

## Why is Uzbekistan's regulatory standard still inaccurate with regard to deception in advertising?

Khodjaev Bakhshillo

Tashkent State University of Law

1, 13 Amir Temur Avenue, Tashkent 100000

E-mail: [bakhshillo.khodjaev@yahoo.com](mailto:bakhshillo.khodjaev@yahoo.com)

### Abstract

An advertising facilitates the transmission of marketing information from producers to consumers and, as a result, influences the purchasing decisions of customers. Therefore, each manufacturer tries to persuade consumers on certain product characteristics, but the persuasive information can become deceptive when manufacturer attempts to manipulate consumers. Since deception creates unfair advantages for its distributor and misleads consumers by affecting their purchasing decision, the government has to regulate misleading advertising by setting legal standards concerning deception. Deception standard was originated in the USA and has been implemented in other legal systems. However, the US standard is not applicable to Uzbekistan due to the specific legal concept, so-called improper advertising, which contains elements unrelated to deception. The formation of non-deception elements was a result of misunderstanding of the commercial speech doctrine and consumerism issues. The enforcement authority is unwilling to exclude non-deception elements from deception standard because their existence in the legal framework provides administrative interest to keep control over advertising. Moreover, the ambiguous legal framework of improper advertising gives the enforcement agency an opportunity to unreasonably intervene into the commercial speech of entrepreneurs. This situation causes an imbalance of interests in the advertising market. In fact, the government interest to control commercial information flow has become superior to that of competitor and consumer interests. Hence, the main principle of the commercial speech doctrine on the limitation of government intervention does not work in practice. To more actively implement the deception standard in practice, this article suggests the enforcement body to focus on deception rather than non-deception components. The study suggestions can be applicable to Russia and other CIES members as well because they have been dealing with related issues.

**Keywords:** Uzbekistan, advertising, challenges, consumer interest

**DOI:** 10.7176/JLPG/133-07

**Publication date:** June 30<sup>th</sup> 2023

### 1. Introduction

An advertisement has an informative function that facilitates the flow of commercial information from a manufacturer to a consumer. Since consumers search available products to make a purchasing decision, producers try intensively to persuade consumers about quality, price and other characteristics of their products.<sup>1</sup> In turn, the persuasion leads to use selling tactics in order to manipulate consumers, consequently these tactics more likely and frequently mislead consumers.<sup>2</sup> Hence, misleading advertising occurs in the marketplace. As a result, misleading advertising harm consumers by causing them to have false beliefs about the nature of the products being advertised and thereby causing them to make different purchasing decisions than they would have made otherwise and purchase things unsuitable for their needs. This type of advertising creates an unfair advantage in the marketplace.<sup>1</sup>

<sup>1</sup>Van den Bergh, R., Paccas A. (2012) Regulation and Economics, Cheltenham, UK: Edward Elgar Pub, 138.

<sup>2</sup>Mizuno M, Odagiri H. 1990. Does advertising mislead consumers to buy low-quality products?, International Journal of Industrial Organization, 8, 545-558,

Therefore, governments need to filter deception from commercial information flow in order to regulate misleading advertising. However, the complexity of misleading advertising regulation requires balancing the interests of competitors, consumers and governments in the market.

## 2. Theoretical framework

The main theory of advertising regulation based on Commercial Speech Doctrine, that is the doctrine developed by the US Supreme Court to protect commercial speech under the First Amendments of the US Constitution.<sup>3</sup> Accordingly, the commercial speech doctrine determined three main questions to regulate misleading advertising: (1) How much regulation is permissible? (2) How should government protect competitors and consumers from misleading advertising? (3) What method of regulation can be applied towards misleading advertising? To answer these questions the US Supreme Court developed an Integrated Model of Restriction of Commercial Speech.<sup>4</sup> The model concluded that the regulation of misleading advertising should be less strict, direct, and content-based. Less strict regulation connotes that even misleading advertising does not enjoy constitutional regulation; it should not be totally banned.<sup>5</sup> Indeed, strict regulatory policy towards misleading advertising can suppress true information.<sup>6</sup> Direct regulation means that regulation should be directed to identify and eliminate deceptive statements from commercial messages. Finally, content-based regulation should be applied towards misleading advertising because deceptive messages in advertisement are determined by textual analysis of its context.<sup>7,8</sup>

