
CHAMBERS GLOBAL PRACTICE GUIDES

Advertising & Marketing 2023

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**China: Law & Practice
and Trends & Developments**

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CHINA

Law and Practice

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Contents

1. Legal Framework and Regulatory Bodies p.6

- 1.1 Primary Laws and Regulation p.6
- 1.2 Enforcement and Regulatory Authorities p.6
- 1.3 Liability for Deceptive Advertising p.6
- 1.4 What Is Advertising? p.7
- 1.5 Pre-approvals p.7
- 1.6 Intellectual Property and Publicity Rights p.8
- 1.7 Self-Regulatory Authorities p.8
- 1.8 Private Right of Action for Consumers p.8
- 1.9 Regulatory and Legal Trends p.8
- 1.10 Taste and Cultural Concerns p.9
- 1.11 Politics, Regulation and Enforcement p.9

2. Advertising Claims p.10

- 2.1 Deceptive or Misleading Claims p.10
- 2.2 Regulation of Advertising Claims p.10
- 2.3 Substantiation of Advertising Claims p.10
- 2.4 Product Demonstrations p.11
- 2.5 Endorsements and Testimonials p.11
- 2.6 Disclosures p.11
- 2.7 Representation and Stereotypes in Advertising p.12
- 2.8 Environmental Claims p.12
- 2.9 Dark Patterns p.12
- 2.10 Children p.13
- 2.11 Sponsor ID and Branded Content p.13
- 2.12 Other Regulated Claims p.13

3. Comparative Advertising and Ambush Marketing p.14

- 3.1 Specific Rules or Restrictions p.14
- 3.2 Competitor Copyrights and Trade Marks p.14
- 3.3 Challenging Comparative Claims Made by Competitors p.14
- 3.4 Ambush Marketing p.15

4. Social/Digital Media p.15

- 4.1 Special Rules Applicable to Social Media p.15
- 4.2 Liability for Third-Party Content p.15
- 4.3 Disclosure Requirements p.15

4.4 Requirements for Use of Social Media Platforms p.16

4.5 Special Rules for Native Advertising p.16

5. Social Media Influencer Campaigns and Online Reviews p.16

5.1 Special Rules/Regulations on Influencer Campaigns p.16

5.2 Advertiser Liability for Influencer Content p.17

5.3 Consumer Reviews p.17

5.4 Liability for Consumer Reviews p.17

6. Privacy and Advertising p.17

6.1 Email Marketing p.17

6.2 Telemarketing p.17

6.3 Text Messaging p.17

6.4 Targeted/Interest-Based Advertising p.18

6.5 Marketing to Children p.18

6.6 Other Rules p.19

7. Sweepstakes and Other Consumer Promotions p.19

7.1 Sweepstakes and Contests p.19

7.2 Contests of Skill and Games of Chance p.19

7.3 Registration and Approval Requirements p.19

7.4 Free and Reduced-Price Offers p.20

7.5 Automatic Renewal/Continuous Service Offers p.20

8. Artificial Intelligence p.20

8.1 AI & Advertising Content p.20

8.2 AI-Related Claims p.21

8.3 Chatbots p.21

9. Web 3.0 p.21

9.1 Cryptocurrency and Non-fungible Tokens (NFTs) p.21

9.2 Metaverse p.21

10. Product Compliance p.21

10.1 Regulated Products p.21

10.2 Product Placement p.22

10.3 Other Products p.23

Haiwen & Partners was founded in May 1992 and is one of the leading general practice law firms in the People's Republic of China, with around 200 lawyers working in its Beijing, Chengdu, Hong Kong, Shanghai and Shenzhen offices. The firm started its pioneering entertainment and media law practice more than a decade ago, involving a wide variety of practice areas in the entertainment industries, including the development, production and distribution of film and television projects; large theme park

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1. Legal Framework and Regulatory Bodies

1.1 Primary Laws and Regulation

The Advertising Law of the PRC (the “Advertising Law”) sets forth the legal framework in connection with advertising and marketing practices in the PRC. The law was amended three times in the last decade in response to rapid developments in the advertising industry. Provisions regulating advertising and marketing activities are found in various national laws and administrative regulations, including:

- the Civil Code;
- the Anti-Unfair Competition Law;
- the Food Safety Law;
- the Drug Administration Law;
- the Law on Protection of Rights and Interests of Consumers (the “Consumer Protection Law”);
- the Administrative Measures for the Broadcasting of Advertisements on Radio and Television; and
- the Administrative Measures for Internet Advertising (the “Internet Advertising Measures”).

1.2 Enforcement and Regulatory Authorities

The State Administration for Market Regulation (SAMR), and a local counterpart to the SAMR, the AMR, are the primary regulatory authorities that enforce both the Advertising Law and the Anti-Unfair Competition Law.

While the SAMR is the key government authority responsible for overall market regulation, the Advertising Law also empowers other regulatory bodies to work with the SAMR to supervise advertising activities in specific industries. For instance:

- internet advertising activities will be regulated by the cyberspace administrative authority and the industry and information technology administrative authority;
- advertisements for NFTs and the metaverse will be regulated by the banking and insurance regulatory commission and the securities regulatory commission; and
- advertisements for medical-related products will be regulated by the medicine supervision and administrative authority.

1.3 Liability for Deceptive Advertising

Under PRC laws and regulations, the persons or entities that can be held liable for false advertising include advertisers, advertising agencies, the publishers of adverts, and in certain circumstances, those who endorse products. Administrative penalties resulting from the violation of the Advertising Law and the Anti-Unfair Competition Law range from fines, forced cessation of illegal acts, confiscation of illegal proceeds and revocation of business licences. Criminal liability for false advertising, when the violation amounts to a crime, may apply to advertisers, advertising agencies and the publishers of adverts (Article 222, the Criminal Law).

Advertisers

The advertiser, as the provider of the product/service, is in principle liable for false advertising with limited exceptions. The advertiser may be required to cease the illegal acts or be subject to fines, revocation of business licences or confiscations in an administrative ruling and compensation in a civil proceeding. If the false advertising constitutes a criminal offence and the advertiser (being a legal person) is found guilty of false advertising under the Criminal Law, the directly responsible individual or the individual taking primary responsibility for that false adver-

tising may be held chargeable (Article 231, the Criminal Law).

Agencies and Publishers

Both the advertising agent and the publisher of an advertisement must take responsibility for the advertisement verification. They shall verify, among other things, the certificates and other types of files provided by the advertiser and the content of the advertisement to ensure consistency between the claims therein and the qualification of the product. Liabilities similar to those applicable to the advertiser may also apply to an advertising agent and/or publisher if they knowingly produce or publish a false advertisement.

Endorsers

A person who endorses a product may be held liable for promoting falsely advertised products, if the endorser is, or should have been, aware of the fact of false advertising but they still recommended or otherwise endorsed the product or service. In such cases, the AMR may confiscate the illegal income and impose a fine on the endorser. In addition, if the subject product or service of a false advertisement concerns the life or health of consumers and causes injury or damage to the consumer, the endorser shall take joint liability with the advertiser, advertising agent, and advert publisher.

