

# New Game Rules for Advertising in Ukraine



By Sergiy V. TKACHENKO

Advertising in Ukraine is regulated mainly by the *Advertising Act* (the "Act"). Some aspects are also regulated by the *TV and Radio Broadcasting Act*, *Printed Mass Media Act*, *Protection Against Unfair Competition Act*, *Copyright and Related Rights Act*, *Protection of Rights to Trademarks Act*, *Protection of Consumer Rights*, *Languages Act* and others.

The Act has recently become one of the most publicly debated laws in Ukraine. During the last 8-9 months it has been substantially re-edited. However, there are a number of draft amendments to be implemented into the Act. The high level of public attention given to regulation of advertising and intensive lawmaking process in this field is a result of the substantial growth of Ukrainian media and advertising market, which appears to be prospective and dynamic.

On 11 July 2003 the Parliament adopted a new edition of the Act. It put an end to long-time polemics between major media and advertising market players (mainly, TV and radio broadcasters, printed mass media, advertising agencies, producers of alcohol, tobacco and pharmaceuticals) and government bodies (healthcare, competition and consumer protection agencies) with respect to some "cornerstone issues", in

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particular to regulation of TV and radio advertising, outdoor and indoor advertising and advertising of certain types of products (such as tobacco, alcohol, medicines, weapons, certain financial services, securities).

Regardless of the fact that parties to the polemics had, in some cases, opposite views, they reached a consensus. As a result, the Act now regulates many advertising aspects in a new fashion. However, it contains some ambiguous provisions which may create some difficulties for market players in their business as well as for regulatory authorities in their law-enforcement practice.

## General requirements regarding advertisements

Pursuant to the Act, legality, accuracy, authenticity, application of forms and methods, which shall not cause damages to consumers are among the basic principles of advertising. Advertisements shall comply with general principles of fair trade and competition and shall not undermine the confidence of society in advertisements. Advertisements shall not contain also any information or images contradicting generally recognized rules of ethics, morality or humanity.

In accordance with the Act it is prohibited to:

- Disseminate information on goods, production and/or circulation of which is/are banned under Ukrainian law;
- Use discriminating statements concerning origin and parentage of a person, social and property status, race, nationality, sex, political convictions, religious beliefs, education, language, occupation, domicile, etc.;
- Call to activities, which may result in violations of law, damaging of people's health or environment, or incitement to neglect safety measures;
- Apply methods and technologies, which have an effect on the subconsciousness of consumers;

- Use discriminating statements with regard to persons who do not use the promoted goods and services;

- Advertise goods, which are subject to mandatory state certification, or production or sale of which is subject to licensing or permission, without respective certificate, license or permission;

- Use an image or name of an individual without his/her permission;

- Imitate or copy text, image, musical or sound effects, which are used in advertisements of other goods, if otherwise provided by Ukrainian intellectual property laws.

- Disseminate advertisements containing elements of cruelty, violence, pornography or disparagement.

The Act also provides other prohibitions and restrictions with respect to the content of advertisements.

## Language requirements

Pursuant to Article 6 of the Act in its effective wording *the dissemination of advertisements in Ukraine shall be made in accordance with the laws on languages in Ukraine. Trademarks may be used in advertisements in a language in which they are protected in Ukraine.* This clause was introduced into the Act in February 2004 in order to correct the discriminating provision adopted in July 2003.

Pursuant to Article 6 (July 2003) of the Act, *all advertisements shall be disseminated in Ukraine exclusively in Ukrainian. Duly registered trademarks may be used in advertisements in their original language, but in this case such trademarks shall be dubbed into Ukrainian. Trademarks registered on behalf of and in the name of Ukrainian companies may be used in advertisements exclusively in Ukrainian.* The adoption of this provision resulted in (i) the creation of substantial restrictions for trademark owners and for non-Ukrainian language mass media and (ii) in public debates concerning its compliance with other laws governing the activities of mass media, rights of na-

tional minorities, trademark protection, etc. A number of professional associations, mass media and trademark owners expressed their negative attitude with respect to this provision. Article 6 was one of the most contradictory parts of the new edition of the Act.

However, the ambiguity was removed in February 2004 and Article 6 of the Act now appears to be in compliance with other Ukrainian media and intellectual property laws and international treaties to which Ukraine is a party.

## TV and radio advertising

Under Article 13 of the Act, TV and radio companies have been substantially limited in airtime, which may be assigned for advertising. In particular, the time assigned for advertising on a certain TV channel or radio station, shall not exceed 15 % of actual airtime on such a TV channel or radio station during every astronomical day. This restriction shall not apply to specialized advertising TV channels and radio stations. In addition, the time assigned for advertising on a certain TV channel or radio station, shall not exceed 20 % of airtime on such a TV channel or radio station during every astronomical hour. However, the Act fails to explain whether the 20 % restriction applies to specialized advertising TV channels and radio stations. Such a gap in the regulation of TV and radio advertising may create legal confusion and result in problems in business of specialized advertising TV and radio companies.

## Tobacco and alcohol advertising

The Act contains several strict requirements as to advertising of tobacco and alcohol. In particular, it provides that (i) advertising of tobacco, trademarks and other IP rights related to tobacco shall be completely prohibited on TV and radio, and (ii) advertising of alcohol, trademarks and other IP rights related to alcohol shall be prohibited on TV and radio from 6 a.m. to 11 p.m.

Under the Act, advertising of tobacco and alcohol, trademarks and other IP rights related to alcohol and tobacco shall be completely prohibited:

- On the first and last pages of newspapers;

- On the first and last pages of covers of magazines and other publications;

- Through indoor advertising;
- Through placement of advertisements on transport facilities;
- Through events of an advertising nature (except for specialized exhibitions).

In addition, it is prohibited:

- To place advertisements of tobacco and alcohol in printed mass media and publications aimed at persons who are under 18 or in certain parts of the printed mass media and publications aimed at such persons;

- To use images of persons who are under 18 in tobacco and alcohol advertisements;

- To depict the process of smoking tobacco or drinking alcohol in advertisements;

- To place an advertisement of tobacco and alcohol closer than 300 meters to kindergartens, schools or other educational institutions where persons who are under 18 study.

Alcohol and tobacco advertisements must contain special health warnings. Health warnings must fill not less than 15 % of the advertisement space and must contrast with the advertisement.

## Draft amendments

As noted above, there are a number of draft amendments to be implemented into the Act. Most of them are related to (i) regulation of tobacco and alcohol advertising, (ii) regulation of social advertising and to (iii) implementation of more clear and single meaning terminology in order to remove any ambiguous interpretation of terms contained in the Act.

As regards the regulation of tobacco and alcohol advertising, there are draft amendments concerning (i) complete banning of tobacco and alcohol advertising, (ii) change of content and upsizing of health warnings in tobacco and alcohol advertisements, etc.

Moreover, there is also a very important *On Political Advertising Draft Act* aimed at regulation of the advertising of political parties and contenders to the Presidency, membership in the Parliament and local government bodies during election campaigns. ■

advertisement

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