



REPORT

**(Review of present legislation on Trade Promotion
and Commercial Advertising in Viet Nam)**

ACTIVITY CODE: ICB-15

“Revision of the Commercial Law of Viet Nam”

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A. Report/research on the Vietnamese legislation on trade promotion

Sales promotion is an important activity of trade promotion activities of national to speed up and seeking business opportunities, including goods and service supply in both the country and international markets. Sales promotion is a marketing activity that adds to the basic value proposition behind a product for a limited time in order to stimulate consumer purchasing, selling effectiveness or the effort of the sales force. It is may be directed either at end consumers or at selling intermediaries such as retailers or sales crews. Thereby, the state takes its interests in the activity and build a system of policies and legal rules involved in the promotion operations in general and in the regulation system of promotion in particular. During the years of enforcement, the policies and legal regulations have shown their high efficiency as well as shortcomings that need making good next time.

Main contents of this report is to make researches on legal rules involved in sales promotion activities, review achievement and shortcomings and make proposals and recommendations for amending, supplementing and finishing the policies and legal regulations on sales promotions.

I. The state of the legal systems of sales promotion

Sales promotion means activities of trade promotion conducted by traders to promote the purchase and sales of goods or the provision of services by offering certain benefits to customers¹. It is adjustment scope of the Commercial Law; Decree No. 37/2006/ND-CP dated on April 04, 2006 by the Government specifying the Commercial Law regarding trade promotion activities (hereafter referred to as Decree No. 37/2006/ND-CP); Decree No.68/2009/ND-CP dated August 06, 2009 of the Government amending and supplementing Clause 7, Article 4 of Decree No. 30/2006/NDD-CP dated on April 04, 2006 by the Government specifying of the Commercial Law regarding trade promotion activities and Joint Circular No. 07/2007/TTLT-BTM-BTC dated on July 06, 2007 of Ministry of Finance – Ministry of Commerce guiding the implementation of a number of articles on sales promotion activities, fair and commercial exhibition as prescribed in Decree No. 37/2006/ND-CP dated on April 04, 2006 by the Government specifying the Commercial Law regarding trade promotion activities (hereafter referred to as Joint Circular No. 07/2007/TTLT-BTM-BTC).

In addition, some specific legal norms such as norms of postal service, telecommunication norm, tax regulations, price regulations, credit regulations, competitive rules, pharmaceutical regulations, insurance business norms, travel service regulations... also stipulate regulations on promotion activities.

Thereby, the legal texts also specify cases involved to apply appropriate adjustment in the development in order that businessmen can deploy their promotion operations within the frame of the laws.

¹ Article 88 Decree 37/2006/ND-CP

II. Contents of legal regulations on sales promotion activities

1. Regulations on sales promotion activities under Commercial laws

1.1. Forms of sales promotion

The Commercial Laws specifies 8 (eight) most common forms of sales promotion² for the traders' choice in conducting goods or service sales promotion activities. In addition to these forms, they may conduct other forms of sales promotion approved by the competent state management agencies in charge of commerce. In fact, traders have been conducting a lot of different forms of sales promotion.

1.2. Promoted goods and service, maximum value of goods and services used for sales promotion, and sales promotion duration

Any promoted goods or services must be those which are in accordance with the law.

With an aim to preventing companies from taking advantage of sales promotion regulations to devalue their goods or services, the laws specify "*Maximum limit for values of goods or services used to promote a unit of accepted goods must not exceed 50% values of the goods or services before applied terms. The total values of the accepted goods or services that businessmen use in a sales promotion program must not exceed 50% total values of the promoted goods or services*"³.

For the implementation of sales promotion period, the legislation limited to the two forms of sales promotion (i) sales of goods or provision of services at prices lower than the prices of goods or services previously: "The total time for a sales promotion program by reducing the price of a trademark or service should not exceed 90 (ninety) days in a year; a sales promotion program should not exceed 45 (forty five) days"⁴, "and (ii) sales of goods or provision of service together with promotion programs of chance: "Total time for the implementation of sales promotion programs to a trademark or service should not exceed

² Form sales promotion regulation in commercial law including (1) Giving samples of goods or providing samples of services to customers for trial use free of charge;(2) Presenting goods as gifts or providing free-of-charge services to customers; (3) Selling goods or providing services at prices lower than goods sales prices or service provision charge rates previously applied during the period of sales promotion already registered or announced. In case of goods or services subject to the State management over their prices, the sales promotion in this form shall comply with regulations of the Government; (4) Selling goods or providing services together with coupons that allow customers to enjoy one or several benefits; (5) Selling goods or providing services together with prize-contest entrance tickets to customers, for purpose of selecting prize winners according to the rules and prizes already announced; (6) Selling goods or providing services together with opportunities for customers to participate in games of chance, the participation in which comes after the purchase of goods or services and the winning of prizes depends on the luck of participants according to the rules and prizes already announced; (7) Organizing programs for frequent customers whereby gifts are presented to customers on the basis of the quantities or values of goods purchased or services used by such customers and expressed in forms of customers' cards, coupons acknowledging the purchase of goods or services, or other forms and (8) Organizing cultural, artistic or entertainment programs or other events for customers for the purpose of sales promotion.

³ Article 5 Decree No. 37/2006/NĐ-CP

⁴ Article 7 Decree No. 37/2006/NĐ-CP

*180 (one hundred and eighty) days in a year, a promotion program should not to exceed ninety (90) days."*⁵.

1.3. Acts prohibited in sales promotion activities

In order to protect interests of consumers and comply with relevant laws and regulations, the Commercial Law specifies prohibited acts in promotion activity. For example, it is prohibited that the traders must not promote or use prohibited goods and services and have limitation to business in unpermitted commodity or not promote or use limited goods or services, merchandises prevented from circulation, unsupplied services or promote merchandises with bad quality or making promotions to have unhealthy competitions, or making promotions at schools, hospitals or making promotions in cases the values of promotion merchandises and services exceed the maximum allowed etc.

1.4. Merchants, rights and obligations of promoter

To ensure benefits and responsibilities of the promotion traders, the Commercial Law specifies objects of promotions including (i) direct implementer of goods and services and (ii) traders in promotion services; besides, the Law also specifies rights and obligations of traders of promotion activities.

1.5. The order and procedures for implementation of sales promotion activities

To implement promotions, traders must carry out registration procedures or notify competent agencies. For some specific forms of promotion, they shall send a written notification to the Department of Commerce (now known as the Department of Trade and Industry) where promotion activities are held. As for the sales of goods or provision of services related to participation in the programs of chance and forms prescribed in Article 17 of Decree No. 36/2006/ND-CP, traders must register with competent authors at central and local levels. Specifically, with promotion organizations in the area of a province, traders must register with the provincial Department of Industry and Trade and with promotion organizations in an area from two or more provinces, they must register with the Ministry of Commerce or the Ministry of Industry and Trade.

Besides, traders should publicize information about promotion activities of their goods and services for customers' application to all forms of promotion.

Regulations on all dossiers, orders and procedures for notification/registration of promotion are stipulated in Decree No. 37/2006/ND-CP and specified in details in Joint Circular No. 07/2007/TTLT-BTM-BTC.

1.6. Termination and suspension of sales promotion activities

To strictly implement promotion programs, merchants are prevented by the law from terminating the implementation of promotions ahead of announced time, except in cases of force majeure in which the traders may terminate the promotions providing that they must

⁵ Article 12 Decree No. 37/2006/ND-CP

inform clients and state authorities. The state agencies can suspend a part or all promotions of merchants if detecting any violation to the law.

1.7. The state's management of sales promotion activities

To implement state management in the field of promotion, the Government assigned the Ministry of Trade and Industry to perform the state management of promotion activities. Specifically, they should be responsible for solving registration procedures and coordinating with competent authorities to supervise and monitor the implementation of the provisions of the merchant law, organize activities related to promotion.

Ministry of Industry and Trade assigned Department of Trade Promotion to solve registration procedures of traders. Then, Department of Market Management shall coordinate with the Department of Trade Promotion and related agencies to inspect and examine the performance of the traders and organize activities related to the promotion and apply administrative punishment to cases of violation of the merchant and hold activities related to promotion.

The Department of Commerce settles notifications and registrations for promotion. In addition, the Department of Commerce is responsible for making reports on promotion activities in the area at the request of the Department of Trade Promotion.

2. A number of regulations on sales promotion activities under specific legislations

2.1. Sales promotion in the telecommunications sector:

Telecommunications Law and some texts in the field of telecommunications sector regulate promotion activities for telecommunications services, telecommunications goods used exclusively including prohibited acts, quality, value limits and the total maximum value of services and goods, forms of promotion, the total time of promotion... Besides they also specify promotion management for telecommunications services, exclusively used telecommunications goods, especially rights of controlling lists, units, forms of promotion, the maximum value for each unit of services, specialized telecommunications goods and rights to suspend a part or all of promotion programs. However, these regulations have some inconsistency or coincisive contents with the Commercial Law and Decree No. 37/2006/ND-CP.

2.2. Sales promotion in the field of travel service:

The Tourism Law defines responsibilities of travelling agencies to "*publicize price levels of sales and service, internal rules and regulations in Vietnamese history and foreign languages; clearly inform tourists about promotion programs applied in each period*".

2.3. Sales promotion in the field of tax (corporate income tax, personal income tax, value added tax) provisions primarily specify methods of tax calculation and invoices and vouchers for goods services used for promotions or deduction or non - deductible in determining taxable income.

2.4. Sales promotion in some other areas:

Pricing, insurance business, credit, competition, pharmaceutical operations, mostly regulations on prohibited acts or reference to legal provisions on promotion.

III. Review of the situation and law enforcement on sales promotion

1. Result received

The Commercial Law and Decree No. 37/2006/ND-CP and relevant documents on promotion activities have created a basic and relatively complete legal framework in promotion activities. These documents also create a clear and transparent mechanism to sales promotion activities of traders as well as state management requirements on sales promotion activities.

Over 9 years of implementation, promotion activities have achieved a lot of considerable accomplishment, bring a positive effect for the purpose of business in goods and services of merchants and contributing in the economic development of the whole country. In addition, they also helps the state management units to strengthen management of promotion activities and bring this activity into order to prevent violations of the law, commercial frauds, unhealthy competition, thus contributing to protecting the rights of consumers and express strictness of the law.

In the management of promotion activities, the state agencies have timely responses to reflections of public opinions in the process of implementation of promotion activities of businesses in the whole country, which affect interests of consumers as well as cause unhealthy competitions. Besides, they also guide and direct the Department of Industry and Commerce to oversight and handle violations and directly supervise hundreds of promotion programs, inspect and handle many cases of violations in the field of promotion.

Regarding the performance of the central agency, management agencies, annually, confirm registration for implementation of chance promotion programs for more than 300 programs at average with a total value of up to hundred billion dong. In the period from 2007 to 2010, they confirmed registrations for over 1834 promotion programs and issued Decision on budget collection related to awards of nearly 50 billion dong of prizes without winners from promotion programs. Particularly, in 2013, they confirmed registrations of over 500 promotion programs with a total prize value of over 700 billion dong and issued Decision on Budget Collect for over 25 billion dong, equivalent to 50% of the prize value without winners.

Thus, we can see that the promotion activity has a lot of accomplishment in the management of the state as well as economic benefits. It is an active contribution to

boosting trade promotion activities for high efficiency in both economy and society and to maximize all resources to support enterprises and enhance competitiveness while protecting legitimate interests of enterprises and consumers.

2. Limitations and problems

Besides the results mentioned above, the law in promotion activity also shows limitations and problems in the management of state institutions as well as ways of organization of sales promotion activities of traders. The problems focus on a number of overlapping rules and inconsistency in the same legal system or specific law. Apart from, some laws have not bring legally high efficiency; some are not efficiency or were not clearly defined etc. The problem arises as follows:

For form of sales promotion: The Commercial Law defined some forms of promotion of goods and services, however, the telecommunications law also stipulates a number of forms of promotion merchandise on which some specialized telecommunications are not in consistency with the Law. For example, provisions on using telecommunications services or goods exclusively for units of telecommunications services or goods, then, telecommunications services or goods exclusively used should keep price levels of form of discounts⁶. However, under the provisions of Paragraph 2, Article 92 of the Commercial Law, this form of sales promotion is a form of "donated goods to customers, service provided without fee." Besides, telecommunications law also stipulates assignment to Ministry of Information and Communication to give regulations on forms of promotion, the maximum value for application to each unit of telecommunications services, exclusive telecommunications goods, and the total value of services and goods for promotion. However, the commercial law also gave regulations on this content.⁷

In addition, in fact, there exist some forms of promotion that the Commercial Law has not defined or defined without clear contents leading to many different interpretations. Some typical forms are currently being used such as sales promotion in groups (Groupon), sales promotion by goods pack, service pack (coupon); sales promotion gifts, free service associated with the purchase; gift sales promotion in the form of unlimited duration; sales promotion interest rate for sales of apartments; sales promotion with luck voucher etc.

Under current law, the above-mentioned forms of promotion may be in cases of other forms of promotion stipulated in Clause 9, Article 92 of the Commercial Law. However, there are some forms to miss in the implementation such as promotion models of groups, goods package, service package with some items that fail to comply with the allowed maximum discount and some forms banned to perform as rate gifts (Law on Credit Organizations prescribe no promotion currency). Some forms have not yet determined as form of notification or form of register with the state management agencies, leading to difficulties in the management of the state for promotion activities.

