

## The legal system for electronic advertisements

### النظام القانوني للإعلانات الالكترونية

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**Abstract:** The rapid development of electronic commerce in recent years and the spread of commercial transactions through modern electronic means prompted merchants to use the Internet to market their products and services by publishing their commercial advertisements on it, as electronic advertisement is the first method to attract consumers to commercial websites, and it is also the tool that Through which the consumer searches for the goods and services that he wants. In view of the importance of electronic advertising in the marketing of goods and services, the merchant must abide by the terms of honest advertisements when presenting them, to be honest, transparent, clear, accurate, and presented in a language that the consumer understands, and to avoid false and unwanted electronic advertisements that harm the consumer.

**Keywords:** electronic advertising, false electronic advertising, unwanted electronic advertising, consumer protection, advertising, electronic commerce.

**ملخص:** إن التطور السريع للتجارة الالكترونية في السنوات الأخيرة و انتشار المعاملات التجارية عبر الوسائل الالكترونية الحديثة، دفعت بالتجار الى استعمال شبكة الانترنت لتسويق منتجاتهم و خدماتهم من خلال نشر إعلاناتهم التجارية عليها، حيث يعد الإعلان الالكتروني أول أسلوب لجذب المستهلكين الى المواقع التجارية، كما أنه الأداة التي يبحث من خلالها المستهلك عن السلع و الخدمات التي يريدها.

و نظرا لأهمية الإعلان الالكتروني في تسويق السلع و الخدمات فعلى التاجر الالتزام عند تقديمه بشروط الإعلانات الزبينة بأن تكون صادقة و شفافة وواضحة و دقيقة و مقدمة بلغة يفهمها المستهلك و الابتعاد عن الإعلانات الكاذبة و غير المرغوب فيها.

**الكلمات المفتاحية:** الإعلان الالكتروني، الإعلان الإلكتروني الكاذب، الإعلان الالكتروني غير المرغوب فيه، حماية المستهلك، الإشهار، التجارة الالكترونية.

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## **1-Introduction:**

The spread of electronic commerce in recent years has led to the emergence of electronic markets where the seller, supplier and consumer meet, where goods and services are presented via the Internet, contracting is done by computer and the price is paid by the available electronic financial means (Payment cards, electronic money, etc.), and one of the advantages of electronic commerce is that it allows the consumer to deal with the internal or international markets all the time without stopping or waiting for a specific product and the purchase process does not require anything except entering some personal information and submitting the request shown on the screen the computer.

E-commerce brings many benefits to consumers, but it is surrounded by some legal problems, whether before or after the conclusion of the contract. It raises many issues related to the protection of private life, the applicable law, the extant of authoritative electronic matters and the electronic signature in evidence, in addition to other problems represented in the merchant use of online advertising and advertisement to promote goods or services except that they are false or misleading advertisements to the consumer, or the consumer may enter into a contract for an advertised commodity with special features, features and images that, when received, do not match what was published in the advertisement, and sometimes we find that the consumer deals and contracts with a fake seller through advertising on fake websites or do not exist at all, so that and other problems that weaken consumer confidence and lead him to refrain from electronic contracting<sup>1</sup>.

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<sup>1</sup>- Kawthar Saeed Adnan Khaled, "Electronic Consumer Protection," New University House, Egypt, 2012, p. 110.

Consumer protection in electronic transactions is one of the most important goals that countries have set, whether when enacting domestic or international laws, in particular, with the spread of electronic advertisements, which have become the primary method used by the merchant or service provider to attract the largest number of consumers to their commercial sites.

Relying on electronic advertisements to promote goods or services with respect for integrity, honesty, accuracy and clarity, makes them achieve the desired goals, but if merchants and service providers do not respect the conditions of electronic advertising and is interspersed with false information that leads to deceiving the consumer, it will cause him a material and moral damage.

In front of the development of advertising by modern technical means, it is issued daily in the form of advertising messages directed to the consumer e-mail or Smartphone, which makes him confused by the huge number of electronic commercial advertisements through which the competition between merchants and service providers increases in attracting and contracting with him. Therefore, it was necessary for the legislator to protect the consumer from false and misleading electronic advertisements or those made by e-mail, which are unwanted advertisements, by regulating the conditions and requirements for electronic advertising and how to display it to the consumer, the legislator dealt with this in the Law 18/05 related to electronic commerce <sup>2</sup>, In Chapter Seven entitled "Electronic Advertising", especially since we entered the field of electronic commerce later than the rest of the countries, which makes the Algerian consumer ignorant of how to deal or contract electronically to acquire his

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<sup>2</sup>- Law 18/05 of May 10<sup>th</sup>, 2018 related to Electronic Commerce, Official Gazette No. 28.

needs, and is ignorant even of his legally guaranteed rights from any false advertisement.