However, the commercial speech doctrine and its integrated model cannot clearly describe direct regulation, which refers to legal standards for misleading advertising. The doctrine and its model cannot answer to the question how to identify deceptive message in advertisement. The reason for this uncertainty is the distinct nature and complexity of legal standards. There is no unique legal requirement that can be applied to all deceptive claims. Moreover, it is impossible to identify deception in advertisement without applying economic and cognitive theories that have an impact on legal requirements.<sup>9</sup> Furthermore, the doctrine and its model focus on regulation in respect of government and business interests, but do not consider public interests.<sup>10</sup> Later, consumerism became a main part of misleading advertising regulation and considers three key questions as criteria.<sup>11</sup> First, can consumers comprehend advertising information? Second, how much information should be provided to consumers? Third, in what format should advertising information be supplied to consumers? not only government regulation of deception as business practice, but also criteria that involve public interests and consumer protection issues.<sup>12</sup> Thus, effective regulation of misleading advertising depends on clear legal standards, which should include Since legal requirements need special analysis, the research emphasizes on the nature of legal requirements concerning misleading advertising.

## 3. Situation in Uzbekistan

For over 130 years, the economy of Uzbekistan was under the influence of the Soviet Union, where the market was managed by centrally planned administrative command methods.<sup>13</sup>

<sup>3</sup>Va. Pharmacy Bd. v. Va. Consumer Council, 425 U.S. 748 (Supreme Court 1976); Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of NY, 447 U.S. 557 (Supreme Court 1980).

<sup>4</sup>Fred McChesney, "Commercial Speech in the Professions: The Supreme Court's Unanswered Questions and Questionable Answers," *University of Pennsylvania Law Review* 134, no. 1 (December 1, 1985): 66.

<sup>5</sup>Fred S. McChesney, "De-Bates and Re-Bates: 'The Supreme Court's Latest Commercial Speech Cases,'" *Supreme Court Economic Review* 5 (1997): 87.

<sup>7</sup>Paul Siegel, *Communication Law in America*, Fourth edition (the USA: Rowman & Littlefield, 2014), 37

<sup>8</sup>*Ibid*, 383.

<sup>9</sup>Wayne Hoyer and Deborah MacInnis, "Consumerism and Public Policy Issues," in *Consumer Behavior*, 4th edition (Houghton Mifflin, 2007), 531.

<sup>10</sup>Va. Pharmacy Bd. v. Va. Consumer Council, 425 U.S. 748 (Supreme Court 1976).

<sup>11</sup>Cambridge Dictionary (Cambridge University Press, 2018).

<sup>12</sup>Hoyer and MacInnis, "Consumerism and Public Policy Issues", in *Consumer Behavior*, 2007.

<sup>13</sup>History of Uzbekistan, accessed September 20, 2017, (The Government portal of the Republic of Uzbekistan, 1997), [https://www.gov.uz/en/pages/historical\\_heritage](https://www.gov.uz/en/pages/historical_heritage)

Particularly, due to the supremacy of social (state) ownership, competition in the market did not exist at all and advertisements were just announcements planned in advance and regulated in an administrative way.<sup>14</sup> After gaining independence, Uzbekistan developed its own Uzbek model for market transition that is a long-term strategic program for economic development of Uzbekistan.<sup>15</sup> This economic development aims to build a socially-oriented free market economy which is based on gradualism and state-led approaches.<sup>16</sup> One of the main focuses of the model is to provide free and fair competition, which ensures free information flow in the market. However, during a quarter-century of independence, Uzbek model has failed in this matter. In particular, this economic model provides for a high level of government interference in socio-economic processes and limits the development of competition, and therefore the model clearly fails to provide real conditions for competition in the market.<sup>17</sup>

Newly elected President Shavkat Mirziyoyev has started full-scale reforms, which international experts acknowledge as positive changes in political and socio-economic life of Uzbekistan.<sup>18</sup> The President declares that improvements to the business environment through liberalization measures in trade are the top policy priorities in Uzbekistan.<sup>19</sup>

In February 2017, the President initiated the Strategy for Further Development of Uzbekistan 2017-2021.<sup>20</sup> The strategy contains five-areas of action, and one of the main areas is liberalization of the economy.<sup>21</sup> Accordingly, the State Program on Development Strategy determines the special task to deal with counterfeit merchandise, which intends to prevent unfair competition and to protect manufacturer and consumer rights.<sup>22</sup> The task should have been accomplished by research-based and legislative amendment proposals by June 2017.<sup>23</sup> However, there is no legislative or research proposal on this matter yet. Furthermore, although the specific law on Advertising of Uzbekistan (Advertising law) was adopted in 1998, legal provisions on misleading advertising have not been amended since 2002.<sup>24</sup> Also general acts such as the law on Competition (Competition law) and the law on Consumer Rights Protection (Consumer Protection law) have remained unchanged without any progressive or effective provisions on misleading advertising.<sup>25</sup>

