

Advertising in China? Proceed with Caution! [1]

In recent months, our Shanghai office encountered many cases where local authorities enforced China's Advertising Law against businesses. In light of these occurrences, we believe that the implications of this law should be taken into consideration by any business operating in China and catering to local consumers. As 2020 draws to a close, one can only describe it as an extremely turbulent year, full of changes and upheavals in the landscape of business and law in China. Other than the adverse effects of Covid-19, which are still felt despite China's relative recovery and return to normalcy, 2020 also brought about a plethora of new legislation whose full implications will be felt in the years to come. Such laws and regulations include the Foreign Investment Law which came into effect at the beginning of 2020,[2] a revised Copyright Law and new Civil Code (both effective on 1.1.2020), new draft laws in the fields of privacy and data protection[3] and an ambitious, technology-focused 5-years plan. However, sometimes legal change may take the form of changes in enforcement of existing laws, rather than the promulgation of entirely new ones. In recent months, our office has seen multiple cases of enforcement of 2018's Advertising Law of the PRC ("Advertising Law"). Due to the Advertising Law's broad scope and the harsh penalties on non-compliance, we would like to detail some of its provisions.

1. Applicability The Advertising Law applies to advertisers as well as their agents, publishers and endorsers and covers all sorts of media. This includes advertising through social applications like WeChat and Weibo and e-commerce platforms.

2. Requirements Advertisements' content needs to be in strict compliance with the Advertising Law's provisions, with one major requirement being the prohibition on false or misleading statements. The law takes a strict view as to which statements may be deemed as "misleading", with one common mistake a business can make is claiming their product is the "best" in the field. Additionally, local and national sensitivities need to be taken into consideration when designing in the campaign. For example, putting a map of China on your website might seem sensible, but if you get the borders wrong (e.g. by not including Hong Kong or Taiwan) you may find yourself in trouble. The wording of some of the Advertising Law's provisions is extremely detailed (e.g. requiring listing a patent number in case of products claimed to be patented), while other provisions tend to be quite vague (e.g. advertising may not contain "undesirable cultural content" or "depart from a good social climate"). For the more vague provisions, we suggest for businesses to follow these provisions' enforcement in practice by the authorities – in order to learn what should be avoided.

3. Penalties Businesses found to violate the Advertising Law may be required to pay between three to five times the advertising expenses or, if the advertising expenses cannot be calculated or are evidently low, between RMB 200,000 to RMB 1,000,000. Heavier penalties have been levied when the violations were deemed to be serious, with one of the highest we saw reaching RMB 3.4 million. These alone should make companies aware of the risk, but it does not end there: the fact that these cases get public exposure may also cause reputational damage to the brand. One should also consider that the Advertising Law contains the harsh sanction of revoking a company's business license and other licenses in case of serious violations.

[1] A different version of this article appeared on LinkedIn. Please refer to: Lichtblau, Z. (2020). *Advertising in China? Proceed with Caution!* [online] LinkedIn.com. Available at: <https://www.linkedin.com/pulse/advertising-china-proceed-caution-zachi-lichtblau/?trackingId=lsq6jY6gQOeLZaGWJOWsHg%3D%3D> [Accessed 18 Dec. 2020].

[2] See: Lichtblau, Z. (2020). *Happy 2020! The WFOE is Dead, Long Live China's FIL (and its Implementing Regulation)!* [online] LinkedIn.com. Available at: <https://www.linkedin.com/pulse/happy-2020-wfoe-dead-long-live-chinas-fil-its-zachi-lichtblau/> [Accessed 18 Dec. 2020].

[3] See: Muller, H.; Barak, U. (2020). *Data and privacy protection changing fast in China – 2 recent developments you need to know about* [online] LinkedIn.com. Available at: <https://www.linkedin.com/pulse/data-privacy-protection-changing-fast-china-2-recent-you-uri-barak/?trackingId=KMJX6dPSSTOiAVONcIXSyw%3D%3D> [Accessed 18 Dec. 2020].

Since the Advertising Law's promulgation, and increasingly in recent months, we encountered a growing interest from clients either looking for our help in negotiating with the authorities when facing penalties or seeking to educate themselves on how to advertise in China in a legally-compliant manner. We strongly recommend taking the latter approach. It is important for every business advertising in China to make sure its content creators are aware of the Advertising Law's requirements, and to follow enforcement trends to see how the law is implemented in practice (gaining better understanding of

its vague clauses).18 December 2020