

Protecting the Electronic Consumer from Misleading Commercial Advertising in the Digital Environment

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Abstract:

Electronic advertising remains a highly controversial issue, particularly in its commercial aspect, when an electronic supplier markets products in the digital environment and relies on misleading methods that affect the decision of the electronic consumer. The consumer may later discover that the information provided in the advertisements does not reflect the true nature of the good or service, which poses a threat to the relationship between the consumer and the electronic supplier. Therefore, advertisements containing misleading information negatively affect the consumer's freedom and willingness to obtain accurate information.

As a result of the development of electronic marketing methods, misleading electronic commercial advertising has become a common means of promoting products in virtual markets. Electronic suppliers use it to attract consumers and influence their choices. The protection granted to consumers against such advertisements has developed accordingly. The Algerian legislator has responded to this development by establishing preventive rules to ensure fair commercial advertising activity on the one hand, and by combating misleading electronic advertisements through their prohibition and the punishment of offenders on the other hand.

Keywords: Electronic Consumer, Electronic Supplier, Fair Electronic Commercial Advertising, Misleading Electronic Commercial Advertising, Digital Environment, Products, Services.

INTRODUCTION:

Electronic commercial advertising represents a fundamental pillar and a legitimate means through which the electronic supplier markets products and services in the digital environment and virtual markets. It also constitutes a direct communication channel with the electronic consumer, through which the supplier is obliged to provide the consumer with the necessary information related to the product and the service.

However, electronic commercial advertising may exceed the aforementioned limits of legality when the electronic supplier uses it to attract the largest possible number of consumers by employing misleading methods that significantly affect the will of the electronic consumer, causing the consumer to be drawn toward those sales and services.

The importance of the subject of misleading electronic commercial advertising lies in the fact that it negatively affects the relationship between the electronic supplier, namely the advertiser, and the electronic consumer, namely the recipient of the advertising message. The consumer may be driven toward this type of advertising under the illusion of needing the product or service, only to discover later that the content of the electronic advertising message is not actually present in the product or service.

Including false information in electronic commercial advertisements for the purpose of misleading the electronic consumer affects the consumer's freedom and legitimate desire to obtain electronic commercial advertisements that are accurate and fully reflect the content of the advertising message, while ensuring that the electronic consumer obtains products and services that reflect the true nature of their content.

In light of the violations and the spread of misleading electronic commercial advertisements in the digital environment, how does the electronic consumer fall victim to them, and what are the means of confrontation adopted by the Algerian legislator to protect the electronic consumer from them under the Electronic Commerce Law?

To answer this issue, we deemed it appropriate, in the first stage, to examine the concept of misleading electronic commercial advertising directed at the electronic consumer (Section One), and, in the second stage, to examine the methods of protecting the electronic consumer from misleading electronic commercial advertisements: between prevention and repression (Section Two).

Section One: The Concept of Misleading Electronic Commercial Advertising Directed at the Electronic Consumer

As a result of the development of electronic marketing methods, misleading electronic commercial advertising has emerged as a means of promoting products in electronic virtual markets, through which electronic suppliers seek to attract consumers and influence their choices.

Since misleading electronic commercial advertising is a multidimensional concept, it is first necessary to define it and to define the electronic consumer as the recipient of the misleading advertising message (Subsection One), and then to examine the manifestations of deception affecting the electronic consumer through electronic commercial advertisements (Subsection Two).

Subsection One: Definition of Misleading Electronic Commercial Advertising and the Electronic Consumer

Misleading electronic commercial advertising primarily addresses the electronic consumer. Therefore, the study requires, as a first stage, an examination of its meaning (Branch One), followed by an examination of the definition of the electronic consumer (Branch Two).

Branch One: The Meaning of Misleading Electronic Commercial Advertising

Regardless of the traditional meaning of commercial advertising¹, which is considered a form of communication between two parties, namely the advertiser and the consumer, and in view of the difficulty of defining it because of the multiplicity of its fields, traditional commercial advertising directed at the consumer, who is the subject of protection, is one of the means of stimulating contracting and a form and method of introducing products.

From a commercial perspective, it has been defined by the American Marketing Association as: a non-personal means of presenting and promoting ideas, goods, or services through identified information and in return for paid compensation².

1- At the outset, it should be noted that there is a difference between Arab Mashreq countries, which use the term advertisement, and other countries, such as Algeria, which use the term publicity or advertising. In Arabic, there is no difference between the two terms, as they are synonymous and have the same meaning. This is the approach adopted by the Algerian legislator. See: Walid Turki, Consumer Protection from Misleading Advertising under Law No. 04-02 Establishing the Rules Applicable to Commercial Practices, *Journal of Economics and Sustainable Development*, Hamma Lakhdar University, El Oued, Vol. 04, No. 02, 2021, p. 307.

