

Misleading Advertisement and Customer's Behaviour

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Zásady pro vypracování:

Úvod

Teoretická část

Definujte a vymezte pojem reklama.

Zpracujte teoretická a metodologická východiska k problematice spotřebitelského chování.

Stanovte cíle a hypotézy práce.

Praktická část

Zpracujte analýzu vybraných reklam.

Na základě analýzy navrhněte soubor obecných a konkrétních doporučení v oblasti marketingu reklamního průmyslu.

Závěr

Rozsah bakalářské práce:

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Arens, Williams F., Michael F. Weigold, and Christian Arens. 2010. Contemporary advertising and integrated marketing communications. 13th edition. New York: McGraw-Hill/Irwin.

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ABSTRAKT

V mojí bakalářské se zabývám Klamavou reklamou a jejím vlivu na spotřebitelské chování. Uvádím teoretické poznatky z oblasti reklamy, spotřebitelského chování, stejně tak jako právní regulace.

Dále analyzuji konkrétní reklamní kampaně a hodnotím jejich sestavení po stránce spotřebitelského chování..

Klíčová slova: reklama, spotřebitelské chování, manipulace, klamavost, právní regulace

ABSTRACT

My bachelor thesis deals with Misleading advertising and its influence on customer behaviour. I elaborate on the theoretical knowledge of advertisement, customer behaviour as well as on the legal regulations of advertisement.

Furthermore, I have analysed concrete misleading campaigns and evaluated their composition from the point of view of customer behaviour.

Keywords: advertisement, customer behaviour, manipulation, deceptiveness, legal regulations

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Finally, I would like to dedicate my work to my dog Monty.

"Advertising is legalized lying" H.G.Wells

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INTRODUCTION

For my bachelor thesis is crucial misleading advertising and misleading labelling of goods and services. As a misleading statement is consider deceptive figure that is capable of producing such an idea about your own or a foreign enterprise or performance, which does not reflect reality.

Truthfulness is one of the fundamental pillars on which stands the modern ethical advertising. The requirement is that advertising should be truthful and not misleading and it's fixed also in legislation and in self-regulatory codes of practice. The meaning of truth is crucial for the promotion of advertising and the implications of the truth being circumvented or violated are more visible than in other ethical standards. Advertising, which balances on the boundary between the truth and a lie, or even exceeds it, is still in many cases regarded as a very provocative by the recipient.

By disregarding the truth or stating false information advertising denies its own substance. Without truthful data it loses its meaning. Advertising is created for people; its purpose is to sell a product, a service, image or an idea. But if the advertisement lies or is dishonest, it loses its strength. Moreover, it loses its meaning or the fundamental substance of a truthful advertising. The rule of truthful advertising crosses borders of nations. This applies everywhere and to all. A good ad creator, as well as an advertiser, should bear in mind the unwritten rule of the truthful advertising.

My bachelor work is deliberately referring to advertising only, as it is the most prominent form of marketing communications on which I would like to focus my attention. The aim of the thesis is to focus on the misleading advertising and customer behaviour, which is closely associated with advertising. Customers are often convinced by an advertisement to make a purchase. However, it is often based on inaccurate, misleading, false, or comparative data. Advertising has a great power, it can influence customers to buy products which they really did not want or need to buy. This is why I have chosen this topic.

Advertising is closely linked with psychology as psychology affects customer behaviour. There are many emotional appeals which can be smartly incorporated into television commercials so as to be both consistent with the product and influencing the customer in a desirable way, i.e. eventually making him/her buy the product.

Moreover, advertising as a phenomenon of modern times deliberately influences our perception, shapes the perception of the world we live in. It's an integral part of all media, including television, radio, print and internet advertising. Advertising is a tremendous hidden strength, a power of control. This force has become part of our lives, whether we realize it or not. The theme of advertising is very topical. It follows us on every step and affects our lives. Advertising attacks us from all sides; we are constantly influenced by it. It's forcing us to buy products, services, and models of the right life style. It seems that advertising cannot be avoided; it attacks us from TV, radio, billboards, newspapers. It affects our lives and virtually it is almost impossible to avoid or fight off. Or is it?

My bachelor thesis is divided into two parts. The aim of the theoretical part is to define advertising, customer behaviour and the legal regulations in the Czech Republic and in the practical part I am going to focus on selected advertising campaigns, which I have chosen for my needs. I am going to analyse them mainly from two points of view. The aim of the first point of view is going to be focused on the violation of ethical principles and the second one will be directed on the influence of this misleading advertisement on customer behaviour.

I. THEORETICAL PART

1 ADVERTISEMENT

"Advertising is the nonpersonal communication of information, usually paid for and usually persuasive in nature, about products, services, or ideas by identified sponsors through various media". (Boveé, Arens, 1989, 5)

Every advertisement has one target – a customer. Potential customers could be a group of older adults, who like gardening or a group of young girls enjoying fashion. Therefore, advertisement is nonpersonal, which means – it is not communication face-to-face.

Most of advertising is paid for by sponsors. They pay money to media for one purpose: to get into our mind what we read, hear and see and by this way to encourage people to buy their products, so that they would have a benefit from it, of course. So the main function of advertising is to be persuasive. Advertisement is being used to sell different types of ideas – economical, political, religious and social and is distributed through media like television, newspapers, magazines, billboards, radio etc. (Boveé, Arens, 1989, 5)

"Advertising is not just about the commercial promotion of branded products, but can also encompass the idea of texts whose intention is to enhance the image of an individual, group or organisation." (Goddard, 2002, 8)

Effective advertisement must be based on:

- A perfect definition of to whom we are trying to communicate
- A visible idea of what we need to communicate
- Some understanding of what effect we are expecting
- An evident understanding of how communication process works

(Adrian Mackay, 2005, 23)

1.1 Functions and effects of advertising

Among the main functions of advertising belong:

- to determinate product and distinguish it from others
- to communicate information about the product, its properties, and to establish its place of selling
- to persuade customers to try new product and reuse it
- to activate a distribution (sales) of a product

- to raise up product usage
- to built up a brand preference and loyalty (Boveé, Arens, 1989, 8)

1.2 Types of advertisement

Classification of advertisement is often derived into several types:

- Print advertisement – newspapers, magazines, brochures, fliers – the printed advertisement has always been a very popular type of distribution of ideas. From newspaper to fliers – all kind of printed adverts are successful in drawing attention of customers. In newspapers or magazines (is greatly important) the position of advertisement is greatly important (front page/middle page), as well as the readership of publications.
- Outdoor advertisement – billboards, newsstands, tradeshows and events – also popular type of advertising, because of the wide spectrum of techniques and possibilities how to attract the customers outdoors. Billboards are the most common example of advertising outdoors and probably the hardest one, because they have to contain a good idea to capture attention of passengers passing by.
- Broadcast advertising – television, radio and the internet – broadcasting advertisement is one the strongest weapons. Since the moment, the first television advertisement was introduced, popularity of television commercials has been going higher and higher. (Buzzle, online)

1.3 Types of misleading advertisement

The reason why advertisement is criticised is not just for the role it plays in selling goods, but primary for the method how they try to persuade clients. (Boveé, Arens, 1989, 45).