⁶ Point b Paragraph 7 Article 36 Decree 25/2011/ND-CP

Prohibited sales promotion activities:(i) the contents specified in the Commercial Law are not inconsistency, namely, Item 1, Clause 2 of Article 100, the Commercial Law prohibit prescribing no merchandise promotion, limited business services and no use of limited goods and services for promotion. Alcohol is a limited commodity under provisions stated in Decree No. 59/2006/ND-CP. However, Paragraph 3 and 4, Article 100 of the Commercial Law allow conditioned wine promotion, in which, the Law just bans alcohol promotion or use alcohol in promotions for people under 18 years of age and alcohol from 30 degrees or more. As a result, these provisions may lead to misunderstanding or wrong applications; (ii) The Commercial Law and Advertising Act are inconsistency: Clause 3, Article 7 of the Advertising Law specifies regulations for prohibition of advertising alcohol with the content of 15 degrees or more. However, Paragraph 4, Article 100 of the Commercial Law specifies regulations for prohibition sales promotion of alcohol with the content of 30 degrees or more. Normally, when making sales promotions, merchants will give information of the sales promotion programs on mass media or through advertising banners and posters. Thus, if a trader advertises for promotion programs of wine types from 15 to 29 degrees, he or she would be considered violating the Advertising Law. Besides, the Commercial Law prohibits promotions of alcohol or use alcohol in promotions for people under 18 years of age, while the Advertising Law does not contain any provision to recommend advertising contents for this problem.

For the maximum level of discount for sales promotion goods and services: According to current regulations, "the maximum level of discount for promotion goods and services can not exceed 50 % of the price applied to the goods or service immediately before the promotion time". However, in fact, some businesses dodge these provisions to implement some programs "big-discount programs" up to 60% to 80% for second goods etc. Specially, the businesses divide into many periods of price reduction (each period may be short-time; after the completion of the first one, the price of the second may be a little higher than that of the first one and then, a sharp reduction should be applied at the second) because the promotion price is only compared to the price "immediately before the promotion period."

Besides, most of counters at fairs, at present, are with a very high discount rate (usually between 50% to 70%). If it is pursuant to applicable law, then such discount violates regulations on the maximum level of discount. However, for this case, the law should be flexible because (i) the discount is only within the fair held in a few determined days (outside this fair, the goods are sold at a normal price) and (ii) encourage customers to visit, go shopping with special price levels. This creates a very strong effect for attracting customers whose purchases do not affect competition between goods of businesses.

Limited period for organization of sales promotion program: Current, the Law only gives limit to time to hold promotion programs for the two forms stated in Section 1.1 above. However, for some programs including sales of goods or provisions of services with coupons, bill of use of services, paper of sales or provision of service with entry forms for selection of winners under rules and prizes available, if no limit to time to hold promotion programs, large enterprises deliberately abuse or prolong the duration of promotion

programs causing difficult to competitiveness of small businesses or newly established companies.

Responsibilities of traders for notification to competent agencies before holding sales promotion programs: According to Paragraph 1, Article 101 of the Commercial Law, before making promotions, businesses must register/notify the state agency of commerce. However, the law on telecommunication prescribes that telecoms businesses, in the process of promotions for telecommunications services or specific telecommunications goods, must inform the agencies in charge of telecommunications and Department of Information and Communications of the local. Thus, this, unintentionally, creates responsibilities and administrative procedures for the businesses.

The order and procedures for notification/registration of sales promotion: the Commercial Law and relevant documents define orders and procedures for the implementation of traders as well as responsibilities of authorized agencies to receive the notifications or registration procedures for promotion activities to ensure smooth and quick implementation of the traders. However, the law also specifies that authorized agencies, before receiving the application forms, should consider and give written confirmations for cases of the registration. In case that such confirmation is not sent, they should give clear reasons. Regardless of such rules, the law does not stipulate conditions on how the traders can get confirmations from the state agencies and rights of the traders in cases of refusal. Besides, that the traders or competent authorities define other forms of promotion than the forms specified by the Commercial Law, may result in casual application without reference to legal regulations.

Currently, the number of promotion programs with notification is very large (about 95%). However, the notification procedures do not specify places for promotion but only areas of promotion. Therefore, the inspection and monitoring of contents of the promotion programs are not performed nowhere.

In fact, there are cases that when the promotion programs nearly come to ends, traders notify or send applications for amendment or supplementation to their promotion contents to competent authorities. Therefore, by the time the authorities finish their confirmation in writing, the promotion programs come to ends before. This makes it difficult to review the handling of violations and make it difficult for the traders.

Besides, in order to perform administrative reform, some locals have confirmed registrations for traders within a maximum of 3 days from the date of receipt of applications (this is 7 days according to legal documents). This creates favorable conditions for businesses but it is difficult for tax authorities in paying fees to the budget.

In addition, according to the program of administrative reform by the Government as in Resolution No. 59/NQ-CP assigned the Ministry of Industry and Trade to amend and supplement Decree No. 37/2006/ND-CP on procedures for application of promotion activities as notifications. However, this registration is specified in the Commercial Law.

Promotion in supermarkets, shopping centers: At supermarkets or commercial centers, we regularly see some promoted goods in a certain period of time and these goods belong to many different distributors. Thus, if 10 distributors are under promotion of sales, they must notify or register with competent authorities. Instead of that, the competent should apply assignment to enterprises in the field of supermarkets or commercial centers to require notification under programs and list types of promotion merchandise, thus this shall reduce administrative costs for the businesses, simultaneously in cases of identified violations, it will determine clearly subjects for liabilities and obligations involved.

Protecting consumers in promotion activities: to protect interests of consumers, current laws prescribe clearly goods or services for promotion, legal rights and obligations of traders in promotion and prohibited acts in promotion activities etc. However, in fact, these regulations are not adequate to ensure the interests of their clients. The clients must suffer from frauds in promotion operations or technical errors in printing of stamps, stocks or articles containing information about physical benefits that the customers shall be enjoyed in the promotion periods that the law has not given specific regulations as legal bases for the protection of consumers' interests. For programs of chance, the protection of consumers' interests is even more difficult because the Commercial Law 2005 only requires traders to "*comply with approved programs and commitments to customers*". With this provision, the control over truthfulness of the traders during the performance promotion is extremely difficult.

Liquidation of inventories in sales promotion activities: Currently, there is no legal document giving detailed instructions for legal procedures in liquidating inventories. However, in fact, the businesses can take advantage of the liquidation or discharge of inventory to sell at a price lower than fixed prices for the purpose of avoiding corporate income tax, dumping and cause damages to other businesses' interests or enhancing the competitiveness of their goods through "*dodging*" at a price exceeding the maximum limit of 50 % specified by the law on promotion which sometimes goods for sales expressed by the businesses as may be not inventories but are common goods.

Item b, Paragraph 2, Article 23, Decree 116/2005/ND-CP acts of "*cutting the prices of inventories due to quality degradation, outdated forms and inconsistency with consumers' taste*" are not regarded as the acts of selling goods below the cost with an aim to eliminating all competitors. Thereby, this is not considered violations of competition.

Compliance with the laws of consumers under infringement by promotion violations: Under the Commercial Law, consumers may directly or indirectly through their associations sue under civil proceedings when their rights are infringed upon. In addition, in terms of the Competition Act, they, directly or indirectly through their association, have the rights to initiate a case under *competition proceedings*. Thus, two different legal systems shall adjust contents with two different procedures, so the consumers can not know to choose what legal options to comply with when they are abused by promotion acts.

IV. Regulations on sales promotion in some countries

1. The United States

In the United States there are no set laws or regulations regarding sales promotion. Certain obvious things, like obscene pictures as billboards, are not allowed, but when it comes to general promotions, it is free game. There are, however, regulations regarding sales promotion internationally. There are a set of articles that were ratified by the International Chamber of Commerce (ICC) and must be upheld. However, Sales promotion is one level or type of marketing aimed either at the consumer or at the distribution channel (in the form of sales-incentives). It is used to introduce new product, clear out inventories, attract traffic, and to lift sales temporarily. In the USA, there are many methods of sales promotion, including: coupons and price discounts; price deals; point-of-purchase display; trade shows, etc.

Read more: http://www.ehow.com/list_7152858_sales-promotion-regulations.html#ixzz2zhH0poC

Sales promotion includes short term cents-off coupon and discount activities, contests and sweepstakes, promotion logoed products, product sampling, and in-store promotion collateral materials. All sales promotion activities are designed to generate sales over a defined time.

Sales promotions are most often directed at consumers. Sales promotions are also developed for the trade industry or for internal sales staffs. Manufacturers will create sales promotions for the trade industry such as its distributor network for the same strategic reasons as for consumers, which is to generate short term sales.

Price discounts and cents-off coupons are primary tactics used for sales promotion. Price discounts may be promoted in printed circulars distributed in store or mailed as well as weekly price specials deals displayed on shelf. Price discounts may also be provided in rebates. Coupons have a defined dollar value and expiration date and are distributed in newspapers, magazines and online.

2. China

Decree No 18 on the Measures for the Administration on Sales Promotion Acts of Retailers, which were adopted at the 7th executive meeting of the Ministry of Commerce on July 13, 2006 and were approved by the National Development and Reform Commission, the Ministry of Public Security, the State Administration of Taxation and the State Administration for Industry and Commerce, are hereby promulgated and shall enter into force as of October 15, 2006.

Measures for the Administration on Sales Promotion Acts of Retailers with a view to regulating the sales promotion acts of retailers, ensuring the lawful rights and interests of consumers, maintaining the order of fair competition and the interests of the general public,

and promoting the sound and orderly development of the retailing industry, the present Measures are formulated under the relative laws and regulations.

The term "retailer" as mentioned in the present Measures means the enterprises and their branches as well as the individual business households, which have registered in the administrative departments for industry and commerce and sell commodities to consumers.

The term "sales promotion" as mentioned in the present Measures refers to the marketing activities that retailers conduct in order to attract consumers and expand sales.

The contents main of the Decree:

- A retailer, when undertaking sales promotion activities, shall follow the principles of lawfulness, fairness and good faith and observe the commercial ethics, and may not undertake any sales promotion activity in violation of social moralities, disturb the market competition order and the social public order or impair the lawful rights and interests of consumers and other business operators.

- A retailer, when undertaking sales promotion activities, shall have corresponding safety equipments and management measures and ensure the smoothness of the safe passages for fire control. As regards large-scale sales promotion activities such as business start, festival celebration or business anniversary, it shall set down an emergency scheme for safety so as to ensure good shopping order and prevent the sales promotion activity from causing any traffic jam, disorder, transmission of diseases, personal injuries or property losses.

- The contents of advertisements or any other propaganda for sales promotion of a retailer shall be authentic, lawful, explicit and understandable, in which the retailer shall not use any language, word, picture or image which is ambiguous or misleading. The retailer may not, under the excuse of retaining the final explanation right, impair the lawful rights and interests of consumers.

- A retailer, when undertaking sales promotion activities, shall show the promotion contents at an eye-catching place in its business site, which shall include the promotion reasons, form, rules, time limit, commodity scope and other restrictive conditions.

- The retailer shall clearly indicate the counters or goods which are not under the sales promotion activities, and may not declare whole-store promotion. When clearly indicating the exceptional commodities or promotion rules with restrictive conditions or additional conditions, the relative characters or pictures shall be conspicuous and definite.

- The retailer may not, unless the change is caused by any force majeure, change any of the promotion contents within the time limit as indicated after it has begun to undertake a promotion activity.

- A retailer, when undertaking a sales promotion activity, shall pay taxes on its promotion commodities (including the awards or complimentary gifts for sales with awards) according to law.

- A retailer, when undertaking sales promotion activities, shall establish a sound price management archives, faithfully, correctly and completely record the prices prior to and during the process of the promotion activity, and shall properly preserve them and accept supervision and inspection according to law.

- A retailer, when undertaking sales promotion activities, shall clearly mark the prices on the price tags with and complete pricing items, true, clear, and eligible price contents, corresponding goods and price tags and conspicuous marks. It shall not sell any goods by increasing the marked price, nor charge any fee that is not indicated clearly.

- A retailer, when undertaking sales promotion activities, may not cheat or induce the consumers to buy commodities by giving them a discount on the basis of a false original price or by marking a misleading price or by taking a misleading price method.

- A retailer, when undertaking sales promotion activities, may not decline the quality or after-sale service level of the promotion commodities (including the awards and complimentary gifts for sales attached with awards), or may not use any article which does not meet the quality requirements as awards or complimentary gifts.

- A retailer, when undertaking sales activities with awards, shall display the awards or complimentary gifts, and may not mislead the consumers by the false values of awards or complimentary gifts or by ambiguous words.

- A retailer, when undertaking sales promotion activities within a time limit, shall ensure adequate supply of the commodities within the said time limit.

- A retailer shall clearly indicate the concrete quantity of the promotion commodities when undertaking sales promotion activities within a certain quantity. Where the stores of a chain enterprise undertake sales promotion activities within a certain quantity, they shall clearly indicate the concrete quantities of the promotion commodities in their respective stores. As for a sales promotion activity within a certain quantity, a notice of termination of the sales promotion shall be given as soon as the promotion commodities are sold out.

- A retailer, when undertaking sales promotion activities through preferential cards of accumulative points, shall clearly indicate the method to obtain the accumulative points, the valid time period for the said accumulative points and the preferential items to be obtained for the purchase of goods.

- After a consumer gets a preferential card of accumulative points, the retailer may not change any of the items as clearly indicated in the preceding paragraph, except for the changes that will add to the rights and interests of the consumer.

- No retailer may undertake any sales promotion activity by making up a reason such as rummage sale, store dismantlement and resettlement, termination of business, suspension of business or shifting to another business.

- Where a consumer asks the retailer to provide an invoice or purchase voucher for a promotion commodity, the retailer shall do so immediately and may not require the consumer to pay any extra fee.

- No retailer may, under the excuse of sales promotion, refuse to return or change any commodity or set any barrier for the consumers' return or change of commodities.

- Industrial associations shall be encouraged to establish credit archives on commercial retailing enterprises so as to intensify the self-discipline and guide the retailers to undertake sales promotion activities on the basis of law compliance, fairness and good faith.

