Advertisement Law of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of regulating advertising activities, protecting the lawful rights and interests of consumers, promoting the healthy development of the advertising industry, and maintaining the social and economic order.

Article 2 — This Law shall apply to commercial advertising activities in which commodity operators or service providers directly or indirectly introduce commodities or services they market through a certain medium and form within the territory of the People's Republic of China. For the purposes of this Law, the term "advertiser" shall mean a natural person, legal person or other organization that designs, produces and publishes

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advertisements on its own or through another person to market its commodities or services or promote its services. For the purposes of this Law, the term "advertising agent" shall mean a natural person, legal person or other organization that accepts the entrustment to provide advertisement design and production services and agency services. For the purposes of this Law, the term "advertisement publisher" shall mean a natural person, legal person or other organization that publishes advertisements for an advertiser or an advertising agent entrusted by the advertiser. For the purposes of this Law, the term "spokesperson in an advertisement" shall mean a natural person, legal person or other organization that makes recommendations or certifies commodities or services in an advertisement in its own name or image.

Article 3 — Advertisements shall be truthful and lawful, and shall express their contents in a healthy manner, conforming to the requirements of socialist spiritual civilization and the promotion of the fine traditions of the Chinese nation.

Article 4 — Advertisements shall not contain any false or misleading content, and shall not deceive or mislead consumers. Advertisers shall be responsible for the authenticity of the contents of advertisements.

Article 5 — Advertisers, advertising agents and advertisement publishers shall abide by laws and regulations, be honest and trustworthy, and compete fairly when engaging in advertising activities.

Article 6 — The administrative department for industry and commerce under the State Council shall be responsible for the administration of advertising nationwide. The relevant departments of the State Council shall be responsible for the administration of advertising within their respective functions. The local administrative departments for industry and commerce of the local people's governments at or above the county level shall be responsible for the administration of advertising in their respective administrative regions. The relevant departments of the local people's governments at or above the county level shall be responsible for the administration of advertising within their respective functions.

Article 7 — The advertising industry organizations shall, in accordance with the provisions of laws, regulations and their articles of association, formulate industry norms, strengthen industry self-discipline, promote the development of the advertising industry, and guide members to engage in advertising activities in accordance with the law, and promote the construction of an advertising industry that is honest and trustworthy.

Chapter II — Advertising Content Guidelines

Article 8 — Where an advertisement involves the performance, function, place of origin, use, quality, composition, price, producer, term of validity, or promise of a commodity, or the content, form, quality, price or promise of a service, it shall be accurate, clear and explicit. Where an advertisement indicates that a commodity or service is accompanied by a gift, the variety, specifications, quantity, term and method of the gift shall be clearly indicated. Where any content required to be clearly indicated by laws or administrative regulations shall be explicitly indicated in the advertisement.

Article 9 — An advertisement shall not: (1) use or covertly use the national flag, national anthem or national emblem of the People's Republic of China, or the military flag, military anthem or insignia of the People's Liberation Army; (2) use or covertly use the name or image of a state organ or its functionary; (3) use words such as "state-level", "highest-level" or "best"; (4) prejudice social stability or harm personal or property safety, or harm public interests; (5) hinder public order or violate sound social mores; (6) contain content involving pornography, superstition, terror, violence or hideousness; (7) contain content involving ethnic, racial, religious or sexual discrimination; (8) prejudice the protection of the environment or natural resources; (9) hinder the protection of minors or disabled persons in physical or mental health; or (10) involve other circumstances prohibited by laws or administrative regulations.

Article 10 — Advertisements shall not harm the physical or mental health of minors or disabled persons.

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Article 11 — Where an advertisement involves an administrative licensing matter, it shall be consistent with the content of the license. Where an advertisement uses data, statistical information, survey results, abstracts, quotations or other cited content, such content shall be truthful and accurate with the source indicated. If the cited content has a scope of application and term of validity, it shall be clearly indicated.

Article 12 — Where an advertisement involves a patented product or patented method, the patent number and patent type shall be indicated. A person who has not obtained a patent shall not falsely claim in an advertisement that he or she has obtained a patent. The use of a patent application for which the patent right has not been granted or a patent right that has been terminated, revoked or invalidated is prohibited.

Article 13 — Advertisements shall not disparage the commodities or services of other producers or operators.