The aim of this study is to shed light on the importance of electronic advertising, and the rules adopted to protect the consumer from the electronic advertisements he receives and faces them daily while carrying out electronic transactions and adjusting the conditions that must exist in order to achieve his goal.

To study this topic, we must present the following problem:

What are the rules for consumer protection from electronic advertisements, and how effective  
are the legal texts that regulate them?

We relied in our research on the descriptive and analytical approach by dealing with the description of various aspects of the topic from legal texts, gathering information, and then analyzing it by relying on references, researches and studies that are relevant to the topic.

To answer the problem, we devoted two studies to that; the first topic, in which we deal with the legal nature of electronic advertising, and the second topic is the conditions for consumer protection from electronic advertising.

## **2-Tilte I: the legal nature of electronic advertisements**

Electronic advertising is one of the most important methods adopted by merchants or producers or service providers to promote goods or services through advertising to attract the largest number of consumers and push them to contract with them to satisfy their desires, but sometimes the consumer falls victim to misleading electronic advertisements and is led to acquire goods and services, so we have to provide protection for him from that.

We will analyze this in the two requirements, in the first requirement we present the concept of electronic advertising and the second requirement is to organize electronic advertising.

### **2.1- First Subtitle: the concept of electronic advertising**

Businesses are usually preceded by advertising or advertisement, and its purpose is to inform the consumer of the existence of a service or product that he needs, and this is what merchants, producers or service providers have adopted when entering the field of electronic commerce, so they use electronic advertising via the Internet due to the role it plays in promoting goods or services and speed in attracting the largest number of consumers, so we will be exposed to the definition of electronic advertising in the first section and the controls of electronic advertising in the second section.

#### **The first section: the definition of electronic advertising**

Electronic ads do not differ from regular commercial advertisements except in terms of the medium used in them which is the Internet, and both aim to attract consumers and push them to buy goods and request services even if they do not want them.

The advertisement is defined as: “A commercial or professional informing or media intended to introduce a specific product or service by highlighting the advantages and praising the merits in order to create a good impression that leads to the public’s appetite for this product or service”<sup>3</sup>. And there are those who know it as: “An informing handled by a professional with the intention of introducing a product or service, with the aim of

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<sup>3</sup>- Abdel-Fadil Mohamed Ahmed, “Advertising products and services from a legal point of view”, Al-Galaa New Library, Egypt, without a year of publication, p. 19.

leaving an acceptable impression on it among the audience addressed, leading to the demand for the products and services subject of the advertisement"<sup>4</sup>.

As for electronic advertising, it is defined as:"Every commercial or professional news that merchants and service providers make by using electronic means to inform the consumer of the advantages of goods and services in order to motivate them and their willingness to contract"<sup>5</sup>.

On the other hand, we find different legislation defining commercial advertising as the European Directive on Misleading Advertising No. 450, which was adopted in 1984 and amended by Directive No. 55 in 1997. In order to include comparative advertisements in its Article 2/1, stating: "Every form of communication that takes place in the context of commercial, industrial, craft or professional activity in order to encourage the supply of goods and services, including real estate goods, rights and duties. "As for the legislator, it defined advertising using the term publicity in various legal texts, in Article 2/8 of Executive Decree 90/39 related to quality control and the suppression of fraud<sup>6</sup>, which states:" All suggestions, advertisements or statements or offers, advertisements, publications, or instructions intended to promote the marketing of a commodity or service by means of visual or audio-visual attribution. The legislator did not specify in the text the means by which the advertisement is made in the

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<sup>4</sup> - Bodali Muhammad, "Consumer Protection in Comparative Law, a Comparative Study with French Law", Dar Al-Kitab Al-Hadith, Cairo, 2006, p. 165.

<sup>5</sup> - Kawthar Saeed Adnan Khaled, previous reference, p110.

<sup>6</sup> - Executive Decree 90/39 of 01/30/1990 related to quality control and suppression of fraud issued in the Official Gazette No. 5, amended and supplemented by Executive Decree 01/135 of 10/16/2001, Official Gazette No. 61.

sense of contravention that includes the electronic advertisement that is made via the Internet, as Article 3 /3 of Law 04/02 relating to rules applicable to amended commercial

practices and complementary<sup>7</sup>, defined advertisement as: “every advertisement aims, directly or indirectly, to promote the sale of goods or services, whatever the place or means of communication used.”

