

Commercial and consumer electronic advertising**Dr. Hamrit Rachid 1**

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*Received: 31/10/2022**Accepted: 22/12/2022**Published:30/04/2023***Abstract:**

The ease of surfing on the Internet is increasing the pressure on the consumer by exaggerating the advertising of goods and services, to try to seduce him and enter into the world of e-commerce, and induce him to contract through the international information network, without giving him time to question what is provided, which We wonder whether this "consumer" consumer of goods or services can question the product or service it is offered through the electronic means it offers, especially since traditional legal dress is unable to receive this technology and catch up with it because it is constantly evolving. E-contracting is a very important stage, on the basis of which the contracting party decides to take the product or service or not, which calls for rapid intervention to protect the weak consumer at this stage, to increase fraud and piracy, and the idea of informing the consumer of legal protection is not a newly created idea or Is limited to electronic contracts only, the consumer - no matter what contract he makes - needs protection, especially in electronic contracts.

Keywords:electronic advertising, commercial advertising, consumer.**JEL Classification Codes:** D12.D18

1. INTRODUCTION

In general, e-business is preceded by advertising, online advertising, or any other electronic means. Today, thousands of commercial advertisements are exposed to the vast majority of the commercials, Newspapers and banners on the streets. Even when you walk around, you find someone who gives you printed papers for the products of a particular company or product, which has been described to the community today as a consumer and advertising community at the same time because you may open your mobile messages and find a huge number of promotional messages inviting you to sign them. You are surprised by the existence of facilities and discounts, even with the presence of gifts, and when you close the page of messages, you are surprised to return to you again, such as parasitic, and here if the consumer wants to acquire a commodity, or access to a service, find himself puzzled to choose with Of the contract, which led us to focus on the protection of the consumer of commercial messages that may involve deception and deception in order to pay the latter to the acquisition of the product, and in this context we will discuss the protection prescribed by the legislation to the consumer to be aware of the order before the contract E-mail?

To answer this question, we divide the subject into legal elements in which we talk about consumer protection in the pre-e-contracting stage by committing to electronic advertising.

2. the concept of electronic advertising directed to the consumer and its legal nature:

Consumer-oriented electronic advertising is only a contract between two parties, the advertiser and the advertising agency, which is one of the contracts signed and executed through the Internet or any other electronic means, one of the unnamed contracts, and has been exposed to the national texts that I defined, so I will address in the first section The concept of commercial advertising and its terms, and hence the legal nature of commercial advertising in the second section.(Mahmoud, p. 35).

2.1 Definition of electronic commercial advertising and its legal nature

2.1.1 Definition of electronic advertising

Before referring to this definition of publicity in Algerian law, we note that there is currently no legal text dealing with commercial advertising in our country, which would protect the recipient in general and the consumer in particular. A draft law was introduced in 1999 to parliament, The time of entry into force, with reference to articles 41 to 44 to criminalize misleading publicity.(Ibrahim, p. 176)

With reference to Article 2/8 of Executive Decree **No. 90/39 of 30 January 1990** on quality control and suppression of fraud, publicity has been defined as: **"all proposals, advertisements, statements, Offers or advertisements or service by visual or audiovisual support "**

So it is all used by the electronic merchant to stimulate the consumer to the demand for his goods, whether through visual or audio or read, which is called consumer advertising, commercial advertising is a picture of commercial advertising in which the advertiser reaches the maximum limits in the promotion and marketing of goods and services.

Referring to Law **04-02**, which defines the rules applicable to commercial practices, it is defined in Article 3/3 as **"any advertisement aimed directly or indirectly to promote the sale of goods or services, whatever place or means of communication used"**

As defined in Law **04-08** on the conditions for the conduct of commercial activities, in article 12: **"Legal publicity means, for legal persons, the disclosure of the contents of the constituent acts of companies, transfers and adjustments, as well as operations affecting the company's capital and mortgages, As well as financial accounts and notices ... "**(Schuchi, 2000, p. 236).

