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LEGAL LIABILITY FOR COPYRIGHT INFRINGEMENT IN THE ADVERTISING INDUSTRY

Summary

One of the most important and developing problems of the 21st century is copyright infringement. In analyzing the topic of legal liability for copyright infringement in the advertising industry, we will analyze the essence of advertising in the advertising industry, existing copyright in the advertising industry, how to protect copyright and what is the legal liability for copyright infringement in the advertising industry.

Key words: *advertising, copyright, subjects, object, sanction, infringement, liability for infringement, civil liability, criminal liability, administrative responsibility*

Reklam sənayesində müəlliflik hüquqlarının pozulmasına görə hüquqi məsuliyyət

Xülasə

21-ci əsrin mühüm və inkişaf etməkdə olan problemlərindən biri də məhz müəlliflik hüquqlarının pozulmasıdır. Reklam sənayesində müəlliflik hüquqlarının pozulmasına görə hüquqi məsuliyyət mövzusunun təhlil edərkən reklam və reklam sənayesinin mahiyyətini, reklam sənayesində mövcud olan müəlliflik hüquqlarını, müəlliflik hüquqlarının necə qorunması və reklam sənayesində müəlliflik hüquqlarının pozulmasına görə hansı hüquqi məsuliyyətin olmasını araşdıracağıq.

Açar sözlər: *reklam, müəlliflik hüquqları, subyekt, obyekt, sanksiya, hüquqi pozuntu, hüquqi məsuliyyəti, mülki məsuliyyət, cinayət məsuliyyəti, inzibati məsuliyyət*

Introduction

The term of advertising is a Latin word "reclamera", means "to shout". Advertising is a means of information and communication that calls for the sale or use of any product or the use of the service or the support of the one's ideas.

According to Article 2.0.1 of the Law of the Republic of Azerbaijan "On Advertising" advertising - information disseminated in order to attract the attention of the advertisement consumer to the object of advertising in any form using various means and methods, to form and maintain interest, to promote the product in the market and to stimulate sales. (6, p.1)

However, an advertised product or service must be not prohibited by law and must attract the attention of advertising consumers by methods and means not prohibited by law. The scope of non-prohibited methods and means of such products or services is specific for each country and is regulated by legislation. In the event of a violation of these rules, the subject who commits the violation is liable for legal liability in accordance with the legislation.

Consists of the advertising industry are advertising agencies, advertising companies, media, brand managers, designers and other advertising-related people. An unnecessary product or service in the advertising industry can be presented to us as desirable and irreplaceable. This is also the success and main goal of the activities of advertisers, advertising creators and manufacturers operating in the advertising industry.

The subjects of advertising are reflected in Article 2.0.4 of the Republic of Azerbaijan "On Advertising". According this norm subjects of advertising are advertiser, advertisement creator, advertisement producer, advertising agent, advertisement publisher and advertising consumer. (6, p.2)

What are the copyrights in the advertising industry? In general, what is copyright? what is the importance of copyright protection in our society, what is legal liability and what is the legal liability exists for copyright infringement in the advertising industry?

According to Article 5 of the Law of the Republic of Azerbaijan "On Advertising" advertising it is the object of copyright and related rights within the conditions stipulated by the Law of the Republic of Azerbaijan "On Copyright and Related Rights". (7, p. 4)

Advertising must meet the basic conditions for copyright. Non-plagiarized, original advertisements are protected by copyright. Advertising in the advertising industry is protected as a subject of copyright and causes legal liability in case of copyright infringement.

Copyright infringement in the advertising industry can be two forms: To plagiarize a product belonging to another person in whole or in part. Another form of Copyright infringement to use the intellectual work of another without permission or consent.

Advertising as an object of copyright has three main conditions. These are the following:

1. Advertising as an object of copyright must belong to the list specified in Article 5 of the Republic of Azerbaijan "On Copyright and Related Rights".

2. Advertising must be original. It mean, must protect its identity, not duplicate or plagiarize any advertising object.

3. Advertising must meet the fixation requirement. That is, advertising should be reflected on the permanent object. For example, we can mark the image on paper, board, leather, fabric and other object.

The advertising object that meets these conditions is protected as an object of copyright and causes legal liability in case of copyright infringement.

If any of these conditions are not met in the advertising object, it will not be possible to protect it.

In this case, when the rights of the advertising subject are violated, advertising subject will not be able to use the means of legal protection. It should be noted that, the idea is not protected by copyright. In order to protect an advertising object, an idea must be described as a form of expression.

