

ІНТЕЛЕКТУАЛЬНА ВЛАСНІСТЬ, ІНФОРМАЦІЙНЕ ТА КОРПОРАТИВНЕ ПРАВО

УДК 347.711

LEGAL REGULATION OF INTERNET ADVERTISING

Y. Samagalska

*Ivan Franko National University of Lviv,
1, Universytetska Str., Lviv, 79000, Ukraine,
e-mail: ysamagalska@gmail.com*

The article is dedicated to the study of the concept and essence of advertising and Internet advertising in particular. The article defines legislative principles and requirements for advertising, as well as characterizes the features of Internet advertising.

The author discovered the lack of separate legal regulation of Internet advertising and concluded that there is a need to improve current legislation on advertising regarding the order of placing advertising on the Internet and liability for the offense.

The article classifies Internet advertising and describes each of its forms. Among them, there are display advertising, banner advertising, contextual advertising, promotion on social networks, geo-textual advertising, viral advertising, product placement in online games, e-mail as advertising, pop-up windows and spyware, electronic bulletin boards, as well as participation in ratings. Particular attention is paid to the contracts for advertisements placements on the Internet and their essential conditions.

The author comes to the conclusion that legal protection of consumers of Internet advertising is insufficient and there is a necessity to increase responsibility for violation of advertising legislation on the Internet.

Keywords: advertising, classification of Internet advertising, contracts for advertisements placements on the Internet.

Advertising plays an enormous role in commerce, as it is a way to bring potential buyers into the purchase of a particular product (services). Day by day advertising becomes more aggressive, because sellers do not spare it resources in order to increase their profits. Moreover, it should be noted that nowadays e-commerce is actively replacing the traditional one. According to analysts, in 2016 73 % more goods were purchased than previous year in Ukraine - in the amount of 8.5 billion UAH [13]. That is why improving the legal support of advertising, and Internet advertising in particular, requires more attention.

N. Butenko highlights main objectives pursued by advertising: formation of a certain level of knowledge about the product / service by a consumer; formation of a definite image of a company by a consumer; formation of a friendly attitude towards a company by a consumer; inducing a consumer to turn to the company again; inducing a consumer to purchase the product / service in the given firm; stimulation of the sale of goods / services; acceleration of the company's turn over; the desire to make a consumer a regular buyer of the product / service [2].

As for Internet advertising, there is neither specific definition nor specific legal regulation defined by a legislator. It should be noted that in 2008 Ukrainian parliament considered the law «On Internet advertising», but it hasn't been implemented. Current Ukrainian Law «On Advertising» contains only one norm that mentions the Internet. Namely, art. 20 of the Law states that advertising of tobacco products, signs for goods and services and other objects of intellectual property that manufacture tobacco products are prohibited: on the Internet, except for the websites intended for adults, a mandatory access condition is the preliminary identification of the age of users.

Scientific doctrine does not pay enough attention to the legal regulation of Internet advertising as well. The research on advertising was conducted by A. Golovin, N. Hrytsyuta, O. Ishchenko, A. Minbaleev, L. Kiselev, E. Utkin, V. Uchenova, V. Fesenko, O. Shishko. However, there are no comprehensive developments in this field. That is why the purpose of this study is to identify the features of Internet advertising and the need for their legislative consolidation.

Fairly, it should also be noted that most countries do not have some specific legislation on Internet advertising as well, as they believe that the usual approach to advertising regulation is enough. In total support of this approach, I believe that there is a need to supplement the current legislation with several articles that would take into account the peculiarities of Internet advertising, in particular, the placement of advertisements and responsibility for the offense.

According to the aforementioned Law, advertising should comply with such principles as legitimacy, accuracy, reliability, and be used in forms and means that do not harm the consumer. It should not contain information or images that violate ethical, humanistic or moral norms and neglect the rules of decency. It should also take the special sensitivity of children into account to not harm them. It is important that advertising should not undermine public confidence in advertising, while also complying with the principles of fair competition.

The Law sets a number of requirements for advertising. In particular, it should comply with the Law of Ukraine «On the Principles of State Language Policy», as well as to be clearly separated from other information, regardless of the forms or methods of distribution, so that it can be identified as advertising. The use of hidden advertising is prohibited.

The peculiarity of Internet advertising is the fact that the Internet is a global network without any borders. The first question that arises here is the law of which state regulates advertising activity on a specific site. Here an attention should be paid to the domain where a site is registered. Thus, the UA domain is the top-level domain of the hierarchical address space of the Internet, created on the basis of the coding of the names of countries in accordance with international standards, in order to serve the address space of the Ukrainian segment of the Internet [3]. Therefore the sites registered on the national domain UA will be considered Ukrainian and fully covered by domestic legislation, including advertising.

