information in the official language is also possible if such information is provided in the regional language or the language of minorities.

In most cases, advertising in Ukraine is provided as promotional materials in Ukrainian.

Trademarks shall be produced in advertising in the form enjoying legal protection in Ukraine or pursuant to the international registration.

Marking of goods, instructions on their use shall be produced in Ukrainian, regional or minority language. By the decision of manufacturers of goods, translation into other languages can be placed along with the text in Ukrainian. Marking medicines for export shall be done in any language. Marking medicines, medical devices and instructions (for use of such medicines and medical devices) for import into Ukraine shall be performed in the original language.

13.3. Prohibitions on the use of advertising

Pursuant to the applicable legislation of Ukraine, when placing advertisements, it is forbidden:

- to disseminate information about the goods which are subjects to prohibition for production, circulation or entry into the customs territory of Ukraine;
- to place statements which are discriminatory on the grounds of human origin, social and economic status, race, ethnicity, sex, education, political views, attitude towards religion, language, type or nature of occupation, place of residence or other circumstances as well as those discrediting the products of others;
- to place data or call to actions which may cause breach of the law, cause or may cause harm to the health or life of people or the environment, and encourage the safety facilities neglect;
- to use tools and technologies affecting advertising consumers subconscious;
- to use a discriminatory statement in respect of persons not using the advertised product;

- to use or imitate images of state symbols of other states and international organizations as well as the official name of the government bodies and local governments;
- to advertise products subject to obligatory certification, or production or sales of which requires a special permit, a license in case of absence of the respective certificate, permit or license; to place a picture of an individual or use his/her name without his/her prior written consent;
- to imitate or copy texts, images, music or sound effects used in advertising of other goods, unless otherwise provided by laws of Ukraine in the field of intellectual property;
- to advertise services related to a concert, touring, touring and a concert, a competition, a festival activity, without information on use or non-use of phonograms by performers of music. This information shall take at least 5% of the total area of the whole advertising volume on posters and other advertising materials concerning a particular service;
- to distribute advertising (including cinema and TV films trailers), containing elements of cruelty and violence, pornography, cynicism, denigration of human honour and dignity. Film trailers having restrictions on the viewing audience shall be placed only during the time allowed for showing such films;
- to distribute advertising on construction of a residential house using private funds, involved from physical and business entities, including that in operation without acquiring by business entities involved in its construction or investment, or financing of proprietary or usage right for the land plot, licenses for construction activities, permission for construction works or permission/license on delivery of financial services or a certificate for registration of targeted bond issue, performance of commitments by which shall be secured by a real estate unit under construction;
- to distribute advertising services of divination and fortune-telling.

13.4. Features of certain types of advertising

13.4.1. Advertising of medicines and medical equipment

When advertising medicines and medical equipment the following principal requirements shall be taken into account.

Only those medicines and medical devices are possible for advertising, the use of which is permitted by the Ministry of Health of Ukraine, as well as medicines sold without prescription and not included to the list of drugs prohibited for advertising by the Ministry of Health of Ukraine.

Advertising of drugs, administration and sales of which are allowed by prescription only as well as listed as medicines prohibited for advertising, is prohibited. Advertising of doping substances and methods for their use in sports is prohibited.

13.4.2. Advertising of weapons

Advertising of weapons may be possible only in relevant specialized publications on weapons, or directly in the premises of commercial entities (companies) selling weapons or at the relevant exhibitions (events). Advertising using images of real or toy weapons, explosive devices in any form, is prohibited.

13.4.3. Advertising of services related to the involvement of public funds

Advertising of services (banking, insurance, investment, etc.) related to the involvement of public funds, or funds of persons providing them, is allowed only subject to a special permit, or a license, confirming the right to pursue such an activity. Such advertising shall include the number of the permit, the license, the date of issue and the name of the authority, having issued the permit or the license. Advertising of trademarks, names of persons (without advertising of services) is possible.

13.4.4. Advertising of construction projects

Advertising of construction projects for the purpose of selling residential or non-residential premises, including those associated with the involvement of public funds is allowed only subject to the license (permit) for construction activities and permit for construction work on a specific site advertised. Such advertising shall include the number of the license (permit), the date of its issue and the name of the authority, having issued the license (the permit).

13.4.5. Advertising and children

Attention shall be drawn to the requirements of advertising in respect of children who are the most vulnerable for advertising consumption as compared to adult consumers of advertising. Thus, according to the Law of Ukraine "On Advertising", it is prohibited:

- to use images of children consuming or using products intended for adults only or products the purchase or consumption of which by minors is prohibited by law;
- to include information that could undermine parents', guardians', caregivers', teachers' authority and children's trust in them;
- to include calls to children to buy products or apply to the third parties with a request to make a purchase.

Pursuant to the Law of Ukraine "On Advertising", advertising for children shall not:

- include images of children in dangerous situations or under circumstances which in case of their imitation may harm children or other persons, as well as information that may cause children's negligence to situations hazardous for life and health;
- cause moral or physical harm to children, cause a feeling of inferiority in them;
- show the possibility of purchasing the advertised product, designed primarily for children, by each family with no regard to their budget;

- create the impression in children that the possession of advertised products gives them an advantage over other children.

13.5. Types of advertising contracts

The main types of contracts in advertising are the following:

- a contract on advertising services for the development/adaptation of promotional materials;
- a contract on advertising services for advertising materials placement;
- contract on advertising services for the organization of promotional activities (contests, quizzes);
- license agreements for the use of intellectual property in advertising.

Mixed contracts which include elements of various contracts, such as a contract on supply of promotional materials, a contract on creation of intellectual property, a licensing contract, an agency contract for the organization of promotional events, etc. may be used in the advertising activity.