With the issuance of Law 18/05 related to electronic commerce, the legislator addressed the definition of electronic advertising in Article 6/6 as follows: “Every advertisement aims, directly or indirectly, to promote the sale of goods or services through electronic communications.” Through what was mentioned it is clear to us that either traditional advertisements or electronic advertisements aim to induce the consumer to acquire the good or service. And they clarify the advantages and characteristics of each of them, and they also affect the consumer by motivating him to contract, the more the contract increases, the more profit is made, and the difference between them is the means used in advertising, so traditional advertising is done through traditional means, as for electronic advertising depends on modern means of communication technology such as Smart phones, internet and others.

### **The second section: electronic advertising controls**

Since electronic advertising is intended to broadcast certain advertisements of a commercial or professional nature through transmission channels or the Internet, and in order to achieve this,

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<sup>7</sup>- Law 04/02 defining the rules applicable to commercial practices issued in the Official Gazette, amended No. 41. Supplemented by Law 10/06 of 08/15/2010, the Official Gazette No. 46.

the elements and characteristics of the electronic advertisement must be displayed.

### **First: Electronic Advertising Elements**

These elements are:

- A- The material element: The material element means every act, activity, or every use of an expression tool that is aware of the senses<sup>8</sup>, which makes us understand that there must be material means working to deliver the advertisement to the consumer. And we find in our daily life a large number of means used to broadcast electronic advertising such as visual, written, signs, light panels, wall stickers, and most recently the Internet and all modern means of information and communication technology.
- B- The intangible element: The intangible element means the realization of profit and material gain, which is expressed in the necessity for the advertisement to be commercial<sup>9</sup>, so all the profit criteria resulting from the promotion of goods and services are what distinguishes an advertisement from similar advertisements.

### **Second: Characteristics of electronic advertising**

The consumer receives several advertising messages every day, whether on his e-mail or when browsing to websites or by messages on his mobile phone, but the nature of these electronic advertisements differs between what is commercial and what is not, and in order to distinguish electronic commercial advertising from other ads or the like, the characteristics of electronic advertising must be addressed to achieve this:

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<sup>8</sup> - Khaled Mamdouh Ibrahim, "Consumer Protection in the Electronic Contract", Dar Al-Fikr University, Egypt, 2008, p. 137.

<sup>9</sup> - Khaled Mamdouh Ibrahim, previous reference, p. 137.

- A- Electronic advertisement of a commercial nature: the electronic advertisement that the advertiser aims to achieve profit is considered a commercial advertisement, as it has relied on the profit criterion to distinguish electronic commercial advertising from other advertisements made on the Internet, such as ads carried out by government institutions or associations, which are not of a commercial nature<sup>10</sup>.
- B- Electronic advertising is done using an electronic means: The most important feature that distinguishes electronic advertising from traditional advertising is through the medium of its transmission. The electronic means of advertising on the Internet is a feature of electronic advertising that overcomes traditional means of newspapers, magazines, audio and Visual<sup>11</sup>.
- C- Electronic advertising directs consumers and urges them to contract: Merchants and service providers aim to promote goods and services by displaying and marketing them, so they direct their advertisements to consumers to view it and get to know the content of the service or commodity. Therefore, electronic advertising is not directed to a specific person, but to the consumer audience in general, through websites specialized in the field of advertising<sup>12</sup>. Also, electronic advertising works to have a psychological effect on the audience that receives it, by convincing him of the advantages of the good or service and the benefits it achieves, so the consumer must be attracted to the

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<sup>10</sup> - Kawthar Saeed Adnan Khaled, previous reference, p. 111

<sup>11</sup> - Kawthar Saeed Adnan Khaled, previous reference, p. 112.

<sup>12</sup> - Sherif Mohamed Ghanem, "The Legal Regulation for Commercial Advertising via the Internet," Dar Al-Jameya Al-Jadida, Egypt, 2008,p. 29.

contract and demand for goods and services, otherwise we are advertising<sup>13</sup>.

## 2.2 - Second Subtitle: the regulation of electronic advertising

The contract is usually concluded by matching the offer and acceptance between the parties, but the problem arises when the electronic advertisement is presented to the consumer here. The offer was directed by a person to another person for the purpose of contracting and completing the purchase. What is the value of the offer here? And if everyone browses e-commerce websites that offered goods and services, and their price and how to acquire them, is considered an offer in the legal sense, so can electronic advertising be considered positive?