"Advertising is downright untruthful, and at best, it presents only positive information about products. The advertising manipulates people psychologically to buy things they can't afford by promising greater sex appeal or improved social status." (Boveé, Arens, 1989, 45)

Advertising is very often insulting, misleading, in bad taste, too excessive or being misunderstood. (Boveé, Arens, 1989, 45)

Types of unfair and deceptive practices in advertising:

- *False promises* – Promises using in advertising cannot be fulfilled, because they are impossible: "forever youth" or "cancer is preventable".
- *Incomplete description* – To proclaim a fact that boots were made of real fur without a mention that the sole wasn't.
- *Misleading comparisons* – The mentioned claim can't be verified. Making disproportionate comparisons, such as "as hard as a diamond is".
- *Bait-and-switch offers* – Advertising a "lower" type of product, but suddenly requested type is "out of stock", so "switching" customer to a "higher" product (more expensive)
- *Visual distortions* – Making items bigger on pictures, completely different, than was printed advertisement in newspaper, more or less colourful, smaller than in TV commercial
- *False testimonials* – To involve famous celebrity into commercials for gaining a bona fide user of the product.
- *False comparisons* – Comparison of two unbalanced items - "superior" (high-cost car) and "inferior" (economical car), for purpose to show how advertising product is looking better.
- *Partial disclosures* – to disclosure just a part of quality of a product, and the rest (worse part of it) isn't mentioned. For example, advertisement says: The new laptop has battery for 9 hours of working and it costs only 5.000 Kč. However, what this advertisement doesn't say is a need of having a special charger, which isn't included in price and cost extra money.
- *Small- print qualifications* – Making a large print statement "Any new dress – 50% off! ", but if you decided to buy one, you realise that mentioned sale is just for small sizes. (Boveé, Arens, 1989, 53)

None of products should promise unrealistic and fake expectations created by ad that "over-promise", because the result will be dissatisfaction of a customer. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 90)

Advertising can push clients to buy items by tricking on their emotions. Persuasive methods are so reliable and powerful that costumers can't help to defend themselves. (Boveé, Arens, 1989, 47)

2 CUSTOMER BEHAVIOUR

Advertising can influence customer's behaviour and completely shake with our value system, and that's a reason, why is criticised. Its kind of suggestion that we need this and that, we have to buy it but in fact, we really don't need it. Advertising can cheer up our brains, that we are missing something, we aren't happy, we feel a desire and sense of lack. It's caused by false promises, that in case, we would buy it, our sex appeal will go higher, our social acceptance too and at last but not least, our social status will become more valuable. (Boveé, Arens, 1989, 47)

2.1 Definition of Customer behaviour

Customer behaviour is defined as *"study of the processes involved when people select, purchase, use, or dispose of products, ideas, or experiences to satisfy needs and desires"* (Boveé, Arens, 1989, 105).

"Customers are people who buy or use product or adopt ideas that satisfy their needs and wants. " (Moriarty , S.Mitchell, William Wells, 2009, 177)

Customer behaviour is a complicated process, involving different components of human behaviour, also involving a process, when the issues has influence on customer before, during and after a purchase.

Human behaviour including in this process can be divide into:

- what people are ("Who I am") - the self and personality, specified by peoples' attributes and traits ("What sort of person am I")
- how people feel, think and learn
- what people do (Boveé, Arens, 1989, 105).

2.1.1 Influencing customer behaviour

A customer's needs and desires are changed trough all his life. It's caused by behaviour changes as he moves through a life cycle.

Each person's life has different stages:

1. Single person – without wife, children.
2. Young married or cohabiting couples with no children yet.

3. Couples or single parents with older children.
4. Older people, children left home.
5. Survivors. (Adrian. R. Mackay, 2005, 6)

As a person goes through different parts of life, his needs are logically changing. Young couples which are building their first home will have different needs than single parents with two little boys.

Needs, attitudes and motivations are contingent on cultural, sociological and economic influences. (Adrian. R. Mackay, 2005, 6-7)

2.1.2 Needs

Functional or social needs are the central stimulations for consumption. A functional need could be satisfied by buying clothes and social by following the latest trends. A car satisfies a functional need, but the type and brand of a car can satisfy a social need. Buying motives aren't just clearly internal impulses; it also depends on social environment. (Marika De Mooij, 2005, 114)

Needs could be:

- Innate needs (biogenic) are psychological needs, which are needs for water, air, shelter and sex. These needs have to be sustained for keeping alive; and for that reason they are considered to be primary.
- Acquired needs (psychogenic) are that types of needs, those we learn in our life process: self-esteem, prestige, affection, power and learning and because acquired needs are in general psychological, they are rated as secondary. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 83)

Usually, if old needs are satisfied, new needs emerge. It's because of existing of hierarchy of needs and when the old ones are fulfilled, new needs arise. (Schiffman, Leon G. Kanuk Leslie Lazar. 2007, 90)

Dr. Abraham Maslow, a well-known clinical psychologist, created broadly accepted theory based on human motivation with connection of notion of a universal hierarchy of human needs and developed a pyramid of human needs. It's based on five levels of human need, which starts with the lower need (biogenic) and goes up to higher needs (psychogenic). (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 97) See picture below.

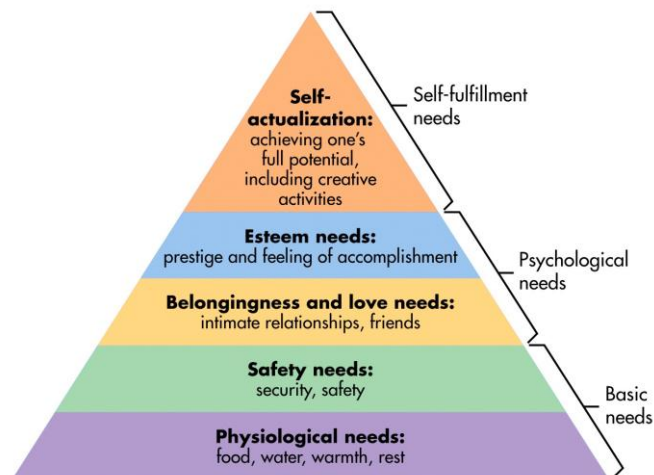


Figure 1: Maslow's pyramid of needs (www.desmondsim.com)

1. Basic psychological needs – are on the basic level of hierarchy, they are primary and most important for staying alive. These needs include food, sleep, water, air, shelter, sex.
2. Safety needs – these needs are not only physical safety as protection from danger, but also include order, stability, routine, familiarity and control over one's life.
3. Love and Belongings needs – Social needs include love, affection, belonging, acceptance, relationship, and motivation from love families.
4. Ego needs – Egoistic needs can be inward or outward or combination of both. Inward needs are ego needs for self-acceptance, self-esteem, success, independence and personal satisfaction. Outward needs include the needs for prestige, reputation, status, recognition and respect from others.
5. Self-fulfilment – Needs for self-actualization refer to an individual's desire, creativity, satisfaction with workplace, and fulfilment of personal potential. (Adrian. R. Mackay, 7-8, 2005, 97-99)

An individual has interest to satisfy needs from lower- level to higher-level needs. The lowest needs are satisfied automatically but the higher levels and satisfaction of them depends on individual's behaviour and motivation. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 97)

2.1.3 Motivation

Motivation is *"the driving force within individuals that impress them to action."* An existing unfulfilled need produce a state of tension, which leads to a mentioned driving

force. Every person with tension like this inside has an interest to reduce it consciously and subconsciously through appropriate behaviour, which will fill his anticipations. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 83)

Motivation is inner state of organism, which force us to behave in certain way. Because of motivation, we are active and we are trying to strive for our goals. The first step of understanding of behaviour is based on understanding a motivation as a whole packet of wants, needs, and drives. Motivation is the reason, why persons have attitudes, beliefs, motives and other pressures which influence customer's purchase decisions. (Marika de Mooij, 2005, 115)

Motivation can be positive or negative. Between positive motivation include needs, wants, desires and between negative fears or aversions. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 87)

2.1.4 Goals

Goals are reasons of motivated behaviour. Human being behaviour is goal oriented. There are many different and appropriate goals. Selection of goals is difficult, because many ways of various selections are given. Every target is chosen by different individual's needs, wants and desires and is chosen according to person and depends on his/her own experiences, capacity of his physical condition, cultural norms and values, and also targets in his social environment. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 84)

Firstly, person establishes his goal on the basis of his personal values; secondly, he selects the best type of behaviour (means), which should apply for meeting his dream target. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 84)

2.1.5 Success and failure influence goals

If a person successfully reaches a target which he/she sets for himself, he/she usually wants to get more, so that means he is reaching for a next higher goals. It's caused by an uprising feeling of being more confident and that is the main driving force for going further and trying to get as many goals as possible. But on the other hand, those who are not successful in reaching their targets sometimes lower their levels of aspiration. The selection of goals is based on successes and failures. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 90)

If a customer cannot for any reason reach a dream goal, which he or she is hoping for, behaviour could be directed for another *a substitute goal*. Despite that fact, that the

substitute goal won't be as good as the primary goal, it could satisfy an unpleasant tension too. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 90-92).

