

THE LEGAL REGULATION OF ELECTRONIC COMMERCIAL ADVERTISING

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Abstract:

With technological advancement, commerce has become deeply rooted in an electronic environment relying on various communication means, including the internet. E-commerce is initially practiced through electronic advertising, which is considered a promotional tool to showcase commercial offers online. Electronic advertising stands out as an advertising method on the internet that depends on various techniques to ensure successful online marketing. Electronic advertising is governed by legal regulations to ensure its organization. This regulation subjects it to specific conditions that must be designed and complied with in a non-deceptive manner. It is also restricted by principles of public morality and public order in its design. Despite this, electronic advertising still requires further legal regulation, especially concerning artificial intelligence.

Keywords: Advertising, Commercial, Regulation, Laws, Electronic, Conditions.

INTRODUCTION

Technological advancement has led to the creation of a parallel space to traditional practices, giving rise to electronic commerce, also known as e-commerce, resulting in electronic transactions and contracts.

While e-commerce operates within a digital environment, it still requires the same chain of traditional commerce. Within this chain lies commercial advertising, that has transitioned to the digital realm and become a promotional tool for e-commerce. This study is focused on digital commercial advertising.

The issue of digital commercial advertising and its legal regulation is crucial in establishing a legal framework that ensures the practice of e-commerce in a healthy environment, especially since commercial advertising is at the core of business operations. Regulating digital commercial advertising ensures the implementation of digital economic plans both in theory and practice, considering the interconnected relationship between e-commerce as a component of the digital economy and digital commercial advertising as a component of e-commerce. Given the significance of digital commercial advertising, questions arise about its regulation. Therefore, the following problem is posed: What is the purpose of digital commercial advertising and does it enjoy sufficient legal regulation?

To answer this question, a descriptive analytical approach will be adopted by analyzing the legal regulations governing digital commercial advertising, aiming to demonstrate their adequacy and effectiveness in regulating digital commercial advertising. The research problem will be addressed through two axes:

The first axis: a legal and technical campaign on electronic commercial advertising, The second axis: legal requirements for electronic commercial advertising.

1 Legal and technical campaign on electronic commercial advertising

Electronic commercial advertising focuses on presenting the commercial process electronically, and in light of the electronic practice of commercial advertising, it requires legal importance that highlights its legal concept, and it also requires technical importance that highlights the technical methods and means that regulate it.

1.1 Definition and legal nature of electronic commercial advertising

The Algerian legislator defined electronic commercial advertising in Law No. 02-04 specifying the rules applicable to commercial practices through the text of Article 3/3 as: “Advertising: Any advertisement that aims, directly or indirectly, to promote the sale of goods or services, regardless of the place or means of communication used.”¹ The Algerian legislator defined electronic commercial advertising through the text of Article 6/6 of Law 05/18 related to electronic commerce, which states: “Electronic advertising: any advertisement that aims directly or indirectly to promote the sale of goods or services via electronic communications.”²

It is noted that the Algerian legislator, through its definition, considered commercial advertising as a commercial advertisement. According to the legislator, this advertisement is an action that precedes the contractual process in which promotional and incentive means and tools are used using electronic means, and the purpose of this is to influence the consumer’s behavior in order to push him to contract.

The European E-commerce Directive defines electronic commercial advertising as: “Any form of communication designed to promote, directly or indirectly, goods or services or a picture of a company, organization, or person practicing a commercial, industrial, or craft activity, or practicing an organized profession.”³

It is noted that the European Directive considered electronic commercial advertising as an electronic communication process designed according to an electronic template, the aim of which is to promote a product or service by any party practicing a commercial activity. The term adopted by the European Directive is more correct in view of the nature and technology of electronic commercial advertising, as the means on which electronic commercial advertising relies, such as electronic mail or video tape, can be considered a communication process that performs the advertising function in order to influence the electronic shopper.

1.2 The legal nature of electronic commercial advertising

Electronic commercial advertising has been considered by the legislator as an electronic advertisement to promote a commodity or service for sale. From this standpoint, jurisprudence differed in determining its legal nature, as some considered it to be an offer issued by the provider of the commodity or service that only requires acceptance for the idea of contracting to be established. However, another trend considered electronic commercial advertising as an invitation to contract.