Third Parties

Other participants involved in a false or misleading advertisement may also be held liable. For example, the law requires that an administrator of a public place, an operator of a telecommunications business, or an internet information service provider shall stop the sending or publishing of illegal advertisements if such entity knows or should have known about the illegality relating to the advertisements in question (Article 45, the Advertising Law). Through the operation of this

provision, the law essentially imposes liability for verification on these third parties.

1.4 What Is Advertising?

The Advertising Law shall apply to commercial publicity activities within the PRC where commodity business operators or service providers directly or indirectly promote their goods or services through certain media and formats.

The Internet Advertising Measures of 2023 were developed to address the ever-changing landscape of digital promotion. Under these Measures, keyword bidding for commodities or services shall be prominently marked as “advertisement” to be distinguished from organic keyword rankings; knowledge or experience sharing (eg, influencer marketing campaigns) and customer reviews, alongside accessible purchasing methods (eg, purchase links), shall also be prominently marked as “advertisement”; and the promotional activities of a commodity business operator or service provider through live-streaming broadcasts may also constitute advertising.

1.5 Pre-approvals

Pre-approval is required for certain enumerated advertisements, including:

- advertisements for medical institutions and medical services shall be approved by the administrative authority of health and that of Chinese medicine, as applicable;
- advertisements for medicine, medical devices, dietary supplements and formula food for special medical purposes shall be approved by the medicine administrative authority;
- advertisements for pesticides, in practice, shall be approved by the agricultural administrative authority; and

- advertisements for animal medicine shall be approved by the veterinary administrative authority.

1.6 Intellectual Property and Publicity Rights

The Advertising Law provides for special rules when an advertisement involves patents:

- it requires inclusion of the patent number and patent type in advertisements involving patented product or methods;
- it prohibits false claims that a patent has been granted, if in fact it has not; and
- it prohibits the use of pending patent applications or expired, revoked or invalidated patents in advertisements.

Although advertising regulations have not explicitly addressed the use of copyright and trade marks, laws governing the protection of intellectual property rights require the consent of the rights owner with regards to the use of trade marks or copyrighted items in an advertisement.

The Advertising Law specifically mandates advertisers or advertising agencies to secure prior written consent for using an individual's name or image. As per the Civil Code, the use of names and voices is subject to the same restrictions as those governing the use of images. Specifically, prior written consent from the legal guardian is necessary for use of the name or image of an individual lacking capacities or having limited capacities for civil conducts.

1.7 Self-Regulatory Authorities

The Advertising Law outlines self-regulation rules in the advertising and marketing sector. The main responsibility of self-regulatory bodies is to assist the government authority in regulating the industry, setting up industry standards

and developing an industry self-regulation system. As the key self-regulatory bodies, the China Advertising Association (CAA) and the China Association of National Advertisers (CANA) have adopted certain ethical codes to help maintain order in the advertising market and strengthen self-regulation in the industry. Violations of these ethical codes may result in the admonishment or a circulated notice of criticism within the organisation.

1.8 Private Right of Action for Consumers

A private right of action is available for consumers and private citizens to challenge advertising practices. When the content of an advertisement infringes the legitimate interest of a consumer or private citizen, the latter may have a cause of action and claim for remedies based on applicable laws. Among others, the Advertising Law specifically provides for a cause of action for consumers against the advertiser if the advertisement is fraudulent, deceptive or misleading and the consumer's interest is harmed after the purchase of products or receipt of services. The remedies available for private actions include, in general, damages, rescission and apologies.

1.9 Regulatory and Legal Trends

There have been increased regulatory efforts in the advertising industry in the past 12 months, including the following guidelines and measures:

- the Guiding Opinions on Further Regulating Celebrity Endorsements in Advertising;
- the Administrative Measures for the Review of Advertisements for Medicine, Medical Devices, Dietary Supplements and Formula Food for Special Medical Purposes (draft for comments);
- the Internet Advertising Measures; and

- Guidelines for Law Enforcement on the Use of Absolute Terms in Advertising (the “Absolute Terms Guidelines”).

On the law enforcement front, the Inter-Ministerial Joint Meeting on Rectifying False and Illegal Advertisements held the first session of its 2023 meetings in March and outlined the plan for enforcement efforts of this year. The session highlighted the importance of taking vigilant actions against false and illegal advertising particularly in sectors closely related to public welfare, such as medical services, medicine, medical devices and finance and wealth management. It also emphasised the need for effective oversight of celebrity endorsements and continuous enhancement of the regulatory framework.

1.10 Taste and Cultural Concerns

It is important that advertisements shall uphold the correct political orientation and the core values of socialism, aligning with societal ethics and traditional virtues. Aspects to consider with regard to special taste and cultural sensitivities include:

- the content shall be presented in a positive and integrated manner;
- advertisements shall not include content that:
 - (a) uses absolute terms such as “national-level”, “highest-level”, “best” or similar phrases;
 - (b) contains obscenity, pornography, gambling, superstition, terror-related themes or violence;
 - (c) exhibits discrimination based on ethnicity, race, religion or gender;
 - (d) promotes concepts such as extravagance or materialism; or
 - (e) intrudes personal privacy.

In accordance with these mandates and the “correction orientation” outlined by the SAMR in 2022, efforts are increasing nationwide to rectify distasteful advertising materials and eliminate vulgar and indecorous content designed solely for sensationalism.

1.11 Politics, Regulation and Enforcement

2023 sees China’s economy rebounding from the impact of the pandemic and returning to a more stabilised trajectory. To tackle the prevailing economic concerns, a central focus of the government this year is to expand domestic demand, invigorate consumer expenditure, boost market confidence and guard against risks. Notably, the SAMR outlined nine key areas of focus during its nationwide market regulation conference in January 2023, including:

- stabilising market expectations;
- expediting the establishment of a top-tier business environment; and
- intensifying regulatory and law enforcement endeavours pertaining to people’s well-being.

On one hand, to stabilise the market and promote economy growth, the SAMR and local AMRs have issued notices and guidelines to demonstrate clearer expectations for market participants and optimise the business environment. The Absolute Terms Guidelines issued by the SAMR is an important document which helps delineate the nuanced boundary between scenarios where absolute terms are prohibited to prevent misleading consumers and those where the use is permissible under particular circumstances.

On the other hand, to boost consumer confidence and spur spending, the SAMR, in joint efforts with local AMRs, has implemented meas-

ures to strengthen risks monitoring and eradicate unlawful advertisements in sectors crucial to public welfare, such as tourism, entertainment performances and medicines. Authorities have also paid close attention to live-streaming e-commerce activities with concerted efforts to curtail unlawful advertisements in live-streaming e-commerce, pop-up advertisements and so-called “soft advertisements”.

2. Advertising Claims

2.1 Deceptive or Misleading Claims

According to Article 28 of the Advertising Law, any advertisement that defrauds or misleads consumers with any false or misleading content will be a false advertisement. Furthermore, the law specifies a list of scenarios where a false advertisement will be deemed to exist, including where:

- the advertised product or service does not exist;
- in connection with the product’s performance, functions, ingredients, price and honours received, among others, or the service’s contents, quality, price, sales condition and honours received, among others, or any commitments, among others, made regarding the product or service, there is any inconsistency with the actual circumstances that has a material impact on purchase decisions;
- any scientific research result, statistical data, investigation result, excerpt, quotation or other information, which is fabricated or forged or cannot be validated, has been used as certification material;
- the results of using the product or receiving the service are fabricated; and
- consumers are otherwise defrauded or misled with any false or misleading content.