- Where the single store of a retailer with a business area of more than 3, 000 square meters, if the retailer undertakes a sales promotion activity under the name of business start of any new store, festival celebration or store anniversary, it shall submit the clearly indicated promotion contents to the commerce administrative department of the place where the business site is located for archiving purpose within 15 days as of the end of the sales promotion activity.

- Where any retailer's act is in violation of the present Measures, if it is subject to any other law or regulation, such law or regulation shall prevail. If it is not provided for in any law or regulation, the retailer shall be ordered to make corrections. In the case of any illegal gains, the retailer may be imposed upon a fine of 3 times of the amount of illegal gains or less, but not exceeding 30, 000 Yuan. In the case of no illegal gains, the retailer shall be imposed upon a fine of 10, 000 Yuan or less. In addition, an announcement may be made.

Beside, Decree requires the departments of commerce, price, tax, and industry and commerce of all places shall, in accordance with the pertinent laws, regulations and provisions, supervise and manage the sales promotion acts under their respective functions. In case any sales promotion act is involved in any crime, it shall be investigated and punished by the public security organ.

In addition, Decree requires all provinces, autonomous regions, and municipalities directly under the Central Government shall, in light of their respective actual circumstances, formulate relative provisions to regulate the sales promotion acts.

3. Japan

The local legal framework is generally business friendly but sales promotion is still subject to fairly intricate regulations. This briefing note provides an overview of the regulations that apply to certain sales methods and practices used by retailers to sell their products.

Price Reductions

99% off all items! – was extortionate, now affordable! The indication of an original and discounted price is generally permitted but subject to certain restrictions under the Improper Premiums and Improper Representations Prevention Act (the "IPIRPA") and

guidelines of the Fair Trade Commission of Japan⁸ (the "FTC", the Japanese competition authority), to prevent misleading pricing. Artificial price reductions can be used to deceive consumers into thinking they have chanced across a bargain, through a process known as "double-pricing". Double-pricing is a method by which the original price of a product is marked-up, immediately prior to discounting the marked-up price, which means that the resulting discounted price, while appearing to be a bargain, is not really a discount at all.

The IPIRPA requires that the reference price on the label is genuine and has been in effect for at least four weeks during the eight weeks preceding the offer and no more than two weeks before the start of the offer. In other words, the former price must be offered during a sufficiently long period that is not too remote from the starting date of the offer at a discount.

Subject to a few exceptions, discounts are not deemed to be premiums regulated by the IPIRPA. According to a notice and guidance issued by the FTC, these exceptions apply where (i) the benefit of the reduction is subject to a lottery or competition, (ii) an additional product, whether identical or not, is offered as a premium (the customer has the choice between a price discount and an additional product); and (iii) use of the cash discount is limited. On the other hand, the following schemes are in principle regarded as discounts and not as premiums: price reduction (including a reduction subject to subsequent purchases) (e.g., X yen discount if you buy more than Y pieces; X% discount on the price of a coat if you buy a suit; X yen discount on the next purchase if you buy more than Y yen today) and a cash refund (including cash back conditioned by subsequent purchases) (e.g., X% cash refund on your payment, X yen cash refund if you buy for Y yen).

Sales below-cost - Unbelievable prices, limited time only! Retailers may be tempted to offer goods at a price below their cost to attract customers. However this practice may have the effect of driving competitors out of the market or may deter competitors from entering the market. As a result, regular sales below-cost price without justification are prohibited as unfair trade practices under the Antimonopoly Law.

Free Gifts

Spend more and get a gift absolutely free! The value of free gifts is regulated under the IPIRPA and guidance issued by the FTC⁹ The maximum value of a free gift must be whichever is the lower of (i) an amount which is appropriate by reference to industry standards and business customs, or (ii) a value generally capped as follows: 200 yen or 20% of the transaction value, whichever is the higher. The valuation of the transaction varies according to circumstances, such as whether the gift is made by the manufacturer or the retailer.

⁸ Policy concerning Abusive Price Indication in connection with the IPIRPA (*Futouna kakaku hyouji ni tsuite no keihin-ho jou no kangae kata*)

⁹ Restriction on Offering Premiums to the Consumer Public (*ippan shouhi-sha ni taisuru keihin-rui no teikyo ni kansuru jikou no seigen*)

Buy one – get one free! This sounds like a free gift but it is actually a discount. A "free gift" of an identical or similar product or service (e.g, 1 shirt given if you buy 3 shirts, a pair of trousers if you buy a suit, an air ticket to Honolulu if you fly more than 10,000 miles) is treated as a discount. If the free gift is a different product or service (e.g., free French fries if you buy a hamburger), it is a gift and the above-mentioned maximum value applies. One should be careful not to engage in "sales below-cost" when "free gifts" are offered.

Gifts are not limited to products and they can include services, vouchers, securities, cash, entertainment and anything else. They are defined as a "Premium" under the IPIRPA. As mentioned above, the maximum value of Premiums is regulated by the IPIRPA. However, certain gifts, such as samples and promotion materials, discount coupons, items necessary for the sale and/or use of the goods or services, items offered in connection with an opening ceremony or anniversary celebration, are exempt from this maximum value limit insofar as these items are considered to be appropriate by reference to ordinary business customs.

Even if the free gift is not subject to a purchase, the maximum value of the gift is still limited to (i) 200 yen or (ii) 20% of the cheapest product in the store (if the cheapest product is more than 100 yen), whichever is higher, and must be appropriate by reference to business customs.

Games and Lotteries

Buy more and you'll have a chance to win! When Premiums are given by way of games, quizzes or lotteries ("kenshou"), different rules apply. The IPIRPA and a notice issued by the FTC¹⁰ regulate the permissible value of Premiums. For instance, for purchases of JPY5,000 or more, the Premium is capped at a maximum of JPY100,000. The value of the Premium must not exceed 2% of the total sales forecast of the product within the period of the game, quiz or lottery. When the game, quiz or lottery is run jointly with other sellers in the same region, the maximum value of the Premium may be increased to JPY300,000 and the total Premium value to 3% of total sales, subject to certain conditions. Games involving card-matching games are prohibited by the IPIRPA.

"Open" Prize Competitions

Prize draw – No purchase necessary! The distribution of prizes in a game, quiz or lottery to the public using a free entry route not conditional upon entering a shop or purchasing a product/service is not regulated by the IPIRPA. For example, when a company runs a quiz competition in a newspaper, any reader can enter the game by telephoning the newspaper offices, or sending an entry by email or fax, and winners are chosen by lottery from the readers having sent the right answer and are given a gift. Such gift is not a Premium under the IPIRPA because there is no connection with a particular transaction. Such offer of a gift to the public is called an "Open" Prize Competition. The maximum value of a gift given in such a scheme is not restricted.

¹⁰ Restriction on Offering Premiums by Lotteries (*kenshou ni yoru keihin-rui no teikyo ni kansuru jikou no seigen*)

Loyalty Cards

Collect extra points! Loyalty cards, depending on how they are operated, can be classified either as a discount or a Premium, and regulated in the same way as above.

Sanctions for Breaches

The price of non-compliance... If the Consumer Affairs Agency (the "CAA") suspects that a retailer is in breach of the IPIRPA, the CAA will conduct an investigation. If the investigation identifies facts suggesting a breach, the CAA will give the retailer a chance to produce contrary evidence, submit its views in writing, and take necessary measures to end the practice. If the CAA is not convinced by the evidence it may issue a cease and desist order (a "CDO")¹¹.

A CDO is published in the Official Gazette and on the CAA's website and the CDO may order the retailer to cease and desist from conducting the unlawful activity, announce it was conducting unlawful activities, and take measures to prevent a recurrence of the activity and any other necessary measures and make them known to the retailer's officers and employees. The CDO may also include an obligation to report remedial measures to the CAA. A retailer is given the opportunity to appeal against the CDO by filing a complaint with the Chairman of the CAA or by initiating a lawsuit before the courts. If no such appeal is made, the CDO becomes final. Depending on the matter, the CAA may issue a warning instead of a CDO.

Violation of a final CDO is punishable by up to two years imprisonment and/or a criminal fine of up to JPY 3,000,000. If an officer or employee of a company commits a violation of a CDO, in addition to the aforesaid sanctions, the company may be subject to a fine of up to JPY 300,000,000. Repeat offenders engaged in below-cost sales without justification over a ten- year period may be subject to an administrative fine up to 2% (for retailers) or 1% (for wholesalers) of turnover during the period of violation. Retailers will also be exposed to claims for damages by consumers.

Given these sanctions, retailers doing business in the Japanese market should be aware that it may not be business as usual and that comprehensive professional advice may be needed to successfully navigate the regulatory framework.

V. Proposals and recommendations

From above researches, besides the progress and achievement, the legal system of sales promotion activities also has certain limitations. The followings are a few recommendations for improving the legal system of sales promotion.

- Completing legal regulations on sales promotion forms, firstly, adjust and supplement forms of overlapping sales promotions, which are inconsistent with the Commercial Law (forms of telecommunications law with those of the commercial law); secondly, supplement forms of promotions under progress, which have not been adjusted by

¹¹ *Sochi meirei*

the law or have not been regulated unclearly. Therefore, it is necessary to prescribe provisions in details and specify forms of sales promotions. In cases full cover is not reached, it is necessary to specify criteria to identify other forms of sales promotion so that the traders can select in accordance with legal provisions as well as facilitate opportunities for the management of the state agencies.

- To complete legal regulations on prohibited acts in sales promotion activities, it is necessary to unite prohibited acts in the commercial law. In cases of exceptions, it is necessary to specify contents and uniform prohibited acts banned by the commercial law and specific provisions, avoid cases of compliance with the specific provisions but violation to prohibited conducts of the commercial law.

- Supplement exception regulations on the maximum reduction of promotion goods and services in the range of the fair.

- Supplement legal provisions on limit to period of time for organization of sales promotion programs for some forms of promotion except the two forms prescribed as sales, service provision with coupons, paper of services or sales and entry forms for customers to choose winners according to rules and prizes announced etc.

- Amend and modify telecommunications provisions on clues to receive notifications of sales promotion programs under the Commercial Law (the state management agencies of commerce). In case Telecom agencies need information about promotion programs, refer to information of the state authorities about trade activities.

- Complete legal regulations on procedures, steps for applications/notifications of sales promotion programs with an aim to reform administration procedures to create favourable conditions for businesses. This problem needs paying attention for amending and supplementing the following provisions:

- + Confirmation of competent authors when receiving applications for sales promotion programs if the programs are not parts of the forms mentioned (other forms), specify criteria for confirming and giving conditions for that the businessmen can be approved and the businessmen's rights in cases of refusal, avoid to consider application procedures as a form of "ask - give".

- + For the time to confirm registration for sales promotion programs, it is advisable to have regulations for the implementation of the local in accordance with provisions on the maximum of 7 days. From that, the locals can balance and self regulate the time for confirmation of the local.

- + For the period of time, it is necessary to specify conditions on periods of time for amendment, adjustment, supplement and extension for businessmen in the process or for people whose organizations almost expires in comparison with the time notified/registered and give instructions for implementation in details.

- + For notification of the implementation of sales promotion, it is advisable that competent authors should specify regulations on contributing systems of goods, agency

general with an aim to helping management units in investigating and supervising sales promotion programs. Current regulations only prescribe notifications of promotion areas.

+ For registration/notification of sales promotion for promotion activities at supermarkets or commercial centers, it is advisable to register under the sales promotion programs instead of registration upon items of goods.

+ For requirements on delivery of notifications to local areas in case registrations are applied to central agencies, it is advisable to follow local regulations and in the process of confirmation, notify the local authors so that the authors can get favourable conditions in inspecting, monitoring and giving punishments to cases of violation instead of requiring businesses to make notifications to departments.

+ For results of finished programs, it is advisable to give regulations on online way of reports. This should reduce costs and administrative procedures and enhance the effectiveness of the management.

- Finish all legal regulations on interests of customers related to sales promotion activities with clear provisions for merchants in promotion work that the merchants should have full responsibilities for cases that customers fail to get their benefits as stated due to incorrect information of printing or unintentional frauds.

- To meet regulations on liquidation of inventories in sales promotion activities, the law should have regulations to control liquidation of inventories in this field. Thereby, it is necessary to specify and adjust 3 issues: (i) goods are inventories; (ii) goods show a decline in the quality, appearance and are not accordant with customers' taste; and (iii) liquidation of stock inventory is to recall a part of investment in the production of the goods but not deform the product market and price levels. In case the above criteria are not met, sales of goods at a lower price level shall be adjusted by the law including regulations on maximum limits.

In addition, the management unit must strengthen inspection and give strict punishments to cases of violation in promotion operations.

Conclusion, it is likely that the legal system of promotions has a lot of shortcomings and difficulties that need to be resolved. It is the time to amend and supplement some regulations on trade promotion activities in the Commercial Law and legal provisions in details to improve the system.

B. Report/research on Commercial advertising in Viet Nam and comparative analysis

I. The reality of legislation system in commercial advertisement and application in reality

1. Summary of provisions in the advertising law system at the time of Viet Nam joined WTO

Since Viet Nam joined World Trade Organization (WTO) until before the year 2012 advertisement law was promulgated and effective, advertise activities in general,

commercial advertising activities in particular governed by a system of previous legal documents issued including advertising decree law; Decree No.24/2003/ND-CP dated March 13rd, 2003 of the Government on detailed regulations to implement the Ordinance on Advertising and instruction circulars; In addition, advertisement activities are also defined legal documents of different branches such as Commercial Law, Competition Law, Pharmacy Law, Newspaper Law, Publication Law, ...

2. The reality of laws on commercial advertisement

2.1. Trade legislation

2.1.1. Legal basis

According to Commercial Law, commercial advertisement is an activity of promoting of commercial of business men to introduce customers to the business activities of their goods and services. Trade promotion activities are commercial activities which have lucrative commercial advertising activities.

