

# Implication of Advertising Rules on Trade Competition and Consumer Protection in Ethiopia: A Comparative Approach

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## Abstract

Advertising plays a key role in almost every firm's marketing strategy. It is an important tool and increasingly important for survival in a dynamic, competitive international marketplace and thus, promoters use their maximum effort to curve consumers to products they are advertising. In so doing, promoters may use false or misleading advertisements, may ridicule other competitors, and the like. False advertising occurs when a business misrepresents its own products or services, or misrepresents the products or services of a competitor through either false or misleading statements. It harms not only the customer, but also fair competitors. The paper address objectives of regulating misleading advertising through laws to ensure that advertisements do not distort the facts about the product and mislead the buyer through subtle implications, omissions and, false statements about the quality, quantity, features or other characteristics of the product and also to protect anticompetitive acts. To that effect the paper analyses Ethiopian Competition and Consumer Protection Law and Ethiopian Advertisement Law. In order to elucidate the ideas contained in these legislations the writer sometimes resorts to the laws of other countries experience and international principles. Hence, the paper concludes the Ethiopian advertisement law is poorly drafted. It would be better if the law divides among others, violations of fair trade practice which can be made through advertisements into Unlawful advertisement; Immoral and Abusive advertisement; Misleading and Deceptive advertisement; and Comparing and disparaging advertisement.

**Keywords:** Advertising, trade competition, consumer protection, Ethiopia

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## 1. Introduction

Consumer is the central point in every business. Now a day, attracting and satisfying a customer is more difficult than producing the goods<sup>1</sup>. Advertising may be described as the science of arresting human intelligence long enough to get money from it.<sup>2</sup> It is an important competitive tool that firms use to convey information to potential purchasers about their products' performance, characteristics and price. This makes advertising conduct an important market attribute.<sup>3</sup>

Advertising has a strong economic impact on companies as it is a key element of any business strategy. It allows traders to present their goods and services and is an important element for commercial success. It can also enhance competition by providing customers with better information and the possibility to compare products. Advertising may facilitate differentiation and therefore competition<sup>4</sup>.

Generally, commercial advertisement is a very essential way of customers' decision towards buying the products/ services of the promoters and it is also a legal way of increasing market share but when an advertisement is unfair, it could turn out into acts or practices that cause or is likely to cause substantial injury to consumers and competition as well<sup>5</sup>. Thus, as one of an unfair competitive act, false or misleading advertisements results in injury of market participants and material distortion of competition. Moreover, free-riding on the advertising value of another amounts to a misappropriation because it undermines the effectiveness of competition.<sup>6</sup>

Several countries address safety concerns with advertising. An unfair or pure omission could occur when advertising is not deceptive but, consumers still would be harmed by the omission of important information.

Competition law mainly targets on the so-called "*restrictive business practices*" (RBPs). These practices which constitute the main content of competition law are abuse of dominance, anti-competitive arrangements, and mergers and acquisitions.<sup>7</sup> Despite the fact that many countries' competition laws do not give a due

<sup>1</sup>Mukesh Trehan and Ranju Trehan, advertising and sales management, v.k publishing (India), 2006-07, pp. 1

<sup>2</sup> Stephen Leacock 1869-1944 garden of folly (1924) 'the perfect salesman' oxford dictionary of quotations and proverbs

<sup>3</sup> Anthony j. Dukes, advertising and competition, in issues in competition law and policy 515 (aba section of antitrust law 2008)

<sup>4</sup> Protecting businesses against misleading marketing practices and ensuring effective enforcement, review of directive 2006/114/ec concerning misleading and comparative advertising, communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions, Brussels, 27/11/2012

<sup>5</sup> Terence Shimp and J. Craig Andrew, Advertising promotion and other aspects of integrated marketing communications, Ninth edition

<sup>6</sup> Apostolos Chronopoulos, Legal and economic arguments for the protection of advertising value through trade mark law, Queen Mary journal of intellectual property, Vol.4, 2014, pp. 256-276

<sup>7</sup> Cuts, Towards a Healthy Competition Culture, India: Jaipur Printers, 2005, PP.28-30

consideration to abuse of advertisement rules, as a main content of competition law, the effect can easily be seen in the diverting of consumers towards illegal and harmful products plus in the damage many producers and service givers sustaining by the free riders of advertisements. To the contrary, those free riders are unlawfully enriching themselves or third parties over those who spent their huge amount of money, precious time, and energy on producing quality product.

## 2. Research Methodology

A doctrinal method approach was employed for the study, hence, the rules and principles that make up Competition and Consumer Protection and specifically Ethiopian Advertisement Law was reviewed. Specifically, I have followed comparative legal methodology. Comparative analysis of laws of Advertisement in cross-cultural settings through critical review of legal documents in developed and developing countries were conducted.

## 3. General concept of advertising

### 3.1. Definition

#### 3.1.1 Advertising

The term “advertising” is derived from the Latin word “advertere”, which means to turn attention towards a specific thing<sup>1</sup>.

Advertising is of several different kinds: commercial advertising for products and services; public service advertising on behalf of various institutions, programs, and causes; and a phenomenon of growing importance today : political advertising in the interests of parties and candidates. For the purpose of this paper, the writer focuses on the commercial advertising.

Commercial advertising or promotion is a commercial speech by a defendant who is in commercial competition with the plaintiff for the purpose of influencing consumers to buy the defendant’s goods or services; and that is disseminated sufficiently to the relevant purchasing public to constitute “advertising” or “promotion” within that industry, even if not made in a “classical advertising campaign”<sup>2</sup>.

Economists typically view advertising as an activity that sellers undertake to inform buyers about their products or persuade them that a product is most suitable<sup>3</sup>.

Webster’s dictionary defines “advertising” as, among other things, “the act of calling something to the attention of the public especially by paid announcements”, and “promotion” as, among other things, “the furtherance of the acceptance and sale of merchandise through of the acceptance and sale of merchandise through advertising, publicity, or discounting”<sup>4</sup>.

Generally, advertising could be defined as paid, mediated, form of communication from an identifiable source, designed to persuade the receiver to take some action, now or in the future<sup>5</sup>.

#### 3.1.2 Channels of Advertising

Today the advertiser has a vast array of choices. The Internet alone provides many of these, with the advent of branded viral videos, banners, advertorials, sponsored websites, branded chat rooms and so much more. Fortunately, every single tactic available to the advertiser falls into one of the following buckets.