Per the Supreme People’s Court, in determining whether an advertisement constitutes misleading and false publicity, the courts shall use as the basis such factors as daily life experiences, the general attention of the relevant public, the facts causing misunderstanding and the actual circumstances of the subject of the publicity.

2.2 Regulation of Advertising Claims

The scope of advertising claims subject to the regulation of the Advertising Law is broad, including both express claims and implied claims regarding products and services. Any product or service-related information that can have a material effect on a consumer’s decision-making is regulated by the Advertising Law. The Advertising Law does not set forth how to distinguish express and implied claims; instead, the court and administrative regulator would have substantial discretion to determine whether there is an actionable implied claim. The key to determining whether there is an actionable advertising claim is whether the advertisement has any false or misleading content or defrauds or misleads consumers. To avoid being challenged, an advertising claim should be truthful and precise.

2.3 Substantiation of Advertising Claims

The substantiation of advertising claims is largely achieved by verification of the certifications of the advertiser/advertised products. The Advertising Law requires the advertising agent and advertisement publisher to examine the relevant certification documents, and to verify the content of an advertisement under the laws and administrative regulations. According to the Administrative Regulations for Advertising, the following certification documents need to be provided in connection with the corresponding types of advertisements:

- for a commodity advertised as meeting quality standards – the certificate of inspection issued by the competent standardisation administrative department or by a quality inspection body;
- for a commodity advertised under the title of a high-quality product – the certificate of a high-quality product issued by the government;
- for a commodity advertised as under patent protection – the certificate of grant of patent;
- for a commodity advertised as bearing a registered trade mark – the certificate of trade mark registration;
- for cultural, educational or public health advertisements – the certificate issued by the competent administrative department; and
- the certificate issued by the competent authority, or its authorised institution, in the case of other types of advertisements for which certificates are required.

In addition, the Advertising Law also requires advertisements in highly specialised industries, such as medical treatment, medicine, medical devices and dietary supplements, be subject to review by applicable authorities of the claims therein.

2.4 Product Demonstrations

Product demonstration is a type of advertising activity that is subject to the general requirements set forth in the Advertising Law. According to such general requirements, all product information presented at the demonstrations must be accurate, clear and understandable in all respects, including, without limitation, the performance, functions, quality, price and manufacturer. In addition, if any gift is attached to the demonstrated product, the type, specification, quantity, term and form of such gift shall also be explicitly stated in the demonstration.

2.5 Endorsements and Testimonials

The use of endorsements and testimonials is regulated by the Advertising Law, the Internet Advertising Measures and the Guiding Opinions on Further Regulating Celebrity Endorsements in Advertising jointly published by seven national-level government authorities. Endorsements are required to adhere to the correct orientation and comply with social morality and traditional virtues. Endorsers are required to conduct a pre-examination of certain information such as the business registration information, relevant qualifications, etc, and review the script of the advertisement.

In addition, endorsers are prohibited from certain acts, including:

- recommending or certifying any products that they have not used or services that they have not experienced;
- endorsing any after-school training;
- exaggerating the efficacy of products, etc.

The use of testimonials is regulated to the same extent as endorsements when the referrer recommends or testifies for a product or service in their own name or image.

2.6 Disclosures

An advertisement shall be identifiable so that consumers can identify it as an advertisement. Advertisements shall not be published in the disguised form of a news report in mass media. Any advertisement published in mass media shall be conspicuously identified as an “advertisement” in order to be distinguished from other non-advertising information and to avoid misleading consumers.

2.7 Representation and Stereotypes in Advertising

Article 9 of the Advertising Law generally prohibits content, among others, “hindering public order or violating social morality or involving ethnic, racial, religious, and gender discrimination”. Though there are no detailed rules at state or local level in this regard, non-compulsory guidelines are being made. In the Administrative Guide on Medical Cosmetology Advertising (the “Medical Cosmetology Advertising Guide”) issued by the SAMR in November 2021, advertisements that may create “appearance anxiety”, or improperly associate undesirable appearance with negative remarks such as “laziness” and “poverty”, or improperly associate outstanding appearance with positive remarks such as “diligence” and “success,” are deemed to violate the good social moral.

There have also been administrative cases regarding advertisements involving stereotyping or discrimination. For example, in a case handled by the Shanghai local AMR, a bra advertisement with descriptions including “a piece of equipment enabling easy success for women” was found to violate social morality and involve gender discrimination, and the AMR confiscated the publisher’s illegal income and fined the publisher CNY200,000.

2.8 Environmental Claims

To date, there have been no laws and regulations under PRC law specifically targeting advertisements conveying misleading information about the environmental impact of a product, also referred to as “greenwashing” ads. “Greenwashing” is generally understood as a form of deceptive advertising or marketing strategy to persuade the public that certain products, aims and policies are environmental-friendly, which may include two typical types of behaviours.

The first type of greenwashing involves direct false advertisements of the environmental-friendly features of a product or misappropriation of certain environment-related certification marks (eg, the organic food or green food certifications). The second involves a marketing strategy that focuses only on a few specific features of a product that can be beneficial to the environment without referencing the other features or such product as a whole or intentionally omitting defects in its products that could harm the environment. It is more difficult to deem such greenwashing as false or misleading, thus more difficult to identify as a matter of law.

2.9 Dark Patterns

The “dark patterns” are primarily regulated by the Internet Advertising Measures. Advertising is not allowed to deceive or mislead users into clicking on or browsing advertisements in any of the following ways (without limitation): false system or software updates, false signs of start, etc; and false promises of rewards. For a pop-up or similar form of advertisement, a close button must be clearly marked and closing the advertisement should require only one click. In addition, the advertiser and the ads publisher shall make sure the following does not occur in a pop-up or the alike:

- there is no close button or the advertisement cannot be closed until the time expires;
- the close button is fake, unidentifiable, etc, which creates barriers to close the advertisement;
- it requires more than one click to close the advertisement; or
- while browsing the same page or document, advertisements continue to appear after the advertisement is closed, which affects the users’ normal Internet access.

Advertisements using dark patterns are subject to the regulations of false advertisements (see **1.3 Liability for Deceptive Advertising**).

2.10 Children

The Advertising Law introduced a set of restrictions on advertising that targets minors under the age of 18, as well as certain additional restrictions on advertising targeting minors under the age of 14. In connection with minors under the age of 18, the following restrictions apply:

- tobacco ads are prohibited;
- no advertising activity shall be conducted in kindergarten, primary and middle schools, as well as on textbooks, school uniforms, stationery, etc; and
- no adverts for medicine, drugs, cosmetics, etc shall be published in mass media targeted at minors.

In connection with minors under the age of 14, the advertisement shall not contain:

- any inducement to minors to ask parents to purchase the advertised goods or services; or
- any unsafe activity that may cause imitation by minors.

2.11 Sponsor ID and Branded Content

In general, sponsor identification or branded content is subject to the disclosure rules set forth in **2.6 Disclosures**. Further to that, there are some specific rules regulating sponsor identification in films, television dramas and programmes. Certain rules, including the following, also need to be complied with:

- the titles of political news programmes shall not be associated with any sponsorship; and

- the credit or logo of a sponsor of the film, television drama or programme shall not be presented as follows:

- (a) the credit/logo is displayed independently;
- (b) the title of the television drama or programme when displayed is illegible; and
- (c) the credit/logo is rolled to display for more than five minutes each time.