To answer these questions, we found the opinion was divided into two directions. One group believes that it is positive and another team believes that it is an invitation to contract or in preparation for negotiation, and accordingly we will display that in two sections, the first section, the electronic advertisement is considered offer, the second section, the electronic advertisement is an invitation to contract.

### **The first section: online advertising is considered offer**

A offer is defined as an offer made by a person to express with certainty his will to conclude a specific contract, so the contract is concluded upon acceptance<sup>14</sup>, according to Article 59 of the Civil Code which states: "The contract is concluded as soon as the two parties exchange expressions of their identical wills

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<sup>13</sup> - Abdul-Fadil Muhammad Ahmad, previous reference, p. 22.

<sup>14</sup> - Ali Filali, "Obligations - The General Theory of Contract -", Mouffem for Publishing and Distribution, Algeria, 2001, p. 88.

without prejudice to the legal texts». Therefore, if the offer is accompanied by acceptance and the basic elements of the contract are available, the latter concludes that the offer expresses the express will of the obligator in concluding and implementing the contract.

Therefore, a group of jurists believe that displaying an electronic advertisement directed at the consumer is an affirmative, as long as its content is specific enough to conclude the contract as soon as it is associated with acceptance, especially when the offer is collectively, that is, directed to all members of society<sup>15</sup>, that is, the offer must express the will in the contract and include a definition of the commodity, a definition that precludes ignorance, determining the price and the basic elements of the contract, free from any ambiguity or mystery, how to pay the price of the thing sold, where to deliver it and if not available These conditions when displaying the electronic advertisement are not in front of an affirmative, but merely an invitation to contract.

### **The second section: electronic advertising is an invitation to contract**

There is another trend of jurisprudence that believes that the invitation to contract is that an invitation addressed by a person to another or to the public with the aim of urging them to contract with him without specifying the essential issues and he has no intention of directly linking to the contract if others accept this invitation<sup>16</sup>, and therefore if the electronic advertisement does not contain the basic elements of a contract, it is considered an invitation to contract, not an affirmative.

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<sup>15</sup> - Khaled Mamdouh Ibrahim, previous reference, p. 143

<sup>16</sup> - Ahmed Ibrahim Attia, "The Legal System for Advertising in Civil Law," Dar Al-Nahda Al-Arabiya, Egypt, 2006, p. 80.

Considering the display of electronic advertising directed to consumers as a call for negotiation or contracting is consistent with the nature and requirements of e-commerce, as the producer or merchant may receive thousands of e-mails approving the purchase order without having all the required quantity or having prices that are more expensive than the price at the time because of the increase of demand, so, considering the electronic advertisement directed at the public via the Internet is just an invitation to contract would enable the producer or merchant to reject the requests that exceed his capabilities due to the lack of the required quantity or for a price <sup>17</sup>

Therefore, if the offer of goods and services electronically does not include the basic issues of contracting such as the price, specifications of the thing sold, how to pay and the dates and place of receipt, this offer is considered merely an invitation to contract.

In our opinion, considering the electronic advertisement as a mere invitation to contract is the correct opinion in order to give the consumer an opportunity to view the terms of the contract and negotiate them, especially since the electronic advertisement is directed to the local consumer audience and those in other countries.

### **3-Tilte II: conditions for consumer protection from electronic advertising**

The spread of electronic advertisements in recent years and the diversity of their methods with the development of modern technology means has led the consumer to be affected by it, and on the basis the decision is made by resorting to contracting and acquiring the thing sold, so it is the right of the consumer to receive

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<sup>17</sup> - Kawthar Saeed Adnan Khaled, previous reference, p. 135.

true, honest, not misleading and deceptive electronic advertisements, so that the information contained in the electronic advertisement is actually identical to the goods or the services provided, and when delivery of the commodity or providing the service, he must find the same specifications as in the advertisement.

However, sometimes the advertiser resorts to the use of advertising methods that involve fraud and deception and he mentioned wrong and inconsistent specifications with what was shown in the advertisement to push the consumer to contract, as such false advertisements affect consumer behavior and make him lose confidence in dealing electronically, so national and international legislations set a number of conditions that electronic advertising must include in order to protect the consumer from advertisements Deceptive or deceptive electronic, and this is what we find in the law of 18/05 related to electronic commerce, which regulated these conditions from Article 30 to Article 34, and accordingly we will analyze these conditions. In the first requirement we offer clarity of electronic advertising, the second requirement is to prevent misleading and unwanted electronic advertising.