The subject of the contract on advertising services for the advertising materials development and adaptation is performance of works and services, in particular, creation of advertising clip, an advertising design, an advertising layout, synchronization of an advertising clip in Ukrainian, integration of the new video frames or pictures in the existing advertising clip, creation of computer graphics with the advertiser's advertising, creation of promotional web banners.

The subject of the contract on advertising services for advertising materials placement is providing services in the created advertising material placement on television, radio, outdoor advertising constructions, various Internet websites, trade areas, transport, architectural objects, etc.

The subject of the contract on advertising services for the organization of promotional activities (contests, quizzes) is the organization of promotional contests in the Internet on an advertiser's website or on a specially created website, procurement and awarding prizes (gifts) to the winners of promotions, delivery, installation and maintenance of advertising structures to carry out an advertising event outdoors or indoors, organizing promotional contests in the course of different events.

The subject of the license agreement is obtaining a permission (a license) from the owner of the intellectual property, such as music, photos, design, font, text advertising, actor's performance, image of an individual, for its further use in the advertiser's promotional materials under the terms of use (time, area, method), referred to in such an authorization (a license).

During the promotional activities other business contracts are possible to be executed, depending on the advertiser's advertising activity.

13.6. Advertising on TV

Time allocated for advertising and shopping on TV shall not exceed 15% for each actual clock hour of the broadcast. Advertising shall be placed in breaks between programs and shows.

Advertising may be placed during the program and show broadcast so as not to harm the integrity and content of the program, show and the rights of their owners.

Broadcast of concert and entertainment programs, shows may be broken by advertising provided that the program or show lasts for at least 20 minutes between the advertising breaks. Advertising during broadcasting of sports programs, shows shall be placed in breaks between their parts. Broadcasting programs, shows for children (lasting up to 30 minutes) cannot be interrupted by advertising. Broadcasting programs, shows for children (lasting for more than 30 minutes) and programs, news broadcasts may be interrupted by advertising no more than once every 30 minutes.

For the purposes of advertising on TV the following shall not be considered as advertising:

- disclosure, announcement in the program, show of the name of the sponsor, intellectual property belonging to it;
- broadcasting social advertising if it is distributed by TV and radio organization free of charge;
- announcements of own broadcasting programs, shows of TV and radio organization.

The anchor, speaker and other participants of information, information and analytical programs, shows are prohibited to provide direct consumer properties of goods or specify bank accounts, contact numbers, address of the manufacturer of the goods, the price of goods.

Broadcast (rebroadcast) of the advertising contained in programs and shows of foreign broadcasters broadcast (rebroadcast) to Ukraine, provided that the foreign broadcasters do not fall under the jurisdiction of the European Union member states or the states, having ratified the European Convention on Transfrontier Television, is prohibited.

Broadcast (rebroadcast) of the advertising contained in programs and shows of foreign broadcasting organizations falling under the jurisdiction of the European Union member states, or the states, having ratified the European Convention on Transfrontier Television, broadcast (rebroadcast) to the territory of Ukraine shall be allowed, provided only broadcasting (rebroadcasting) of such advertising is paid to a legal person of Ukraine, regardless of the method of implementation of such broadcasting (rebroadcasting). Placing advertising by program service providers in programs and shows of foreign broadcasters is prohibited.

The responsibility for meeting the requirements on the advertising placement and distribution in programs and shows shall be borne by TV and radio broadcaster.

13.7. Outdoor advertising

Outdoor advertising is advertising placed on special temporary and permanent structures – advertising media located in open areas and on the outer surface of buildings, structures,

elements of street furniture, above the roadway of streets and roads. Outdoor advertising is governed by the contract on the placement of the corresponding type of advertising material.

Outdoor advertising shall meet the following requirements:

- being placed subject to the requirements of safety rules and providing visibility of the road signs, traffic lights, intersections, pedestrian crossings, stops for public transport of general use and representing no images of road signs; outdoor advertising lighting should not dazzle road users as well should not illuminate apartments in dwelling houses;
- foundation of the ground external advertising, located above the earth surface, may have ornamental design;
- pylon of the ground external advertising located along the roadway of streets and roads, should have vertical road markings laid by reflective material of 2 meters height above the ground;
- lower edge of the outdoor advertising, placed over the roadway, including on the bridges, overhead roads, etc., should be located at the height of not less than 5 meters from the surface of the pavement;
- in places where travel way touch caps of buildings or fences, outdoor advertising can be placed in one line with facades of buildings or fences.

Outdoor advertising placement on the monuments of the national or local importance within protection zones of these monuments, historical areas of settlements shall be implemented on the basis of permits issued by the participation of executive power bodies, enshrined by the Law of Ukraine “On Protection of Cultural Heritage”.

13.8. Adaptation of advertising

Advertisers quite often use in their work advertising materials (videos, advertising models, advertising banners, brochures, etc.) made in another country meeting the requirements of the advertising legislation of that country. However, these advertising materials do not always meet the requirements of the advertising law and should be brought into conformity with the applicable law of Ukraine and advertiser’s advertising requirements.

The requirements of the applicable law of Ukraine should be taken into account, when adapting advertising materials, in order to prevent imaging in advertising materials of the objects which are prohibited for advertising by the applicable law (images of weapons, symbols of international organizations, images of famous persons, without written permission from those individuals, etc.).

Thus, the legal analysis of advertising material subject to adaptation shall define in full the list of images, objects, texts, etc., subject to adaptation, including removal, Ukrainian translation, editing, adding new titles in advertising materials, subject to the applicable law, etc.