Article 14 — An advertisement shall be clearly identifiable as such, so that consumers can distinguish it from other information. Mass media may not publish advertisements in the form of news reports. Advertisements published through mass media shall bear distinct advertisement marks, which shall be distinguished from other non-advertisement information, and shall not mislead consumers.

Article 15 — An advertisement for any of the following commodities shall not be published, unless otherwise provided by laws: (1) narcotic drugs, psychotropic substances, toxic drugs for medical use, radioactive pharmaceuticals, pharmaceutical precursor chemicals, and other special drugs, as well as pharmaceutical precursor chemicals, therapeutic drugs and toxic chemicals for medical use prohibited from being advertised; or (2) other commodities whose advertising is prohibited by laws or administrative regulations.

Article 16 — An advertisement for any of the following commodities or services shall not be published: (1) tobacco; or (2) other commodities or services whose advertising is prohibited by laws or administrative regulations.

Article 17 — No advertisement shall be published in media or premises targeting minors, such as primary and secondary schools or kindergartens, unless the advertisement is for public interest.

Article 18 — An advertisement for goods on the Internet shall not prevent users from closing the advertisement by technical means, and shall be distinguished from non-advertisement information on the Internet, and shall not mislead consumers. Pop-up advertisements published on Internet pages shall be clearly marked with a close sign, ensuring that users may close them with one click.

Article 19 — No advertisement may be placed in the form of a message sent by electronic information to a resident or vehicle without the consent or request of the resident or vehicle involved, or when the resident or vehicle involved has explicitly refused. Advertisements published by electronic information shall indicate the true identity of the sender and provide a method for refusing to continue receiving such advertisements.

Article 20 — Advertisements for medical treatment, pharmaceuticals or medical devices shall not contain: (1) assertions or guarantees of efficacy or safety; (2) statements of cure rate or effectiveness rate; (3) comparisons with the efficacy or safety of other medical institutions, pharmaceuticals or medical devices; (4) content using spokespersons in advertisements for recommendation or certification; or (5) other content prohibited by laws or administrative regulations.

Article 21 — An advertisement for pharmaceuticals, medical devices, therapeutic medical instruments or health food shall not contain any assertion or guarantee on efficacy or safety, and shall not involve any disease prevention or treatment function.

Article 22 — An advertisement for a pesticide, veterinary drug, feed or feed additive shall not contain: (1) assertions or guarantees of efficacy or safety; (2) statements of the rate of effectiveness using scientific research institutions, academic institutions, technology extension institutions, industry associations, professionals or users in the name or image thereof for recommendation or certification; (3) statements of the rate of effectiveness; or (4) other content prohibited by laws or administrative regulations.

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Article 23 — An advertisement for alcohol shall not contain: (1) inducing or encouraging alcohol consumption or representing alcohol consumption without limits; (2) scenes of alcohol consumption; (3) driving a motor vehicle, vessel, aircraft or any other means of transport; or (4) statements indicating or implying that alcohol consumption relieves tension and anxiety or increases physical strength.

Article 24 — An advertisement for education or training shall not contain: (1) an express or implied guarantee of entrance to a higher school, passing an examination, obtaining a degree or passing a qualification examination, or obtaining a certificate; (2) express or implied content relating to the relevant examination proposers or their staff members participating in education or training; (3) the use of the name or image of a scientific research institution, academic institution, education institution, industry association, professional or beneficiary for recommendation or certification; or (4) other content prohibited by laws or administrative regulations.

Article 25 — An advertisement for commodities or services with expected returns on investment, such as real estate, shall be truthful, shall not contain any guarantee of appreciation or return on investment, and shall not mislead consumers by using images of projects not within the scope of the plan or within the scope of the transportation plan.

Article 26 — An advertisement for seeds, breeding livestock and poultry, aquatic seeds and fry, or plant varieties shall not contain: (1) assertions of increasing or guaranteeing output through scientific predictions; (2) assertions on the effectiveness of increasing or guaranteeing output; (3) the use of the name or image of a scientific research institution, academic institution, technology extension institution, industry association, professional or user for recommendation or certification; or (4) other content prohibited by laws or administrative regulations.

Article 27 — An advertisement for any commodity or service that must be examined by an administrative authority shall be published only after examination and approval in accordance with the law. No person may publish advertisements without examination or inconsistent with the examination and approval content.

