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10 QUESTIONS TO A LAWYER ABOUT ADVERTISING IN KAZAKHSTAN

Advertising embraces most aspects of our life and becomes more versatile. Understanding of its legal basics is important for both businessmen and lawyers active in this sphere. Nowadays advertising is represented in many forms: from traditional advertisements in mass communication means to online campaigns, including promotion of specific regulated goods, such as alcohol or medicines.

Legislation sets its requirements to the form, content and procedure for advertising different goods. Violation of such rules may lead to severe consequences, including fines and bans on advertising. This article sets out the analysis of the key questions relating to advertising, which will help better understand its legal regulation, specifics of different types of advertising, and liability for a failure to comply with the established norms.

1. What is advertising?

According to provisions of the Law No. 508-II of the Republic of Kazakhstan "On Advertising" dated 19 December 2003 (the "**Advertising Law**"), advertising is information distributed and/or placed in any form using different means and intended for an indefinite range of persons. The purpose of advertising is to form and keep up interest to individuals or legal entities, goods, trademarks, work and services, as well as to facilitate their sale.

This definition embraces a wide range of advertising activities, allowing to cover different types of information and distribution vehicles, in which connection almost any message intended to draw attention of consumers and increase the sales may be considered as advertising.

2. What are the general requirements to advertising?

Besides specific requirements to advertising of certain types of goods and services, the Advertising Law provides for the requirements, as follows:

- Advertising must be reliable and clearly perceptible directly at the moment of presenting, regardless of the form and used dissemination devices, including in the sphere of electronic commerce.
- Advertising, except for advertising in printed periodicals, on the Internet resources and in information agencies, must be disseminated in the Kazakh language and, at the advertiser's discretion, in the Russian and other languages. Translation of the text of advertising must not distort its gist.
- If an advertiser carries out the licensable activities, for example, banks, pharmaceutical companies, etc., when advertising relevant goods, work, services, as well as in case of advertising the very advertiser, it is necessary to specify a

license number and indicate a governmental authority that issued such license. This requirement does not apply to radio advertising.

- Price of the advertised goods or services must be specified in tenge.

3. What are the existing types of advertising?

According to the Advertising Law and other legislative acts, advertising may be classified based on various criteria, such as the purpose, content, methods of exposure and placement. Depending on these factors, the following types of advertising may be distinguished:

- (1) online advertising;
- (2) advertising on television and radio channels;
- (3) advertising in printed periodicals;
- (4) advertising in cinema facilities, video viewing facilities and reference services;
- (5) outdoor (visual) advertising; and
- (6) social advertising.

4. What are the requirements set to online advertising?

Online advertising is the advertising on online platforms, which is produced, placed, disseminated, stored by the users of online platforms or the owners of online platforms in the form of:

- (1) targeted advertising;
- (2) sponsor content; and
- (3) other information intended for an indefinite range of persons.

Online advertising must be clearly identifiable and marked in accordance with the procedure established by an authorized agency, and must be disseminated in accordance with requirements establishment by the Advertising Law.

With respect to targeted advertising, there are strict requirements. It must contain clear marking that this is advertising, as well as the information on the advertiser. Furthermore, it is prohibited to use such sensitive data as race, ethnicity, political views, biometric or personal data, and such advertising must not be targeted at underage persons.

Sponsor content must clearly specify a sponsor and avoid defamation of individuals and legal entities, their goods, work and services. It must not contain any opinions, audio records, photos or images of third parties without their prior consent. Recommendations and feedback in such content must be true and verifiable.

Finally, online platforms must ensure identification of advertising and safe storage of information about advertising within one year after the last placement, dissemination of online advertising. It is important that no personal data of users must be contained in such storage.

5. What are the requirements to advertising in mass communication means?

Mass communication means include printed periodicals, television channels, radio channels, and Internet resources. Therefore, advertising in mass communication means embraces all advertising materials disseminated via these channels.

Advertising on television and radio channels, which are not specializing in advertising, must not exceed 20% of the total broadcasting time per day, including evenings, except for a rolling ticker, social advertising, information regarding own products of television and radio channels (announcements), advertising about events held by a channel, and advertising at the place of event, which is broadcasted live or recorded. This restriction does not apply to television channels specializing in television trade.

The scope of advertising in the Kazakh language must be at least equal to the scope of advertising in other languages. Furthermore, advertising must not interrupt broadcasting of important messages and educational programs. Advertising is prohibited on the days of national mourning. Social advertising must be placed on a regular basis and in several languages if stipulated by an advertiser.

It is worth separately pointing out that the daily scope of social advertising placed free of charge on mandatory television and radio channels must be not less than 10 broadcasts within 18 hours, starting from 06:00 local time. There must be 2 mandatory broadcasts within 6 hours starting from 18:00 local time.

