

Consumer Protection Against Electronic Commercial Advertising: "The Pre-Contractual Stage"

Nora RAMDOUM*

Legal Enterprise Research Laboratory
Djillali Liabes University - Sidi Bel Abbes, Algeria
nora.ramdoum@univ-sba.dz

Date of submission: 20/11/2025 - Date of acceptance: 22/12/2025 - Date of publication: 28/12/2025

Abstract: Various e-commerce businesses now require electronic advertising to promote their goods or services. Undoubtedly, electronic advertising has gained significant importance in meeting the requirements of e-commerce, aiming to achieve competitiveness and profit via the Internet.

This prompts the need to study the concept of electronic advertising and to identify the mechanisms for protecting consumers from electronic advertisements.

Keywords: Electronic Advertising, Consumer, Legal Protection.

*Corresponding author: Nora RAMDOUM.

Introduction:

It is evident that developments in the field of information and communication technology have had a clear impact on various aspects of life, leading to significant changes in contractual processes and prompting a reconsideration of their legal framework and structure. Contracts are now often concluded through modern communication means, which do not inherently rely on the trust traditionally required. Among these means is electronic advertising, which has become one of the most effective tools for merchants and business operators to promote their products and services. A successful advertisement transcends the distinction between necessities and luxuries, transforming consumer desire into perceived need.

Through electronic advertising, merchants can gain insights into consumers' tastes and demands and attempt to meet them. Additionally, it is less costly compared to traditional advertising, which is expensive and geographically limited. It also allows consumers to obtain detailed information and data about products and services.

However, despite these advantages, consumers remain vulnerable to false or misleading commercial advertisements, which puts their safety and security at risk and may result in decisions to contract that are flawed or ill-informed.

Consequently, all legislative systems aim to protect consumers online, considering them the weaker party in the face of electronic advertising.

This raises the following question: **To what extent has the Algerian legislator sought to provide adequate protection for consumers against electronic commercial advertisements?**

To answer this question, the study will be divided into two main sections: the first will address the concept of electronic commercial advertising, and the second will examine the mechanisms for protecting consumers against electronic advertisements.

1- The Concept of Electronic Commercial Advertising:

Electronic commercial advertising has become one of the most prominent features of the era of technological and informational revolution, owing to its widespread presence, the diversity of its methods, and its technical advancements that influence consumer behavior. Such advertising often forms the basis upon which consumers make their decisions to engage in transactions. At times, however, a contracting party may resort to promotional techniques involving deceit and manipulation with the intention of inducing the consumer to contract, which undoubtedly affects the consumer's ability to exercise free and informed choice.

1.1- Definition of Electronic Advertising:

Advertising is generally defined as "a means of presenting ideas, goods, and services for the benefit of the advertiser or the addressee. It includes displaying goods through brokerage,

Consumer Protection Against Electronic Commercial Advertising: "The Pre-Contractual Stage"

as well as other modern methods such as writing in newspapers and magazines, posters, billboards, radio, and television, whether paid or unpaid¹".

The French Court of Cassation has defined advertising as "any commercial document containing information and offers that allow the customers to whom it is directed to form an opinion regarding the expected results of the product or service²".

As for electronic advertising, it is defined as "advertising via the Internet, consisting of advertising inserts (banner ads, sponsorships, commercial links, etc.), whether paid or unpaid, included within online media³".

It is also defined as "a promotional policy that relies on electronic means and media to convey the marketing message with the aim of attracting customers and persuading them to purchase the product⁴".

The Algerian legislator has defined electronic advertising in several legal texts, including Executive Decree No. 90–39 concerning quality control and fraud suppression⁵, which defined commercial advertising and referred to it by the term publicity⁶, as well as Law No. 04–02, which sets the rules applicable to commercial practices⁷, wherein it addressed its definition in Article 03/03. In addition, the Draft Law on Publicity⁸ provided a definition in its Article 02⁹.

It is observed from the foregoing definitions that electronic advertising is any act or conduct intended to psychologically influence consumers in order to persuade them of the advantages of a product or service and the benefits it may provide, regardless of the means used. Electronic advertising does not differ from traditional advertising except in the medium used, whether through the Internet or other electronic means such as mobile phones¹⁰.