For example, for the creation of an advertising object, the advertising creator named A spoke of the idea of advertising creator named B, which has nowhere to describe the content, general design of advertising, the advertiser named B prepared on its own behalf in its name and in the event of a spread, the advertiser A has no right to raise or complain about the existing advertising object. Because, the advertiser named A hasn't reflected the idea by any video, voice recording or other means. There will be no evidence during a court dispute in this situation.

There of, to prevent copyright infringement in the advertising industry the object of advertising must be constructed in accordance with the conditions of copyright.

Legal liability for copyright infringement in the advertising industry is the result of infringement. In case of violation of the legal norm in force, the advertising subject is subjected to sanction to restore the rule established by the state and away from unlawful behavior to avoid accountability. The responsibility of this subject also plays a warning role for other people in society.

Legal liability protects the interests of the subject of advertising to society and the state. Legal liability in the advertising industry occurs as a result of copyright infringement and against a person who violates the right against the person who violated the right is a coercive measure of the state.

Legal liability in copyright infringement in the advertising industry has been determined by the state, it is applied by the competent authorities. In the advertising industry, the subject violating the copyright does not comply with the requirements of regulatory legal acts established by the state, and violation of the laws entails legal liability.

There are two approaches to copyright infringement in the advertising industry:

Positive – positive legal responsibility for copyright infringement in the advertising industry is derived from the legal duty to implement a positive, useful function and social role for society. That is, the presence of legal responsibility prevents copyright infringement in the advertising industry when viewed in a positive sense. It makes development much easier in society and social life. In a positive approach, legal responsibility is more of a deterrent function.

Negative – arises in connection with copyright infringement in the advertising industry. It is connected with the imposition of legal sanctions by the state. These sanctions can include fines,

correctional labor, imprisonment, or restriction of liberty. In a negative approach, legal responsibility for copyright infringement in the advertising industry has an educational function.

In the advertising industry, the subject of advertising has property and non-property rights, which are also protected by legislation. Refers to the property rights of the subject of advertising is direct or indirect reproduction of the advertising object, distribution of originals or specimens of the advertising by sale or other transfer of property right, transfer for commercial rental of original or specimens of the advertising, import of specimens of the advertising object for the purpose of distribution including specimens produced on consent of author or owner of exclusive copyright, right of public display, right of public performance, right of public communication, right of communication to the public by broadcasting, right of communication to the public by cable, right of translation, right of adaptation, right of interactive public communication. In the advertising industry, non-property rights of the subject of advertising may also be violated. Those rights are right of authorship, right of name, right of respect, right to disclosure.

Contradictions in copyright infringement in the advertising industry are mainly found in advertising films, advertising design, formation, advertising registration, logos, brochures, advertising texts, packaging and labeling forms, sizes, colors, posters, store name formation, and the advertising industry. May occur in concluded copyright agreements.

One of the most common cases of copyright infringement in the advertising industry is related to images reflected on the advertising object. Sometimes these images are displayed on advertising objects without the author's permission, even if they belong to licensed, patented persons. These cases also lead to violation of the rights of the author.

There are three main types of legal liability for copyright infringement in the advertising industry.

1. Criminal liability;
2. Administrative liability;
3. Civil liability.

Criminal liability for copyright infringement in the advertising industry arises for a criminal offense committed. The subject of advertising must have committed a crime or participate in the commission of a crime.

Article 165 of the Criminal Code of the Republic of Azerbaijan reflects criminal liability for infringement of copyright or related rights. According to Article 165.1 of the Criminal Code, illegal use of copyright or related legal objects or publication of another's scientific, literary, artistic or other work under one's own name or misappropriation of another's authorship, illegal reprinting of such work and or distribution, as well as coercion to co-authorship, if as a result of these actions caused significant damage - shall be punished by a fine in the amount of one thousand to two thousand manats or by public works for three hundred twenty to four hundred eighty hours. (3, p. 147)

Similar acts under Article 165.2 of the Criminal Code:

“165.2.1. when committed again;

165.2.2. When committed by a group of individuals or organized groups — from two thousand manat to four thousand manat or with corrections for up to two years, or with imprisonment for up to two years, or with imprisonment for up to two years”. (The term "significant amount of damage" provided for in the Code means an amount exceeding one thousand manats.) (3, p. 147)

The commission of a violation of the law provided for by the Criminal Code, which has all the elements of a crime, creates criminal liability. Criminal liability in the case of copyright infringement is the state's reaction to the prosecution of the perpetrator and the application of criminal measures.