Feelings of frustration could be often affected by failure of achievement. Frustration comes from non-ability to reach a goal. It could be a reason to be frustrated, if people aren't able to get what they want. For this kind of situation, people use to adopt a defence mechanism as a protection against feeling of inadequacy. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 90-92).

2.1.6 Defence mechanisms

A defence mechanism is *"the process by which we protect ourselves from awareness of our undesired and feared impulses. Defence mechanisms are our way of distancing ourselves from a full awareness of unpleasant thoughts, feelings and desires."* (Planetpsych.com)

Some example of types of defence mechanisms:

- Aggression - frustration can be transformed into aggression very easily as a protection of individual's self-esteem: A hockey player is furious because of a loss of his team, so his first reaction is to hit a referee or to make a damage of anything what is in distance to him.
- Daydreaming – helps people to escape from a normal life into a fictional, illusionary one. Making fantasies can bring a good feeling and little bit of satisfaction of reaching of unfulfilled needs: A boy is dating a girl, but he is dreaming about dating another one.
- Projection – a person doesn't want to admit to himself that it was his fault and blames for it others instead of himself: A footballer missed a goal and blamed his team-mates. (Schiffman, Leon G., Kanuk Leslie Lazar,2007, 93)
- Displacement – transferring of an impulse from one target to another. A person is angry about his boss, so after arrival home, he gave a slap to his wife, because of his boss.
- Denial – trying to deny reasons of being frustrated: A student failed a test, but he denied it and persuaded himself/herself, that it was a mistake. (Wilderdom.com)

2.2 The customer decision process

The customer decision process is described as *"the five step decision making process the consumer uses to complete a purchasing decision"*. This process is presented below.

(Glossary.econguru.com)



Figure 2: The customer decision process (www.guuui.com)

The customer decision process covers set of activities:

1. recognition of a problem (which comes out because of seeing an adv)
2. searching for information (where it is possible to buy it etc.)
3. evaluation and selection of the best choice (when the time will be right and also the price)
4. storing choice and buying
5. postpurchase behaviour (satisfaction over a purchased item) (Boveé, Arens, Weigold, 2010, 159)

This process is different from a daily shopping of food. The model of customer decision process is an example of customer's behaviour after seeing an advertisement, which captured his/her interest.

The customer decision process is divided into two processes:

- personal process
- mental process (Boveé, Arens, Weigold, 2010, 160)

Personal processes involved:

1. Perception – the knowing of existence of a product

2. Learning and persuasion- compilation information about a product, finding interest and making an informed decision
3. Motivation – stimulation of customer's desires for buying a chosen product
(Boveé, Arens, Weigold, 2010, 160)

Mental processes and behaviour of every person are impressing by two types of influence:

1. Interpersonal influences – which comprise our society, family, culture
2. Nonpersonal influences – factors, usually outside of consumer's control – time, place, environment. (Boveé, Arens, Weigold, 2010, 160)

Whether customer remembers an advertisement or not depends on a perception. The perception is an element of attention. (Boveé, Arens, Weigold, 2010, 160)

Humans being are able to transform a sensitive impression into a logical united view of world around them. The perception completes and unites information and makes a "reality" around us and influences human behaviour. (Businessdictionary.com)

2.3 Personality

Personality can be defined as *"those inner psychological characteristics that both determine and reflect how a person responds to his or her environment."* (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 116).

Inner characteristics includes qualities, which are specific for every person, attributes, traits, factors and mannerism that distinguish one individual from other individuals. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 116)

2.3.1 The nature of personality

The main importance of nature personality has three central properties:

- 1 - personality reflects individual differences
- 2 - personality is consistent and enduring
- 3 - personality can change

(1) Personality reflects individual differences: inner characteristic of every human being makes a unique combination of individual's factors, so that means it is impossible to find two persons with the same personality or similar.

(2) Personality is consistent and enduring: personality of person links to be permanent and consistent but customer's consumption behaviour is in comparison with personality,

changing and varying by various psychological, sociocultural, environmental and situational factors, which affect behaviour of a person.

(3) Personality can change – is caused by certain factors as a marriage, birth of a child, death of parents. (Schiffman, Leon G., Kanuk Leslie Lazar, 2007, 116-117)

2.3.2 Identity and Image

Identity is basically an idea about oneself, which every person has about him/her. This idea has characteristic properties, unmistakable human body and at least inner value of person, how much person values himself. The main importance in identity is to have an independent individualistic self. Very often, if a person is asked what identity is, he/she usually answers with categorising himself in terms of desirable values ("I believe in..."), also as a member of social groups (a mother, a student) or by personality traits (sad, lazy). The image is what other people see, an appearance and how the others judge a person according to what they see. (Marike de Mooij, 2005, 118)

2.3.3 Emotion

Interaction processes between cognition and physiology are called emotions. Emotions depend on previous experience, are also accompanied by facial expression and psychological response. All these factors are closely working together. (Marike de Mooij, 2005, 118)

3 REGULATION OF ADVERTISING

3.1 Legal regulation of advertising

Legal regulation of advertising takes place in both the public and private law. Both types of laws are applied independently and simultaneously. Issues which are not subject to legal regulations are covered by self-regulatory bodies; however, they are not legally supported. Advertising is regulated by many legal regulations, such as the Press Law or the Personal Information Protection Law. The basis for this legislation are directives issued by the European Union, in particular Council Directive 84/450/EEC of 9 October 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising. (Digizone.cz)

For the needs of this thesis, I have chosen those kinds of laws, which contains the definition of measures relating to the truth or misleading information in the advertising practice.

3.1.1 Statutory regulation of advertising

Among the most important laws which deal with advertising in the field of public law belong:

- Act No. 231/ 2001 Coll. for radio and television broadcasting, which determines restrictions for advertising in such broadcasts.
- Act 40 / 1995 Coll. about regulation of advertising, in amended laws' version, which determines particularly the general requirements for advertising and expressly limits the advertising of tobacco products, alcohol, prescription medicines and weapons.
- Act No. 634 / 1992 Coll. about consumer protection.
- Act. No. 101 / 2000 Coll. about protection of personal information (Aka.cz)

3.1.2 Act on Advertising Regulation

Public service regulation of advertising was first set, though very briefly, in the Consumer Protection Law No. 634/1992 Coll. Nonetheless; this part is now settled in a

separate regulation. Public service regulation of advertising is also regulated by other directives, the most important of which being the Media Law.

The Act on Advertising Regulation is a basic regulation on the field of Public Law. Its observance is monitored by the state through the National Supervisory Authorities.

(Císařová, Z., Křest'ánová, 2002.)

3.1.3 Consumer Protection Act

The Consumer Protection Act sets the conditions for business and public administration tasks on the field of consumer protection and privileges. This act deals with clearly defined responsibilities for the sale of products and services in the Czech Republic. Primarily, it prohibits any discrimination against consumer or selling dangerous products. It is expressly forbidden to mislead the consumer by marketing untrue, unsupported, incomplete, inaccurate, vague and exaggerated information which has a great importance for the promotion of ethics. Furthermore, there must not be concealed information about the true nature of the product or services and the quality of purchasing condition. (Zakonycr.cz)

3.1.4 Commercial Code

Commercial Code governs the mutual interaction of competitors as well as consumer protection in the competition. The part of the Commercial Code which deals with unfair competition concerns the legal regulation of advertising as well. The unfair practices are considered as the ones that are in the contrary to good morals and are detrimental to other competitors or consumers. Unfair competitions are prohibited by the Commercial Code. The competition is deemed unfair, misleading advertising, misleading labelling of goods and services, a likelihood of confusion, sponging on the reputation of the company or the performance of another competitor, bribing, corruption, detraction, comparative advertising, violation of trade secrets or endangering the health of consumers and the environment. (Onlinedata.cz)

3.2 General legal restriction on advertising

The following issues pervade into all above mentioned laws and are regulated by other legal regulations and standards. These cases of illegal advertising practices are also subject to a number of directives issued by the EU.