2- Fadila Mohandi, *Misleading Commercial Advertising and Its Impact on the Requirements of Consumer Protection*, Master's thesis in Law, Department of Law and Political Science, specialization in Contracts and Liability, Faculty of Law, M'hamed Bougara University, Boumerdes, 15-05-2021, pp. 16–17; see also: Saadan Chebaiki, *Commercial*

Legal doctrine agrees, on the one hand, that commercial advertising is a legitimate means of presenting ideas, goods, or services for the benefit of the advertiser or the advertised party³. It includes displaying goods through catalogues and other modern means, such as writing in newspapers and magazines, posters, billboards, radio, and television, whether the advertiser is a trader or not⁴. The advertiser attempts to introduce products, whether goods, services, or ideas, and offers them to prospective consumers in order to stimulate needs and desires and encourage their purchase. Advertising also helps consumers identify unmet needs and the means of satisfying them⁵.

As for electronic commercial advertising, legal doctrine defines it as: commercial or professional information carried out by traders and service providers through the use of electronic means⁶.

On the other hand, legal doctrine agrees that misleading commercial advertising constitutes unlawful conduct because it is classified among prohibited acts⁷. It refers to every advertisement that affects the consumer by omitting or concealing certain elements within the content of the advertisement, or by presenting an unreal image of goods or services in a way that may lead the consumer into error. Misleading commercial advertising is everything that contradicts the truth and violates the principles and honor of dealing, integrity, and honesty within the framework of legitimate competition, with the aim of misleading and attracting customers⁸.

Despite the numerous doctrinal definitions of misleading commercial advertising or misleading commercial publicity, and despite the variety of terms used for it, such as deceptive advertising or advertising deception, some have stated that misleading commercial advertising consists of leading the consumer into deception because it is based on methods of fraud and deceit that prevent the consumer from obtaining accurate information⁹.

From the legislative perspective, European Directive No. 2006/114, issued on December 12, 2006, defines misleading commercial advertising in Article 2 as follows: misleading advertising means any advertising which, in any way, including its presentation, deceives or is likely to deceive the persons

Advertising and Consumer Protection, Journal of Economic Sciences and Management Sciences, Ferhat Abbas University, Setif 1, No. 06, 2006, p. 20.

3- Legal doctrine distinguishes between commercial advertising and commercial propaganda. It considers that the latter involves the advertiser's use of advanced technological means that may influence the consumer and induce them to contract, whereas commercial advertising is one of the traditional means of informing the public about goods offered in the market. All of these are means used by professionals to encourage consumers to purchase goods. For further detail, see: Nassira Kheloui, Mechanisms for Protecting the Consumer from Commercial Advertising on the Internet, Tajseer Journal for Interdisciplinary Research and Studies, Hadj Lakhdar University, Batna 1, Vol. 03, No. 01, 2023, p. 109.

4- Bashayer Abdullah Al-Sammari, Aspects of Consumer Protection from Forms of Misleading Advertising: An Analytical Study of the Provisions of Federal Law No. 15 of 2020 on Consumer Protection, Researcher Journal for Academic Studies, Hadj Lakhdar University, Batna 1, Vol. 08, No. 03, June 2021, p. 1038.

5- Hossam Fathi Abu Tu'eima, Advertising and Consumer Behavior, 1st ed., Dar Al-Fareq for Publishing, Amman, 2008, p. 20.

6- Belhadj Belkhir and Laidi Abdelkader, Criminal Protection from Misleading Commercial Advertising, Professor Researcher Journal for Legal and Political Studies, Mohamed Boudiaf University, M'Sila, Vol. 06, No. 02, December 2021, p. 620.

7- Legal doctrine sometimes uses the term misleading advertising and at other times deceptive advertising. For further detail, see: Sanaa Nedjma Kendouz, Preventive Mechanisms for Protecting the Consumer from Misleading Advertisements: Between Traditional Protection and Electronic Protection, Journal of Rights and Freedoms, Mohamed Khider University, Biskra, Vol. 10, No. 02, 2022, p. 1053.

8- Ibid., pp. 1052–1053.

9- Bashayer Abdullah Al-Sammari and Awatif Zarara, previously cited reference, p. 1043.

to whom it is addressed or whom it reaches, and which, by reason of its deceptive nature, is likely to affect their economic behavior, or which, for these reasons, injures or is likely to injure a competitor¹⁰. As for misleading electronic commercial advertising¹¹, in addition to the absence of a definition in Algerian legislation under the traditional rules¹², there is also no definition of it in the Electronic Commerce Law¹³. What has been defined applies only to electronic advertising in Article 6, paragraph 6, of that law, on the basis that it is any advertisement aimed directly at promoting the sale of goods or services through electronic communications. It should be noted that the legislator addressed what suggests misleading electronic commercial advertising in the final paragraph of Article 30, which refers to ensuring that all the conditions required for the commercial offer are neither misleading nor ambiguous.

Based on the foregoing, misleading electronic commercial advertising may be defined as advertising carried out through electronic means, concerning goods or services, whose purpose is to mislead, or which is likely to mislead, the electronic consumer through false offers or claims that affect the consumer's decision, induce the consumer to contract, and deceive the consumer.