Commercial activities are specified in the Commercial Law and Decree No. 37/2006/ND-CP April 4, 2006 of the Government defines the Commercial Law in details of trade promotion activities. Therefore, the provisions of the Trade Act of prohibited commercial advertising, Commercial Law's provisions are forbidding commercial advertising media using of these vehicles, commercial advertising rights, rights and obligations of commercials lessee, commercial service providers, commercials releaser. Decree No. 37/2006/ND-CP stipulates general contents as protection of intellectual property rights, protecting children, the goods or services relating to health, the veterinary medicinal products , insecticide, fertilizers , feeds for animal and animal breeds and plant varieties, commercial advertisements for goods under the application of standards, technical regulations on product quality, the Furthermore Decree also stipulates responsibilities of organizations and individuals on the content infomercial products.

2.2.2. Basic contents

a. Commercial advertisement rights

Commercial Law defines the advertising rights of merchants. Vietnamese traders, branch of Vietnamese traders and branches of foreign traders are allowed to be active in Viet Nam having the right to advertise business goods, services or hire traders advertising commercial services for them; Representative offices of traders are not directly allowed to perform commercial activities. In the case, authorized traders, representative offices have the authority to sign contracts with traders providing commercial advertising services to advertise for the traders who they represent; if foreign traders want to trade advertising activity and trading goods and services in Viet Nam, they have to hire Vietnamese traders of commercial advertising services do it. In addition, the law also stipulates the rights and obligations of commercial lessee, advertising the service provider and the issuer of commercial advertisement. In addition, the law also stipulates for additional merchants

regist for protection of intellectual property for commercial advertising products as prescribed by law.

b. Commercial advertising products

According to Commercial Law, commercial advertising products includes informations in visual, action, sound, voice, words, symbols, colors, light contained commercial contents. Advertising products are information in visual, sound, color ... to introduce to customers about informations of goods, their business activities. This information must ensure its accuracy, honesty, clarity, without causing damage to business and consumers.

Depending on the characteristics of goods, customers and advertising products must suit the lifestyle of Vietnamese people. Forms of promotion products have aesthetics, no against traditional morals, habits and customs, clear, easy to understand and to distinguish signs advertising informations, with no advertising informations confuse business manufacturers and consumers. Advertising products must be in Vietnamese, excepting internationalized words trade marks or not be substituted by Vietnamese ; Advertising through books , newspapers and publications, to publish in the languages of Viet Nam's ethnic minorities, foreign language; radio programs, television language minorities in Viet Nam, foreign language.

According to Section 1 of Chapter III of Decree No. 37/2006/ND-CP, contents commercial advertising products to ensure some regulations on protection of intellectual property rights in trade promotion activities (Article 21); commercial advertising products have comparable contents with counterfeit goods, goods of violating intellectual property rights (Article 22); Child protection in trade promotion activities (Article 23); Commercial advertisements for goods and services related to health (Article 24); Commercial advertisements for goods and services related to veterinary medicine, plant protection products, fertilizers, animal feed and animal breeds and plant varieties (Article 25); Commercial advertisements for goods subject to the application of standards, technical regulations on the quality of goods (Article 26).

c. Commercial advertising means

Commercial advertising means provisions of the Trade Law of 4 media (mass media, communication, publication types, table types, signs, banners, posters, posters, objects fixed regulations, the vehicles or other moving objects) and different means of commercial advertising. The use of advertising media must comply with the provisions of the state agency having jurisdiction.

d. Commercial advertising banned

Commercial advertising banned are prohibited as stipulated in the Commercial Law including 9 ads not be allowed: (i) Advertisements disclosed the state's secrets, prejudice the independence, sovereignty, national security and order, and social security; (ii) advertisement uses advertising promotion products, advertising media which oppose to

traditional history, culture, ethics, habits and customs of Viet Nam and contrary to the provisions of law; (iii) Advertising goods or services which are banned in business, restrict business or be prohibited the advertising; (iv) tobacco advertising, wine with alcohol from 30 degrees upwards and the products, goods not be circulated or services not licensed to provide the Viet Nam market at the time of advertising; (v) Taking advantage of commercial advertisement cause damage to the interests of the State, organizations and individuals; (vi) Advertising through using the direct comparison method with production activities, trading goods and services with the same types of other traders; (vii) false advertising in contents of a quantity, quality, price, design, origin, type, packaging, service mode, the warranty period of the Product goods and services; (viii) Advertising for business activity by using promotion products in breaking of intellectual property rights; use images of organizations and individuals to advertise without their allowance; (ix) Advertisement for unfair competition as prescribed by law.

e. The order and procedures for commercial advertisement

Commercial Law and Decree No. 37/2006/ND-CP have no rules about the order and procedures for commercial advertising. Paragraph 1 of Article 27 of Decree No. 37/2006/ND-CP stipulated traders in commercial advertisement are solely responsible under law if the contents of their products violate banned advertising contents in advertising Commercial Law, must abide by the regulations on using advertising media as current law. The head of the agency the mass media, news media, electronic media and other types of publications responsible for infomercial products advertised on their advertising media management reasonable.

f. The State's competent management of commercial advertisements

Article 3 of Decree No. 37/2006/ND-CP stipulated Ministry of Trade (now the Ministry of Industry and Trade) is responsible to the Government for performing the function of State management of trade promotion activities (including commercial advertising activities), regulated by the Commercial Law and this Decree. The ministries, ministerial-level agencies, agencies under Government, in the scope of their duties and powers, are responsible to coordinate with the Ministry of Industry and Trade to manage the state of trade promotion activities. People's Committees of provinces and cities under central authority and duties in the scope of his authority, directing the Department of Trade and Industry perform State management of trade promotion activities as prescribed by law.

2.2. Relevant legislation

2.2.1. Advertising legal

a. The birth of Advertising Law

In recent years, along with the development of socio-economic, promotion activities in Viet Nam has significantly growth with the increase in the number of businesses advertising services, expansion in form, scale and technology. The investment expense for promotion activities of goods and services have been interested by manufacturing bussiness.

Because demand for advertisement has increased day by day, new advertising types of to appear and develop hardly, especially advertising on electronic media, terminals, telecommunications equipment; website on electronic media and electronic information; advertising caravan.

However, the legal system of advertising has shortcomings, not yet meets the requirements of comprehensive development of promotion activity in the market economy. The highest validity document in the legal system is Advertisement Ordinance promulgated in 2001, beside, some provisions on advertising in the specialized field has been defined in many legal documents: Commercial Law, Press Law, Publication Law, Pharmacy Law and other documents. Therefore, the application of the provisions on advertising activities is so difficult; especially in the case of the document have different provisions. Advertisement Ordinance is relatively document on advertising activity. However, due to the development of promotion activities should also have a lot of contents have been not adjusted or not consistent with the real situation as well as Viet Nam's commitment , such as promotion activity contain information inter-countries; Prohibited acts in promotion activities; advertising media; advertisements in newspapers; advertising on; advertising on billboards , posters , banners , ...

To meet the practical requirements of the advertising development, the inadequacies of current legislation documents system, which aims to promulgate a legal document with high value to adjust the overall operation advertisements in Viet Nam. In third Session, June 21, 2012 the National Assembly of the Socialist Republic of Viet Nam term XIII through Advertising Law. President of the Socialist Republic of Viet Nam has signed a decree to proclaim the Advertisement Law and effective from 01 May 2013.

Advertising Law includes 5 chapters, 43 Articles, outlines as follows:

Chapter I: General Provisions

This chapter defines the problems have general principles, including: adjusting scope; interpretation of terms; State policy for promotion activities; State management contents for promotion activities; State 's management responsibilities on advertising activities; advertising services contract; products, goods and banned services of advertising; prohibited acts in promotion activities; Evaluation Council on advertising products; Professional organization of advertising and handling violations in promotion activities.

These new points of this chapter include:

- State management of promotion activity: The Law Ministry of Culture, Sports and Tourism is responsible before the Government for performing the state's management of advertising. Article 5, "State's Responsibility for management of advertising activities ", as follow:

"1. Government unified State management of promotion activity.

2. Ministry of Culture, Sports and Tourism is responsible before the Government for implementing state management of advertising activities.

3. *Ministries, ministerial-level agencies break the duties and powers, be responsible for coordinating with the Ministry of Culture, Sports and Tourism perform State management of promotion activity.*

4. *The People's Committees of all levels shall perform the state management of advertising activities in localities within its jurisdiction."*

- Regulations on products, goods and services banned for advertising including tobacco, alcohol of breathalyser of 15 degrees, milk for children under 24 months of age, nutritional products for infants under 6 months of age, per breast, artificial breast sucking; prescription drugs, drugs are recommended by state agency for limiting use or use under the supervision of a physician; commodities have aphrodisiac ability, incite violence; shotgun and shotgun bullet and sporting arms.

The regulation of banning advertising alcohol from 15 degrees or higher is necessary. This problem stems from a lot of practical social evils, accidents caused by drunkard. However, the regulations must be consistent with custom, as well as the international treaties signed. According to Viet Nam's commitments to join WTO, advertising wine and strong wine must comply with the provisions of the State on the basis of non- discrimination. Paragraph 4 of Article 109 of the Commercial Law in Viet Nam in 2005 alcohol regulations of prohibit advertising alcohol from 30 degrees or more (this law was promulgate before Viet Nam joined the WTO) . However, some countries (mostly European countries) said that there has been discrimination in the wine business between foreign businesses Viet Nam now. In fact, wine has an alcoholic from 30 degrees or higher mainly due to the import of beetwen foreign enterprises and Viet Nam, and alcohol breathalyser below 30 degrees primarily due to manufactured by Viet Nam's enterprises. So, to make sure the principle of non -discrimination, which affects the business environment in Viet Nam and to consumers more conscious about the harmful effects of alcohol abuse, the Law stipulates banning alcohol advertising alcohol from 15 degrees or more.

- For acts prohibit in advertisements: add some new contents as: lacking vulgar ads, violate freedom of beliefs, religion, gender stereotypes, disability, advertisement by using direct comparison methods, using words, such as "best", only, the best, or several words with the same meaning without proving legal documents, intellectual property infringement, advertising advertising affect children ...

- Regulations of Council appraise on promotion products: Council under the Ministry of Culture, Sports and Tourism is responsible for examining and draw conclusions about the compatibility of the advertising product with regulations of law before, and after carrying advertisement if having request of organizations and individuals for participation in promotion activities.

Chapter II: Rights and obligations of organizations and individuals in promotion activities

This chapter defines the issues related to the rights and obligations of advertiser; rights and obligations of businessmen who do advertising services; rights and obligations of the issuers of advertising; rights and obligations of the lease places, advertising media; rights and obligations of recipients advertising.

The basic new contents of the chapter include:

- Separation of people participating promotion activities to specified rights and obligations, including the rights and obligations of the advertiser; businessmen of advertising services; Advertising issuers; owner's rental places, advertising media and advertising recipients.

- + About the advertiser's obligations (Clause 2, Article 12), not only supplying necessary information, such as honesty, accuracy, but also must provide documents relating to advertising conditions, and must be responsibility for those informations.

About the division of responsibilities for promotion products, advertising law stipulates that advertisers are not only responsible for its advertising products in the case of direct advertisement in media, but also for liability product in case of rent other partner to perform (point c, Clause 2, Article 12).

- + In order to strictly control the advertising process, the Law supplement provision that businessmen do advertising services and promotion issuers before implementing to inspect documents relating to advertising condition that advertiser supply (point b paragraph 2 of Article 13 and paragraph 2 of Article 14).

- + There are now many disputes relating to advertising places that have not been defined therefore impacted negatively on the quality and safety of the advertising media. To overcome this situation, the Law has additional regulations on the rights and obligations of owner's rental place, advertising media. Accordingly, renters must be responsible for the legal basis of the venue rental, advertising vehicles; quality and safety of advertising media; comply with the obligations in the lease contract locations, advertising media as signed (paragraph 2 of Article 15)

- Adding new objects is people receiving advertising and provisions of the rights and obligations such as requirement for advertisers or advertising issuers don't tell truth about quality, price ... and denounce civil action in accordance with law...

Chapter III: Advertising Activity

- This chapter consists of 22 articles (from Article 17 to Article 38), divided into 6 categories:

Section 1: advertising medium; requirements for the contents, advertising conditions.

Section 2: advertisement in newspaper, electronic media, terminals and other telecommunications equipment.

Section 3: advertisement in printed products, recordings, recording images and other technological devices.

Section 4: advertisement on billboards, banners, signs, light boxes, advertising display screen and transport vehicles.

Section 5: advertisement in cultural and sports programs, conferences, seminars, fairs, exhibitions, organization of events, groups of people in line for advertising, promotion material.

Section 6: outdoor advertising plan.

In detail, contents of this chapter have some noteworthy provisions:

- Administrative procedures:

+ Abolish advertisement license on bandrol, replaced by notification procedure of promotion products to the state agency prior to do promotion advertisement. Article 29 specifies notified files of selling advertised products on billboards, banners.

+ Abolish support advertising license replaced with notification procedures for state management agencies about journalism.

+ Abolish received advertising file (or registration procedures for advertising contents) for goods and services in the field of health, agriculture and development instead of regulations conditions to comply with Article 20 of advertising Law and compulsory contents will be provisioned in the Decree of the Government.

+ Maintain licence for a channel or advertising program (Ministry of Information and Communication licenced) and licence building for advertising screens from 20 square meters or more; Advertising board of 20 square meters attached to built works; Advertisement stands alone from 40 square meters and more (Licence by Ministry of Construction) (Item 6, 7, Article 22 and Article 31).

