

LEGAL STANDARDS FOR MISLEADING ADVERTISING IN CONSUMER PROTECTION AS ETHICAL MARKETING ACTIONS IN PANAMA

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Abstract

Misleading advertising is intended to manipulate the consumer's perception in a way that does not reflect reality. The objective of this article is to explain the different legal norms existing in Panama to deal with misleading advertising in consumer protection as ethical marketing actions in the sales process. The research is situated in a qualitative approach. It is of a documentary nature, of a descriptive type and level. The results highlight that Law No. 45 of October 31, 2007, which dictates rules on consumer protection and defense of competition and another provision in Article 58 highlights the truthfulness in advertising. Any advertisement or publicity regarding transactions must conform to the truth, taking care that the advertiser does not misrepresent the facts and that the advertisement or publication does not induce error or confusion.

Keywords: *Misleading advertising, legal standards, marketing, consumer, ethics.*

1. INTRODUCTION

In Panama, as in any other part of the world, companies, regardless of their size or *raison d'être*, as part of their daily activities carry out sales processes, understanding these as the contract by virtue of which an own thing is transferred to another's domain for the agreed price (Real Academia Española, 2014), on the other hand it is explained as the personal or impersonal process by which the seller verifies, activates and satisfies the needs of the buyer for the mutual and continuous benefit of both (American Marketing Association, 2016), or as the transfer of ownership of a product in exchange for compensation in money, service or species (Andres, 2016), activates and satisfies the needs of the buyer for the mutual and continuous benefit of both (American Marketing Association, 2016), or as the transfer of ownership of a product in exchange for compensation in money, service or species (Andersen, 2018), in if sales refer to the process of exchange of goods, services or products either for money or some other type of compensation, which is fundamental in any economy, constituting the basis of many commercial transactions.

In today's world, sales have taken on special importance, becoming an essential function of first order in companies (Vásquez, 2008), and the purpose of any company is to sell, since its subsistence depends on it. It is the main activity of a company; without it, it would not have a future and would not last in the market (Soto and Ortega, 2021). Their success depends directly on how many times they perform this activity, how well they do it and how profitable it is for them to do it (Pérez et al., 2021). Therefore, now more than ever, there is an awareness of the need for each and every person in the company to have the responsibility, in one way or another, to promote the sale of products, as well as the image of the company (Cantera, 2016). However, for sales to occur satisfactorily, companies must make an effort to incorporate strategies that consist of establishing a plan that positions the brand of a company or product to obtain a competitive advantage, focusing on the target market customers, maintaining a relevant and meaningful communication with them (Gluck, 2016). Marketing represents a crucial factor that works as a basis for sales to be carried in a better way within companies, this is defined as a social process by which both groups and individuals get what they need and want through the creation, supply and free exchange of products and services of value with other groups and individuals (Kotler and Keller, 2012), on the other hand it stands out as a very important tool for all companies, since it helps to analyze and study the market and to know what the user really needs, achieving in many cases to create, realize, design, process and satisfy, thus generating employment, increasing sales and improving business equity (Izquierdo et al., 2020). In short, marketing is a set of strategies that seek to promote products, services or ideas, in order to attract, retain and build customer loyalty.



Within one of the fundamental pillars that marketing involves to boost sales is advertising, which is a mass communication process, from which it is intended to inform and persuade the market about the products and services of the company in order to influence the behavior or attitude of potential consumers (Reinares and Calvo, 2020), from the perspective of marketers, advertising includes any message disseminated through the media, this message can be related to the sales of a mass consumer product, the dissemination of an idea or even the image of an individual (Otero, 2008). Advertising is a real industry composed of people of all kinds, publicists, communicators, marketers, photographers, makeup artists, among others, who are responsible for communicating the commercial intentions of sellers, producers or service providers to consumers (Gómez, 2008). Advertising is a form of communication that seeks to promote or persuade a specific audience with the purpose of generating interest, desire or action regarding a product, service, brand or idea. There are three objectives of advertising: to inform. Persuade and remember. Advertising aims to influence consumer behavior and emotions to modify their purchase decision (Benavides et al., 2018).

