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*Consumer Protection from misleading commercial advertising: a legal comparative study
adopted to the needs of Iraqi legislator*

Dissertation submitted to University of Szczecin – Faculty of Law and Administration for the
degree of doctor of laws in the legal ambit

REVIEW

1. Helan Adnan Ahmed dissertation “*Consumer Protection from misleading commercial advertising: a legal comparative study adopted to the needs of Iraqi legislator*” submitted to University of Szczecin – Faculty of Law and Administration is an important and interesting scientific work on satisfactory level. It concerns with one of the most vital legal topic both from European Union and national perspective. One has to observe it was written within the context of modern Iraq. The significance of this country is impossible to overestimate as it is one of the global and regional focal points in politics and transition law.

2. The dissertation meets the basic and the wider requirements of internationally recognized academic demands. The choice of the research topic, formula of the research questions and hypotheses, the importance and scope of research as well as the originally demonstrated topic in the planning, are all on a very high level. It should be noted that structure of arguments was presented in a transparent manner especially in the chapter IV and V. The adequacy of materials used by author, the quality and thoroughness of work, the versatility of the methods, the deduction of results the material studied are all satisfactory at the level of a doctoral dissertation

On the sufficient level are: the adequacy of materials used by author, the quality and thoroughness of work, the versatility of the methods, the deduction of results the material studied. The most important advantage of the thesis are author's *de lege lata* and *de lege ferenda* conclusions for the Iraqi legislator.

3. The author made an excellent scientific decision with the delimitations of the topic. Advertising, whether or not it induces a contract, affects the economic welfare of consumers and traders. There is no doubt that misleading or comparative advertising can lead to distortion of competition. Legal protection against some types of commercial advertisements is closely related to constitutional order to fulfilment of state positive obligations under the right to information or freedom of speech. Therefore, it is possible to agree with the Author's point of view that legal regulations shall require commercial advertisement to be complete, clear, explicit and free of ambiguity, misleading, lying and deception. The dissertation has given an interesting and original answers to questions pertaining to: a) alternative legal ways to protect consumers from misleading and deception in commercial advertisements in the face of Iraqi consumer legislation deficiencies; b) classification of commercial advertisement as an action preceding the effective conclusion of an agreement; c) legal nature of advertiser responsibility towards consumers for misleading commercial advertisements. Referring to the first question, author presented the Iraqi civil code rules in an interesting and sufficient way. Included in chapter II and IV analysis authorized the author's statement that tort law actions and other civil law actions may be an appropriate by not a complete tools to protect consumer rights. Author relevantly pointed out the importance of recognition of the core, scope and functions of foreign (American, European) consumer protections systems. Referring to the second question, author distinguished two types of situations that could be legally relevant for the scope of consumers protection. The first situation may be reduced to the relationship between consumer and product, the second one – to relationship between the advertiser-producer and other producers or traders. Both situations demand different legal analysis and various solutions. Under the author's opinion, in the first relationship consumer is a weak party with a lack of experience or knowledge about advertised product or service. The second situation primarily demands protection against unfair commercial practices. According to the author opinion "misleading, deception or lying in ads results in the advertiser's being responsible for damages to any consumers who were directly harmed, and to competitors in the market whose business has suffered because of unfair competitive practices. Deceptive advertising violates the principle of

legal and fair competition required by various laws designed to protect commercial activities, reputations and dealings based on trust" (p. 320). Referring to the third question, author accurately pointed out that "Consumers who are exposed to harm from commercial advertising have the right to file suit against producers or advertisers either based directly upon relevant laws and regulations, through consumer protection associations or by filing civil lawsuits based on the general rules of civil law, demanding a cessation of the harm and claiming compensation for damages" (p. 321).

Another advantage of the dissertation is a comprehensive and broad description of various legal definitions that are relevant for consumers protections against some types of commercial advertisements. It was one of the most important part of author's analysis to define: consumer, trader, producer, misleading, deception, fraud or lie in commercial advertising. However author provoked a discussion by statement that "misleading", "deception", "fraud" or "lie" "render the same meaning in almost all uses and the same legal result of harming consumers or competitors (p. 320).

4. One of the weaker points of dissertation is its composition. The negative influence follows from the lack of chapter I-III summaries that would help to separate beyond any doubt author's point of view from the quoted scholars and jurisprudence opinions. Another structural problem that can be observed is related to the author's language. There are few minor mistakes (e.g. "Bending Provisions of Mistake in Civil Law to Protect Consumer from Misleading in Commercial Advertisement", p. 177). It is also difficult to understand the Author did not point out the different meanings of "commercial advertisement" and "commercial advertising".