3.2.1 Misleading advertising

According to the Commercial Code, the misleading advertising implies the dissemination of information about one's own or somebody else's business, its performance or products, which could lead to false expectations and bring about competitive advantage to one's own or somebody else's business at the expense of other competitors or consumers. (Onlinedata.cz)

3.3 Ethical self-regulation of advertising

In addition to the state regulations that are supported by laws, there are also self-regulations. The self-regulation is based on an ethical level. State regulation and the self-regulation are closely linked. The main disadvantage of the self-regulation is its unenforceability in court as it can only use moral sanctions to warn the public against unethical advertising.

3.3.1 Self-regulatory bodies in the Czech Republic

3.3.2 The Czech Advertising Standards Council

The Czech Advertising Standards Council is a non-profit organization; its main focus is the ethics of advertising. It was founded in 1994 under Act No. 83/ 1990 Coll. as the first East European organisation dealing with self-regulation of advertising. The main target is to ensure honest, lawful, truthful and decent advertising in the Czech Republic. Since 1995 it has been a member of EASA – European Association of self-authority. Advertising council is composed of the General Assembly, Executive Committee, Arbitration Committee, the Supervisory Commission and the Secretariat. (Rpr.cz)

In order to assert advertising self-regulation even more effectively, the Czech Advertising Standards Council have introduced a very effective means called Copy Advice. Principle of Copy Advice is to prevent consumers from inappropriate and unethical elements in advertising. (Rpr.cz)

3.3.3 Advertising Code of Ethics

Among the other activities The Czech Advertising Standards Council is also concerned with the Advertising Code of Ethics.

As in other European countries, the content of the Advertising Code of Ethics is inspired by the instructions on the regulation of advertising which are issued by the International Chamber of Commerce based in Paris. (Rpr.cz)

SUMMARY AND EVALUATION OF METHODOLOGY

The interesting point about a misleading advertising is that the main subject matter of this work - the position of misleading advertising and customer behaviour, will remain unanswered to a certain degree. I am convinced that the terms such as the truth or the lie are too narrow for advertising practice, as the truth can have many forms and depends to a large degree on the individuality of each of us. What some people may consider being true, others might find misleading, and vice versa. There is a fine dividing line between a lie and an advertisement. Therefore, while some information may be unconditionally accepted or seen as advertising hyperbole by one person, the other person may find the same information unethical or even misleading. Advertising message with similar conflict of opinions may be perceived as controversial. In such cases, only the experts, on the basis of their experience, can determine whether the generally accepted ethical rules have been violated or not.

Supervision over the basic principles of advertising is difficult. The Czech Advertising Standards Council is the supervisory body that "watches over" observing of these rules in the Czech Republic. However, this is only a voluntary association of advertising agencies, media and advertisers. In addition to that, advertising in the Czech Republic is also regulated by laws, regulations and decrees that respect both the importance of advertising for companies and customer protection.

As far as regulation of advertising is concerned, the application of the principles of self-regulation, which is promoted by governing bodies of the European Union, is even more important than laws. Selling goods by personal persuasion only is far more expensive than selling goods through advertising. Advertising must be socially responsible. The industry and also the trade are deeply familiar with this truth. That is why the International Chamber of Commerce in Paris issues the instructions for advertising regulations on a regular basis. These are subsequently agreed upon in individual states and become a part of ethical standards of national advertising.

II. PRACTICAL PART

4 METHODOLOGY AND OBJECTIVES APPROACH TO ANALYSIS

4.1 The Methodology process

The main aim of this chapter is to analyse and evaluate the selected group of ads, which had been proven misleading and because of that, they had to be withdrawn from the advertising world. As far as this part is concerned, The Czech Advertising Standards Council and its official list containing all available cases that were handled by The Czech Advertising Standards Council on the basis of complaints by customers was the main source of information. These cases had to go through a process, in which all aspects were thoroughly examined, especially investigating whether the Law on Protection of Consumer No. 634/1992 Coll had not been violated.

All complaints received by the Secretariat of The Czech Advertising Standards Council are divided into groups according to the type of advertising. Based on this selection, I have chosen those types of ads, which were classified as misleading. This group contains comparative, misleading and deceptive (C, M, D) types of ads and that is the group my bachelor thesis is focused on.

I am not going to take into account other groups such as children in advertising, violence, fear and vulgarity, as they are out of my topic and my focus too.

From all the available information of The Czech Advertising Standards Council, I am going to focus on the last three years (2008, 2009, 2010). In this chosen group, I will perform an analysis and an assessment of a percentage based on the complaints and the notifications. I want to find out, what the current development in this monitored period was, including the percentage of progress of complaints in every year and whether the progress of a total number of complaints had a rising or decreasing character. Moreover, I want to determine, what the percentage was represented by the number of my analysed group – misleading advertising (C, M, D).

Therefore the interpretation on my chosen examples relying on theory presents subjective observation analysis and may vary from reader to reader. The present study tries to answer the following questions:

Does the number of total complaints on misleading advertising have an increasing character?

What causes an increase or decrease of total of number of complaints?

What has been violated in my chosen advertisements?

What is the influence of this misleading advertisement on customer behaviour?

4.2 Analysis of reports according to the established criteria

4.2.1 Analysis of complaints by the quality – a development in the time

The curve representing the number of all complaints received by The Czech Advertising Standards Council since 2008 to 2010 has a decreasing trend (see Figure 3). This holds true for both the C, M, D forms of advertisements as well as the total number of complaints received by The Czech Advertising Standards Council in the reference period.

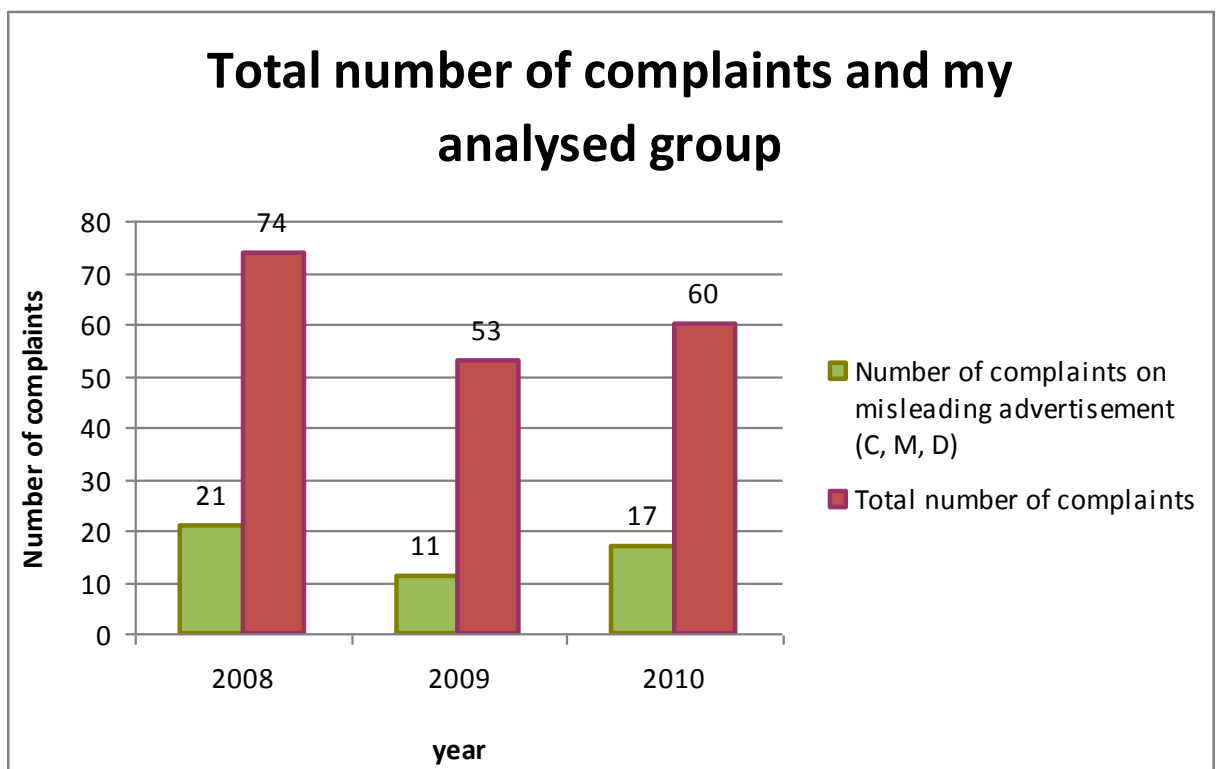


Figure 3: Total number of complaints and my analysed group (own calculation)

In the year 2008 the total number of complaints was 74, including 21 complaints that belonged to my monitored group. The percentage of my monitored group to the whole was 28.38 %.

