In the current business world with a large variety of goods and services, advertising is becoming one of the most important instruments of existing and potential customers' and visitors' information, awareness and interest in the cause of persuasion. The company marketing depends primarily on different types of advertisements to enforce that their products are better or more sufficient than the competitors. Recently, the advertising grows over business economic interests – in advertising concepts are intertwined economics, sociology, psychology and aesthetics issues. For this reason, advertising interpretation is a complex problem because each person perceives the information in their own way, and the information itself is never completely objective. It is very important that advertising unfairness factor would always stay below a principle of justice. Advertisers, by submitting misleading advertising, which affects consumers’ decisions, try unfairly convince consumers to believe in advertisers’ ideas, and thus affect the other person’s ability to compete. By impact of misleading advertising consumers end up purchasing items at a higher price or at a lesser quality than they had intended. User’s interests are violated, while trying to suggest that the product or service has unique features - in this case the user gets manipulated to promote himself to accept disadvantageous decisions. In certain scenarios, misleading advertising may occur in order to boost an individual’s status as is the case with political advertising. Misleading advertising can occur in order to boost membership for instance through sporting clubs or church donations. As advertising has the potential to persuade people into commercial transactions that they might otherwise avoid, many governments around the world use regulations to control false, deceptive or misleading advertising. “Truth” refers to essentially the same concept, that customers have the right to know what they are buying. False advertising, in the most blatant of contexts, is illegal in most countries. However, advertisers still find ways to deceive consumers in ways that are legal, or technically illegal but unenforceable. Because of that reason, deep attention in the EU is paid for legal regulation of advertising in order to protect consumer rights, and not to damage their economic interests. It is prohibit for economic subjects to perform any acts contrary to fair business practices and good management of customs affairs, including the use of advertising, which in accordance with EU regulations and the laws of the Republic of Lithuania are considered misleading. EU tries to approximate the laws of the Member States on unfair commercial practices, including unfair advertising, which directly harm consumers’ economic interests and thereby indirectly harm the economic interests of legitimate competitors. EU tries to protect people from actions or omissions which by deceiving the consumer prevent him from making an informed and thus efficient choice.

The article analyzes misleading advertising impact on the consumers’ decisions, with regard to consumer protection regulation in the EU and Lithuania within the framework of misleading advertising.

Keywords: interpretation of misleading advertising, misleading advertising impact on consumers’ decisions, the regulation of misleading advertising, consumer protection.

Introduction

Researchers of advertising and marketing (Armstrong, G., 2003; Briggs, S., 2001; Burnet, J., 2003; Curran, C., 2002; Moriarty, S., 2003; Kotler, Ph., 2003; Richards, J., 2002; Saunders, J., 2003; Wells, S. 2002; Wong, V., 2003; Bakanauskas, A., 2004; Čereška, B., 2004; Janulienė, I., 2006; Jokubauskas, D., 2003; Mažėkaitė, R., 2001; Vveinhard, J., 2006; and others), defining specialties of advertising distinguish the fact that advertising is a way of information sharing, determined to affect the decisions of potential buyers. A variety of instruments are being invoked for this aim. Though, it is not always being legal or legit to consumers, instruments has to be regulated according to the mislead aspect. It is needed to consider if advertising includes false information or affects customer behaviour in unacceptable way. Although advertisement itself is neither good, neither bad – it is just a gadget to aim the goal, however, the affect on the consumer may be and usually is harmful. Due to this reason in the European Union a lot of attention is put on the consumer right protection policy, related to misleading advertising. Under European Commission request a variety of researches are carried on annually which are determined to identify the consumer safety level in the frame of misleading.
advertising. Practise shows that even in an effective market economy there are misleading market prac\-tise – inadequate information about goods and services. In modern times advertisers are looking for ways to penetrate into the consciousness of consumers and get them to do actions related with the acquisition of advertised products. Advertisers, by giving false information and by trying fraudulent affect the consumer, violate the efficient functioning of the market. They are reducing rivals opportunities to reach consumers. Legal regulation of advertising is very important because recently advertising often teetering on the threshold of legality.

The European Commission’s Policy for Consumers’ 2007-2013 strategy seeks to strengthen consumer protection and to this aim in the Community as one of the priorities is highlighted informed and educated consumer. Such consumers should promote competition and thereby economic growth, so they need a clear market, accurate information and confidence in promotional communication.

Considering above mentioned aspects the article solves the scientific problem: How to compare the problems of misleading advertising identified in the theory and established in practice? What is the theoretical regulation and institutional background of the protection of consumer rights in relation to misleading advertising in Lithuania?

Solution of the scientific problem would enable to provide the comprehensive, theoretical suggestions for the consumer protection in the field of misleading advertising in the state level.

Therefore the research problem being solved in this article is directly correlated with the influence of misleading advertising on consumers’ behaviours.

