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Commitment to Electronic Media: A Tool for Consumer Protection in E-Commerce

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Abstract:
This study provides a legal analysis of the duty to provide information and consumer protection in e-commerce. The legislature enacted Law No. 18-05 on e-commerce, which enshrines the duty to provide information in order to protect consumers in the digital environment, where they may fall victim to misleading advertising. Thus, the duty to provide information serves as a safeguard for both the consumer and the supplier in the formation of an electronic contract, as it restores balance to the contractual relationship between the consumer — as the weaker party — and the supplier — as the stronger party.
Given the importance of the duty to inform in electronic commercial transactions in terms of protecting consumer rights, it is essential to examine the nature and scope of this duty on the one hand, and the methods of electronic information provision for consumer protection on the other.

Keywords: duty to provide information, e-commerce, online supplier, online consumer, online advertising.

1. Introduction

E-commerce is a term that has emerged as a result of the technological developments the world is experiencing, particularly in the field of commercial transactions. Thus, in light of these changes in commercial transactions — which are now conducted via modern means of communication, foremost among which is the internet — it has become imperative to establish mechanisms to protect consumers in electronic transactions, in order to counterbalance the professional contractor given the disparity in economic standing.
Consequently, the Algerian legislature enacted Law No. 18-05 on e-commerce[1] to safeguard consumers' rights and protect them from fraud, given their inability to inspect the ordered product thoroughly and verify the presence of any defects it may have. Consequently, the legislator[2] has emphasised the duty to provide information, which is an obligation incumbent upon the online supplier to provide the consumer with essential information regarding the online commercial offer.
In light of the above, and given the importance of the duty to provide information in e-commerce transactions in terms of protecting consumer rights, it is necessary to examine the nature and scope of this duty on the one hand, and the methods of electronic information provision to protect consumers on the other. To address the issues raised in examining this topic, a descriptive and analytical approach will be adopted, focusing on the legal provisions governing e-commerce in Algerian legislation, in particular Law No. 18-05 on e-commerce, as outlined above.

[1] Law No. 18-05 of 10 May 2018 on e-commerce, Official Gazette, 16 May 2018, Issue 28, p. 4.

[2] Articles 10 and 11 of Law No. 18-05 on e-commerce, cited above.

2. Section One: The Obligation to Provide Information Online: Legal Foundations and Limits of Application

The obligation to provide information is one of the most important factors influencing consumer satisfaction in electronic commercial transactions. This is because, in the digital environment and in the face of misleading advertisements for electronic commercial products, consumers are often at a loss due to their lack of knowledge about the product, as they are unable to physically verify its features; this, in turn, affects their satisfaction. Consequently, to ensure that the consumer's free will — as the weaker party in electronic transactions — is not compromised, the legislator has enshrined a duty to provide information, which is an obligation incumbent upon the online supplier.

2.1 First Requirement: The Conceptual Framework for the Duty to Provide Information

The duty to provide information is a fundamental element of electronic commercial transactions, as the online supplier is required to provide the consumer with all necessary information regarding the product offered online in order to remove any ambiguity concerning it.

Section 1: The Duty to Provide Information: From the Duty of Silence to the Consumer's Right to Know

The Algerian legislature has enshrined the duty to provide information within the provisions of the Electronic Commerce Act, stipulating that the online supplier must present the commercial offer in a visible, legible and comprehensible manner, and that it must include all necessary information concerning both the supplier and the product.[3] Thus, it is noted that the legislator did not define the duty to provide information online, but rather outlined its parameters. Consequently, some legal scholars have defined the duty to provide information in general terms as 'a pre-contractual obligation relating to the obligation of one contracting party to provide the other with a set of information and data to ensure proper consent, informed by all information relating to the contract, owing to specific circumstances — whether natural or relating to the nature of one of the parties — which make it impossible for one of the parties to be aware of the facts enabling them to conclude the contract'.[4] Another school of thought defines it as "an obligation preceding the formation of the contract, occurring during the stage of the formation and validation of consent; it is a legal obligation."[5] Thus, it is noted that the obligation to provide electronic information is a pre-contractual obligation, grounded in the principle of good faith, which requires that it be fulfilled during the stage preceding the conclusion of the contract, namely the negotiation stage.[6] Furthermore, the obligation to provide electronic information is an obligation incumbent upon the electronic supplier towards the electronic consumer, whereby the supplier must provide the consumer with all necessary and accurate information regarding the commercial offer presented — whether it be a service or a good — so that the electronic consumer may make an informed decision as to whether to accept (i.e. enter into the contract) or reject (i.e. decline to enter into the contract) the offer.[7]

