

# Review Obligations of Real Estate Advertisement Publishers

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## Abstract

Advertisement publishers refers to the media that accept the entrustment of advertisers or advertising operators to publish advertisements to the public, such as television stations, network new media and radio stations. The censorship obligations of advertising publishers means that advertisement publishers actively take reasonable and necessary measures to take the initiative to review the legality of the advertising content and form provided by advertisers or advertising operators. In the current era of digital economy, many real estate enterprises pay too much attention to creating advertising marketing effects, resulting in inducing advertising compliance risks in the content and form of advertising. However, advertisement publishers have insufficient awareness of the importance of advertising compliance, lack of effective violation identification mechanism, lack of spontaneous driving force of advertising compliance system, etc. As a result, the advertisement publishers themselves bear the legal responsibility. This paper will first analyze the legal liabilities that may be caused by the failure to fulfill the obligations of examination from the perspective of advertisement publishers, and then sort out the characteristics of real estate advertising and the main forms of non-compliance of real estate advertising, and finally discuss and propose corresponding compliance strategies.

**Keywords:** advertisement publishers, China's Advertising Law, real estate advertising

## 1. Review Obligations and Relevant Legal Responsibilities of Advertisement Publishers

In the China's Advertising Law of the People's Republic of China officially implemented on September 1, 2015 (hereinafter referred to as the "China's Advertising Law"), the term "mass media" appears many times. According to the interpretation of the China's Advertising Law edited by Lang Sheng, deputy director of the Legal Affairs Committee of the Standing

Committee of the National People's Congress, mass media mainly refers to radio, film, television, newspapers, periodicals, Internet and so on. At the same time, since the advertisements must be released through a specific medium and form, the mass media is the most important advertisement publishers in the advertisement release. Therefore, it is of great theoretical and practical significance to explore the review and compliance obligations of advertisement publishers, and to explore the

legal responsibilities arising from the failure of advertisement publishers to fulfill their review obligations has practical reference value for advertisement publishers.

### *1.1 Analysis of Review Obligations and Duty of Care*

Article 34 of the China's Advertising Law stipulates that advertising agents and publishers shall establish a daily management system and have the obligations to check relevant supporting documents and check the content of advertisements. Before clarifying the censorship obligations of advertising publishers, it is necessary to distinguish the distinctions between the censorship obligations and the duty of care. In the theoretical circle, the confusion between the censorship duty and the care duty is very common. (Qi Lei, 2009) The duty of care refers to the obligations that the subject of the obligations should act or fail to act prudently, so as not to cause damage to others. The duty of review refers to that the subject of the obligations should take the initiative and take reasonable measures to review the behaviors and try his best to avoid causing damages to others due to his behaviors.

When applied to advertising, the duty of care means that the advertisement publishers should take the initiative and actively take reasonable measures to carefully check the advertising content provided by each advertisers, and try its best not to make the commissioned advertising content infringe on the rights of others. It can be seen that compared with the duty of care, the duty of review requires the subject of the obligations to take the initiative and actively exercise to avoid the infringement of the rights of others by his own behaviors. As for advertisement publishers, they should take the initiative and actively use laws and regulations to examine the contents of advertisements one by one to see if there is any violation of public law or private law. Therefore, in the discussion of the legal liability arising from the failure of the advertising publisher to fulfill the duty of review, we should strictly distinguish the use of the two words: duty of review and duty of care.

### *1.2 The Boundary of the Censorship Obligations of Advertisement Publishers*

Throughout the whole text of the China's Advertising Law, Article 34 contains two provisions on the censorship obligations of advertising publishers. The first is to check the content of the published advertisements; The

other is to publish the advertising content does not match or the supporting documents are incomplete, the advertising publisher shall not publish it. From the comparative use of the words "check" and "inconsistent", it can be seen that the examination obligations of the advertisement content belongs to the formal examination obligations rather than the substantive examination obligations, and it is also a major change from the old China's Advertising Law to the current China's Advertising Law. (Yao Zhiwei & Liu Runtao, 2016) So how to define the boundary of the censorship obligations of advertisement publishers?