### **3.1- First Subtitle: clarity of electronic advertising**

Electronic advertisements bring many benefits to the consumer as he sees the commodity offers and services via the Internet in a short time and with minimal effort, and compares the prices of the exhibiting companies and identifies the advantages of the good or service, and in a few minutes, he has determined his choice of the product he wants and began the contracting procedures, all this leads to the creation of competition between exhibiting companies, which drives it to improve product quality but to achieve this, electronic advertisements must be clear and honest,

so they must meet a set of general conditions that are agreed upon in jurisprudence and legislation, which must be fulfilled in any advertisement that was displayed on the Internet. We see in the first section that the electronic advertisement must be Clear and specific, the second section is that the information contained in the advertisement is truthful and accurate.

### **The first section: that the electronic advertisement must be clear and specific**

Electronic advertisements vary daily on Internet sites and take many forms, so the bidder or advertiser is required to have his advertising message clear and unambiguous, and in order to achieve this, the advertisement must include sufficient data and information about the product or service provided. This would create in the consumer a conscious thinking and an informed will before entering into the conclusion of the contract, which would help him to accept the contract with full awareness<sup>18</sup>.

And there are those who know the condition of clarity of the electronic advertisement as "that the advertisement includes sufficient data about the good or service provided that would create a conscious and insightful thinking that works to form an informed conscious will on the part of the consumer while he is about to accept the contract<sup>19</sup>." The advertisement owner must display the electronic advertisement in a clear manner on the products that he wishes to sell to the consumer using clear

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<sup>18</sup> - Malika Djamaa, "Information Consumer Protection", PhD thesis in private law, Faculty of Law and Political Science, Jilali Yabis University, Sidi Bel Abbas, 2017/2018, p. 31.

<sup>19</sup> - Mamdouh Muhammad Khairy Hashem, "Civil Protection from Deceptive Commercial Ads," Dar Al-Nahda Al-Arabiya, Egypt, without a year of publication, p. 28.

expressions and pictures so that we are not in front of a misleading advertisement or a liar.

Most of the legislations have adopted<sup>20</sup> this condition within their legal texts, which is what the legislator adopted and imposed on the owner of the advertisement, and this was in separate texts, including what was stated in Executive Decree No. 16/222 that includes the general conditions and which defines the general rules imposed on the broadcast service Television and radio broadcasts<sup>21</sup>, including what came under Executive Decree No. 13/378 which defines the conditions and modalities related to informing the consumer<sup>22</sup>, However, the legislator remedied the matter and regulated the provisions of electronic advertising (electronic advertising) in Law 18/05 related to electronic commerce, and Article 30/1 and 2 that it must be available in every advertisement, promotion, or message of a commercial nature or purpose that takes place through electronic communications without prejudice to the legislative provisions and the regulatory applicable in this field and it must meet the following requirements: "- To be clearly defined as a commercial or advertising message."

The electronic advertisement is required to be identifiable in terms of determining the content of the advertising message, as

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<sup>20</sup> - For example, what was stated in the law on trust in the French digital economy of 2004, the Belgian law 2003 on the legal aspects of serving the informatics society.

<sup>21</sup> - In this regard, see Articles 27, 55, 58, and 75 of Executive Decree 16/222 of 11/08 /2016 which contain the general conditions book that defines the rules imposed on television and radio broadcasting service, Official Gazette No. 48.

<sup>22</sup>- Executive Decree No. 13/378 of 11/09/2013 defining the conditions and modalities related to consumer information, Official Gazette No. 58.

well as identifying the owner of the advertisement for whom the advertisement is made by displaying all the information related to him as a natural or legal person, mentioning the trademark, its address, ... etc. This is in accordance with Article 30/3, which states: "To allow the identification of the person for whom the message is designed". The legislator was right when he required clarity and identification of electronic advertising due to the importance of advertisements and their role in influencing the consumer by making the contracting decision to buy The commodity or obtaining the service, as well as to achieve integrity and objectivity and to avoid confusion and suspicion in electronic advertising.

**The second section: that the information contained in the advertisement is truthful and does not disturb public order**

When displaying his advertisement, the advertiser must investigate the truthfulness, integrity and accuracy of the information related to the good or service that he offers to the consumer, so that the characteristics of the product and the declaration are presented by their nature as they are in reality. For example, advertising for cars that they are fully equipped and have modern technical specifications is what it should be, so the consumer will not be surprised when he receives it from another model, or the advertised equipment is not installed in it.