A large decline is evident in the year 2009 when the total number of complaints reached the number of 53, with 11 complaints included in my selected group, which represent only 20.75 % of total amount.

In the year 2010, the total number reached a number of 60 complaints. 17 complaints belonged into my analysed group. The percentage of my monitored group to the whole was 28.33 %.

If we look at the total number of complaints in the monitored period 2008-10, it is obvious that the amount of the total number of complaints has a decreasing character. On the contrary, a rising character is apparent in the percentage indicator which represents the ratio of my analysed group (M, F, D) to the total amount of complaints.

In my opinion, there are several reasons why the total number of complaints has been gradually decreasing.

As for me is the one of the reasons is the growing confidence of the public towards The Self-regulation in the advertising sector. The trust is the key factor for The Czech Advertising Standards Council, mainly for its existence and continuation of its activities in the future. As the observed results shows, The Czech Advertising Standards Council carries out really meaningful activities as far as general regulation of advertising is concerned.

There have been numerous cases which in my opinion justify and endorse the activities of The Czech Advertising Standards Council. As a result of its activities, what may actually happen is for an advertisement to be completely withdrawn or suspended on the basis of the resolution issued concerning an objectionable advert. If this is the case, media are very often informed about this kind of decision. One of the cases of an advertisement being recommended for a withdrawal was highly publicized. The case was a billboard campaign for Radio Kiss and it was called "Radio for life". The central character in this campaign was Jiří Kajínek, a prisoner who had been sentenced to life imprisonment.

The Arbitration Committee of The Czech Advertising Standards Council indentified this campaign as being very unethical and recommended that this ad be withdrawn from media. By doing this, the ad became even more visible, got into the attention of all media and became a very well-know for it.

Sometimes a bad advertisement works better than a proper one. Thanks to this "scandalous" campaign, the existence of The Czech Advertising Standards Council and all its activities became more popular among the general public.

5 ANALYSIS OF SELECTED ADVERTISEMENTS

5.1 Ford Motor Company Ltd

The inclusion of case:

THE DECISION OF THE ARBITRARY COMMITTEE OF THE CZECH ADVERTISING STANDARDS COUNCIL NO. 005/2010/ COMPL

The Decision:

The complaint is approved – the advertisement is unethical

Presentation of the advertisement and the brand

Advertiser: FORD MOTOR COMPANY, s.r.o., Karolinská 654/2, 186 00 Praha 8

Complainant: BPA sport marketing, a.s., Těšnov 1/1059, 110 00 Praha 1

Type of media: the press

Description of the case

The complaint concerns the advertising of Ford Transit, which was published in daily newspapers. The car is promoted as "the car of the Czech nation ice hockey team", which is in fact not true. As a result of this connection, the average customer perceives Ford Transit in connection with the Czech national ice hockey team as "the car of the Czech hockey team...." In this case the ad suggests an alleged cooperation of Ford Motor Company Ltd. and the Czech national ice hockey team as Ford Transit have been chosen and should be used (as quoted by the advertising) by the Czech national ice hockey team. The advertiser defended himself by claiming that it was just some kind of exaggeration due to the fact that the ad is set in unrealistic environment and space-time. The advertiser was also trying to point out that ".. no one knows what might happen in a few years.. "

The violation of ethical principles

- This is an example of the False testimonials – (to involve famous celebrities into commercials for gaining a bona fide user of a product). The ad exploits "names" of

famous personalities, regardless whether or not the other party "mentioned" had been informed.

- After seeing this ad the customer gets a false idea that this car is really the official car of the Czech national team because he/she had just seen it. No one cares about the possibility that this kind of advertisement could be only a certain kind of exaggeration and also nobody is interested in details of this ad, for example that the ads' plot was situated in the future. Advertising then creates an utterly false impression of cooperation between two parties.
- Fake testimonials lead to false expectations because they are based on untrue information. By purchasing the product based on a misleading ad the customer can be disappointed. This is a typical case of Failure influencing goals. Customer has not fulfilled his/her expectations. This disappointed coming from an unsatisfying purchase can offset into the defence mechanisms – such as aggression, projection or displacement.
- In this type of ad a psychological aspect is being applied on a customer – a fulfilment of Acquired needs.

The influence of this misleading advertisement on customer's behaviour

- As hockey is mostly watched by male population and also with men being more interested in cars than women, it is evident what the aim of the advertiser was. He combined two powerful elements – ice hockey and the car – and impressed by this combination the male part of costumers →
- A customer, who is just going to buy a new car and who is also a hockey fan, becomes a very easy target after seeing this ad. The person concerned gets a feeling that if this car is used by the Czech national hockey team, he "as a true fan" should buy it too. Especially when the car was recommended by the national hockey team and the hockey team would have for sure not promoted "just an ordinary" car →
- Theme of the national hockey should symbolise "strong athletes with their heart in the right place who are fighting for their country in order to get a gold medal." This boldness, determination and desire to fight and win should make the impression that Ford Transit is the right choice for customers who sympathise with these ideas. By buying Ford Transit they would be given a chance to join this category →

- This advertising is focused on the male ego. The national hockey team is very popular and admired for its credit. If a customer buys exactly the same type of the car which is promoted by ice hockey players, it will be a symbol of a certain prestige →
- The sponsor of this ad highlights the identity and image aspects. These two key elements are in this advertising stressed by the combination of the car and the hockey team. The sponsor is trying to evoke a uniqueness of such a purchase, which emphasizes customer's image and also highlights his/her identity →
- → Customer behaviour of customer tends to buy products by Ford Motor Company Ltd

Improvement suggestion

My recommended solution is simple. Next time The Ford Motor Company Ltd should inform about its intension to promote any subject. It is a fundamental obligation to let the other party know about its actions.

Alternatively, the two parties may set up a contract on a mutual cooperation. If the party addressed isn't interested, its product must not be used in any advertising campaign, not even in the sense of "future".

Summary

This advertising is highly unethical, mainly because it is promoted by people who disagreed about "playing a part in this ad". I think that the Ford Motor Company Ltd. definitely sold some cars by this "move" as a result of this advertising. As a matter of fact, the ad had to be withdrawn from marketing advertising.

We do not live in future, but in reality.

5.2 Rossmann Company Ltd

The inclusion of a case:

THE DECISION OF THE ARBITRARY COMMITTEE OF THE CZECH ADVERTISING STANDARDS COUNCIL NO. 020/2010/ COMPL

The Decision:

The complaint is approved – the advertisement is unethical

The presentation of advertisement and the brand

Advertiser: ROSSMANN, s r.o., Na Pankráci 1683/127, 140 00 Praha 4

Complainant: the Czech Association for Branded Products, Těšnov 5, 110 00 Praha 1

Type of media: leaflets, internet

The description of the case

The complainant aims his complaint against the comparative advertising campaign entitled "Save money with our own products rather than with other conventional brands". This campaign is also accompanied by an advertising claim, which says: "Compare the prices yourselves! Our own brands guarantee a top quality at an unbeatable price!" Furthermore, graphic images of products from the advertiser (Rossmann Company Ltd) are shown in this campaign accompanied by other products of branded manufacturers, such as a Camey shower gel, or a liquid detergent Persil. Afterwards, there is also showed a price comparison to those products, which contains a claim about the same or first-rate quality of those brands.