- Adjust advertising area in newspapers, as follow:

+ Printed newspaper: Separation of printed newspapers and magazine. Previously, Decree - law regulated that printed newspaper is not allowed to advertise more than 10 % of total area, the provisions advertise Law are advertising area are not allowed over 15 % (increase 5 % compared with PL) of the total area of a publications , 20 % of the total area of a printed magazine (formerly Ordinance has no separate provisions for the magazine).

+ Speaking newspapers and television: Regulations of Advertising ordinance were not allowed more than 5 % promotion advertising. At present, its regulations are to advertise not over 10 % (increase 5 %). Payment television advertising is not allowed more than 5 % (In advertisement Ordinance have no private provisions for pay TV).

+ No allowance for broadcast advertisements in programs: news; live radio and television programs on the particular political events, celebrating the major holidays of the nation.

+ For advertising runs beneath line screens shall not be allowed more than 10 % screen high.

+ For advertising forms of messages, e-mail shall be specified in details: only send e-mail messages and advertising prior and advertisement email having agreement of the recipient; only be sent from 7am to 22 hours; not send more than 3 messages and 3 emails to a phone number or an email address within 24 hours unless otherwise other agreements.

- Advertisement in printed products

+ For pictures, photos , posters , catalogue , brochures and leaflets fans content and communication on political , economic , cultural , social , scientific , technological , cultural education , art , advertising is not more than 20 % of each product.

+ No allowance for advertising print product is money or valuable papers, diplomas and certificates of the State's management documents.

+ Advertisement time allowance in sound recordings, video recordings of cultural programs, art , movies , sound recordings , video recordings substituting or illustrate books not exceed 5 % of the amount of programs contents.

Besides, this chapter also shows out strict provisions of the writing and, placement of signs, displayed contents on organization, personal business activities; regulations on constructing advertisement with the requirements of planning contents and responsibilities of the state agency management in local areas in planning to building advertising plan to ensure ad environmental security landscape, urban landscape and social order and safety (Article 34, Article 37, 38)

Chapter IV: Advertisement with foreign elements

Chapter IV includes 03 Article (from Article 39 to Article 41) provisions matters relating to the advertising activities of foreign organizations and individuals in Viet Nam; foreign investment and cooperation in promotion activities; representative offices of foreign advertising enterprises in Viet Nam.

b. Decree No. 181/2013/ND-CP November 14, 2013 of the Government defines specifically implementation of some articles of the Advertising Law

November 14, 2013, the Government promulgates Decree No. 181/2013/ND-CP providing detailed regulations for implementation of some articles of Advertising Law. This Decree has been effective since 01st January 2014. Decree No. 24/2003/ND-CP of March 13, 2003 of the Government detailing the implementation of the Advertising Ordinance has been out of effective implement since the date of signed this Decree.

This Decree defines for advertising contents of products, goods and special services; advertising on website of electronic information organization, foreign individuals do business advertising services across borders create advertising revenue in Viet Nam; Outdoor advertising plan; representative offices of foreign enterprises advertising in Viet Nam and assigned responsibility for the state's management of advertising.

For drugs, the advertisement must contain the name of the drug, name of active ingredient, specify /contraindications, recommended *"Read carefully usage guide before using, please"*. Advertisements must not include photos of patients/ names or images of the physician or mention the effects of the drug scheme that have not been studied and demonstrated.

For cosmetics, advertising contents need cosmetic name; features and usage; name and address of the organization or individual responsible for bringing products to market; warnings under the provisions of the international treaties and may not promote misleading cosmetic products such as drugs.

The advertising content of food, additives food, chemicals, insecticides, disinfectants and household appliances used in medical, medical equipment, dairy products and nutritional supplement products for children, medical services, medical treatment, plant protection chemicals, pesticide raw materials, plant protection materials, useful organisms used in plant protection, veterinary medicine, veterinary supplies provisions of Articles 4 to Article 11 of the Decree. Note: the advertising of products, goods and special services above are only done after state agencies had certified the advertising contents.

Organizations and individuals in Viet Nam have goods and services want to advertise on websites of electronic communications of overseas organizations and individuals advertising services business to cross-border business through the advertising services were registration to operate legally in Viet Nam. Activity on websites of the electronic information organizations, foreign individuals advertising services business across borders has created advertising revenue in Viet Nam to pay tax as provisions of tax law.

Businessmen who do advertising services, implement advertising services contract on electronic websites of foreign cross border organization or individuals in advertising services business in Viet Nam, must be meet the following conditions;

1) As a business whose functional advertising services business is established and operated under Viet Nam's Law;

2) Becoming a partner in implement of advertising services as defined in Viet Nam's Law and electronic information website of foreign organizations, individuals advertising services business across borders in Viet Nam signed contract with.

Chapter 4 of the Decree on planning outdoor advertising:

Suggesting dossiers for establishing representative offices of foreign advertising enterprises in Viet Nam includes:

a) An application for a license to establish a representative office by the authorized representatives of the overseas advertising business signed as a regulated form of the Ministry of Culture, Sports and Tourism;

b) A copy of the business registration certificate or papers of equivalent value of foreign enterprises is competent authorities where the business establishment or business registration confirmation;

c) The financial statements audited or other material of equivalent value to prove the existence and activities of foreign enterprises in advertising the latest financial year;

d) The documents defined in paragraph b and c must be translated into Vietnamese and representative diplomatic missions, consulates of Viet Nam in foreign countries perform authentication and consular legalization defines with the laws of Viet Nam.

2.2.2. Safe Food Legislation

Safe Food Law 2010 stipulates banning advertising false of food, confusing consumers (Clause 11, Article 5).

The advertisement of food by organizations and individuals producing and trading food or businessmen do advertising services comply with the provisions on advertising law. Before registering advertisement, organizations and individuals that food need advertising to send records to the state agency authorized to verify the advertisement contents. The issuer of advertising, the advertising services business, organization or individual advertising food advertising is conducted only when the content has been evaluated and is right advertising contents confirmed.

Minister of Ministry of Health, Minister of Ministry of Agriculture and Rural Development, Minister Ministry of Industry and Trade stipulate specifically kinds of foods to advertise registration, competence, order and procedures for certification of advertisement contents products are in the field of management.

2.2.3. Health Law

Promotion activities in the health sector is regulated by Pharmacy Law, Joint Circular No. 01/2004/TTLT-BVHTT-BYT dated 12 January 2004 of the Ministry of Culture and Information – Ministry of Health guides promotion activities in the health sector . Accordingly, a joint circular on the conditions specified, records, registration procedures in advertising medical field include: medical treatment; medicines for human; cosmetics directly affect human health; vaccines, biological medical products ; medical equipment ; food ; chemical preparations insecticides and disinfectants for domestic and medical. In the field of drug advertising, Ministry of Health promulgate a private circular to guide as Circular No. 13/2009/TT-BYT September 1st, 2009 of Ministry of Health guidelines advertising information activities drugs , accordingly, provisions of general conditions in Circular of drug information and advertising acts prohibited in advertising drugs , medicines advertised forms and contents of advertising drug. In addition, the Circular also provides contents information to recommend the drug for medical personnel, records, order handling procedures for receiving advertising information records introduce drug, medical staff regist seminar to introduce drugs, for registration information base, drug advertising. In addition, the Ministry of Health also issued Circular No. 42/2010/TT-BYT December 15, 2010 of the

Minister of Ministry of Health issued the list of active ingredients and pharmaceutical drugs are registered on radio advertising, television. Circular issued a series of lists of active ingredients and pharmaceutical drugs and make list building principles as well as the selection criteria of the active ingredient to be registered on radio advertising, television.

2.2.4. Laws on agriculture

Promotion activities in the agricultural sector are defined in the Joint Circular No. 96/2004/TTLT-BVHTT-BNN November 3rd, 2004 of the Ministry of Culture and Information, Ministry of Agriculture and Rural Development guide promotion goods in the field of agriculture and rural development, under joint circular stipulated conditions, advertising contents, records, registrate procedures advertisements, examine, inspect and handle violations of some promotion goods in the field of agriculture and rural development including plant protection chemicals, raw materials pesticide; fertilizer and serving probiotics cultivation; animal breeds and plant varieties; veterinary medicine, veterinary raw materials medicine; animal feed and raw materials for processing of animal feed, bio- served livestock.

2.2.5. Other legislations (Penal code, Competition Law, Publication Law, Press Law, Intellectual Property Law, Law on Product Quality and commodities, Law on Protection of Consumers' Rights)

In criminal law, deceptive advertising behavior may constitute a criminal offense and the offender shall be subject to criminal liability. Article 168 of the Penal Code 1999 stipulate: Any person who falsely advertising goods or services causing serious consequences or have been administratively sanctioned for such actions or was convicted of this crime, has not been criminal record remission but relapse into crime, shall be subject to a fine of between ten million and one hundred million Viet Nam dong, non-custodial reform for three years or imprisonment from six months to three years. Offenders can be fined between five million Viet Nam dong and fifty million dong, forbid going on occupation or doing certain jobs for one to five years.

In competition law, advertising of unfair competition to be listed as one of the acts of unfair competition (Article 39 Clause 6 of the Competition Act year 2004) and prohibit implement. According to Article 45 of the Competition Law, unfair competition advertisement understandingly include the following acts: (1) A direct comparison of its goods and services with the same type of other business; (2) Imitating other promotion products to cause confusion for customers; (3) Giving false information or mislead customers about one of the following contents: a) price, quantity, quality, utility, style, type, packaging, production date, shelf life, origin of goods, the manufacture, production place, processer, processing place; b) Method of use, service mode, warranty period; c) The false information or misleading others; (4) The other promotion activities prohibited by law.

In legal publishing, advertising in publications must obey the following provisions: No allowance for advertising on administrative maps. The advertisement on calendars wall are made under the following provisions: Area for advertising shall not exceed 20% of each

page calendar area and advertising image contents must conform with the habits and customs of Viet Nam and the other provisions of advertising law; Not advertisement on the national holiday calendar and major anniversary of the country (Article 30 of Law Publishing 2012). According to Article 49 of Law Publishing, no mixed advertising with contents or disrupting the content of electronic publications in any forms, on electronic publications.

According to the press law, press published, broadcast advertising and promotion fee levy. Advertising contents need to separate from propaganda contents and not violate the provisions of Article 10 of the Press Law 1989 (Article 10 the regulations for no information in the press). Decree No. 51/2002/ND-CP of April 26, 2002 of the Government detailing the implementation of the Press Law, the Law amends and supplements some articles of the Press Law has introduced the concept of advertising on journalism. Accordingly, the newspaper advertising is a form of notification, introduced to the public on business operations, goods, commercial services and non-commercial services organizations and individuals under types of journalism (Clause 16, Article 1). Article 7 of Decree 51/2002/ND-CP stipulates the press have the right to organize business activities and services in the field of printing, publishing , book publishing , advertising ,making film, photography and business equipments, materials related to professional journalism to create income reinvested for the development of journalism.

Promotion activities related to intellectual properties are defined in Intellectual Property Law 2005 (amended and supplemented in 2009), Advertising Law 2012 and Decree No. 37/2006/ND-CP some relevant documents. Advertising Law to define advertising action violating laws on intellectual property is one of prohibited acts in advertising activities (Section 13, Article 8). Article 21 of Decree No. 37/2006/ND-CP provides regulations on the protection of intellectual property rights in trade promotion activities. Accordingly, the use of commercial advertising products containing protected objects of intellectual property rights must be under agreement of the owner object protected intellectual property rights; traders may register for protection of intellectual property rights for commercial advertising products as prescribed by law. Intellectual Property Law has some provisions related to content ad in Articles 26, 33, 75, 124 and 130.

In the law on product quality, commodities, promotion documents are of the documents attached to products and goods. Specifically, Clause 17 of Article 3 (Definition of words) Goods Product Quality Law, 2007 prescribed: "Documents attach products, commodities include results of appropriate assessment, advertising brochures, introduced the features, uses, characteristics, manual use of product and goods ". Information behavior, false advertising or deceptive acts on product quality, goods and origin of goods was identified as one of the acts prohibited under the provisions of Clause 9 Article 8 of product Quality goods Law year 2007.

In the law on protecting the interests of consumers, consumers may demand compensation when goods or services are not under standard, technical regulation, quality,

quantity, features, utility, prices, or other contents that organizations and individuals trading in goods and services was announced, post a bill, advertising or commitment (Item 6 of Article 8 of the Law on Protection of Consumers' rights year 2010). Organizations and individuals trading in goods or services is strictly prohibited perform fraudulent or misleading to consumers through promotion activities or conceal information provided with contents incomplete, misleading, inaccuracies as defined at points a, b, c, Clause 1, Article 10 of the Law on Protection of Consumers' rights.

2.3. The compatibility of legal normative documents in advertising services with Viet Nam's commitments to join WTO

1.3.1. Forms of commercial presence

Viet Nam committed since the date of joining, the service provider is established abroad or participate in a joint venture agreement to cooperate with Viet Nam's business partners was allowed to advertise business services, allowing the joint ventures contributing the foreign capital may not over 51 % of legal capital of the joint venture but this restriction will be removed from January 1st 2009.

In Advertising Ordinance stipulates organizations and individuals that do overseas advertising services business establish branches in Viet Nam. However, when Viet Nam became a member of the World Trade Organization (WTO), the organizations and individuals that do abroad advertising business services get contracts or cooperative business venture with Viet Nam partners but not established branches. Therefore, Advertising Law abolished the allowance of establishing of a branch appropriate commitment of Viet Nam to the WTO.

Advertising Law prescribed organizations and individuals operating in Viet Nam are allowed to advertise its products, goods and in Viet Nam. For oversea organizations and individuals do not operate in Viet Nam if they want to advertise their products, goods and services and their activities in Viet Nam must hire Vietnamese businessmen do advertising services. Oversea organizations and individuals cooperate with the investment advertising services businessmen in Viet Nam as the form of joint ventures and business cooperation contracts.