Some legal scholars believe that electronic commercial advertising is considered an invitation to negotiate or contract, as it is based on the fact that advertising via electronic means does not include the essential elements of the contract, such as the price, as the invitation to contract is the one that a person directs to another or to the public, inviting them to contract with him without providing the basic information related to the contract, as long as the electronic advertisement lacks mention of the price and other essential elements of the contract, it is not

¹ Law No. 02-04 defining the rules applicable to commercial practices, dated

Jumadah I 9,1425 corresponding to June 27, 2004, Official Gazette of the Algerian Republic, No. 41, p. 3

² Law 05/18 on electronic commerce dated Shaaban 30, 1439 corresponding to May 16, 2018, Official Gazette of the Algerian Republic, No. 28, p. 5.

³ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Art 2/E/: “commercial communication”: any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession

considered an offer, but rather a mere invitation to contract that may be followed by the process of offer and then acceptance. And this was the trend that French law has settled on.⁴ The second opinion considers that advertisements directed to the consumer via electronic means represent a positive, as the proponents of this trend emphasize the importance of electronic advertisements including the basic conditions of the contract, including clearly specifying the price, advantages and characteristics of the product or service. These advertisements must express a firm and final will to contract, which means that the consumer's behavior will move towards concluding the contract immediately if the advertisements are acceptable, free of ambiguity, and specific to the characteristics of the product or service.⁵

It is useful to note that electronic commercial advertising is characterized by a mixed legal nature, such that it can be an invitation to contract if the electronic commercial offer comes in the form of a design that invites the electronic consumer to adopt and consume commercial products and services, i.e. an electronic promotion without mentioning the details and particulars of the contract. However, the electronic commercial offer may turn into an affirmative if the offer design contains details of the product or service such as the price, product specifications, and even information about the merchant.

Referring to the Algerian legislator, we find that he has defined the legal nature of electronic commercial advertising, as he considered electronic commercial advertising positive, and this is what is stipulated in Article 11 of Law 05-18 related to electronic commerce, which stipulates that the electronic supplier must include in his electronic commercial offer several details, such as his information, specifications and price of the commodity, and information related to the implementation of the transaction.⁶

1.3 Technical means of electronic commercial advertising

Despite the commercial nature of electronic advertising, it is characterised by a technical support represented by technical mechanisms and means that contribute to the design and creation of commercial advertising content via the Internet⁷, where these mechanisms vary according to the nature of their use, as reliance is placed on the advertising strip, electronic sponsorship, and advertising breaks.

1.3.1 Advertising strip

It is called banner ads and it is a type of electronic advertisement, which is known as slogans. These ads include brief information about a specific institution, product or service, and are designed in an attractive way to attract the attention of users and push them to click on them. This type of ad is considered the most widespread in terms of application in the digital world, due to its movement and dynamism that contributes to attracting the attention of the user when it appears. In addition, the advertising institutions provide detailed information and data about the product or service in question. These ads are also known as those that appear at the top, bottom or sides of web pages, and come in the form of rectangles of various sizes, as they include a picture or logo of a specific institution or its product, which prompts the user to click on it using the mouse, with the aim of directing them to the advertiser's website.⁸

1.3.2 E-sponsoring

⁴ Bouzkri Intisar Boudiaf Abdel Razzaq, *Electronic Advertising Controls Under Law 05-18 Related to Electronic Commerce*, Academic Journal of Legal Research, University of Bejaia, Issue 02, Algeria, Year 2022, p. 108.

⁵ Bouzkri Intisar Boudiaf Abdel Razzaq, *Electronic Advertising Controls under Law 05-18 on Electronic Commerce*, previous reference, pp. 108-109.

⁶ Law 05/18 on Electronic Commerce, previous source, p. 06.

⁷ It is worth noting that there are other methods of electronic commercial advertising outside the Internet, represented by means of communication that do not require the appearance and operation of the Internet, such as short text messages sent via phone (SMS) as well as messages (MMS) in addition to advertising via Bluetooth technology. The process of electronic advertising via the Internet is based on a support represented by social networking sites, search engines, websites, in addition to e-mail.

⁸ Jabara Noura, *Electronic Advertising as a Media Means*, Legal Studies Journal, University of Medea, Issue 02, Algeria, 2021, p. 677.

Known as paid or sponsored advertising, sponsored advertising is a form of online advertising where companies pay to promote their products, services, or content on digital platforms. These ads are often labeled “sponsored” to distinguish them from organic content. Sponsored advertising is found across various online channels, including social media platforms such as Facebook, Instagram, and Twitter, as well as search engines such as Google. The primary goal of sponsored advertising is to increase visibility, reach a targeted audience, and drive specific actions, such as clicks, conversions, or brand awareness.⁹

This process is characterized by the use of websites for commercial advertisements, where backgrounds or sections are designed across the website to indicate a trademark, name, product, or service.