One could ask why the Uzbek Government is not satisfied with the current regulation on misleading advertising and wants to change its legal framework. The answer to this question is that the current regulatory approach on misleading advertising in Uzbekistan is ambiguous and therefore ineffective. In particular, Article 13 of the Advertising law defines misleading advertising as improper advertising, which, along with the deception standard, has standards unrelated to deception as well. The non-deception standards refer to non-content regulation and substantiation standard that aim to control amount of advertisement rather than to find and evaluate deception in advertisement. This ambiguous legal framework of improper advertising gives an opportunity to the government to intervene in free commercial speech of entrepreneurs in an administrative way. As a result, the government unreasonably punishes trader for non-deceptive actions and limits the free flow of commercial information. Consequently, consumers cannot access the information about products and services that they need and they lose confidence. While the government is anxious and busy with this non-deceptive standard, unfair competitors use misleading advertising as a tool to manipulate consumers.<sup>26</sup> Thus, the state becomes unable to carry out its function on market regulation; especially it cannot keep a balance between government interest and competitors and consumers concerns.

---

<sup>14</sup>Competition Policy in Uzbekistan 2010, 20.

<sup>15</sup> Diloram Tashmukhamedova, "The Uzbek Model of Economic Reform in the Global Financial and Economic Crisis," April 22, 2013.

<sup>16</sup>Diversifying Uzbekistan (The Asian Development Bank, January 28, 2011); Khaki G. N. and Riyaz Ahmad Sheikh, "Uzbekistan: Karimov's Model of Economy; Dynamic or Paradox A Critical Study" Studies in Asian Social Science 3, 2016, 54.

<sup>17</sup>Ikrom Nosirov, "New Uzbek Leader's Reforms Greeted Warily," Nikkei Asian Review 2016)

<sup>18</sup>Uzbekistan: In Transition" Briefing 82 / Europe & Central Asia, Crisis Group, 2016.

<sup>19</sup>Brent Hierman, Russia and Eurasia 2017-2018 (Rowman & Littlefield, 2017), 7.

<sup>20</sup>Mirzokhid Rakhimov, "New Priorities of Uzbekistan," Journal of International Affairs, Columbia/SIPA, 2017.

<sup>21</sup>Priority Areas of the Development Strategy, accessed September 26, 2017, <http://strategy.uz/ustuvor-yonalishlar>.

<sup>22</sup>About Strategy for Further Development of Uzbekistan, 2017, <http://www.president.uz/uz/lists/view/231>.

<sup>23</sup>Ibid, paragraph 97.

<sup>24</sup>Law on Advertising of the Republic of Uzbekistan 1998.

<sup>25</sup>Law on Competition of the Republic of Uzbekistan, 2012. Law on Protection of Consumer Rights 1996.

<sup>26</sup>Dilshod Azimov, Sell, but Do not Manipulate, Economic Review, 11, 2015, 20–26.

Hence, the state fails to provide constitutional guarantees on economic freedom and legal protection of consumer rights.<sup>27</sup> Moreover, foreign investors, who observe this situation in the Uzbek market, feel mistrust to the government and disbelief in the legal system of Uzbekistan which might cause very negative impact on the foreign investment policy of the country. Furthermore, the enforcement of the Advertising law in Uzbekistan shows that the incidence of improper advertising has increased year to year (Figure 1).

This research aims to make a significant contribution to future reforms according to the development strategy of Uzbekistan taking into account domestic prerequisites and making a comparative analysis of related legal systems in order to propose an effective regulatory approach to misleading advertising. The second main question is how to regulate misleading advertising in Uzbekistan. An answer to this question requires examining the theoretical framework of the issue.<sup>28</sup>

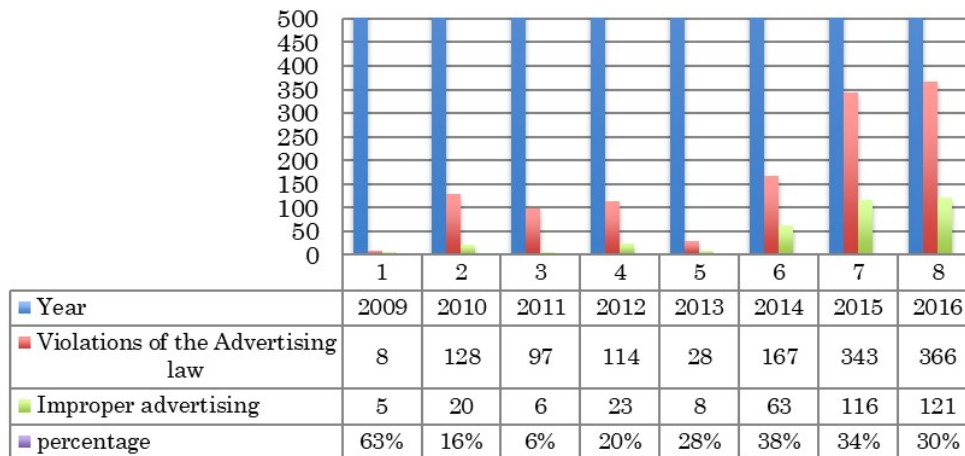


Figure 1. Dynamic change of the number improper advertising and its percentage regarding to total violation of the advertising law in Uzbekistan