2.1- The Legal Nature of Electronic Advertising:

According to the general rules of civil law, a contract is formed by the concurrence of the parties' wills (offer and acceptance). An offer is what is issued by one of the contracting parties

¹ Ali Al-Sayyid Hussein Abu Diab and Walid Muhammad Bishr, The Legal Aspects of Civil Protection for the Consumer from False or Misleading Commercial Advertisements in Egyptian Law and the Saudi System, Journal of the Faculty of Sharia and Law in Tanta, Vol. 02, Issue 32, Al-Azhar University, 2017, p. 445.

² Sarah Wagdy Abdu, Civil Protection from Advertising, New University House, Egypt, 2020, p. 44.

³ Fendouchi Rabia, Electronic Advertising, Houma Publishing, Printing, and Distribution House, Algeria, 2012, p. 134.

⁴ Sadiqi Manal and Boukniche Othman, Electronic Consumer Protection from Misleading Advertising, Journal of International Law and Development, Vol. 09, Issue 01, Ibn Badis University, Mostaganem, 2021, p. 303.

⁵ Executive Decree No. 90–39 on Quality Control and Fraud Suppression, dated January 30, 1990, Official Gazette No. 05.

⁶ Article 02/8 of Executive Decree No. 90–39 on Quality Control and Fraud Suppression.

⁷ Law No. 04–02, which sets the rules applicable to commercial practices, dated June 23, 2004, Official Gazette No. 41.

⁸ Draft Law on Publicity, published in the Official Gazette of the National Assembly Deliberations, Session 20, held on July 26, 1999, printed by the National Assembly on August 29, 1999.

⁹ Article 02 of the Draft Law on Publicity.

¹⁰ Abdullah Dheeb Abdullah Mahmoud, Consumer Protection in Electronic Contracting: A Comparative Study, Master's Thesis in Law, Graduate School, An-Najah National University, Nablus, Palestine, 2009, p. 36.

and reflects the intention of the offeror, i.e., the intention to be bound by the contract if met with a corresponding acceptance. In contrast, a proposal directed by one person to another is not considered an offer unless it is definite and final, and a proposal is regarded as of a lower rank than an offer.

Invitations to contract take many forms, among which is the practice of merchants displaying their goods via the Internet using various commercial advertising methods. This raises the question, when a person navigates and browses web pages presenting products and services, whether those pages constitute an offer in the legal sense or not, or in other words, whether a commercial advertisement directed to the public via the Internet can be considered an offer¹¹.

1.2.1- Commercial Advertising as an Offer:

Some scholars hold that an offer directed to the public constitutes an offer in the strict legal sense, as long as its content is sufficiently specific to enable the formation of a contract upon acceptance, particularly when the offer is collective, i.e., directed to the public.

An offer via the Internet has a distinct concept compared to an offer made through traditional means. The Internet, as an international network open to remote communication, gives the offer a specific meaning within this context. European Directive 97/7/EC on consumer protection in distance contracts defines an offer as “any remote communication containing all necessary elements, enabling the recipient to accept the contract directly, and excludes mere advertising from this scope¹²”.

Accordingly, an offer directed to the public is considered an offer if it is sufficiently precise and free from ambiguity. For an electronic sales contract, which is among the most commonly used contracts over the Internet, the offer must inform the buyer of the essential terms of the contract, the nature of the goods, the price, the method of payment, and the time and place of delivery¹³.

Proponents of this view argue that Internet advertising constitutes an offer in favor of the consumer, because the contract is concluded at the moment the consumer receives a notification from the supplier acknowledging acceptance. They add that if Internet advertising is considered merely an invitation to contract, then the consumer's order is the offer, the supplier sends acceptance, the consumer is notified via an electronic mailbox, and the acceptance acknowledgment is sent back to the supplier. The contract is then concluded when the supplier receives the acknowledgment of receipt from the consumer. This situation grants advantages to the supplier that the consumer is deprived of under the contract, which leads to the conclusion

¹¹ Al-Dhahabi Khadouja, *Legal Mechanisms for Consumer Protection in E-Commerce Contracts*, Master's Thesis in Law, Faculty of Law and Political Science, Ahmed Draia University, Adrar, 2015, p. 46.

¹² Khaloui Anane Nesira, *Civil Protection of the Consumer via the Internet: A Comparative Study*, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2018, p. 18.

¹³ Al-Dhahabi Khadouja, *op. cit.*, p. 48.

Consumer Protection Against Electronic Commercial Advertising: "The Pre-Contractual Stage"

that advertising should be considered an invitation to contract, as the advertising message may or may not achieve its intended purpose¹⁴.