The Algerian legislator has not defined a specific definition of e-advertising, contrary to comparative legislation, so publicity is any act or

behavior prior to the process of contractual aims to influence the psychology of consumers, to convince them of the benefits of goods and services, and the benefits that can be achieved regardless of The means used. Electronic advertising differs from traditional means only in the means used, because the first is via the intranet, or other electronic means such as telephone.

In reference to the French Civil Code, no specific definition of electronic advertising has been assigned, according to some jurists. However, by reference to Article 3 of Law **79-1150 of 29.12.1979** on protection from advertising signs on walls, **"The declaration of every inscription intended to publicize and attract the attention of the public, whether it is a typical or a picture"**

It is also defined as: **"a group of non-personal efforts aimed at drawing the attention of members of society to a specific commodity and service to induce them to purchase or request it, or the various types of activities through which the publication, Community members with the aim of urging them to purchase the item or service advertised"**.(Houhou, p. 61).

The French Court of Cassation defined the declaration as: **"Any commercial document such as an application voucher whose data and presentation allow potential customers to have an opinion about the expected outcome of the proposed product or service"**.

The French Consumer Law of **1993**, when he spoke about the advertising deception provided for in article 121/1, stated that **"any declaration that contains, in any way, false claims, statements or presentations, or which misleads one or more Of the following elements ... "**.

Therefore, the French legislator used the words of every advertisement without specifying this declaration, with the aim of expanding the protection of the consumer from any crime that may be abandoned by the declaration, whatever the case may be. The same law was

adopted by the law of 23 February 2005. Article 3333/4 of Public Health Regulations The Commercial Declaration shall contain any data related to products, goods and services as long as they are intended to appeal to the public.(Kawther , 2012, p. 99).

It is also known that: **"a commercial or professional news or information intended to introduce a particular product or service by highlighting the advantages and praising the beauties in order to create a good impression that leads to the public's interest in this product or service"**

It can be said that advertising is always aimed at promoting a product or service in order to expand marketing and gain more profit.

- **Advertising has two elements:**

Physical element: It is any act, activity, or all use of an instrument of expression that is aware of the senses.

A material element: It is intended to achieve profit and material gain, which is meant to be necessary to be commercial.(Khalid, 2007, p. 81).

2.1.2 Distinguishing commercial advertising from what is similar to it

a) Advertising and publicity:

That the first difference between them lies in the verbal side, commercial advertising is la publicitecommercial, the propaganda is la propagande, which was defined by some as **"the activity that leads to influence the doctrine of the public positively either to make him believe in an idea or a doctrine, or negatively by making him depart from the idea What or what principle or doctrine "**

Therefore, advertising is not the goal of promoting profit, contrary to commercial advertising, which is the goal of profit.(Lendrevie & Bernard, 2001, pp. 277-278).

On the one hand, there is a difference between commercial advertising and commercial advertising, so that commercial advertising uses sophisticated technological means that affect the contractor and pay him to contract, while advertising is a traditional means of knowing the public of the goods on the market, That there is no difference between them, because each is a means used by the electronic seller to push and motivate the public to contract.

b) Advertising and Media:

Media is a dissemination of facts and information among the public, with the aim of spreading culture and developing awareness together is the future, not the profit, which is a means of communication between people in general and contracting parties in particular, the publicity is aimed at the promotion of products and services among the public to submit to the contract, In order to make a profit, because the advertiser is spent on it for this reason, so the media is more objective than it, because the publicity and even included a notification, but a media with a specific purpose and purpose.(Shaker, 2009, p. 432).

