



General Principles For Consumer Protection And Their Impact On The Television Advertising Industry

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Summary:

The contract is concluded whenever its elements are met, provided that the will is free of defects. However, the use of audio-visual and technical effects has a direct impact on the will. What is the legal protection of the contractor?

Keywords: Consumer, protection, influence, advertising, television

Introduction:

It is known that the conclusion of a contract takes place when the elements of the contract are met, such as consent, purpose, reason - and form in some cases - after the contracting party expresses his free and decisive will, away from any coercion or exploitation, in accordance with the principle of the authority of will.

However, the emergence of television advertising in the modern era has an impact Directly on the will of the contractor, including the audio, visual and technical effects he uses.

If the contractor falls under the influence of television advertising, what is the protection provided by the Algerian legislator to the contractor?

We will divide this article into the following sections:

The first topic: General principles of consumer protection.

The second topic: The judicial authority and its role in stopping or controlling offensive advertising.

The first topic: the general principles of consumer protection

Djamel Eddine Mimoune **General Principles For Consumer Protection And Their Impact On The Television Advertising Industry**

Why talk about general principles and exclude the TV advertising law?

It is known in Algeria that the draft law on publicity was submitted in 1999, but it was retracted and withdrawn from the office of the National Assembly, and was not issued in the Official Gazette of the Algerian Republic and therefore this law did not complete its legislative path so it cannot be talked about as a law to continue the legal vacuum in the field of television advertising in Algeria.

From this standpoint, the general principles of consumer protection are resorted to in the event of a dispute before the judiciary related to television advertising, so what are the general principles of consumer protection in the Algerian legal system?

We touch on the legal principles established in Law 04-02 renewing the rules applicable to commercial practices, the legal principles established in the Algerian Civil Code, and the principles of Islamic Sharia.

The first requirement: the legal principles established in Law 04-02 establishing the rules applicable to commercial practices¹

The Algerian legislator has stipulated several principles through Law 04-02 specifying the rules applicable to commercial practices with the aim of protecting the consumer, these controls can be summarized in the need for information related to the good or service to be true and accurate and not to be misleading or false.

Illegal publicity is defined by the Algerian legislator in article 99 of Law 02-04 – without prejudice to other legislative and regulatory provisions applicable in this field, illegal advertising is prohibited and any misleading advertisement, especially if:

1/Contains statements, statements or formations that may lead to misinformation about the definition, quantity, abundance or characteristics of a product or service.

2/Includes elements that could lead to confusion with another seller or with his products, services or activity.

3/relates to a particular offer of goods or services whereas economic aid with sufficient stock of such goods or services can guarantee that they must normally be provided, as compared to the magnitude of advertising. '

However, in the absence of an authority that monitors the implementation of these provisions in their civil aspect and the absence of experts accredited to the judiciary, these texts remain dead letters.

¹ -Law N 04-02 dated 5 Jumada Al-Awal in 1425 corresponding to June 23, 2004 determines the rules applied to commercial practices, an official newspaper number 41.

The second requirement: the legal principles established in the Algerian Civil Code and the principles of Islamic law

Islamic law is usually mentioned closely when the civil code is mentioned, especially since the Algerian judge is obliged to refer to the principles of Islamic law in the absence of a legislative text

Subchapter I: Algerian Civil Code

The Algerian Civil Code has developed several legal texts with a view to protecting consumers, the most important of which are the following³:

- 1/ Considering defects of consent such as error, fraud, coercion and exploitation as defects that make the contract voidable.
- 2/ The buyer must have sufficient knowledge of the sale²
- 3/ The contract shall be concluded in sales that require trial, such as cars and household appliances, for example, after testing them and declaring acceptance.
- 4/ The need for the sale to be free from hidden defects under penalty of guaranteeing hidden defects.

Subchapter II: Principles of Islamic Sharia

Jurists deduced several principles through the sources of Islamic law, especially the Holy Quran and the Sunnah of the Prophet, these principles are considered rules on which legislation is based, and the most important of these principles:

1/In the contract of sale in particular

Allah Almighty said in Surah An-Nisa, verse 29: "O you who believe, do not eat your wealth among you in falsehood, except that it be a trade of your own accord"

قال الله تعالى في سورة النساء الآية 29 " يا أيها الذين آمنوا لا تأكلوا أموالكم بينكم بالباطل إلا أن تكون تجارة عن تراض منكم ⁴"

Falsehood is that which does not benefit from the fact that it is expressed about taking money without compensation in the form of compensation⁵

-Article 01 of the Algerian Civil Code issued by order: 75-58 of Ramadan 20, 1395 3 corresponding to December 26, 1975 amended and completed, 2009 edition, Ministry of Justice.