Branch Two: Definition of the Electronic Consumer

Legal scholars almost agree on defining the consumer as a natural or legal person who contracts for the purpose of satisfying personal needs, without the main objective of obtaining goods and services being their use in a professional or commercial field. The electronic consumer is distinguished from the ordinary consumer by the means used, since the electronic consumer contracts remotely through communication means and the Internet¹⁴.

10- Article 2 of Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, codified version, provides that: misleading advertising means any advertising which, in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behavior, or which, for these reasons, injures or is likely to injure a competitor. See: <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32006L0114>, accessed on 25-04-2026.

11- Among the examples of misleading electronic commercial advertisements that may be mentioned, electronic consumers often express their disappointment through images shared on social media or platforms such as YouTube concerning products they obtained through electronic commerce contracts. It is noticeable that most of these cases relate to clothing orders, where customers are surprised to receive clothes that resemble what they ordered only in terms of color. This is due to misleading advertisements that display clothing items attractively, by dressing male or female models in clothes that fit their waist size, making the clothes appear elegant and comfortable in bright colors. This marketing trick tempts many people to buy online, but the surprise occurs upon receiving the order, when they find that the product does not match the advertisement in terms of size, color, and other aspects. See: Fatima Zahra Cherifa El-Mahi, The Effectiveness of Law 18-05 Relating to Electronic Commerce in Protecting the Electronic Consumer from the Abuses of Electronic Suppliers, *Ijtihad Journal for Legal and Economic Studies*, University of Tamanrasset, Vol. 10, No. 03, 2021, pp. 185–186.

12- The Algerian legislator indicated, in the law applicable to commercial practices, the cases that make misleading advertising an unfair practice, under which misleading advertising is unlawful and prohibited. This includes statements, information, or presentations that may lead to misleading the consumer regarding the identification of a product or service, its quantity, availability, or characteristics. See: Article 28, paragraph 1, of Law No. 04-02 of 23 June 2004 relating to the rules applicable to commercial practices, Official Gazette No. 41 issued on 27 June 2004, amended and supplemented by Law No. 10-06 of 15 August 2010, Official Gazette No. 46 issued on 18 August 2010. Likewise, in the executive decree establishing the conditions and procedures relating to consumer information, no food may be described or presented in a false, misleading, or deceptive manner, or in a manner likely to create a false impression regarding its nature in a way that misleads the consumer. See: Article 36 of Executive Decree No. 13-378 of 9 November 2013, Official Gazette No. 58 of 2013.

13- Law No. 18-05 of 10 May 2018 relating to electronic commerce, Official Gazette No. 28, issued on 16 May 2018.

14- Shahira Boulahia and Shahrazad Lakhali, The Impact of Electronic Commerce on the Electronic Consumer, *Journal of Legal and Economic Studies*, Si El Haoues University Center, Barika, No. 03, June 2019, p. 109.

The electronic consumer is the person who concludes electronic contracts in electronic transactions, such as purchase, lease, loan applications, use, and other contracts, and who obtains goods and services in a way that enables the satisfaction of personal and family needs, without the purpose being resale and without possessing sufficient knowledge and experience in this field¹⁵.

As for the Algerian legislator, the electronic consumer was defined in Article 6, paragraph 3, of Law No. 15-05 relating to electronic commerce as any natural or legal person who acquires, for payment or free of charge, a good or service through electronic communications from the electronic supplier for the purpose of final use.

It is clear that the electronic consumer corresponds in concept to the ordinary consumer according to the above definition, in that both may be natural or legal persons, and the transaction connecting them concerns goods and services obtained in return for payment or free of charge, for the purpose of final use or benefit and not for resale. The difference between them lies in the method of dealing: the electronic consumer deals through electronic means, such as the computer, the Internet, and others. This makes the electronic consumer enjoy all the rights and bear all the obligations of the ordinary consumer within the scope of ordinary commerce, in addition to the specific nature of the electronic contract¹⁶.

As a result, the protection granted to the ordinary consumer is the same as that granted to the electronic consumer. However, practical reality and the nature of electronic transactions require the establishment of special protection for the electronic consumer, given the immaterial nature of the relationship linking the consumer to the electronic supplier and the problems arising from it in relation to goods and services, whether in terms of defects or the deception of consumers through misleading and false electronic advertising and marketing. Therefore, special protection must be established for the electronic consumer in a manner that corresponds to the digital environment in which the consumer contracts¹⁷.

Subsection Two: Manifestations of Misleading the Electronic Consumer in Electronic Commercial Advertisements

Electronic commercial advertising is considered a means of marketing and promoting goods and services to the public through the Internet¹⁸. However, some advertisements have negatively affected the electronic consumer's right to receive accurate information, as it becomes clear that such

15- Mohamed Abib and Mohamed Bouras, Consumer Protection in the Field of Electronic Transactions in Algeria in Light of Law 18-05 Relating to Electronic Commerce, Studies and Research Journal, Arab Journal of Humanities and Social Sciences, Ziane Achour University, Djelfa, Vol. 13, No. 04, 13th year, July 2021, p. 131.