Through the definitions that we mentioned, we draw the characteristics of electronic commercial advertising, which is no different from ordinary publicity except in speed and comprehensiveness, as follows:

2.1.3 The characteristics of commercial electronic advertising:

a) Commercial advertising is directed at the consumer audience

There are websites that specialize in advertising to the public, through which merchants and service providers advertise their products and services, because advertising must be directed to all people without assigning it to a particular person a consumer word must be understood to mean that each person is directed to the advertising message, which can be the final consumer or the distributor or producer.(Sherif, 2011) **b)**

Electronic advertising tells consumers about the benefits of goods and services

Because it praises products and services and shows its advantages, and this is normal, because it focuses on the statement of the pros and cons of goods and services, but should not be overestimated.

c) Advertising inspires consumers to contract

Traders spend a lot of money on commercial messages to psychologically influence consumers to attract them and push them into contracting. This is a foregone conclusion, because it is unreasonable for traders to spend their money just to advertise their goods, without making much money from it. (Qashi, 2012, p. 335)

d) Commercial advertising is of a commercial nature

To see whether advertising is commercial or not, we look at its nature. If the goal is to make a profit, it is commercial, because not all online communications are of a commercial nature, because there are government institutions or associations that do not make a profit, No longer commercial

e) Electronic advertising is done by electronic means

This is what distinguishes e-advertising from the traditional. E-advertising is done through electronic means, such as the Internet, which is the most effective means of the present time of television, radio and newspapers, because it will attract the largest number of shoppers to the web, to convince them of goods and services. (Falah, 2011, p. 65).

2.2 Legal Nature of E-Business Notices

The opinions of jurists differed and differed about the legal nature of e-advertising, at the point of whether e-advertising is a positive or an invitation to contract.

When people browse web pages that display goods and services, it is not known whether they have the right to discuss what is being offered, or whether the pages contain a positive meaning in the legal sense or not? The

distinction between the positive and the call for contracting is important, because the affirmation is subject to strict legal requirements, contrary to publicity, and therefore two trends appear to be positive and the other considers it an invitation to contract.(Gassemi, 2007-2008, p. 21).

2.2.1 e-commerce advertising is positive

This view is considered to be a consumer-driven advertisement on the Internet. This will serve the consumer, because the moment of conclusion of the contract will be the moment when the supplier receives a receipt from the supplier, because the online advertising is an invitation to contract. By sending the acceptance, and notify the customer through the e-mail box, and then the consumer sends a statement of acceptance to the supplier, the contract will be concluded.

As well as in considering publicity as a positive, and obligating the advertiser to what he mentioned in his advertising message, will make him cautious and objective in all the speech he presents before publishing, and this thing serves the consumer, and generates a sense of confidence in what is published.(Khalwi, p. 11)

Which is the same as the Egyptian e-commerce bill. Electronic advertising is considered positive, but implicitly in Article 16: **"Advertisements and advertising documents transmitted or transmitted through electronic media shall be considered as contractual documents complementary to contracts entered into for declared goods and services , And the contracting parties shall comply with all the provisions stated therein "**

Through this article it is found that electronic advertising is implicitly positive, giving the notes contractual value, and considers it to be complementary to the contracts.(Khalid M. i., 2008, p. 108).

Therefore, the owners of this trend should emphasize the need for e-advertising to include the basic conditions - for the contract to be concluded - in particular the commodity or service in the place of publicity, as well as

the price so that we say that electronic commercial advertising is positive.

As for contemporary Islamic jurisprudence, some say that advertising on the Internet or other modern electronic means, if it includes the specifications of the sale and the price, is a good answer to be accompanied by acceptance. Therefore, pressing the icon with yes is acceptable.

In this regard, Thibault Verbiest says that the judiciary had the legal framework for publicity and affirmation in the future, because Internet technology was difficult to differentiate between them.(Kandouz, 2000-2001, p. 30).

From the above we can say that advertising is a positive if it includes all the mandatory data mentioned in the affirmative, but if it does not include this data is just a call for contracting, which we will try to clarify in the next point.

2.2.2 e-commerce advertising invitation to negotiate

Advertising, which does not include the basic conditions of the contract and the price is not positive, and the call to negotiate is the one directed by the person to another or to the public calls them to contract with him, without specifying the core issues of the contract, and this is what some of the drafters of the law, The Internet screen is very much like the display on the real store window. If the online offer includes the price of the sale, the offer is a positive one. In both cases, the consumer can see the thing sold by filling the eye or the virtual vision via the website.(Law 2003, p 202, dated 18-08-2004.