The violation of ethical principles

- This is obviously an example of comparative advertising – self-styled: False comparisons – (a comparison of two unbalanced items - "Superior" (high-cost product) and "Inferior" (economic one) – with the difference that the author seeks to show the comparison of their price advantage in comparison to other branded products.
- At the same time, this campaign involves another trick of manipulative and deceptive advertising, called False testimonials (to involve famous celebrities into

commercials for gaining a bona fide user of the product) - as the Rossmann Company Ltd advertising campaign depicts world-famous brands such as Camay soap, which belongs among the products of the Procter & Gamble Co., and these products takes pride in good-class advertisements usually involving famous celebrities. The Procter & Gamble Co. is an American company, which was founded in 1837, while Rossmann Company Ltd was founded in 1996 in Germany. By using a product developed by Procter & Gamble Co., the Rossmann Co. not only sponges on the long-standing history of the world-famous company (the Procter & Gamble Co), but it also abuses its name for its own benefit and feeds off all the previous ads produced by Procter & Gamble Co, which this company had to create and paid for in order to make a profit and also built its current position in the market. During a long-term history and business process the Procter & Gamble Co. has introduced the List of the Billion Dollar Brands, which includes brands such as Braun, Duracell, Gill, Head & Shoulders, Pampers, Pantene and Wella etc. In comparison to the Procter & Gamble Co., the Rossmann Company Ltd products are almost inappropriate to mention as I have serious doubts that anyone knows or even remembers those names of their products.

- Advertising is also inadmissible because of fact that it is a type of a misleading comparative advertisement, which is called a Support type of comparative advertising, i.e. a comparison advertisement which capitalises on the reputation of another company.
- Comparative advertising can only compare products under these conditions: the products are comparable, verifiable and representative. The comparison should be made on several levels such as a comparison of quality and price. The Rossmann Company Ltd created for customers a comparison, which was without any evidence that might be applied to their claims, as the results of tests conducted. Their comparability cannot be carried out. Although Rossmann products have to satisfy the needs of the same purpose as the products of the Procter & Gamble Co, this argument is without a proof still based on speculations only.
- Although a certain degree of exaggeration and detraction is permitted in comparative advertising, Rossmann advertising company gave the customer a sense of confusion between products, prices, and trademarks of the Rossmann Company Ltd and Procter & Gamble Co.

The influence of this misleading advertisement on customer's behaviour

- In my particular case study of this advertising, influencing the customer through the customer decision process is clearly visible, namely in two levels – personal and mental.
- In this advertisement the economic point of view was also highlighted, in order to draw customers' attention by the price comparison which should make him/her buy the product →
- The "trick" of this misleading ad lies in drawing one's attention. Firstly this attention is drawn to well-know branded products, and then this ad tries to evoke an impression in the customer - why he/she should pay "unnecessarily" more, when there is a possibility to have "the same quality" for a lower price. This impression in the customer automatically leads to purchasing the products of the Rossmann Company Ltd →
- The aim of those prestigious brands both depicted and named in the advertising is to get into customers' subconsciousness. The customer gets a false impression that Rossmann brand products are of the same quality as reputable brands but for a lower price. This is unsupported evidence →
- Once the customer attention is captured by the Rossmanns' Company ad, it could make him/her recall the advertising which is connected to a specific product or involves a famous person who has acted in this advertising. This mental association will automatically combine this product with good quality and when he/she sees a comparison with other products at a lower price, it's a classic case of addressing the need for replacement or substitute in the form of products by Rossmann. This satisfaction is not on the same level as having the brand name product, however, due to a lower price Rossmann company is offering, this feeling of "saving money" can make a balance to the need of "owning a branded product" →
- In another case the customer could be "confused" by assessing (the depiction) of a branded product in a comparison with a less-known branded product, especially if they are situated in a close proximity. The aim is to give an impression that a world-famous product may not be of such a good quality if it is compared with the less-known and cheaper product →
- Advertising is trying to influence the customer by emotions that are falsely giving the impression of comparative type of a misleading advertising. The customer has

the impression that if he/she buys well-know brands, he/she is actually being robbed, for the products by Rossmann are offered at the same quality but for a lower price. This conviction leads to influencing the emotive aspects and also leads to buying cheaper products.

- → Customer behaviour of a customer leads to buying products by Rossmann Ltd Company

Improvement suggestions

The improvement I would suggest in this case is to focus more on own brands and presentation of own company and products, even though the history of Rossmann Company Ltd isn't very long.

Generally speaking it is more efficient to satisfy customers by an ethical, truthful advertisement than by a misleading one. Another advice is to put a greater emphasis on promoting Rossmanns' products without having a need to compare those products with products of other companies.

Summary

Products of Rossmann Company Ltd benefited from the good reputation of the Procter & Gamble Company products, which Rossmann Company Ltd doesn't have yet.

This advertising campaign includes two main faults: misleading customers by comparison with another company and also sponging on a good name of another company.

My chosen ad campaign was judged as completely unethical and had to be withdrawn from marketing advertising environment. This ad violates the Advertising Code published by The Czech Advertising Standards Council as it is based on comparative advertising.

A very cunning way how to influence customer's emotions by another well-know product and making the best of it to own (Rossmann Company Ltd) benefit.

6 RECOMMENDATION

The crucial part of this thesis – recommendations and suggestions for the future are divided into two parts: the first part contains general recommendations and the second one is a concrete recommendation including my own proposal. My recommendations are as follows:

Verbal manipulation - is surely a part of advertising, but only in an appropriate average. Different types of verbal manipulation were proved in my analysed campaigns – visual aspects to manipulate people, persuasive elements based on words, misleading information, comparisons, celebrities, sponging on the reputation of the company, hyperbole etc....All this was done for a reason - to draw attention of potential customers. I would recommend for sponsors of advertisement to refrain from this type of manipulation or to be at least very careful with that kind of using. It is important to follow the rules and it is always better to built advertisement on the truthful statement and keep ethic boundary.

Follow to legal regulation - advertisement must not be false or misleading and generally must comply with conditions imposed on it by following a legal regulation of advertising and also the rules of advertising industry. From my point of view more emphasis should be put on compliance with regulations which affect advertising and media. I highly recommend following the most important laws such as Act on Advertising Regulation, which belongs to a basic regulation on the field of Public Law. Another significant Act is Act No. 634 / 1992 Coll. about consumer protection, where are settled down the conditions for business and public administration tasks on the field of consumer protection and privileges. In this act is forbidden to mislead the consumer by marketing untrue, unsupported, incomplete, inaccurate, vague and exaggerated information which has a great importance for the promotion of ethics. Furthermore, there must not be concealed information about the true nature of the product or services and the quality of purchasing conditions. In Commercial Code there is a part which deals with unfair competition and the legal regulations of advertising as well.

Ethics in advertising - is no less important to observe Ethical self-regulation of advertising. That means to follow the instructions by The Czech Advertising Standards Council, which belongs to Self-regulatory bodies in the Czech Republic, also take into account the Advertising Code of Ethics.

No discrimination – is allowed. Advertisements shall not discriminate from reason of race, gender or nationality. When formulating requirements for advertising, it is equally important to take into account the fact that advertising not only reflects social attitudes, but it also affects them. For this reason, the advertisement should not degrade.

Social responsibility – should be taken more seriously. I would like to appeal to advertisers and advertising agencies to realise their social responsibility and put more emphasis on their responsibility towards the public. Advertisers are investing large sums in advertising and product marketing and to a certain degree their activities influence and shape social values. Therefore they should take into account and reflect shifts in the social status of women and men. They should be aware of the negative impact of a misleading advertising on customers and disillusionment which is often caused by disappointment induced by a dissatisfying purchase.

Be care about dissatisfaction - Generally speaking, the general problem of advertisement in connection with goals of customers is that advertisement cannot promise more, that their product can really do. There is a small gap between customer expectations and objective performance. None of products should promise unrealistic and fake expectations created by ad that "over-promise", because the result will be dissatisfaction of a customer.

