

AMENDMENTS TO THE PRC ADVERTISING LAW

the practical implications for brands

WHEN WILL THINGS CHANGE

The existing PRC Advertising Law (“**Existing Law**”) entered into force on February 1, 1995 and has not been amended since then. With the advance of the internet and the fact that the average person is now reported to spend almost 2 hours per day on social media, the advertising landscape has shifted dramatically. Legislators all around the world, not just in China, are playing catch up. The amendments to the Existing Law seek to modernize the legal framework surrounding advertising and address issues which exist in modern day China and which could not have been foreseen 20 years ago, when the Existing Law was introduced.

The amended PRC Advertising Law (“**Amended Law**”) was officially approved on April 24, 2015 and comes into force on September 1, 2015. This gives business a relatively short amount of time to get to grips with the amendments and the practical implications they have on advertising in China.

The Existing Law is very short and has been widely criticized for being too vague. The Amended Law is almost double in length and is much more prescriptive, with one of the key aims being to reduce the number of grey areas that exist in the advertising space in China, making compliance and indeed the imposition of sanctions for non-compliance, much more straightforward.

This update focusses on the key provisions of the Existing Law and the key amendments which are being introduced by the Amended Law on September 1, 2015. This update contains the following:

- a summary of the key provisions of the Existing Law;
- a summary of the key amendments being introduced by the Amended Law; and
- our thoughts on the practical implications of the amendments being introduced by the Amended Law.

SUMMARY OF KEY PROVISIONS OF THE EXISTING LAW

The Existing Law provides that advertisements must:

- be true and must not contain false and misleading information which cheats or misleads consumers;

- adhere to the principles of fairness and trustworthiness;
- not be detrimental to the physical and mental health of the people of China;
- not impair the physical and mental health of minors or disabled people;
- be in compliance with social morality and professional ethics and safeguard the dignity and interests of the state;
- only contain data, statistics and survey findings that are factually correct with the source being indicated in the advertisement; and
- not discredit the products or services of third parties.

The Existing Law also contains specific restrictions in relation to the advertising of pharmaceutical and medical devices, agricultural chemicals, tobacco and health foods.

SUMMARY OF KEY PROVISIONS OF THE AMENDED LAW

The key amendments that will be introduced by the Amended Law are as follows:

- **Misleading Advertising** – the Amended Law provides specific examples of what will constitute a misleading advertisement and thus provides further detail on the scope of what is otherwise a very broad and un-prescriptive definition. Specifically, advertisements that provide incorrect information in relation to the performance, function, origin, uses, quality, size, composition, prices, manufacturers and expiration dates of products will be considered misleading;
- **Children** – the Amended Law introduces more controls on advertising aimed at children. All advertising in schools and kindergartens is prohibited, as is advertising in textbooks and exercise books and on school uniforms and school buses. Children under the age of 10 cannot be used to endorse products or services. Endorsement is defined as “*recommending or providing testimony in support of products or services in an advertisement*”. Mr Zhang Guohua, one of the SAIC officials responsible for the enforcement of advertising laws in China, stated in an

interview that this provision does not mean children under the age of 10 cannot feature in advertisements, they just must not specifically endorse the products or services being advertised. Furthermore, advertisements targeting children under 14 must not contain content which persuades their parents to purchase the goods or services being advertised. It is however unclear at this stage what constitutes “*content which persuades*” but this will hopefully be made clear when the implementing regulations are published later this year. Advertisements targeting children under 14 must also not contain content which encourages the imitation of dangerous acts. The Amended Law also prohibits the advertising of cosmetics, medicines, medical apparatus, online games, alcoholic beverages and tobacco to children;

- **Communication of advertisements** – advertisements must not be sent to home addresses without prior consent. In addition, other forms of electronic direct marketing are also prohibited unless an individual’s consent is first obtained. Any advertisement must also not interfere with people’s normal usage of the internet, meaning care needs to be taken when using pop-up advertising. Under the Amended Law, a pop-up advertisement must be capable of being closed in one click. Furthermore, an electronic advertisement must also include the sender’s true identity, contact details and information as to how to un-subscribe from receiving further advertisements;
- **Telecoms** – the Amended Law imposes liability on service providers responsible for communicating advertisements which breach the Amended Law if they were aware of the content and did not take action to stop the advertisement;
- **Product Endorsement** – anyone who endorses a product may be held jointly liable for any infringement of the Amended Law if he or she ought to have known the advertisement infringed the Amended Law. Anyone found guilty of endorsing a false advertisement can be banned for endorsing other products or services for a period of 3 years; and
- **Sanctions** – the Amended Law introduces wider ranging sanctions including fines of up to 1,000,000 RMB (circa US\$150,000) and the imposition of criminal liability and revocation of business licenses for serious instances of infringement.

The Amended Law also introduces much more stringent control on the advertisement of pharmaceuticals, medical devices, health foods, alcohol, tobacco and agricultural

products and introduces new controls in relation to the advertisement of breast milk substitutes, educational services and financial services.

THE PRACTICAL IMPLICATIONS OF THE AMENDED LAW

The Amended Law shows a definite intent to police advertising more stringently and we believe the authorities will be keen to be seen to be zealously enforcing the Amended Law after it comes into force.

We believe close attention will be given to advertisements of products and services in those areas which the Amended Law has introduced new and wider reaching measures. As such, business operating in these industries should ensure they are fully cognizant of the provisions of the Amended Law in these areas and should make any changes to their operational processes that are required to ensure they don’t fall foul of the Amended Law.

The Amended Law also introduces much tighter control around online and social media advertising and businesses who engage in this type of advertising in China should review their online and social media operating procedures and guidelines to ensure they comply with the Amended Law.

Our team of specialist lawyers is ready to counsel you on the preparations you need to make ahead of the implementation of the Amended Law.

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