Overseas advertising business is allowed to establish a representative office in Viet Nam. Representative offices are allowed to operate with the license of province People's Committee where foreign business proposed established representative office. Representative offices are only just promoted advertisement without doing directly business advertising services.

Decree No. 181/2013/ND-CP November 14th, 2013 of the Government stipulates articles of Advertising Law also allows organizations and individuals to business overseas advertising services are allowed to provide advertising services across borders through the advertising services businessmen registered legally operating in Viet Nam.

1.3.2. The presence of record

Viet Nam has not committed, except the common commitments.

1.3.3. For kinds of promotion products

Viet Nam committed to allowing advertising for any products that may be advertised except for alcohol and tobacco.

For tobacco, Viet Nam has no commitment.

For alcohol, Viet Nam committed to advertising with the conditions of alcohol advertising must comply with the regulations of the State of Viet Nam (these provisions will be applied in a non- discriminatory).

Under commitments, the service provider is allowed to provide advertising services for all types of products, except cigarettes. The service provider for liquor advertising is permitted but must ensure compliance with the regulations of the State, which are applied to both enterprises and foreign invested enterprises with 100 % foreign owned Viet Nam's capital.

The foreign services providers are providing advertising services across borders for Viet Nam's organizations and individuals as requested. Besides, when Viet Nam joined the WTO, they will be allowed to set up joint ventures in which foreign capital contribution not over 51 % for service providers. By Date January 1st, 2009, limiting the proportion of foreign capital in the new venture is removed. Meanwhile, foreign capital can contribute on any joint venture with any percentage less than 100%.

Advertising services have two important reserves. Firstly, Viet Nam committed no company form of 100% capital of branch for foreign services providers. The application for the establishment of 100% foreign-owned companies or branches of foreign advertising company in Viet Nam, therefore, maybe agency of Viet Nam refused , unless the Viet Nam's law more different stipulates. Second, although Viet Nam allowed partner joint venture and must be merchants business working in advertising service, unless Viet Nam's law stipulates more. The advertising venture will be entitled to treatment as the advertising business in Viet Nam.

In general, the law on advertising was consistent with current commitments of Viet Nam joining WTO. However, Viet Nam has not done notification obligations in this field.

3. Practical implementation on commercials advertising legislation

3.1. The attained achievements

After nearly 10 years of implementation of the Ordinance on Advertising and documents guiding the implementation of the results achieved, namely:

- Having established a framework of high legal, relatively uniform and unified promotion activities developed.

- The provisions of advertising law was relatively detailed provisions as a basis for acts on media advertising gradually into order, limiting the violations of law, contributing to ensure the rights for receiving advertisements.

- Details, full transparency about the rights and obligations of the participants in promotion activities legislation system has attracted a large number of Viet Nam's and abroad enterprises participated field advertising on the territory of Viet Nam , contributing to the development of promotion activities contribute effectively to economic growth - the country's society.

- Prove an effective tool of the state's management for agencies perform management tasks, monitor advertising activities in the country.

In general, advertising Ordinance is the highest legal text enacted at a very appropriate time and necessary in order to improve the effectiveness of state management of advertising at the time, while protecting the rights and legal interests of consumers, organizations and individuals in promotion activities, contributing to economic development - social. Since the promulgation of the Ordinance on advertising before 2001 Advertising Law 2012 comes into force, commodity markets , services and consumer needs of society as well as the number of organizations and individuals involved in business has dramatically increased and the market mechanism is being improved gradually. Advertising enactment replaced Advertisement Ordinance 2002 to create a legal framework for higher advertising activities to meet the needs of socio-economic development today.

Advertising Law tackles and solves most of the limitations of the Advertisement Ordinance, 2001, at the same time and complete additional regulations on advertising activities in accordance with the situation of economic, political, society of Viet Nam. Basically, Advertising Law has made a positive impact on the legal system, reform administrative procedures of Viet Nam, promoting the development of promotion activities and ensures the rights of the actors; create a complete, uniform in construction and execution of legal documents on promotion activities and the legal documents involved.

However, in order to manage operations effectively advertising under the regulations of the Advertising Law requires the application of the unified the state's management agencies at all levels with practical solutions to real- Advertising Law is a legal instrument most comprehensive adjustment promotion activities on the territory of Viet Nam.

3.2. Difficulties and shortcomings and causes

- Lack of regulations on responsible for electronic media the links page

According to provisions of the Press Law, electronic news organizations take responsibility for information contents on your report. As a result of information technology, electronic media can link with other newspapers across the link. Currently, Viet Nam has no law specifying responsible for the electronic media agency with contents on websites associated with its newspapers; Newspapers are only responsible for the contents on the website in registration.

- Lack of regulations advertising on social networking websites, email, blogs and SMS on mobile phones

Currently, according to the regulations, only the electronic media and electronic information in permission, therefore, personal blogs, social networking websites, email, mobile phone, etc related to promotion activities are beyond the state's control. Some websites from foreign server free advertising is not controlled by Viet Nam's law.

- Lack of regulations for type of search advertising

Along with the birth of Google search network, has emerged a new type of service that search advertising (search advertisement) next type of advertising display (display advertisement) familiar. Many electronic newspaper advertisement, websites are not placed in an area reserved for displaying ads per page when electronic readers hover over certain words in the articles, newsletters, disturbing readers. However, so far there is no legal text about advertising in Viet Nam there are adjusted rules the type of search advertising.

- Advertisement planning problem still have many shortcomings

As reported of the Ministry of Culture, Sports and Tourism, by the end of 2012, there are 33/63 provinces and cities to approve advertisement plan. The delay of the local may be due to leadership and advisory bodies have not paid adequate attention to plan. About objective reasons , we can see the advertisement planning to wait for slow because the overall planning of urban architecture of local , related to many sectors, many fields such as culture , construction , transport - the main resource - the environment ... and depending on the individual plan level administrative unit basis (communes, districts). Moreover, this plan must be built on the basic instructions of Ministry of Culture, Sports and Tourism, Ministry's guide criteria also change many times. In addition, with the continuous development of the municipality, the local supplement regularly and should be planned provincial city approved new legal value. Time for each adjustment for each advertisement planning extends from 4 to 5 years. With plans unstable and prone to such backward, authorities have licensed promotion duties often embarrassing, always remaining businesses in passive strategies, its own business plan.

Another limitation in advertising planning quality is often poor. First cause is the lack of experts, unprofessional. Many localities do perfunctory planning, forms, even districts should do lack uniformity. With the same position as supermarkets, railway stations, highways, even on the same highway that runs through many provinces, each province has its own rules about the size billboards advertising. Because there is no consensus among locals so every time the administrative boundaries of local changes, businesses must advertise services edit billboard, so very expensive and wasteful.

Many locals ignore consultation process residents, and businesses in advertising services when planning. The reference of the advertising planning in the region and in the world is in the process of planning at the advertising managers concerned. A few cases planning have approved outdated advertising, lacks vision and urban beauty.

Moreover, in some localities, advertising planning is not publicly leading to licensing makes emotional status "- grant" in licensing rampant advertising that does not have overcome.

- *False Advertising*

Although there are prohibit regulations for false advertising, but in reality there are many false advertising or not true, which causes misunderstanding, published, broadcasted widely through the media, have an effect on buyers and users of goods and spend much paper and ink discussing this matter in newspaper, for example recent case: Happy Shopping, but everything become amicable in the end.

Treatment measures, warn document, administrative fines is effective and obvious in the mechanism of sanctions violations; specifically all advertising manager (advertising product base) and media manager (broadcasters, newspapers) is stipulated under Press Law and censorship to ensure accuracy and truth of information posted on their medium.

- *"Polluted" advertisements*

The word "pollution" here is used to refer to the case of overlapping and dense advertisements that defy listeners, viewers, readers of the radio, the press and outdoor advertising units. Despite the restrictions on advertising time on radio and television, the page number quantity of advertisements in newspapers, magazines, regulations require that they must have signs to inform viewers, readers to distinguish informative advertise content with program content and newspaper articles, but there are many cases of journalists, broadcasters themselves arbitrarily ads in entertainment, between films, advertisements or posting articles like it is newspaper articles.

Advertisements pollution here also mentions to topsy-turvy turmoil of outdoor advertising in Viet Nam, every man for himself strong, all high wall they will paint if they have chance, districts freely collect fees, land of agencies that enlist for rent. Outdoor advertising is done not through any press or state management agency, so it's also lack uniformity and difficult to manage. Department of Culture only can manage a few management positions of political advocacy but they have not commented on outdoor advertising sites are also a potential source of revenue and as a media for effective commercials advertisement not only for propaganda. In order to effectively manage outdoor advertising, if the state wants to understand this medium as a means of propaganda, it should be given to the focal point of cultural department to build cultural attractions and outdoor advertising can do for rent for commerce. If this is considered as a kind of media that is not need state management being focal point, there must be planning outdoor advertising generally specifies the requirements for size, safe distance, ... to private sector investing and managing themselves.

Advertisements pollution here also talk about advertising for sensitive products that does not broadcast "right time", "right place" and it creates offensive to the viewer or negative impact on children. Children under 14 years old are object that is vulnerable and

most affected by advertising. Every sentence, every word, every letter, every picture they can be easily in mind, and can belong fluently repeated. Non-selective advertising language, not "standard" image ads can be misleading and mimics in children.

In developed countries, the state specified in the scheduled to broadcast television commercials, which programs are allowed to disconnect for advertising, which product types are permitted to be advertised every hour, which product types are only allowed to advertise after 9pm such as tampons advertising, condoms advertising, or promotion of HIV prevention. Which program with which content is forbidden to advertise shortly thereafter, the minimum duration of the program must be between the commercials, the maximum duration of the promotion period, etc.

- Advertising aimed at children

Currently there is no regulation on advertising targeted children. A lot of advertising is being developed on kids channels like Star TV that targeted children, inspire action through interactive forms on television as collectibles, answered questions to make business, games play in the film leads to difficulties for parents when children ask them to buy the fruit robo, the royal executioner mangosteen, yoyo or TOSY UFO with exorbitant prices, about several hundred thousand dong and frustrated when purchasing because they cannot work as advertising.

European Community have regulations that required ad targeting children not to abuse the lack of practical experience of the children, so the ads that aimed at children are not allowed to used images of child actors have influence in purchase decision of children to advertise products, as well as ads that make children mislead the use of games may be more common functions of special toys and must state the selling price for expensive toys.

- Disagreements in law on advertising:

Commercial Law prohibits advertisements for goods and services trading restrictions; while Ads law only prohibits advertising of goods and services which are banned from business, and the restrictions business items is limited banned.

There are no regulations banning beer advertising now, while negative effects of beers is also no less than alcohol. Decree No. 59/2006/ND-CP beer is also not listed beer as Prohibited products / restricted products / conditioned business products.

- The overlap in the legislation:

Clauses 9 and 10 of Article 8 of the Law on Advertising rules prohibited acts (improper advertising or misleading advertising and ads by direct comparison). These are behavioral advertising to unfair competition based on provisions of Article 45 Competition Act 2004. Meanwhile, Clause 12, Article 8 of the Law on Advertising for banned ads "Advertisements have unfair competition content under the provisions of competition law". Thus, the content of Article 8, Clause 12 Advertising Law implies the contents of paragraph 9 and paragraph 10 of this Article. Technically presenting the text, such regulation is not reasonable.

II. Experience in some countries on commercial advertising laws and lessons learned for Viet Nam

1. Experience in some countries on commercial advertising laws

1.1 . *The concept of advertising*

1.1.1. Law of the Russian Federation on advertising

Advertising is the dissemination of information about a person or legal entity, goods, ideas or projects (advertising information) in any way with the help of any public media, targeting to a limited group of people and to establish or support care for those persons, legal persons, goods, ideas or above project and promote that sale of goods, ideas and projects.

1.1.2. Federal Regulations of the United States

- Advertising is a promotion activity that is used as a marketing function in order to communicate persuasive information from identified advertising renter to an identified listener/ audience.

- Advertising is a instinctive combination of persuasive factor sand encourages controlled by advertisers through his communication with a product, service or idea, to a consumer or customer sin the future thata clear, concise and understandable message convey.

1.1.3. Chinese Advertising Law

- The term "advertising" is used in this Law refers to the commercial advertising that is paid by manufacturers or goods sellers or services providers and by that ads as well as this person, through the medias or certain forms, directly or indirectly introduce their goods for sale or services offered.

- The term "advertiser" is used in the Act refers to the legal entity, other economic organizations or individuals design themselves or hire someone else to do this, manufacture and distribute advertising, aimed at promoting sales or service providers.

- The term "advertising agency" is used in the Act refers to the legal entity, other economic organizations or individuals who are hired to provide designed services and produce advertising and agency services.

- The term "advertising issuer" is used in the Act refers to the legal entity or other economic organizations to issue advertisement for the advertiser or advertising agency that is hired by advertisers.

1.2. *The prohibited acts*

1.2.1. Chinese advertising Acts

- An advertisement must not contain any false information, and does not mislead or confuse to consumers.