Therefore, the advertiser or advertiser owner should avoid using vague or ambiguous phrases, but simple phrases that all consumers whom the advertisement address can understand, by placing the image of the advertised thing, the data related to is accurate, clear, and the type of sale is discounted or special for a specific occasion. The advertiser has to design the website in a way that facilitates the user's freedom of movement between its

pages<sup>23</sup>, and this is what the legislator adopted and stipulated in the text of Article 30/5 of Law 18/05, stating: It clearly specifies whether this commercial offer includes discounts, rewards or gifts, in case this offer is commercial, competitive or promotional. "

In order for the electronic advertisement to achieve the purpose or aim of its display, it must be taken into account in that it should respect public morals and that it does not contain pictures, drawings or phrases that offend the modesty of the consumer or contrary to public morals, and the electronic advertisement should not be issued in contradiction to public order, such as the use of words calling for rebellion or racial discrimination ... etc., and given the importance of this condition, especially in conservative Arab societies, we find the legislator adopted it and stipulated that it does not violate the electronic advertisement Public order and morals, in Article 30/4 of Law 18/05, which states that: "It shall not prejudice public morals and public order".

### **3.2- Second Subtitle: preventing misleading and unwanted electronic advertising (spamming)**

We mentioned in the previous paragraph that any electronic advertisement must be clear, specific, and honest and transparent and not in violation of public order and morals so that we are faced with a fair and honest declaration and the absence of one of these conditions indicates the bad intention of the advertiser to mislead or deceive the consumer, especially with the multiplicity and diversity of commercial sites on the Internet that sometimes led to fraud and fraud on The consumer, on the other hand, we find some merchants taking websites for them and sending many advertising messages to consumers' e-mail without their acceptance of that, so we will be presenting in the first section misleading or false

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<sup>23</sup> - Kawthar Saeed Adnan Khaled, previous reference, p.145-146

electronic advertising, the second section unwanted electronic advertising(spamming).

### **The first section: misleading or false electronic advertising**

The advertiser is obligated that the information provided in the electronic advertisement is truthful, and that he does not exaggerate in presenting the advantages of the product or service and describing it with something that is not in it, which leads him to lie and deceive the consumer, and this is with the aim of increasing sales and attracting the largest number of consumers to contract as a result They are convinced of this falsehood, which causes multiple damages to them, and therefore requires protection for them from false or misleading electronic advertisements.

#### **First: Defining misleading or false electronic advertising**

Various legislations have dealt with misleading or false advertising, some of them are its regulations, some have stipulated it and among its specifications, and it is defined as “the advertisement containing information that leads the consumer to fall into confusion and deception with regard to essential elements or descriptions of the product<sup>24</sup>.”

The legislator did not know the misleading or false advertisement, but rather it was referred to in various texts such as Law 04/02 that defines the rules applicable to commercial

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<sup>24</sup> - Samiha El Qalioubi, “Food fraud and consumer protection,” - Intervention presented at the Conference on Consumer Protection in Law and Sharia, Faculty of Law, Ain Shams University, 1995, p. 136.

practices<sup>25</sup>, or what was stated in Executive Decree 13/378 that defines the conditions and modalities related to informing the aforementioned consumer <sup>26</sup>, As for Article 30/6 of Law 18/05 related to electronic commerce, the legislator stipulated the necessity to ensure that all the conditions available to benefit from the display of the electronic advertisement are not misleading or ambiguous, as it states: “- Ensure that all conditions that must be met to benefit from the commercial offer are not Misleading and not ambiguous. "Therefore, we conclude that the legislator prohibited misleading or ambiguous electronic advertising, but did not specify its images, conditions, or when it would occur? And it would have been better if it had been organized in detail so that the consumer could distinguish between honest advertising and misleading advertising, especially with the expansion of the electronic advertising field adopted by merchants offering their goods and services on the Internet in Algeria.

### **Second: Conditions for misleading or false electronic advertising**

For an electronic advertisement to be considered false or misleading, two conditions must be met, and they are:

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<sup>25</sup> - Article 28 of Law 04/02 defining the rules applicable to the amended and complementary commercial practices, the aforementioned states: “.....Advertising is considered illegal and all deceptive advertising is prohibited, especially if it: 1- It contains statements or Data or facilities that may lead to mislead by defining a product or service, its quantity, availability, or advantages. 2- Includes elements that could lead to confusion with another seller or with his products, services or activities. 3- Relating to a specific offer of goods or services while Economic aid does not have an adequate stock of those goods, or it cannot guarantee the services that should normally be provided in comparison with the huge advertising.”