Although a few of these are relatively new to the field, most go way back to the very beginnings of modern advertising<sup>6</sup>. Some of the channels of advertising are: Print Advertising, Guerrilla advertising (or marketing), Broadcast advertising, [Outdoor advertising](#), Public service advertising (PSA), Product placement advertising, Cell phone and mobile Advertising and online advertising (aka digital).<sup>7</sup>

#### 3.1.3 Basic types of advertising

According to Larry Percy, there are four basic types of advertisings.

**COBA:** - Brand focused advertising directed towards individual consumers, delivered via a wider range of possible media is what most people think of when they are thinking about advertising. It is brand-focused, seeking to make consumers more aware of the brand, and to form positive attitudes towards it, ‘turning’ the mind of the consumer towards a positive consideration of the brand.<sup>8</sup>

**Retail Advertising:** - Involves store image as well as products or services offered, and generally uses local

<sup>1</sup> See Mukesh Trehan and Ranju Trehan, at Supra note 1

<sup>2</sup> Courtland L. Reichman and M. Melissa Cannady, False advertising under the Lanham Act, Franchise law Journal, Spring 2002, Vol.21, No.4 (Reprinted by permission of the American Bar Association), Page 189-190

<sup>3</sup> Anthony J. Dukes, Advertising and Competition, in issues in competition law and policy 515 (ABA Section of Antitrust Law 2008), pp.517

<sup>4</sup> Webster’s Ninth new collegate dictionary 59, 941 (1984)

<sup>5</sup> Richards, J. I. and Curran, C. M. (2002). Oracles on "Advertising": Searching for a Definition. Journal of Advertising, Summer, 31(2), 63-77

<sup>6</sup> Paul Suggett (Advertising Expert), The Major Tactics Used in Modern Advertising to Reach Consumers (available at <http://www.advertising.about.com/bio/Paul-Suggett-84966.htm>)

<sup>7</sup> Ibid

<sup>8</sup> Larry Percy, *Strategic Integrated Marketing Communications*, 2<sup>nd</sup> ed., Routledge printing co., 2014, page 81

media. The unique aspect of retail advertising is that it generally involves two brands: the store itself and the products or services it offers.<sup>1</sup>

**B2B Advertising:** - Addresses both customers and the trade, and uses specialty media directed to target segments. The difference here is that B2B advertising need not specifically address the end user. It may seek to build awareness and positive brand attitude not only among their customer base, but also among the trade and other aspects of the distribution system with which they deal.<sup>2</sup>

**Corporate advertising:** - Promotes the company rather than the product or service offered, and addresses all important target audiences. Traditionally, this is advertising that promotes a company itself rather than the products or services it markets. It seeks to positively raise the salience of the company, and creates a favorable attitude towards it, among particular target audiences that can range from consumer markets to the financial community to government regulatory agencies.<sup>3</sup>

### 3.2 The role of Advertising in the free market economy

Most people thought that in a free-market economy nothing would prevent businesses from false advertisement and businesses could easily say one thing and do another if no one is regulating. Human freedom is an unequivocally good thing, and it comes in many degrees. The freedom to engage in voluntary, peaceful transactions with the consumers (primarily adult consumers) of one's choice is a centerpiece of civil society<sup>4</sup>. In a free-market society, government exists for the protection of people's lives and property, the sanctity of their contracts, and the maintenance of peace and we should bear in mind that there is not a single free-market economist who would argue that rules against lying apply to everyone else but businessmen<sup>5</sup>.

One of the characteristics of the perfect market is that economic actors, including buyers or consumers, have "perfect information" about the nature and value of commodities traded<sup>6</sup>. In reality, however, private laws cannot help consumers protect themselves from information asymmetry in that they know less than the other party (generally the supplier) and will frequently suffer from some information imperfections<sup>7</sup>.

Competitive markets have three specific features: the first one is it consists of a large number of buyers and sellers that are small relative to the size of the overall market, the second one is sellers in these markets offer reasonably homogeneous or similar products and consumers in these markets view all of the products in the market as being, at least to a close approximation, perfect substitutes for one another and the third one is firms can freely enter and exit the market. In competitive markets, there are no barriers to entry and leaving the market<sup>8</sup>.

Individual firms and consumers are price takers in competitive markets. Anti-competitive practices, in other way, refers to a wide range of business practices in which a firm or group of firms may engage in order to restrict inter-firm competition to maintain or increase their relative market position and profits without necessarily providing goods and services at a lower cost or of higher quality.<sup>9</sup>

The link between advertising and free markets is strong and multifaceted. Some might say that the very idea of regulation of advertising is incompatible with the concept of a free market. In fact, Mary L. Azcuenaga<sup>10</sup> believes, the opposite is true. One of the fundamentals of a market economy is the free flow of information about goods and services offered for sale. The underlying theory is that the more fully consumers are informed, the better equipped they will be to make purchase decisions appropriate to their own needs. The phrase "appropriate to their own needs" expresses an important point. The appropriateness of a purchasing choice in a free-market economy depends on consumer preference, not governmental fiat. It is the exercise of informed choice by consumers that ensures that unwanted goods and services eventually will disappear from the market, and that prices that are too high to induce purchase ultimately will be lowered as selling firms seek to attract buyers<sup>11</sup>.

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<sup>1</sup> Ibid

<sup>2</sup> Ibid, pp.83

<sup>3</sup> Ibid

<sup>4</sup> Michael D. LaFaive, False Advertising and the Free Market, Mackinac Center, published on Nov. 1, 1997 (available at [www.mackinac.org](http://www.mackinac.org)).

<sup>5</sup> Ibid

<sup>6</sup> Peter Cartwright, Consumer Protection and the Criminal Law: Law, Theory and Practice, Cambridge University Press, UK, 2001, p.19

<sup>7</sup> Ibid

<sup>8</sup> Jodi Beggs, Introduction to competitive markets available at <http://economics.about.com/od/perfect-competition/ss/> last visited: July 12, 2018

<sup>9</sup> Available at <https://stats.oecd.org/glossary/detail.asp%3FID%3D3145>.

