

CHINA LEGAL REPORT*

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Significant Changes in Advertising Law of P.R.C.

I. Overview

On September 1st, 2015, the new version of the Advertising Law of the People's Republic of China ("Chinese Ad Law 2015") entered into force. This is the first time for the Advertising Law of the PRC of 1995 ("Chinese Ad Law 1995") to be revised. The fast pace of the Chinese economy and the emergence of new social media and marketing platforms have changed the advertising business in China in these ten years. As a marking change, Article 1 of Chinese Ad Law 2015 newly puts "protecting the legitimate rights and interests of consumers" ahead of "promoting the healthy development of the advertising industry", from which the trend to strengthen management of advertisements in this revision can be sensed clearly. As a result, most of the revisions are clearly directed at protecting consumers from misleading advertisements, in particular in sensitive areas such as medical products, food, alcohol, infant nutrition, real estate, etc. For such purpose, the legislator has used a wide array of legal instruments: banning or restricting certain contents from advertisements; forbidding certain types of intrusive advertisements; limiting and regulating the endorsement of celebrities; punishing authors of misleading advertisements more harshly; and improving the supervision structures.

This issue of China Legal Report intends to deliver a comprehensive overview of the main amendments in Chinese Ad Law 2015 in four aspects: changes of the rules on contents of the ads (see II.); restrictions on Ad endorser (see III.); punishment for false ads was strengthened (see IV); and changes on supervision and legal liabilities (see V).

II. Changes of the rules on contents of advertisements

On the one hand, the revised law expands the scope of existing restrictions on the contents of advertisement, in particular in the field of medical and chemical products. On the other hand, it adds new rules for certain kinds of goods or services.

A. New Law expanded the application range of existing rules on the contents of advertisement(main articles: Article 15, 16, 21)

- **Areas in which advertisement is prohibited:** The revised law extended the prohibition to pharmaceutical precursor chemicals, drug addiction treatment medicines, medical devices and

treatment methods (art. 15). Besides, advertisements for prescription medicines other than items listed in article 15 can only be made on certain medical or pharmaceutical journals as jointly designated by the public health administrative authority and the drug administration under the State Council.

- **Contents of advertisement for pharmaceuticals and medical devices:** Such advertisements are limited according to the instructions of the related authorities. Further, advertisement endorsers (such as artists or other celebrities appearing in an ad) are entirely prohibited to make endorsements or testimonials in advertisements for medical treatment, pharmaceuticals or medical devices (Art. 16).

- **Limitations on the use of names of institutions:** Advertisements for agricultural pesticides, veterinary medicines, food and food additives shall not use the names or images of medical research institutes, academic institutions, technology promotion institutions, industry associations or professionals and users for recommendation or as proof of their efficacy. Besides, any statement on the rate of efficiency is forbidden (Art. 21).

B. New rules for certain kinds of goods or services

Articles under this subject are totally different from the old law. They are new regulations added into the Chinese Ad Law 2015 applicable on the following products and services:

- **Healthcare food:** The words “This product cannot substitute medication” shall be marked conspicuously in the advertisement, while no guarantee or assertion for efficacy and safety shall be stated. Any claim or hint that the product advertised is necessary to safeguard health is forbidden. Ads endorsers are not able to make endorsements or testimonials in advertisements for healthcare food (article 18). Note that the law does not contain a definition of what is “healthcare food”, so that this article will probably be subject to further specification by the authorities or in an additional ordinance.

- **Infant nutrition:** Advertisements for infant dairy products, soft drinks and other food shall not claim that they can constitute full or partial substitution of breast milk through mass media of communication or in public places (Art. 20).

- **Alcoholic drinks:** The new law restricts content showing excessive drinking and indications of conducting activities such as driving a car, steering a boat or airplane, etc. Even the act of drinking itself may not be shown anymore in an ad for alcoholic products (art. 23).

- **Education and training:** No implicit or explicit promises relating to progression, passing exams, relevant examination agency or its personnel may be made in advertisement for education and training. No recommendations using the names or images of research institutes, academic institutions, educational institutions, etc., may be made in the ads (Art. 24).

- **Product or service with anticipated investment returns:** Advertisement for such products shall provide a reasonable prompt or warning of any possible risk and the assumption of the responsibility for any involved risk. Besides, the ads shall not contain any guarantee promise of any future results, proceeds or other relevant situations, etc. No use of the names and images of academic institutions, industry associations, professionals or beneficiaries may be used as recommendation or as proof of success in ads (Art. 25).

