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Legal Protection of Online Consumers Against Misleading Online Advertising

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ABSTRACT

Electronic advertising is currently one of the most important pillars underpinning electronic commerce, given the central role it plays in introducing and promoting goods and services across various digital media such as websites, social media platforms, mobile applications, and email. This type of advertising has become an effective marketing tool relied upon by economic operators to reach the widest possible segment of consumers, owing to its rapid dissemination, lower cost compared with traditional advertising, and its ability to target specific audience groups according to their interests and consumer behavior. However, these advantages may sometimes be exploited unlawfully, where some economic operators resort to misleading electronic advertising by providing incorrect or exaggerated information about product or service characteristics, prices, quality, or origin, or by concealing material data that could influence the consumer's will and induce them to contract based on a mistaken perception of reality. This undermines the recipient's consent to the advertisement, which is one of the essential pillars of the validity of legal acts, restricts their freedom of choice, and breaches the principles of transparency and integrity that must govern electronic commercial transactions.

Recognizing the risks that misleading electronic advertising may pose to consumers and to trust in the digital environment, the Algerian legislator has established a set of legal mechanisms aimed at protecting advertisement recipients and guaranteeing their rights. This protection is embodied in enabling the consumer to resort to the judiciary to claim redress for the harm suffered, by filing a civil action to obtain compensation for material or moral damages resulting from misleading advertising, whenever the elements of civil liability are met. The legislator also provided for the possibility of initiating criminal proceedings against the perpetrator when misleading advertising constitutes a punishable offense, thereby achieving general and specific deterrence and contributing to strengthening confidence in electronic transactions and protecting the consumer from various forms of fraud and deception in the digital environment.

Keywords: Electronic consumer; misleading electronic advertising; means ;protection ;civil action ;criminal action

Introduction:

Electronic advertising is considered one of the most important facets of economic activity, especially with the emergence of tremendous scientific advances in digital communication networks and the rise of electronic commerce as one of the tributaries of the information revolution. Through it, the consumer is enlightened and provided with the necessary and sufficient information about the product. It enables the consumer to review everything offered in electronic markets and to become acquainted with the goods and services available in this domain, thereby assisting in decision-making and choosing the appropriate product.

The Algerian legislator defined electronic advertising in Article 6, paragraph six, of the Electronic Commerce Law 18-05, which states: "Electronic advertising is any announcement that aims directly or indirectly to promote the sale of a good or services by means of electronic communications."

Despite the importance of electronic advertising and its role in informing the consumer about goods and services, it has become a tool for misleading and deceiving the consumer through the use of deceptive and exaggerated methods when presenting advertised products, with the aim of attracting the recipient and urging them to contract for the advertised products in order to achieve profit. Misleading in advertising may concern elements intrinsic to the products themselves, or elements extraneous to the products, by including misleading phrases in the advertisement that affect the recipient's satisfaction and freedom of choice. It may also harm competition among economic agents by imitating an advertisement or tarnishing a competitor's reputation. In this context, the following problem can be posed:

To what extent are the means of protecting the consumer from misleading electronic advertising effective under Algerian legislation?

To answer this problem, we proposed dividing our study into two sections. In the first section, we addressed the civil action as a means of protecting the consumer from misleading electronic advertising. In the second section, we dealt with the criminal action as a means of protecting the consumer from misleading electronic advertising.

First Section: Civil Actions as a Means of Protecting the Consumer from Misleading Electronic Advertising

The electronic consumer may fall victim to deceptive or misleading electronic advertising as a result of the economic agent's use of deceptive and exaggerated methods when presenting the products subject to advertising, which induces the consumer to contract. Therefore, the Algerian legislator has provided legal protection for this consumer by allowing them to bring an action for specific performance, an action for deceit, or a claim for compensation under tort liability. Below we will address these actions in turn.

First: Action for Specific Performance

If the advertiser advertised a particular product or service over the Internet for the purpose of contracting and the consumer accepted the offer, and thereafter the advertiser refrained from performing their obligation by delivering the item of the same kind as that contained in the commercial advertisement, the consumer may in this case resort to filing an action for specific performance requesting enforcement of the obligation in accordance with Article 164[1] of the

[1] Article 164 of the Algerian Civil Code provides: "The debtor, after being warned in accordance with Articles 180 and 181, shall be compelled to perform his obligation in kind, whenever that is possible." Order No. 75-58 dated 26 September 1975 containing the Civil Code, Official Journal of the People's Democratic Republic of

Algerian Civil Code. If the advertiser does not perform their obligation, the consumer may request delivery of the product or service of the same kind as that contained in the commercial advertisement[1].

The consumer also has the right to demand the value of the item from the advertiser by way of compensation, that is, performance against payment. Instead of requesting specific performance, the injured party may request rescission of the contract for the advertiser's breach of performance. On the other hand, the injured party may accept the nonconforming sale in exchange for a price reduction if a deficiency in the value of the delivered sale compared to its value stated in the advertisement is proven. This is provided for in Article 365 of the Algerian Civil Code[2].