The object of the article is the influence of advertising on consumers. The aim of the article is to identify legal regulation of misleading advertising from the position of consumers and to detalize consumer protection institutional background in Lithuania.

The aim is achieved by analyzing legal and political data, articles, documents, addressed the misleading advertising impact on market information system and consumer rights, as well as studying the scientific literature. To achieve this aim four tasks are to be solved:

- to systemise misleading advertising occurrence characteristics in modern society;
- to highlight theoretical links between misleading advertising and consumers’ decisions;
- to analyze misleading advertising legal regulation in EU and to detalize consumer protection institutional background in Lithuania;
- to represent the results of the empirical research, identifying misleading advertising impact on Lithuanian consumers’ decisions.

Comparative analysis of scientific literature and online sources used to systematize the concepts of misleading advertising and its impact on consumers. Document analysis and synthesis is used to analyze the EU and Lithuanian legislation, which defines misleading advertising and consumer protection regulation.

Scientific originality and practical significance of the article:

There is studied expression of misleading advertising and its impact on consumer decisions. Is analyzed the European Union’s rules which is regulating misleading advertising and protecting consumers’ rights’ abuses in this area. Moreover, it is provided the importance of the implementation of the regulations in national law, in this case in Lithuanian. There are highlighted the most common misleading situations, as well as provided methods for ensuring consumer protection against misleading advertising. Also, is presented recommendations on how to improve consumer protection field in relation to misleading advertising.

Misleading advertising occurrence characteristics in modern society

Advertising, as a certain source of information, helps to shape the interests, customs, attitudes, prejudices, to overcome mistakes and superstitious beliefs, serves the cultural, political, moral and aesthetic education of the people. A. Vaišvilienė (2008) highlighted that by examining advertising concepts, proposed from the first definitions to these days, it was noted that there is lack of precision in distinguishing advertising from other forms of commercial activity. J. I. Richards and C. M. Curran (2002) notes that the advertising and marketing literature lack analysis to determine the distinctive elements of advertising. This creates confusion when evaluating the contribution of advertising in business communication. It is clear that the main purpose of advertising is to make profits, and this is often done by overstepping the mark, or even breaking rules enshrined in the directives and laws. In modern society it is widely considered the ethical aspects in advertising. Some critics (e.g., Kreshel, P.; Zabarauskas, R.) state, that advertising itself is unethical and deceptive, because it forces to use products or services, encourages behaviour that may transcend the public ethics. While information declared in advertising should be objective, but it will always be presented in such a way that would affect consumers more than just knowing the fact. The purpose of advertising is not only vigorously and rapidly generate specific human action, but also affect the person’s worldview. However, it may be said that „the advertising is mannered or formed in such a way that the consumer can understand the implied wrong (misleading) advertising claim”. This statement, lurking in each advertising is „buy, it will be your best choice”. So what is defined as the misleading advertising is ultimately inevitable in any advertising feature (R. Šimašius, 2004). Despite that, the implicit claim in advertising may be recognized as misleading if the advertiser could not provide evidence that the advertised product fulfil images or facts displayed in advertising.

It can be concluded, that the misleading advertising is such an advertising, which in any ways, including its identification...
presentation method materially distorts or could materially distort the persons to whom it is addressed or whom it reaches and which, by its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, affects or is likely to harm another person’s ability to compete. According to Lithuanian Advertising Law, it is emphasized the fact that the law does not require that the advertising actually do damage to the person, it is enough the fact that advertising may affect persons, whom it is addressed or whom it reaches, economic behaviour. Economic behaviour is interpreted as the consumers’ decisions and actions related to the acquisition of goods or services, economic and commercial, financial or professional activities (Lithuanian Advertising Law – article 2, part 2). Competition Council of the Republic of Lithuania in their practice as well always notes that it is sufficient to determine a person’s likelihood of misrepresentation, and not a concrete misleading fact.

The assessment of whether certain actions have violated the prohibition of misleading advertising, it is necessary to take into account three criteria: fairness, thoroughness and presentation criteria. It is not necessary to establish all three requirements at once, but found that advertising contravenes at least one criterion, it will be recognized as misleading. Advertisement contained clear incorrect statement is quite understandable thing and do not give much doubts in practice. It is generally believed that the advertising claims are false, if an advertiser can not prove the trueness of claims during the dissemination of advertisements. Other cases, that may occur misrepresentation, interpretation is a difficult task, for the simple reason that they are at first sight not so obvious. It is recognized that the advertising information is incomplete if missing a certain piece of information that are required, taking into account other information contained in the advertising. Determining whether a misleading advertising is unfair, it is assumed that consumers form an opinion about accuracy of the claims represented in advertising and advertising presentation form, and take such decisions are to be expected from the average consumer (R. Tatol, 2010).