Therefore, considering electronic advertising as an invitation to negotiate and not positive, refer to not mention the basic conditions for the contract, including the price, which is considered the essential information of the contract.(Thibault, 2005, p. 135).

Therefore, the Egyptian Court of Cassation ruled that the opening of the door of detention is a mere invitation to contract and not a positive sale.

It also ruled that the submission of tenders of supply and other statements addressed to the public or individuals such as bulletins and advertisements is not a response but an invitation to contract or negotiate. The contract shall be accepted by the bidder

Some consider that the product or merchant may receive thousands of e-mails to approve the purchase, without having the required quantity, or have more prices than at the time of advertising. Orders that exceed their potential, for lack of quantity, or for price changes.

Clicking on the display board is like browsing the advertising, which often includes a special icon that tells the meaning of the demand or purchase. When the consumer enters and completes the filling of the necessary data, the offer turns to the customer, asking the bidder, not vice versa.

3. Consumer protection against misleading electronic messages

The tremendous development witnessed by production and the fierce competition in the market have played a major role in the emergence of fraudulent methods and misinformation in electronic commercial advertising, affecting the behavior of the individual, on which the decision is based, and making it contract without thinking, which led to most countries in the world. To criminalize this behavior, to protect the consumer, by preventing the electronic merchant from praising his goods and describing what is not in them.

So consumer protection here is based on basic rules, the first is to require clarity of electronic advertising and the second to prevent or prohibit some commercial messages and we will discuss each in detail.

The expression of the clarity of electronic advertising means that the data used in advertising by the advertiser is sufficient to express the goods or services, so as to illuminate and drive the consumer's path, to contract consciously and informedly by moving away from vague or ambiguous terms that are understood more than meaning, The advertiser should use his

declaration of the product or service as easy and simple phrases, and taking into account the consumer category. If advertising is a commodity that all people need, then simple and easy words are used here according to the degree of consumer acceptance. If advertising is for medical devices, Here n speak them in their own language. The Egyptian Court of Cassation ruled that the commercial declaration addressed to the public issued by Al-Nasr Company for the automobile industry about the opening of the seizure of the cars produced by them is no more than an invitation to contract. The request to book the car submitted to the distributing company is considered positive. If the contested judgment has been arranged on me That the declaration directed by the car company is a positive sale binding, and that the request to detain the car submitted by the first contestant to the company distributed it is acceptable to the positive, it is deficient in the causation, led to an error in the application of the law - the appeal of civil denial No. 198, meeting 12 3-1976, Judgments of Cassation - Office Group Technical p. 492- No. 80.(Khalid M. i., 2008, p. 39).

Referring to French law, we find that electronic business operations and accompanying advertising must include clear and easy data for the advertised product or service, which helps the consumer to make informed decisions without any pressure from anyone

The importance of the visibility of e-commerce advertising for the trader is shown in:

That the clear electronic messages appeal to consumers, which is far superior to the traditional ones, in which the advertiser uses sounds, images and animations that show advertising clearly and attract the attention of those who see, and these ads are cheap, the advertisers do not need to buy advertising space, and can continue to advertise in terms of degree Public demand for the advertised product and change it according to the circumstances, because it is not expensive, contrary to traditional advertising, which needs to monitor large amounts of money, and a certain period.

As for the consumer, clear e-mail has many advantages, including the variety of products and services, as well as the possibility of contacting the advertiser directly to discuss with him about advertising, and to compare the prices of different companies in a matter of minutes, Producers are encouraged to improve their products and make them more accessible to consumers

The advertiser must clarify a set of statements in the advertisement that he directs to the consumers, including: the identity of the advertiser, his address, telephone numbers, website, commodity or service, as well as how to obtain them, clearly on his website or e-mail, easy for any user to see Easily, decide on them.