Bringing an action to enforce the contract requires the formal conditions applicable to any lawsuit, namely standing, interest, and capacity. It also requires the procedural conditions of jurisdiction both in subject matter and territory, and filing the action within the time limits set by the Code of Civil and Administrative Procedure[3].

Regarding territorial jurisdiction, in an action to enforce a contract arising from misleading electronic advertising on the Internet, jurisdiction is linked to the domicile of the defendant, who may often have no clear domicile or may not have a domicile within Algeria. Therefore, rules of international jurisdiction must be applied. In this regard, Article 41 of the Algerian Code of Civil and Administrative Procedure provides: "A foreigner may be required to appear before Algerian judicial authorities to perform obligations contracted in Algeria even if they are not resident in Algeria."[4]

Conditions for specific performance include the following[5]:

1. That specific performance be possible: meaning the consumer has the right to demand specific performance from their debtor (the advertiser) as long as it is possible. If performance becomes impossible, the claim for specific performance loses its purpose. The cause of impossibility is then examined. If it resulted from the advertiser's fault, the advertiser is liable for compensation unless it is proven that the impossibility arose from a cause beyond their control. The same applies when the debtor delays in performing their obligation[6].
2. That the creditor (the consumer) request specific performance or that the debtor (the advertiser) offer it of their own accord: if the debtor offers specific performance, the

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Algeria, No. 78, 30 September 1975, as amended and supplemented by Law No. 07-05 dated 13 May 2007, Official Journal of the People's Democratic Republic of Algeria, No. 31, issued 13 May 2007.

[1] Lamia Laajal, *Protection of the Consumer in Electronic Commerce Transactions*, Doctoral thesis in Private Law, University of Algiers 1, 2016, p. 40.

[2] Ben Khaled Fateh, *Protection of the Consumer from False or Misleading Commercial Advertising*, Master's thesis in Private Law, specialization in Business Law, Faculty of Law and Political Science, University of Sétif 2, 2014/2015, p. 176.

[3] Saliha Bonfla, "Civil Liability for Electronic Advertising," *Afaq for Sciences* Journal, Vol. 05, No. 17, September 2019, p. 105.

[4] Saliha Bonfla, ibid., p. 105.

[5] Anwar Sultan, *General Legal Principles*, Dar Al-Nahda Al-Arabiyya, Beirut, Lebanon, 1979, pp. 288–289.

[6] See the text of Article 176 of the Civil Code, Order No. 75-58 cited above.

creditor cannot refuse it. Nevertheless, the consumer and the advertiser may expressly or implicitly agree on compensation instead of specific performance.

3. That specific performance not be unduly burdensome to the debtor: meaning that if specific performance would inflict heavy loss on the debtor (the advertiser), for example if the costs are exorbitant and disproportionate to the harm suffered by the creditor (the consumer) as a result of specific performance, it may be refused[1].
4. Debtor's warnings: according to Article 164 of the Civil Code, the debtor (the advertiser) must be warned by a notice or by what amounts to a notice. If specific performance is effected by operation of law, no warning is necessary[2].

It can be said that the action for specific performance is an important means of protecting the consumer from the harms of misleading advertisements. However, resorting to it depends primarily on conferring contractual value on those advertisements, in addition to the availability of the conditions for bringing such an action.

It may be difficult to bring this action because it requires that the advertisement meet the conditions of an offer, which is not guaranteed in all advertisements. The second reason is advertising that leads to confusion because the deception does not result from the nonconformity of the good or service to the advertisement, but from the error that occurs in the consumer's mind affecting their choice. In such a case, an action for specific performance is of no avail[3].

Second: Action for Deceit

Deceit is inducing a person to believe something other than the truth by using fraudulent methods and means to compel them to contract. The use of deceptive means does not in itself vitiate consent; rather, what vitiates consent is the error that results and into which the other contracting party falls[4].

The Algerian legislator recognized deceit as a defect of consent within Article 86 of the Algerian Civil Code, which provides: "A contract may be annulled for deceit if the tricks resorted to by one of the contracting parties or their agent are of such gravity that without them the other party would not have concluded the contract. Silence deliberately maintained about a fact or circumstance is considered deceit if it is proven that the deceived party would not have concluded the contract had they known of that fact or circumstance."

It is required for misleading advertising to be considered deceit that three basic conditions be met, which are[5]:

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[1] Anwar Sultan, op. cit., p. 289.

[2] See the text of Article 183 of Order 75-58 dated 20 Ramadan 1395 corresponding to 26 September 1975 containing the amended and supplemented Algerian Civil Code.

[3] Sarah Azzouz, *Protection of the Consumer from Misleading Advertising in Algerian Law*, Doctoral thesis in Law, specialization in Business Law, Faculty of Law and Political Science, University of Batna 1, 2016/2017, p. 232.