Advertising today is done through traditional and digital media. Traditional advertising has a focus on aggressive promotional strategies such as direct sales, television, radio, mail and print media (such as magazines, books, newspapers, among others), focusing on the product or service, with a high level of reach (Cañón & López, 2021). On the other hand, digital advertising is a group of techniques that are conducted through media and Internet channels, all with the aim of promoting a company efficiently and achieving its market positioning in an optimal way. It also focuses clearly on the customer of the product or service, in knowing a little more about the buyer and learn about their needs and interests, while the results of their tactics are measurable (Carreño, 2022), on the other hand this allows an integration between the different media, taking advantage of the possibilities offered by the new and traditional ones, thus generating greater interaction and attracting users to participate (Ivoskus, 2010).

As part of digital advertising are social networks, which are an online digital platform, of which thanks to technology has been adopted by users, who appropriate them and familiarize them thanks to their ease of use and interactivity (Boyeras et al., 2019). These have transformed the way in which companies establish communication with their public. It has also changed the very essence of many businesses. They play a very significant role, since many companies have managed to get customers by promoting their products or services using them (Merodio, 2016).

Nowadays, a great number of social networks have emerged, being of great support to companies to advertise, within this are Instagram, which is a social network and a mobile application at the same time, which allows its users to upload images and videos with multiple photographic effects such as filters, frames, etc., to later share those images on the same platform or on other social networks. Instagram is useful for expressing users' ideas in a visually appealing way. This is useful then for companies, as they can express the value of their brands simply without investing heavily in advertising space in traditional media (De la Vega, 2018). On the other hand, there is Tik Tok, which is a social network with a high potential to captivate young audiences that do not necessarily consume television (Chobanyan & Nikolskaya, 2021). Within these we can also mention Facebook, which is a website that provides a free service with the aim of facilitating the contact of users with their friends already established or new friendships that they can make in the network; in addition to uploading and sharing their own content (Fresno, 2018), likewise within these we can include WhatsApp Business that streamlines communication with customers, minimizes the actions of competition combat, enables greater contact with the customer, facilitates the sale of perishable products and causes an increase in the generation of value in the perception of the user (Dutra et al., 2019).

All these traditional and digital advertising media are used in physical stores, i.e. a space in which the customer of the shopping center will enjoy a shopping experience with the five senses (Ruiz, 2020), as well as in virtual stores through e-commerce, carrying a process of buying and selling information, products and services through electronic media, such as the Internet and other computer networks, i.e. using information and communication technologies (Martin, 2020).

Undoubtedly both traditional and digital tools are extremely essential in advertising that all companies need to boost sales, however many times these in their purpose of wanting to sell at all

costs use unethical actions through these media committing fraud by making misleading advertising. This is understood as that which, by its form of presentation or its information (or lack thereof), may mislead or deceive the consumer and/or user about the product or service, its qualities, price, nature, origin, quantity, use, etc. (Ceredin, 2019). It is a modality of illicit advertising that has a special impact on consumers and has taken a special prominence throughout the last years (Muela & Perello, 2018). Some companies in their advertising strategy reach to introduce several data that are not entirely real in order to make their product even more striking and thus increase their sales achieving in a certain way to be better than the competition, thus violating the rights of the consumer and the interests of the competitor since it can become an act of unfair competition (Angulo, 2020). Kotler and Armstrong (2007), refer to the influence of misleading advertising, pointing to this means of harm through high prices, due to high distribution costs, high advertising and promotion costs and excessive overpricing; deceptive practices such as misleading pricing, misleading promotion, misleading packaging; poor quality or unsafe.

Products that turn out to be harmful or harmful to health; planned obsolescence, causing products to become obsolete before they really need to be replaced by others.