This is what was confirmed by the Palestinian Consumer Protection Law No. 21 of 2005, when dealing with commercial advertising and the necessity of its clarity, in Article 15, which is entitled "Integrity of economic transactions and promotion." **It states: "Anyone who promotes and advertises products shall**

take into account the availability of what is advertised, Specifications of the advertised products, and the advertisement must not involve deceit or mislead the consumer "

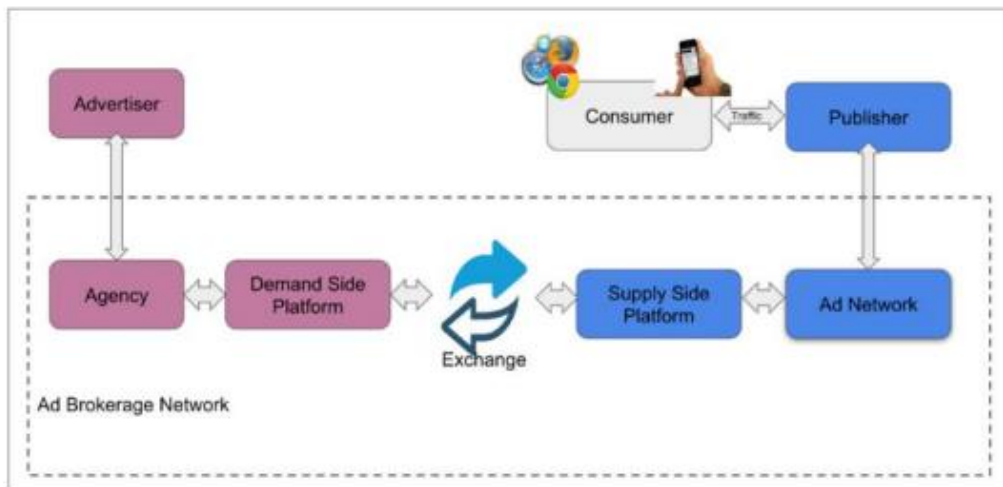
It is the same trend followed by the French legislator, who stressed that the electronic business operations and the accompanying publicity should be clear and unambiguous. The use of the French language in the advertising of goods and services must be committed through the Internet or any other electronic means, and to provide the consumer with clear information about the advertised product or service , Allowing the consumer to give consent to the contract consciously and know-how

Referring to the International Chamber of Commerce in its article 11 of the International Law on the Sound Applications of the Declaration, the obligations to be made available in the Declaration stated that: **"The**

**Declaration must be clearly distinguishable regardless of the form or medium used, and when the advertisement is broadcast or published
The media must be presented immediately as an advertisement. "**

4. models:

Figure 1: Main players of the online advertising value chain



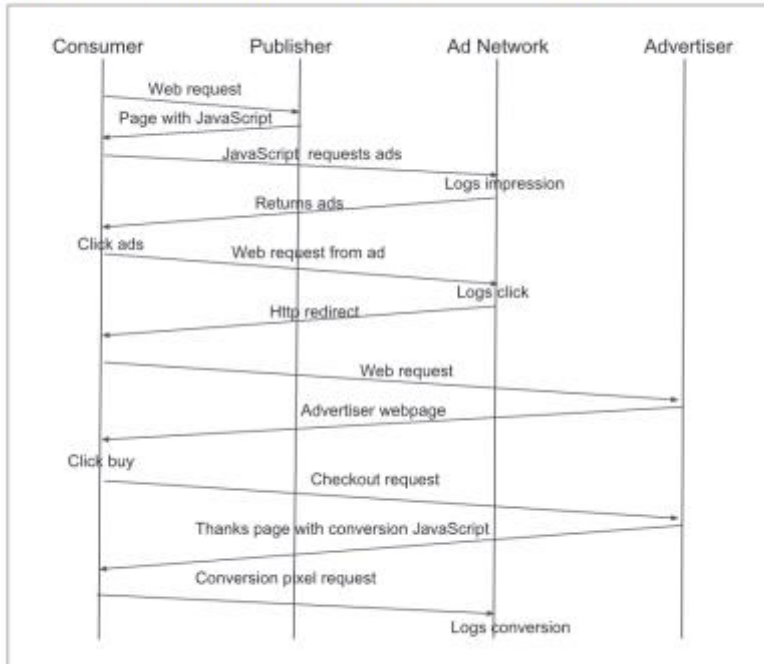
source: Cai et al (2020)