[4] Ferhat Fatima Zahra; Qanfoud Ramadan, "The Effect of False or Misleading Commercial Advertising on the Consumer's Will in the Digital World," *Voice of Law* Journal, Vol. 08, Special Issue, 2022, p. 222.

[5] Mohamed Bouras, *The Legal Regime of Advertising for Products*, Dar Al-Jamia Al-Jadida, Alexandria, Egypt, 2014, pp. 338–339.

1. **Use of fraudulent methods:** These are all the tricks used to induce the contracting party into an error that pushes them to contract. An example is the advertiser imitating the distinctive marks of a competing economic agent or imitating its products or services or the advertising it conducts with the aim of attracting that agent's customers to it. Among the fraudulent methods we also mention lying, which consists of exaggerating praise of the advertised item; however, such lying, if it reaches a degree of gravity such that it was the principal motive for contracting, is considered deceit.
2. **Fraudulent methods may also rely on concealment,** which is deceit by omission, i.e., adopting a passive stance. Opinions and rulings differ regarding this, and the basic rule is that such omission does not constitute deceit except when it concerns a fact that must be disclosed pursuant to law, agreement, or contract.
3. **Intent to mislead on the part of the advertiser:** If the intent to mislead is absent, there is no deceit, but rather an error pursuant to Article 83 of the Civil Code.
4. **That the deceit be a motive for contracting,** i.e., that the deceit be the driving cause that led the consumer to conclude the contract, to the extent that it reaches a degree of gravity, as provided by Article 86, paragraph 01 of the Algerian Civil Code.

The first criticism directed at the theory of deceit is that to activate this mechanism it is necessary that a contract has linked the consumer and the economic agent, and that fraudulent acts and behaviors be committed by the advertiser. Added to that is the imbalance between the weak consumer and the powerful advertiser, who can exploit his professional expertise and strength to obstruct the consumer from proving the deceit committed against him. Thus, the theory of deceit is an inadequate and limited theory for protecting the consumer from misleading electronic advertising[1].

When the consumer brings an action for deceit to annul the contract, the sanction resulting from that is purely negative on two levels. The first is that it provides individual protection to the consumer at a time when individual consumers tend to avoid resorting to the judiciary, either due to ignorance, lengthy litigation procedures, or high litigation costs. The second lies in the material burdens the consumer faces in terms of effort and money, and moral burdens represented by psychological suffering in confronting the specialized advertiser. Moreover, the hoped-for result, namely annulment, is not sufficient to compensate for the damages that may befall the consumer as a result of misleading electronic advertising[2].

5. **Criminalization of financial benefit from acts of magic and sorcery,** whether in return for money or other benefit.

   Aggravation of penalties if:

- The crime was committed against a person in a state of weakness or vulnerability.
- It targeted a minor or a person lacking legal capacity.
- It was committed within the framework of an organized group.

[1] Khaldia Maizi, *The Legal Regime of False or Misleading Advertising*, Doctoral dissertation submitted for the PhD in Sciences, Specialization: Private Law, Faculty of Law and Political Science, University of Abou Bekr Belkaid, Tlemcen, 2018/2019, p. 292.

[2] Sarah Azzouz, op. cit., pp. 245–246.

- It resulted in serious harm to the victim.

Criminalization of publicity and advertising for magic and sorcery, including the use of media or electronic communication means and social media platforms to advertise or promote these activities.

Criminalization of preparing, possessing, or distributing the means used in practicing magic and sorcery if they are intended for committing these crimes in the cases specified by law[1].

Third: Action for Tort Liability

Tort liability is based on fault, damage, and the causal link between them. We focus on the legal basis of fault and its elements as follows.

1. **Legal basis of fault in Algerian law** The Algerian legislator did not provide a comprehensive definition of fault[2], leaving that to jurisprudence and doctrine, and limited itself to mentioning its effects in Article 124 of the Civil Code, which states: "Any act, whatever it may be, committed by a person through his fault and causing damage to another obliges the person who caused it to compensate."

From this text it is inferred that fault is the breach of a preexisting legal obligation with the person's awareness of that breach.

2. **Elements of fault in tort liability** Tortious fault in Algerian legislation rests on two essential elements:

a. **The material element (the wrongful act):** It is the deviation from the conduct of the reasonable person (the objective standard), such that the person exceeds the limits he must observe in his behavior. This deviation is measured by the conduct of an abstract person characterized by care, prudence, and vigilance in the same external circumstances of the defendant.

b. **The moral element (awareness and discernment):** For liability to arise, the perpetrator of the wrongful act must be aware and of sound mind regarding his actions. Article 125 of the Civil Code provides that a person is not held accountable for his harmful acts unless he is of sound mind, and Algerian law has set the age of discernment at 13 years.