<sup>26</sup> - Article 56 of Decree 13/378: “Every piece of false information or publicity that causes Confusion in the mind of the consumer is prohibited.”

A - Employing false information about the essential characteristics of the advertised good or service: in order for the electronic advertisement to be characterized as false or misleading, lying must be adopted when presenting the basic information of the advertised thing and the consumer believes that. Also, withholding real information from the consumer is considered deceptive or misleading advertisement<sup>27</sup>.

B - Misleading the consumer with the aim of attracting him to the contract:

so that the advertiser achieves profit from his display of the advertisement providing false information within it with the aim of deceiving the consumer by publishing the importance and benefits of the good or service which is in fact not identical to reality, so the demand for it increases and his income rises.

Since the advertiser used lying or misleading in electronic advertising to mislead the consumer and pushing him to contract, then he will be harmed by that, which necessitates raising the responsibility of the advertiser, whether civil or penal, according to the laws regulating it.

### **The second section: Unwanted electronic advertising (spamming)**

The forms of deceptive electronic advertisements made through internet sites vary, and among them we find misleading advertisements that are made by e-mail or what is called the term "unwanted ads" or "Le spamming" for short "spam". The National Committee for Informatics and Freedom in France (cnil) in its report issued on 04/10/1999 declarations called (spam) as:

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<sup>27</sup>- Hussein Fathy, "Limits to Legitimacy of Commercial Advertising to Protect the Store and the Consumer," Dar Al-Nahda Al-Arabiya, Egypt, without a year of publication, p. 26.

“Sending an unlimited number of continuous, irregular and unwanted e-mails and it is illegal and has a commercial nature to a group of individuals that there is no contractual relationship between them, and their e-mail has been selected from the previously visited sites<sup>28</sup>”.

Therefore, unwanted advertisements are electronic advertisements displayed by e-mail messages that are not accepted by the consumer, and despite that they are constantly reaching his e-mail and it takes a large space in it without his approval and without prior dealing with the site, regardless of its content, whether it is legitimate or unlawful.

On the other hand, we find that (spam) ads have many advantages for traders or commodity owners. The producers advertise their services to the largest segment of consumers with messages that arrive quickly in their e-mail boxes and at the lowest cost compared to the rest of the advertisements in various media, while ensuring that most consumers read these ads and know the goods and services contained in them.

As for the damages caused by (spam), they are many and the consumer faces it alone because it is a source of inconvenience and harassment, and the majority do not want to receive these messages, and thus it represents an assault on consumers' private lives<sup>29</sup>, so the consumer, when he opens his e-mail, finds an accumulation of advertising messages, which hinders his work either taking time to read it or when removing it, and this is what makes the consumer alienate from the abundance of electronic

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<sup>28</sup> - Abdel-Hadi Fawzi Al-Awadi, “The Legal Aspects of Electronic Mail,” Dar Al-Nahda Al-Arabiya, Egypt, 2005, p. 81.

<sup>29</sup> -Tarek Abdel-Al Hammad, “E-commerce,” University House, Egypt, 2004/2005,p601.

advertisements and even lose confidence in contracting electronically, especially since some of these sites are fake and send their advertisements at specific times and then close the site. And when he contracts with them sometimes the item is not delivered or the service is not received.

Therefore, such unwanted advertisements sent by e-mail if they display goods that do not exist or exist and are counterfeit, then we will be facing fraud and deception, especially since there is no contractual relationship between the advertiser and the consumer<sup>30</sup>, so the consumer must be protected from these advertising messages by providing the technical and legal necessary means for that.

In the end, we point out that the legislator has given importance to the rules or conditions that must be provided in the electronic advertisement within the provisions of Law 18/05 on electronic commerce and stipulates that any violation of these conditions previously explained exposes the owner to punishment, whether by paying a fine or raising civil or criminal liability for the violator And this is in accordance with Article 40 of Law 18/05

“Without prejudice to the victims' rights to compensation, a fine from 50,000 to 500,000 dinars shall be imposed on anyone who violates the provisions of Articles 30, 31, 32, 34 of this law”.

#### **4-Conclusion:**

Electronic advertising is considered an important and sensitive means at the same time to develop e-commerce and meet the

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<sup>30</sup> - Hassan Douaji Souad, “Civil and Criminal Responsibility for Electronic Advertising”, PhD thesis, specializing in Comparative Business Law, Faculty of Law and Political Sciences, University of Oran 2, 2018/2019,p. 51.

needs of the consumer, and therefore it must be presented in accordance with the agreed legal terms that the advertisement be fair, transparent, truthful and specific, not violating the public order in order to achieve the necessary protection for the consumer. However, if the mandatory conditions in electronic advertising are not respected and means are used to deceive the consumer, this advertisement becomes within the circle of misleading or ambiguous electronic ads.