In other words, misleading advertising is intended to manipulate the consumer's perception in a way that does not reflect reality. The negative effects of misleading advertising are the loss of money and time, growing distrust with the customer towards the product or service, which implies new strategies to gain new customers, which represents more investment of money and time (Rodriguez, 2022).

Panama does not escape from this reality, since in 2023, out of 433 irregularities between ex officio verifications, denunciations and complaints filed with ACODECO (Authority for Consumer Protection and Defense of Competition), which is an entity that protects and ensures the rights of consumers in the country, 138 were due to untruthful advertising (Open Data, 2024), which means that the incidence of this type of bad practices by businesses is very common.

Under these circumstances, ethical marketing actions must be taken, understood as the set of habitual behaviors that are evident in marketing policies, which in turn are transparent and trustworthy, characterized by integrity and fairness in relations with consumers and other stakeholders (Murphy et al., 2005). Where value standards are applied in terms of the various variables of the marketing mix such as: ethical products, fair and reasonable prices, ethics in distribution strategies, as well as ethical promotion focused on values (Fernandez and Seijo, 2010). Finally, the application of ethical marketing practices is essential to prevent and avoid misleading advertising. Ethical marketing involves the adoption of principles and practices that respect truth, transparency and moral values, and that seek to build long-term relationships with customers based on trust and integrity.

Under these circumstances in which misleading advertising has a direct impact on the consumer, as has been explained, it is necessary to take ethical marketing actions in which the sales processes in all its latitudes are real and transparent, however for these ethical actions within the framework of marketing are met and thus avoid falling into bad practices of misleading advertising companies must act in accordance with what is stipulated in the law, to avoid incurring in any infringement.

In most countries, there are legal rules that prohibit and regulate misleading advertising, which seek to protect consumers, ensuring that the information provided in advertising is accurate and truthful. Panama is not exempt from them, since in the country there are regulations that regulate this crime, which if incurred by the companies, they will be penalized.

In view of the circumstances already known, the objective of this article is to explain the different legal norms existing in Panama to deal with misleading advertising in consumer protection as ethical marketing actions in the sales process.

2. METHOD

In relation to the research, the study is situated in a qualitative research approach, which Strauss and Corbin (2002) point out is any type of research that produces findings that are not reached through statistical procedures or other means of quantification. The mass is of a documentary nature,

since it is responsible for collecting, compiling and selecting information from documents (Guerrero, 2015). Therefore, an exhaustive documentary review of the Panamanian legal system on misleading advertising was carried out. In turn, the study is of a descriptive type and level. Descriptive because it comprises the description, recording, analysis and interpretation of the actual nature, and the composition or process of the phenomena (Tamayo, 2003).

3. RESULTS AND DISCUSSION

The results obtained under the exhaustive documentary review carried out in various sources based on existing legal norms in Panama to address misleading advertising in consumer protection as ethical marketing actions in sales highlight the following:

The National Assembly of Panama, created Law No. 45 of October 31, 2007, which dictates rules on consumer protection and defense of competition and another provision, where in its Article 1, emphasizes that the purpose of this law is to protect and ensure the process of free economic competition and free competition, eradicating monopolistic practices and other restrictions on the efficient operation of markets for goods and services, to preserve the best interests of the consumer. That is to say that the intention of this law is to watch over the interests of the consumers in which they are protected from all those undue practices incurred by the companies and in which because of these they can be affected, including advertising.

Therefore, Article 58 of this law emphasizes truthfulness in advertising. Any advertisement or publicity concerning transactions must conform to the truth, taking care that the advertiser does not misrepresent the facts and that the advertisement or publication does not induce error or confusion. Statements referring to the nature, composition, origin, substantial qualities or properties of products or services must always be accurate and verifiable at any time. In this same article, misleading advertising is understood as that which refers to characteristics or information related to a good, product or service, which induces to error or confusion due to the inaccurate, limited, false, exaggerated, partial, artificial or biased manner in which it is presented. In view of what is set forth in article 58, the advertiser has the responsibility to ensure that the information provided is accurate and not misleading, as well as that it should not be presented in a way that can be easily misinterpreted, and also implies that the information presented should not only be accurate, but also demonstrable and verifiable when necessary. The content of this article establishes ethical and integrity standards for advertising in the context of commercial transactions. It seeks to protect consumers by ensuring that the information provided in advertisements is accurate, transparent and verifiable, avoiding misleading practices.