As for the tort liability of the advertiser, the Algerian legislator established it on the basis of damage in order to protect consumer interests, so the advertiser is held liable for the damage he caused to the consumer as a result of his advertising even in the absence of a contract linking them[3].

If the advertisement contains misleading information and data related to the good or service, or if it conceals important information and data that would help the consumer identify the product, this constitutes negligence on the part of the advertiser because he seeks thereby to deceive the consumer by highlighting one or more attributes of the advertised good or

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[1] Articles 303-ter 41, Articles 303-ter 43 to 303-ter 46 of Order No. 24-06 dated 28 April 2024, amending and supplementing Order No. 66-156 dated 8 June 1966 containing the Penal Code, Official Journal of the People's Democratic Republic of Algeria, No. 49, issued 11 June 1966.

[2] Ali Ali Suleiman, *General Theory of Obligation: Sources of Obligation in Algerian Civil Law*, 9th ed., Diwan of University Publications, pp. 108–116.

[3] Mohamed Hassanein, *A Concise Treatise on Civil Liability*, Diwan of University Publications, pp. 21–62.

service[1], which are often important and essential for the consumer. The consumer is induced to contract on the basis of their existence, believing they meet his needs, whereas reality proves otherwise.

The Algerian legislator recognized the consumer's right to compensation for damages resulting from false or misleading advertisements through Article 40 of Law No. 18-05 on Electronic Commerce, which states: "Without prejudice to the victims' rights to compensation."[2]

Fourth: Action for Warranty Against Hidden Defects

The obligation to guarantee hidden defects is one of the most important obligations incumbent on the seller. The consumer who contracts to purchase a product assumes it is free of defects and suitable for its intended purpose; had the consumer known that the sold item had defects that diminish its use, he would not have proceeded to purchase it.

A hidden defect is defined as a defect that diminishes the value or utility of the sold item, and which the buyer cannot discover by examining the item with the care of an ordinary person[3].

Article 379 of the Algerian Civil Code provides: "The seller is bound by warranty if the sold item does not include the qualities he promised to exist at the time of delivery to the buyer, or if the sold item has a defect that diminishes its value or its utility according to the intended purpose as stated in the contract of sale, or as appears from its nature or use; the seller is therefore liable for these defects even if he was not aware of their existence."[4]

Conditions for a hidden defect include that the defect be old, i.e., it existed at the time the buyer received the sold item from the seller, whether the defect existed before the completion of the sale or occurred after it; the important point is that it existed at the time of delivery.

1. That the defect be hidden.
2. That the consumer was not aware of the defect.
3. That the defect be substantial.

Second Section: Criminal Actions as a Means of Protecting the Consumer from Misleading Electronic Advertising

Misleading or fraudulent electronic advertisements harm individual interests and their danger has extended to affect the national economy in general. Hence, it was necessary to prescribe penal sanctions and not be content with civil remedies. This prompted the Algerian legislator to prohibit this type of advertising and consider it a punishable crime.

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[1] Omar Zouda, *Civil Liability of the Professional*, Dar Houma, pp. 90–125.

[2] Ferhat Fatima Zahra; Qanfoud Ramadan, op. cit., p. 223. See also Ahmed Adel Rashid, *Advertising*, Dar Al-Nahda Al-Arabiyya for Publishing and Printing, Beirut (no year of publication), p. 45.

[3] Ibrahim Ben Daoud, *Consumer Protection Law*, 1st ed., Dar Al-Kitab Al-Hadith, Algiers, 2012, p. 24.

[4] See the text of Article 379-1 of Order 75-58 containing the Civil Code, as amended and supplemented, cited above.

First: The Consumer's Criminal Action on the Basis of the Crime of Fraud and Deception

To bring this action, the three well-known elements required for initiating criminal proceedings must be present, namely:

a. **The legal element** The legal element means the existence of a legal text that criminalizes the committed act and prescribes a penalty for it; a crime does not exist unless the act was criminalized by a text prior to its commission, in application of the principle of criminal legality enshrined in the Algerian Constitution and the Penal Code.

In the field of misleading electronic advertising, the legal element of the criminal action brought by the consumer is based on

Article 29, amending Article 372 of Order No. 66-156 dated 8 July 1966 containing the Penal Code, as amended and supplemented, which criminalizes the offense of fraud and punishes anyone who seizes or attempts to seize another's money by using fraudulent means, such as using false names or attributes or inducing the victim to believe in the existence of a fictitious project, profit, or fact, whenever that leads to the delivery of money.

The Algerian legislator criminalized all forms of fraud and deception pursuant to Article 29[1] of the Algerian Penal Code, No. 24-06, amending and supplementing Article 372 of Law No. 66-156 dated 8 July 1966. For the elements of this crime to be established, the means used to mislead another must be those exhaustively listed in Article 29 of the Penal Code, and the perpetrator must obtain the delivery of a sum of money, a movable, or any movable value by those means; the delivery must cause material loss to the owner of the thing; and finally the intent to defraud must be present[2].