2.2.1- Commercial Advertising as an Invitation to Contract:

Commercial advertising directed at consumers via the Internet is not considered an offer, but rather an invitation to negotiate or to contract. It is stipulated that such advertising should not include the essential terms of the contract. For example, displaying goods in store windows without indicating their prices does not constitute an offer, just as displaying goods with their prices in store windows does not constitute an offer¹⁵.

Considering electronic advertising directed at consumers as an invitation to negotiate or to contract is based on the absence of essential contractual terms in the advertisement. Displaying goods over the Internet can constitute an offer, because indicating prices is one of the essential elements of the contract¹⁶.

In application of this principle, the Egyptian Court of Cassation ruled that an advertisement announcing the opening of car reservations constitutes merely an invitation to contract, not an offer of sale. That is, an advertisement addressed to the public by a car manufacturing company, announcing the opening of reservations for its cars, does not constitute an offer. Instead, the reservation request submitted to the distributing company is considered the offer. The court also ruled that tender announcements and other communications directed to the public or individuals, such as bulletins and advertisements, are not offers but invitations to negotiate; the offer is the response to this invitation, and the contract is concluded upon acceptance of the offer by the entity issuing the tender¹⁷.

Supporters of this view argue that an offer directed to the public does not constitute a binding offer but merely an invitation to negotiate, in accordance with the nature and requirements of e-commerce contracts. Producers or advertisers often receive a large number of purchase requests via electronic messages, potentially reaching hundreds or thousands, while they may not have sufficient quantities to fulfill all requests, or prices may change due to increased demand or higher production costs.

Accordingly, considering electronic advertising as merely an invitation to contract allows the advertiser to reject requests that exceed production capacity, due to the unavailability of goods or services. Treating a public offer as a binding offer is risky, as it may cause significant losses to the advertiser, either through liability for compensation or being forced to sell products at unsuitable prices¹⁸.

¹⁴ Jalloul Dawaji Belhoul, Legal Protection of the Consumer in the Field of E-Commerce, Master's Thesis in Law, Faculty of Law and Political Science, Abou Bekr Belkaid University, 2015, p. 60.

¹⁵ Abdullah Dheeb Abdullah Mahmoud, op. cit, p. 38.

¹⁶ Abdullah Dheeb Abdullah Mahmoud, Ibid., p. 38.

¹⁷ Jalloul Dawaji Belhoul, op. cit, p. 61.

¹⁸ Al-Dhahabi Khadouja, op. cit, p. 48.

2- Mechanisms for Protecting the Consumer from Electronic Advertising:

Technological developments have left a clear imprint on advertising activity, as the latter has benefited from modern technological innovations in enhancing marketing communications and promoting various types of goods and services. However, these digital transformations have, in turn, raised several questions regarding the extent to which legislation is capable of protecting consumers from the deceptive or misleading practices that electronic commercial advertisements may contain¹⁹.

This necessitates clarifying the legal rules for consumer protection in the face of electronic advertising in the first section, followed by the mechanisms of civil protection for consumers from commercial advertisements in the second section.

1.2- The Legal Rules for Protecting the Consumer in the Face of Electronic Advertising:

No one can deny the significant role that electronic commercial advertising has come to play in an era that can rightly be described as the age of technology and information. With its widespread reach, continuous development, and diverse methods, its risks to the electronic consumer class have likewise increased, given its ability to influence their behavior during the contracting process. This has led the Algerian legislator to require that such advertisements be accurate and clear, and to prohibit misleading or deceptive advertising.

1.1.2- Clarity of Commercial Advertisements:

The Algerian legislator, in Law No. 18–05 on Electronic Commerce²⁰, required in Article 11 that the electronic supplier present the commercial offer in a visible, readable, and understandable manner. The legislator's intention in using these three terms appears to be to oblige the electronic supplier to present the offer in a clear and unequivocal manner so that the electronic consumer can properly comprehend it. The legislator also specified certain mandatory information that must be included in the commercial offer²¹.

Accordingly, the requirement for clarity in electronic advertising means that the advertisement must contain sufficient information about the product or service being offered, enabling the consumer to engage in conscious and informed thinking that leads to the formation of a deliberate and enlightened will when entering into a contract²².

Many comparative legislations have clarified the importance of clarity in electronic advertising. French law, for example, emphasizes that online commercial transactions and their accompanying advertisements must be clear and comprehensible, and it requires the use of the French language when promoting goods and services over electronic networks. It also obliges suppliers to provide consumers with accurate and unambiguous information regarding the

¹⁹ Al-Dhahabi Khadouja, *Ibid.*, p. 49.