<sup>10</sup> Former Commissioner of the US FTC, the thoughts of the writer is of her own and not representing the FTC

<sup>11</sup> Mary L. Azcuenaga, Former Commissioner of the United States FTC, The Role of Advertising and Advertising Regulation in the Free Market, The Turkish Association of Advertising Agencies, Conference on Advertising for Economy and Democracy, Istanbul, Turkey, April 8, 1997 (available at <https://www.ftc.gov/mary-l-azcuenaga>)

### 3.3 Economic and social considerations for regulation of advertising

#### 3.3.1 Regulating Advertisement to Protect the Economy

Unfair competition relates to the actions of firms that cause an economic injury to another firm, through a deceptive or wrongful business practice. The terms “unfair competition” and “unfair trade practices” are often used interchangeably while some legal systems make distinctions between the two. Unfair competition is used to refer only to those actions that are meant to confuse consumers as to the source of the product, while “unfair trade practices”, comprises all other forms of unfair competition<sup>1</sup>.

The main focus of the law, as far as unfair competition is concerned, is on the protection of one competitor against unfair acts of another competitor. On the other hand, prohibition of unfair competition has many things to do with the protection of consumers<sup>2</sup>.

A likelihood of confusion exists when there is confusion as to the enterprise/undertaking /business, products and services, or commercial activities. More particularly, confusion may occur with respect to any of the following: trade-names, distinguishing marks, the appearance of a product, and the presentation, including advertising, of products or services<sup>3</sup>. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition<sup>4</sup>. All acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities of a competitor; false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor; indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods<sup>5</sup>.

These confusions affect the economic status of competitors and the decisions of consumers towards buying those advertised products and most importantly may harm the image of the country and due to these; advertisements of different kinds should be regulated to protect businesses, consumers and the public at large from comparative, abusive and disparaged advertising.

Regulation is all about the relationship between government and business. It pertains to the various instruments by which Governments impose requirements on business enterprises and citizens. It accordingly embraces laws, formal and informal orders, administrative guidance and subordinate rules issued by all levels of government, as well as rules issued by NGO or professional self-regulatory bodies to which governments have delegated regulatory powers<sup>6</sup>.

Through regulation governments can pursue different types of objectives. Economic regulation, social regulation and administrative regulation are among the three main categories of government intervention in pursuit of its objectives<sup>7</sup>. Social regulation covers health, safety, and environmental quality and specifies how particular goods and services will be designed, produced, and sold<sup>8</sup>. Economic regulation includes government requirements which intervene directly in market decisions, such as pricing, competition, and market entry or exit<sup>9</sup>. Administrative regulation includes paperwork and formalities through which governments collect information and intervene in individual economic decisions<sup>10</sup>.

#### 3.3.2 Regulating Advertising as Business Protection

Practices that fall into the area of unfair competition include false advertising, “bait and switch” selling tactics, unauthorized substitution of one brand of goods for another, use of confidential information by former employee to solicit customers, theft of trade secrets, breach of a restrictive covenant, trade libel, and false representation of products or services<sup>11</sup>.

According to Professor Stucke, circumstances may exist in which deception also is competitive harm. He argues that profit-maximizing firms would only engage in deception if the expected benefits, in the form of monopoly profits, outweighed the expected costs, which include the costs of the deceitful advertising, the criminal and civil liability that may attend, and the “potential loss of sales, goodwill, and competitive advantage

<sup>1</sup> Unfair Competition Law: an overview, Legal Information Institute, University of Cornell Law School, 2008 (available at: <http://topics.law.cornell.edu>)

<sup>2</sup>Desalegn Adera, The legal and institutional frame work for consumer protection in Ethiopia, Addis Ababa University, faculty of law, LLM thesis, (Unpublished), 2011, pp. 64

<sup>3</sup>Alemayehu Fantaw, Ethiopian Unfair competition law: A critical evaluation, JU Journal of law, Vol.I, No.II, January, 2009, P.10

<sup>4</sup> Article 10(2) of the Convention of Paris for the Protection of Industrial Property of 1833, as amended

<sup>5</sup> Ibid Article10(3)

<sup>6</sup> UNCTAD Model Law on Competition, UNCTAD series on issues in Competition Law and Policy, 2007,pp. 9

<sup>7</sup> UNCTAD, Model Law: The Relationships between a Competition Authority and Regulatory Bodies, including sectoral Regulators ,retrieved on July 2018from:<http://www.unctad.org/en/docs/c2clp23&c1.en.pdf>, pp.7

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Ibid.

<sup>11</sup> Unfair Competition Law: an overview, Legal Information Institute, University of Cornell Law School, 2008 (available at: <http://topics.law.cornell.edu>)

if the deceit is uncovered”<sup>1</sup>. The danger of unfair competition from the viewpoint of traders consists in the erosion or loss of their goodwill. The harm that a competitor does to his rival through unfair competition, in effect, is to cut down or take away his clientele.<sup>2</sup>

This implies that series measures should be taken by the government to deter the violators of unfair trade practice.

### 3.3.3 Regulating Advertising as Consumer Protection

Competition policy is usually very effective in well-functioning markets (strong supply side of the market) and is implemented through a set of policies and enforcement of competition laws that seek to ensure that competition in the market place is not restricted to the extent of reducing economic welfare. The consumer policy consists of policies seeking to prevent sellers from engaging in unfair practices (strong demand side of the market). Further, consumer policy aims to improve transparency in a general sense in order to increase the number of informed consumers<sup>3</sup>. Advertising is a business activity firms presumably choose to improve their profits through its effect on consumer demand<sup>4</sup>.

The major problems consumer protection seeks to address include, imperfect information about product attributes, imperfect information about market prices, consumer costs of obtaining market information, supplier costs of advertising, and consumers possessing imperfect information about their own needs. Consumer policies and laws thus deal with duress and undue sales pressure, information problems pre-purchase and undue surprises post-purchase<sup>5</sup>.

As far as consumer demands are concerned; Ethical business practice means “doing the right thing” whereas unethical business practices include: discrimination against customers on the grounds of race; standard form contracts that are one-sided and over-protective of business; misleading or deceptive advertising (for instance, requiring the consumer to pay a higher price than the displayed price, or enticing young consumers who do not fully understand the consequences of acting on misleading advertising)<sup>6</sup>.

Asymmetries in information between consumers, sellers and firms in these markets may have negative impact on competition; thus, affect consumers’ ability to effectively drive competition.

Misleading advertisement and false representation includes any statement which is not true either because it hides facts that are important or suggests falsehood or is put in such words or context that it may give rise to two meanings, one of which is false, would be misleading<sup>7</sup>.

The United Nation has provided a framework for strengthening national consumer protection policies around the world. Among others, the right to be informed and to acquire factual information to make an informed choice, and to be protected against dishonest or misleading advertising and labeling is the one<sup>8</sup>.