Prototype of a new code - In this part of this chapter, I would like to suggest my own solution, which I have already mentioned. I have proposed a creation of precise recommendations, which should be written down in one list. It would be similar to the Advertising Code of Ethics but with the difference that this "code" would settle down conditions only for advertising and creative agencies. This code would serve as guidelines mainly for advertising industry. Also this code would serve for general public but just for information. The code would set the boundaries of misleading ad and also help to solve problems with ethics and non-ethics inaccuracies, which happened in past. These ethical restrictions on advertising would function as follows: the advertising market participants would agree to abide by certain ethical principles and at the same time they would be able to monitor whether these rules are being adhered to by the competition. Each year, this code would be updated and would contain mistakes in advertisement which happened during the previous year. I mean those serious mistakes because of which that concrete ad had to be withdrawn from advertising industry. It follows that Advertising agencies would

adhere to it which would prevent them and also their customers from unnecessary negative impacts caused by false advertising.

As far as costs of these recommendations are concerned, it is arguable what the actual costs of these suggestions would be.

Hopefully, all the recommendations and suggestions will help to improve the advertising industry just a bit.

CONCLUSION

The aim of this bachelor thesis was to find out how misleading advertisement can influence a customer.

As for the theoretical part, the thesis covered the topics of advertisement, customer's behaviour as well as legal regulation in advertising industry. The aim of this theoretical work was to explain the concept of advertising, to shed light on customer behaviour and also explain the nature of legal bodies which are involved in advertising processes in the Czech Republic.

As far as the practical part was concerned, I created an analyse of the total number of complaints in my tracking period and the results along with their graphic interpretation in the form of graph, are to be found in the analytical part. What else can be found in the practical part are advertising campaigns, which I analysed in detail and from all this realized information I created the recommendation for the future.

Advertising, if is conceived properly, has a very strong influence on customer behaviour. This effect increases if the customer is interested in the advertising. At this moment the customer's emphasis is directed on customer's perception, whose pays attention to the advertising. This fact alone is not sufficient for a successful advertising. Customers must also be attracted by the content of the ad. If the company offers something which the competition does not, it is assumed that the information in advertising simplifies and accelerates the decision - making process. In this case the customer is able to store this information contained in the ad in his/her memory, and uses this information when he/she makes the decision whether to buy the advertised product.

I personally think that people relied on the legal regulation of advertising much more before, but nowadays the situation is quite the opposite. The reason why it has changed is to be seen in the length of judicial litigations and other complications that accompany the judicial proceedings. I also think that the citizens of the Czech Republic, namely the Czech customers have become more aware of the importance of the concept of ethics in the advertising industry. If the customer is aware of this fact, the companies have to be aware of that as well, and take this fact into account, because customers are an existential source of their livelihood.

Although my bachelor thesis focused on assessing the impact of advertising on customer behaviour, I also want to point out, that customer behaviour is not affected by advertising only, but is also affected by many other influences such as the economic situation, the seasons, the need for the goods which is offered, its attractiveness, uniqueness, newness, etc.

Every company should remember that telling a lie to the public is wrong because the truth is usually revealed sooner or later. There is a no-lying rule in advertising marketing and this rule should be observed at all times.

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LIST OF ABBREVIATIONS

C, M, Dcomparative, misleading and deceptive advertisement

Ltda limited company

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APPENDIX I Rossmann spol. s.r.o.

ROZHODNUTÍ ARBITRÁŽNÍ KOMISE RPR Čj. 020/2010/STÍŽ

Zadavatel: ROSSMANN, spol. s r.o., Na Pankráci 1683/127, 140 00 Praha 4

Stěžovatel: České sdružení pro značkové výrobky, Těšnov 5, 110 00 Praha 1

Médium: letáky, internet

Stížnost: Stížnost ČSZV směřuje proti srovnávací reklamní kampani „Ušetřete s našimi vlastními výrobky oproti běžným značkám!“ Kampaň, která je provázena reklamním tvrzením „Porovnejte si ceny sami! Naše vlastní značky Vám zaručí prvotřídní kvalitu za bezkonkurenční cenu!“ je zároveň spojena s grafickým zobrazením výrobků spol. Rossmann a současně renomovaných výrobků značkových výrobců, např. tekutého detergentu Persil či sprchového gelu Camay, vůči kterým pak provádí cenové srovnání s tvrzením o stejné, či prvotřídní kvalitě svých značek.

Podle názoru stěžovatele se jedná o neetickou srovnávací reklamu spojenou s parazitováním na pověsti renomovaných značkových výrobců. Zadavatel na svých letácích záměrně vyobrazuje prakticky nejkvalitnější značky jiných soutěžitelů (o jejich kvalitách i průměrný spotřebitel má široké povědomí) vedle svých výrobků a snaží se spotřebitele přesvědčit o tom, že jeho výrobky mají stejnou kvalitu, jakou je kvalita odzkoušeného značkového výrobku, ovšem dostupnou za výrazně nižší cenu.

Tímto postupem jde spol. ROSSMANN při prezentaci svých výrobků za rámec povolené srovnávací reklamy, přičemž zcela jasně zneužívá dobré pověsti konkrétních značkových výrobků, vůči kterým se slovním i grafickým způsobem vymezuje, respektive vůči kterým činí takovéto srovnání, a zároveň i klame spotřebitele, pokud jde o tvrzení o srovnatelné, respektive prvotřídní kvalitě svých privátních značek.

Stěžovatel je přesvědčen, že kampaň porušuje Kodex reklamy a žádá Arbitrážní komisi, aby vydala rozhodnutí o neetičnosti a klamavosti dotčené reklamní komunikace spol. ROSSMANN

Rozhodnutí: stížnosti se vyhovuje – reklama je neetická

Odůvodnění: Členové nezávislé Arbitrážní komise se seznámili s obsahem stížnosti, s vizuálem předmětné reklamy a se stanoviskem zadavatele Ten ve svém vyjádření mj. konstatuje, že s námitkami stěžovatele nemůže souhlasit a jako důvody uvádí: výrobky, které zadavatel nabízí jako tzv. privátní značky, jsou výrobky vysoké kvality, které jsou pravidelně ve spotřebitelských testech hodnoceny jako velmi dobré či dobré.

Zadavatel je toho názoru, že ani ČSZV ani Radě pro reklamu nepřísluší hodnocení toho, co je či není značkový výrobek, resp. co ještě je a co již není „značkový“ výrobek, stejně tak hodnocení toho, co je či není výrobek kvalitní. Naopak má zadavatel za to, že některé z tzv. privátních značek se již v povědomí spotřebitelů natolik etablovaly, že spotřebitel nečiní rozdíl mezi značkami výrobců, jež sdružuje např. ČSZV a privátními značkami zadavatele, resp. že tyto privátní značky jsou „značkami“ ve smyslu ČSZV. Pokud jsou tyto značky nabízeny v porovnání s výrobky výrobců sdružených v ČSZV levněji či výrazně levněji, má tato skutečnost zajisté více příčin, v žádném případě však s ohledem na objektivní výsledky testů těchto výrobků nemůže zadavatel akceptovat tvrzení či předpoklad, že je nižší cena těchto výrobků „vykoupena“ jejich nižší kvalitou.

Zadavatel dále nesouhlasí s poukazem na případ, který Arbitrážní komise RPR řešila ve věci reklamní kampaně společnosti TESCO (č.j. 024/2009/STÍŽ). Podle názoru zadavatele je výše uvedený obchodní řetězec TESCO prodejcem, který působí ve všech segmentech maloobchodního prodeje. Zadavatel předmětné reklamy je však výlučně zaměřen na prodej drogistického zboží včetně doplňkového prodeje, což nepochybně vede k vyšší kvalitě výrobků nabízených jako tzv. privátní značky. Z tohoto důvodu se zadavatel domnívá, že označení výrobků těchto privátních značek jako výrobků „prvotřídních“ nemůže působit vůči spotřebiteli klamavě, a z tohoto důvodu by proto případ týkající se reklamní kampaně zadavatele měl být posuzován odlišně od případu, na který ČSZV ve své stížnosti poukazuje TESCO).