As regards the advertising in printed periodicals (mass media), their offices determine the subject of advertising themselves. The periodicals distributed based on subscription must specify the thematic scope in the subscription conditions, so that the subscribers could be aware of the content. Advertising in such periodicals must be placed in the language specified in a certificate of mass media registration.

The questions arise regarding the advertising on the Internet resources. Thus, an Internet resource is the information (in the text, graphic, audio-visual or any other form) placed on hardware and software with a unique network address and/or domain name and functioning in the Internet.

At the same time, an online platform is also classified as an Internet resource; however, online advertising falls under the rules of the Law on Online Platforms and Online Advertising. This gives rise to a conflict of laws, because one regulatory act states that advertising on the Internet resources must be regulated by the Advertising Law, whereas advertising on online platforms is regulated by a separate Law on Online Platforms and Online Advertising.

6. What are the specifics of advertising alcoholic beverages?

Kazakhstan prohibits advertising of ethanol and alcoholic beverages, products imitating alcoholic beverages, as well as advertising in the form of various events, including prize drawings, lotteries intended to stimulate the demand for and interest to alcoholic beverages.

In addition, it is prohibited to advertise goods, work and services with the elements of trademarks or names relating to alcohol, except for the trademarks and names of wine made in Kazakhstan in complying with requirements of the Advertising Law.

Advertising of a trademark and name of wine made in Kazakhstan is permitted during limited hours and on certain platforms in complying with strict requirements. In particular:

- (1) Television and radio advertising may be broadcasted from 22:00 to 06:00 on domestic channels (except for channels dedicated to children and religion). Advertising must contain a warning about the harm of excessive consumption of wine and be accompanied by 2 social advertisings about healthy living.
- (2) No advertising is allowed in printed periodicals on the front and back pages of newspapers or covers of magazines and almanacs. Advertising must correspond in its scope to the scope of social advertising about healthy living, which is formed pursuant to the established rules.

Furthermore, advertising of wine must not state any therapeutic qualities, encourage excessive consumption, be associated with driving or labor activities, and must not be focused on underage persons, or use them in such advertising.

7. Is it allowed to advertise tobacco products in Kazakhstan?

Kazakhstan also prohibits the advertising of tobacco products, including non-smoking tobacco products, tobacco heating systems, vapes and liquids for them. This restriction

applies to advertising in any forms whatsoever, including events and lotteries intended to stimulate the demand for tobacco products.

Furthermore, it is prohibited to demonstrate tobacco products and the process of their use in audiovisual work intended for adult audience, including television movies and motion pictures, theatrical productions, radio and television programs, and any public performances and broadcasts. The only exception allowed relates to the cases where this is an integral part of an artistic conception.

8. What are the specifics of advertising medicines and medical products?

Medicines and medical products may be advertised in mass media, electronic information resources in healthcare organizations in the Kazakh and Russian languages. Such advertising must contain full and reliable data on a medicine or a medical product facilitating their smart use.

One should bear in mind that advertising must correspond to the basic prescribing information of a medicine or an operations manual for a medical product. Changes in the instructions, which influence on the advertising content, must be reflected in the advertising materials.

Certain additional requirements are set by legislation with respect to advertising of medicines and medical products, which encompass as follows:

- **Reliability and accuracy of advertising:** Advertising must not overstate pharmacological properties, therapeutic indications of a medicine and sphere of application of a medical device. Any comparison with other medicines or medical products must be excluded. Advertising must not misinform consumers, take advantage of their trust, including with respect to the properties, composition, consumer properties, value, anticipated application results, and results of studies and trials.

Advertising materials must be easy to read and printed using a clear and legible type. They must be reliable and easily perceptible, without the necessity to use special knowledge or apply additional means.

- **Information requirements:** As regards the medicines, advertising must include a trade name, active ingredients, indications for use, method of administration and dosage, key side effects and counterindications, special warnings regarding pediatric use, and use when lactating, conditions of sale and warning about potential harm of self-treatment, name and address of the manufacturer and sales representative in Kazakhstan, number and date of issuing the medicine marketing authorization, and the date of expiry.

Advertising of medical products contains similar information with a focus on indications and side effects.

- **Assessment and approval:** Prior to placement of advertising, it is necessary to obtain an opinion from the Healthcare Technologies Assessment Center confirming that advertising complies with legislation. Such assessment includes checking of advertising materials as to compliance with requirements and may require introduction of amendments.

Besides additional requirements to advertising of medicines and medical products, the Kazakhstan legislation also provides for a number of prohibitions relating to advertising. These prohibitions are aimed at ensuring of safety and protection of consumers and include as follows:

- It is prohibited to advertise medicines, medical products and other products, which are subject to the state sanitary and epidemiological control if they are not registered

in Kazakhstan. Advertising of prescription medicines in mass media is also prohibited, same as distribution of their samples for the purposes of advertising. It is not allowed to use children, their images and voices in advertising, except for the medicines and products intended for children. It is prohibited to disseminate advertising of medicines and medical products in public vehicles and organizations not associated with their prescription, use and sale, except for professional events.