2.12 Other Regulated Claims

Advertising claims in connection with all the following types of products and services are subject to special rules as stipulated in the law: education and training, real estate, dietary supplements, medical treatments, drugs, medical devices, pesticides, veterinary drugs, feed and feed additives, tobaccos, spirits, commodity or services with an expected return on investment, crop seeds, tree seeds, grass seeds, breeding livestock and poultry, aquatic seedling and species breeding, etc.

In addition, certain expressions are specifically prohibited in an advertisement relating to a regulated industry. For instance, according to the Interim Administrative Measures for the Review of Advertisements for Drugs, Medical Devices, Dietary Supplements and Formula Food for Special Medical Purposes (the “Interim Measures for Review of Medical-Related Advertisements”), advertisements on drugs, medical devices, dietary supplements and formula food for special medical purposes shall not contain any commitment-related language, such as “safe”, “no toxic side effect”, “refund if found ineffective”, or “non-addictive”.

3. Comparative Advertising and Ambush Marketing

3.1 Specific Rules or Restrictions

Comparative advertising is, with certain exceptions and constraints, permitted by the Advertising Law, provided that no advertisement shall disparage the goods or services of any other producer or trader, and the advertiser, advertising agent, and advertisement publisher shall not conduct any form of unfair competition in their advertising activities.

Notwithstanding the foregoing, with respect to certain categories of products – such as medical drugs, medical devices and dietary supplements – comparative advertising is not allowed.

For products and services not prohibited by the law from conducting comparative advertising, on the basis that there is scientific evidence and/or proof that the products/services being compared are of the same categories and are comparable in nature, comparative advertising is allowed.

3.2 Competitor Copyrights and Trade Marks

PRC law does not prohibit using a competitor's name, trade marks or packaging in comparative advertising. However, since these elements play a crucial role in consumer identification and are closely linked to a company's reputation, advertisers are expected to be prudent when using them, given the advertising landscape in the PRC does not seem to encourage comparative advertising. According to the Anti-Unfair Competition Law, advertisers are prohibited from using in a confusing manner the influential marks, names or packaging of another company or conducting advertising in a manner that leads the public to

mistakenly associate the advertiser's products with those of others.

When an advertisement seeks to underscore the superiority or distinctiveness of the advertiser's offerings compared to rivals, it may potentially damage the competitor's reputation. Consequently, advertisers bear a heightened responsibility to ensure that such advertisements do not constitute false or misleading advertising or even commercial disparagement.

In addition, if an advertiser uses a competitor's well-known trade marks, it may be perceived as free-riding on the goodwill of the competitor. Such comparison aims to enhance visibility and may create confusion, leading consumers to believe in an affiliation between the advertiser and the competitor or assume the advertiser's products share the same esteemed quality as the competitor's. Even if confusion is not imminent, such use may erode the distinctiveness of the competitor's trade mark and increase the risk of the mark becoming generic, thereby potentially constituting a trade mark infringement.

3.3 Challenging Comparative Claims Made by Competitors

An advertiser may challenge claims made by a competitor based on different causes of action, including false advertising and unfair competition. If the advertiser exaggerates its own products and disparages the competing products, or publishes false advertisements which contain non-truthful or misleading information, the advertiser may be found to have conducted false advertising and commercial disparagement, and consequently be subject to administrative sanction and civil liabilities for violating the Advertising Law and/or the Unfair Competition Law. The liabilities include damages, fines, cessation of

the illegal act, elimination of effects and revocation of the business licence.

3.4 Ambush Marketing

Ambush marketing is generally understood as a marketing strategy in which an advertiser “ambushes” an event to compete for exposure against other advertisers without actually being an “official” partner or sponsor of said event. For example, the advertiser may use various covert advertising tactics to project an association with events like the Olympics or the World Cup, thereby gaining marketing benefits typically reserved for authorised sponsors.

There are no explicit rules targeting ambush marketing under the Advertising Law and such practices would be generally regulated by the Trade Mark Law, the Anti-Unfair Competition Law and other advertising-related laws and regulations. However, there are rules relating to ambush activities with respect to the Olympics. The Regulations on the Protection of Olympic Symbols amended by the State Council in 2018 prohibits commercial use of the Olympic symbols (including the names, logos, emblems and slogans) without the rights holders’ authorisation. The Regulations also prohibit unfair competition leveraging elements relating to the Olympics to engender a misunderstanding of sponsorship or a similar relationship with the right holders of Olympic symbols.

For other distinctive symbols associated with national or international events of public welfare, the Administrative Regulations for Special Symbols also prohibit commercial use of such symbols without authorisation.

4. Social/Digital Media

4.1 Special Rules Applicable to Social Media

Digital advertising has seen tremendous development in China over recent years. Forms of digital advertising range from advertising on social media to search engine advertising, e-commerce retail advertising and in-feed advertising. All such advertising activities are primarily regulated by the Advertising Law and the Internet Advertising Measures of May 2023.

4.2 Liability for Third-Party Content

As to the liability of the advertiser for content posted by others on the advertiser’s site or social media channels, as long as advertising is deemed to be in existence and the advertiser is deemed to be an “advertiser” within the meaning of the Advertising Law, that advertiser is required to “be responsible for the truthfulness of the advertisement”. Bona fide reliance by consumers may be found, which could render the host advertiser liable due to content posted by others on its website or social media. To avoid being held liable, advertisers are advised to timely review the content on their site or social media channels and remove any undesirable content.

4.3 Disclosure Requirements

In principle, the same disclosure requirements apply to social media advertising (including space-constrained ads) and traditional media advertising. Meanwhile, it is noteworthy that Article 9 of the Internet Advertising Measures provides that internet advertising shall be identifiable so that customers can identify them as advertisements and clearly marked with a recognisable “advertising” sign where the product/service is displayed as a result of competitive bidding, or where the advertisement takes the form of knowledge introduction, experience

sharing and consumption evaluation with the purchase link attached.

4.4 Requirements for Use of Social Media Platforms

At this time, the authors are not aware of any unique laws or regulations that specifically apply to the use of major social media platforms, such as WeChat or Weibo. Meanwhile, major social media platforms in the PRC have developed their own editorial and content guidelines and verification procedures with which the advertisers must comply on top of the existing laws. Several major social media platforms are not accessible in the PRC including Facebook, Twitter, Instagram, YouTube, Snapchat and WhatsApp.

4.5 Special Rules for Native Advertising

Native advertising is a type of advertising that matches the form and function of the platform upon which it appears. It can take the form of in-feed ads, search and promoted listings, content recommendation, Weibo posts, WeChat articles, etc.

However, if it is a marketing activity to promote a product or service, it should still be subject to the disclosure requirements as set out in **4.3 Disclosure Requirements**. In practice, however, due to the blurred lines between editorial and sponsored claims, native advertising is usually not marked with an “advertising” sign as required by law. As such, in the event that native advertising violates the law, there are more uncertainties as to how it should be regulated.