1.3.3 Interstitial Ads

Interstitial Ads are ads that impose themselves on the user while he is browsing a page on the Internet. These ads appear suddenly, making it difficult for the user to ignore them. Some liken these ads to flashes of advertising that displayed on television or radio, where the viewer or listener cannot avoid watching or listening to if he wants to follow the content provided by these media¹⁰

These ads are characterized by being sudden, as they appear to the user while browsing a website, and they also appear frequently while watching videos on the Internet, especially through the YouTube application. The Google website provides this feature with a tool that enables electronic users to create small advertising clips in the form of a video to display their products or services. This feature is called Google Ads.¹¹

2 LEGAL REQUIREMENTS FOR ELECTRONIC COMMERCIAL ADVERTISING

Electronic commercial advertising represents a contractual incentive, i.e. it is the beginning of establishing a contract. Since electronic commercial advertising precedes the contracting process and paves the way for it, it needs legal controls to regulate it, ensure its clarity, and guarantee the protection of the consumer who receives it.

2.1 Foundations of electronic commercial advertising

Article 11 of the E-Commerce Law stipulates that certain rules must be respected when creating and designing an electronic commercial advertisement, as the article states: The electronic supplier must present the commercial offer in a visible, readable and understandable manner, and must include at least, but not limited to, the following information:

- Tax identification number, supplier's electronic address and telephone number,
- Commercial registration number or professional card number of the craftsman,
- Nature, characteristics and prices of the proposed goods or services, including all fees,
- Availability status of the goods or services,
- Costs, expenses and delivery times,
- General conditions of sale, especially those relating to the protection of personal data,
- Terms of commercial warranty and after-sales service,
- Method of calculating the price in the event that it cannot be determined directly,
- Payment procedures,
- Conditions for terminating the contract if necessary.
- A comprehensive description of the various stages of the implementation of the electronic transaction,
- Validity period of the offer if necessary,
- Terms and conditions for withdrawal if necessary,
- Method of confirming the order,

⁹ See the following site, <https://www.speedcommerce.com/what-is/sponsored-ad/>, See it on 10/04/2024, 01:50.

¹⁰ Jabbara Noura, Electronic Advertising as a Means of Media, Legal Studies Collection, previous reference, p. 679.

¹¹ See the following website: <https://27i51h.us.feji>, accessed on 10/04/2024.

▪ Delivery date and price of the product subject to the order, in addition to the costs of cancelling the order if necessary.

▪ Method of returning or exchanging the product,

The cost of using electronic means of communication when calculated on a basis other than the applicable tariffs.¹²

Through the text of Article 11, it is clear that electronic commercial advertising is governed by two rules when it is designed and directed to the electronic consumer, whereby it must:

A- Electronic commercial advertising must be completely clear and unambiguous. Clarity indicates that the design of electronic commercial advertising must include sufficient and comprehensive data about the commodity, product or service, such that the advertisement must show all the information that enables the electronic consumer to contract and enjoy the content of the commercial offer if he so desires. Electronic advertising is not valid without mentioning the price, description of the product or service, information about the supplier or electronic merchant, and the method of implementing and concluding the contract.

B- Electronic commercial advertising must not contain any fraud or false information. It is not permissible to use promotional images that do not match the product or service. It is also not permissible to encourage the consumer to contract by using misleading and incorrect data.

The European Directive on E-commerce stipulated the same rules, requiring that electronic commercial advertising be clear, including all information and without ambiguity. However, the European Directive was more organized than the Algerian legislator, requiring that unwanted electronic commercial advertising, which is advertising received in e-mail in the form of Spam, be clear and unambiguous and that is what the Algerian legislator delayed organizing.¹³

2.2 Terms of electronic commercial advertising

Article 30 of the Algerian Electronic Commerce Law stipulates that electronic advertising must include a set of elements that are described as conditions for its validity, as the article states that: “Without prejudice to the legislative and regulatory provisions in force in this field, any advertisement, promotion or message of a commercial nature sent via electronic communications must meet the following requirements:

- To be clearly identified as a commercial or advertising message.
- To make it possible to identify the person for whom the message was designed.
- To clarify whether the commercial offer includes discounts, rewards or gifts, if it does not conflict with public morals and public order commercially, competitively or promotionally.
- To ensure that all conditions required to benefit from the commercial offer are not misleading or ambiguous.¹⁴

The text of the article indicates that for the validity of electronic commercial advertising, it must be prepared in the form of a commercial or advertising message, and this message in turn must be clearly defined and effectively indicate the content of an electronic commercial advertising and nothing else. The message must also specify the identity of the advertiser or merchant concerned with the advertising message, clarifying all aspects of the commercial offer through the advertisement, such as discounts or gifts, if any. It is also required that electronic commercial advertising does not violate public morals and order, which indicates the necessity of the legitimacy of electronic advertising, and non-violation means that the advertisement does not relate to a product or service prohibited in Algeria, such as promoting prostitution or drugs. It is

¹² Law 05/18 on electronic commerce, previous source, pp. 06-07.