In light of the above, it is noted that the legislator[8] has established the obligation for the online supplier to provide the online consumer with specific information, which the legislator has listed by way of example only. This information can be divided into two categories: information relating to the online supplier, and information relating to the goods or product.

With regard to information relating to the supplier, it should be noted that the obligation to provide information requires the disclosure of details concerning the identity of the online supplier; one of the obstacles limiting consumers' willingness to

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[3] Article 11 of Law No. 18-05 on e-commerce, cited above.

[4] Nawaf Mohammed Mufleh Al-Dhibat, "The Duty of Disclosure in Electronic Contracts," Master's thesis, specialising in Private Law, Faculty of Law, Middle East University, 2013, p. 46.

[5] Khalifi Abd al-Rahman, "Consumer Protection," National Forum on Competition and Consumer Protection, 17 and 18 March 2019, Abd al-Rahman Mira University, Bejaia. See also Sarrah Khawalef, "Legal Mechanisms for the Protection of Online Consumers in Algerian E-Commerce Law," *Journal of Legal and Political Jurisprudence*, vol. 1, no. 1, p. 240.

[6] Asma Assasi, "The Right to Electronic Information: A Mechanism for Consumer Protection in the Digital Environment," Proceedings of the National Forum on the Legal Protection of Consumers in the Marketing Process: Between Reality and Aspirations, 11 and 12 November 2019, Maghnia University Centre, Incentives for Studies, Publication and Training, Algiers, 1st edition, November 2019, p. 67.

[7] Al-Zahra Jagrif and Wasila Shreibat, "The Obligation to Provide Pre-Contractual Information in Electronic Transactions as a Guarantee of Consumer Protection in the Digital Sphere: A Study in the Light of Law No. 18-05 on E-commerce," *Al-Ma'ayar Journal*, vol. 24, no. 51, 2020, p. 717.

[8] Article 11 of Law No. 18-05 on e-commerce, cited above.

enter into an electronic contract is a lack of knowledge regarding the identity of the seller with whom they are dealing. Therefore, disclosing the supplier's identity instils confidence in the online consumer.[9] Consequently, the legislator[10] has required the online supplier to provide their commercial registration number, or the professional licence number for tradespeople, as well as all information relating to their identity so that the consumer can contact them, such as their first name, surname and telephone number. Generally speaking, the specific details required to inform the online consumer are not specified; therefore, the online supplier is obliged to include information that reveals their identity to the consumer.
As regards information relating to the product, goods or even the service, the information contained in the online commercial offer focuses on the distinctive features of the goods or service, the price, the conditions entitling the online consumer to exercise their right to withdraw from the contract, information on after-sales services and commercial guarantees, information regarding the use of the item sold or the provision of the service.[11]

Section 2: The Legal Nature of the Duty to Inform: A Preventive Duty or an Independent Contractual Obligation?

The duty to provide information is one of the obligations incumbent upon the online supplier. However, a question arises regarding the legal nature of this obligation: is it a contractual or a statutory obligation? To determine its legal nature, various legal opinions will be reviewed. Some legal scholars[12] consider it a statutory obligation, as it precedes the conclusion of the contract, and the online supplier is obliged to provide all necessary information relating to the contract, on the basis of which the consumer enters into the contract with sound consent, free from any defect of consent, and that a breach of this obligation gives rise to liability in tort,[13] as the duty to inform constitutes an obligation separate from the contract. Another view holds that the duty to provide information is a contractual obligation,[14] as 'errors preceding the conclusion of the contract may give rise to contractual liability; for although the act may have preceded the contract, its consequences arise after the contract'.[15]
Consequently, and with reference to the legal provisions relating to e-commerce, it is noted that the legislator has obliged the online supplier to provide a commercial offer for any electronic transaction; furthermore, the commercial offer must include all the information necessary to enable the consumer to identify the product or service. It is therefore evident that the obligation to provide information derives from the law rather than the contract, which means that it is a legal obligation rather than a contractual one.