Article 59 states that advertising must clearly indicate the terms and conditions of the offers, promotions, discounts, rebates, special conditions or similar circumstances offered. All advertisers are obliged to comply with what is offered in the terms contained in the advertisement. Advertisements of articles that imply that the product has qualities, characteristics or benefits that it lacks will not be allowed. Consumers affected by misleading advertising shall have the right to terminate the sales contract, each party returning what it has received. Explaining the context of this article, it ensures that consumers are fully informed about what they are receiving when participating in an offer or promotion. Likewise, the conditions and terms set forth in the advertisement must be respected and honored by the advertiser. And in the event that the consumer is affected by a misleading advertisement, he/she can undo the transaction and return what he/she has purchased. This article seeks to guarantee transparency and honesty in advertising, protecting the rights of consumers and ensuring that offers and promotions are presented in a clear and truthful manner. It also establishes measures to correct situations in which consumers are affected by misleading advertising.

In turn, Article 60, on testimonials in advertisements, states that advertisements based on testimonials must be true and authentic. It states that advertisements based on testimonies must be true and authentic. The Authority may request from the suppliers the identification, domicile and general information of the persons who offer their testimony, so that it may be verified. For all purposes, the supplier shall keep the information contained in this article available to the Authority



for a term of up to six months, counted from the last publication. The implications of this article refer to the fact that the testimonials presented in advertising must reflect real experiences and cannot be invented or false. In this case, ACODECO has the right to request from the company information from those who have given testimony on a given advertisement, in order to verify the authenticity of the same.

On the other hand, in Article 61, on clarifications, legends, headbands, asterisks or any other call for attention that clarifies, conditions, restricts or limits the use of the advertised good or service or the use of an offer, in any means of communication, must be visible, legible, clear, truthful and unambiguous. The supplier is obliged to provide the essential elements for the consumer to be able to make a judgment on the good or service, without the need to be referred to another source. This article seeks to guarantee the transparency and accessibility of relevant information in advertising, ensuring that consumers have at their disposal all the essential details of a good or service in a clear and direct manner, without the need to seek additional information from other sources.

Regarding article 62, on the duration of promotions. Advertising relating to offers, promotions, discounts, rebates, discounts, special conditions or similar circumstances must indicate the duration of these or the minimum number of units offered. Otherwise, the supplier is obliged to provide consumers who so request the products or services offered under the conditions indicated. If the supplier does not indicate the duration of the offer or the minimum number of units offered, it will be understood that he is bound by the provisions of the preceding paragraph, until he communicates by the same means the end of the special sale. Regarding Article 63 of this law on Rectification in advertising. The supply of the information that verifies the veracity of the advertising is the responsibility of the sponsor. The supplier who in advertising fails to comply with the obligations set forth in the preceding articles shall suspend its dissemination or presentation and shall proceed to the advertising rectification, disclosing the truthful or omitted information, by the same means and in the same form initially used.

In turn, Article 64, on special sales, be it a sale, liquidation, bargain, discount or in any other way, whose purpose is to induce the consumer to purchase a good, implying that its regular price has been reduced, must indicate, in a visible place in the establishment, the lowest price at which said article has been sold by the establishment in the last three months and the new special sale price. For these purposes, each article shall have the previous price of the last three months and the new special sale price affixed to it.