4-The Holy Qur'an, Surah An-Nisa, Verse 29

5- Ibn al-Arabi, Ahkam al-Qur'an, electronic version

*The Prophet (peace and blessings of Allaah be upon him) said: "Whoever buys something that he has not seen, has the option if he sees it"⁶

قول الرسول صلى الله عليه وسلم: "من اشترى شيئا لم يره، له الخيار إذا رآه"

*The Prophet (peace and blessings of Allaah be upon him) said: "It is not permissible for anyone to sell anything unless he explains what is in it, and it is not permissible for anyone to know that except among him: 'Narrated by Imam Ahmad⁷

وقوله صلى الله عليه وسلم: "لا يحل لأحد أن يبيع شيئا إلا يبين ما فيه ولا يحل لأحد يعلم ذلك إلا بينه": رواه الإمام أحمد

*As well as the saying of the Prophet (peace and blessings of Allaah be upon him): 'A Muslim is the brother of a Muslim and it is not permissible for a Muslim to sell from his brother a defect except to show it to him: 'Narrated by Ibn Majah⁸

وقوله صلى الله عليه وسلم: "المسلم أخو المسلم لا يحل لمسلم باع من أخيه يبيع وفيه عيبا إلا بينه له": رواه ابن ماجه.

This is known in Islamic law as the option of vision, i.e. the obligation to inform in the sense of positive law.

2/ On the rules of Islamic jurisprudence

Among the hadiths on which the rules of Islamic jurisprudence are based are the words of the Messenger, may God bless him and grant him peace: "There is no harm nor harm"⁹.

The aggrieved person must refer to the judiciary to rule for compensation for his harm¹⁰

The second topic: The authority of the judiciary and its role in stopping or controlling offensive advertising

After we discussed the total legal texts and principles on which the consumer relies to claim his rights, the following question arises: How does the consumer recover his rights, and how does the judicial machine move to look into what the consumer raises?

Among the most important principles It is stipulated in the law that the right is required and not predicated. Therefore, whoever is harmed by an act must apply to the competent authorities to claim his rights.

However, the matter differs in view of the act committed by the person involved in the advertisement and the extent to which the supposedly harmed person benefits from his rights.

- Al-Kamal bin Al-Hammam, Sharh Fath Al-Qadeer, Part 6, electronic version, p. 310.6-

- Imam Al-Shawkani, Nayl Al-Awtar, Part 5, electronic version, p. 324.7

- Ibn Hajar Al-Asqalani, Fath Al-Bari, Part 4, electronic version, p. 3648

-9-Al-Tabarani, Al-Mu'jam Al-Awsat, Part 1, electronic version, p. 90

10-Imad Ali Jumaa, Easy Jurisprudential Rules, first edition 2006, Dar Al-Nafais for Publishing and Distribution, Jordan, p. 64

The first requirement: Abusive advertising

The effect of offensive advertising varies in view of its effects. Advertising may have penal effects, or it may be limited to pushing the consumer to buy only, and therefore it does not go beyond a civil nature.

The first section: Abusive advertising that rises to the level of a crime

Advertising may be offensive and rise to the level of a crime in the case of committing any legally criminal act, as in the case of Fraud¹¹

Insulting, defamation, insulting God, or encouraging terrorism... etc

In this case, the Public Prosecution only has to file a public lawsuit claiming public rights or on behalf of society¹²

In this case, the aggrieved person only has to come forward to claim his rights with proof of the assault.

However, the matter is more sensitive when the act affects society and does not affect individual people. In this case, it is not acceptable to establish any party as a victim despite the filing of a public lawsuit by the Public Prosecution in all cases.

The second section: Abusive advertising of a civil nature

Professionals resort to advertising methods to inform the consumer about the sale, but the advertising has a negative impact on the consumer as a result of the false signals and abuse used by the professionals. Thus, in front of the Civil Code, the consumer does not find legal texts that protect him, especially Article 106 of the Civil Code, which It makes the contract the law of the contracting parties, and thus the judge adheres to the content of the contract, except in a few and rare cases. Accordingly, the necessity of the legislator's intervention is an inevitable consequence, whether by amending the civil law or issuing special legislation that protects the consumer from misleading advertising¹³.

The second requirement: The role of the judicial authority

11-Article 429 of the Algerian Penal Code issued by Order No. 66-156, dated 18 Safar 1386 corresponding to June 8, 1966, amended and supplemented, 2009 edition, Ministry of Justice

-12- Article 01 of the Algerian Code of Criminal Procedure issued by Order: 66-155 dated 18 Safar 1386 corresponding to June 8, 1966, amended and supplemented, 2009 edition, Ministry of Justice

Jaroud Al-Yaqout, Sales Contract and Consumer Protection in Algerian Legislation, 13-Master's Thesis, Contracts and Liability Branch, Faculty of Law, University of Algiers, .academic year 2001-2002, p. 11

When the elements of responsibility are present: error, damage, and causal relationship, then we are in the process of arranging responsibility, but arranging responsibility in the case of offensive television advertising faces several legal difficulties.

First section: Arranging civil liability

The Algerian legislator protects The buyer through the contractual responsibility that he imposes on the seller in the event of his breach of a contractual obligation.