²⁰ Law No. 18–05 on Electronic Commerce, dated May 10, 2018, Official Gazette No. 28.

²¹ Khaloui Anane Nesira, *op. cit.*, p. 27.

²² Abdullah Dheeb Abdullah Mahmoud, *op. cit.*, p. 41.

Consumer Protection Against Electronic Commercial Advertising: "The Pre-Contractual Stage"

product or service, enabling them to make their contracting decision with full awareness and understanding²³.

It is worth noting that electronic commercial advertising raises issues relating to the mechanisms for monitoring such advertisements, in addition to the difficulty of unifying the laws governing them. As a result, some advertisements may be permitted in certain countries and prohibited in others. The matter may even extend to differences within the same country, where an advertisement may be allowed in one state but banned in another²⁴.

2.1.2- Prohibition of Publishing Electronic Advertisements Containing Consumer Misleading Content:

Commercial advertising is considered one of the manifestations of legitimate competition and represents a fundamental element of marketing, as well as an effective means of informing the public about goods and services²⁵. However, misleading or false advertising constitutes unlawful behavior due to the harm it may cause to consumers, which necessitates establishing legal protection against such practices²⁶.

Misleading advertising is among the most dangerous forms of advertising, as it involves deceiving the consumer and causing errors in their purchasing decisions. Legislators in various legal systems have paid significant attention to this issue due to its potential to undermine the principle of transparency in commercial transactions and to violate consumer rights.

Under European legislation, misleading advertising is defined as any advertisement that contains, or may contain, elements likely to mislead the public, either in terms of its presentation or the information provided, in a way that may affect the economic behavior of the recipient or cause harm to market competitors²⁷.

French consumer law defines it in Article 121/1 as any form of advertisement that contains false or misleading statements or indicators, or that could lead the consumer to make an erroneous decision regarding the offered product or service.

In Algerian legislation, the legislator has ensured the criminalization of false and misleading advertisements within various laws regulating consumer protection, commercial practices, and electronic commerce. The laws emphasize that the information provided in advertisements must be accurate and truthful, and must not contain any claims or false statements that could influence the consumer's choice or direct them toward contracting²⁸.

²³ Sadiqi Manal and Boukniche Othman, op. cit, p. 306.

²⁴ Al-Dhahabi Khadouja, op. cit, p. 50.

²⁵ Abdullah Dheeb Abdullah Mahmoud, op. cit, p. 42.

²⁶ Khaloui Anane Nesira, op. cit, p. 28.

²⁷ Article 02/2 of the European Council Directive issued on December 12, 2006.

²⁸ Article 13 of Executive Decree No. 90–367 on the Labeling of Foodstuffs, dated November 10, 1990, Official Gazette No. 50, as amended and supplemented by Executive Decree No. 05–484, dated December 22, 2005, Official Gazette No. 83, repealed by Executive Decree No. 13–378, which sets the conditions and procedures related to consumer information, dated November 9, 2013, Official Gazette No. 58; Article 28 of Law No. 04–02

It can be concluded that the illegality of misleading advertising is based on two main elements:

- **The material element:** represented by the act that misleads or deceives the consumer through inaccurate or exaggerated information.
- **The moral element:** embodied in the advertiser's intention or purpose to deceive the consumer in order to encourage purchase or contract conclusion²⁹.

2.2 Civil Protection of the Consumer from Commercial Advertising:

The Algerian Civil Code does not contain specific provisions for protecting the consumer from misleading advertisements. Therefore, if a consumer is deceived by a false advertisement, their only recourse is to rely on the general rules concerning fraud.

Fraud is defined as misleading a contracting party about a non-true matter using deceitful means, with the intention of inducing them to conclude a contract³⁰, Fraud also occurs when a material fact is concealed, provided it is established that the contract would not have been concluded had the party been aware of that fact or circumstance³¹.

For fraud to occur in the context of a false advertisement, three essential conditions must be met³²:

- The use of deceitful means capable of inducing the consumer to contract.
- That the purpose of these means is unlawful.
- That the fraud is the primary motive for entering into the contract.

It follows that deception in electronic advertising constitutes fraud when these conditions are met, especially since deceiving the consumer online is easier due to their inability to physically inspect the product. Some scholars argue that in the case of online sales, if the seller uses deceitful means in their advertisements to mislead the consumer regarding goods or services, the contract must be annulled due to the effects of fraud on invalidating legal acts³³.