(1) The advertisement publishers should check the advertising content provided by the advertiser one by one, as long as the advertising content is consistent with the actual situation, there is no need to meet the verification standards. If the advertiser promotes his project as a key project in a province in the advertising content, it only needs to check the proof of a key project in a province provided by the advertiser, without verifying whether the project is actually rated as a key project in a province and the actual existence of a key project evaluation.

(2) The advertisement publishers only need to show the form review of the proof documents provided by the advertiser. Most advertisement publishers do not have the ability to verify the authenticity of the documents provided by the advertiser. If the advertiser is required to verify the authenticity of all the documents, it is obviously too harsh. Therefore, the advertisement publishers only need to review the corresponding supporting documents, that is, to review whether the advertiser has the corresponding supporting documents.

(3) The advertisement publishers does not have the obligations to review the legality and authenticity of the advertising content. (Zhang Shipeng, 2013) In combination with the necessary distinctions between the duty of review and the duty of care mentioned above, the advertisement publishers only bears the duty of care for the content of the advertisement. If the advertisement publishers has the obligations to review the legality and authenticity of the advertising content, the advertisement publishers needs to take the initiative and actively review the legality of every detail of the advertising content, but this will fall back into the situation that the

advertisement publishers need to review the substance. The key is that because of the legal professional ability, human resource cost, time and energy of the advertisement publishers, it is unable to meet the professional requirements of substantive review, so the advertisement publishers only need to pay attention to the illegal advertising content provided by the advertiser will not publish it.

### *1.3 The Advertisement Publishers Fails to Fulfill the Legal Responsibility of the Review Obligations*

If the advertisement publishers fail to fulfill the examination obligations, it needs to bear the corresponding legal liability according to the relevant provisions of the China's Advertising Law. The legal liability is generally divided into three types: administrative liability, criminal liability and civil liability. (1) Administrative responsibility. The "China's Advertising Law" stipulates that if the advertisement publishers fails to fulfill the examination obligations, the administrative supervision department has the right to only stop the advertisement release, confiscate the illegal income, fine, revoke the business license and other administrative penalties. At the same time, the relevant person in charge of the press, publication, radio and television department and the advertising examination authority will also be given corresponding administrative sanctions. (2) Criminal responsibility. Article 55 of the China's Advertising Law stipulates that if an advertisement publishers publishes or acts as an agent for a false advertisement, it shall be investigated for criminal responsibility if it constitutes a crime. At the same time, China's Criminal Law stipulates the crime of false advertising, and makes criminal punishment provisions for the publishers of false advertising, but the statutory sentence of this crime is too low, and the crime standard is not clear, resulting in relatively few cases of this crime in judicial practice. (3) Civil liability. Civil liability is the legal liability that this part focuses on. Article 56 of the China's Advertising Law provides that: "If, in violation of the provisions of this Law, a false advertisement is published to deceive or mislead consumers, thereby harming the legitimate rights and interests of consumers who purchase commodities or receive services, the advertisement publishers shall bear civil liability according to law. If an advertising agents or publishers fails to provide the real name, address and effective contact information

of the advertisers, a consumer may demand compensation from the advertising agents or publishers in advance. Where false advertisements of commodities or services that affect the life and health of consumers cause harm to consumers, advertising agents, publishers or spokespersons shall be jointly and severally liable with the advertisers. Where a false advertisement of commodities or services other than those provided for in the preceding paragraph causes harm to consumers, advertising agents, publishers or spokespersons who design, produce, act as agents, publish, recommend or certify an advertisement, knowing or should have known that it is false, shall be jointly and severally liable with the advertiser."

It can be seen from the provisions of the foregoing articles that the advertisement publishers has two liability modes of preliminary compensation and joint and several compensation liability in the civil liability of the above circumstances. If the advertisement publisher cannot provide the real name, address and effective contact information of the advertiser, and the commodities or services involved in the advertisement are not linked to life and health, it shall bear the liability for compensation in advance; If the commodities or services in the advertisements published by the advertisement publishers involve life and health or are other commodities or services, but they are still published knowing that they are false advertisements, they shall bear joint and several liabilities with the advertiser. It can be inferred that the civil liability of the advertisement publishers belongs to the tort liability, and the standard of civil liability is that the advertisement publishers fails to fulfill the requirement of "knowing or should know", which is a lower duty of care than the duty of review.