Although the crime of fraud is not originally conceived to protect the consumer from misleading and false advertising, in the absence of a decisive statutory provision French jurisprudence has expanded the interpretation of fraud rules to apply them to misleading or false advertising and to allow recourse to the provisions of that crime to punish those who perpetrate deception in advertising. Nevertheless, the cited text is not sufficient to provide full protection to the consumer because of the difficulty of applying the text with respect to the elements of the crime[3].

Three essential elements must be present for misleading advertising to be considered fraud:

b. The material element

The material element of the crime of fraud and deception consists of three basic components:

- **The advertiser's use of a fraudulent means:** That is, a deceptive method must be used, and Article 29 of the Algerian Penal Code lists such methods exhaustively. The Algerian legislator did not define the fraudulent methods but specified them as follows:

[1] Article 29 of Law No. 24-06 dated 28 April 2024, amending and supplementing Order No. 66-156 containing the Penal Code, Official Journal, No. 30, dated 30 April 2024.

[2] Abdelkarim Boukhalfa, "Protection of the Consumer from Misleading Electronic Advertising," *International Journal of Legal and Political Research*, Vol. 1, No. 02, 2017, p. 132.

[3] Mohamed Bouras, op. cit., p. 429.

a. The advertiser's use of false names or attributes. What is noticeable is that the common denominator among the deceptive means mentioned is lying; the necessity of lying for the establishment of the crime of fraud under the law does not mean it is sufficient in all cases, but it must be coupled with material acts or external facts that lend credibility to the falsehood. These external acts are varied and not exhaustive[1].

b. The use of fraudulent maneuvers: These are false claims supported by external appearances by the perpetrator that may induce the victim to believe one of the matters enumerated by law by way of example. Their purpose must be one of the objectives listed in Article 29 by way of example, such as:

c. Feigning the existence of fictitious projects.

d. Feigning the existence of imaginary authority or reliance on a fiction, for example the advertiser's claim that he can produce an effective product capable of curing in the shortest possible time.

e. Creating hope of winning or fear of the occurrence of a fictitious event, for example promotional contests advertised by various media that invite consumers to participate to obtain a profit that is in fact illusory[2].

f. Creating fear of the occurrence of a fictitious event means instilling in the victim's (consumer's) mind a dread of a painful incident; this includes obtaining the victim's money by inducing him to believe he is about to lose his job and that the perpetrator will act to prevent that.

g. Seizure of another's money: Seizure in fraud is realized when the victim (consumer) voluntarily hands over money to the perpetrator (advertiser) as a result of the deception that the fraudulent act produced. It is immaterial whether the transferred movable belonged to the victim or to another, so long as it was handed over to the perpetrator.

h. Causal link: The fraudulent means used by the advertiser (perpetrator) must be what prompted the consumer (victim) to hand over his money to the advertiser, and the delivery must follow the use of the fraudulent means in the advertisement.

c. The moral element

In addition to general criminal intent, which is the perpetrator's will directed to commit the crime with all its elements as defined by law and of which he is aware, the crime of fraud requires the presence of specific criminal intent, namely the intent to deprive another of his money. To punish misleading electronic advertising as the crime of fraud and deception, the advertiser's will must be directed to deception and the appropriation of another's money[3].

It is noticeable that the crime of fraud requires the perpetrator's bad faith, whereas in false or misleading advertising bad faith is not required; the material element alone suffices without requiring the moral element. Likewise, omission (silence) is not among the fraudulent means applied in the crime of fraud, while false or misleading advertising may be realized by

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[1] Mohamed Boudali, op. cit., p. 20.

[2] Sarah Azzouz, op. cit., p. 266.

[3] Sarah Azzouz, ibid., p. 268.

silence or concealment when providing information that the consumer considers significant; had the consumer known it, he would not have contracted.

Moreover, fraud presupposes the existence of an illusory transaction: the perpetrator does not provide anything in return for the money he obtains from the victim. This is not the case in misleading advertising, where the advertiser does offer something, even if it is not exactly the counterpart or the thing in the consumer's mind[1].

Second: The consumer's criminal action on the basis of the crime of deception

The Algerian Penal Code addresses the crime of deception under Chapter Four entitled "Fraud in the sale of goods and deception in foodstuffs and medicines" in Articles 429 and 430. Although these provisions do not explicitly mention misleading advertising, and despite the limited scope in applying criminal law rules, they can be applied because they address deception related to the product itself and deception concerning external elements of the product. The penalty for anyone who deceives or attempts to deceive is imprisonment from one month to three years and a fine ranging from 20,000 to 100,000 DZD, or one of these two penalties[2].

The crime of deception requires the presence of its three elements: the material element, the moral element, and the legal element.