5. Social Media Influencer Campaigns and Online Reviews

5.1 Special Rules/Regulations on Influencer Campaigns

An influencer campaign that promotes a brand or product and influences the purchasing decision of a consumer would be viewed as advertising and, as such, be regulated by the Advertising Law, the Internet Advertising Measures and other regulations applicable to online activities in general.

If an influencer campaign is carried out in the form of livestreaming, the relevant parties – including the platform, livestreaming operators, marketing personnel as well as the influencer – shall abide by, among others, the following regulations and rules:

- the Opinions on Further Strengthening of Online For-Profit Livestream Marketing to Promote the Healthy Development of the Industry (March 2022); and
- the Measures for the Administration of Livestream Marketing (Trial Implementation) (May 2021).

Among the livestreaming participants, livestream marketing platforms take primary responsibility of the marketing activities. For livestream studio operators and marketing personnel, qualification review and real-name authentication are required. They shall perform the duties and obligations of advertisement publishers, advertising agents or endorsers, as applicable, if the livestreaming content constitutes a commercial advertisement.

5.2 Advertiser Liability for Influencer Content

An advertiser's liability under the Advertising Law for the content posted by an influencer is determined by two factors: whether the influencer's activity is advertising under the Advertising Law, and the relationship between the advertiser and the influencer. When advertising is deemed to have taken place, the influencer may be viewed as the advertising publisher or as the endorser.

5.3 Consumer Reviews

According to the E-commerce Law, the business operators are not allowed to solicit or use fake transactions, fake customer reviews or otherwise to conduct false or misleading business promotion and to defraud or mislead consumers. Further, the Measures on the Supervision and Administration of Online Transactions (the "Online Transaction Measures") specifically require that online business operators shall refrain from conducts such as fabricating transactions and customer reviews, and engaging in false marketing by fictitious booking or false panic buying, etc.

5.4 Liability for Consumer Reviews

If the particular consumer review constitutes an advertisement, the corresponding advertiser shall be held liable for any violation of the E-commerce Law and Online Transaction Measures (see **5.3 Consumer Reviews**) and may be subject to a fine and even revocation of their business licence. In addition, when the customer review is deemed to be false advertising under the Advertisement Law, the advertiser will take the corresponding liability as provided in **1.3 Liability for Deceptive Advertising**. Currently, there are no RPC laws or regulations that specifically impose a duty on advertisers to monitor reviews.

6. Privacy and Advertising

6.1 Email Marketing

The Civil Code generally prohibits disturbing the peace and privacy of an individual by phone calls, text messages, instant messengers, e-mails, leaflets, etc, without an individual's express consent. Specifically, email marketing is also regulated under the Advertising Law, the Measures for the Administration of Internet Email Services and the Internet Advertising Measures.

Electronic advertising must clearly indicate the real identity and contact information of the sender, and provide the recipient with the means to unsubscribe.

Legal liabilities for the violation of such rules include the rectification of wrongdoings and a fine of up to CNY30,000, as applicable.

6.2 Telemarketing

Telemarketing is governed by the Advertising Law and certain other administrative rules. According to the regulations, for commercial outbound telemarketing calls:

- the consent of users shall be obtained;
- a white list of users shall be established; and
- the time and conduct of telemarketing calls shall be regulated.

In summary, the user's consent is essential for permitted telemarketing, alongside other factors, including that the content of telemarketing must be lawful.

6.3 Text Messaging

Advertising by text messaging is regulated by, in addition to the Advertising Law, the Provisions on the Administration of Short Message Services Communications (the "SMS Provisions"), as well

as the administrative regulations and rules promulgated by local governments.

In summary, the general requirements for SMS advertising are that:

- commercial short messages can only be sent after informing the recipient of the type, frequency and time limit of such messages and obtaining the consent of recipients;
- the identity and contact information of the SMS content provider shall be included; and
- a convenient and effective way to unsubscribe shall be provided along with the SMS.

The SMS Provisions do not provide any specific liability provisions. However, the Online Transaction Measures provide the rectification of wrongdoings and a fine of up to CNY30,000 as liabilities. In addition, the law enforcement body may also rely on the Advertising Law to enforce the prohibition against illegal SMS advertising and the Consumer Protection Law for the infringement of consumer rights.

6.4 Targeted/Interest-Based Advertising

In connection with the use of consumer data for the purposes of targeting or retargeting consumers with advertising, the Personal Information Protection Law (PIPL) provides that, in the case of a targeted push and commercial marketing to individuals by means of automatic decision-making, the option to not be targeted by their characteristics (eg, the option to refuse tailored recommendation) or convenient opt-out options shall be provided at the same time.

Moreover, the Administrative Provisions on Algorithmic Recommendations for Internet Information Services (the “Algorithmic Recommendations Provisions”) provide that, algorithm recommendation service providers shall provide

users with the choice of selecting services not targeted at a user’s personal characteristics, or refusing services based on such user’s personal characteristics. In addition, algorithmic recommendation services providers shall not unreasonably differentiate among consumers in terms of prices and other transaction conditions based on and taking advantage of each consumer’s preferences, transaction habits and other characteristics.

As for self-regulation, a nationwide industry standard Personal Information Security Specification provides that clear identity directionality shall be eliminated to avoid identifying any individuals directly, unless otherwise necessary and approved by the subject of the personal information upon authorisation.

6.5 Marketing to Children

The collection of personal information from minors is also covered by the PIPL, the Laws on the Protection of Minors (the “Minors Protection Law”) and the Provisions on the Cyberspace Protection of Children’s Personal Information. Consent from parents or other guardians of minors under the age of 14 shall be obtained for the processing such minors’ personal information. The personal information of minors is categorised as, among other things, a kind of “sensitive personal information” under the PIPL and thus subject to heightened requirements.

The violation of the Minors Protection Law may result in, among other things, confiscation of illegal turnover and relevant fines, a fine of up to CNY1 million if there is no illegal income, and the shutting down of the website in question. In addition, if the action violates the PIPL, heavier penalties may be triggered.

6.6 Other Rules

It is prohibited to send advertisements to a recipient's residence or private vehicles without the recipient's consent or request. In addition, internet advertisements shall not be sent to a recipient's vehicles, navigation devices, smart home appliances, etc, without the recipient's consent or request.

7. Sweepstakes and Other Consumer Promotions

7.1 Sweepstakes and Contests

"Sweepstake" does not have a corresponding legal term under existing Chinese laws, nor are there specific rules governing sweepstakes as marketing activities. That said, sweepstakes can be loosely interpreted as prize-attached sales, which are subject to certain rules and may trigger different legal issues. According to the Interim Provisions on Regulating Promotional Activities, prize-attached sales refer to the activities of business operators to provide consumers with prizes, articles or other benefits to sell commodities or obtain competitive advantages, such as lucky draws and gift giving.

Anti-Unfair Competition Law

Laws and regulations, such as the Anti-Unfair Competition Law and the Interim Provisions on Regulating Promotional Activities, impose regulations on prize-attached sales, which focus on, among others, unclear information on prize-attached sales, internally determined prizes, and the amount of the highest prize exceeding the statutory limit.

Lottery Management Regulations

If a person issues lottery tickets in the guise of prize-attached sales in order to seek profits, and to earn the price difference from the sale of

commodities by setting prices much higher than the actual commodities using the lure of large prizes, this act shall be deemed illegal and may even constitute a crime. According to the Lottery Management Regulations, if anyone violates these regulations by illegally issuing or selling lottery tickets, or issuing or selling foreign lottery tickets within the territory of the PRC, they may be subject to criminal liability; where no crime is constituted, they may be subject to a public security penalty.