16- Ahcen Gharbi, The Shortcomings of General and Specific Legislation in Protecting the Electronic Consumer, Journal of Law and Political Science, University Center, Naama, Vol. 06, No. 02, 2020, p. 109.

17- Shahira Boulahia and Shahrazad Lakhali, previously cited reference, p. 109.

18- These means may be classified into a variety of advertising methods that have become increasingly common today. They include advertisements through advertising banners or logos, which are often visible at the top or bottom of Internet pages. In addition, there is digital advertising, which relies on incorporating the brand name or logo into the content of web pages. Other common methods include interstitial advertisements, which appear as automatic clips imposed on the user and cannot easily be skipped. As for digital advertisements outside the Internet, they have also developed significantly and taken multiple forms. The most prominent of these forms include advertisements through Bluetooth technology, which depends on connecting mobile phones to various electronic devices such as computers, cameras, and audio devices. Short text messages are also considered one type of such advertising, as messages are exchanged between mobile phones and computers. Multimedia messages also allow the sending and receiving of varied content, including images, audio files, video clips, and long text messages. For further detail, see: Noura Djebara, Electronic Advertising as a Means of Information, Journal of Legal Studies, Sovereignty and Globalization Laboratory, Yahia Fares University, Medea, Vol. 07, No. 02, June 2021, pp. 677–681.

information is misleading and that the electronic supplier uses certain methods for the purpose of misleading the electronic consumer and convincing them to purchase a particular product.

Misleading electronic commercial advertising appears through the electronic supplier's use, in advertisements, of false information about the essential characteristics of the advertised item, whether it is a good or a service (Branch One), or through misleading consumers with the aim of attracting them to contract or increasing the number of contracts (Branch Two).

Branch One: The Electronic Supplier's Use of False Information about the Essential Characteristics of Products

This means that simple falsehoods, or even exaggerated falsehoods that are difficult for the consumer to believe, are not legally punishable. However, the matter does not stop at the limits of the declared falsehood; it also includes refraining from mentioning important information that may lead to misleading the consumer. This conduct is considered one of the forms of false or misleading advertising that gives rise to legal liability. In the same context, concealing true information from the consumer is considered a form of advertising deception¹⁹.

The French legislator has paid special attention to electronic advertising by requiring that the consumer be provided with sufficient and clear information about the product, especially when it is disseminated through electronic means such as the Internet²⁰.

It is important for advertising data to be clear and attractive in order to ensure that the intended purpose is achieved. It should be taken into account that the form of the advertisement is not limited to a specific format; it may be written text, a video, images, or various other forms. What matters most is that the information be prominent and easy to understand, and that the accompanying audio elements be appropriate and consistent with the main content. Nevertheless, this requirement may sometimes be neglected when the advertiser presents important information in a manner that makes it unclear to the consumer, such as placing it in locations that are rarely read or writing it in very small font sizes that are difficult to notice. To ensure that the information is clearly delivered, the information must be displayed clearly and directly on the same screen, or at least the consumer must be alerted to the existence of a link containing additional details²¹. It is preferable to avoid distracting the audience's attention by raising secondary topics or using video clips that may hinder the direct and understandable delivery of the main advertising content²².

Branch Two: Misleading Electronic Consumers with the Aim of Attracting Them to Contract or Increasing the Number of Contracts

The advertiser includes information in the advertisement intended to mislead the consumer, by highlighting the advantages and benefits of the good or service and exaggerating its importance and the consumer's need for it. This leads to an increase in demand for these goods and services, thereby contributing to the achievement of greater profits for the advertiser²³.

19- Meriem Touil, Electronic Misleading Advertising and Its Impact on Electronic Consumer Behavior, *Journal of Legal and Political Jurisprudence*, Ibn Khaldoun University, Tiaret, Vol. 01, No. 01, 2019, p. 66.

20- Abdelkrim Boukhalfa, Consumer Protection from Electronic Misleading Advertising, *International Journal of Legal and Political Research*, Hamma Lakhdar University, El Oued, Vol. 01, No. 02, 2017, p. 128.

21- We often find electronic advertisements that direct the consumer to websites marketing products similar to products bearing a trademark or trade name, with slight differences that the consumer may not notice, especially if they are identical in shape, color, and other characteristics. See: same reference, p. 128.

22- Imad Eddine Lakhel and Islam Chenia, Consumer Protection from Misleading Electronic Advertising under Law 18/05, *Al-Hikma Journal for Media and Communication Studies*, Al-Hikma Center, Algeria, Vol. 11, No. 03, 2023, p. 60.

23- Meriem Touil, previously cited reference, p. 66.

The U.S. Federal Trade Commission has considered that deception or falsehood in online advertisements does not differ fundamentally from its counterpart in traditional media. Deception remains the same, even if the means through which it is carried out differs, as the modern form of these practices is represented by the Internet²⁴. According to the law of this Commission, an advertisement is considered misleading if any information is omitted or any information is added to the good in a way that affects²⁵:

- The decision to buy or not to buy the product.
- The consumer's shift from a good they usually purchase to the advertised good.
- The misleading and deception of the consumer.