Another peculiarity of Internet advertising is its diversity. The researchers single out display advertising, banner advertising, contextual advertising, promotion on social networks, geo-textual advertising, viral advertising, product placement in online games, e-mail as advertising, pop-up windows and spyware, electronic boards advertisements, as well as participation in ratings [4] and others. Each of them is worth looking at in more detail.

First of all, before choosing Internet advertising, the entrepreneur needs to create his own website, which could also be considered as a type of advertising. This is a business card page that contains information about the person and his product, as well as contact information for communication.

Display advertising is a kind of advertising that uses textual and graphic promotional materials. It is hosted on relevant websites with a specific target audience. Before signing a contract for such advertising, the site's audience (their geography, age, social and other criteria), as well as time spent on the site and some other data are analyzed in order to determine how effective an advertisement on this site would be. The analysis is done through the analysis of cookies - files that are stored by the browser on a computer and contain various data about recently visited sites [8], as well as by means of counters of site visits. As a result, the site with the highest number of potential customers (targeting) is selected. There is the notion of retargeting – this is a way to show an advertisement again to the people who have already been investigated and have taken some certain actions that indicate their interest in the product.

The payment for such an advertisement is determined predominantly for 1 thousand of its appearances or for each click individually.

Banner advertising is online advertising, which is placed in the form of static or dynamic images (banners) on the sites. A banner is a jpg, png, gif or flash image that contains a hyperlink to an advertised company or product [1]. There are different types of contracts of placing such advertising.

The first type is an ordinary contract of placing an advertisement on a site or a banner network (an advertising network of sites used to display banner advertising at once on a large number of participating sites [1]). The contract may be for a temporary placement of advertising (flat fee – fixed advertising for a specified period of time) or for subscription services. For this kind of contracts, the banner's effectiveness is most important. It is determined by the ratio of the number of clicks on the advertisement and the number of its appearances (CTR – click-through rate [6]). So, the more clicks there are, the more effective the banner is.

According to the CTR, the contracts can be divided into certain subtypes. In particular, the CPM condition (cost per mille [11]), which determines the price per thousand views, is popular. It guarantees the advertiser some specific amount paid for the views of his advertising.

The CPV (cost per visitor [9]) determines the payment for each visitor, attracted to the advertiser's site, individually.

The CRA (cost per action [10]) determines the price for a certain definite action of the user. It could be registration as a user, transition to a site, form filling, order payment, email subscription, file download, or any other action agreed upon by the parties and it may be mathematically tracked by the site program.

And the CPS (cost per sale [12]) determines payment for the sale of the advertised product. Preferably, payment is determined as a percentage of the sale amount.

Due to other agreements, the mutual advertising of each other on partner sites can be regulated. The terms of the contract can determine who and how often needs to show such advertising, etc. This type of advertising will be free of charge. A large network of banner partner sites can determine the accumulated appearances as a kind of currency, according to which certain advertising services can be transferred and implemented. In case of malware detection (spinning clicks and appearances using special programs), these appearances are burned out or the whole cooperation agreement is canceled.

Contextual advertising is a kind of advertising, where the advertising information corresponds to the content (or context) of the website. It means the advertisements of specific goods on thematic sites or the advertisements according to the keyword, which is searched by a user. This kind of advertising is considered to be the most efficient, as the potential consumer is looking for it himself. In order to implement such advertising,

search engines create their own contextual advertising systems, through which they make profits. For instance, Google created Google AdWords, Yandex – Yandex.Direct [5]. These contextual advertising systems place advertisements on both separate search results and search result pages that a user chooses.

This advertising is predominantly paid for under the CPC (Cost Per Click [12]), that is, for a user's transition to an advertised link. It is possible to sell an advertisement slot for a keyword in an auction that is won by the one who offers the highest price for a link transition. For instance, while searching for a keyword “car”, the first place in search will be given to a car company that is willing to pay the highest price for it.

Although these agreements do not contradict to the current legislation but they should be additionally provided by the Civil code of Ukraine. It would improve their implementation.

Geo-contextual advertising is the same contextual advertising that additionally takes a user's location into account. As a rule, it is used on mobile phones and tablets and allows users to find the closest on-demand products and services (for instance, a restaurant or gas station) quickly with the help of a mobile card.

Promotion in social networks is also a kind of advertising. Each entrepreneur can create a free of charge one's own page or group in a popular social network and use it to advertise his product in a manner similar to a site-business card. And in case of using the targeting method and imposing advertisements of one's page on unknown users, it will become chargeable. For instance, the social network Facebook allows advertisements for a selected group of users to be placed, calling it «Suggested Post» and designating it as «Sponsored».

Viral advertising is compared to the flu that is transmitted from one person to another through a supportive environment. Viral advertising is transmitted by users independently, and is not imposed on them by distributors of advertising. Therefore such distribution is free. The most typical example of viral advertising is funny videos.