Advertising Rules

If sweepstakes are used as marketing promotions to reward consumers and to draw attention to products or services, then they shall be subject to all advertising law requirements as a form of advertising campaign.

7.2 Contests of Skill and Games of Chance

The existing Chinese law has not defined what constitutes a "contest of skill" or a "game of chance", nor does it provide for a distinction between them. Gambling disguised as a contest of skill or game of chance is strictly prohibited, yet the law has not provided the criteria to distinguish contests of skill and games of chance (as forms of marketing activity) from those regarded as prohibited gambling.

7.3 Registration and Approval Requirements

As "contests of skill" and "games of chance" are not defined legal terms, they are, in principle, subject to particular registration or approval requirements only if the concrete activity falls into the scope of defined activities for which such requirements exist. For example, if the contests or games constitute sports competitions, they are regulated by the sports administrative department under the State Council, in

accordance with the Sports Law of 2023. This new law provides that sports events are subject to graded and classified management by the sports administrative authority.

7.4 Free and Reduced-Price Offers

Generally speaking, the Chinese Anti-Monopoly Law prohibits operators that have a dominant position in the market from selling commodities at a price below cost without justifiable reason. In addition, the Price Law forbids the dumping of sales for the purpose of crowding out competitors and dominating the market, or implementing a hidden price decrease by way of increasing the grade of merchandises or services. A marketer's offer of free or reduced-price products or services is not illegal per se but regulators may, in certain circumstances, deem such activities as unfair methods for gaining advantages over competitors and proactively impose rectification.

7.5 Automatic Renewal/Continuous Service Offers

According to the Online Transaction Measures, online transaction operators shall clearly notify the consumers of the consumers' selection five days before a consumer accepts the relevant services or the date of automatic renewal. During the service period, operators shall also provide convenient and instant opt-out or change options without charging unreasonable fees. Any violation may result in an order of rectification of the misconduct and a fine of up to CNY30,000.

8. Artificial Intelligence

8.1 AI & Advertising Content

China's regulatory framework for artificial intelligence (AI) is taking shape with three new regulations:

- the Algorithmic Recommendations Provisions;
- the Administrative Provisions on Deep Synthesis Internet Information Services (the "Deep Synthesis Provisions"); and
- the Interim Regulations for the Administration of Generative Artificial Intelligence Services (the "Interim Regulations on Generative AI").

These rules focus on establishing the basic principles of AI and are primarily aimed at service providers that are engaged in the aforementioned technologies. If a service provider offers the relevant technologies to users for the generation of advertising content, in addition to the relevant regulatory filings and assessments, the service provider shall also:

- abide by the laws and regulations, respect social morality and ethics, and adhere to the correct political direction, public opinion and value orientation;
- take effective measures to prevent discrimination based on ethnicity, religious beliefs, nationality, region, gender, age, occupation or health conditions when designing algorithms, selecting training data, generating and optimising models;
- clearly mark content generated or edited with deep synthesis technology, as well as clearly mark in a way as to remind users that certain services or functions (such as synthetic human voice, face generation, immersive simulation scenes) may generate or significantly alter information or content;
- ensure that data and models shall come from legitimate resources and respect the legitimate rights of others, including intellectual property and the rights to likeness, reputation, honour, privacy and personal information;

- adopt technical or manual methods to examine the input data and synthesis results to identify illegal or harmful information; and
- take effective measures to make the services more transparent and to improve the accuracy and reliability of the generated content.

Advertisers using third-party generative AI technologies to create advertisements may consider disclosing to the public that AI technologies are involved in generating the adverts when publishing the advertisements, especially when human likeness is generated in such advertisements. Extra care is required to ensure that AI-generated advertisements conform to the truthfulness requirements under the Advertising Law.

Furthermore, it remains uncertain as to whether AI-generated content qualifies for copyright protection under PRC law. As a result, employing AI alongside a notable degree of human creativity is recommended to enhance the likelihood of qualification for copyright protection under existing copyright framework, particularly for the aspects of content that involve human input.

8.2 AI-Related Claims

There are no special rules related to making claims that a product is developed through the use of AI, is powered by AI, or has AI-related capacities. However, the mark obligation mentioned in **8.1 AI & Advertising Content** shall be followed.

8.3 Chatbots

There are no special rules or guidance related to the use of chatbots. However, chatbots are commonly categorised and regulated as a specific type of generative AI. The current AI-related rules discussed at **8.1 AI & Advertising Content** would apply.

9. Web 3.0

9.1 Cryptocurrency and Non-fungible Tokens (NFTs)

To date, there has been no official definition of cryptocurrency or NFTs at the legislative level in China. Regulatory bodies emphasise upholding the renminbi as the statutory currency, and cracking down on illegal financial activities of illegal fundraising (such as initial coin offerings), financial fraud, pyramid schemes and money laundering through cryptocurrency. So far, there does not seem to be specific statutory rules governing NFT activities or the advertising thereof. In September 2021, a notice issued by high-level authorities stressed the prohibition of providing commercial display and marketing for virtual currency-related business activities.

9.2 Metaverse

The metaverse is commonly understood as an integrated network of 3D virtual worlds facilitated by the use of virtual reality and augmented reality technologies. This concept has been popular in China since 2021, but it is not yet officially defined by the legislators or regulators. There are no special laws or regulations that apply to advertising within the metaverse, nor have there been any administrative or judicial cases in this regard given its novelty in nature. Nevertheless, there are notices alerting the public to illegal fundraising and fraud under the guise of the metaverse, and the existing advertising laws and regulations will apply where applicable.

10. Product Compliance

10.1 Regulated Products

Specific rules and restrictions that apply to the advertisements of regulated products and services can be found in the Advertising Law and

the regulations governing the advertising of products and services in special sectors, including the following.

Food

The Advertising Law and the Food Safety Law provide for specific restrictions on the presentation in the advertisements of dietary supplements and food. For instance, advertisements of dietary supplements and food may not claim that such products can be used for the prevention or treatment of diseases, and that advertisements of baby dairy products, beverages and other food claiming to be full or partial substitute for breast milk are prohibited from distribution in mass media or public places, etc. Further, advertisements in connection with dietary supplements are subject to prior censorship pursuant to the Interim Measures for Review of Medical-Related Advertisements. According to the Food Safety Law, formula food for special medical purposes shall be subject to the regulations applicable to drugs.

Medical Devices and Drugs (Including Formula Food for Special Medical Purposes)

Advertisements in connection with medical devices and drugs are subject to prior censorship pursuant to the Interim Measures for Review of Medical-Related Advertisements. Restrictions under the Advertising Law include, without limitation, that (i) advertisements of special drugs (including narcotics, psychotropics, toxic drugs for medical purposes, radioactive drugs, etc), pharmaceutical precursor chemicals, drugs and medical devices for drug abuse rehabilitation, drugs for special use by the army, and preparations made by medical institutions are prohibited; (ii) advertisements of drugs, medical devices and medical treatments may not include content such as assertions or guarantees on their effica-

cy or safety, statements related to the recovery or response rate, etc.