What is noticed is that the legislator did not regulate advertising or publicity with a special text, but rather dealt with it in separate texts. However, when the 18/05 law related to electronic commerce was issued, electronic advertising was dealt with within its provisions and stipulated that its rules or conditions must be respected in order to achieve its purpose. And he was right with this commitment.

We came up with a set of suggestions, which we site as follows:

- The necessity to issue a special law that regulates traditional and electronic advertising and to set the rules for each of them.
- Establish legal and technical mechanisms to prevent misleading or unwanted electronic ads.
- Tougher the punishment for anyone who displays a misleading or false electronic advertisement.
- Educating the Algerian consumer in all ways in order to avoid dealing with suspicious or fictitious sites, with the contribution of consumer protection associations.
- Specialized bodies should monitor electronic advertisements and commercial websites and the extent of conformity of goods and

services to reality and what is offered in order to protect the consumer from any trickery or fraud.

## 5-References:

### 1- Books :

- 1- Abdel-Fadil Mohamed Ahmed, "Advertising products and services from a legal point of view", Al-Galaa New Library, Egypt, without a year of publication.
- 2- Abdel-Hadi Fawzi Al-Awadi, "The Legal Aspects of Electronic Mail," Dar Al-Nahda Al-Arabiya, Egypt, 2005,
- 3- Ahmed Ibrahim Attia, "The Legal System for Advertising in Civil Law," Dar Al-Nahda Al-Arabiya, Egypt, 2006.
- 4 - Ali Filali, "Obligations - The General Theory of Contract -", Mouffem for Publishing and Distribution, Algeria, 2001.
- 5- Bodali Muhammad, "Consumer Protection in Comparative Law, a Comparative Study with French Law", Dar Al-Kitab Al-Hadith, Cairo, 2006.
- 6 – Hussein Fathy, "Limits to Legitimacy of Commercial Advertising to Protect the Store and the Consumer," Dar Al-Nahda Al-Arabiya, Egypt, without a year of publication.
- 7- Khaled Mamdouh Ibrahim, "Consumer Protection in the Electronic Contract", Dar Al-Fikr University, Egypt, without a year of publication.
- 8- Kawthar Saeed Adnan Khaled, "Electronic Consumer Protection," New University House, Egypt, 2012.
- 9- Mamdouh Muhammad Khairy Hashem, "Civil Protection from Deceptive Commercial Ads," Dar Al-Nahda Al-Arabiya, Egypt, without a year of Publication.
- 10- Sherif Mohamed Ghanem, "The Legal Regulation for Commercial Advertising via the Internet," Dar Al-Jameya Al-Jadida, Egypt, 2008.
- 11- Tarek Abdel-Al Hammad, "E-commerce," University House, Egypt, 2004/2005.

**2- theses:**

1- Hassan Douaji Souad, "Civil and Criminal Responsibility for Electronic Advertising", PhD thesis, specializing in Comparative Business Law, Faculty of Law and Political Sciences, University of Oran 2, 2018/2019,

2- Malika Djamaa, "Information Consumer Protection", PhD thesis in private law, Faculty of Law and Political Science, Jilali Yabis University, Sidi Bel Abbas, 2017/2018,

**3- Works forum:**

1- Samiha El Qalioubi, "Food fraud and consumer protection," - Intervention presented at the Conference on Consumer Protection in Law and Sharia, Faculty of Law, Ain Shams University, Egypt; 1995,

**4- laws:**

1- Law 04/02 defining the rules applicable to commercial practices issued in the Official Gazette, amended No. 41. Supplemented by Law 06/10 of 08/15/2010, the Official Gazette No.10

2- Law 18/05 of May 10<sup>th</sup>, 2018 related to Electronic Commerce, Official Gazette No.28.

3- Executive Decree 90/39 of 01/30/1990 related to quality control and suppression of fraud issued in the Official Gazette No. 5, amended and supplemented by Executive Decree 01/135 of 10/16/2001, Official Gazette No.61.

4- Executive Decree No. 13/378 of 11/09/2013 defining the conditions and modalities related to consumer information, Official Gazette No. 58.

5- Executive Decree 16/222 of 11/08 /2016 which contain the general conditions book that defines the rules imposed on television and radio broadcasting service, Official Gazette No. 48.