Consumers need not only, to access information about the goods and services offered in the market, but also assess those offers and finally act on accessed information in order to make informed decisions when purchasing goods or services in the market place (accessibility, assessment and acting on information about the market-are the three elements of consumer decision making process). Lack of any of the above mentioned elements of consumer decision making process, may harm consumer’s ability to effectively driving competition in the market<sup>9</sup>.

Consumer protection is a way of dealing effectively with these adverse effects of market failure from the demand side. In regulatory terms, consumer protection refers to the set of laws and policies aimed at ensuring social justice, equity and fairness in the relationships between producers and consumers<sup>10</sup>. The major problems consumer protection seeks to address include<sup>11</sup>: imperfect information about product attributes, imperfect information about market prices, consumer costs of obtaining market information, supplier costs of advertising,

<sup>1</sup> Maurice E. Stucke, How Do (and Should) Competition Authorities Treat a Dominant Firm’s Deception?, University of Tennessee, College of Law Research Paper No. 57 (2009) (available at [ssrn.com/abstract=1397728](http://ssrn.com/abstract=1397728))

<sup>2</sup> Alemayehu Fentaw, pp.3

<sup>3</sup> Mark Armstrong: Competition Policy International: Interactions between competition and consumer policy Volume 4 Number 1 spring 2008 pp. 112

<sup>4</sup> Anthony J. Dukes, Advertising and Competition, in ISSUES IN COMPETITION LAW AND POLICY 515 (ABA Section of Antitrust Law 2008), pp.512

<sup>5</sup> Mark Armstrong, Interactions Between Competition and Consumer Policy, Munich Personal RePEc Archive, MPRA Paper No. 7258, February 2008, p. 2 (available at: <http://mpra.ub.uni-muenchen.de/7258/>)

<sup>6</sup> Karunanidhi Reddy and Renitha Rampersad, Ethical business practices: The consumer protection act and socio-economic transformation in South Africa, African Journal of Business Management, Vol.6, No.25, 27 June, 2012, pp. 7404

<sup>7</sup> Competition Policy & Law Made Easy, Monographs on Investment and Competition Policy, #8, CUTS Centre for International Trade, Economics & Environment, 2001, pp. 26

<sup>8</sup> United Nations Department of Economic and Social Affairs (UNDESA), UN Guidelines for Consumer Protection (as expanded in 1999), New York, (2003)

<sup>9</sup> presentation by Martha Kisyombe, competition and consumer protection policy: a Tanzanian perspective, session 3: emerging issues in consumer protection: complementarities and areas of tension, presentation at UNCTAD ad-hoc expert group meeting on the interface between competition policy and consumer welfare: Geneva, 12 to 13 July 2012, pp. 4

<sup>10</sup> Michelle C. Goddard, Designing A Consumer Policy Framework For Small States, CUTS Briefing Paper No. 9, 2008, p. 1

<sup>11</sup> See at Supra note 71



and consumers possessing imperfect information about their own needs.

Thus, consumers have the right to be given truthful information about the goods and services they buy. This honest information must by law appear in advertisements of all kinds and on labels and packages.

#### **4. The legal framework for advertising in trade competition laws: experience from developed and developing countries**

##### **4.1. Experience from developed countries**

###### **4.1.1 Germany**

Sec. 4 UWG nos. 3 and 4 addresses acts of competition that conceal their advertisement purposes and sales promotions methods that do not state explicitly the conditions wherein discounts and free gifts are granted. Not only do these provisions protect consumers, but they protect competitors as well. Furthermore, Sec. 4 UWG nos. 5 and 6 regulate competitions and games of luck.

Pursuant to these provisions, it is unfair if an entrepreneur either fails to explicitly inform about the respective participation criteria or if he/she couples participation with the purchase of his goods or services.

On the other hand, the general clause and the special prohibition on misleading advertising in the German Act on Unfair Competition (UWG) only concern actions having competitive purpose<sup>1</sup>. Similar delimitations can be found also in other countries.

###### **4.1.2 United Kingdom (UK)**

The Business Protection from Misleading Marketing Regulations 2008 (BPRs) came into force on 26 May 2008. They implement the Comparative and Misleading Marketing Directive (MCAD) which is aimed at harmonizing legislation across the European Union relating to advertising which misleads traders. The regulations also set out the conditions under which comparative advertising (advertising which identifies a competitor or a competitor's product) is permitted. This allows traders to understand what their obligations are when advertising their products or services to traders in other Member States.

The BPRs prohibit advertising which misleads traders. They set out what conditions are acceptable in relation to comparative advertising and require code owners (traders and bodies responsible for codes of conduct or monitoring compliance with such codes) not to promote misleading advertising and comparative advertising which is not permitted<sup>2</sup>.

The BPRs replace the requirements set out under the previous Control of Misleading Advertising Regulations 1998 (CMARs) not to use advertisements which mislead other businesses or which are not permitted by comparative advertisements<sup>3</sup>.

##### **4.2 Experience from developing countries**

###### **4.2.1 South Africa**

In South Africa, the Consumers' Protection Act of 2008 provides for various rights of consumers extensively. Among others, the act provides for the right to information in plain and understandable language, the right to disclosure of price of goods or services and the right to product labeling and trade description<sup>4</sup>. Moreover, consumers have the right to be protected from false or misleading representation and fraudulent and deceptive acts and misleading advertisements under the part of "right to fair and responsible marketing"<sup>5</sup>.

Consumers are protected against any misleading trade descriptions or trade descriptions that have been tampered with. No person may apply a trade description knowing that it is likely to mislead the consumer, or tamper with a trade description in a manner that might mislead a consumer<sup>6</sup>.

The Act deals extensively unconscionable conduct; false or misleading representations; fraudulent schemes and offers under "part F". In relation to the marketing of any goods or services, the supplier must not, by words or conduct; directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer; use exaggeration and ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or fail to correct an apparent misapprehension on the part of a consumer, amounting to a false, misleading or deceptive representation, or permit or require any other person to do so on behalf of the supplier<sup>7</sup>.