#### 4. Nature of legal requirements in jurisdictions affected under Uzbek law

Legal requirements for deceptive advertising serve to determine the regulability of misleading advertising in a particular jurisdiction. Usually, the legal requirements reflect on legal concept of misleading advertising, and therefore they can vary from country to country. For instance, Jef Richards demonstrates clear legal requirements for misleading advertising through the formula "deceptiveness + materiality = regulation".<sup>29</sup> According to the Richards's approach, misleading advertising deserves regulation if it has the capacity to mislead consumers that is deceptiveness, and it is likely to influence consumer behavior which is called materiality. Deception refers to the completed deception, while deceptiveness means the likelihood of deceiving. Thus, deceptiveness is sufficient to invoke regulatory action against misleading advertising because it serves public interests to stop any deception in its incipency.<sup>30</sup> Moreover, materiality means that only consumer perception of advertising message is not enough for regulation, but the important factor is that the message must affect on consumer purchase decisions.<sup>31</sup> Furthermore, there is the third legal requirement for misleading advertising which is the reasonable consumer standard. Even if Richards did not mention reasonable consumer standard as a legal requirement for misleading advertising, he implied that deception standard covers reasonable man principle as well, because misrepresentation is usually directed to consumers.<sup>32</sup> However, Paul Siegel makes the scope of legal requirements clearer by adding reasonable consumer standard as the third element of legal regulation.<sup>33</sup>

<sup>27</sup>Constitution of the Republic of Uzbekistan, 1992

<sup>28</sup>Annex 5 of the Annual Reports (The Competition Committee of the Republic of Uzbekistan, 2009-2016).

<sup>29</sup>Richards, Deceptive Advertising, 1990, 12-19.

<sup>30</sup>Ibid. 12-13.

<sup>31</sup>Ibid. 16.

<sup>32</sup>Ibid.

<sup>33</sup>Siegel, Communication Law in America, 2014, 389-390

According to the reasonable consumer standard, a consumer is considered to be a person who is “acting reasonably under the circumstances”.<sup>34</sup> To find which jurisdiction’s legal requirements affected Uzbek law, this research analyzes the legal concepts of misleading advertising in the USA, the EU, Russia as well as Uzbekistan. US antitrust law introduced the legal concept of misleading advertising under unfair methods of competition and deceptive practices in commerce.<sup>35</sup> The Federal Trade Commission Act (FTC Act) declared dissemination of false advertisements as unlawful; however the legal provision limits legal requirements by stating only materiality requirement.<sup>36</sup> Accordingly, false advertisement is an advertisement which is misleading in a material respect (§55 a). The materiality here refers to misrepresentation that likely to directly or indirectly induces the purchase by affecting upon commerce (§52a). A more comprehensive legal concept of misleading advertising was introduced by the Lanham Act (§43a),<sup>38</sup> and its legal requirements were developed by the Skil case.<sup>39</sup> In *Skil Corporation v. Rockwell International Corporation*, the US District Court for the Northern District of Illinois clarified two main legal requirements for misleading advertising under Section 43(a) of the Lanham Act. First, deceptiveness, which describes that advertisements should actually deceive or have the tendency to deceive a substantial segment of their audience, and secondly, materiality, which means that deception is material, in that it is likely to influence the purchasing decision.<sup>40</sup>

The EU competition law developed the legal framework for misleading advertising under the influence of US antitrust law.<sup>41</sup> The analysis made above shows that the EU Directive follows common legal requirements such as deceptiveness and materiality like the US law.<sup>42</sup>