2.2 Second Requirement: Scope of Application of the Duty to Provide Information

The application of the disclosure obligation is subject to rules regarding both persons and time. Thus, this section will examine the persons subject to this obligation as well as the temporal scope of the disclosure obligation.

Section 1: The Personal Scope of the Disclosure Obligation: Who is Obliged to Disclose and to Whom is Protection Granted?

An analysis of the legal provisions relating to e-commerce reveals that the Algerian legislator[16] has specified the persons subject to the electronic information obligation, limiting them, on the one hand, to the electronic supplier upon whom this obligation falls, and, on the other hand, to the electronic consumer as the beneficiary of this obligation.
With regard to the electronic supplier, whom the legislator has defined as 'any natural or legal person who markets or offers to supply goods or services via electronic communications'.[17] Consequently, the term 'electronic supplier' encompasses the

[9] Sarrah Khawalef, the aforementioned article, p. 240.

[10] Article 11 of Law No. 18-05 on e-commerce, cited above.

[11] Article 11(4) to (11) of Law No. 18-05 on e-commerce, cited above.

[12] Nawaf Mohammed Mufleh Al-Dhibat, the aforementioned paper, p. 60.

[13] For tortious liability, see Article 124 of the Civil Code et seq.

[14] For contractual liability, see Article 106 of the Civil Code et seq.

[15] Aksoum Eilam Rachida, *The Legal Status of the Online Consumer*, PhD thesis in Law, specialising in Private Law, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, 2018, p. 354.

[16] See Articles 10 and 11 of Law No. 18-05 on e-commerce, cited above.

[17] Article 6 of Law No. 18-05 on e-commerce, cited above.

producer, manufacturer, intermediary, importer and trader; furthermore, service providers and self-employed professionals are also included within the scope of the term ‘electronic supplier’.[18]

It is worth noting that the legislator[19] has established a national register of electronic suppliers at the National Centre for the Commercial Register, which includes the names of electronic suppliers registered in the Commercial Register or in the Register of Traditional Industries and Crafts. The ‘National Register’ of e-suppliers is published via electronic communications to make it accessible to e-consumers; thanks to this publication, e-consumers can verify the identity of the e-supplier.

As for the e-consumer, the legislator has defined them[20] as “any natural or legal person who acquires, for a consideration or free of charge, a good or service via electronic communications from an e-supplier for the purpose of end use”. Thus, the e-consumer is entitled to the obligation to provide information, as they are the party who lacks the expertise and technical knowledge required to be fully informed of all necessary details regarding the products or services intended for consumption.

Section 2: The Temporal Scope of the Duty to Provide Information: Pre-contractual Information and Extended Post-contractual Protection

The duty to provide information is a pre-contractual obligation between the supplier and the consumer in the digital environment, as the electronic consumer’s conclusion of the contract is based on awareness and understanding of its legal consequences. This conclusion only takes place after a period of time during which the consumer has gathered all the information and data relating to the electronic contract; this is referred to as the ‘reflection period’, which may be longer or shorter. Legal doctrine has established that the ‘reflection period’ must not be so long as to risk a delay in the essential elements of the contract.[21]

3. Section Two: Electronic Communication Mechanisms in the Service of the Digital Consumer

Advances in communications technology have paved the way for market expansion and the widespread promotion of goods and services with a view to their acquisition by consumers. Within the framework of e-commerce, the legislator has established commercial advertising as a means of informing consumers of all data and information relating to goods or services, given that consumers are unable to physically inspect the goods or services as a result of electronic contracting via the internet.

Consequently, this paper will examine the concept of electronic advertising and its forms, as well as the legal requirements applicable to electronic advertising.