- An advertisement must not use or implement the following:

+ Using the national flag, national emblem or national anthem of the People's Republic of China;

- + Use the name of the State agency or official soft these agencies;
- + Using terms such as "state-level", "highest rank" or "best";
- + Hindering social stability or threaten the safety of persons or property, or harm to the public interest;
- + Obstructing public or deror violate social ethics;
- + Contains pornography information, superstition, terrorism, violence, or offensive;
- + Contains discriminative information on ethnic, racial, religious or gender;
- + Obstructing the protection of the environment or natural resources;
- + The other cases are prohibited by law or the rules and administrative management regulations;
- An advertisement must not reduce the value of the goods from other manufacturers or other goods sellers or services of other providers.
- An pharmaceutical products and medical equipment, instruments advertising must not include the following:
 - + These affirmations or ensure effectiveness which have no scientific basis;
 - + Indications of treatment or effectiveness rate;
 - + A comparison of the efficacy and safety to other pharmaceuticals, devices and medical equipment;
 - + Use the name or image of medical research organizations, educational institutions, health care organizations or of an expert, a doctor or a patient with evidence;
 - + The other information is prohibited by law or rules and administrative management regulations.
- The special pharmaceutical products as drugs, sedative substances, poisons and radio active drugs are not allowed to advertise.
 - An advertisement of agricultural pesticides must not contain the following:
 - + The absolute assertion about the safety of these drugs, such as non-toxic or harmless;
 - + The absolute assertion or guarantee which do not scientifically confirm about the effectiveness of the drug;
 - + Spoken languages or written languages or pictures that violate the rules of safe use of agricultural pesticides;
 - + The other information is prohibited by law or the rules and administrative regulations.
 - Banning the dissemination of advertising on tobacco using radio, films, television programs, newspaper or periodically published magazine. Be prohibited to advertise tobacco in any waiting room, cinema, theater, hall, stadium and gym or any other similar public location.
 - Advertising of food, alcoholic beverages or cosmetics must meet the requirements of public health and not use jargon or medical terms it is capable of causing confusion these products are pharmaceutical products.

1.2.2. Russian Federal Law on Advertising

An advertisement is not authentic if it contains the information which does not correspond to reality involves the following:

- Using terminology at highest level of comparison, including the use of words like "most", "only one", "best", "absolute", "unique" and similar words, if it cannot confirm by document.
- Compare to goods (other commodities) and the rules and regulations of other legal person or entity.
- Reference to any warranty forms of advertised goods for consumers.

1.2.3. Federal Law and Regulations rules of the Federal Trade Council (United State)

Prohibit advertising flag of the United States of America in the ad.

1.2.4. Malaysian Law of enforcing advertising

- Advertising must not misuse religion.
- Advertising must not contain anything which could lead to or support the actions leading to violence, anti-social behavior, and must eliminate such behavior.
- Ads must not contain or lead to criminal acts, illegal or reckless actions, and must eliminate such behavior.
- The exaggeration intended to attract the attention of customers or entertainment maybe accepted as long as there is not tendency to become too super natural images.

- Advertising is not misuse research results or quotations that come from false science or scientific terms. The statistics are not implying that they are more than the actual value. The scientific term is not used for improper purposes, and the scientific jargon and inappropriate words not be used to avoid any questions that may occur ...

- Products should not be described as "gratuitous" if there is any cost to the client, except the real value for distribution, or transportation charges. As such the costs are paid by the customers, there will be a clear information that this will be reflected in advertising.

1.3. State Administration

1.3.1. Thailand Advertising Laws

Currently Thailand has three agencies involved in the management of state about advertising, including:

- The feed management agency, human drugs, and pharmaceutical products under Ministry of Health: This agency has functions to censor and license for releasing advertisements for goods and services in the medical field.

- The Government consumer protection agency: have function in collaboration with feed management agency, human drugs, and pharmaceutical products under the Ministry of Health to develop legislation on advertising in health sector through the National Assembly. In addition to building legislation, this agency also has the function of monitoring activities across all advertising media and handle violations of advertising.

- Public relations Agency of the Government: due to specific of promotion activities focused on radio and television; on the other hand, advertising medium has a great influence on the scope of social life, so the Government established this agency to implement the law making function of advertising on radio and television to the National Assembly pass, and perform oversight functions of advertising activities on this media.

1.3.2. Japan Advertising Laws

In Japan, State management agencies for advertising are Ministry of Economy, Ministry of Trade and Industry; People's Committees manage and license for advertising in local.

1.3.3. Chinese Advertising Laws

The administrative authority for industry and commerce of the people's government at the county level or above the county level is the administrative authority and supervision of the ad.

1.3.4. Law of the Russian Federation on advertising

There are federal Antimonopoly agencies for state management in the field of advertising and self-regulatory bodies in the field of advertising.

1.3.5. Singapore promotion activities Law

State management agency on advertisement in Singapore is the Singapore Association of the consumer.

1.4. Outdoor Advertising

1.4.1. Malaysian laws on Advertising enforcement

- The posters or billboards (except the advertising sponsored by the Government or other recognized agencies) are prohibited if the posters and billboards that:

- + Description of murder scenes, terrorism scene, horror or violent acts;
- + To be considered as destructive moral, or may be held to mitigate crime or incite crime;
- + Description of or talk about indecency, pornography, nudity or a striptease;
- + Possibly, through the mundane, is a design or may bediscredit to offend passersby.

1.4.2. Law of the Russian Federation on advertising

- The dissemination of advertising in urban residential compound and rural areas and other areas that can be implemented in the form of posters, brackets, lighting marine and technical methods to arrange other fixed ads (outdoor advertising) according to the prescribed procedure.

The outdoor advertising must not have similar characteristics as road signs, must not obstruct vision and these direction and not adversely affect to traffic safety.

- The popularity of outdoor advertising in urban residential compound and rural areas and in other areas which is allowed depending on obtaining the consent of the appropriately local authorities and the agreement with:

+ For the land which was to clearly define the boundaries and areas along highways outside of urban residential compound and rural areas, the appropriate agencies for highway and State inspector subdivision about vehicles of Interior federal law enforcement agencies;

+ For urban residential quarters and rural areas: State inspection subdivisions on vehicles of Interior federal law enforcement agencies;

+ For the railway land that was demarcated: the appropriate agency that manages railway.

Payment for the popular licensing of outdoor advertising after considering the above requirements must be made by appropriately local authorities with the consent of the appropriate authority as indicated above. Payment amount must not exceed the incurred cost due to the implementation of the popularly licensed outdoor advertising, determine ad placement and control conditions for outdoor advertising and digital medias for the stably generalize these ads.

- Dissemination of outdoor advertising through installation on an area (including the area of cultural monuments, religious objects and the conservation of natural areas), the buildings, the facilities or other objects and determine the amount and payment procedures to perform to popular ads that have to make on the basis of agreement with the property owner or the person have authority to owner that property, if having no other provisions of law or other agreement with the person entitled to the property owner and be due to permission as prescribed in the preceding paragraph.

1.5. Advertising in theaters

Advertising Regulation in Philippines: alcohol and tobacco ads must not be placed in the cinema that audience is mostly or all children.

1.6. Advertising on radio and television programs

1.6.1. Law of the Russian Federation on advertising

- The below radio and television programs that advertisements must not break in:

+ Programs for children and religious programs

+ No more than every 15 minutes and no more than 45 seconds in the educational program.

+ Do not have the consent of the copyright holder for radio plays and films.

+ The direct programs, according to the list developed by the Federal Law about "procedure for reporting activities of state agencies on state public media".

+ Any program that time limit is less than 15 minutes.

- + More than two times in any program with amount of time from 15 to 60 minutes.
- When using advertising as additional program on-screen, including a form of "chain motion", the size of such advertisements must not exceed 7% of the frame area.
- Dissemination of advertising for the same goods and similarly, the popularity of an ad for an advertiser shall not be played more than two times, for a total period not exceeding 2 minutes in each hour broadcast on a radio program broadcast or on television on a transmission frequency.
- Ads must not exceed 25% of the broadcast of each 24-hour period on radio and television programs that are not registered as specializing in information and document programs.

1.6.2. Advertising Law in Poland

- Advertisement must not last more than 15% of daily broadcasting time and over 12 minutes per hour.
- Prohibit advertisements in movie time more than once for each 45-minute film.
- Prohibit interrupt other programs but movies and sporting events more than once per 20-minute program (for radio is no more than once every 10-minute program).
- Prohibit interrupting (for advertising purposes) some certain auditioned programs, for example, information program or audition for children.
- Prohibit using voice or appearance of the presenter of information program or programs for children that is earlier than 3 months before the ad aired.
- Prohibit direct advertising that encourages minors to buy products or services or to force their parents or others to purchase the product or service being advertised.
- Prohibit advertisements that abuse the trust of minors to their parents, teachers or others;
- Prohibit advertisements that show minors in dangerous situations irrationally;
- Prohibit unspoken advertisements that impact on subconscious (known as the subconscious advertising) or unspoken ad;
- Prohibit advertisements that infringe human dignity, discrimination, including advertising jeopardize to the development of physical, mental and moral of minors.

1.7. Advertise on periodical publications

Law of the Russian Federation on advertising: Ads must not exceed 40% of the capacity of periodical publications that do not specialize in providing advertised information and document.

1.8. Advertising in cinema, video and information services

Law of the Russian Federation on advertising:

- Interrupting movie byads, except during breaks between sections, infilm and video services that is not allowed.

- Advertising can be performed in the information service over the phone, but only after providing information that telephone subscribers have requested.

- Advertising can be performed in the pay phones information services, computers and other services only with the consent of the subscriber. The cost of such advertising is not included in the cost of subscriber information request.

1.9. Advertising on transport means and postal services

Law of the Russian Federation on advertising:

- Dissemination of ads on the transport means must be performed on the basis of agreements with owners of transport means or person who haveproperty rights to the transport means, if the law or the agreement does not have other provisions relating to the ownership of such assets.

The limited or prohibit advertisingcase on the popular transport means for the purpose of ensuring traffic safety must be determined by the competent agencies on controlled transportation safety.

- Dissemination of ads on postal service can only be performed when federal law enforcement agencies which have jurisdiction on matters of postal communications permit. The licensing procedures and corresponding payments must be performed by the designated agencies. Such payments must not exceed the cost of advertising popular licensing. The whole performed payment is moved to the federal budget.

1.10. Advertising on various commodities

Law of the Russian Federation on advertising:

- Advertising for alcoholic beverages, cigarettes and tobacco products are popular in any manner must not:

+ Containing illustration of the process of smoking or usingalcoholic beverages and must not create the impression that the use of alcohol or cigarette have significant importance to achieve personal success, collective success or social, or enhance physical or mental health.

+ Lowering the meaning of limiting alcohol use or smoking, contain any information on positive healing properties of alcohol, cigarettes or tobacco products or express high levels of the nature of the commodities that are commendable.

+Directly invite minor source images of persons under 35 years old, or use the idea or involvement of influential people among adolescents and young people under 21 years old.

+ Being popularized under any forms of radio or television programs, the cinema or video services or printed publications for minors.

+ Being popularized on the first or last page of a newspaper or on the first or last page or the cover of a magazine.

+ Being popularized at organizations for children, education, health, sport or culture, or within the range of 100m of these organizations.

- Pharmaceutical products ads and advertising for the product is intended to cure or medical technology must not be allowed to produce or sell, and cure, prevention, diagnosis, and recovery advertisement are not permitted to provide such services, which is not by federal law enforcement agencies in the health sector is not allowed to perform, including cases that has received a patent for an invention, patents in this field.

Pharmaceutical products advertising prescribed by a doctor and advertising for the product that is intended to cure and medical technology that the user should have the guidance of experts, are allowed to perform on the basis of considering the requirements that are specified in the first paragraph of this clause, but only in the publications for health professionals and pharmaceutical.

- Advertising for all weapons, armed vehicles and military technology are not allowed, except advertising for war weapons, armed vehicles and military technology that are mentioned on the list of military products that the import and export of these products be performed in the Russian Federation in accordance with a license, as well as ads for civilian weapons, including weapons for hunting and sports.

Ads for weapons, armed vehicles and military technology for civilian purposes on the list of military products that the import and export of these products be performed in the Russian Federation in accordance with a license, not done if this ad directly or indirectly disclose the production technology or military method and special applications of these weapons, armed vehicles or military technology.

1.11. Checking and handling violations of promotion activities

The inspecting, handling of violations on advertising in Japan follow the principle: which agency detects violation first, handles violations; a violation on advertising media by which the agency manages is handled by that agency.

2. Laws in some countries compared to laws of Viet Nam

2.1. Similarities

- The laws in other countries and the law of Viet Nam generally perceived ads as a promotion activity to introduce and promote the sale of goods, products and services through various advertising mediums.

- Laws all define the general prohibitions, restrictions relating to the quality, accountability, sanctions for violations of prohibitions, restrictions and reserves the right to

decide, adjust the regulations relating to the public media that have a big impact on the community as radio, television and newspapers.

- For special goods and services, have the ability to affect health, human life, laws all specified the conditions to be advertised, as a basis for ensuring that advertising will not infringe upon the social relations those are protected by law.

2.2. Differences

- Advertising laws in all countries list comprehensive and specific acts that are prohibited in promotion activities. In which, there are some behaviors that Viet Nam's Advertising Law is not specified as: Obstructing the protection of the environment or natural resources; Use the name of State agencies or officials of these agencies (China); Products should not be described as "gratuitous" if there is any cost to the clients, except the real value for distribution, or transportation charges. As such the cost paid by the customer, there will be clear information that this will be reflected in advertising (Malaysia).

- Most countries stipulate giving state management competent about advertising for state administration on the economy, industry and trade ministry level, due to specific perspective of marketing activities that aimed at economic profitability. This is different from the Advertising Law of Viet Nam while Viet Nam assigned it to the Ministry of Culture, Sports and Tourism's agency.

- In the United States, the State management agency have responsible for monitoring, testing, implementing effective evaluation of the regulations governing advertising by a professional consultant hired by state management agencies to be independent edit and resolve daily disputes in promotion activities. This consulting unit is completely independent of the state management agencies and completely independent of the enterprise involved or activity in advertising sector that have responsible for synthesis, specifying ethical standards relating to advertising of the relevant laws such as the Law on Commerce, consumer Protection Law, advertising Law, Information Law, Competition Law,... In Viet Nam, there is no equivalent organization as NARB of U.S that only has Viet Nam Advertising Association - VAA. Please note that such organizations as NARB are independent of the state management agencies as well as entirely independent of the advertising industry, is responsible for ensuring that all promotion activities are carried out in accordance with the provisions advertising standards specified in the laws, the relevant document under laws. In other words, these organizations have responsible as Economic arbitrators but specializing in activities and regulation related to content advertising, forms of advertising and perception influence.