The business model of an intermediary Ad Brokerage Network is based around aggregating advertising space from publishers and matching it against advertisers' demand. It can offer any combination of services that would relate to a Supply Side Platform (SSP), Demand Side Platform (DSP) or Ad-Exchange. Table 1 provides definitions of these roles as described by the Interactive Advertising Bureau (IAB).(Cai, Yee, Gu, & Lung, 2020)

Although Ad-Networks in the narrow sense represent only one element in an Ad Brokerage Network's service umbrella, the term is often used as a synonym for the entire sector of intermediaries. For the remainder of the study we refer to "Ad-Networks" in relation to all Ad Brokerage services and refer to the elements of DSPs, SSPs and Ad Exchanges specifically where necessary. Ad-Networks in their role as intermediaries interact with

advertisers and publishers. Advertising firms provide the network with the

Figure 2: Ad delivery process: impression, click and conversion 19

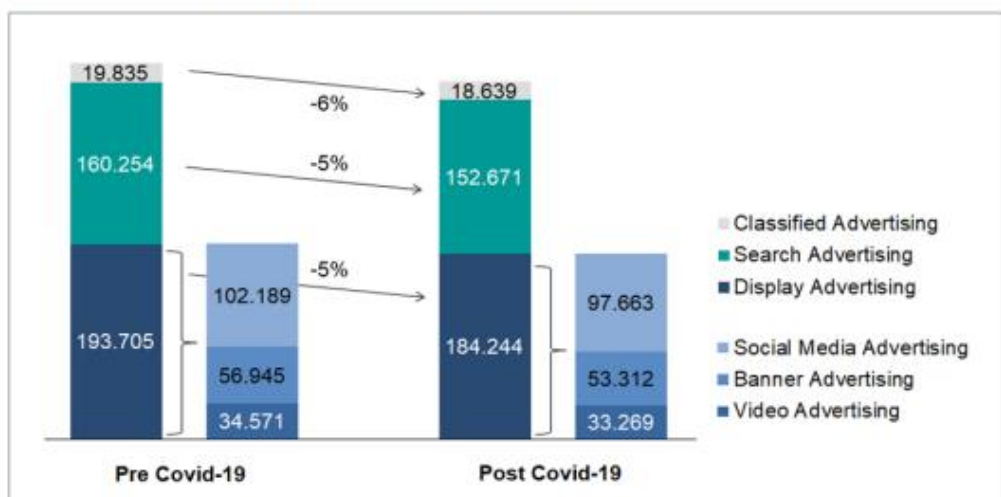


Source: Dave et al. (2013).

relevant campaign materials while the publishers offer advertising space on their website to be filled by the network. When planning their advertising campaign, advertisers can typically choose between different targeting options offered by the network. Targeting can for example be based on geolocation, specific keywords which define the contextual environment, time of day, browser type or operation system amongst other options. To identify these different consumer segments, Ad-Networks rely heavily on the analysis of click-stream data from users (i.e. data on the detailed interaction of users with elements of the web-service).