It can be concluded that, in addition to the above circumstances, if the advertisement publishers fails to fulfill the review obligations, it needs to be held accountable according to the principle of fault liability; If the above circumstances exist, the liability should be attributed according to the principle of no-fault liability. However, Professor Yang Lixin is opposed to the provision that advertisers should be attributed according to the principle of no-fault liability when they publish false advertisements related to life and health goods or services. He believes that

advertisers have no subjective intention to contact food and drug manufacturers. And the advertising publisher does not have the corresponding ability to substantially review the safety of food and drug, so the fault principle should also be adopted for liability. (Yang Lixin, 2013)

## **2. The Characteristics of Real Estate Advertisement Publishers**

As a kind of special movable property, real estate has the characteristics of immobility and strong regionalism. At the same time, different communities have different special marketing points, and even different buildings and different floors of the house will bring different particularity and uniqueness, which determines that real estate advertising has its own uniqueness compared with other types of advertising. (Business Xueshu & ZHOU Xiaojing, 2008)

First of all, the information conveyed by real estate advertisements is richer. Because the commodity property of real estate itself is more inclined to expensive high-grade durable goods, buyers of real estate will generally be more cautious when buying, while real estate enterprises will spread more information when advertising, which can better enable consumers to compare and make decisions.

Secondly, real estate advertising pays more attention to the marketing effect. At present, many real estate enterprises will make the marketing advertisements of real estate more artistic and exaggerated to increase the marketing effect, so that buyers can shine when they read the advertisements. At the same time, another reason why real estate advertisements pay more attention to marketing effect is that the time of real estate advertising is more urgent than other advertisements, so creating impressive advertising marketing effect in a short period of time will lead to a sharp rise in advertising compliance risk.

At the same time, the regionality of real estate advertising is more obvious. The special attribute of real estate itself is immovable, resulting in the geographically superior real estate can be more favored by buyers, which will lead to many real estate enterprises in the development of the real estate is not well located, still through exaggeration, steal the concept of propaganda and marketing, and even lead to the emergence of false advertising. This will

inevitably lead to the steep increase in advertising compliance risk.

## **3. The Main Forms of Non-Compliance in Real Estate Advertising**

The many links involved in the real estate industry and the aforementioned characteristics of real estate advertising all determine that real estate advertising is easy to cause opacity. Real estate enterprises are not transparent in the process of land acquisition, demolition, planning, construction and acceptance, and subsequent sales license acquisition, which makes the information between real estate enterprises and buyers asymmetrical, and it is the information asymmetry of both sides that leads to the chaos of real estate advertising. At the same time, compared with real estate enterprises, homebuyers lack industry information and professional knowledge, and are in a disadvantaged position. Most of them can only decide whether to buy according to the self-reported information of real estate enterprises.

In the case of off-schedule housing transactions, it is more likely that real estate enterprises fail to fulfill the advertising content when delivering the houses, but this situation needs to distinguish whether the real estate enterprises have intentions. It is many real estate enterprises to take advantage of the regulatory loopholes in advertising caused a lot of chaos, the State Administration for Industry and Commerce in 2015 issued the "Real estate advertising release regulations", which will be revised in 2021. Article 3 of the regulation stipulates that real estate advertisements must be true, legal, scientific and accurate, and must not deceive or mislead consumers. Although the introduction of departmental regulations has greatly curbed the trend of continuous chaos in the real estate advertising market, there are still new forms of non-compliance in real estate advertising, mainly in the following forms:

### **3.1 False Real Estate Advertising**

False advertisement for real estate refers to the advertisement of real estate enterprises which contains false or misleading contents in the advertisement content, so that consumers are deceived or misled. Real estate enterprises usually carry out false publicity in three aspects: one is false publicity for the surrounding environment and value of the house, the other is false publicity for the qualification of the subject,



the third is false publicity for the sales price, and the fourth is false publicity for the area of the house. In the first form, in the false publicity for the housing environment and value, real estate enterprises generally use ambiguous words to express, usually for the geographical location, surrounding public transportation facilities, promise related supporting facilities, return on investment, housing decoration, entry, enrollment, etc. (1) For example, drawing a simple geographical location diagram in the advertisement to indicate the geographical location of the house, so that the buyers have the awareness that the house is in the transportation hub and around the bustling commercial area, but the actual distance deviation is large; (2) Another example is that many real estate enterprises often advertise in their advertisements that the transportation facilities around the house are complete or the location is convenient, usually with “ten minutes away from the city center” and “five minutes away from a commercial center”, but do not mention which means of transportation can achieve the effect declared in the aforementioned advertisement content; (3) The promise of relevant supporting facilities is also a more commonly used advertising method of real estate enterprises, such as real estate enterprises in the advertisement claimed that the community is equipped with a swimming pool, gym, elevator, 24-hour security patrol, etc., but after the delivery of the house is not the case, instead of real estate enterprises in the advertising of some facilities do not exist. Or with supporting facilities, but the buyer needs to pay high fees. Some buyers buy houses with one of the supporting facilities as the basic purpose of the contract, which has the possibility of breach of contract and false publicity. (4) In the actual real estate advertising, it is also common for real estate enterprises to deliberately enlarge the actual value or investment value of houses, such as indicating in the advertisement that the rental rate of return is as high as..., or the municipal government plans that a school, transportation hub, large commercial center will be built around the house in the future, but the actual situation has no corresponding basis or only comes from the so-called unreliable internal information; (5) Real estate advertisements may mislead through the interior or exterior decoration of the house. Real estate enterprises often use beautiful rendering

of the interior design of the house and claim the use of luxury and high-end furniture. However, when the actual delivery of the house, the buyer will find that the actual situation is quite different from the design drawings. Moreover, the definition of the value of luxury high-end furniture is very vague. Meanwhile, real estate enterprises also exaggerate the decoration or greening of the public part of the community, but the actual decoration or greening of the public part of the community is far from the publicity; (6) Home and school housing benefits are also real estate enterprises once fanatical propaganda relying on, such as the purchase of a house can be transferred to the local household registration, children around the school district enrollment, but many of the actual situation is only the unilateral propaganda of real estate enterprises, because of this, some places have issued relevant guidelines to regulate and restrict. For example, the “Real estate Advertising Compliance Guidelines” issued by the Shenzhen Market Supervision and Supervision Bureau in March 2022 stressed that real estate enterprises are prohibited from using words such as “degree room” and “school district room” in the advertising content, which is aimed at the aforementioned endless false advertising phenomenon.

Many real estate enterprises will also carry out false advertising for the qualification of the main body. According to the Regulations on the Management of Urban Real Estate Development and Operation and related laws, real estate enterprises that publish advertisements are required to have the following qualifications: (1) business license of real estate development enterprises; (2) the relevant qualification certificate of the real estate development enterprise; (3) land use certificate; (4) Certificate of acceptance upon completion of the project; (5) Certificate of pre-sale or sales qualification of real estate, etc. Some real estate enterprises in the sale, in the advertising content to promote the relevant procedures are complete, but the actual advertising can not see the pre-sale or sales license number indicated, and even some real estate enterprises in the new real estate development project advertising in the past has been fully developed project pre-sale or sales license number, in order to achieve the purpose of cheating buyers. (Chen Yiyang, 2017)

Real estate enterprises on the sale of houses on the sales price of false publicity is mainly

reflected in the actual purchase price distortion. For example, the selling price advertised in the advertising content is actually the most biased and worst house in the real estate project, or the advertised price does not exist; For example, the real estate enterprise will induce the buyer to pay the so-called “sincerity money” and give a rough price range, but the actual purchase price will exceed the original promised price range when the final delivery.

The distortion of the actual area of the houses sold is also a common phenomenon in false advertising. Real estate enterprises often express the actual floor area in advertisements without marking the standard size of a certain part, or change the actual floor area in the construction process, or strictly control the reduced area within the area error of 3% as stipulated in the Interpretation of Several Issues Concerning the Application of Law in the Trial of Commercial Housing Sales Contract Disputes of the Supreme People’s Court. In this way, the buyer can get the most is the real estate enterprise to refund the corresponding reduced part, but can not cancel the purchase contract. The mismatch between the actual area and the advertised area of the houses sold by the real estate enterprises is a major category of commercial housing litigation in recent years.