3. Lesson learned for Viet Nam

3.1. About content adjustment

Viet Nam's Advertising laws should recognize advertising activity is a trade or economic means for the purpose of operating profitability. It is no coincidence that the laws

of all countries and experienced referencing have such a concept. It comes from the process of scientific research and legislative history that is consistent with economic reality. This recognition will play role to adjust oriented content, management mechanism and especially is management competence.

Viet Nam's Advertising laws should additionally specify some prohibited behaviors in advertising (as defined in Section 2.2 above) to further improve the properties for preventing illegal intrusion to interests, people's living environment as well as the sanctuary of the public authorities. The prohibited acts should be specified in the legal documents for handling violations in promotion activities with corresponding penalties, ensuring sanctions and deterrence.

Advertising laws need to concern and spend special attention to promotion activities on radio, television, electronic equipment due to the enormous and profound impact to receiving ability and make behavioral decisions in buying and selling goods and services of consumers. The statistics show that advertising revenue via these means is major in the total revenue of the entire advertising industry.

3.2. Management Mechanisms

For advertising "special" goods, products and services, instead of specifying more regulation of administrative procedures that can be troublesome, costly in terms of time, effort, money, laws should learn experience from other countries through only prescribe specific conditions, clearly advertising content (including prohibited or limited acts) in advertising legal documents; transferred from "pre- control" to "post-control". By extension, reasonable reducing the administrative procedures should be done in a comprehensive way in all promotion activities.

3.3. Management competence

Basing on experience of the advertising laws of some countries that mentioned above, the lesson that Viet Nam can learn from some countries in the British- U.S legal system in management competence regulation for ads activities such as:

Firstly, the competent authority chaired the ad management activities are specialized economy agencies such as the Japan Ministry of Economic and Industry and Trade or agencies that are responsible for trade as the Federal Trade Commission - FTC of the United States. This is the agency which is responsible for drafting regulations on advertising activities while implementing monitoring promotion activities. In Viet Nam, it can be entrusted to the Ministry of Information and Communications or the Ministry of Industry and Trade shall which are responsible before the Government for performing the state management of advertising activities. However, under the provisions of Clause 2, Article 5 of the Law on Advertising in 2012, the agency that is responsible before Government for implementing management advertising activities is Ministry of Culture, Sports and Tourism. Currently, the Ministry of Information and Communications is responsible for the state advertising information management but the Ministry of Culture, Sports and Tourism is focal

agency which builds the legal text of ads. It is possible to see that such regulation is not reasonable. Besides, currently about 80% market share of advertising is done through public media such as print media, radio system, TV, internet, media broadcasting, publications, ...¹ managed by the Ministry of Information and Communications.

In addition, advertising activities management must come from two core problems of promotion activities such as "advertising content" and "advertising medium", if it derived from management requirements "advertising content", the agency which is in charge of advertising activities management is the Ministry of Industry and Trade but if it derived from management requirements "advertising medium", the lead agency which manages advertising activities is the Ministry of Information and Communication. However, if comparing the complexity in controlling of advertising content and advertising medium, advertising content can proactively control before advertising product is released, through registration or licensing procedure. Because of these above reasons, Viet Nam law should regulate the competent authority that chaired the ad activities management is the Ministry of Industry and Trade.

Second, strengthen management, monitoring mechanism of Viet Nam Advertising Association - VAA (Viet Nam Advertising Association) in order to reduce the burden and responsibility for management of state agencies for promotion activities. Globally, most countries have established advertising associations and federations, such as the Association of TV advertising - 4A, United States advertising monitoring agency—AAF in US; Advertising AssociationEAAA (European Association of Advertising Agencies) in Europe; World Advertising Association IAA (International Advertising Association), etc. These associations and federations will consult, ask members to strictly follow the laws on advertising, while implementing the monitoring programs of members' advertising. Through self-monitoring mechanisms, these associations and unions have positive contribution to advertising management. Particularly, the case of Singapore, the Government assign competent to Singapore Association of Consumer being state management agencies for advertising. In Viet Nam, although VAA was established in 2001 but so far the members of the VAA are still limited. Therefore, VAA can not promote all of their performance. So, VAA expanding the number of members as well as enhancing self-monitoring mechanism is essential.

Third, the establishment of an agency which is specialized in handling complaints as Advertising Standards Authority ASA (Advertising Standards Authority) in the UK, National advertising verification agencies NARB in American. This is an independently judicial agency rather than state power agency that carry out judicial functions. Any recommendations or rulings of these bodies often do not enforce the parties but they are very respectful. We can see the performance of this agency through the figures show the number of cases that this agency had resolved. Viet Nam managers should also consult and build such an agency, thereby helping to reduce the burden of responsibility for the state competent authorities.

III. Conclusions and recommendations for improvement of commercial advertising law

1. Conclusion

Competition is the key issue of enterprises in the economic market. In that contest, all enterprises use all solutions to find, to promote sales opportunities and provide services such as: propaganda, introduction and promotion of goods and services, organizing discounts for sales, distribution of gifts, etc. These activities are called trade promotion and it is inevitable process that business must be conducted to meet competing demands. In trade promotion activities, commercial advertising is one of the most popular activities today with accelerating growth. Recognizing the importance of this activity, our State tried to perfect the legal system of commercial advertising. The formulation and promulgation of the Law on Advertising in current period is suitable with the strategic goals and complete of the legal system in Viet Nam to 2010 and orientations to 2020 under Resolution No. 48 - NQ/TW May 24, 2005 of the Political Bureau: *"Develop and complete synchronous, consistent, feasible, public, transparent legal system... radically innovate building mechanisms and implementing legislation; promote the role and effect of law to contribute to social management, etc."* and also consistent with the development of promotion activity in the economical market, opening, integration to serve the industrialization and modernization of the country. Besides these achievements, the legal system of commercials ads still exist many problems that brings difficulties for the implementation of the enterprise as well as the management of the State.

2. Recommendations for improving the law

2.1. Unify and strengthen organizational apparatus of state management on advertising

- At the central level:

When Advertising Law 2012 was adopted, the Ministry of Culture, Sports and Tourism has been identified as the competent authority which have responsible for managing state on advertising. The selection of the Ministry of Culture, Sports and Tourism is the agency that has responsible for management will create difficulties in coordination mechanisms, effective implementation of state management in the field of advertising. Advertising activities are complex, involving many activities of specialized ministries. However, currently the issues that related to advertising activities only stop at the Chamber (Chamber of Advertising and Propaganda under Department of Culture basis - Ministry of Culture, Sports and Tourism). Therefore, when performing functions in coordination with concerned ministries, it has many limitations. At the present time, in the context of newly Advertising Law was enacted in 2012 and took effect in 2013, the establishment of a Department-level units (e.g. Advertising Bureau) specializes in advertising is needed in coordinated organizing and play key role of the Ministry clue. Issues handling in advertising activities require that specialized agencies must have their own seals and accounts at the State Treasury. In the long run, recognition of advertising activity is a commercial activity for the purpose of profit, which decided to competent state management unified, focus is a

requirement of the management practices. Instead of identifying the promotion activities is a complex activity with the aspects of culture, advertising media, advertising content, etc. The State should focus on management-oriented "advertising content". Such an orientation management like that inevitably leads to positive outcomes is to minimize the administrative procedures without compromising the purpose of advertising. Besides, experience from other countries in the establishment of an independent body that have function to handle complaints or disputes in promotion activities should also be cared and researched.

- At the local level:

Need to strengthening organizations by increasing manpower to state management department of advertising, arranging specialized staffs that have professional qualifications. Besides, one door department should be added, completed the facilities, staff ensure that the licensing for advertising one door; focus on the role of state management at district-level, especially for big cities that have broad administrative boundaries and developing promotion activities.

2.2. Solutions related to administrative procedures in promotion activities

Reform Programme in Administration in the 2011-2020 period, one of important goals: Cut down and improve the quality of administrative procedures in all areas of state management, especially administrative procedures relating to people and businesses. Simplifying administrative procedures, especially in the field of advertising is necessary in the context of business and people "complain" a lot about administrative procedures related to the field of advertising. In that spirit, Advertising Law 2012 had many changes when previously pre-test to post-test of administrative procedures. Advertising law was repealed receipts advertising profile (or ad content registration procedures) for goods and services in the field of health, agriculture and rural development; supplement license replaced with notification procedures for state management agency of the press; Abolish licenses for advertising on billboards, banners replaced by the notification procedure for promotion products to the state management agency prior to performing advertisement. In order to continue the program of administrative reform in the advertising sector, should implement the following measures:

- Minimizing the promulgation of "small licenses" in the field of advertising. Advertising Law 2012 is built on the spirit of "reform", "untie" for businesses and individual in society. However, if agencies issued guidelines which put more conditions in the administrative procedures for the promotion activities, effect is footling, would like to "take off the top, belt the bottom". The government must strictly control the administrative procedures on the basis of Decree No. 63/2010/ND-CP June 8, 2010 of the Government on administrative procedures controlling.

- Design "standard" procedures process that take into account the link between the involved agencies when licensing: In order to be advertised on independent billboards or attached to buildings, enterprises have to undergo step: Department of Natural Resources

and Environment (position hire contract, residential, farm land, or home (red book, notaries, ...)); Department of Construction (building structure evaluation); Department of Planning and Architecture (design and planning evaluation); Department of Transport and Public Works (considering the influence of public transport or in median strips); Department of Culture, Sports and Tourism. With these complex procedures, enterprises do not know what procedure need to do first, what procedure need to do later, to be "fumbling". Department of Culture, Sports and Tourism in local should be exemplary implementation under this form. Ministry of Culture, Sports and Tourism pilot one door mechanism (learning experience of the Ministry of Planning and Investment to perform registration "one door") at some locals that promotion activities usually take place.

2.3. Accelerate to formulate and plan ads

Currently, mayhem and loss of urban beauty for advertising on billboards, posters and outdoors advertising vehicles is a matter that agency need to concern, especially in big cities like Hanoi, Ho Chi Minh City. Recently, although the Prime Minister has the direction, the Ministry of Culture, Sports and Tourism has deployment guidance to formulate planning outdoor advertising, however the results are not so good, Committee in some provinces is not interested in directing and funding to implement to formulate planning; some Departments of Culture, Sports and Tourism have not actively implemented yet, so it has led to the construction progress of the plan is very slow. The problem now is to find solutions to overcome difficulties and continue to implement and complete advertising plan. For provinces that have already completed advertising plan, due to the rapid development of urbanization, it must continue to timely supplement to avoid advertising plan is not suitable with the development of urban and strong growth of outdoor advertising. Advertising Law has provisions on advertising plan and responsibilities of the various levels and branches about this issue.

2.4. Strengthen inspection, testing and handling of violations

In order to promptly remedy the existing problems in the inspection, testing and handling of violations in promotion activities, especially the policy to strengthen the post-test, in the next time the Department of Culture, Sports and Tourism need to set out the key tasks to effectively implement inspection, testing and handling of violations. These tasks should be focused as: implementing manpower and facilities for the Inspectors of Department of Culture, Sports and Tourism; strengthen coordination between Inspectors of the Ministry of Culture, Sports and Tourism with Inspectors of ministries; between the Inspectors of the Ministry and Inspectors of Department of Culture, Sports and Tourism; between the Inspectors of Department of Culture, Sports and Tourism with the relevant departments in local to organize regular inspections. Through these inspections, tests that must have results, if it exists any violations must be handled strictly and promptly. Besides, for some new offense arising without any sanctions, they need timely additional to effectively apply in the inspection, testing and handling of violations.

2.5. Enhancing dissemination of advertising law

Currently, the social awareness of the role of advertising has been uneven, inconsistent. For the state management agency, in this place or anywhere else, it is still expressed to concern about the advertising content, so existing too tight management method, leading to restricting the development of normal operation of advertising. There are some places that disregard promotion activities due to lack of manpower, lack of management knowledge, advertising developing is not timely implemented causing to cluttered ads, which leads to bad affect for urban landscape and environmental landscape. For organizations and individuals who involved in promotion activities, lack of understanding of ads law or know but because of economic benefits, there have so many violations of the provisions.

Changing the social perception, raising awareness to observe law is a long-term job that is regularly and constantly perform. Therefore, the dissemination and propagation of the provisions of advertising law plays a very important role in changing social perception about the role of advertising, the requirements for the advertising content, advertising form; truthfulness and transparency of advertising. The provisions of law have been popular and propaganda to organizations and individuals who take part in promotion activities.

2.6. Enhance and promote the role of associations: the Viet Nam Advertising Association (VAA), Viet Nam Consumer Protection Association (VINATAS)

The results that were achieved by the Viet Nam Advertising Association in recent year had confirmed the role and position of this organization for the state management issue and operation of advertising business. However, in the coming years, Viet Nam Advertising Association should strongly promote their role in protecting the legitimate rights and interests of the advertising business; representative in the proposals, petition and join with the state management agency in the process of policy and legislation formulation in the field of advertising; performing tasks to popular guidelines, policies and laws of the State to all members; support and help advertising businesses in the development process of rising competition with the business of foreign elements, particularly it should pay attention to establishment and consolidation of organizational structure, facilities of advertising training Institute, implementing programs between the local Department of Culture and Viet Nam Advertising Association.

Viet Nam Consumer Protection Association have 25 years tradition, however, has not really operate effectively even when the Law on Consumers Protection 2010 takes effect. The advertising product may contain content that affect legitimate rights and interests of consumers. VINATAS should be developed as an intelligent shield, to protect consumers before the inaccurate information about descriptions of goods, products and services; sue businesses using advertising that have bad affect to consumers; popular to consumers the basic safeguard behavior for advertising violations./.