Advertisers know that they cannot outright make false claims, because any claim they must be supported by some kind of statistic, according to the law. However, advertisers can and often do bend and curve the truth for their own benefit and in order to promote and advertise own product. Company can exaggerate certain features of their products or they can make vague and ambiguous claims that sound good. Of course any negative features of the product won’t be mentioned. B. Čerėška (2004) identifies the most common misleading, inadequate or inaccurate advertising cases:

![Figure 1. The cases of misleading advertising](image_url)

The analysis of all B. Čerėška indicated cases concludes that misrepresentation usually occurs during the creation of a false impression. On the other hand, it could be seen that all these misleading forms of advertising are quite similar to each other and even overlap, that they are not always able to distinguish one from another. Often there are cases where it is difficult to distinguish a clear misrepresentation of facts, and even harder to prove. Misleading advertising can be varied in a lie, and the wide range of conscious manipulation of formally correct statements, and one that expresses the subjective opinion. According to T. A. Shimp (2002), misleading advertising forms stereotypes and plays with people’s feelings, so pursuit of objectivity in all advertisings is doomed to fail. The more people seek truth facts in advertisements, the more it will be pushed to black technology sphere. Advertisers have found out that if they make a product, and make customers believe that their product will make them happy, sales will skyrocket. To fulfill that, advertisers must bombard customers with images and false claims for hours every day patiently, until people start to believe in certain things. Customers become addicted to products that they usually don’t need, and that’s the real image of our society of over consumerism. Today, because of advertising conditioning and trendsetting, judgments are made on what kind of clothes people wear, what shampoo and kitchen cleaner they use, and not on who they really are. This leads to a certain degree of social discrimination and emotional insecurity, especially in younger population.

Misleading advertising interpretation is a complex problem, because for individual aspects of the misleading advertising it is stated that whether advertising is presented in correct way it should be decided on each individual case. Of course, in many cases misleading is stated as misleading without much discussion there. In the Competition Council resolutions there

---


4 2006 May 11 Resolution No. 2S-7 by Competition Council of the Republic of Lithuania , 2006 March 23 Resolution No. 2S-5 by Competition Council of the Republic of Lithuania, etc.

5 In Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (amending Directives 84/450/EEC, 97/7/EC, 98/27/EC and 2002/65/EC) it is written about average consumer which is defined by the Court of Justice. This criterion is adjusted when a commercial practice specifically targets a particular group (e.g. children) in which case the average member of this group becomes the reference point. And advertising falseness is considered by this standard.
are full of examples of misleading advertising: promised to give a discount, but have not; promised to provide a method to lose weight without dieting and conditions, but also ordered to comply with hundreds of pages contained nutrition program and buy expensive herbs. R. Šimašius (2004) argues that even the text written in a large and small letters can be obvious misleading in some cases while in others not, and where to draw the line depends on the situation.

By observing an active transformation of advertising spread, as well as the development of public relations and lobbying, it could be confidently said that the information generated by business makes a huge impact on all the symbolic environment: directly through television advertising, indirectly – through advertising effect on consumers; directly through the head of a firm which is interviewed by journalist about “innovative” products, indirectly – through freely distributed “educational tools” for schools; directly – when the company’s personnel director gives an interview on television, indirectly – when the public relations department advising parliamentarians tries to gain favor and do effects of the legislation. The fact that this information is not neutral and the interests are hidden it reduces the public domain, distorts information area where its source’s economic power gives it a disproportionate advantage in comparison with the less privileged groups (F. Webster , 2006). There is invented “the audience as a product” term to draw attention to the fact that an important function of media is to gather an audience for advertisers. Therefore, an important matter become not the information content but the number of viewers or readers, could be sold for advertisers. A. Balčytienė (2005) highlights the impact of consumer capitalism on advertising and society. She states that even communication channels would be generated by business makes a huge impact on all the legislation. The fact that this information is not neutral and the interests are hidden it reduces the public domain, distorts information area where its source’s economic power gives it a disproportionate advantage in comparison with the less privileged groups (F. Webster , 2006). There is invented “the audience as a product” term to draw attention to the fact that an important function of media is to gather an audience for advertisers. Therefore, an important matter become not the information content but the number of viewers or readers, could be sold for advertisers. A. Balčytienė (2005) highlights the impact of consumer capitalism on advertising and society. She states that even communication channels would be expanded, in media sphere always become more informed who seek the profit at the expense of less informed or wrong informed. At this stage could be highlighted the information transformation to business.

It is noticeable the undeniably big impact on consumers and it should be considered another important fact – a positive approach of business to misleading advertising. It is clear that unethical or misleading advertising may cause the company’s reputation. Using such advertising company may lose some customers, but it does not suspend from the unethical behavior. Ad-makers should adopt the moral values of society, such as friendship, affection, honesty, justice, dignity and respect for others. Instead, by using these values they very easy manipulate consumers’ decisions. Often advertisements proclaiming the misleading or deceptive information use well-established consumer society values and norms. They can directly and indirectly stimulate the images of the potential product. According to P. Kreshel (2009), any interference with the formation of social attitudes forms the public market, where social values become products that are bought and sold primarily to support business goals instead of public good, and that is unethical. Advertisements incompleteness, inaccurate information affects consumer choices and behaviours of society. The new technologies allow to control society. Advertisers currently tend to use forms of information transmission by influencing subconsciousness, but their creativity is often beyond the limits. Recently, advertisers start to manipulate the impulsive buyers, because they are more exposed, but at the same time more vulnerable – guided by emotions, the initial impression, not the actual arguments or logical reasoning.