Article 28 — An advertisement that deceives or misleads consumers by means of false or misleading content, causing consumers to purchase commodities or accept services that they would not otherwise purchase or accept, constitutes false advertising. Any of the following circumstances shall constitute false advertising: (1) the commodity or service advertised does not exist; (2) the performance, function, place of origin, use, quality, specifications, composition, price, producer, term of validity, sales status, honors received or other information of the commodity, or the content, provider, form, quality, price, sales status, honors received or other information of the service, as well as the promises related to the commodity or service, are inconsistent with the actual situation and have a substantial impact on the purchasing behavior; (3) the use of fabricated or forged scientific research results, statistical data, survey results, abstracts, quotations or other certification materials as proofs; (4) falsely representing the use of a commodity or the acceptance of a service; or (5) other circumstances where false or misleading content deceives or misleads consumers.

Chapter III — Advertising Activities

Article 29 — When engaging in advertising activities, an advertiser shall enter into a written contract with an advertising agent or advertisement publisher in accordance with the law.

Article 30 — An advertiser shall provide true, lawful and valid certification documents when designing, producing or publishing advertisements. An advertising agent or advertisement publisher shall, in accordance with the relevant provisions of the State, establish and improve the undertaking, examination and file management systems for advertising business. An advertisement publisher shall examine the certification documents and contents of advertisements, and shall not publish any advertisement whose content is inconsistent or for which certification documents are incomplete.

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Article 31 — No advertisement publisher shall publish advertisements when it fails to provide the true address and valid contact information of the advertiser.

Article 32 — An advertiser or advertising agent shall not engage in any form of unfair competition in advertising activities.

Article 33 — An advertisement shall be designed, produced and published by an advertiser or an advertising agent entrusted by the advertiser, and the advertiser or its entrusted advertising agent shall be responsible for the contents of advertisements entrusted to be designed, produced or published.

Article 34 — No advertisement for any of the following commodities or services shall be designed, produced or published without the content being examined and approved by the relevant competent department: (1) pharmaceuticals, medical devices, pesticides and veterinary drugs; (2) other commodities or services required to be examined or approved by laws or administrative regulations.

Article 35 — Engaging in advertising activities shall abide by the provisions of laws and regulations and shall not engage in unfair competition or harm the interests of consumers.

Article 36 — When designing, producing and publishing advertisements using the Internet, the participants in such activities shall abide by the provisions of laws and regulations on the administration of advertisements and shall not engage in any form of unfair competition.

Article 37 — Where an advertisement is published by means of sending an electronic message to a resident or a vehicle, or by means of placing an advertisement in a public place, the advertisement shall be published in accordance with the provisions of the relevant laws and administrative regulations on outdoor advertising.

Article 38 — An advertisement using the name or image of another person shall obtain the written consent of that person in advance. An advertisement using the name or image of a person without civil capacity or with limited civil capacity shall obtain the written consent of his or her guardian in advance.

Article 39 — Advertising activities using the Internet shall comply with the provisions of this Law. Where laws or administrative regulations provide otherwise for Internet advertising, such provisions shall prevail.

Article 40 — No entity or individual may distribute advertisements on another person's means of transport, or display or post advertisements on another person's building, structure or other facilities without the consent or request of the owner or the person entitled to use the same.

Chapter IV — Supervision and Administration

Article 41 — The administrative department for industry and commerce shall perform its duties of advertising supervision and administration, and may exercise the following powers: (1) conducting on-site inspections of premises suspected of engaging in illegal advertising activities; (2) questioning the parties or interested persons, and investigating the relevant situation; (3) requesting the parties to provide relevant documents and materials within a prescribed time limit; (4) consulting and duplicating contracts, invoices, account books and other materials related to suspected illegal advertising activities; and (5) sealing up or seizing advertisements, tools, equipment and other property directly related to illegal advertising activities.

Article 42 — Where the administrative department for industry and commerce performs its duties of advertising supervision and administration, the parties shall assist and cooperate with it, and shall not refuse or obstruct it.

Article 43 — An advertising review body shall review advertisements in accordance with the law and shall be responsible for the results of its review. An advertising review body shall release the contact information and review procedures to the public to facilitate the review of applications for advertising content.

Article 44 — No entity or individual may forge, alter or transfer an advertising review document.

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Article 45 — The administrative department for industry and commerce under the State Council shall, in conjunction with other relevant departments under the State Council, formulate standards and norms for the release of advertisements by mass media and other advertising activities.