Alcohol

Advertisements of alcohol may not include any inducement or instigation to consume alcohol, the promotion of immoderate drinking, the depiction of the action of drinking, the depiction of driving cars, boats, airplanes, etc, or present an explicit or implicit expression that alcohol consumption would ease tension and anxiety and enhance physical stamina, etc.

Vaping/Tobacco

Advertisements of vaping/tobacco may not be published in mass media, in public places, outdoors, or on the internet; and no such advertisements may be sent to minors.

Cannabis

Cannabis is deemed to be a kind of narcotic drug and is strictly restricted in the PRC. Only very limited usage of cannabis, including for medical use, education and research, is permitted under the supervision of the applicable authorities. Correspondingly, the advertising of related products and services are also prohibited.

10.2 Product Placement

Product placement in entertainment content usually refers to a strategic practice where advertisers achieve visibility for their products, services or brands by investing in their inclusion or discussion within films, television series, variety shows, social media posts, etc.

Product placements have emerged as an important marketing tool. The authorities responsible for censoring film and television programmes enforce specific guidelines to ensure responsible content creation, which include avoiding:

- featuring tobacco brand logos, tobacco-related content and disguised tobacco advertising;
- depicting smoking scenes involving minors, associating tobacco with minors or showcasing smoking in prohibited areas; and
- portraying minors purchasing or using tobacco.

However, there have been no clear criteria to determine whether and when product placements constitute advertisements. To the extent that product placements constitute advertisements, they shall adhere to the constraints stipulated within the prevailing framework governing advertising and combatting unfair competition. It remains unclear whether product placements in their usual forms in films and television programmes should be made subject to the regime and the Advertising Law. Notably, official media outlets have advocated for regulating product placements as advertisements and the authorities appear to be gradually incorporating them into the regulatory framework. In 2022, Shanghai AMR clarified in its Guidance on Endorsements in Commercial Advertisements that celebrities or public figures appearing in variety shows with product placements and recommending or endorsing products or services in their own name shall be deemed as an endorser. Beijing AMR, in similar guidance, has gone a step further, specifying that the introduction or recommendation by celebrities in variety shows and films and television productions would constitute endorsement. Consequently, celebrities are expected to exercise greater caution when considering product placement opportunities.

10.3 Other Products

Beyond the specific products listed in **10.1 Regulated Products**, there are other products or

services for which advertisements are regulated, including the following.

Medical Services

Similar to drugs and medical devices, advertisements of medical services are also subject to prior censorship.

Education and Training

Article 24 of the Advertising Law prohibits advertisements of education and training from including in its contents:

- the explicit or implicit guarantee of successful enrolment, passing certain examinations, obtaining certain degree qualifications or certificates, or the effect of education or training, etc;
- the explicit or implicit expression of involvement of the relevant examination institutions or its personnel, or writers of the examination questions in the education or training; and
- recommendation or endorsement using the name or image of scientific research or academic institutes, etc.

Real Estate

Article 26 of the Advertising Law provides specific restrictions on advertisements of real estate, including:

- information on the property listed shall be true;
- information on the area shall be the floor space or the usable space; and
- no content relating to a commitment on the increase in a property's value or investment return, etc.

Investment Solicitation/Fundraising/Internet Financing/Personal Financing

Advertising in connection with various kinds of fundraising or financing services is heavily regulated. Generally speaking, such advertisements are required to include reasonable risk warnings and are prohibited from including explicit or implied statements of guarantee on future earnings, etc.

Other Products or Services

Advertising of the following products or services is also regulated under the applicable laws or regulations: pesticides, veterinary drugs, feed and feed additives, crop seeds, tree seeds, grass seeds, breeding livestock and poultry, aquatic seedling and species breeding, wild animal and the relevant products, products relating to stamp collection, souvenir medals, renminbi, insurance, and services of certified public accountants and lawyers, etc.

Other Advertisements Except Those of Medical Treatment, Drugs and Medical Devices

Other than advertisements for medical treatment, drugs and medical devices, any other advertisement claims shall not include the function of the treatment of diseases, or the medical terms or terms that may mislead the readers to confuse the promoted product with drugs or medical devices.

Trends and Developments

Contributed by:

Cao Yu, Zhou Jian, Tang Danni and Kang Ling

Haiwen & Partners

Haiwen & Partners was founded in May 1992 and is one of the leading general practice law firms in the People's Republic of China, with around 200 lawyers working in its Beijing, Chengdu, Hong Kong, Shanghai and Shenzhen offices. The firm started its pioneering entertainment and media law practice more than a decade ago, involving a wide variety of practice areas in the entertainment industries, including the development, production and distribution of film and television projects; large theme park

projects; recording and music publishing; live concerts; literary publishing; advertising; and new media matters. The firm's clients include major film studios, leading investment companies, as well as top talent, producers and directors, both in and outside China. Combined with its strong practice in the capital markets and M&A areas, Haiwen also provides extensive legal services to clients conducting IPOs, M&A and other general corporate finance transactions in the entertainment industries.

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CHINA TRENDS AND DEVELOPMENTS

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Overview

During the past 12 months, the economy of China has experienced great challenges. The government has rolled out multiple sets of policies in order to revive the dynamics of the economy. The efforts have also been seen in the advertising and marketing industry. Technology, in the meantime, has had some major breakthroughs that impact the business sectors, which may be represented by the generative artificial intelligence (“Generative AI”) and the content it generates (AIGC; artificial intelligence generated content). On the one hand, the government has endeavoured to craft a framework to regulate Generative AI. On the other hand, both the business sector and academic institutions have been looking into the legal intricacies and challenges brought about by AIGC, including in copyright law. In other areas of the advertising and marketing industry, the PRC has seen logical extensions of notable regulatory efforts by the government in the medical, celebrity endorsement and internet advertising sectors. In addition, against the background of the heightened attention of the whole country on the damages, losses and dangers brought about by the telecom fraud centres operated from Myanmar (largely thanks to increased media attention on this issue during the past 12 months), anti-telecom fraud provisions are included in a newly enacted law.

Efforts in the Economy

Since the 20th National Congress of the Communist Party of China in October 2022, the central government, as well as local governments at all levels, have made and published many policies and rules for the economy to revive its vitality. On the one hand, the government has called for the “stabilisation of foreign investment and foreign trade”. On the other hand, the government has taken a series of initiatives to help the domestic private sector to stabilise and grow.

A common thread may be summarised as the efforts to improve the environment for business, including the efforts to make the business environment more tolerant towards foreign investors and private entrepreneurs.

In the advertising and marketing industry, the State Administration of Market Supervision issued the Guidelines for Law Enforcement on the Use of Absolute Terms in Advertising (the “Guidelines”), which were implemented on 25 February 2023. The Guidelines were issued with a key purpose of optimising the business environment and restricting the government’s discretionary power. The regulatory background is that Article 9 of the Advertising Law provides that an advert may not use expressions such as “State-level”, “highest-level”, “best” and similar modifiers. Such expressions are referred to by the government as “absolute terms”. The Guidelines have attempted to clarify the scope of application of such prohibitions under the Advertising Law, giving it interpretations so that the use of absolute terms constituting prohibited usage will have clearer boundaries. The effect is that absolute terms may actually be used in certain scenarios of publicity (including those terms will arguably constitute advertising), making the environment more tolerant towards advertisers and ad publishers.