1. **The legal element**

The legal element means the existence of a statutory provision that criminalizes the act of deception and prescribes a penalty for it, in application of the principle of criminal legality, which is a fundamental principle of criminal law and requires that no one be criminally prosecuted for an act that was not criminalized by law prior to its commission. In the field of consumer protection, the crime of deception is based on the provisions of Law No. 09-03 on consumer protection and the suppression of fraud, as amended and supplemented, in Article 68, which provides: "Anyone who deceives or attempts to deceive the consumer by any means or method regarding:

The quantity of products delivered;

a. the usability of the product;

b. the date or shelf life of the product;

c. the expected results from the product;

d. methods of use or precautions necessary for using the product; shall be punished by the penalties provided for in Article 429 of the Penal Code."

According to Article 69 of the same law, the penalties provided in Article 68 above are increased to imprisonment of up to five years and a fine of 500,000 DZD if the deception or attempted deception was committed by means of:

- weight or measure or other falsified or nonconforming instruments;
- methods intended to mislead in analyses, quantity, weight, or measure, or alteration by fraud in composition, weight, or volume of the product;

[1] Sarah Azzouz, op. cit., p. 269.

[2] Fatima Zahra Rabhi Taboub, "Protection of the Consumer from Misleading Electronic Advertising," *Annals of the University of Algiers*, Vol. 35, No. 01, 2020, p. 151.

- deceptive indications or claims;
- booklets, brochures, leaflets, labels, advertisements, cards, or any other information.

2. **The material element**

The material element of the crime of deception is embodied in any positive or negative conduct likely to mislead the consumer regarding the nature, origin, characteristics, quality, quantity, or shelf life of the product, whether by providing false data or concealing material information. This element is the foundation of criminal liability, as it requires the commission of the criminalized conduct and any consequences stipulated by the legal text, together with the existence of a causal link between the conduct and the result.

3. **The moral element**

The moral element in the crime of deception is based on criminal intent, represented by the perpetrator's knowledge of the falsity of the data or the nonconformity of the product to legal specifications, and his will directed to misleading the consumer or achieving an unlawful benefit. Criminal intent is inferred from the circumstances of the case and the surrounding facts, without requiring an explicit confession by the accused, in accordance with general rules of criminal law[1].

The material element of the crime of deception is realized by acts and lies that present the thing as it is and clothe it with an appearance contrary to reality; it is a behavior likely to induce one of the contracting parties into error about the identity, reality, origin, source, number, quantity, or other aspects of the goods[2].

Deception is an intentional crime that requires proof of criminal intent on the part of the accused, i.e., the perpetrator's will directed to committing the criminal act and knowledge of its criminalization by law[3].

Accordingly, the judge must state in the conviction judgment for the crime of deception the perpetrator's knowledge and will to deceive and reach a conclusion of the perpetrator's bad faith; if the perpetrator mistakenly believed that a certain attribute existed in the goods, deception is not established.

Third: The consumer's criminal action on the basis of the crime of adulteration (fraudulent tampering)

Adulteration concerns several materials listed in Article 431 of the Penal Code related to materials fit for human or animal consumption, medical materials, beverages, or agricultural or natural products intended for consumption. If these materials are offered for sale and their owner knows they are adulterated, spoiled, or poisonous, meaning they are unfit for consumption or use, or if he offers or places for sale materials used to adulterate materials fit for human or animal consumption, beverages, or agricultural or natural products, or encourages their use by means of booklets, brochures, leaflets, labels, advertisements, or instructions of

[1] Ben Khaled Fateh, op. cit., p. 237.
[2] Ben Khaled Fateh, ibid., p. 237.
[3] Ibid., p. 239.

any kind, he is punished for the crime of adulteration by imprisonment from two to five years and a fine from 20,000 to 100,000 DZD[1].

Fourth: The consumer's criminal action based on special laws for his protection

Misleading advertising has not been addressed by a single special law, but rather by a set of provisions ranging from decrees to laws related to consumer protection, including Law No. 18-05 on electronic commerce.

Law 04-02, which defines the rules applicable to commercial practices, criminalized misleading advertising under Article 28, which provides: "Without prejudice to the legislative and regulatory provisions applicable in this field, any advertising that is misleading is unlawful and prohibited, particularly where it:

a. Contains statements, data, or presentations that may lead to confusion regarding the definition of a product or service, its quantity, availability, or characteristics.

b. Contains elements that may cause confusion with another seller or with that seller's products, services, or activity.

c. Relates to a specific offer of goods or services while the economic operator does not have sufficient stock of those goods or cannot guarantee the services that should normally be provided compared with the scale of the advertising."