Section Two: Methods of Protecting the Electronic Consumer from Misleading Electronic Commercial Advertisements: Between Prevention and Repression

The protection granted to consumers against misleading commercial advertisements, as known under traditional rules, has not remained unchanged. Rather, it has developed in line with the development of electronic commerce, where advertising goods and services acquired electronically has taken a new and rapid direction. As a result, the electronic consumer has become highly fearful and cautious when acquiring or purchasing them, due to the nature of advertising, which is often associated with fraudulent means that mislead the consumer.

Similar to comparative legislation, the Algerian legislator has kept pace with the aforementioned development through the Electronic Commerce Law by establishing two types of protection for consumers against misleading electronic commercial advertisements. On the one hand, the legislator established preventive rules to regulate fair commercial advertising activity (Subsection One). On the other hand, the legislator repressed every misleading electronic advertisement that affects the consumer because of its illegality, by prohibiting it, recording violations committed by specialized agents, and imposing penalties on its perpetrators (Subsection Two).

Subsection One: Prevention through the Regulation of Misleading Electronic Commercial Advertising Activity

Protecting the consumer from the potential harm resulting from misleading electronic commercial advertisements in the digital environment requires examining the legal rules that determine how electronic commercial advertising may be used fairly by the electronic supplier in a manner that ensures consumer safety, whether in terms of the legality of the content of the electronic advertising message (Branch One), or in terms of the transparency of the electronic advertising message (Branch Two).

Branch One: The Legality of the Content of the Electronic Advertising Message

In Law No. 18-05 relating to electronic commerce, the Algerian legislator required that the advertising message be lawful and not contrary to public order and public morals (First), and that it be free from deception and ambiguity, while satisfying the legitimate desire of the electronic consumer (Second).

First: The advertising message must not violate public order and public morals.

It is difficult to define the concept of public order and public morals precisely. However, the Algerian legislator required electronic advertising to be consistent with public order and public morals in

24- Imad Eddine Lakhali and Islam Chenia, previously cited reference, p. 66.

25- Ibid., pp. 66–67.

Algerian society²⁶, without clearly defining the meaning of these terms, thereby leaving room for their interpretation according to the prevailing understanding in legal doctrine. Accordingly, the electronic supplier must refrain from including any images or notices that may offend modesty or conflict with the moral values of Algerian society²⁷.

It appears from this position that the legislator required the subject matter of the advertising message to be lawful and not to violate the fundamental principles on which society is based. The legislator also required it to respect the values and morals of those addressed by the advertising message. In addition, the legislator prohibited advertisements whose subject matter consists of materials whose marketing and sale are prohibited in Algeria²⁸.

Second: The absence of deception and ambiguity in the good or service in a manner that satisfies the legitimate desire of the electronic consumer

In Article 30, paragraph 5, of the Electronic Commerce Law, the Algerian legislator required the need to ensure that all the conditions required to benefit from the commercial offer are clear and not misleading. Therefore, electronic advertising must be completely free from any elements that may mislead the public or create ambiguity, in order to ensure that the concerned consumer benefits from the advertised good or service. Accordingly, the conditions for obtaining the offer presented to electronic consumers may not be affected by any defects resulting from deception or confusion, as these provisions are primarily intended to provide them with the necessary protection²⁹.

Unlike the Algerian legislator, the French legislator addressed misleading advertising in Article L121-1 of the amended Consumer Code, which was repealed by Ordinance No. 16-301³⁰. Through this provision, the French legislator kept pace with the development of electronic transactions in a manner that protects the electronic consumer, who is considered a weaker party compared to the producer or professional, especially in transactions concluded remotely, which are vulnerable to deception and fraud due to the absence of physical contact between the parties, in addition to the lack of any possibility of physically inspecting the good or product that is the subject of the contract³¹.

The Algerian legislator has required the electronic supplier, when promoting advertisements for products or services, to take the necessary measures to satisfy the electronic consumer's request within 24 hours. Consequently, the supplier must immediately begin implementing the required procedures to ensure that requests are fulfilled as quickly as possible. A maximum period of only 24 hours has been set for the electronic supplier to respond to the electronic consumer's request³².

Branch Two Transparency of the Electronic Advertising Message

26- See: Article 30, paragraph 3, of Law No. 18-05 relating to electronic commerce, previously cited.

27- Linda Boumehrath, *Electronic Advertising in Algerian Legislation: A Critical Analytical Study*, *Al-Mi'yar Journal*, Emir Abdelkader University of Islamic Sciences, Constantine, Vol. 28, No. 04, June 2024, p. 604.

28- See: Article 34 of Law No. 18-05 relating to electronic commerce, previously cited. It should also be noted that the legislator specified the products and services prohibited from electronic advertising under Articles 03 and 05 of the same law, including gambling, betting, lotteries, alcoholic beverages, tobacco, pharmaceutical products, products infringing intellectual, industrial, or commercial property rights, and any good or service requiring the drafting of an official contract. The legislator also prohibited advertising for electronic transactions whose subject matter consists of sensitive equipment or devices, or a service that may affect national defense or national security.