- **Real estate:** The housing resource information shall be authentic. The surface measurement method shall be indicated (i.e. including walls and public areas or not). Besides, there are several prohibitive provisions of such ads, such as no promises of appreciation or investment return (Art. 26).

- **Seeds and breeds:** In advertisements for crop seeds, forest seeds, grass seeds, breeding animals, aquatic fingerlings, planting and breeding are now regulated in a prohibitive manner. Variety name, production performance, increment or output must be explicitly expressed. Any assertion that cannot be proved in science; any assertion or guarantee for efficacy; analysis, forecast or guarantee promise of the economic benefits, etc. are banned, (Art. 27).

- **Protection of minors:** Advertisement on items commonly used by pupils such as school bags, pencils etc. and advertisements in schools are prohibited. Public service advertisements are the only exception. Ads for certain products are banned from publication in mass media of communication targeting minors. Besides, the ads shall exclude contents that induce minors to ask their parents to buy products or services advertised or are likely to cause minors to imitate unsafe acts (Art. 39 and 40).

Limitations for unrequested advertisement and right to refuse advertisements : In these regulations, it's requested to add a clear mark for closing pop-up ads on websites, to express the true identities and contact details of senders and at the same time provide methods to refuse subsequent receipt when delivering electric ads. To protect personnel privacy, art. 43 also prohibits the unrequested sending of advertising emails and the distribution of leaflets on and around vehicles and residential areas (art. 43 and 44).

III. Restrictions regarding advertisement endorsers

In the last ten years, the media industry, entertainment stars and artists have increased their influence initiatively or unconsciously on their fans and on the public. The legislator now seeks to ensure that the promotion of particular products by such celebrities (endorsers) in advertisements do not mislead or damages consumers.

- Definition of an “endorser”: any natural person, legal person or other organization other than an advertiser that uses his/her/its own name or image to make endorsements or testimonials for a product or service in an advertisement (Art. 2).
- **Personal use:** Endorsers shall not make endorsement or testimonials for productions or services they never used or accepted. Minors under the age of ten shall not be used as advertisement endorsers. (Art. 38).
- **Liability of endorsers:** An endorser shall bear joint and several liabilities for damages caused by misleading or deceiving ads for products or services relating to the life and health of consumers. Regarding misleading or deceiving advertisements for other products which lead to damages to consumers, the endorser shall bear joint and several liabilities if he/she knows or should have known the misleading nature of the ad (Art. 56).

Heavier penalties for endorsers violating the law (Art. 62).

IV. Punishments for false advertisements were strengthened

- A new, clear definition of the concept of “false advertisement” has been included in article 28 of Chinese Ad Law 2015: an advertisement which deceives or misleads consumers with false or confusing content. Penalties and liability for false ads were in general made stricter and heavier. For instance, if the advertising agent or advertisement publisher fail to provide the true name, address and valid contact information of the advertisers, the customers may require them to make advance compensation.

Regarding false ads of products or services relating to the life and health of consumers which cause damage to the consumers, the advertising agents, advertising publishers or advertisement endorsers for such ads shall bear joint and several liabilities with the advertisers concerned.

- Legal persons responsible for false ads or other violations of the Chinese Ad Law 2015 may have their business license revoked. Where a director, supervisor or senior management of companies is responsible for such acts, he shall be banned from such positions for three years.

V. Changes on supervision and legal liabilities

The new law has changed the structure for the supervision of advertisements by authorities and civil agents. Basically, the Administration for Industry and Commerce (AIC) under the state council is in charge of the advertising supervision and administrative work nationwide. Local AICs at the county level or above are in charge of the advertising supervision and administration work within their own jurisdictions. The new law newly regulates civil supervision as well (articles 7, 53 and 54). Advertising industry organizations, all entities and individuals, consumers’ association and other consumers’ organizations are supervision units of advertising activities. Thus, the main new elements are the involvement of the national AIC and of civil agents in the advertisement supervision.

The official powers of authorities to supervise advertisement have also been extended to include, for instance, conducting on-site inspections of the places which have been suspected of being used for carrying out illegal advertising activities.

The old law of 1995 mentioned only fines as the penalty for infringements. The new law creates a whole new range of more subtle penalties, such as revocation of business license; revocation of practicing license for diagnosis items or medical institutions imposed by the public health administration authority; revoke the approval documents for advertisement review; non-acceptance of advertisement review of such applicant for one to three years; criminal liabilities; removal of responsible persons in approval work; etc. (Art. 55).

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