To improve efficiency in the intermediation process (and to maximise the profits generated by targeting) large Ad-Networks and Ad-Exchanges tend to employ an auction format to determine which advert is shown to a given user. After the Ad-Network/Exchange receives the JavaScript request for the display of an ad, this real-time auction process is triggered and returns the winning advertisement. The successful impression of the winning ad is recorded and the relevant advertiser is billed. Advertisers who are interested in targeting a specific consumer group can choose to do so by preselecting a keyword, industry sector or other identifiable metric. The largest players in the Ad-Networks space are Google, Facebook and Amazon, who not only act as SSP, DSP (thereby aggregating advertising demand and supply) but also operate an integrated AdExchange. Thus, these firms operate well beyond their self-generated ad spaces and additionally act as market makers, e.g. via Google Ads, Google AdSense, DoubleClick, the Facebook Audience Network or Amazon Advertising. The vertical integration of these large players contrasts with smaller market participants, which typically act only as DSP, SSP or provide Ad-Exchange services. We identify potential problematic practices arising from vertical integration by major players in online advertising in Section 2. (Dave, Guha, & Zhang, 2013, pp. 765-766).

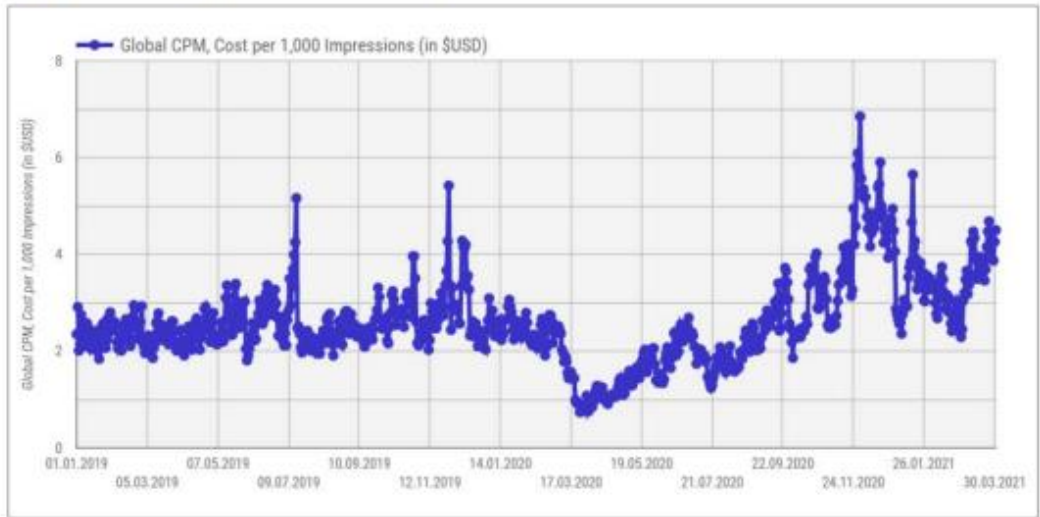
Figure 3: Global ad spending forecast in million USD in 2020



Source: Statista, 2020, *Digital Advertising Report 2020*.

This underspend may be due to the fact that companies have faced uncertainties in their operating businesses and, therefore, scaled back on ad spending. Especially in the first month of the pandemic, both publishers and intermediaries experienced a decline in the value of their inventory and service.(Widawska, 2021). The pandemic had particularly negative consequences for news publishers, who regularly reported on the pandemic. Since advertisers generally avoid displaying their ad alongside information about natural disasters or tragedies, many advertisers refrain from placing ads on news publishers' websites.(IAB Europe, 2020).However, the pandemic had a far more dramatic effect on traditional advertising segments than on the digital advertising industry in 2020.(Statista, 2020). According to an article posted by the World Economic Forum (2020), "out-of-home and cinema advertising shrank almost instantly", as did spending on TV and print advertising. On the other hand, spending on online advertising still grew in 2020, albeit less than expected and lower than in previous years. Compared to 2019, global online advertising spending increased by around 7% and is expected to rise again by 12% in 2021, while in Europe online ad spending increased by about 4% in 2020 compared to the previous year. In 2021, expenditure is expected to increase again by 13%.(Statista, 2021).This development is also reflected in the rising costs per 1,000 impressions. Figure 4 shows the development of the global CPM in USD for ads on Facebook and Instagram. The dip in prices from February to April of 2020 is clearly visible. With many pulling out of the advertising business, the availability of programmatic inventory skyrocketed during this time. Those companies that were in a position to keep investing in advertising faced less competition in the auctions, which resulted in greater efficiency and a decrease in CPMs. (Comstock, 2020).Nevertheless, Figure 4 also illustrates that prices rose again from around April onwards, and by the end of 2020 had already surpassed the price level recorded in the previous year.