Russia, on the other hand, attempted to implement the EU legal concept, but unfortunately it designed very a general and ambiguous legal framework for misleading advertising, or so-called improper advertising. The first version of Russian Advertising law, which was affected by the EU law, defined improper advertising as unfair, unreliable, or false advertising, which violates the requirements on content, time, place and manner of advertising.<sup>43</sup> This definition shows that Russian legislature implemented non-content regulation as well, which intends to control amounts of advertising.<sup>44</sup> The current Russian Advertising law defines improper advertising as any violation of advertising law.<sup>45</sup> However, unlike the US and EU models, the Russian legal concept of improper advertising includes the deception standard, but not deceptiveness.<sup>46</sup> Most interestingly, Russian law puts unfairness into the deception standard, which makes its enforcement complicated.<sup>47</sup> Furthermore, the concept of improper advertising also contains non-content regulation such as violation on times, place and manner of advertising that makes the enforcement vague. The CIS Agreement on Collaboration in the Field of Advertising Regulation (Moscow, 2003) not just defines improper advertising at the regional level, but also requires the harmonization of legal provisions in national legislations of member-states.<sup>48</sup> Uzbekistan implemented the Russian model of improper advertising, but tried to add the EU model without understanding the nature of legal requirements for misleading advertising and without predicting the economic, social and legal entails of this concept.<sup>49</sup> As a consequence, the Uzbek legislature designed a mixed legal concept of improper advertising, which includes deceptiveness form the EU model and non-content regulatory standard from the Russian model.<sup>50</sup>

<sup>34</sup>Kraft, Inc. v. Federal Trade Commission, 970 F.2d 311 (7th Cir. Court of Appeals 1992).

<sup>35</sup> “The Federal Trade Commission Act of 1938,” Columbia Law Review 39, no. 2 (1939): 259–73.

<sup>36</sup> Federal Trade Commission Act (USA 2013).

<sup>37</sup>Carson, Lying and Deception, 182.

<sup>38</sup>Lanham (Trademark) Act (15 U.S.C.) (1946).

<sup>39</sup> Skil Corporation v. Rockwell International Corp., 375 F. Supp. 777 (N.D. Ill. District Court 1974).

<sup>40</sup> Ibid.

<sup>41</sup>David J. Gerber, Law and Competition in Twentieth Century Europe: Protecting Prometheus, Oxford University Press, 2001, 233-265.

<sup>42</sup>Council Directive concerning misleading advertising of 1984, 84/450/EEC 0017–0020 (Council of Europe 1984).

<sup>43</sup>Issues on Legal Regulation of Advertising in Russia and Foreign Countries, 2002, 208-209.

<sup>44</sup>Federal law on Advertising, № 108-Ф3 (Russia 18.07.1995). For the official translation of the law see [https://www.wto.org/english/thewto\\_e/acc\\_e/rus\\_e/WTACCRUS48\\_LEG\\_58.pdf](https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS48_LEG_58.pdf).

<sup>45</sup>Federal law on Advertising, № 38-Ф3 (Russia 13.03.2006). The official translation of the Law at [http://data.euro.who.int/tobacco/Repository/RU/Russian%20Federation%20Law%20on%20Advertising\\_2006.pdf](http://data.euro.who.int/tobacco/Repository/RU/Russian%20Federation%20Law%20on%20Advertising_2006.pdf)

<sup>46</sup> Ibid

<sup>47</sup>Federal law on Advertising (Russia № 38-Ф3).

<sup>48</sup>The Main Provisions of the Agreement on Collaboration of States - Participants of the CIS in the Field of Advertising Regulation, The basic documents on collaborations’ direction of CIS, 2005.

<sup>49</sup> Richard, “Theory and Law,” 481.

<sup>50</sup>Law on Advertising of the Republic of Uzbekistan (Uzbekistan 1998).

### Complications in Uzbekistan

The problem in Uzbekistan is misunderstanding and misimplementation of the commercial speech doctrine and consumerism issues concerning misleading advertising regulation which causes development of ambiguous and tangled legal requirements. The legal concept of improper advertising can describe and prove the fact. Improper advertising is (1) unfair, false advertising which actually misleads or tends to mislead consumers by the way of inaccuracy, ambiguity, exaggeration, omission, or through the (2) violation of requirements on time, place and manner of advertising or (3) violation of other legislative requirements, which can cause damages to person and state. This tangled legal concept of improper advertising contains a mixture of three distinct legal requirements, which result in the following problems in enforcement:

- (i) The first problem is comprehension of deception standard. Case analysis shows that the Competition Committee of Uzbekistan (UzCC) cannot clearly understand the legal nature of the deception standard. For instance, in the Beeline case, although there are special legal requirements for deception, the committee applied general legal requirements for advertising such as legality, accuracy, reliability and using harmless advertising techniques, which do not incur any sanctions (See Beeline case in paragraph 5.2.3). Moreover, the San`at Sehri company case shows that the committee does not clearly distinguish deception by omission of facts from hidden (subliminal) advertising that has subliminal effects on the consciousness of consumers (See San`at Sehri company case in paragraph 5.3.1). The committee created a list of superlative words and phrases that are prohibited to use in advertising. Moreover, the "Rubikon Wireless Communication" Joint Stock Company case shows that the committee does not clearly differentiate exaggeration and puffery concepts indeed (See paragraph 5.3.1).
- (ii) The second problem is the application of non-content regulation. According to the commercial speech doctrine, restrictions on time, place and manner of advertising is a non-content regulatory method that should be applied to excessive advertising in order to control the amount of advertising. Another different issue is the amount of information provided by advertising, which should be considered as a main standard for content-based regulation of misleading advertising. However, the legislature of Uzbekistan misunderstood this standard as the amount of advertising instead of the amount of information provided by advertisement. Therefore, the Parliament applied a legal standard for restriction on time, place and manner of advertising that aimed to control an excessive amount of advertising. Thus, the legislature created a non-content regulatory standard in place of content regulation. The non-content regulatory standard has become widespread as the main legal standard for evaluation of misleading advertising in practice, even if it is not able to identify deception in advertisement.
- (iii) The third problem is the application of substantiation standard. One of the main issues in the legal concept of improper advertising is the phrase "violation of other legislative requirements." This phrase shows a loophole in evaluation of misleading advertising. Since the legislature does not clarify which kind of violation should be considered as a "violation of other legislative requirements," this legal uncertainty causes ambiguous interpretation and abuse of power by the Competition Committee in practice. Indeed, the committee can find any violation of legislative requirements as misleading advertising. The committee currently interprets the loophole as substantiation standard, in particular as substantiation of the advertised product with relevant license and certificate, even if this standard is not able to identify deception.

Unfortunately, the substantiation standard could be used widely in the future, which might bring unreasonable intervention to the commercial speech of entrepreneurs. Most dangerously, the Namangan International Airport case shows that the substantiation standard has become superior in the evaluation of misleading advertising in practice rather than the deception standard (See paragraph 5.3.3).

---

<sup>51</sup>Law on Advertising (Uzbekistan 1998).

### Investigating the issue's underlying causes

The reasons of the problems regarding misleading advertising in Uzbekistan are related to the weak-designed legal framework. In particular, substantive issues regarding legal requirements have three main drawbacks, which cause problems in practice. The first drawback in the Advertising law is underdevelopment and complexity of the deception requirement. Specifically, forms of deception are described in a tangled way within the legal concept of improper advertising. For instance, Article 13 of the Advertising law determines unfairness, falsity, inaccuracy, ambiguity, exaggeration and omission as the main conducts that might cause deception.<sup>52</sup> Actually, all these forms of deception, except unfairness, belong to the two main categories: statement and omission. This refers to that falsity, inaccuracy, ambiguity and exaggeration are the forms of misleading statement; on the other hand, omission of facts is the second category of deception. However, unfairness is an independent category, which cannot be seen as a way of deception. The International Code of Advertising Practice, which determines international standards on advertising regulation, describes deception as a statement or visual presentation and omission.<sup>53</sup> The US Lanham Act defines deception as misleading representation of fact and omission of fact.<sup>54</sup> The EU Directive concerning Misleading and Comparative Advertising describes deception as presentation and omission.<sup>55</sup> Thus, forms of deception are only two: statement and omission. However, Uzbekistan's legislature made a confusing legal framework for deception by adding to it an unfairness standard, consequently this complicated framework causes ambiguity and miscomprehension in practice as mentioned in the previous paragraph.

Moreover, legal standards for misleading advertising in Uzbekistan also remain underdeveloped due to the lack of materiality requirement. The materiality is the main criterion for evaluation of misleading advertising impact on consumer behavior. Materiality means an advertising message turns to be actionable that is likely affects on consumer purchasing decision. Hence, the purchase of product is presumed to be material.<sup>56</sup> The ICC Consolidated Code of Advertising and Marketing Communication Practice, as a global guideline for advertising regulation, sets the rule on materiality under a basic principle of honesty.<sup>57</sup> The principle states that relevant factors likely to affect consumer decisions should be communicated in such a way and such a time that consumers can take them into account. The US Federal Trade Commission (FTC) act defines false advertising as misleading in a material respect.<sup>58</sup> US case law that developed legal standards so called the Skil test determined materiality as the likeliness to influence purchasing decisions or the audience's behavior.<sup>59</sup> The EU Directive concerning Misleading and Comparative Advertising describes materiality as the likeliness to affect the economic behavior of consumers.<sup>60</sup> However, in case of Uzbekistan, absence of a materiality requirement, which is a crucial element of the legal framework, brings a serious obstacle to evaluate misleading advertising properly and to enforce it effectively. Secondly, non-deception standards are excessive and unnecessary to the legal concept of improper advertisement. Apart from the deception standard, the legal framework of misleading advertising includes "alien" non-deception standards such as non-content regulation and the substantiation standard, both of which are not able to identify deception at all. The presence of such strict legal standards causes unreasonable government interference in free commercial speech of advertisers and restricts the flow of commercial information. Therefore, they are unnecessary and excessive to proper regulation of misleading advertising. Perhaps, control of time, place and manner of advertising or substantiation of facts are useful methods for an administrative-command economy, and therefore was handed down and integrated into Uzbek legislation from the Soviet Union. The third shortcoming in the enforcement of Advertising law is the deficiency of the voluntary compliance program that consequently causes weak co-regulation.