1. Elements of the Offense of Misleading Advertising

For the offense of misleading advertising to be established, three elements of the crime must be present:

a. The Material Element : Referring to Article 40 of the Electronic Commerce Law No. 18/05, we infer that the material element of the offense of misleading advertising arises as soon as the electronic supplier fails to respect the obligations set out in Articles 31 and 32 of the same law. In other words, the mere sending by the supplier of direct electronic solicitation messages to the consumer without obtaining the consumer's prior consent, in addition to failing to enable the consumer to object to the electronic messages sent to them and failing to respect the consumer's wish in that regard, constitutes the material element of the offense[2].

b. The Legal Element : Article 28 of Law 04/02 concerning the rules applicable to commercial practices pointed to the elements that constitute misleading advertising when the advertising is exaggerated to the extent that it is disproportionate to the guarantee of supply or availability. All these acts can be envisaged in the field of electronic commerce, especially on the Internet, as well as the elements provided for in Article 60(01) of Executive Decree 13/378. However, this provision remains incapable of encompassing all forms of misleading advertising[3].

c. The Moral Element : The offense of misleading advertising is indifferent to the electronic supplier's intent; in this respect, the supplier's good faith or bad faith is immaterial[4].

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[1] Fatima Zahra Rabhi Taboub, op. cit., p. 151.

[2] Khawalef Sarah; Karim Zineb, "The Role of Law 18/05 on Electronic Commerce in Protecting the Electronic Consumer from Unsolicited Electronic Advertising," *Studies and Research*, Arab Journal for Research and Studies in Human and Social Sciences, Vol. 12, No. 03, July 2020, p. 257.

[3] Maryam Tawil, "Electronic Misleading Advertising and Its Impact on Electronic Consumer Behavior," *Journal of Legal and Political Jurisprudence*, Vol. 01, No. 01, 2019, p. 65.

[4] Khawalef Sarah; Karim Zineb, op. cit., p. 257.

2. Penalty Prescribed for the Offense of Misleading Advertising

The Algerian legislator classified misleading electronic advertising in Article 40 as a misdemeanor punishable by a fine ranging from 50,000 to 500,000 DZD. In the case of recidivism, Article 48 of the same law provides for doubling the fine, provided that the offense is repeated within 12 months from the date of the penalty related to the previous offense.

This means that the Algerian legislator avoided custodial penalties to prevent disputes and to avoid overburdening the judiciary; disputes between the operator and the consumer are resolved by resorting to a settlement fine[1].

Conclusion

At the conclusion of our study we reach the following findings:

- Electronic advertising facilitates the consumer's contact with the product, service, or seller; however, when such advertising contains deception or fraud it harms the consumer's interest and even the national economy in general.
- There is a widespread prevalence of misleading electronic advertising, especially with the increased use of electronic means by consumers.
- The Algerian legislator has provided the consumer with multiple means of protection against the harms caused by misleading advertisements. These protections may derive from general rules embodied in the Civil Code—through the consumer's ability to bring an action for performance against payment, an action for deceit, a claim for compensation based on tort liability of the operator, or an action for warranty against hidden defects—or from criminal law rules based on the consumer's exposure to the crimes of fraud and deception or adulteration. Special consumer laws also provide protection against misleading or false advertising.
- There are legal gaps in the field of electronic transactions, which are often international, and there is weakness in judicial jurisdiction in this area, especially when the economic operator is foreign.

Recommendations

- Enact a comprehensive standalone law that regulates electronic advertising in all its aspects, especially given the increasing pace of electronic transactions; unify advertising terminology to remove ambiguity and confusion and grant additional protective measures in favor of recipients of advertising messages, particularly against misleading or false advertisements.
- Establish specialized regulatory bodies to conduct prior review before publishing advertisements, and regulatory bodies vested with the right of subsequent oversight over published advertising and to monitor the extent to which the economic operator complies with legally defined controls.
- Activate the role of consumer protection associations and civil society in educating the consumer and informing them of various practices that prevent them from falling into the trap of unlawful or harmful practices, and in raising their awareness of the legal means available to obtain their rights resulting from exposure to misleading advertising.

[1] Khawalef Sarah; Karim Zineb, ibid., p. 258.

- Call on consumers to boycott products directed at them that pose a danger to their health, or to boycott purchasing a product or acquiring a service that does not conform to the advertised specifications; advise them to exercise caution before agreeing to purchase any product offered on an Internet site, especially anonymous advertisements, and to avoid suppliers who do not provide an email address or telephone number.
- Require national judges to undergo training courses in the electronic field and to keep pace with global developments, especially when the electronic operator is foreign.