Depending on the degree and severity of copyright infringement in the advertising industry, in addition to criminal liability, there is also administrative liability. An administrative violation of copyright infringement is the basis of administrative liability. Administrative liability for copyright infringement in the advertising industry consists of the imposition of administrative penalties on the perpetrators. An administrative penalty is a measure of copyright infringement. Administrative liability is a form of legal liability for administrative offenses committed by citizens and officials.

According to Article 185 of the Code of Administrative Offenses of the Republic of Azerbaijan, for violation of copyright and related rights, a fine in the amount of eighty to one hundred and fifty manats

is imposed in case of a small amount-pirated copies, as well as materials, equipment used in the preparation (production) and distribution of pirated copies and other means. ("A small amount of damage" means up to one thousand manat.) (2, p. 139)

In the advertising industry, civil liability is property, property, as if substituting. Because in the advertising industry, the definition of civil liability for copyright is the restoration of the rights of infringed persons. In civil law liability, usually, the size of the property must correspond to the amount of damage incurred.

In the advertising industry, civil liability for copyright causes harm to the subject of advertising if they do not fulfill or duly execute the obligation. At the same time, a violation of civil liability leads to a violation of commodity-money relations in society.

The application of civil liability in violation of copyright in the advertising industry is a sanction aimed at preventing violations of law, eliminating its consequences.

Violation of the contract and other obligations may include the property of the advertising subject who committed a civil offense. This has a negative impact on the country's economy and civil society.

Civil law liability for copyright infringement in the advertising industry is contractual and non-contractual. This civil law liability is based on the principle of compensation for damage caused by a copyright infringing subject.

Civil legal liability for copyright infringement in the advertising industry can be defined as undesirable consequences of property nature, sanctions that create additional burden on the person who committed copyright infringement during copyright infringement in the advertising industry.

In civil law, civil law sanctions applied for violation of copyright in the advertising industry include penalties, fines, compensation for damages and others.

According to paragraph I of Article 30 of the Constitution of the Republic of Azerbaijan, everyone has the right to intellectual property. Copyright, inventive law and other types of intellectual property law are protected by law.

As advertising is a form of intellectual labor, copyright infringement in the advertising industry also violates the constitutional rights of advertising subjects.

There are court guarantees for copyright infringement in the advertising industry. Any advertising subject whose rights have been infringed may claim material and moral damages for copyright infringement.

Summarizing the above, we conclude that in the advertising industry there is a legislative body that protects copyright and the authorized body that controls the rights where Intellectual Property Agency. Why is copyright infringement in the advertising industry in the Republic of Azerbaijan and other countries and it is impossible to prevent its infringement.

In our opinion, rapid development of science and technology, innovation, rapid access of people to information through social networks and internet resources lead to development in the advertising industry. This increases the number of advertising subjects and their interest in advertising. As long as the advertising industry exists, rights are also violated.

Thus, such accessibility of internet resources and social media makes it difficult to prevent copyright infringement. It is impossible to prevent piracy of advertising objects through social networks. Although many social networks warn users of copyright infringement, in most cases, social networks infringe copyright.

The law enforcement mechanism for infringing on the rights in the advertising industry is weak. In order for the law to work, it should not remain formal. At present, legal liability is provided for in the legislation in cases of violation of the law and the norm that protects these relations. So, the state actually fulfilled the duties assigned it. In this case, neglect of advertising entities leads to copyright infringement.

Conclusion

Most copyright infringed advertising entities do not try to recover infringed rights. Some groups are not interested in restoring non-property rights when they are violated, because they use advertising for commercial purposes. They regard the restoration of their rights as a waste of time and money. Some

groups do not know what copyright they have in the advertising industry. To prevent this, it is necessary to educate the authors of advertising and other people. Copyright infringement is mainly due to ignorance. The only way to prevent this is to educate people in a way that will interest them. All responsibility should not be imposed on the state, responsibility should be divided equally between the author and the state.

The Intellectual Property Agency, which controls copyright infringement, should increase control by interacting with other bodies, copyrights in all countries of the world must collect recognized and registered objects in a single database through an electronic system.

Also, in addition to sanctions provided for copyright infringement in the advertising industry, cash prizes should also be applied. The reward must be taken from the offender as a sanction and given to the author or other person who discovers the infringed rights. This method will be stimulating and it will help in the detection and control of any copyright. It is known that the author whose rights have been violated has the right to claim civil and material damages. However, the right holder is not interested in requesting compensation for violation of his rights in cases of administrative nature or in the event of a small amount of damage or this increases the burden on the courts. The cash reward will help reduce the burden on the courts, prevent copyright infringement and strengthen control.

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