29- Asma Ben Wirad, *The Legal System of Electronic Advertising under Law No. 18/05*, *Journal of Comparative Legal Studies*, Hassiba Ben Bouali University, Chlef, Vol. 08, No. 02, 2022, p. 234.

30- Article L121-1 of the Consumer Code was amended by Law No. 2014-344 of 17 March 2014, Article 29, and repealed by Ordinance No. 2016-301 of 14 March 2016, Article 34. See: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000028747832/2026-01-01, accessed on 24-04-2026.

31- Linda Boumehrath, previously cited reference, pp. 604–605.

32- Asma Ben Wirad, previously cited reference, p. 237.

When presenting the electronic advertising message, the electronic supplier is required to observe the obligation of transparency. Under Law No. 18-05 relating to electronic commerce, the Algerian legislator required the identification of the electronic supplier in the advertising message (First), and the clarity of electronic commercial advertising (Second).

First: Identification of the electronic supplier in the advertising message

Verifying the identity of the supplier with whom the consumer deals is one of the most important aspects of contracting over the Internet. The special nature of electronic contracting requires a level of clarity and transparency in all transactions, most notably the precise and unambiguous identification of the offeror in such contracts. This measure comes within the framework of strengthening consumer confidence, which is the cornerstone of encouraging engagement in electronic commerce. Accordingly, most legislations have tended to require the seller to fully disclose their identity online by providing all necessary information so that the consumer is clearly aware of the person with whom they are contracting³³.

The advertising message should make it possible to identify the person responsible for the good or service being promoted electronically, whether that person is the advertiser themselves or whether the advertising message has been prepared by an individual or a company specialized in the field of advertising³⁴.

The advertiser must include in the advertisement directed at consumers a set of important details that enhance transparency and increase consumer confidence. These details include the advertiser's identity and address, telephone numbers, and website. The advertiser must also clearly present the details of the advertised good or service, whether on their website or through their email, in a manner that enables the consumer to easily access the necessary information and make an informed decision. Providing such information strengthens the consumer's sense of security and encourages them to contract, especially if the advertiser has a prestigious trade name and enjoys a good reputation at both the local and international levels³⁵.

Second: Clarity of the Content of Electronic Advertising

Electronic advertising must be clear and unambiguous, and the advertisement must contain sufficient information about the good or service offered, in a way that creates conscious and insightful thinking and helps form an informed will on the part of the consumer when entering into a contract³⁶.

The electronic supplier must present electronic advertisements in a manner that provides clear visibility, easy reading, and accurate understanding³⁷, while ensuring that commercial advertising is specific and direct when it contains information related to the good or service³⁸. This aims to enable the consumer to make the decision to contract on the basis of informed will and sufficient knowledge. The electronic supplier is also prohibited from promoting the good through exaggerations or

33- Rasha Mokaddem, The Supplier's Obligation to Inform the Electronic Consumer under Law No. 18-05 Relating to Electronic Commerce, *Tabna Journal for Academic Scientific Studies*, University Center of Barika, Vol. 07, No. 02, 2024, p. 1329.

34- Linda Boumehra, previously cited reference, p. 603.

35- Asma Ben Wirad, previously cited reference, p. 235.

36- Belkhir Halimi, The Legal System of Electronic Advertising and Consumer Protection in Electronic Commerce Law No. 18-05, *Al-Hikma Journal for Media and Communication Studies*, Al-Hikma Center, Algeria, Vol. 10, No. 04, 2022, p. 14.

37- See: Article 11 of Law No. 18-05 relating to electronic commerce, previously cited.

38- See: Article 30, paragraph 1, of Law No. 18-05 relating to electronic commerce, previously cited.

descriptions that do not reflect the truth, and must avoid using ambiguous conditions or expressions that may carry more than one interpretation, which could cause confusion for the consumer³⁹.

One of the essential aspects of the clarity of the content of the advertising message is the identification of the advertiser, especially if the message includes rewards, incentives, or gifts. This becomes even more important when the offer is commercial, competitive, or promotional in nature. This is what is provided for in the fourth paragraph of Article 30 of Law No. 18-05 relating to electronic commerce⁴⁰. The French legislator also required electronic commercial operations and the advertisements related to them to be clear and specific with regard to the product or service offered, in order to ensure that the consumer is able to make the decision to contract on the basis of full awareness and understanding⁴¹.

Subsection Two: Repression through the Deterrence of Misleading Electronic Commercial Advertisements

Protection through the repression of misleading electronic commercial advertisements is achieved by prohibiting misleading electronic commercial advertisements (Branch One), and by recording violations related to misleading electronic commercial advertising and imposing penalties (Branch Two).

Branch One: Prohibition of Misleading Electronic Commercial Advertisements

Commercial advertising represents one aspect of legitimate competition. It is also considered a marketing tool and a means aimed at informing the public about products and services. However, it may contribute to deceiving the consumer, or may lead to such deception, as it may include information that results in error or creates a misleading perception regarding the essential elements and characteristics of the product⁴².

