
LEGISLATIVE DEFINITION OF ADVERTISEMENT IN SLOVAKIA AND ITS ETHICAL ASPECTS

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Abstract

The function of advertisement as a tool for manipulation with potential customers – with their conscience, decisions and acting - is guaranteed by legislative, although one can have doubts about its adequacy. Though, the aim of this paper is to focus on marketing strategies and practices, which collide with ethical social standards.

Keywords: advertisement, ethics, media laws

1. Legislative regulation of advertising

Each society has got its normative system and each system consists of rules regulating certain field of life that belongs to its competencies. Legislative regulation also regulates activities of media and advertisement, which are in case of Slovak legislation regulated by the Act No. 147/2001 Coll. on Advertising and Act No. 308/2000 Coll. on Broadcasting and Retransmission. While the Act on Advertising regulates the general requirements for advertising and defines the advertisement as “*presentation of products in any form in order to market them*”, Act on Broadcasting and Retransmission determines conditions for broadcasting of TV and radio advertising [www.zbierka.sk/sk/predpisy/147-2001-z-z-p-5686.pdf, accessed 11.07.2015].

The primary function of advertising is to inform. However, ethical principals are often violated when fulfilling this function and it is many times reproached that:

1. the advertisement often informs only about the subject of its promotion (price, function, characteristics), but sometimes it intentionally conceals material facts on promoted service or product that are not favourable for a customer;
2. it encourages healthy competition which supports increase of quality, but many times in the form of ‘idealization’, ‘retouching’, ‘exaggeration’ or comparison, disadvantaging the competition, causing its deterioration and breaking of Ethics Code of Advertising;

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3. it sponsors media production; however the price of the advertised object itself is increased for the costs spent on advertising;
4. it provides the possibility of choice, but it also artificially creates and generates pseudo-needs by persuading a consumer about the need of such goods and services, which use value is false and effect is unrealistic.

Meeting the principles prescribed by the Act No. 147/2001 Coll. on Advertising, as amended, is subject to review by the Slovak Trade Inspection (STI). It is evident from the statistics of STI that the most often the breached points are the following:

- truthfulness of information on properties of advertised products (e.g. non-compliance of information about the character of sold products, their technical parameters, material composition and data specified in the promotional leaflet with real properties);
- the accuracy of information on original prices of the goods (e.g. price valid before beginning of the sale);
- the accuracy of information on sales price specified in the promotional leaflets and unit price (if defined in the leaflet);
- the accuracy of data on percentage decrease of prices calculated from the price valid before the beginning of sale [Slovenská obchodná inšpekcia, *Informácia o výsledkoch kontroly výpredajových akcií vykonaných v obchodných prevádzkach na trhu SR*, 2007, <http://www.soi.sk/files/documents/kcinnost/vypredajeobchodnreazce.doc>, accessed 19.07.2015].

The above defined examples represent evidence of misleading and unfair practices of the advertising at the point of sale (sale), it means below the line advertising. It is necessary to note that reactions to initiative in the store depend on the length of time you have for making a decision, available financial resources, and whether a person has been exposed to media advertising before (above the line).

Since only legislation is enforceable by state, advertisers are legally obliged to meet only the legal principles determined for content and form of advertisement. The ethical standards are not enforceable so in theoretical level, in the situation when ethics settle wider protection of minors or more strict rules for advertisement for minors the advertisement can be in accordance with law and currently breaches the ethical standards [1].

The Council for Broadcasting and Retransmission ensures the supervision on fulfilment of requirements and imposing sanctions for their breach. It is generally known that despite quite serious effort to apply these requirements in practice, 'gaps in the law' are still misused and so certain ethical standards are still breached. In many countries, bodies of so called *self-regulation of advertising* are established as a response to these insufficiencies.

2. Ethical aspects of advertising

Self-regulation means that besides existing legislation, there are requirements on advertising which are defined by subjects active in the field of

advertising (producers, advertisers, media representatives, and media experts). These conditions are mostly formulated in so called *Codes of Ethics* and the subjects being associated in the bodies of self-regulation voluntarily undertake themselves to observe these conditions.

In Slovakia this function is carried out by *The Slovak Advertising Standards Council*. It is a member of EASA - The European Advertising Standards Alliance.

Code of Ethics defines the following general principles of advertising practice: advertising politeness, advertising honesty, social responsibility in advertising and advertising veracity. However, these principles are often violated. Subject-matters of such violations are appraised by an independent body of the Slovak Advertising Standards Council – *Arbitration Committee*. An impulse for appraisal of a certain advertisement can be submitted not only by a natural person or a legal entity in the form of a complaint, but it can be also initiated by the Slovak Advertising Standards Council itself.