Under the title product placement in online games a promotion of goods in gaming operations is meant. Such advertising is efficient since players, who are consumed by the game, lose their conscious understanding that this is an advertisement, along with the fact that they develop the feeling that they already own the product. For instance, a car of a certain game hero. In order to prevent such advertising from being considered hidden, it must be properly identified for a consumer.

E-mails could also be used as advertisements. The newsletter is called Direct mail [7] and its essence is the purposeful sending of emails to a certain group of people. It will be effective if a relevant database of people who are interested in the product (potential consumers) is collected before the distribution. Such advertising is free, although the creation and processing of a database of users can be quite expensive since the consent for such a mailing-out is needed (mainly in the form of filling in the application form for registration, which contains a point about the will to receive such mailings). For instance, these are messages to regular customers of a company about promotions and seasonal discounts.

Sending such messages to some uncertain circle of people without their consent is called spam. Most systems that are used by e-mail services block such advertising as illegal because it violates the rules of using computer networks. Spam is prohibited by law in many countries. According to the Law of Ukraine «On e-commerce» dated September 3, 2015, a commercial e-mail may be sent to a person without his consent only on condition that he may refuse further communications.

Pop-up windows and spyware are dangerous kinds of advertising. They are distributed through expensive programs that penetrate the user's computer and are equated with viruses.

Rich-Media (clips and graphics on the top of a page), Pop-Under (advertisements in a new browser window) and Top-Line (stretching over the contents of a page) are singled out separately. The OPERA system has created a program that blocks them.

Electronic bulletin boards are sites that work according to the principles of ordinary bulletin boards, meaning that they contain specific promotional information.

Participation in ratings is not considered to be a popular method of advertising, as the credibility of most ratings raises questions for users.

Regardless of the type of Internet advertising, it is worth paying attention to the fact that it must comply with the same rules that regulate traditional advertising of a state where a site is registered. However, it should be noted that because of the technical features of the Internet, control over compliance with this legislation is very limited. In Ukraine the main body, authorized to control the legality of Internet advertising is the State Service for Food Safety and Consumer Protection of Ukraine, and the Department of Cyberpolice of the National Police of Ukraine which should fight against the fraud of consumers (which may also include Internet advertising), but they do not have sufficient knowledge and resources to bring the perpetrators to justice.

Список використаних джерел

1. Банерна реклама // WebStudio2U. 2015. URL: webstudio2u.net/ua/internet-ad/99-banners.html.
2. Бутенко Н. В. Маркетинг [Текст]: підручник. – Київ: Атіка, 2006. 300 с.
3. Демченко К. Медійна реклама в Інтернеті: закон один для всіх / К. Демченко // Газета «Юридична газета». 409. №36.
4. Інтернет-реклама // Вікіпедія. 2018. URL: <https://uk.wikipedia.org/wiki/Інтернет-реклама>.
5. Контекстная реклама. Основы // eLama. 2017. URL: <https://elama.ru/blog/kontekstnaya-reklama-osnovy/>.
6. Рейтинг кліків // Вікіпедія. 2016. URL: https://uk.wikipedia.org/wiki/Рейтинг_кліків.
7. Реклама в інтернеті // rek.time. 2014. URL: <http://rektime.info/uk/reklama-v-%D1%96nternet%D1%96>.
8. Що Таке Cookies (Куки) // badcomp.net. 2017. URL: badcomp.net/internet/168-scho-take-cookies-kuki.html.
9. Basic formulas in Online Advertasing // knowonlineadvertising. 2013. URL: <http://www.knowonlineadvertising.com/facts-about-online-advertising/basic-formulas-in-internet-advertising/>.
10. Cost Per Action // Вікіпедія. 2017. URL: https://uk.wikipedia.org/wiki/Cost_Per_Action.
11. CPT(реклама) // Вікіпедія. 2017. URL: https://ru.wikipedia.org/wiki/CPT_
12. CPS // Вікіпедія. 2017. URL: <https://ru.wikipedia.org/wiki/CPS>.
13. E-COMMERCE В УКРАЇНІ: ПІДСУМКИ 2016. ТОПОВІ ТРЕНДИ 2017 // Logist.FM. 2017. URL: <http://logist.fm/publications/e-commerce-v-ukrayini-pidsumki-2016-topovi-trendi-2017>.

References

1. Banerna reklama. (2015). *WebStudio2U*. Retrieved from <https://webstudio2u.net/ua/internet-ad/99-banners.html>.
2. Butenko, N. V. (2006). *Marketynh*. Kyiv: Atika.
3. Demchenko, K. (2012). Medijna reklama v Interneti: zakon odyh dla vsikh, *Hazeta «Yurydychna hazeta»*, 409, 36.
4. Internet-reklama. *WikipediYa*. Retrieved from <https://uk.wikipedia.org/wiki/Internet-reklama>.
5. Kontekstnaia reklama. *Osnovy*. (2017). *eLama*. Retrieved from <https://elama.ru/blog/kontekstnaya-reklama-osnovy/>.
6. Rejtynh klikiv. (2016). *WikipediYa*. Retrieved from https://uk.wikipedia.org/wiki/Rejtynh_klikiv.
7. Reklama v interneti. (2014). *rek.time*. Retrieved from <http://rektime.info/uk/reklama-v-%D1%96nternet%D1%96>.