Another misleading advertising expression forms is internet advertising, which is currently one of the most popular, most effective and highest profit getting tool. Despite the high popularity of online advertising, J. Plummer (2007) argues that many marketing professionals still do not know how to create effective advertising in the internet. The main aspect is the frequent repetition of advertising. In regard to people’s fatigue of huge amount of advertising currently it is attempted to distribute commercial information even when it clearly does not define as advertising, so could mislead consumers. As an example it could be an online diary, which, according to S. D. Meerman (2011) is a simple and effective way to express the organization’s approach to the market. Marketing and public relations specialists, knowing this tendency, see what it is blogging and by using millions of conversations on the web they proceed outsourcing articles campaigns. Information content become not the objective description of the product or service in which people can rely on, but the information lacks the truth and the product is pictured with properties which in reality does not exist.

Interpretations of theoretical links between misleading advertising and the consumers’ decisions

Consumer as a potential buyer is welcome in all the places, all the hopes and expectations about selling products and goods are put on him, the efforts to create a good advertisement are done only for him. Consumers want to be unique, but at the same time want to belong to the party, to be similar to other people and to secure a safety net by trying to fulfill one or another group’s norms and values. Uniqueness and conformity mixture creates new categories of social life, life style groups. The life styles of different groups are largely in line with the consumption styles. Concentrating in certain parts of society, life styles become the sign of the social position and influence consumers’ behaviour. This behaviour is defined as a consumer’s perspective, emotional, and physical activity related to the products, which satisfy the needs or solves the problems, search acquisition, use, disposal and evaluation.

Terms, such as human attitudes and provisions are analyzed in psychological field, but in recent decades they are often met in advertising range. D. Hill (2010) notes that the sale of “hope” to the people and the promise of happiness belongs to marketing science. For this reason, current advertisers are looking for ways to influence the consciousness of consumers. W. F. Arens (2011) argues, that advertising effectiveness depends on advertising creator skills. Advertising creators analyze a large group of human behavior characteristics to create advertising which influences the group. Knowledge of the internal factors of consumer behavior is necessary in order to adapt the psychological mechanisms for persuading consumers and influencing their purchase decision. Consequence of persuasion includes an internal, emotional struggle between the innate desire to trust the benefit of the company and skeptical view of the consumer.
unrealistic promises. Consumer attitudes are attributed to personal factors that influence consumer behavior, because they are formed on personal experience, lifestyle, and on the influence of the other people. The consumer responds to the the complex knowledge and opinions about product, rather than separately on the product itself. His behavior in choosing, buying and using the product depends on the prejudices and attitudes. All consumer behavior depends on the attitude: buying stability, recommendation to others, an assessment, security, intent (Solomon, M., 2006). Examining consumers’ attitudes influence on their behavior and possible ways to change this approach, it is worthwhile to examine the components of the approach. The most common theory, focusing on the consumer’s attitude, influencing his decisions, consists of three components:
- emotions, sensuality (assessment, fondness);
- cognition (knowledge, comparison, awareness);
- behaviour (action, trend).

Advertising creators provide for the consumers a lot of sometimes redundant information, which ones psychological effects appear later. Advertising information affects emotions, thoughts, and possible solutions and customer specific behavior. All companies are working hard to make the customer to like them, leaving aside his beliefs and behaviors, but influencing his emotional component. Increased overall positive impression can influence the need to purchase the product, and the acquisition and euse can influence positive beliefs (Morden A.R., 1991). Researchers note (Hill, D.; Čerėška, B.; Jokubauskas, D.; Šliubystė, L.) that is constantly growing the amount of advertisings based on emotions and feelings. First of all, emotional advertising is designed for to trigger positive emotional attack, and not to provide information or arguments. People usually like these type of advertisements more than neutral, what is more, they are very easy to cause a positive consumer attitudes to product. Frequently changing consumer preferences also it used cognitive component. New beliefs and opinions are formed and old one are replaced (Halper, E., 2010). Of course, the choice is always left to the consumer, but it is not entirely true. Exactly how people affect other people, advertising affects consumer behavior. People decisions are exposed by advertising often without consciously realizing it. Knowing about the unconscious attitudes retention and trying to influence consumer behavior to purchase the product advertisers may use additional, nearly invisible, or deliberately not recorded instruments – smells, colors, backgrounds and music etc.