Chapter V — Legal Liability

Article 46 — Any person who publishes a false advertisement in violation of the provisions of this Law shall be ordered by the market regulatory authority to cease publishing the advertisement, to eliminate the effects of the advertisement within an appropriate scope, and shall be fined not less than three times but not more than five times the advertising expenses. If the advertising expenses cannot be calculated or are obviously too low, a fine of not less than 200,000 yuan but not more than 1,000,000 yuan shall be imposed. If there are three or more violations within two years or there are other serious circumstances, a fine of not less than five times but not more than ten times the advertising expenses shall be imposed. If the advertising expenses cannot be calculated or are obviously too low, a fine of not less than 1,000,000 yuan but not more than 2,000,000 yuan shall be imposed, the business license may be revoked, and the advertising review authority shall revoke the advertising review approval documents, and the application for advertising review shall not be accepted within one year.

Article 47 — Any person who publishes an advertisement in violation of the provisions of Article 9, 10, 11, 12 or 13 of this Law shall be ordered by the market regulatory authority to cease publishing the advertisement, and the advertiser, advertising agent and advertisement publisher shall each be fined not less than 200,000 yuan but not more than 1,000,000 yuan. If the circumstances are serious, the business license may be revoked, and the advertising review authority shall revoke the advertising review approval documents, and the application for advertising review shall not be accepted within one year.

Article 48 — Any person who publishes an advertisement in violation of the provisions of Article 14 of this Law shall be ordered by the market regulatory authority to make corrections and shall be fined not more than 100,000 yuan.

Article 49 — Any person who publishes an advertisement in violation of the provisions of Articles 15 through 17, Article 20, or Article 40 of this Law, or publishes an advertisement for a prescription drug, an over-the-counter drug subject to special control, or a therapeutic medical device without explicitly indicating the advertisement approval number in the advertisement, shall be ordered by the market regulatory authority to cease publishing the advertisement, and the advertiser, advertising agent and advertisement publisher shall each be fined not less than 200,000 yuan but not more than 1,000,000 yuan. If the circumstances are serious, the business license may be revoked, and the advertising review authority shall revoke the advertising review approval documents, and the application for advertising review shall not be accepted within one year.

Article 50 — Any person who publishes an advertisement in violation of the provisions of Article 18 of this Law shall be ordered by the market regulatory authority to cease publishing the advertisement and shall be fined not more than 100,000 yuan.

Article 51 — Any person who publishes an advertisement in violation of the provisions of Article 19 of this Law shall be ordered by the market regulatory authority to cease publishing the advertisement and shall be fined not more than 30,000 yuan.

Article 52 — Any person who publishes an advertisement in violation of the provisions of Articles 22 through 27 of this Law, or violates the provisions of paragraph 2 of Article 43 of this Law, shall be ordered by the market regulatory authority to cease publishing the advertisement and shall be fined not less than 100,000 yuan but not more than 200,000 yuan. If the circumstances are serious, the fine shall be not less than 200,000 yuan but not more than 1,000,000 yuan, the business license may be revoked, and the advertising review authority shall revoke the advertising review approval documents, and the application for advertising

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review shall not be accepted within one year.

Article 53 — Any person who, in violation of the provisions of this Law, publishes advertisements without examination and approval or fails to publish advertisements in accordance with the content examined and approved shall be ordered by the market regulatory authority to cease publishing the advertisements and fined not less than 200,000 yuan but not more than 1,000,000 yuan.

Article 54 — If an advertising agent or advertisement publisher, in violation of the provisions of this Law, fails to establish and improve the system for undertaking, examining and managing advertising files, or fails to indicate the obligation to examine the advertising content, the market regulatory authority shall order it to make corrections and may impose a fine of not more than 50,000 yuan.

Article 55 — Where an advertisement is published in violation of the provisions of this Law and causes damage to consumers, the advertiser shall bear civil liability in accordance with the law. If an advertising agent or advertisement publisher, knowing or having reason to know that the advertisement is false, still designs, produces, or publishes the advertisement, it shall bear joint and several liability in accordance with the law. If an advertising agent or advertisement publisher is unable to provide the true name, address and valid contact information of the advertiser, it shall bear the full liability for compensation.

Article 56 — Where a false advertisement is published in violation of the provisions of this Law, which constitutes a crime, criminal liability shall be investigated in accordance with the law.