8. Scho Take Cookies (Kuky). (2017). *Badcomp.net*. Retrieved from <https://badcomp.net/internet/168-scho-take-cookies-kuki.html>.
9. Basic formulas in Online Advertasing. (2013). *Knowonlineadvertising*. Retrieved from <http://www.knowonlineadvertising.com/facts-about-online-advertising/basic-formulas-in-internet-advertising/>.
10. Cost Per Action. (2017). *Wikipedia*. Retrieved from https://uk.wikipedia.org/wiki/Cost_Per_Action.
11. CPT (Reklama). (2017). *Wikipedia*. Retrieved from https://ru.wikipedia.org/wiki/CPT_
12. CPS . (2017). *Wikipedia*. Retrieved from <https://ru.wikipedia.org/wiki/CPS>.
13. E-Commerce v Ukraini: Pidsumky 2016. Topovi Trendy 2017. (2017). *Logist.FM*. Retrieved from <http://logist.fm/publications/e-commerce-v-ukrayini-pidsumki-2016-topovi-trendi-2017>.

*Стаття: надійшла до редакції 01.03.2018
прийнята до друку 24.10.2018*

ПРАВОВЕ РЕГУЛЮВАННЯ РЕКЛАМИ В ІНТЕРНЕТІ

Ю. Самагальська

*Львівський національний університет імені Івана Франка,
вул. Університетська, 1, Львів, 79000, Україна,
e-mail: ysamagalska@gmail.com*

Досліджено поняття та сутність реклами та Інтернет-реклами зокрема. Визначено законодавчі принципи та вимоги до реклами. Охарактеризовано особливості Інтернет-реклами.

Виявлено відсутність окремого правового регулювання Інтернет-реклами та зроблено висновок про необхідність удосконалення чинного законодавства про рекламу щодо порядку розміщення реклами в мережі Інтернет і відповідальності за правопорушення. Встановлено, що і в науковій доктрині теж не приділено належної уваги Інтернет-рекламі.

Класифіковано Інтернет-рекламу та описано кожен її вид. Виділено медійну рекламу, банерну рекламу, контекстну рекламу, просування в соціальних мережах, геоконтекстну рекламу, вірусну рекламу, продакт-плейсмент в онлайн-іграх, електронну пошту як рекламу, спливні (pop-up) вікна та sruware, електронні дошки оголошень, а також участь у рейтингах. Описано правове регулювання спам-реклами в Україні.

Окрему увагу приділено договорам щодо розміщення реклами в Інтернеті та їх істотні умови. Досліджено поняття таргетинг і ретаргетинг. Перед укладенням договору на Інтернет-рекламу проаналізовано дослідження аудиторії сайту (за географічним, віковими, соціальними та іншими критеріями), час, витрачений ними на сайті та інші дані, щоб визначити, наскільки ефективною буде реклама на цьому сайті. Дослідження проведено за допомогою аналізу куків (Cookies) – файлів, які зберігаються браузером на комп'ютері і містять у собі різні дані про сайти, які відвідували останнім часом, а також за допомогою лічильників відвідування сайту. З'ясовано, що ефективність реклами визначається через співвідношення кількості кліків на рекламу і кількості її показів (CTR – click through rate). Чим більше кліків, тим вона ефективніша. За показником CTR-договори реклама поділена на підвиди залежно від її умов. Зокрема, найбільше використовується умова CPM (cost per mille), що визначає ціну за тисячу переглядів. Вона гарантує рекламодавцеві оплачену кількість переглядів його реклами. А умова CPV (cost per visitor) передбачає оплату за кожного відвідувача окремо, притягнутого на сайт рекламодавця. Умова CPA (cost per action) визначає ціну за певну визначену дію користувача.

Вказано, що в Україні основним органом, що уповноважений контролювати законність Інтернет-реклами є Державна служба України з питань безпечності харчових продуктів та захисту споживачів, а боротися зі шахрайством щодо користувачів (частиною якого може бути і Інтернет-реклама) повинен Департамент Кіберполіції Національної поліції України. Зроблено висновок про недостатній правовий захист споживачів реклами в мережі Інтернет та необхідність посилення відповідальності за порушення рекламного законодавства в мережі Інтернет.

Ключові слова: реклама, класифікація Інтернет-реклами, договори щодо розміщення реклами в Інтернеті.