Figure 4: Global CPM in USD – Metrics on Facebook & Instagram



Source: GuptaMedia, 2021, *Understanding the effects of COVID-19 on the Facebook Ads Marketplace*.

Although many companies worked and are still working with tighter budgets, completely pulling away from advertising would do more harm than good, as it could lead to a significant drop in total brand communication awareness and, thus, even fewer sales.(Roberts & Southgate, 2020). Therefore, the goal of advertisers is to improve the allocation of available resources, leading them to adapt to changing consumer behaviour as a result of the COVID-19 crisis. The pandemic has forced citizens to spend most of their time at home.(Ford, 2020). Consequently, digital consumption has increased significantly. According to an article written by Fernandez et al. (2020), digital adoption in Europe jumped from 81% to 94%.(Fernandez & Jenkins, 2020). Social media and messaging services saw the most growth. ECommerce has also gained in importance.

These developments are reflected in the current as well as the future marketing strategies of various companies which prioritise digital advertising. In a survey of marketing executives from various industries worldwide by Criteo (2021), a significant share of marketers confirmed that

they plan to spend the same or even more in digital advertising in 2021, despite the impact of the pandemic. Most insights presented in this paragraph are based on (Criteo, 2021). More than 40% of the respondents indicated that their budgets for social media advertising, website and content marketing as well as advertising on retail websites and apps is likely to increase in 2021. Video ads will also account for an increasing share of marketing budgets. However, marketers also emphasised that they face some challenges related to digital advertising campaigns. For instance, marketers complain that “campaigns do not always target the right people”, “campaigns are too dependent on Facebook / Google / Amazon”, and “it is difficult to measure the Return on Investment (ROI) of campaigns”. There are also many marketers who plan to diversify their budgets and cover multiple channels. While larger companies and brands have been taking a multi-channel approach for years, smaller enterprises rely more on or tend to use channels that reach a large audience and, thereby, enable engagement on a large scale. (CMA, 2020), (Li & Hall, 2020),

These companies may become more dependent than ever on large players like Facebook, Google, and Amazon in order to reach their audience. Publishers are also looking for new ways to improve and adapt their business models. A study found that around 71% of publishers are seeking to diversify their revenue in the future. (Brazzoni, 2020). As a result, they will become less reliant on advertising revenue. Brazzoni (2020) features three potential strategies for publishers. One approach could be to switch to a subscription model, as this offers an additional source of revenue as well as extensive audience data. Publishers could also consider investing in Commerce. This could include selling products and services online through, for instance, newsletters and ads. Virtual events could also prove successful⁸⁰.

5. CONCLUSION

E-commerce advertising to the consumer may be considered positive, or call for contracting, and the criterion for determining whether it is a positive or an invitation to contract, provides the essential elements of the contract, especially the price. If the advertisement of the goods and services on the Internet includes the essential conditions of the contract, This is positive and vice versa.(Khalid M. i., 2008, p. 113) .

- In some cases, suppliers of goods and services may resort to the use of advertising techniques that mislead the consumer, and pay him to buy the item. **What would he have acquired if he knew what it is, which leads us to ask about the consumer's protection against these misinformation?**

- With all that has been said about the clarity of e-advertising, there is a problem in the laws concerning these overseas publications, how they are censored, and what the law is subject to. Advertising may be allowed in a particular country as in the United States Which allows gambling and gambling in Las Vegas, for example, while in New York it is banned.

- Every consumer has the right to receive fair and legitimate e-commerce advertisements, exactly the same as what is advertised, so that if he contracts as a result of this publicity, and takes the product, he must find it identical to what is advertised, that is exactly the same as reality.

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