¹³ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Art7/1: “In addition to other requirements established by Community law, Member States which permit unsolicited commercial communication by electronic mail shall ensure that such commercial communication by a service provider established in their territory shall be identifiable clearly and unambiguously as such as soon as it is received by the recipient.

¹⁴ Law 05/18 on electronic commerce, previous source, p. 9.

also necessary that no obscene means, tools or drawings that affect public order and indicate incitement or other actions that represent a challenge to the law and public order be used.

The legislator also stipulated through the same article that the advertisement should not be misleading. All details of the commercial offer must be clear and true, not vague or false, as the commercial offer may not contain details on the basis of which the consumer was motivated to enter into the contract, and then after executing the contract, the product or service was found not to be in accordance with the description of the offer or that the price was not the price mentioned in the offer.

The European Directive on E-Commerce stipulated the same conditions through Articles 6 and 7, but what is noted about the Algerian law and the European Directive is the failure to keep pace with technological and technical development, as we currently find commercial offers designed with the help of artificial intelligence, so the robot or a smart program and application creates a commercial advertisement that matches human work based on the algorithms and software it has been trained on. From this standpoint, are these rules sufficient to contain the commercial advertisement designed by an artificial intelligence program?

The answer to this question has two possible answers. The first is that legislation has come to recognize the works produced by artificial intelligence, including the European directive issued in March 2024. However, the Algerian legislator has not found an explicit text recognizing the works of artificial intelligence. The second matter relates to the extent to which artificial intelligence respects the rules and conditions set by the laws to control electronic commercial advertising. From this standpoint, it can be said that electronic commercial advertising designed with artificial intelligence needs legal treatment that can organize and control it according to specific rules that may make it compatible with commercial advertising in general.

CONCLUSION

Electronic commercial advertising is a technical process that takes place in an electronic environment. Despite the technicality of this process, electronic commercial advertising is sorted as a type of legal regulation that makes it happen in a safe and sound environment, which ensures the protection of the electronic consumer.

Despite the existence of legal regulation for electronic commercial advertising, it remains insufficient, as it still needs to update some rules and address some shortcomings that the Electronic Commerce Law has overlooked.

Although there is a legal regulation for electronic commercial advertising, it remains insufficient, as it still needs to update some rules and address some shortcomings that the E-Commerce Law has overlooked. The process of electronic commercial advertising is almost not clear in terms of the legal nature that characterizes it, as practical reality indicates that we are facing a negotiation of the contract from one side, and the original advertising is nothing but a promotion process, so this nature must be defined because it determines the resulting responsibility.

The transition of electronic commercial advertising to artificial intelligence technology, which resulted in the laws not keeping pace with this development, which created a legal vacuum in this regard.

Based on the above, we propose:

Re-adjusting the rules governing electronic commercial advertising, whereby the Algerian legislator must address some of the shortcomings, including Article 6 of Law 05/18, and reviewing the omission of the requirement of clarity in electronic advertising based on spam technology.

Reviewing electronic commercial advertising via artificial intelligence technology and regulating it by the Algerian legislator or other legislation.

Imposing control over electronic commercial advertising, especially via the Internet, whereby the legal reality must be linked to the practical field, which would control and regulate electronic commercial advertising.



References:

1- Laws

- 1- Law No. 02-04 defining the rules applicable to commercial practices, dated Jumada I 9 , 1425 corresponding to June 27 ,2004, Official Gazette of the Algerian Republic, No. 41.
- 2- Law 05/18 relating to electronic commerce, dated Shaaban 30 ,1439 corresponding to May 16 ,2018, Official Gazette of the Algerian Republic, No. 28.
- 3- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

2- Articles

- 1- Bouzkri Intisar Boudiaf Abdel Razzaq, Electronic Advertising Controls Under Law No. 18-05 on Electronic Commerce, Academic Journal of Legal Research, University of Bejaia, No. 02, Algeria, 2022.
- 2- Jabara Noura, Electronic Advertising as a Means of Media, Legal Studies Journal, University of Medea, No. 02, Algeria, 2021

3- Websites:

- 1- Google AdSense: <https://feji.us/h51i27>
- 2- <https://www.speedcommerce.com/what-is/sponsored-ad/>