Irresponsible advertisement too, can bring mistrust to the customer irresponsible advertisement can encourage the irresponsible behavior or represents some people in an irresponsible way. In inappropriate use of people in advertising and psychological harassment some of the society or the specific people are also fall into misleading advertisement.

If we offer products on customer needs, we can divide it into the following groups:
- production outside the customer’s needs;
- production based on customer needs that falls into two groups: customer clear needs; latent customer needs.

Generally misleading advertisement cover the products that are beyond the customer needs that by implying false need in a customer try to sell the product that mostly after the purchase the customer regret or are latent customer needs that the customer needed that product but he/she hasn’t face it up to now that generally after the purchase the customer discovers that the product doesn’t meet the required quality and efficiency.

Gerard J. Tellis (2004) claims, that it is very difficult to assess the impact of advertising because of its main feature complexity. The author presents the problems to be taken into account in assessing the impact of advertising to the consumer. Consumer can purchase for variety of reasons: because of the advertising, because of positive assessment of the product, because of recommendations to buy, and so on. Advertising effect varies with the use of different dissemination ways. Advertising can influence the behavior of the person not at once, but after a while. Effectiveness of advertising varies depending on the product’s life cycle. Exposure of repeated advertising is even bigger, but it is not very easy to measure which advertising had bigger impact. The reaction to advertising varies depending on the people and groups, because of the reason, that advertising can affect different people differently. For example, the same advertisement can mislead one person while another, seeing the same advertisement will understand figurative sense and will not be deceived, misled. Sometimes advertising may mislead two different persons, but this will affect only one’s economic behavior while other economic behaviour will not change (Markauskas, L., 2008). Since advertising can reach a wide range of individuals whose perception and evaluation of information is very different, it is necessary to define what kind of customer is taken into consideration by speaking about the possibility to deceive him. The assay of average consumer features provides a distinction between misrepresentation and misunderstanding. In determining the specific features of the average consumer there is the need to try not too simplified or too exalted. It can not be set too strict rules protecting consumers or otherwise, to allow all except a very significant injustice declaring, false and misleading advertising. Deviate from certain standards and norms, people will not watch advertisement carefully and critically. This leads to mental laziness and disrespect for the consumer, not allowing him to make decisions and learn from them. Also, by setting the strict rules producers and advertisers may lack a desire to promote their products, because of the high risk of incurring additional costs of the judicial process or some sort of compensation claims. On the other hand, D. Atta (1999) argues that looking too lenient at the advertising creator it is possible common mislead cases, and most consumers will be held responsible for their inattention. In the latter case, advertising creation specialists would attempt to use this situation and change information of advertised products or services in better way. This would reduce advertisers sense of responsibility towards the society. This would also reduce the confidence, because the consumers would need regularly with particular care to assess receiving information. They would try to discern misrepresentation, or even would start to ignore all the advertisements.

The question may arise that if the directive on misleading and comparative advertising and the Lithuanian advertising law does not establish any standards for the types and design of advertising, it is very difficult to determine the boundary between the person misunderstanding and purposeful
misrepresentation. So far, it could not be said that institutions protecting consumers from misrepresentation diverge from the common understanding of what is confusing, and what is not, however, advertising professionals have to be very careful. Advertising justice as well as political speech correctness as practice shows must be constantly pursued and perfected. It should be noted, that the concept used in the Lithuanian advertising law is not even the false advertising but misleading advertising. It can be concluded that even if the advertisement does not claim the false statement, it may still be misleading. So even if the information is correct, but the average consumer interprets it differently, and advertising message is understood incorrectly, it can be misleading. Unfortunately, such efforts can bring the opposite than expected results - advertising would be made not to affect human consciousness, but start to manipulate the unconscious. False message spread in such a way that might not even understand, but recorded in the subconscious.

The main factor, which is necessary to establish that advertising can be accepted as misleading, is its ability to influence the economic behavior of individuals – consumer decisions or actions related to the acquisition of goods or services, trade, business, financial or professional activities. As the Directive 2005/29/EC on unfair commercial practices observed such behavior should not only mean the purchase of goods or services, but any consequent action, for example, trip to the trading desk to buy a product or service, when the consumer performs or may perform actions that lead towards the acquisition of goods or services. In this case, it is only important the economic impact of advertising for consumer behaviour and there is no need to find specific influence of misleading advertising on consumer (Markauskas L., 2008). Figure 2 shows the systematic interpretation of the impact of misleading advertising.

Figure 2. Impact of misleading advertising

Sanctions are provided if it would be violated the ban to mislead by advertising or using unfair competition. This should help consumers and competitors to protect against fraud, but often advertising information or the way it is presented affect the economic behavior of consumers at the desirable direction. The important question is how to distinguish cases in which the consumer results in a false opinion about the product because of its unique properties, which could not be taken into account in producing advertising, and cases where the misconception is formed only because of advertising dissemination. On the contrary, how to assess the cases, where very smart and cautious consumers are not affected, but most of the other results in the wrong opinion about the product.