A supplier must not market any goods or services in a manner that is misleading, fraudulent or deceptive in respect of the nature, properties, advantages or uses of the goods or services; the manner in or conditions on which the goods may be supplied, or the existence of or relationship of the price to any previous price or

<sup>1</sup> Articles 1 and 3 of the German UWG

<sup>2</sup> See at Supra note 66, pp.15 ye a quick guide to ...OFT NEW

<sup>3</sup> Ibid

<sup>4</sup> South African Consumer Protection Act, 2008, part D, Arts.22-28

<sup>5</sup> Ibid part E, Arts.29-39

<sup>6</sup> Section 24(2) (a)-(b)

<sup>7</sup> Ibid Section 41(1)

competitor's price for comparable or similar goods or services; the sponsoring of any event; or any other material aspect of the goods or services<sup>1</sup>.

#### 4.2.2 India

The Indian competition act is not prescribing any advertising norms and does not deal with the unfair practices like misrepresentation and misleading promotion etc. Any deficiency or unfair practice including misleading advertisement can be questioned before the consumer forum if the rights of consumers are affected.

In Dabur India Ltd. Vs. Wipro Ltd., The Supreme Court of India laid down certain conditions wherein comparative advertising could be permissible if it is not misleading; if it compares goods or services meeting the same needs or intended for the same purpose, if it objectively compares one or more materials and relevant, verifiable and representative features of those goods and services which may include price, if it doesn't create confusion in the market place between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor's; if it doesn't discredit or denigrate the trademarks, trade names, other distinguishing marks, goods or services, activities or circumstances of a competitor; for products with designation of origin, it relates in each case to products with the same designation; if it doesn't take unfair advantage of the reputation of a trademarks, trade names, or other distinguishing marks of a competitor or of the designation of origin of competing products; if it doesn't present goods or services as imitation or replicas of goods or services bearing a protected trademark or trade name<sup>2</sup>.

### 5. The legal framework for advertising in Ethiopia: A critical overview on its implication for trade competition and consumer protection

#### 5.1 The FDRE constitution of Ethiopia

Under the Ethiopian law, everyone has the right to freedom of expression without any interference<sup>3</sup>. It includes freedom to seek, receive and impart information and ideas of all kinds (emphasis added), regardless of frontiers, orally, in writing or in print, in the form of art, or through any media of his choice<sup>4</sup>. According to this article, imparting information and ideas of all kind include the dissemination of advertisements through different medias or modes.

Freedom of the press, in other way include elements like an access to information of public interest<sup>5</sup> and this could be related to consumers' right to get sufficient and accurate information of goods or services he/she purchases<sup>6</sup>.

Freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed except through legal limitations which can be laid down in order to protect the wellbeing of the youth, and the honor and reputation of individuals. Any public expression of opinion intended to injure human dignity shall be prohibited by law<sup>7</sup>. Under this sub article, individuals could be both physical and legal persons.

An advertisement that affects the wellbeing of youth and more impliedly of minors is prohibited. Thus, any advertisement made contrary to the mental capacity of minors and also which do have an abusive nature is prohibited by law. Moreover, dissemination of advertisement having a content of disrespecting or affecting other competitors' reputation and good will which could disparage or ridicule in other word is prohibited and can be taken as an act in violation of the constitutional principle.

#### 5.2 The 1960 civil code of Ethiopia provisions

The 1960 civil code of Ethiopia define unfair competition as a commission of an offence through false publications or by any other means contrary to good faith that compromises the reputation of a product or the credit of a commercial establishment<sup>8</sup>. False Publication could be made in any book, magazine, newspaper, periodical, journal, and pamphlet whereas the expression of the article "any other means" could be any modes of advertisement dissemination other than the printing stuff. According to this article, the effect of the false dissemination of information should be contrary to good faith and should have an effect on the reputation of the product or the firm so as to be amounted to unfair competition.

The code also provides that supplying false information is an offence<sup>9</sup>. An offence is committed through a dissemination of false information to others, either intentionally or negligently where he knows that the person to whom the information is supplied or another given person, will act upon the information and thereby suffer

<sup>1</sup> Ibid Section 29(b)

<sup>2</sup> Rajat Mittal and Aishwarya Singh, *Comparative advertising: An eye for an eye making the consumer blind*, National law institute university, Journal of intellectual property rights, Vol.13, January 2008, pp. 23

<sup>3</sup> Constitution of the FDRE, Proclamation No.1/1995, Article 29(1)

<sup>4</sup> Ibid Article 29(2)

<sup>5</sup> Ibid Article 29 (3b)

<sup>6</sup> Trade competition and consumers protection proclamation, Proclamation No 813/2013, *Federal NegaritGazeta*, 20<sup>th</sup> year No. 28, Article 14

<sup>7</sup> Constitution of the FDRE, Proclamation No.1/1995, Article 29(6)

<sup>8</sup> Civil Code of Ethiopia, Proclamation No.165/1960, Fed. Neg. Gaz., 19<sup>th</sup> Year No.2, Article 2057

<sup>9</sup> Ibid Article 2059

damage<sup>1</sup>. This provision is applicable for instance when an advertisement is made concealing the real price of the product, and where the buyers could not be there, to the selling place, had they known the real price and costing their time and money which means they incur damage for being there. Also, advertisement of expired products as if they are of non-expired incurs damage to the buyer who took the information as true information. Under the same article, an offence of falsifying information could be said committed where he is duty bound by the rules of his profession to give correct information<sup>2</sup>. These offences are mostly committed when producers falsify the necessary information that label of the product could contain including the country of origin. It also includes the duty of the seller on providing the necessary information to the buyer most especially for those less experienced groups like the illiterates (uninformed or ignorant) and minors.

### 5.3 The 1960 Commercial code of Ethiopia provisions

A business consists mainly of a good will and other incorporeal elements like the trade name, the special designation under which the trade is carried on, the right to lease the premises in which the trade is carried on, patents or copyrights and such special rights as attach to the business itself and not to the trader<sup>3</sup>.

The good will result from the creation and operation of a business and is of a value which may vary according to the probable or possible relations between a trader and third parties who may require from him goods or services<sup>4</sup>.

The commercial code lists cases which are regarded as unfair competition<sup>5</sup>:

- Any act of competition contrary to honest commercial practice
- Any acts likely to mislead customers regarding the undertaking, products or commercial activities of a competitor
- Any false statements made in the course of business with a view to discrediting the undertaking, products or commercial activities of a competitor.

Sub-article (2) (b) of Art.133 broadens the touchstone of liability for unfair competition by making actionable any false statement that is likely to discredit or compromise the reputation of a business or its activities, when made in a competitive context<sup>6</sup>.