3.1 First Requirement: Electronic Commercial Advertising: A Tool for Information or a Means of Influence?

Advertising is an effective means of presenting a product for sale by promoting it using specific methods. With technological developments and the emergence of e-commerce, electronic advertising has become essential, particularly given the consumer’s inability to physically inspect goods and services, a factor which distinguishes electronic advertising from traditional advertising.

Accordingly, this paper will address the definition of digital advertising as well as its various forms.

Section 1: Digital Advertising: Its Concept and Distinctive Features in the Digital Environment

The legislator has enshrined the requirement for disclosure in the provisions of Executive Decree No. 13-378 of 9 November 2013 concerning the definition of the conditions and procedures relating to consumer information,[22] whereby the service provider is required to inform the consumer, through advertising, announcements or any other appropriate means, of the services provided, the tariffs, the potential limits of contractual liability and the conditions governing the provision of the service.

With reference to the aforementioned E-Commerce Law, it is noted that the Algerian legislator has been meticulous and has established a definition of electronic advertising, whereby any advertisement aimed, directly or indirectly, at promoting the sale of goods or services via electronic communications is considered as such. Consequently, electronic advertising constitutes

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[18] Asma Assasi, op. cit., p. 71.

[19] Article 9 of Law No. 18-05 on e-commerce, cited above.

[20] Article 6(3) of Law No. 18-05 on e-commerce, cited above.

[21] Asma Assasi, the aforementioned article, p. 72.

[22] Article 52 of Executive Decree No. 13-378 of 9 November 2013 setting out the conditions and procedures relating to consumer information, Official Gazette, 18 November 2013, No. 58, p. 2.

an effective tool for influencing online consumers in order to achieve commercial objectives.[23] Thus, the legislator has distinguished electronic advertising from traditional advertising on the grounds that it is linked to electronic communications, particularly those taking place on the internet.

It is worth noting that the legislator has not specified the legal nature of electronic advertising: is it considered a civil or a commercial act? Referring to the provisions of Article 3 of the Commercial Code, the legislator has classified agencies and business offices as commercial enterprises by virtue of their form, and it is observed that advertising falls within the scope of advertising agencies' activities. Furthermore, commercial advertising acquires a commercial character provided that the person carrying it out has the status of a trader, as it is consequently regarded as a commercial activity.[24]

Section 2: Forms of Digital Advertising: From Digital Billboards to Influencer Content and Targeted Advertising

Digital advertising is produced using various methods, depending on the medium used to deliver it; it may be delivered via the internet or offline.[25]

With regard to online advertising, several types can be observed whilst browsing websites, including banner adverts, advertising sponsorships and pop-up adverts.[26] With regard to banner adverts, when browsing web pages or websites, a specific area is allocated for advertising; the website visitor can view banner adverts for goods or services that are unrelated to the page they are viewing.[27] As for sponsored content, this is a marketing tool that involves writing or designing web page backgrounds to include the name or logo of the organisation sponsoring that page, along with its slogan, in order to promote the sponsoring organisation's goods or services.[28] As for pop-up adverts, these appear suddenly and are beyond the control of the web page user, as there is no way to avoid seeing them whilst viewing the content on that page.[29]

As for offline digital advertising, this takes various forms, including Bluetooth advertising, SMS advertising and multimedia messaging advertising. Bluetooth advertising relies on Bluetooth technology linked to various electronic devices such as mobile phones and computers. It connects various electronic devices wirelessly via Bluetooth, penetrating walls up to ten metres without the need to physically access and operate the device.[30] As for SMS advertising, this type of advertising is characterised by the ability to send bulk messages whilst reducing the costs of drafting advertising messages; it is considered a low-cost advertising medium as messages can be sent from anywhere at a fixed, standardised rate.[31] As for multimedia message advertising, which is based on the ability to design advertisements in video format (image and sound) using MMS technology, these messages are stored and circulated amongst several people; however, this requires a monthly subscription with one of the organisations providing the advertising service.[32]

It should be noted that it is prohibited to publish any electronic advertisement or promotion for any product or service that is prohibited from being marketed via electronic communications under the applicable legislation and regulations.[33]

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[23] Abdullah Safih and Fathi Ben Jedid, "Electronic Advertising and Consumer Protection in the E-Commerce Law 18-05," *Journal of Legal Studies*, Yahya Fares University, Medea, vol. 7, no. 2, 2021, p. 792.