Misleading advertising impact can be assessed by taking into consideration the average consumer. By responding a question whether it is likely that the advertisement could mislead the consumer. European Court of Justice in adjudicating cases relating to consumer protection and competition drafted the concept of the average consumer (French - Consommateur moyen) as an intelligent well-informed, reasonably observant and circumspect consumer, who is like that considering by social, cultural and linguistic factors. So advertising will be noted as misleading only if it is reasonable to assume that the standard consumer may be misled. In principle, the concept of the average consumer is not an objective assessment of signs, because in all the cases where the person’s perception is assessed, subjectivity is found, which my result from inattention, lack of experience and a certain knowledge, different cultural backgrounds. However, the choice to use the average consumer concept was used in order to estimate false advertising effect. By saying that the buyer will be misled by advertising means that the probability that consumers will be misled is sufficiently large (Atta D., 1999).

Misleading advertising legal regulation in line with consumer rights institutional background

Europe admits that the demanding consumer is a strong and important part for economy. For this reason, huge attention is paid for consumer protection and protection of their interests in EU countries – bigger than in Lithuania. The European Union has long time ago taken a commitment to foster human rights and fundamental freedoms. The main aspect of consumer protection is concerned with defending the economic interests of consumers. The economic interests of consumers may be affected in various areas related to the contractual relationship between the consumer and the company providing product or service. The European Union’s common rules protecting consumers from misleading advertising and its unfair consequences are applied in all EU Member States. The consumer who has become a victim of misleading advertising should be aware that in each Member State’s national rules it is declared that they can require compensation. The EU rules require Member States to take appropriate action, which allows the control the misleading advertising and protect the interests of consumers, competitors and the general public.

EU Directive 2006/114/EC concerning misleading and comparative advertising is the main prevention against consumers’ misrepresentation. However, this directive is just the background, defining the concept of falseness, and the law, determining the specific product’s promotion, labeling and distribution rules, should be seen as a specific standart of the Directive. In addition, the Directive on misleading and comparative advertising provides the possibility for Member States to assess stricter national legislation rules on misleading advertising to protect consumer rights. Practically only the directive requirements are common to all Member States. Also, the Directive 2005/29/EC on unfair commercial

---

practices the first appendix contains a list of practices which, in any circumstances, after the implementation of the directive into national law, must be regarded as unfair and misleading commercial.

Republic of Lithuania Advertising Law and Competition Law prohibit the creation and use of misleading advertising in regard of consumers. Advertising Law defines the concept of misleading advertising and the conditions under which consumers could be misled, while Competition Law defines what is unfair competition, it also establishes a framework of control of misleading advertising, entrusted it to an administrative institution the Lithuanian Competition Council. 

The law also provides that the Competition Council supervising misleading advertising and influence on consumers’ economic interests may impose provisional measures. It could be done until the final decision of the Competition Council to ban the use of misleading advertising, if there is sufficient data that the use of advertising influences consumers’ economic interests, or they could be influenced somehow by the dissemination of misleading information, or cause irreparable harm to the public or to individual users. Advertising Law provides that advertiser is responsible for proof of the truth in advertising. The burden of proof of misleading the consumer fall on the person who submits a complaint of the use of misleading advertising. Misleading definition provided by Law shows that a person who is entitled to defend his interests damaged by the use of misleading advertising, may not only be a customer, but a person whose ability to compete may be affected by the use of misleading advertising.

Lithuania, as well as the whole EU, aims all disputes settle out not by court procedures and strengthen the alternative dispute resolution bodies. The use of advertising controls the State Consumer Rights Protection Authority under the Ministry of Justice, the Competition Council and various community organizations, so the consumer can apply to those institutions and claim for responsibility to individuals, who used misleading advertising and betrayed expectations. In the Table 1 the authorities are referred, which may be contacted if there is advertising which is flawed or unfair, or if it violates consumer rights and interests.

Assay whether comparative advertising is permissible, lays down on the Advertising Law and the Competition Law. The Competition Council monitors if the advertising is misleading and also the comparative advertising, local executive authorities and the state agency are responsible for the protection of cultural property; the authorized institution of reserved area is responsible for the regulations of outdoor advertising, the State Consumer Rights Protection Authority and its authorized state institutions – for other prohibitions and requirements related to the Advertising Law. State Consumer Rights Protection Authority is doing not only consumer education but recently pay a big attention to business education. Practice has shown that businesses, especially small, sometimes unintentionally, because they do not know the law, violate consumers’ rights relating to misleading advertising.

The public consumer organizations also play an important role in consumer protection system. The main this kind of organizations in Lithuania is:
- The Lithuanian National Consumer Federation;
- Consumer Rights Protection Centre;
- Lithuanian Consumers Association;
- Lithuanian Consumer Institute;
- Lithuanian Consumers Union;
- The National Confederation of consumers and others.

