

Chapter 15

Internet Advertising: Legal Aspects in the European Union

Radomír Jakab
University of P. J. Safarik, Slovakia

ABSTRACT

As can be derived from its name, Internet advertising means any form of promoting products or services through the Internet. This form of advertising can be distinguished into more forms such as e-mail advertising, on-line advertisements, corporate and marketing websites. Such differentiation is important from a legal point of view as well. Besides the definition and classification of Internet advertising, this chapter is mainly aimed at an analysis of the applicable European law regulating this area: such as general requirements for advertising, including its Internet form or rules relating to unsolicited commercial communications (spam). Further, when advertising through the Internet, rules designed for the protection against unfair commercial practices or prohibited comparative advertisements may be challenged. The objective of this chapter is not only to analyze some relevant provision of the European law but also to submit proposals for its improvement if needed.

INTRODUCTION

The substance of doing business in any entrepreneurial area is to sell as many of products as possible, eventually to provide a large quantum of services in order to gain profit. For this purpose, promoting of products or services is essential.

There are many marketing activities aimed at reaching this objective, advertising being one of them.

Advertisement has been an integral part of business life for a relatively long time. It is a very effective tool used by marketing competitors in the open competition for consumers' wallets. When considering advertising strategy, the type of media used for this purpose must be taken into

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consideration. Marketing theory recognizes many types of media suitable for advertising purposes such as TV or radio broadcasting, magazines or newspapers, direct mail, outdoor advertisement, the Internet, etc. It must be noted that the significance of the latter one is constantly increasing.

As the advertising carried out through the Internet is becoming a very popular and frequently used tool, legal regulation thereof appears to be very desirable; in other words the Internet advertising needs to fall under some legal regulation in order to protect consumers, other competitors, as well as public interest. Before analyzing the legal regulation of the Internet advertisement, two very important facts must be taken into account. Firstly, law is locally determined; law is applied only on the territory of the relevant state within its borders. Secondly, the Internet is a worldwide network regardless of the jurisdiction of a particular state. So how do we regulate activities spreading through the Internet including Internet advertising? Perhaps the only way is through harmonization of law on the international level or at least within larger organizations such as the European Union.

The objective of this chapter is to analyze the existing legal regulation of Internet advertisement applied in the European Union (partially in its Member states). As the result of the analysis, proposals *de lege ferenda* are going to be suggested. In order to reach this conclusion a deductive method is chosen; this is reflected in the structure of this chapter too. First of all, it is necessary to specify "Internet advertising". Its position is found in the intersection of two terms: Internet and advertising. Internet advertising can have several forms having sometimes a different legal status. Therefore, its forms must be determined as well. The law pays special attention to advertising disseminated per electronic mail; it is connected with the problem known as spam that is annoying its recipients. Further, there are legal restrictions relating to the content of the advertisement, incl. its Internet

type. For instance, advertising cannot be neither misleading, misusing credulity of minors nor being unfair commercial practice, etc. The analysis of the above mentioned issues is the subject-matter of this chapter.

BACKGROUND

The Internet is relatively a new phenomenon that has, perhaps, affected each type of human activity. During its approximately vicennial history it has changed how people spend their leisure time, how they work and communicate with each other, how they are being entertained and mostly how people think. The Internet has changed almost everything including ways of doing business and practices used for this purpose.

"What is the Internet? It is a network of networks" that operates on a set of technical protocols that enables people from around the world to access and exchange information using tools such as World Wide Web, e-mail, chat rooms, etc." (Schumann & Thorson, 2007, p. 15). "It is a system of linked computer networks, international in scope, that facilitates data transfer and communication services, such as remote login, file transfer (FTP), electronic mail (e-mail), newsgroups, and the World Wide Web." (Jansen, 2002, p. 218-219).

"One of the fastest growing internet-based applications is electronic-commerce (e-commerce); the use of the internet as a system to facilitate the exchange of commercial information (e.g. advertising and marketing material) and the execution of commercial transactions (e.g. processing of orders and payments)" (Delta & Matsuura, 2002, p. 12). "The emerging e-commerce market gave rise to a multitude of legal questions ranging from such areas as on-line contracting to digital signatures to copyright" (Vogel, 2003, p. 29).

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