In the Electronic Commerce Law, the Algerian legislator established a prohibition on the use of ambiguous and misleading advertising that contains expressions likely to mislead or deceive the consumer. This prohibition is reflected in the imposition of penalties on those who resort to such practices, because of the material or moral harm they cause to the consumer⁴³.

The prohibition of misleading commercial advertising that leads to consumer deception is not new, as the Algerian legislator had already prohibited it in previous laws. For example, this is clearly found in Law No. 04-02 relating to the rules applicable to commercial practices, where advertising containing statements, information, or presentations likely to mislead the consumer regarding the identification of the product or service, its quantity, availability, or characteristics was prohibited. In other words, the legislator adopted the concept of misleading advertising that causes confusion and deception to the consumer when the supplier or seller provides false information about the good or service and about its essential elements or specifications⁴⁴.

39- Asma Ben Wirad, previously cited reference, p. 235.

40- Ibid., p. 235.

41- Nassira Kheloui, Mechanisms for Protecting the Consumer from Commercial Advertising on the Internet, *Tajseer Journal for Interdisciplinary Research and Studies*, Hadj Lakhdar University, Vol. 03, No. 01, 2023, p. 116.

42- Hanane Khechiba and Noria Dich, Protection from False and Misleading Electronic Commercial Advertisements, *Algerian Journal of Comparative Law*, Vol. 05, No. 10, 2022, p. 15.

43- Belkhir Halimi, previously cited reference, p. 14.

44- Mohamed El-Amine Nouiri, Civil Protection of the Electronic Consumer from Misleading Commercial Advertising, paper presented at the National Conference on the Legal Framework of Commercial Advertising Contracts and Their Effects on the National Economy and the Consumer, held on 5 December 2018, organized by the Department of Law, Faculty of Law and Political Science, University of 8 May 1945, Guelma, p. 08; see also: Article 28 of Law No. 04-02 relating to the rules applicable to commercial practices, as amended and supplemented, previously cited.

The legislator also relied on the same principle in the executive decree establishing the conditions and procedures relating to consumer information, in which any false information or advertising likely to create confusion in the consumer's mind was prohibited⁴⁵. Referring to Article 36 of the same executive decree, it provides that: No food shall be described or presented in a false, misleading, or deceptive manner, or in a manner likely to create a false impression regarding its nature in a way that misleads the consumer. Article 60 of the same decree also adds: The use of any statement or indication... and any advertising method... likely to create confusion in the consumer's mind is prohibited.

Branch Two: Recording Violations of Misleading Electronic Commercial Advertising and Imposing Penalties

Violations of electronic commerce are pursued by qualified agents who are authorized under the Electronic Commerce Law to record them (First), and penalties are imposed on their perpetrators (Second).

First: Recording violations of misleading electronic commercial advertising

Law No. 18-05 on electronic commerce entrusted the monitoring and recording of violations of misleading electronic commercial advertising to the qualified agents authorized under Article 36 thereof. They perform their duties by examining administrative, commercial, financial, or accounting documents, as well as any magnetic or computerized medium.

They may also enter commercial premises, offices, annexes, shipping or storage areas, and, in general, any place except residential premises, which may be entered in accordance with the provisions of the Code of Criminal Procedure. They may also open any package or luggage in the presence of the sender, the recipient, or the carrier⁴⁶.

Monitoring is also carried out within the framework of the Law on Consumer Protection and the Suppression of Fraud through the examination of documents and/or by hearing the concerned intervening parties, or through direct inspection with the naked eye or by means of measuring devices. Where necessary, samples may be taken for the purpose of conducting analyses, tests, or experiments⁴⁷.

The electronic supplier must also allow the qualified agents responsible for recording violations of misleading electronic commercial advertising to have free access to the dates of commercial transactions, in accordance with the final paragraph of Article 36 of the law relating to electronic commerce.

Monitoring and inspection end with the qualified agents referred to in Article 36 above drawing up a report on the violation of misleading electronic advertising. This report includes the dates and places of the recorded inspections, as well as the identity of the offender, their activity, and their addresses. It also includes the penalties proposed by the agent who drew up the report⁴⁸.

Finally, the electronic supplier is notified of the report if present. If the electronic supplier fails to appear, the offending electronic supplier is granted a period not exceeding seven days from the date

45- See: Article 56 of Executive Decree No. 13-378 establishing the conditions and procedures relating to consumer information, previously cited.

46- See: Articles 50 and 52 of Law No. 04-02, as amended and supplemented, previously cited.

47- See: Article 30 of Law No. 09-03 of 25 February 2009 relating to consumer protection and the suppression of fraud, Official Gazette No. 15 issued on 08 March 2009, amended and supplemented by Law No. 18-09 of 10 June 2018, Official Gazette No. 35 issued on 13 June 2018.

48- See: Articles 56 et seq. of Law No. 04-02, as amended and supplemented, previously cited, and Articles 31 and 32 of Law No. 09-03, as amended and supplemented, previously cited.

on which the report is drawn up, for the purpose of being ordered to pay by all appropriate means, accompanied by an acknowledgment of receipt. This notification includes the identity of the electronic supplier, their email address, the date and reason for the violation, the reference to the applicable legal texts, the amount of the imposed fine, as well as the deadlines and methods of payment⁴⁹.