<sup>52</sup>Ibid.

<sup>53</sup>ICC International Code of Advertising Practice," No. 240/381 Rev. (International Chamber of Commerce, 1997).

<sup>54</sup>Lanham Act § 43(a) at Lanham (Trademark) Act (15 U.S.C.) (1946).

<sup>55</sup>Article 2(b) of the Directive of the European Parliament and of the Council concerning misleading and comparative advertising, 2006/114/EC, (Council of Europe 2006).

<sup>56</sup>Felix Kent and Douglas Wood, Legal Problems in Advertising (M. Bender, 1984).

<sup>57</sup>Neema Varghese & Navin Kumar (2022) Feminism in advertising: Irony or revolution? A critical review of femvertising, *Feminist Media Studies*, 22:2, 441-459, DOI: 10.1080/14680777.2020.1825510

<sup>58</sup>Paragraph 55 Federal Trade Commission Act (2013).

<sup>59</sup>Skil Corporation v. Rockwell International Corp., 375 F. Supp. 777 (N.D. Ill. District Court 1974).

<sup>60</sup>Article 2(b) of the Directive 2006/114/EC.

The voluntary compliance is a special enforcement program according to which the enforcement authority helps advertisers to voluntarily fulfill the advertising law by giving them non-binding advices. The voluntary compliance also might include administrative interpretation of the law in the form of industry guides or trade regulation rules. However, Uzbekistan still does not have such extra-judicial guidance concerning advertising law enforcement. The voluntary compliance program may help to understand administrative approach on what types of advertising might be considered deceptive in order to prevent deception in a cooperative way. First, there are no guidelines or recommendations that have detailed explanations about the nature, interpretation, evaluation and implementation of deception in advertising. The deficiency of non-binding instruments causes misunderstanding, misclassification and diversity in the implementation of legal requirements that currently exist in practice. Second, the Competition Committee does not cooperate with the Consumer Protection Federation and mass media on screening deceptive advertising, even though the cooperation on screening is considered to be effective in preventing deception in its incipiency.

### **Conclusion Remarks**

The deception concept originated in the USA to make deception standard clear so that enforcement authorities could easily understand and use it to deal with misleading advertising in practice. According to the current FTC Policy Statement on Deception, deception is a representation, omission or practice which will likely mislead a targeted group of consumers acting reasonably under the circumstances, by affecting their conduct or decision with regard to a product or service. However, the US deception concept cannot be applied to Uzbekistan because of two main factors. First, there is no mechanism to identify a targeted group of consumers to whom deception may be directed. Therefore, as a solution to this issue, the legislature of Uzbekistan implemented the “average consumer” standard according to which a consumer is supposed to be a person without specific knowledge about a product at the time of deception. The second and main factor is the existence of standards unrelated to deception such as non-content regulation and the substantiation standard. However, there is still no solution on how to deal with such non-deceptive elements in misleading advertising regulation in Uzbekistan. The research finding on development root of legal standards makes clear the origin of the deception and non-deception standards in Uzbek law. Legal requirements for deception were developed in the common law system, especially in the USA, then internationalized into civil law systems. The analysis shows that legal standards transplanted to Uzbekistan in following route: "the USA – the EU – Russia – Uzbekistan", which means that legal standards transplanted from the USA to Europe, from Europe to Russia and from Russia to Uzbekistan. The Russian Advertising law implemented legal standards from the EU directive concerning misleading advertising, but did it in the wrong way. When the Russian Duma designed the legal concept for improper advertising, it put into the legal framework external elements such as a non-content regulatory standard without understanding the nature of the commercial speech doctrine. However, this approach of the Russian legislature had a significant impact on the development of legal standards for improper advertising in Uzbekistan as well. Accordingly, the research findings show that the formation of non-deceptive elements such as non-content regulation and the substantiation standard were the result of misunderstanding and misimplementation of the main theories behind misleading advertising regulation. Even though the commercial speech doctrine suggests to apply content-based regulation as a method against deception, the legislature of Uzbekistan wrongly implemented non-content regulation concerning misleading advertising. The reason for this is miscomprehension of the consumerism issue on how much information should be provided to consumer; instead the legislature understands this standard as how much advertising should be provided. The control of information amount within particular advertisement is a matter of content-based regulation, while control over the amount of advertisements is a matter of non-content regulation. In this way, the Parliament implemented the legal standard for restriction on time, place, and manner of advertising to control excessive amounts of advertising. In addition, when legislature designed the legal concept of improper advertising, it considered the “violation of other legislative requirements” in advertisement to be misleading. Even if such a loophole in the Advertising law might be widely interpreted in practice, the Competition Committee of Uzbekistan interprets it as a substantiation standard that requires advertisers to prove their advertising claims with relevant documents or scientific evidence.