The Guidelines enumerated several scenarios where the use of absolute terms will not be considered prohibited under Article 9 of the Advertising Law. For example, if an operator providing products or services publishes information regarding its own name, logo, time of incorporation/establishment, scope of business in its business venue, self-owned website or other media which the business operator has proper rights to use, and then if the use of such information does not directly or indirectly market the

products or services it offers, then the foregoing will not be considered advertising (but truthfulness must be observed). The result is that the use of absolute terms in that case will not be considered such use regulated by the Advertising Law. Secondly, if the absolute terms do not refer to the products that the business operator markets (but truthfulness must be observed), then Article 9 of the Advertising Law would not apply. Moreover, even if the absolute terms used do refer to the products but do not result in misleading consumers or belittling other business operators, then Article 9 would not apply (again, truthfulness must be observed).

The lack of boundaries and clarification relating to absolute terms has offered the government great discretionary power. Reportedly, over the years, many businesses have been punished by the government for the use of such absolute terms. There has been a practice of people reporting the use of absolute terms by other businesses to the government, and some have made such reporting into a business. These practices are now considered harmful to the revitalisation of the economy, for which a more tolerant environment is perceived to be critically important.

Generative AI and AIGC

Over the past 12 months, the Chinese government has rolled out a set of rules to cope with the fast development of, and the challenges brought about by, Generative AI and the type of content it creates, ie, AIGC. These rules include, without limitation, the Administrative Provisions on Algorithmic Recommendations for Internet Information Services, the Administrative Provisions on Deep Synthesis Internet Information Services, and the Interim Regulations for the Administration of Generative Artificial Intelligence Services (the “Interim Regulations on Generative AI”). In

general, the government has adopted a policy of encouraging the research and use of Generative AI, while balancing the concern for security issues. These rules appear to focus on the regulation of Generative AI at the infrastructure level. There are yet to be any established rules concerning the application of Generative AI technologies. The Interim Regulations on Generative AI have put a placeholder on it. The Interim Regulations on Generative AI provide that if the State promulgates rules on the use of Generative AI for the news and publication, film and television production industries, as well as literature and arts creation, then such rules should be followed. As of this article, the authors have not yet seen any rules specifically on the use of Generative AI in those areas, including advertising.

Generative AI is perceived to have the potential for extensive use in advertising, for example:

- it can generate articles and images with given keywords;
- it can match and push advertising content to a customer based on the customer’s searches or the context of the content that the customer reviews;
- it can assess and adjust an advert’s form and substance based on the customer’s behavioural data and responses, etc; and
- deep synthesis technology may be used by Generative AI to create faces and virtual images to replace real persons.

Existing and anticipated applications of Generative AI have raised numerous legal issues. Academic institutions and business industries have been trying to explore these issues in order to find solutions. However, there are fundamentally important issues that have not yet reached a consensus in answers. Among others, Generative AI has raised important issues

in the copyright space, which is relevant to the advertising industry. For example, if an article, an image, a piece of music or a video clip is generated by Generative AI, with only a keyword or a very short instruction given to the AI, then is the resulting AIGC capable of copyright protection? If the resulting AIGC is a song that suddenly becomes a hit, can the ad owner stop others from using the same song in their own products or services on the basis of copyright? Can the ad owner release the song for royalties as a copyright owner? There are discussions on whether human participation in the “creative” process by the Generative AI is necessary for the resulting AIGC to be copyrightable, and if yes, to what extent does the human participation need to be.

Generative AI has also raised issues in areas such as the right of publicity, right to privacy, data security and the truthfulness requirements of advertising. Given how recent Generative AI is, it is not surprising that many issues in its application are still being explored.

Continued Regulation of Online Advertising Activities

Advertisements on the internet have continued to be a focus of the regulators. Over the past 12 months, rules have been revised and/or updated in connection with online advertising.

On 1 May 2023, the revised version of the Administrative Measures for Internet Advertising was implemented. This regulation was first implemented on 1 September 2016. The revisions include, among others, the aspects discussed below.

- Further detailed responsibilities of advertisers and ad publishers. There is a newly added Article 18 that provides that advertisers and ad publishers have an obligation to verify

the ad content of the next superlink which is related to the preceding ad.

- Strengthened requirements to enforce the “one click to close” obligation on pop-up ads.
- More detailed regulation of pop-up ads specifically on intelligent house appliances, navigation equipment, intelligent vehicles, etc. Among others, the revised rule provides that without the consumer’s consent, or if the consumer expressly declines, no ads may be sent to such devices over the internet.

On 30 September 2022, the Cyberspace Administration of China and other relevant authorities published the Administrative Provisions on Internet Pop-up Information Push Services. This new regulation is aimed at dealing with the much-complained-about pop-up windows, both in the way they operate and their content, among others. The problems purportedly being rectified by this new regulation include, without limitation, excessive pop-up windows, difficulty in blocking pop-ups, fake closing of pop-up windows, jump buttons, click fraud, forced sharing of ads, and so forth. The Ministry of Industry and Information Technology (MIIT) has even launched campaigns to crack down on problematic pop-up ads. On the content side, the problems being addressed include those that hype up gossip or major social incidents or disasters, expose privacy, exploit sympathy, flaunt wealth, ridicule literary classics, exhibit gender bias or inappropriately amplify health-related concerns.

On 15 December 2022, the Cyberspace Administration of China published the Administrative Provisions on Comment Threading Services on the Internet. This is a new version of the regulation that replaces the old version published in 2017. One of the key aims of this regulation is to crack down on internet paid trolls. “Likes” are treated as reply posts under the new rules.

Posters are required to register real names with the platform on which they issue reply posts. Comments on news need to be reviewed by the platform before they can be posted. Operators of public accounts are required to strengthen their supervision of the content of reply posts. Platforms are required to evaluate the credibility of public account operators, based on their management of reply posts and comments, and set the operators' administrating authority accordingly.

Celebrity Endorsement

Seven ministerial level agencies jointly published the Guiding Opinions on Further Regulating Celebrity Endorsements in Advertising in October 2022. This new regulation has provided detailed requirements on the celebrity's due diligence obligations regarding the advertiser as well as the product/service being advertised. In addition to requiring the celebrity to personally use the product/service, the new regulation also requires that the celebrity adequately learn about the advertiser and the products being endorsed; review the advertiser's registration information, approval status of the company's various eligibilities, business credit records, the

product/service manual, contract/deal terms that involve the rights and obligations of customers; and review the script of the proposed ad. These detailed requirements basically enhance the access threshold for the celebrity in question to take on endorsements. Moreover, the new regulation also puts an obligation on the enterprise to research the celebrity, including the celebrity's performance in their area of business and their personal credit situation.

Medical Sector

The State Administration for Market Regulation (SAMR) published a draft regulation on 29 May 2023 entitled the Administrative Measures for the Review of Advertisements for Medicine, Medical Devices, Dietary Supplements and Formula Food for Special Medical Purposes. This reflects a continued effort of the government to pay sufficient attention to the medical sector. The new draft regulation focuses on groups of consumers who do not know how to protect themselves from fake and fraudulent ads, such as the elderly. It also covers several other issues of concern, including the use of minors in medical ads and prohibited advertising claims.

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