If the prescribed fine is not paid within a period of 45 days, the report is referred to the competent judicial authority to take the necessary measures against the offender on the charge of misleading electronic commercial advertisements. These measures include initiating public proceedings, conducting the investigation, and ruling on the case⁵⁰.

Second: The Penalty for Violating the Rules on Misleading Electronic Commercial Advertising

Law No. 18-05 relating to electronic commerce specified the penalties resulting from the offense of misleading electronic commercial advertising in Article 40, which provides: Without prejudice to the victims' right to compensation, anyone who violates the provisions of Articles 30, 33, and 34 of this Law shall be punished by a fine ranging from DZD 50,000 to DZD 500,000.

When the electronic supplier breaches the obligations imposed on them and violates the rules governing lawful commercial advertising, their advertising becomes illegal and misleading, which entails liability. The Algerian legislator regulated this matter within the Electronic Commerce Law, imposing two types of penalties on the electronic supplier convicted of practicing misleading electronic commercial advertising: principal penalties and ancillary penalties⁵¹.

The principal penalties consist of a fine ranging from DZD 50,000 to DZD 500,000, while preserving the right of the consumer harmed by the violation to civil compensation for the damage suffered as a result of the advertiser or the electronic service.

As for the supplementary penalties, they are imposed on the electronic supplier who violates the rules on electronic commercial advertising, pursuant to Article 43, paragraph 1, of the Electronic Commerce Law, during the broadcasting of the advertising message. These penalties include the closure of the commercial premises within the meaning of the legislation relating to the practice of commercial activities. Under the Electronic Commerce Law, the corresponding penalty is the precautionary suspension of the registration of the electronic supplier's domain names by the authority responsible for granting domain names in Algeria, pursuant to a decision issued by the Ministry of Commerce.

CONCLUSION:

At the end of this research paper, the great importance of the subject of misleading electronic commercial advertising has become clear to us, given its novelty and its growing importance day after day as a result of the huge number of products and services displayed in electronic virtual markets that attract the Algerian electronic consumer and that have been freed from the constraints of control. In parallel with this, however, the importance of protecting the electronic consumer from misleading electronic advertisements has emerged as a challenge that prompted the legislator to seek to protect the Algerian electronic consumer by regulating electronic advertising under Law No. 18-05 relating

49- See: Article 47 of Law No. 18-05 relating to electronic commerce, previously cited.

50- Fayçal Bouhbel and Nasreddine Semmar, Manifestations of Criminal Protection of the Electronic Consumer from Misleading Electronic Commercial Advertising in Accordance with the Provisions of Law 18-05 Relating to Electronic Commerce, *Journal of Legal and Political Research*, Vol. 07, No. 02, December 2022, pp. 23–25.

51- Imad Eddine Lakhel and Islam Chenia, previously cited reference, pp. 67–69.

to electronic commerce on the one hand. On the other hand, we concluded that the legislator established preventive and repressive methods aimed at protecting the electronic consumer from misleading electronic commercial advertisements.

In light of this, we reached a set of findings, as follows:

- The concept of misleading electronic commercial advertising is complex, as it is a multidimensional phenomenon that negatively affects the electronic consumer when they decide to purchase a good or service.
- In view of the widespread involvement of the Algerian electronic consumer in commercial transactions in electronic virtual markets, the consumer often falls victim to advertisements by electronic suppliers who do not disclose their identity, resort to misleading means with the aim of attracting consumers to contract, engage in legally unauthorized activities, and consequently evade liability.
- The Algerian legislator attempted to keep pace with the aforementioned development by adopting methods ranging between prevention and repression, as established in the Electronic Commerce Law of 2018. However, confronting misleading electronic commercial advertisements goes beyond the limits of this law, given the nature of the activity it regulates and the fact that consumer protection is addressed only incidentally.

Based on the findings stated above, we may present some suggestions as follows:

- The need to regulate the concept of misleading electronic commercial advertising by making it keep pace with the rapid developments in advertising methods, particularly those used by electronic suppliers through artificial intelligence applications.
- The establishment of new methods to protect the electronic consumer in light of digital transformation and the creation of electronic virtual markets, which have resulted in the loss of contractual balance due to advanced misleading methods in which electronic suppliers invest large sums of money to generate multiplied profits that were not known under traditional marketing techniques. These methods should be based mainly on:
 - Making the legislative system relating to the confrontation of misleading commercial advertisements more appropriate by amending Law No. 18-05 relating to electronic commerce in a manner that serves the material and moral interests of the consumer.
 - The need to establish a national electronic regulatory authority tasked with licensing and monitoring the advertisements of electronic suppliers active in virtual markets, in order to protect electronic products and services as well as the national electronic consumer, while expanding its functions to include the monitoring of foreign electronic commercial advertisements that target the national market and the Algerian electronic consumer.

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