Table 1. Statistical evaluation of findings of the Arbitration Committee of the Slovak Advertising Standards Council

Year	Total number of complaints	Complaints concerning dishonour of women	In conflict with the Code	In compliance with the Code
1996	5	0	0	0
1997	12	0	0	0
1998	13	0	0	0
1999	17	2	1	1
2000	24	2	0	2
2001	16	0	0	0
2002	28	6	0	6
2003	48	4	1	3
2004	70	4	1	3
2005	79	13	2	11
2006	74	8	1	7
2007	65	4	2	2
2008	15	0	0	0
2009	80	4	3	1
2010	69	7	4	3
2011	119	8	5	3
2012	114	7	4	3

Character of critical responses of public related to one of the key issues of our paper - the question of adequacy of using erotic motives in the advertisement the key object of which is woman, reflects many facts. Attention of claimants, particularly women, mainly focuses on such forms of display which according to their opinion, give the impression of profanation of the female body in the form

of different, sometimes even vulgar sexual allusions or even explicit verbal/visual statements.

In order to present relevant evidence of our statements, we have undertaken to examine complaints submitted to the Arbitration Committee of the Slovak Advertising Standards Council during the years 1996-2012, the subjects of which were visual display of women. We compiled them in Table 1, which contains statistical data about delivered complaints. For the monitored period of 17 years of activities of the Slovak Advertising Standards Council, during the period from 1996 to 2005 we can observe an increasing tendency in number of complaints and findings reproaching dishonour of the female body. This number has been reduced after 2005 despite the fact that the total number of all registered complaints has increased. Besides 2005 when the Arbitration Committee identified up to 11 findings as the ones violating the Code of Ethics, most complaints are considered as unjustified.

The Committee shall always examine the submitted request, standpoint of a claimant, evidence and assess, whether the conditions defined by the Code of Ethics were fulfilled. As we found out, the discussion leads to the following conclusions in most cases: *“Presentation of the abovementioned advertisement is not in conflict with the ethics of advertising”* or *“The advertising campaign does not promote nakedness or partial nakedness in unsuitable way and the partial nakedness of a human body is used in the respective visual material appropriately”*, etc., while they acknowledge that they take into account changing of the value system of the society which also includes shifting of borders limiting what is and what is not in compliance with the moral values. It is also supported by a proportion of advertisements using sexual motives and claims filed against these advertisements, which is not balanced. We see functional deficiency of these measures in high subjectivity of assessment of findings and in solutions having a character of recommendation and not of a regulation set by law.

Eroticism in advertising is effective and it works, but only in certain contexts. It is really hard to define barriers which should not be crossed when executing out creative ideas. Of course, it is utopia to think that while there are women and men acting in the advertisement, it is possible to exclude erotic connotations. The sterility can not be even achieved by a combination of persons of the same sex, because it will not subdue fantasy of an opposite sex recipient. However, extreme puritanism would significantly complicate the work of authors of the campaigns, which can not work without displaying of a naked body, or without erotic undertone. How to make an advertisement for female underclothes and not to humiliate a woman, when the woman is presenting such underclothes by wearing? Is it better to present it on a man? Is it better not to present it at all? Limits are flexible depending on cultural habits, the story of advertisement, the character of promoted goods or service.

Regarding the advertising of body cosmetics, underclothes, etc., use of soft erotic visuals, which are not in conflict with our moral principals, is tolerated. Other category includes products which are not directly connected

with eroticism. If this motive is used purposeless and it is evident that the author did not find more original form of how to attract attention, the advertisement can cause that the brand will have 'cheap' effect. Examples of this kind of error are advertisements presenting different tools used in industry and agriculture when it is absolutely clear that a woman with just some pieces of clothes and with voluptuously pouted lips does not normally drive a tractor. Despite the fact that the male population would probably like this form of presentation, a message of this kind of advertisement will be irrelevant for a target group and lack of necessary information can cause the opposite effect.

Therefore, it is necessary to think about when, in what form and to what extent it is suitable to use sexual motive in such a way that the advertisement will not miss its intention. Unsuitable use can rather distract attention of the recipients from a product and cause so called '*vampire effect*'. It means that remembering of the primary advertising or promotional message is smaller by more erotic effect of the context. These types of advertisements breach the Act on Advertising and the Code of Ethics of the Advertisement most often.

Advertisers often work with aesthetics of a female body, while a woman is compared to food. Appeal to ambiguity of appetite degrades a woman to a sexual object and it also expresses parallel of eroticism and consumption.