The reason why the legal framework for improper advertising contains non-deception elements is that the enforcement authority put its administrative interests in the Advertising law. Since the draft of the Advertising law was prepared by the Competition Committee of Uzbekistan, the committee put forward its administrative interests in the draft to keep control over the advertising market. Moreover, the committee has not initiated any changes to the legal framework for misleading advertising by excluding non-deception elements from the deception standard. The main reason for this is that the existence of external elements such as non-content regulation and a substantiation standard gives the committee an opportunity to unreasonably intervene in the



commercial speech of entrepreneurs and to keep administrative control over advertising. This current situation in Uzbekistan causes an imbalance of interests in misleading advertising regulation. In fact, the government's interest to control commercial information flow becomes superior to that of competitor and consumer interests. The main principle of the commercial speech doctrine on the limitation of government intervention does not work in practice. Moreover, the state fails to provide constitutional guarantees on the economic freedom of advertisers and legal protection of consumer rights. Hence, the state has become unable to carry out its function on advertising regulation, especially as it cannot provide a balance of government, competitor and consumer interests in the advertising market. The findings of this study may be useful for businesses looking to mislead consumers through advertising. Further study is required to uncover the other factors, such as corporate reputation and service level, that may contribute to the link between misleading advertising and consumer loyalty.

## References

- Bergh, Roger Van den, and Alessio Paccas. Regulation and Economics. Revised ed. edition. Cheltenham, UK: Edward Elgar Pub. 2012.
- Carson, Thomas L. Lying and Deception: Theory and Practice. Oxford, New York: Oxford University Press. 2010.
- Dabbah, Maher M. International and Comparative Competition Law. Cambridge University Press. 2010.
- Hoyer, Wayne, and Deborah MacInnis. "Consumerism and Public Policy Issues." In Consumer Behavior, 4th edition., 531. Houghton Mifflin. 2007.
- Gerber, David J. Law and Competition in Twentieth Century Europe: Protecting Prometheus. Oxford University Press. 2001.
- Kent, Felix, and Douglas Wood. Legal Problems in Advertising. M. Bender. 1984.
- Petty, Ross D. The Impact of Advertising Law on Business and Public Policy. Westport, Conn. ; London: Praeger. 1992
- Richards, Jef I. Deceptive Advertising : Behavioral Study of a Legal Concept /. Hillsdale, N.J. : L. Erlbaum Associates, 1990.
- Richards, Jef I. "Theory and Law." In Advertising Theory, 1 edition. New York: Routledge. 2012.
- Siegel, Paul. Communication Law in America. Fourth edition. the USA: Rowman & Littlefield. 2014.
- Hierman, Brent. Russia and Eurasia 2017-2018. Rowman & Littlefield. 2017.
- Khodjaev, Bakhshillo. The Issues of Civil Law Regulation of Advertising Service Contracts, Monograph. Tashkent: Tashkent State Institute of Law. 2009.
- Khaki, G. N., and Riyaz Ahmad Sheikh. "Uzbekistan: Karimov's Model of Economy; Dynamic or Paradox A Critical Study." Studies in Asian Social Science 3, no. 1 (January 31, 2016): 54.
- McChesney, Fred. "Commercial Speech in the Professions: The Supreme Court's Unanswered Questions and Questionable Answers." University of Pennsylvania Law Review 134, no. 1 (December 1, 1985): 45.
- McChesney, Fred S. "De-Bates and Re-Bates: The Supreme Court's Latest Commercial Speech Cases." Supreme Court Economic Review 5 (1997): 81-139.
- The Federal Trade Commission Act of 1938. Columbia Law Review 39, no. 2 (1939): 259-73.