- Advertising materials may not be placed on industrial products, prescription forms, and in the form of outdoor advertising. It is prohibited to use medical employees in advertising, except as for scientific or educational purposes. Services must not be advertised without a relevant license, and specialists who do not have certificates in the field of healthcare may not advertise their services. It is also prohibited to specify the methods of treatment of a number of serious diseases in advertising, such as HIV, oncology, psychiatric and behavioral disorders, sexually transmitted infections, tuberculosis, and pancreatic diabetes.
- References to recommendations of scientists, healthcare professionals and officials who may encourage the use of medicines and medical products are prohibited for use in advertising. It is not allowed to represent services, medicines or products as unique, safest or most effective, and state that their effectiveness is connected with their natural origin. Advertising must not misinform, guarantee the absence of side effects or successful treatment. Information, which is irrelevant to the advertised services, medicines or products, may not be included in advertising. Finally, proposals on transactions with human organs and tissues are prohibited.

9. What are the specifics of advertising dietary supplements?

Advertising of dietary supplements must comply with a number of strict requirements aimed at protection of consumers and ensuring of reliability of information. In particular:

- Advertising of dietary supplements (except for printed periodicals, Internet resources and information agencies) must be presented in the Kazakh language. An advertiser may also use the Russian and other languages at sole discretion.
- Advertising of dietary supplements must be clear and easy-to-read. Text advertising must be printed using a legible type, audio advertising – with easily understandable and clear accompanying sound, and video advertising – with clear accompanying sound and video.
- Advertising of dietary supplements must be reliable and easily perceptible, must not misinform consumers regarding the properties, composition, consumer properties, value, anticipated application results, and results of studies and trials.
- Advertising of a dietary supplement must contain a trade name of the dietary supplement and name of the manufacturer, including information on prescription of the supplement, unless this stems from its name. It is necessary to specify a category of persons, whom such dietary supplement is intended for, in case this information is provided by a manufacturer. Advertising must also include information on the necessity to review indications, counterindications and side effects (if any), as well as information on state registration of dietary supplements in Kazakhstan and/or EAEU.
- Advertising of dietary supplements must contain information on active ingredients of the composition, method of administration, dosage, key side effects and counterindications, special warnings for children, pregnant women and lactating mothers, conditions of sale, clear recommendations for use, as well as the name, address of the manufacturer and contact details of an authorized representative in the Republic of Kazakhstan. Advertising must contain a warning that a dietary supplement is not a medicine. It is prohibited to place advertising on industrial

products, prescription forms, in public vehicles and organizations not associated with prescription and use of dietary supplements.

10. What liability is stipulated for violating the advertising legislation?

The Kazakhstan legislation provides for liability for the following violations in the sphere of advertising:

- **Patently false advertising** — fine in the amount from 100 to 1,000 monthly calculation indices (MCI) (from USD 790 to USD 7,900), depending on the business entity category (*hereinafter, the fines are dependent on the business entity category as well*);
- **Advertising of pyramid-type schemes** — fine in the amount from 150 to 600 MCI (from USD 1,180 to USD 4,730) with a possibility to suspend the issue of the mass communication means for a term of up to 3 months;
- **Production, dissemination and placement of prohibited advertising** — fine in the amount from 80 to 450 MCI (from USD 630 to USD 3,550);
- **Violations in the advertising of bookmaker's offices and betting offices** — fine in the amount from 60 to 400 MCI (from USD 470 to USD 3,150);
- **Violation of the language requirements to advertising:**
 - General cases — fine in the amount from 20 to 400 MCI (from USD 160 to USD 3,150);
 - In mass communication means — fine in the amount from 120 to 500 MCI (from USD 950 to USD 3,940).

Violations of the advertising legislation also include:

- Bad faith, unreliable, unethical or covert advertising;
- Advertising on the days of national mourning on television and radio channels;
- Events stimulating demand for alcohol and tobacco products, including electronic cigarettes;
- Interruption of official messages, religious or children's programs by advertising;
- Interruption of movies by advertising, except for breaks between series;
- Placement of outdoor advertising on historical and cultural landmarks;
- Inconsistence between the advertised objects, for example, residential houses, and design documentation; and
- Advertising of non-registered religious associations.

These violations entail the fines in the amount from 30 to 400 MCI (from USD 240 to USD 3,150).

It is extremely complicated to bring light to all specifics and details relating to advertising activities in one article. Advertising is regulated by numerous rules depending on the type of goods or services, presentation form and intended audience. Violation of the established requirements may lead to severe consequences.

We recommend thoroughly reviewing the legislation requirements before launching any advertising campaign to ensure its compliance and avoid the risks of violation.