### *3.2 Comparative Advertising of Real Estate*

Real estate comparative advertising, also known as real estate comparative advertising, refers to the real estate enterprises in their own real estate projects to promote their own real estate projects, a certain aspect of their advantages compared with all aspects of the project or a certain aspect of the competition, so that buyers prefer the real estate project advertising. Real estate comparative advertising has not been regulated by Chinese law, so the abuse of this type of advertising by real estate enterprises is more common.

Under normal circumstances, real estate enterprises will list the honors or awards they have won as a means to attract home buyers, and the various forms of publicity and descriptive techniques are too numerous to list. For example, real estate enterprises will publicize real estate projects as “key evaluation units of a certain department”, “national key projects”, “provincial demonstration units” and so on. What’s more, some real estate enterprises will cooperate with the media to hold selection

activities, in which real estate enterprises are both “referees” and “athletes”. This kind of situation appears in a large area, which will seriously mislead the choice of home buyers to a certain extent.

### *3.3 Real Estate Recessive Advertising*

Real estate invisible advertising means that real estate enterprises integrate the advertising content into a certain carrier, such as micro films, short videos and other audiovisual works, so that the audience will perceive the real estate advertisement and the specific carrier, so that the audience can inadvertently get the corresponding publicity brand information. In the actual situation, many real estate invisible advertisements are mostly difficult to be identified, and may even be regarded as a certain audio-visual work for viewing. This is inseparable from the real estate enterprises in the production of advertising content, will intentionally blurred the boundaries of advertising and audiovisual works, so as to subtly let potential target customers accept the effective publicity information of real estate enterprises. There are also some real estate invisible advertisements deliberately do not indicate the word “advertisement” in violation of the relevant provisions of the Interim Measures for the Administration of Internet Advertising, resulting in administrative penalties by the regulatory authorities.

## **4. For Advertisement Publishers in the Review of Real Estate Advertising Suggestions**

According to the above analysis, real estate advertising has its own uniqueness and complexity, and its non-compliance forms mainly include real estate false advertising, real estate comparative advertising and real estate hidden advertising, while advertising publishers are conducting formal review when checking advertising content and supporting documents, and only have a duty of care for the legitimacy and authenticity of advertising content and supporting documents. When examining different types of real estate advertisements, the publishers can refer to the following suggestions:

### *4.1 Review False Real Estate Advertisements*

In this case, the advertisement publishers needs to formally check the pre-sale or sales license number presented in the advertisement content, and check the qualification documents displayed accordingly. There is no need to verify

whether the pre-sale or sales license number is in use of the previously completed project or the authenticity of the qualification documents. For the geographical location of the project presented by the real estate enterprise to carry out a formal check, such as the inspectors think that the actual geographical location of the project and the description of the advertising content is really there is a big difference, or the real estate enterprise claims that “can reach the city center in XX minutes”, but according to life experience, no matter what kind of transportation can not achieve to reach the city center in XX minutes. It should not be released. For real estate enterprises promising in the advertisement content to buy a home, school, etc., if the relevant local departments have issued relevant guidelines, such as Shenzhen, they need to carry out a literal form check.

#### 4.2 For Real Estate Comparative Advertising and Implicit Advertising

In real estate comparative advertising, the advertisement publishers does not need to review the substance of the honors and awards it has won, but only needs to check whether the honors and awards it has marked in the content of the advertisement exist. In the hidden advertisements of real estate, publishers should express the word “advertisement” when publishing advertisements, and try to distinguish commercial advertisements from other news, audio-visual works and other content.

To sum up, when conducting compliance review for real estate advertisements, formal review should be carried out, without substantive review of the legitimacy and authenticity of the advertising content, and the address and effective contact information of the real estate enterprises should be retained. When they know or should know that the real estate enterprises provide false advertising content, they should not publish it.

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