Sources and References

First — List of Sources

1. Order No. 66-156 dated 8 June 1966 containing the Penal Code, Official Journal of the People's Democratic Republic of Algeria, No. 49, issued 11 June 1966, as amended and supplemented; last amended by Law No. 24-06 dated 28 April 2024, Official Journal No. 30, issued 30 April 2024.
2. Order No. 75-58 dated 26 September 1975 containing the Civil Code, Official Journal of the People's Democratic Republic of Algeria, No. 78, issued 30 September 1975, as amended and supplemented, notably by Law No. 07-05 dated 13 May 2007, Official Journal No. 31, issued 13 May 2007.
3. Law No. 04-02 dated 23 June 2004 defining the rules applicable to commercial practices, Official Journal No. 41, issued 27 June 2004, as amended and supplemented, notably by Law No. 10-06 dated 15 August 2010, Official Journal No. 46, issued 18 August 2010.
4. Law No. 08-09 dated 25 February 2008 containing the Code of Civil and Administrative Procedure, Official Journal No. 21, issued 23 April 2008, as amended and supplemented; last amended by Law No. 22-13 dated 12 July 2022, Official Journal No. 48, issued 17 July 2022.
5. Note: Your list included "Order 66-154 containing the Code of Civil Procedure," which is not the current law. The old civil procedure order was Order No. 66-154 of 1966; it was repealed and replaced by Law No. 08-09 of 2008 containing the Code of Civil and Administrative Procedure. Therefore, if your thesis addresses the current legal situation, you should cite Law 08-09 rather than Order 66-154.
6. Law No. 09-03 dated 25 February 2009 on consumer protection and suppression of fraud, Official Journal No. 15, issued 8 March 2009, as amended and supplemented by Law No. 18-09 dated 10 June 2018, Official Journal No. 35, issued 13 June 2018.
7. Law No. 18-05 dated 10 May 2018 on electronic commerce, Official Journal No. 28, issued 16 May 2018.

Second — List of References

I. Books

1. Ahmed Adel Rashid, *Advertising*, Dar Al-Nahda Al-Arabiyya for Publishing and Printing, Beirut (no year of publication).
2. Anwar Sultan, *General Legal Principles*, Dar Al-Nahda Al-Arabiyya, Beirut, Lebanon, 1979.

3. Ibrahim Ben Daoud, *Consumer Protection Law*, 1st ed., Dar Al-Kitab Al-Hadith, Algiers, 2012.
4. Hassan Abdel-Baset Juma'i, *Consumer Protection: Special Protection of Consumer Satisfaction in Consumer Contracts*, Dar Al-Nahda Al-Arabiyya, Cairo, 1996.
5. Ali Ali Suleiman, *General Theory of Obligation: Sources of Obligation in Algerian Civil Law*, 9th ed., Diwan of University Publications, Algiers, 2015.
6. Omar Zouda, *Civil Liability of the Producer*, 1st ed., Dar Houma for Printing, Publishing and Distribution, Algiers, 2010.
7. Mohamed Bouras, *The Legal Regime of Advertising for Products*, Dar Al-Jamia Al-Jadida, Alexandria, Egypt, 2014.
8. Mohamed Hassanein, *A Concise Treatise on Civil Liability*, Diwan of University Publications, Algiers, 3rd ed., 2007.

II. Theses

1. Ben Khaled Fateh, *Protection of the Consumer from False or Misleading Commercial Advertising*, Master's thesis in Private Law, Business Law specialization, Faculty of Law and Political Science, University of Sétif 2, 2014/2015.
2. Khaldia Maizi, *The Legal Regime of False or Misleading Advertising*, Doctoral dissertation submitted for the PhD in Sciences, Specialization: Private Law, Faculty of Law and Political Science, University of Abou Bekr Belkaid, Tlemcen, 2018/2019.
3. Sarah Azzouz, *Protection of the Consumer from Misleading Advertising in Algerian Law*, Doctorate L.M.D. thesis in Law, Business Law specialization, Faculty of Law and Political Science, University of Batna 1, 2016/2017.
4. Lamia Laajal, *Protection of the Consumer in Electronic Commerce Transactions*, Doctoral thesis in Private Law, University of Algiers 1, 2016.

III. Scholarly Articles

1. Khawalef Sarah, Karim Zineb, *The Role of Law 18/05 on Electronic Commerce in Protecting the Electronic Consumer from Unsolicited Electronic Advertising*, Studies and Research, Arab Journal for Research and Studies in Human and Social Sciences, Vol. 12, No. 03, July 2020.
2. Saliha Bonfla, *Civil Liability for Electronic Advertising*, Afaaq for Sciences Journal, Vol. 05, No. 17, September 2019.
3. Abdelkarim Boukhalfa, *Protection of the Consumer from Misleading Electronic Advertising*, International Journal of Legal and Political Research, Vol. 1, No. 02, 2017.
4. Fatima Zahra Rabhi Taboub, *Protection of the Consumer from Misleading Electronic Advertising*, Annals of the University of Algiers, Vol. 35, No. 01, 2020.
5. Ferhat Fatima Zahra, Qanfoud Ramadan, *The Effect of False or Misleading Commercial Advertising on the Consumer's Will in the Digital World*, Voice of Law Journal, Vol. 08, Special Issue, 2022.
6. Maryam Tawil, *Electronic Misleading Advertising and Its Impact on Electronic Consumer Behavior*, Journal of Legal and Political Jurisprudence, Vol. 01, No. 01, 2019.