

The Comparative Study of Goodwill Principle in Misleading Commercial Advertisements based on Jurisprudence and Criminal Law

Commercial advertising is one of the influential factors in transactions. Today, with the expansion of the media, marketing has become very easy and widespread; in such a way that with advertising tricks, sometimes by providing incomplete and misleading information, they induce people to what they want. Commercial advertising is one of the manifestations of pre-contractual negotiations; therefore, the correctness and incorrectness of advertising is one of the categories that is relevant in Imami jurisprudence and Iranian law, and it considers the provision of necessary and transparent information, the avoidance of fraud and falsehood mandatory, and the act or omission of an act requires fair and just transactions. Good faith is an easy and elusive concept; meaning that at first glance its meaning seems obvious and clear, but there are many differences of opinion in providing a comprehensive and specific definition of it. However, by summarizing the various definitions, good faith can be defined as: honest, fair, and reasonable behavior that parties in their relationship expect from each other or even from third parties who are involved in the relationship or subsequently interact with it. In Black's Legal Dictionary, the definition of good faith is: a person's prevailing mental state based on honesty in belief or purpose, faith in the fulfillment of obligations or duties by the other party, compliance with customary business standards in fair dealing with a particular transaction or business, and the absence of intent to deceive or obtain an unfair advantage from the other party (Garner, 2004, 713). Misleading advertising can be measured and quantified in various ways. One of those is the extent to which advertising data conforms to the good faith of the advertisers; now these questions arise: To what extent is it necessary to observe the principle of good faith in commercial advertising? Can providing false information through misleading advertising violate this principle and lead to advertising being unfair? In relation to the above two questions, the following hypotheses are raised: The most important principle for the existence of good faith in commercial advertising is the absence of fraud, deceit, and falsehood in providing information to the consumer, which doubles the necessity of the existence of good faith in all stages of transactions, especially pre-contractual negotiations, and the importance of identifying a legal rule that can respond to the legal challenges of this type of advertising in violation of good faith. Considering the concept of good faith, providing false information through misleading advertising leads to a violation and, as a result, the inappropriateness of advertising.

Good faith is the center of gravity of pre-contractual negotiations, and the issue of untrue statements is related to the pre-contractual negotiations stage. One of the most important foundations of the obligation to provide information is good faith. Accepting the principle of good faith will have important effects and consequences in preliminary negotiations, especially commercial advertising. Compliance with this principle requires in the pre-contractual period: manufacturers and advertisers of goods and services, in order to achieve their own interests, ultimately honestly and transparently provide information and express the characteristics, quantity, and quality of the transaction, and, away from any trickery and fraud, respect the interests of the audience and consumers. Commercial advertising is one of the influential and undeniable factors in the field of commercial transactions, which seeks to seduce customers with deceptive methods using different advertising tools along with false claims about the quality and special characteristics of products and services. It can be said that advertising, beyond providing information, is one of the financial sources of the media that has had a profound impact on all cultural, social, spiritual, and economic fields of human life. In Iranian law, the principle of good faith has not been accepted as a general rule; however, traces and traces of good faith can be seen in the laws, especially in the field of advertising goods and services. In Imami jurisprudence, topics such as: prohibition of fraud, deception, embezzlement, and falsehood indicate the recognition of the principle of good faith. Considering the existence of cases of deception, fraud, insincerity, and falsehood in advertising and its adaptation to the obligatory and supportive functions of good faith, we can conclude that the prohibition of misleading advertising can be one of the approaches to the principle of good faith, and avoiding lies, avoiding exaggeration, deception, and trickery, providing sufficient information about the product, not advertising harmful products, and not comparing one's own product with competitors' products, avoiding unrealistic display of the product, not inducing dependence on comfort and health, and creating a false sense of need in using a product are considered

among the functions of this principle in advertising. If an individual misleads someone by making untrue statements and concealing the truth, based on the ability to invoke and pursue the rights of the audience and consumer of the advertised product, civil and criminal liability and performance guarantees can be considered for commercial advertising in accordance with the acceptance of the principle of good faith in preliminary discussions as the most important basis for creating legal obligations.