Zadavatel zásadně odmítá tvrzení stěžovatele, který se snaží snižovat kvalitu výrobků privátních značek zadavatele v porovnání s výrobky „běžných“ značek. Pokud jde o cenové srovnání výrobků privátních značek a výrobků běžných

značek, pak toto srovnání – podle názoru zadavatele - nijak nevybočuje z mezí srovnávací reklamy dovolené Kodexem reklamy RPR. Nelze odhlížet ani od skutečnosti, že srovnávání výrobků pouze z hlediska ceny výslovně připouští obchodní zákoník a přípustnost takového srovnání byla konstatována i Evropským soudním dvorem ve věci C-44/01 odst. 80 „*Srovnání se může týkat zejména i ceny, přičemž srovnání cen nemůže vést samo o sobě k diskreditaci nebo zlehčování soutěžitele, jehož ceny jsou vyšší.*“

Zadavatel je přesvědčen, že v případě předmětné reklamní kampaně nedochází ke snižování hodnoty výrobků běžných značek a k očerňování jejich výrobců. Cílem reklamní kampaně bylo pouze cenové porovnání výrobků privátních značek a výrobků běžných značek. Taková reklama nemůže být považována za neetickou již z toho důvodu, že pouze srovnává objektivně porovnatelné znaky obou výrobků – totiž jejich cenu. Dle názoru zadavatele není přípustné, aby výrobky výrobců sdružených v ČSZV byly upřednostňovány na úkor privátních značek, které by tak byly bezdůvodně diskriminovány.

Zadavatel uzavírá, že jeho reklamní kampaň, v níž jsou spotřebitelé upozorňováni na to, že nákupem výrobků našich privátních značek mohou ušetřit v porovnání s nákupem výrobků běžných značek, aniž by museli slevovat ze svých nároků na kvalitu výrobků, není neetickou reklamou, která by byla v rozporu s Kodexem reklamy

Rady pro reklamu. Reklamní kampaň žádným způsobem nezlehčuje, neočerňuje ani nesnižuje hodnotu porovnávaných výrobků běžných značek, není tedy možné ji označit jako nepravdivou, neslušnou nebo nečestnou.

Z uvedených důvodů se zadavatel domnívá, že Arbitrážní komise by měla o stížnosti ČSZV rozhodnout tak, že se jedná o neopodstatněnou stížnost.

Většina členů Arbitrážní komise se shodla na tom, že jde o komunikaci, která jde nad rámec povolené srovnávací reklamy. V předmětné reklamě jsou prvky, které snižují hodnotu značkového konkurenčního zboží a mohou být pro spotřebitele matoucí. Použitím konkrétních konkurenčních výrobků může jít i o parazitování na soutěžitelích. Rovněž podčarové sdělení „značky vás okrádají“ lze vnímat jako očerňování konkurence. Zadavatel přitom představuje symbol prodejní sítě, nikoliv produktů. Členové Arbitrážní komise nezpochybují, že kvalita „privátních značek“ může být srovnatelná s kvalitou značkových výrobků, což je jistě doložitelné prostřednictvím informací o výrobních postupech a dodavatelských zdrojích.

Zvolený způsob komunikace je však možné označit za neetický. Nejde již o užitnou hodnotu, ale o psychologickou nadstavbu – emoce. Členové Arbitrážní komise si rovněž uvědomují, že trend v této oblasti nahrává zvýšenému výskytu podobných konfliktů. Rada pro reklamu však chce svá stanoviska konzistentně zastávat. Této stížnosti bylo většinově vyhověno. Reklama byla označena za neetickou.

Ve smyslu článku 12 Jednacího řádu RPR může zadavatel, resp. reklamní agentura ve lhůtě 7 dnů od doručení rozhodnutí podat prostřednictvím sekretariátu RPR protest, kterým se bude zabývat Arbitrážní komise na svém příštím zasedání.

V Praze dne 24. května 2010

APPENDIX II Ford Motor Company s. r. o.

ROZHODNUTÍ ARBITRÁŽNÍ KOMISE RPR Čj. 005/2010/STÍŽ

Zadavatel: FORD MOTOR COMPANY, s.r.o., Karolinská 654/2, 186 00 Praha 8

Stěžovatel: BPA sport marketing, a.s., Těšnov 1/1059, 110 00 Praha 1

právní zástupce Jansta, Kostka spol. s r.o., Těšnov 1/1059, PRAHA 1

Médium: tisk

Stížnost: Stížnost se týká reklamy na automobil Ford Transit, uveřejněné v denním tisku. Automobil je propagován jako „vůz českého národního hokejového týmu“. Stěžovatel uvádí, že reklama má nepochybně klamavý charakter. Běžný spotřebitel, nerozeznáváje mezi specifiky právních vztahů ohledně užívání relevantních názvů jakkoli souvisejících s českým národním hokejovým týmem obecně, na základě reklamy vnímá automobil FORD Transit prostě jako automobil, který je „... vůz českého hokejového týmu...“, tedy ve své podstatě, ovšem v rozporu s objektivní realitou, tu nejde o nic jiného než o prezentaci údajné aktivní spolupráce FORD MOTOR COMPANY, s.r.o. s českým národním hokejovým týmem, neboť by automobil FORD Transit měl být snad českým národním hokejovým týmem využíván.

Rozhodnutí: stížnosti se vyhovuje – reklama je neetická

Odůvodnění: Členové nezávislé Arbitrážní komise RPR se seznámili s obsahem stížnosti, s vizuálem předmětné reklamy a s vyjádřením zadavatele. Ten ve svém stanovisku mj. uvádí, že společnost FORD MOTOR COMPANY, s.r.o. jako dovozce osobních a užitkových automobilů značky FORD do ČR již stěžovateli dostatečně vysvětlila záměrnou nepravděpodobnost/nadsázku na dotčené reklamě vyobrazené situace. Nadsázka měla být akcentována i vícenásobným a jasným konstatováním, že „... nikdo nemůže vědět, co se za několik let stane...“. Zadavatel dále konstatuje, že v kontrastu k záměrné nepravděpodobnosti a mimořádné nadsázce vyobrazené scény reklama naopak obsahuje jediné tvrzení, jehož reálnost a pravdivost má v takovém kontextu o to více vyniknout – totiž tvrzení o poskytnutí prodloužené záruky.

Právě kontrast nereálné představy světového šampionátu ve vysoce nepravděpodobném místě konání (okresním městě středních Čech) s nereálným (nikdy neangažovaným sponzorem), v nepravděpodobně blízké budoucnosti (s ohledem na nedávné hostování šampionátu v ČR) a v dalších verzích reklamy i absurdními finalisty a dalšími aspekty na straně jedné a jasného aktuálního pravdivého a prokazatelného tvrzení o existenci mimořádné záruky, je pro vyznění reklamy klíčový a vlastně jediný motiv. Z toho zadavatel dovozuje, že úvaha o snaze těžit ze spojitosti s hokejem je nejen nesprávná, ale bylo by to přímo proti smyslu a motivu dané reklamy.

Zadavatel dále zdůrazňuje, že neměl sebemenší zájem na konfliktnosti či kontroverznosti dané reklamy. Z tohoto důvodu také zadavatel souhlasil s korekcí obsahu reklamy. Podle názoru zadavatele tedy aspekt, který tížil stěžovatele, přestal být podstatnou částí daného reklamního sdělení. Zadavatel závěrem upozorňuje, že předmětná reklamní kampaň fakticky skočila.

Členové Arbitrážní komise se vztahem předmětné komerční komunikace k etickému Kodexu reklamy se zabývali. Většinově označili tuto reklamu za neetickou. Vzali zároveň na vědomí, že tato kampaň byla ukončena a že se zadavatel stěžovateli vysvětlujícím dopisem omluvil.

V Praze dne 23. března 2010