<table>
<thead>
<tr>
<th>Violations</th>
<th>Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violations concerning misleading and comparative advertising</td>
<td>Lithuanian Competition Council</td>
</tr>
<tr>
<td>Violations concerning outdoor advertising</td>
<td>Local authorities and the Cultural Heritage Department of the Ministry of Culture and the Directorate of Protected Areas and the Regional Environmental Protection Department</td>
</tr>
<tr>
<td>Violations concerning other Advertising Law restricted prohibitions and requirements unfulfillment</td>
<td>State Consumer Rights Protection Authority and the authority of the Government</td>
</tr>
<tr>
<td>Alcohol and tobacco advertising violations in mass media</td>
<td>State Tobacco and Alcohol Control Agency</td>
</tr>
<tr>
<td>Alcohol and tobacco advertising violations</td>
<td>State Consumer Protection Agency and the court</td>
</tr>
</tbody>
</table>

It is worth noting that for the control of the use of misleading advertising different institutions are responsible, but they cooperate with each other, because for intend aims for consumer protection implementation there should be the cooperation of competent state and municipal authorities, consumer associations and business efforts. Although the legislation does not define directly the specific situations in which the advertising is recognized as misleading, but provides rules applicable to each individual case. In Lithuania is not set a special direct legal regulation for sales and other forms of promotion, but the legislation establishes a fair and comprehensive information requirement for consumers. The Competition Council states that effective prevention of misrepresentation is publicity. Often when recognized advertising claims as misleadings, operators are obliged to deny them in those media in which it was distributed. The obligation to deny publicly the advertising for companies is usually even more painful penalty than a fine. However, there are cases where the business pay for damages to consumers before the Competition Council have concluded the investigation, because such benevolent damage compensation may be seen as a mitigating circumstance.

Code of the Republic of Lithuania, Article 6.302 provides that for the harm caused by misleading advertising, first of all the advertiser takes the responsibility (Table 2). The persons who are mentioned in this article are responsible for damage arising from misleading advertising, if they could not prove that the law has been violated not due to the fault of their own, or if they could not prove that the disseminated information is
true. A trader who makes a claim about the effect of a product will have to be able to back it up — wherever in the EU the trader is based.

### Table 2. Responsibility for the use of misleading advertising

<table>
<thead>
<tr>
<th>Responsibility subjects</th>
<th>Nature of Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertiser</td>
<td>Takes the responsibility if it does not prove that the law has been violated not by his fault</td>
</tr>
<tr>
<td>Producer</td>
<td>Takes the responsibility for the use of misleading advertising only</td>
</tr>
<tr>
<td>Mediator</td>
<td>If he knew or should have known that the advertising was misleading or consumers were confusing for their actions in the production or publication of advertising, or does not point out who has been an advertiser</td>
</tr>
<tr>
<td>Spreader</td>
<td></td>
</tr>
</tbody>
</table>

Directive regulating EU consumer law in framework of misleading advertising sets out the responsibilities for all member states. Usually the Directives provides for Member States rights and responsibilities for implementing certain provisions of EU law, but does not define the sanctions to ensure the effective implementation of Community law. The Member States by themselves may set the legal provisions under which administrative or legal authorities may require that the advertising would be terminated and banned. In Lithuanian Advertising Law article 22 paragraph 1 is specified that for use of misleading or permitted comparative advertising operators may be imposed by a fine from one thousand to thirty thousand litas. The same article paragraph 7 provides that penalties shall be determined by the average of minimum and maximum penalties, depending on the mitigating and aggravating circumstances, nature of the violation, the duration and scale. The use of misleading advertising legislation provides warning or a fine for operators of advertising, and the administrative responsibilities for individuals. However, the law does not refer directly to the recipient of advertising, its interests or needs. A consumer who believes that his rights and legitimate interests on misleading advertising are vulnerable has a right according to the law to apply to court for compensation for caused damage.

Today, in developed economies countries the promotional activities are strictly regulated by the government. Principles regulating advertising generally reflect in various laws and codes. As mentioned above, in the EU law the use of advertising is regulated by the European Parliament and Council Directive 2006/114/EC concerning misleading advertising, as well as the directives regulating the advertising of particular groups, for example, tobacco advertising is regulated by 2003, 26 May European Parliament and Council Directive 2003/33/EC on the approximation of the laws; for the advertising of medicinal products – European Council Directive 92/28/EEC on the advertising of medicinal products for human use and others. In Lithuania the use of advertising is also regulated by a number of laws: in addition to the Lithuanian Advertising Law and the Civil Code also the Lithuanian Public Information Law, Lithuanian Law on Alcohol Control, Lithuanian Law on Tobacco Control and others. Self-regulatory bodies can also voluntary control the misleading advertising.