[24] Article 3 of the Commercial Code.

[25] Jabara Noura, "Electronic Advertising as a Means of Communication," *Journal of Legal Studies*, Yahya Fares University, Medea, vol. 7, no. 2, 2021, p. 678.

[26] Ibid.

[27] Samira Zaidi, "The Obligation to Provide Information in Electronic Contracts," Master's thesis in Law, specialising in Business Law, Arab Ben M'hidi University, Oum El Bouaghi, 2015–2016, p. 39.

[28] Jabara Noura, op. cit., pp. 678, 679.

[29] Zouawi Omar Hamza, "The Impact of Electronic Advertising on Individual Consumer Behaviour," PhD thesis in Business Studies, specialising in Marketing, Algiers, 2012–2013, p. 90. See also Jabara Noura, op. cit., p. 678.

[30] Jabara Noura, op. cit., p. 680.

[31] Ibid.

[32] Zouawi Omar Hamza, the aforementioned thesis, p. 100.

[33] Article 34 of Law No. 18-05 on e-commerce, cited above.

3.2 Second Requirement: Legal Controls on Electronic Advertising and the Protection of Consumer Choice

The legislator[34] has stipulated a set of legal conditions that must be met in electronic advertising; the advertisement must be clearly identified as a commercial or promotional message, it must allow the recipient for whom the message is intended to be identified, and it must not contravene public order or public decency. Furthermore, the advertisement must clearly specify whether the commercial offer includes a discount, rewards or gifts, and whether the offer is of a commercial, competitive or promotional nature. In addition, it must be ensured that all the conditions that must be met to benefit from the commercial offer are neither misleading nor ambiguous. Thus, the legislator has sought to protect consumers and safeguard them from misleading online advertising by deterring online suppliers from including false information.

In addition to the above, direct marketing is prohibited where messages are sent via electronic communications using the personal data of a natural person, in any form whatsoever, who has not given their prior consent to receive direct marketing via electronic communications,[35] as the legislator has required electronic service providers to set up an online platform allowing consumers to express their wish to accept or refuse to receive any marketing communications from them via electronic communications.[36]

4. Conclusion

The study has shown that the Algerian legislator has established a legal framework specific to e-commerce to keep pace with the technological developments witnessed in the economic sphere with regard to commercial transactions, whereby the online supplier is subject to a duty to inform, under which they are obliged to provide the online consumer with clear and comprehensive information prior to the conclusion of the contract regarding the goods and services offered, given that the consumer is not physically present to inspect the products. Thus, the duty to provide information serves as a safeguard for both the consumer and the supplier in the formation of an electronic contract, as it restores balance to the contractual relationship between the consumer — as the weaker party — and the supplier — as the stronger party.[37]

Consequently, the enactment by the legislature of the E-Commerce Act No. 18-05 of 10 May 2018 enshrined protection for online consumers in the digital environment, who are vulnerable to misleading advertising, setting out the legal rules governing online advertising, which constitute one of the safeguards adopted by the legislator to ensure that online suppliers fulfil their obligation to inform consumers. It is worth noting that, prior to the enactment of the E-Commerce Act, the legislator had approved Executive Decree No. 13-378 dated 9 November 2013, which sets out the conditions and procedures relating to consumer information; however, this decree is no longer consistent with the provisions of the E-Commerce Act. It is therefore advisable for the legislator to intervene and issue a new regulatory text that is consistent with the provisions of Law No. 18-05 relating to the aforementioned E-Commerce Law.

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[34] Article 30 of Law No. 18-05 on e-commerce, cited above.

[35] Article 31 of Law No. 18-05 on e-commerce, cited above.

[36] Article 32 of Law No. 18-05 on e-commerce, referred to above.

[37] Farhat Fatima Zahra and Qanfoud Ramadan, “The Pre-contractual Information Obligation as a Legal Mechanism for Consumer Protection,” *Journal of Judicial Precedents*, Mohamed Khider University, Biskra, issue 2, 2020, p. 729.

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