Article 57 — Where any decision on an administrative penalty such as an order to cease publishing an advertisement or a fine is made, the penalty decision shall be disclosed to the public in a timely manner.

Article 58 — Where a party refuses to accept an administrative penalty decision, it may apply for administrative reconsideration or institute administrative litigation in accordance with the law.

Article 59 — Where the market regulatory authority fails to investigate and punish illegal advertising activities in accordance with the law, or fails to perform its duties in accordance with the law, the directly responsible person in charge and other directly responsible persons shall be subject to administrative sanctions in accordance with the law. If a crime is constituted, criminal liability shall be investigated in accordance with the law.

Article 60 — Advertisers, advertising agents or advertisement publishers who violate the provisions of this Law and engage in any of the following acts shall bear civil liability in accordance with the law if they cause damage to the legitimate rights and interests of others: (1) damaging the physical or mental health of minors or disabled persons; (2) infringing upon another person's patent right; (3) disparaging the commodities or services of other producers or operators; or (4) using the name or image of another person without consent.

Article 61 — The provisions of this Law on the legal liability of advertisers, advertising agents and advertisement publishers shall not affect the corresponding legal liabilities to be borne by them in accordance with other laws and regulations.

Article 62 — Where a person violates the provisions of this Law by refusing or obstructing the supervision and inspection conducted by the market regulatory authority, or by concealing, destroying or transferring the sealed or seized property involved in an illegal advertising activity, the market regulatory authority shall impose a fine of not less than 10,000 yuan but not more than 30,000 yuan.

Article 63 — Where the illegal acts of an advertiser, advertising agent or advertisement publisher are entered into the enterprise credit file and made public, the market regulatory authority shall, in accordance with the law, take measures such as key supervision, restriction on obtaining administrative licensing, and prohibition from participating in government procurement activities.

Article 64 — Where any entity or individual forges, alters or transfers an advertising review approval document, the market regulatory authority shall confiscate the illegal gains and impose a fine of not less than

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10,000 yuan but not more than 100,000 yuan.

Chapter VI — Supplementary Provisions

Article 65 — The advertising activities of mass media such as radio stations, television stations, newspapers and periodicals, and audio and video publishing entities shall be subject to this Law and shall be supervised and administered by the relevant departments in accordance with the law.

Article 66 — Where laws or administrative regulations provide otherwise for advertising supervision and administration, such provisions shall prevail.

Article 67 — Where public security organs investigate and deal with illegal advertisements involving false advertising that constitutes a crime, they shall handle such cases in accordance with the law on criminal procedure.

Article 68 — The State encourages and supports the development of public interest advertisements, spreading the core socialist values and advocating civilized mores. Mass media shall have an obligation to publish public interest advertisements. The State Council shall separately prescribe the measures for the administration of public interest advertisements.

Article 69 — The State shall implement a system of regular publication of advertising supervision and administration information, and shall make public the investigation and punishment of illegal advertising activities in accordance with the law.

Article 70 — The provisions of this Law shall apply, by reference, to the advertising activities of public interest advertisements organized by state organs, institutional organizations and other organizations, and the advertising activities of commodity operators or service providers for their own enterprises or product image promotion.

Article 71 — Advertisements mentioned in this Law include, but are not limited to, advertisements published through newspapers, periodicals, radio, television, the Internet, films, outdoor advertising, building advertisement spaces, vehicle advertisements, elevator advertisements and other media or forms.

Article 72 — Where an advertisement is found to be illegal, the market regulatory authority shall order the advertiser to cease the publication of the advertisement, eliminate the effects of the advertisement, and notify the public of the handling result. The market regulatory authority shall order it to stop publishing; the advertisement publisher shall truthfully provide relevant materials and shall not refuse or obstruct the process.

Article 73 — The term "advertising expenses" used in this Law refers to the total amount of expenses incurred by an advertiser in designing, producing and publishing advertisements. If the advertising expenses cannot be clearly calculated, they shall be determined by the market regulatory authority based on the specific circumstances of the illegal activity.

Article 74 — The provisions of Article 55 of the Civil Procedure Law of the People's Republic of China shall apply to public interest litigation brought by the China Consumers Association and consumers' associations of provinces, autonomous regions and municipalities directly under the Central Government against false advertising that harms the lawful rights and interests of multiple consumers and other conduct that harms the public interest.

Article 75 — This Law shall enter into force on September 1, 2015.

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