With regard to advertising in terms of price, Article 56 of this law, which deals with price information. In any establishment selling goods to consumers, the cash price of such goods must be clearly, precisely and visibly displayed to the public. The supplier is prohibited from adopting any practice that induces the consumer to confusion, error or deception about the price of the goods or services offered. The supplier of goods or services is obliged, and is only entitled, to receive payment of the price exactly as advertised or printed on the respective establishment or good, unless it is proven that the consumer has altered it. In the event that a product has more than one price marked by the supplier, the lower price shall prevail, and the supplier shall be obliged to sell it at that price. In itself, this article implies that consumers should be able to easily understand the actual cost of goods without confusion or ambiguity, while being able to easily access price information while browsing the products for sale. By clearly displaying cash prices, honesty and fairness in business practices are promoted, allowing customers to understand directly the cost of the goods they are considering purchasing.

In Article 35, on the rights of consumers, paragraph 2 highlights that consumers have the right to receive from suppliers all the information about the characteristics of the product or service offered, in a clear and truthful manner, in order to make a decision at the time of making the purchase of the product or service, as well as to make the proper use or consumption of this, in accordance with national laws. In this sense, every consumer of the Panamanian territory, must assert his rights before any company, demanding that each of the above mentioned articles are fulfilled so that everything is in harmony with what is required by the law in Panama.

Another of the legal norms that refer to misleading advertising in Panama is contemplated in the Criminal Code of the Republic of Panama, specifically in Title VII, which deals with crimes against the

economic order, where Chapter I, which covers crimes against Free Competition and the Rights of Consumers and Users, in Article 240 describes the following: Whoever in his offers or advertising of products or services includes false information or manifests uncertain characteristics and advantages of the products or services advertised, in such a way that may cause serious damage to the consumer, shall be punished with imprisonment from one to three years. This highlights the seriousness of the action and the importance of protecting consumers from possible significant damage or deception. On the other hand, Law No. 5 of January 11, 2007, which streamlines the process of opening of companies and establishes other provisions, in its Article 15 on unfair competition emphasizes that the exercise of trade and industry is subject to the principles of fairness and good commercial faith. In its numeral 1 it highlights as acts of unfair competition any intentional and fraudulent act that is capable of creating confusion, by any means, to the detriment of the establishment, products, services and commercial or industrial activity of a competitor. In its numeral 2 it describes that any false assertion in the exercise of commerce, capable of discrediting the establishment, products, services and commercial or industrial activity of a competitor. In case of non-compliance with the provisions contained in this Law or in its regulations that do not have a specific sanction, the Ministry of Commerce and Industries, through the General, Provincial and Regional Directorates, shall be responsible for the imposition of fines to the offenders, which according to Article 19 shall range between one hundred balboas (B/.100.00) and ten thousand balboas (B/.10,000.00), depending on the seriousness of the infraction.

4. CONCLUSION

This review of the legal regulations in Panama regarding misleading advertising highlights the importance that the legal framework gives to consumer protection as an ethical marketing action. The legal provisions, especially contemplated in Law No. 45 of October 31, 2007, the Criminal Code of the Republic of Panama and Law No. 5 of January 11, 2007, establish clear guidelines to ensure truthfulness, transparency and clarity in the advertising of goods and services.

The regulations highlight the obligation of advertisers to adjust their messages to the truth, avoiding misrepresentations that may mislead or confuse consumers. They also emphasize the need to provide clear and truthful information on the conditions of offers, promotions, prices, testimonials and any other relevant element in the decision making process of consumers.

Panamanian law establishes penalties for those who incur in misleading advertising practices, recognizing the seriousness of such actions and the negative impact they may have on consumers. In addition, it highlights the responsibility of suppliers to rectify any inaccurate information and guarantee the authenticity of the testimonials presented in advertising.


Ethics in marketing is a fundamental pillar, reflected in the need to offer products and services in an honest manner, avoiding any practice that may lead to confusion, error or deception. The regulations seek to preserve free competition and the consumer's best interest, fostering commercial relationships based on integrity and loyalty.

Ultimately, ethical marketing actions are not only a legal obligation, but also a moral imperative that contributes to building long-term relationships with consumers based on trust. The rigorous application of these regulations is essential to ensure a fair business environment and to protect the rights and interests of consumers in the Panamanian market.

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