### 5.4 The 2004 Criminal code of Ethiopia provisions

The criminal code of Ethiopia, regarding crimes of fraud, with intent to obtain for himself or to procure for a third person an unlawful enrichment, fraudulently causes a person to act in a manner prejudicial to his rights in property, or those of a third person whether such acts are of commission or omission, either by misleading statements, or by misrepresenting his status or situation or by concealing facts which he had a duty to reveal, or by taking advantage of the person's erroneous beliefs is punishable with simple imprisonment and if it is grave, rigorous imprisonment not exceeding one year. Some traders makes pretty deceit in order to obtain an unjustifiable enrichment such as filching and such fraudulent obtaining of benefits is liable to the punishments regarding petty offences<sup>7</sup>.

The provision has elements related to fraudulent acts of persons (the physical and legal) with intent to unlawfully enrich themselves or third parties. The fraudulent act, according to the article, is made through misleading statement or by misrepresenting his status or situation by concealing facts that he had a duty to reveal. Thus, the criminal code has a good principle on dissemination of information, although advertisement is not mentioned directly. It also impliedly shows the role of advertisement actors when it says "to enrich those of a third person".

The positive aspect which I mention is that fault related to information could either be made by commission or omission which means the advertiser is duty bound on the disclosing of information that he is obliged to reveal.

The law also prohibit an intentional commission of abusive acts against another an abuse of economic competition by means of direct or any other process contrary to the rules of good faith in business, in particular, by discrediting another, his goods or dealings, his activities or business or by making untrue or false statements as to his own goods, dealings, activities or business in order to derive a benefit there from against his competitors; or by taking measures such as to create confusion with the goods, dealings or products or with the activities or business of another; or by using inaccurate or false styles, distinctive signs, marks or professional titles in order to induce a belief as to his particular status or capacity; or by granting or offering undue benefits to the servants,

<sup>1</sup> Ibid Article 2059(a)

<sup>2</sup> Ibid Article 2059(b)

<sup>3</sup> Commercial Code of Ethiopia, Proclamation No.166/1960, Fed. Neg. Gaz., 19<sup>th</sup> Year No.3, Article 127

<sup>4</sup> Ibid Article 130

<sup>5</sup> Ibid Article 133

<sup>6</sup> See Alemayehu Fantaw, at supra note 50, P.9

<sup>7</sup> The Criminal Code of Ethiopia, Proclamation No.414/2004, 9<sup>th</sup> of May, 2005, Article 692 (1)



agents or assistants of another, in order to induce them to discover or reveal any secret of manufacture, organization or working; or by revealing or taking advantage of such secrets obtained or revealed in any other manner contrary to good faith, is punishable, upon complaint, with a fine of not less than one thousand birr, or simple imprisonment for not less than three months<sup>1</sup>.

Article 720 and 721 also criminalize such specific cases of unfair competition as infringements of intellectual property rights.

### **5.5 The Ethiopian Advertisement proclamation No.759/2012**

Ethiopian advertising is governed by the proclamation on advertisement (proclamation No.759/2012)

“Advertisement” means a commercial advertisement which is disseminated through the means of advertisement dissemination to promote sales of goods or services or to publicize name, logo, trademark or objectives, and includes public and private advertisements<sup>2</sup>.

According to this proclamation, advertisement covers only commercial advertisements that are related to the commercial activities of the sale of goods or services disregarding the regulation of promoting hiring and rental activities.

The proclamation has been enacted having significant roles by influencing the activities of the public in commodity exchange or service rendering in the economic, social and political development of the country; in establishing healthy market competition in the market-led economic system of the country; and in regulating advertisement so as to protect possible harm that could be inflicted on the rights and interest of the people and the image of the country<sup>3</sup>.

The law is applicable on advertising agent, advertisement disseminator and advertiser working in Ethiopia; advertisement prepared and disseminated in Ethiopia; advertisement disseminated through the internet website being designed in Ethiopia or abroad, by an organization established in Ethiopia or by a person who resides in Ethiopia, advertisement disseminated through any foreign newspaper or magazine imported and which focuses primarily on domestic issues; and advertisement produced in Ethiopia primarily for local audience and disseminated from abroad by a foreign broadcasting entity<sup>4</sup>.

In its content and presentation, an advertisement should not be contrary to the law or moral; be free from misleading or unfair statements; respect the social and traditional values of the society and not infringe the legitimate interests of consumers; describe the true nature, use, quality and other similar information of the product or service intended to be promoted; not undermine the commodities or services of other persons protect the dignity and interests of the country; and respect professional code of conduct<sup>5</sup>.

The Ethiopian law prefers to use unlawful or immoral advertisement disregarding abusive and comparative and also disparaging advertisements as a title but mixing up concepts, it lists something related to that<sup>6</sup>. It will be better if the proclamation divides violations which can be made through advertisements into unlawful advertisement; immoral and abusive advertisement; misleading and deceptive advertisement; and comparing and disparaging advertisement.

Advertisement that contains image, speech or comparisons that violates the dignity, liberty or equality of mankind in relation to language, gender, race, nation, nationality, profession, religion, belief, political or social status; advertisement that violates the rules of good behavior or human dignity of individuals, nation, nationalities or peoples, and defames the reputation of an organization; advertisement that undermine the national or regional state’s flag, emblem; advertisement that undermine the dignity or emotional feeling of physically disabled person or a person living with HIV/AIDS or suffering from other disease; advertisement that instigate an action that could endanger the physical or mental health and security of the people; advertisement with obscene written message, image, picture, film or similar presentation; are abusive advertisements.

Commercial advertisement presented by wearing defense force or police uniforms, decorations or insignia; advertisement that instigates chaos, violence, terror, conflict or fear among people; advertisement using the name, image or photograph of a person without his consent, or artistic or creative works protected by the law without authorization by the concerned person; advertisement contrary to traffic safety or environmental protection; advertisement promoting a product the expiry date of which is approaching or has already lapsed; advertisement causing sound pollution through any sound magnifying machine, which does not comply with the sound limit set by the appropriate governmental body; advertisement with content or presentation prohibited by other laws or that promotes the violation of any law are unlawful advertisements.