By applying the general provisions on fraud, there are three legal actions that a consumer can pursue online if they fall victim to fraud, which can be summarized as follows:

on the Rules Applicable to Commercial Practices; Article 56 of Executive Decree No. 13-378 on the Conditions and Procedures Related to Consumer Information; Article 29 of Law No. 18-05 on Electronic Commerce.

²⁹ Al-Dhahabi Khadouja, op. cit, p. 52.

³⁰ Abdel-Razzaq Al-Sanhouri, Al-Waseet in Explaining Civil Law: Sources of Obligation, Vol. 01, Hayat for Arab Heritage, Cairo, Egypt, 1981, p. 261.

³¹ Article 86 of Order No. 75-58 on the Civil Code, dated September 26, 1975, Official Gazette No. 78, as amended and supplemented by Law No. 07-05, dated May 13, 2007, Official Gazette No. 31.

³² Abdullah Dheeb Abdullah Mahmoud, op. cit., p. 46.

³³ Khaloui Anane Nesira, op. cit, p. 33.

Consumer Protection Against Electronic Commercial Advertising: "The Pre-Contractual Stage"

2.2.1- Action for Specific Performance of a Contractual Obligation:

Based on the general rules, it is clear that the Algerian legislator grants the party harmed by a contract the right to resort to the mechanism of specific performance to compel the other party to remedy the damage caused. Accordingly, if a merchant advertises a specific product or service online for the purpose of contracting, and the consumer accepts this offer, the latter has the right, in the event of the advertiser's failure to fulfill their obligation, to file an action for specific performance to compel the advertiser to fulfill their commitment³⁴.

Consequently, the consumer may request the delivery of a product or the provision of a service of the same type as indicated in the commercial advertisement. The consumer also has the right to claim compensation equivalent to the value of the object of the obligation if performance becomes impossible³⁵.

2.2.2- The Consumer's Right to Request Contract Rescission:

The Algerian legislator grants the party who falls victim to fraud the right to annul the contract, i.e., to restore the contracting parties to the state they were in before the contract. Accordingly, an online consumer who falls victim to a false or misleading advertisement may request the annulment of the contract under the provisions relating to fraud.

Consequently, the consumer may demand contract rescission along with compensation for the damages resulting from the termination of the contract. If the contract is annulled, the advertiser is obliged to return the price or installments received from the consumer, and the consumer, in turn, must return the product that does not conform to the specifications stated in the advertisement.

It is noteworthy that the judge requested to annul the contract is not obliged to do so merely upon establishing the advertiser's breach of obligation. Rather, the judge enjoys broad discretionary power to avoid pronouncing annulment and may instead limit the ruling to awarding compensation if the non-performance does not reach a level of severity justifying contract termination³⁶.

2.2.3- The Consumer's Right to Compensation:

A false or misleading advertisement inherently involves an error on the part of the advertiser, consisting of deceiving the consumer by attributing one or more characteristics to the advertised product or service that it does not actually possess, where such characteristics may be significant to the consumer or serve as an incentive to contract.

The discrepancy between the characteristics of the product or service as presented in the advertisement and its actual condition may cause harm to the consumer. In such a case, the conditions for establishing contractual liability of the advertiser are met, granting the consumer

³⁴ Articles 164 and 166/2 of Order No. 75-58 on the Civil Code, as amended and supplemented.

³⁵ Article 176 of Order No. 75-58 on the Civil Code, as amended and supplemented.

³⁶ Khaloui Anane Nesira op. cit, p. 34.

the right to file a claim for compensation before the civil courts for damages resulting from the false advertisement. In this claim, the consumer must prove the elements of civil liability on the part of the advertiser, namely fault, damage, and the causal link between them³⁷.

Conclusion:

What distinguishes the modern world today is electronic advertising, which is considered one of the most prominent features and changes of the era, and a necessity of modern life. It plays a significant and important role in stimulating trade and the economy, serving as a source of information and introduction to products and services. The use of persuasive techniques, exaggeration, or comparisons does not, in itself, render commercial advertising legally illicit. However, if the advertisement contains elements of falsehood, deceit, or misleading information, it may cause harm, in which case the injured party has the right to seek compensation.

³⁷ Khaloui Anane Nesira, *Ibid.*, p. 35.