It is a truth that irresistibility of an advertisement and a woman works on the same principle. A common denominator is the ability of introduction/seduction. As said by Jean Baudrillard: "*The power of femininity is in seduction*" [2].

However, advertisement does not only sell products, but it also forms social and cultural identity of the subject. Therefore, it is necessary to monitor the advertisement not only in terms of aesthetics of the advertisement which closely relates with a work of the object, but also to think about the consequences of work with the subject, and the aesthetics of the advertisement so the female sensuality has a meaning in the advertisement!

Failure to respect ethical principles and cultural specificities in creation of the advertisement leads both to decrease of its effectiveness, and can also cause deepening of negative attitudes of the public to advertisement as such. Cultural variables, which are the most relevant in terms of the advertisement, is language, non-verbal communication, humour, mentality, life style and position of women/men in the society.

3. Measures to eliminate pertracted problems

It is evident from our findings that pertracted problem particularly relates to women. To eliminate this problem, it is necessary to carry out awareness and intervention of interest groups. There is a need to take legislation measures which would initiate the desired change. Many terms from the research of (in)equalities of gender studies were implemented into the terminology of law and legislation (Labour Code, etc.) - it is a clear evidence of liquidation of boundaries between the sphere of men and the sphere of women. Despite the fact

that most activities focused on awareness of public in order to encourage critical assessment of received media content and sensitivity to presence of stereotypes in the advertisement can be attributed to feminist activists, absence of gender equality is also confirmed by sociological researches and the need to solve a question of gender is also emphasized by socially oriented political representatives. A response of Eva-Britt Svensson, the chairman of the Committee on Women's Rights and Gender Equality of the European Union, to the question on how advertising and marketing affect equality between men and women, is the following: "*Gender stereotypes in the advertisement are one of many factors with a great impact on the effort to create a more gender-equal society*" [E.-B. Svensson, *Správa o vplyve marketingu a reklamy na rovnosť žien a mužov*, 2008, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2008-0199&format=XML&language=SK>].

In the report on the motion for the European Parliament resolution (EP) on how marketing and advertising affect equality between men and women (2008/2038 (INI)) from 29 May 2008, with the emphasis on previous resolutions, the following is reproached to the advertisement: "*E. whereas advertising and marketing create culture rather than just reflect it, our concepts of gender being socially constructed and advertisements helping us construct them; M. whereas right from the first years of a child's socialization gender stereotyping may contribute towards the gender discrimination which reinforces the perpetuation of lifelong inequalities between women and men and the emergence of gender-specific clichés*".

This report of the EP also includes proposals of a way of protection against it: "*13. Notes the need to challenge traditional gender roles in order to achieve gender equality; 16. Stresses the importance of the role played by the media in creating and perpetuating gender stereotypes and calls on the EU institutions and Member States to comply with and/or establish ethical codes and/or legal rules applicable to creators and distributors of advertising concerning the concepts of discriminatory advertising and demanding respect for values of human dignity*" [<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2008-0199&format=XML&language=SK>].

4. Conclusions

A person does not have to be a professional in media theory to find out that the statement of the Canadian media theoretician Marshall McLuhan – "*Historians and archaeologists will one day discover that the ads of our time are the richest and most faithful reflections that any society ever made of its entire range of activities*" – has come into effect and that media and social reality set the mirror each other [3]. When thinking about media production as a subject of major social importance with the ability to form public opinion and subsequently also the activity of persons, we put ourselves a lot of questions related to the relationship between an expedient (sender) and a recipient (receiver). Since these reflections came into scientific dimension (thanks to the development of human

sciences, particularly Psychology, Sociology and Anthropological semiotics), many concepts and theories appeared and changed within academic discussions, which sometimes confirmed and sometimes questioned the idea of impacts, effects and manipulative power of media. In our paper the role of 'media speaker' is carried out by the advertisement - a media phenomenon with a power of persuasion that has been the subject of a strong criticism these days. The advertisement is not only a communication tool inducing a purchase stimulus of a potential buyer, but it is particularly a very effective tool to spread opinions with the tendency to influence our way of thinking.

One of the theories explaining patterns/principles of media is the *reflection hypothesis*. Application of this hypothesis to the subject of our paper establishes the assumption that the content of media reflects behaviour, values and norms prevailing in the society. However, media analysts, particularly proponents of *mediocentric theory* point out that media are not only passive reflection, but also active creator of reality, and so the creators of media products have a great social responsibility for media content by which they address wide masses of people and influence their opinions, attitudes, values, and behaviour.

References

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