Advertisements that gives false information about the country or place of origin, date of production, nature,

<sup>1</sup> Ibid Article 719

<sup>2</sup> Art.2(1) of the Advertisement proclamation No.759/2012

<sup>3</sup> Ibid; The Preamble

<sup>4</sup> Ibid Art.3

<sup>5</sup> Ibid, Article 6

<sup>6</sup> Id Article 7 and 8

ingredients, weight, volume, use or acceptance by consumers of a product; gives false information about the price of goods or service including tax and other lawful fees or about obtaining copy right or patent right, quality and standard certification or prize from a recognized body or other related information; advertisement presenting a product or a service beyond its real usage, quality, flavor, taste, ingredient, strength, durability or sufficiency; an advertisement which uses false testimony; are deceptive advertisement.

Advertisement presenting the products or services of others as one's own; advertisement promoting a product or service contrary to the rules of fair trade competition by undermining those consumers who do not use the product or the service; advertisement that undermines a product or service, or the capacity or reputation of a competitor by comparing and contrasting it with one's product or service, or that degrades local products or services with the aim of promoting preference to an imported product or service; are advertisements that are unfair and also comparative. Advertisement containing superlatives such as "the first of its kind", "the only one", "for the first time", "never ever before", or "unparalleled", if it cannot be proved with evidence; any other similar advertisement misleading or unfair with its content or presentation are comparing and disparaging advertisements.

Advertisement that mixes local language with a foreign language unless a term taken from the foreign language has no equivalent in the local language is an unfair advertisement.

The advertisement proclamation leaves room for penalties under article 34 and permits other laws to be applicable if they punish with severe penalties. Any advertisement disseminator who is engaged in the production of advertisement without obtaining advertising business license from the appropriate governmental body, is punishable with fine from Birr 150,000 (one hundred fifty thousand) to Birr 300,000 (three hundred thousand) and with rigorous imprisonment from 7 (seven) to 15 (fifteen) years and the goods and/or the service delivery equipment and/or manufacturing equipment with which the business was being conducted shall in addition be confiscated by the government<sup>1</sup>.

If any advertisement has encountered a violation in its content and presentation, or if it is unlawful or immoral, or if it is misleading or unfair, or if it fails special certification where it requires so, or where lottery advertisement is made without authorization by the law or a permission obtained from the appropriate government body to engage in a lottery business, violation of rules regarding counter advertisement, where a person produces or sells a product or renders a service whose advertisement is prohibited or restricted under article 25 and article 26 of the proclamation and being a sponsor for advertisement dissemination subject to the prohibition is punishable with a fine not less than Birr 20,000 and not exceeding Birr 150,000<sup>2</sup>.

Advertisements related to drugs and narcotic substances are punishable with a fine not less than 30,000 and not exceeding 250,000<sup>3</sup>.

In addition to the fine specified under sub-article (1) of this Article, the income obtained by the convicted person from the illegal advertisement activity shall be confiscated<sup>4</sup>.

## **5.6 The Trade Competition and Consumer protection proclamation**

The Trade Practice Proclamation No. 329/2003 was the first which paved the way for compiled and organized competition law in the country despite its shortcomings and it was after this law, Trade Practice and Consumers' Protection Proclamation No. 685/2010 have been enacted with some improvements and finally; the new Trade Competition and Consumer Protection proclamation No. 813/2013 enacted and came to effect on March, 2014.

The TPP defines unfair competition as any act or practice, in the course of commercial activities that aims at eliminating competitors through different methods<sup>5</sup>. Any act that causes, or is likely to cause, confusion; that damages, or is likely to damage the goodwill or reputation of another enterprise falsely; that misleads or is likely to mislead the public; any false or unjustifiable allegation that discredits or is likely to discredit with respect to another enterprise or its activities, in particular the products or services offered by such enterprise are deemed to be acts of unfair competition<sup>6</sup>.

Issuance of any false or misleading commercial statement or notice, concerning goods and services in respect of their quality, quantity, volume, manufacturing process, component, strength, or the time and place of the production of goods or the rendering of services, or other similar conditions could also be taken as abuse of dominance in the TPP<sup>7</sup>. The proclamation missed the correct meaning of an abuse of dominance and mixed it up with the concept of misleading and abusive advertisements. An abuse of dominance is where a firm's dominant position is abused to reduce or get rid of other competitors from market but the TPP makes false and misleading

<sup>1</sup> Commercial registration and business licensing proclamation of Ethiopia, Proclamation 686/2010, Article 60(1)

<sup>2</sup> Article 34(1)c of the advertising proclamation

<sup>3</sup> Ibid, Article 34(1) d

<sup>4</sup> Ibid, Article 34(2)

<sup>5</sup> Trade Practice Proclamation No. 329/2003, *Federal NegaritGazeta*, 9th year, No.49, Article 10(1)

<sup>6</sup> Ibid Article 10(2) (a, b, c & e)

<sup>7</sup> Ibid Article 11(2) (f)

commercial statements and notices an abuse of dominance while these acts could be done by non-dominant firms of a market and it is not a question of dominance which makes them deceive consumers whilst it is the thirst of acquiring a dominant market position over the others through diverting consumers' purchasing decision towards the products and services they are promoting.

Approaching to proclamation No. 685/2010, compared to the previous proclamation, it has the goal of protecting consumers from misleading market conducts, and to establish a system that is conducive for the promotion of competitive market<sup>1</sup>. Any act or practice carried out in the course of trade, which is dishonest, misleading, or deceptive and harms or is likely to harm the business interest of a competitor have been deemed to be an act of unfair competition<sup>2</sup> and also any act that causes or is likely to cause confusion with respect to another business person or its activities and any false or unjustifiable allegation that discredits, or is likely to discredit another business person or its activities, in particular the products or services offered by such business person; comparing goods and services falsely or equivocally in the process of commercial advertisement; with a view to acquire an unfair advantage, disseminating to consumers or users, false or equivocal information including the source of which is not known, in connection with the prices or nature or system of manufacturing or manufacturing place or content or suitability for use or quality of goods and services are unfair competitive acts, which are related to false information, prohibited by law<sup>3</sup>.

Moreover, the proclamation provided consumers' right to get sufficient and accurate information or explanation on the quality and type of goods and services he purchases which is also an obligation on the seller to give sufficient and accurate information about the quality and type of goods and services he sells<sup>4</sup>.

The TPCPP also provides rules regarding commercial advertisements<sup>5</sup> on the nature, components and quantity of the goods; or the source, weights, volume, method of manufacturing, date of manufacturing, expiry date of the goods and how it is used; or the manufacturer or the supplier of the goods or services; or the place of delivery, basic nature, the use and on how to use it, as far as services is concerned; or conditions of purchase, warranty and services after purchase, conditions of payment and prices of the goods and services; or quality marks; or trade mark and emblem; or results expected by using the goods or services.