In addition to the possibility of holding the advertiser for advertising tort liable, if the consumer does not have a contractual relationship with the responsible advertiser, in the case of promising a prize directed to the public, the media often presents us with prizes for the benefit of The public then fails to fulfill its promise, which results in tort liability¹⁴

The great role of the various means of advertising and publicity has emerged, which contribute greatly to pushing the consumer to buy goods and products that he did not need, but rather bought them as a result of his temptation by the means of advertising.

The consumer turns into a buyer in most cases without realizing it, because the consumer is into In addition to the temptations that he is exposed to in stores, and the various means of advertising that attract his attention, whether through the screen or in the fields, and thus in some cases the consumer submits to the contract almost without being aware of it¹⁵.

Section Two: Obstacles to arranging civil liability

It is certain that advertising is necessary for the benefit of the product. Although advertising has a contractual value, the advertiser is obligated to provide a commodity identical to what was advertised, and here several legal problems appear :

1 / Absence of the advertising law

The modern state is built on legalization in all aspects of life. The law regulates all affairs of the state, groups, and individuals. Therefore, the absence of an advertising law is considered an ambiguous matter and a great ambiguity that is incompatible with the establishment of a state of right and law. The importance of the advertising law is evident in defining the rights and duties of all those involved in the television advertising industry.

It is also certain that there is no competent authority in Algeria that determines for us or differentiates between real advertising and misleading advertising on the one hand, and on the other hand we do not have a list of accredited experts who can be used by the judiciary to decide on the legality of advertising or not. Therefore, it is necessary to form experts. In this field, it is considered an urgent necessity.

14--Article 123 bis 1 of the Algerian Civil Code

-Jaroud Al-Yaqout, previous reference, same page-15

2 / In terms of the contract resulting from the advertising process

If the consumer buys a commodity after following an advertisement, the advertiser is obligated to provide a commodity identical to what was advertised, otherwise he will be considered in breach of a contractual obligation. However, the proof process falls on the consumer, and in this case the advertiser is in a position of power. In addition to this, the length of litigation procedures, judicial expenses, and case costs, so the consumer prefers to waive his right to litigation, and thus this protection remains insufficient.

3/ In terms of the authority granted to the judge in the Algerian legal system:

What is noted about the Algerian legal system is that it has He defined the role of the judge and gave him a passive role, who is satisfied with monitoring the exchange of petitions by the parties. He considered that the judicial dispute is the property of the parties, and they are the ones responsible for managing and directing it and ending the exchange of articles in it ¹⁶.

Therefore, the judge's authority to amend and review the contract is limited in narrow cases, and in addition to the standard contracts to which the consumer automatically joins, we find the various means of advertising and publicity contribute greatly to pushing the consumer to purchase goods and products that he did not need, but rather bought them as a result. Tempting him with means of advertising.

The consumer turns into a buyer in most cases without realizing it, because in addition to the temptations to which he is exposed in commercial stores, and the various means of advertising that attract his attention, whether through the screen or fields, and so in some cases the consumer offers To contract almost without realizing it.

The consumer does not find legal texts that protect him, especially Article 106 of the Civil Code, which makes the contract the law of the contracting parties, and thus the judge adheres to the content of the contract, except in a few and rare cases, as previously explained. Therefore, the necessity of the legislator's intervention is an inevitable result, whether by amending the Civil Code or issuing Special legislation that protects the consumer.

From what was previously explained, it becomes clear that the classical rules have failed to achieve adequate protection for the buyer, as a result of the conflict of the principle of the power of will with current data, and the spread of model contracts that the professional alone drafts and thus sets the conditions that guarantee his interest and the implementation of the obligation in every way. Ease, and guaranteeing him all his rights at the expense of the consumer who finds himself in a weak position, and all of this is the result of changing

16 -See Chapter Six on the Powers of the Judge, Articles 27 to 31, Law N. 08-09 dated Safar 18, 1429, corresponding to February 25, 2008, including the Civil and Administrative Procedures Law, Official newspaper N. 21.

economic conditions and the technological and industrial development that the world has witnessed ¹⁷.

Conclusion:

The great developments that the world is witnessing have greatly affected the methods of concluding classical contracts, which necessarily resulted in the inadequacy of the classical protection established to protect the consumer.

What is noteworthy is that television advertising has made matters worse, as instead of contributing to enlightening the consumer, it has been practiced against him. Systematic deception. Considering that justice is the protector of rights, it finds itself shackled by a dilapidated legal reality and rigid texts that are not up to the new challenges.

The matter has become more complicated with the emergence of electronic commerce, which prompts us to put forward several recommendations:

- Expediting the issuance of an advertising law that specifies the rights and duties of all those involved in the television advertising industry. The judge can use it to decide advertising disputes.
- The necessity of forming experts in the field of advertising who can be used by the judiciary to decide whether advertising is legal or not.
- The necessity of providing more protection. To the consumer as the weak party in the contract by reviewing all laws that aim to protect the consumer.
- The necessity of establishing a consumer protection association specialized in defending the consumer for products and services advertised through television advertising.
- The necessity of conducting integrated training courses for the benefit of judges and lawyers on the subject of the consumer and television advertising. .

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17 - Jaroud Al-Yaqout, previous reference, p. 12.

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