Those who suffer from misleading advertising and whose rights are violated have the right for direct access to court proceedings for termination of the use of misleading advertising, as well as compensation for damages and the obligation to publish certain public statements denying that kind of advertising. The court by request of interested persons may prohibit the dissemination of misleading advertising. These rights, except a claim for compensation, the law gives also for entities or organizations, representing the interests of consumers, and advertising self-regulatory bodies. A properly functioning Institute compensating damages for misleading advertising is very important for the effective implementation of the prohibition of misleading advertising.

**Lithuanian consumers’ attitudes to the misleading advertising**

Empirical research was done in order to determine the impact of misleading advertising to Lithuanian consumers’ behaviour. The aim of the empirical research is to investigate consumers’ attitudes to misleading advertising and its impact on their decisions.

For this research it was taken users from different Lithuanian society groups: the business sector, public sector, higher education, non-governmental and governmental workers and business representatives. Based on research ethics, research informants weren’t revealed.

The results of empirical research enabled to understand that consumers does not have sufficient knowledge about their rights and would not be able to defend its interests.

Respondents’ experience with misleading advertising analysis shows that in Lithuania the number of misleading advertising is quite significant, because more than half of those surveyed are at once confronted with a variety of misrepresentation forms. However, users do not take any actions that it would stopped, they do not try to defend their rights, as well they are not very interested in the regulation of misleading advertising and consumer protection mechanism in Lithuania. This requires to inform users to be more aware of their rights and what to do in order to defend themselves from misleading advertising, because this is the only way to reduce the amount of the false statements.

The hypothesis was formulated that consumers do not trust national consumer policy and consumer rights securing institutions, which has been confirmed. The analysis of the results shows that almost a third of respondents evaluated the control of misleading advertising in Lithuania as a poorly supervised. According to respondents, in order to ensure consumer protection against misleading advertising the most important is to improve consumer awareness and education. Consequently, the most important task of Lithuanian Consumer Protection Policy is to create and implement a proper system of consumers’ legal culture.

**Conclusions**

The principles of advertising, which are established in the Advertising Law of the Republic of Lithuania, require that advertisements should be decent and fair, it prohibits defamation, discrimination, misinformation and other factors that may have a negative impact on society, its morals, and
safety. It is constructed, that in the free-market advertising, which in its wording or presentation deceives or is likely to deceive consumers, influencing the economic decisions, are called misleading. This is an unacceptable phenomenon.

In determining whether advertising is misleading or not, it is not necessary to prove that consumers were actually affected, it is enough to have the opportunity of advertising impact on consumer’s behaviour in terms of economic decisions. According to this, the misleading advertising occurrence characteristics in modern society is: the criteria of justice, integrity, and the eligibility non-compliance, the creation of a false impression, the presentation of false and inaccurate facts, the conversion of social values to products, the manipulation of impulsive consumers, the control of subconsciousness, the impact on persons economic behaviour or possibility of the impact.

In theoretical papers there is a straight correlation between misleading advertising and consumer decisions. In most cases the result is negative, which shows the vulnerability of the consumer’s interest by trying to put into their heads that the product or service has a special features or a false impression is made about the product to encourage the buying process. Consumers are often being manipulated attempting to allure its minds to accept detrimental solutions. This type of advertising is one of the most possible factors for the occurrence of unfair commercial rivalry.

Single European Union’s common rules, which are protecting consumers from misleading advertising is adjusted in the whole European Union. It is executed the official policy of consumer protection against misleading advertising, which is based on the cooperation of public authorities and consumer organizations. Lithuania and the EU consumer policy is aiming to establish the essential requirements and to protect consumers’ economic interests, in order to ensure protection against misleading advertising and provide the opportunity to defend the interests of consumers. Legal regulation of misleading advertising reflects in 2006/14/EC Directive on misleading and comparative advertising, but no less important is also the directives regulating the advertising of particular groups, for example, tobacco advertising – Directive 2003/33/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising; the advertising of medicinal products – Directive 92/28/EEC regarding advertising of medicinal products for human use and Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market. It is assigned four responsible parties (advertiser, producer, mediator, spreader), and the institutional background in Lithuania is implemented by Lithuanian Competition Council, local authorities and the Cultural Heritage Department of the Ministry of Culture and the Directorate of Protected Areas and the Regional Environmental Protection Department, the State Consumer Rights Protection Authority and the Government Authorities, the State Tobacco and Alcohol Control Agency, the State Consumer Protection Agency and the court.

Essential recommendations:
- to proceed greater consumers awareness and education;
- to promote cooperation between state, public institutions and its citizens;
- to implant fair business practices towards consumers by informing advertisers and advertisement producers about their duties and responsibilities to consumers;
- to increase publicity in relation to contradiction the misleading statements in media;
- to publish information about the entrepreneurs, whose values are high commercial honor and good business practice.

References


The article has been reviewed.

Received in April, 2012; accepted in June, 2012.