Issuing misleading information on quality or quantity or volume or acceptance or source or nature or component or use of goods and service may have; failing to disclose correctly the newness or model or the decrease in service or the change in or re-fabrication or the recall by the manufacturer or the second hand condition of goods; describing the goods and services of another business person in a misleading way; failing to sell goods and services as advertised or advertising goods or services with intent not to supply in quantity consumers demand, unless the advertisement discloses a limitation of quantity; making false or misleading statements of price reduction are unfair and misleading acts that are prohibited from being committed by any person or business person<sup>6</sup>.

In the Trade Competition and Consumer Protection proclamation, the current one, one of the unfair competitive acts that have direct impact on the interests of consumers is the commission of any act by one business person that causes or is likely to cause confusion with respect to another business person or his activities, in particular, the goods or services offered by such business person<sup>7</sup>. When there is confusion as to the identity of producers, the quality, mark and types of goods that they provide, consumers may not able to choose goods and services they need. In addition, unfair competition may have effect on the interests of consumers when there is comparison of goods and services falsely or equivocally in the process of commercial advertisement<sup>8</sup>.

Any false or unjustifiable allegation that discredits, or is likely to discredit another business person or its activities, in particular the goods or services offered by such business person<sup>9</sup> is also an unfair competitive act that ridicule or disparage competitors.

Comparing goods or services falsely or equivocally in the course of commercial advertisement is also an unfair competitive act<sup>10</sup>. It is also unfair that dissemination of false or equivocal information in connection with the price or nature or system of manufacturing or manufacturing place or content or suitability for use or quality of goods or services<sup>11</sup>.

Getting sufficient and accurate information or explanation as to the quality and type of goods or services

<sup>1</sup> Trade Practice and Consumer Protection Proclamation No.685/2010, Federal NegaritGazeta, 16th year, No. 49, Preamble

<sup>2</sup> Ibid Article 21(1)

<sup>3</sup> Ibid Article 21(2)

<sup>4</sup> Ibid Article 22(1)

<sup>5</sup> Ibid Article 27

<sup>6</sup> Ibid Article 30(1-5)

<sup>7</sup> Trade Competition and Consumer Protection Proclamation No.813/2013, Art 8(2) a

<sup>8</sup> Ibid, Art 8(2) (d)

<sup>9</sup> Ibid Article 8(2) (c)

<sup>10</sup> Ibid Article 8(2) (d)

<sup>11</sup> Ibid Art.8(2)(e)

purchased is one of the rights of consumers listed under the TCCPP<sup>1</sup>.

According to the proclamation, commercial advertisements about goods and services announced by any means may not be false or misleading in any manner particularly on the nature, components and quantity of the goods. It impliedly shows what commercial advertisements should contain: the source, weight, volume, method of manufacturing, date of manufacturing and expiry date of the goods and how to use; the manufacturer of the goods or the supplier of the service; the place of delivery of the service, its basic nature and use and how to use it; conditions of purchase of the goods or the service, after sales services, warranty, price and conditions of payment; quality marks; trade mark and emblem; and results expected by using the goods or services<sup>2</sup>.

## 6. Conclusion and Recommendation

### 6.1 Conclusion

Violating fair advertisement is one of unfair competitive acts that could harm or injure consumers' decision towards purchasing of goods and services in one hand and also of trade competition on the other hand, through the dissemination of wrong information by the instrumentality of different modes or kinds of advertisement dissemination.

Related to consumers, advertisement could mislead and deceive consumers by using false and equivocal information. It may also affect the society at large by an abusive advertisements that harms the dignity, liberty or equality of gender and race, and also abusive in terms of indecent images and videos.

Related to traders, advertisement could disparage and ridicule the good will and reputation of other competitors so as to steal away customers even by comparing in a direct way. Hence, advertisements containing comparisons should be so designed that the comparison is not likely to mislead, and should comply with the principles of fair competition.

Generally, advertisement could be disseminated through oral media, internet, print and on labels affixed on the product itself. Thus, in all these medias, it should focus only on the main points that consumers could rely on for decision making process like the content, objective, quality, quantity, country of origin, ingredients and the like in a fair and ethical manner.

### 6.2 Recommendations

- 1) The scope of the law regulating advertisement will be better if it includes the hire and rental of products rather than making the focus only on the sale of goods and services since advertisements of these activities is also being made and heard in our day to day life.
- 2) Comparative advertising, benefiting consumers, is valid with certain limits. Therefore, the law should not generally prohibit comparative advertisements which are made through an implied reference of competitors' product. Thus, the law should first distinguish direct and indirect comparative advertisements; then should specifically prohibit what is intended to be prohibited.
- 3) Rules regarding advertisements concerning medicines or medical products promoted without first obtaining the authorization of the relevant department at the Health Ministry shall be included in the proclamation because medicines, if not regulated, could be dangerous to the health and life of the society.
- 4) The three month period given for advertising agents or advertising actors should be reviewed because of its unfairness to the previous company as well as for consumers to recognize which one of the products is preferential over the other in such short period of time and it is obvious that it creates confusions.
- 5) Since creating an informed buyer is advantageous for both producers and buyers, it is not a big deal and worthy of having a provision dealing with the prohibition of advertisements that mix local language with a foreign language as an unfair and misleading act. So, I recommend that this prohibition could be unfair but in any way misleading.
- 6) It is better if the law includes regulation of oral advertisements that could be done through the media of mouth.
- 7) Since the main goal of advertisement is diverting audiences'/ potential customers' decision making of purchase towards the advertised goods/ services, traders use their maximum effort to do so even to the extent of harming other competitors through disgracing and make ridiculed. They can also steal the brand name and mark of the product. Despite the fact that these acts are criminal, the advertisement law does not impose any criminal liability on violators except the punishment made in terms of money and the confiscation of property. Thus, imposing criminal liability is recommended.
- 8) In case of violations of those prohibited advertisement acts, it is stated that the income obtained by the convicted person from the illegal advertisement activity shall be confiscated. Truly speaking,

<sup>1</sup> Ibid Article 14(1)

<sup>2</sup> Ibid Article 19

differentiating what income is acquired from the illegal advertisement is difficult because uninformed purchaser could also be one of the purchasers. Rather than confiscating income from the illegal advertisement, I recommend the punishment to be made in percentile from the annual turnover or from the whole revenue.

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