The most important imperfection in the composition of the thesis in question is an incompatibility between the scope of the title and the content. The Author defined his monograph as a "comparative study". Unfortunately, the comprehensive analysis of the chapters shows the author's lack of understanding of comparative method and argument. It is hard to find references to comparative doctrines or terms. The selection of the bibliography indicates narrow knowledge in comparative law (understood as a separated and specified branch of study). The dissertation shall be undoubtedly recognized more as a study in foreign law (relevant for Iraqi legislator) rather than comparative one.

Regardless of the above, it was necessary to note that there is no methodological or substantive connection between section 1 and 2 of chapter I (p. 26-40) and the title or

dissertation remaining part. The Author largely seems to have neglected any detailed description of the ancient period. However, the Author considerations could not be classified as historical studies in law. In the first two sections of chapter I, the Author included the limited reference to the randomly selected ancient sources of law (e.g. Code of Hammurabi, the Law of the Twelve Tables) and only few essays or monographs on history of law. Having regard to the topic of dissertation, and regarding the fact that Author avoided his own conclusions (on p. 26–40), the purpose of ancient references was unclear. Author tried to compare various legal texts, form different legal orders and time periods. Therefore author's decorative "historical considerations" shall not be recognised as a valid type or method of legal text interpretation.

The author's observations on contradictions and inconsistencies in the commercial advertisement definitions under the varied legal orders (p. 40–64) have a limited explanatory power. Referring to the legal definitions in section 3.1.1. of the chapter I, Author did not take into consideration that listed bills came from different legal cultures (e.g. Nordic, French or Islamic), miscellaneous systems (eg. common law or continental law) or even heterogeneous traditions of defining legal terms. Based on general legislation overview, the author's definition of "commercial advertising" (s. 48) did not give neither partial information about the defined term nor reflect the current stage of scientific knowledge in the relevant field. It should be also underlined that authors definition consisted of general terms (eg. "announcement", "advantages", "benefits") and unspecified concepts requiring further definition (ed. "service", "products"). Moreover, it may be recognised as controversial to define "commercial advertising" by using the term "commercial announcement", as the Author did. In consequence, it should not surprise there was a methodological risk involved in the next section of dissertation (p. 49-56). Having regard to the fact of unclear commercial advertisement definition, the Author did not presented the transparent criteria for separation of the commercial advertisement from other ways of announcement aimed directly to consumers.

There are also concerns about methodological approach to describing Directive 2006/114/EC implementation by EU Member States (p. 136-144). The Author confined himself to the general issue on European level and superficial description of national regulations only. First five sections of chapter III are characterised by the significant lack of references to the scientific literature dealing with the problem of the Directive implementation in the Member States legal orders. The same could be noted in relation to analysis of European and national case law. It leads to the conclusion that considered part of the thesis has fully descriptive nature.

Moreover, objections should be submitted to the author's approach to Court of Justice judgements (referred in section 6 of chapter III, p. 143-149). The dissertation did not explain why the Author concentrated his mind on a very few Court judgements (p. 143). The purely descriptive analysis in this area is limited only to the summary of facts, legal basis and the Court rulings, that has been issued between 2001 and 2014.

The similar objections may be raised due to the author's presentation of American, Canadian and Australian regulations (p. 149-55). The question is the source of the Author's knowledge of the content of national legislation, since he did not refer to judicial decisions or literature. Section 7 of chapter III is limited to description of the contents of various regulations only and the author's commentary, which was not embedded either in doctrine or in case law.

Last but not least, it was with a fair amount of surprise that I became acquainted with the author's conclusion that "We did not find in the consumer protection laws of Arab countries, European countries, the United States, Canada or Australia any specific and fixed criteria through which we may determine the illegitimacy of a given ad because of misleading, deception or lying that may rise to legal violation or harm. We of course agree with giving the judicial system great liberty to examine and verify the existence of misleading in specific commercial advertisements in accordance with the particulars of each case" (s. 321). In my opinion, such conclusion shall induce author to deepen his knowledge and research and study the relevant case law.

I understand that inclusion of the Charter of Fundamental Rights, Egyptian Supreme Court case, European Parliament and European Commission resolutions to the list of EU Directives (p. 380-383) shall be considered an obvious error only.

5. Helan Adnan Ahmed presents himself as a serious researcher with analytical skills with an ability for constructive thinking. *Consumer Protection from misleading commercial advertising: a legal comparative study adopted to the needs of Iraqi legislator* is a dissertation on great value and importance especially for Iraqi legislator. Overall comments outlined above do not call for major changes, and I recommend that the permission for a public defence of the dissertation is granted.

