

Advertising and Information. Specific Regulatory Regime in the Russian Federation

Legislation regulating advertising and information issues consists of the Constitution of the Russian Federation, the Civil Code of the RF and two federal laws which are the Federal Law “On Information, Information Technologies and Data Protection” (*Federal law of 27.07.2006 N 149-FZ*) and the Federal Law “On Advertising” (*Federal law of 13.03.2006 N 38-FZ*). This article does not deal with provisions of the Civil Code of the RF and mass media legislation.

Provisions of the Constitution of the Russian Federation, laid down in Article 29, guaranteeing the freedom of thought and speech, providing for the right to freely look for, receive, transmit, produce and distribute information by any legal way are underlying concept of our advertising and information discussion.

Let’s address the general provisions of the Federal Law “On Information, Information Technologies and Data Protection” (*hereinafter referred to as “Law on Information”*). That Act regulates relationship arising from the execution of the right to look for, receive, transmit and distribute information. By contrast, Law on Advertising is applicable to relations in the area of advertising (and advertising is information), if the dissemination of advertisements takes place on the territory of the Russian Federation. So we face a certain form of information specially regulated only if disseminated on the territory of the Russian Federation. It is necessary to fix the idea for law enforcement purposes.

Law on Information defines information as follows: “*information is knowledge (messages, data) regardless of the form of presentation*”. See the provisions of Law on Information below to realize the basic principles of regulation.

Information may be used freely by any person and transmitted by one person to another, unless restrictions to access to the information or other requirements to the procedure of delivery or distribution thereof established by federal laws.

Subject to the category of access to the information the latter shall be divided into generally accessible information and information where access restricted under federal laws (restricted access information).

Subject to the procedure of delivery or distribution the information shall be divided into:

- 1) to permit or restrict access to information, determine the procedure and terms thereof;
- 2) to use information, as well as to distribute it at his or her own discretion;
- 3) to transmit information to other persons under contract or on other grounds prescribed by law;
- 4) to protect his or her rights by legal methods in case of illegal obtaining of information or illegal usage thereof by other persons;
- 5) to deal with information in other ways or permit such a dealing.

When exercising his or her rights the possessor of information shall:

- 1) observe the rights and legal interests of third parties;
- 2) take measures for information protection;
- 3) restrict access to the information in case such an obligation is prescribed by federal acts.

Restriction on access to information shall be established by federal laws for purposes of protection of the constitutional system, morality, health, rights and legal interests of other persons, provision of the defense of the country and security of the state.

Observance of confidentiality of information access to which is restricted by federal laws shall be obligatory.

Protection of information representing state secrets shall be provided in accordance with the legislation of the Russian Federation on the state secret.

In the Russian Federation distribution of information shall be carried out freely subject to requirements established by the legislation of the Russian Federation.

Information distributed without involving the mass media should include reliable data on possessor thereof or on another person distributing the information, in the form and to the extent sufficient for identification of this person.

If for distribution of information the means are used making it possible to determine recipients of information, including those of postal mailings and electronic messages, the person distributing the information should give the recipient of information a possibility of refusal thereof.

Delivery of information is ensured according to the procedure established by an agreement of persons taking part in the information exchange.

Cases and terms of obligatory distribution of information or delivery thereof, including delivery of obligatory copies of documents shall be established by federal laws.

Distribution of information directed to propaganda of war, stirring up hatred and hostility, as well as other information, which provides criminal or administrative liability shall be prohibited.

Usage of information-telecommunication networks within the Russian Federation shall be provided subject to the requirements of the legislation of the Russian Federation.

Regulation of usage of information-telecommunication network access to which is not limited to a certain range of persons shall be carried out in the Russian Federation subject to the generally accepted international practice of the activity of self-regulation organizations in the industry. The procedure of usage of other information-telecommunication networks shall be determined by the owners of thereof subject to the requirements established by law.

Federal laws may provide obligatory identification of the personality, organizations using information-telecommunication networks in entrepreneurial activity. The recipient of an electronic message located in the territory of the Russian Federation shall have the right to make inspections to establish the sender thereof, and in cases established by federal laws or agreements of the parties, shall make such an inspection.

Transfer of information via information-telecommunication networks shall not be limited, provided that legal requirements to information distribution and protection of the objects of intellectual property are observed.

Transfer of information may be restricted only in accordance with the procedure and on the terms established by federal laws.

So there is a definition of information as general concept, we also aware of its distribution regulation. Now it's time to deal with advertising.

The main law regulating advertising relationship is the Federal Law "On Advertising" (hereinafter referred to as "Law on Advertising"). Law on Advertising defines advertising as follows: "*advertising means information distributed by any means, in any form and by any media which is addressed to a non-specific group of persons and aimed at drawing attention to the object of advertising, at shaping up or maintaining an interest in respect thereof, and at promoting it in the market.*"

Based on that Article, advertising as a form of information has the following attributes:

- 1) this is an information distributed by any *means*;
- 2) this is an information distributed in any *form*;
- 3) this is an information distributed by any *media*;
- 4) this is an information addressed to a non-specific *group of persons*;
- 5) this is an information aimed at:
 - drawing *attention to the object of advertising*;
 - shaping up or maintaining an *interest in respect of the object of advertising*,
 - *promoting the object of advertising* in the market.

Law on advertising sets out forms of information which are not deemed to be an advertisement:

- 1) political advertising and referendum canvassing;
- 2) information whose disclosure or dissemination or communication to the consumer is compulsory according to a federal law;
- 3) the reference, informative and analytical materials;
- 4) announcements of public bodies if such announcements do not contain information of an advertising nature and if they are not social advertisements;
- 5) billboards and signboards not containing information of an advertising nature;
- 6) announcements of an individual or a legal entity which are not relating to the pursuance of entrepreneurial activities;
- 7) any elements of decoration of goods which are placed on the good or on the package thereof and which have nothing to do with other goods;
- 8) a reference to goods, to a means of its individualization, to the manufacturer or seller of goods which is organically integrated in a work of science, literature or art and which per se is not an information of an advertising nature.

We won't cover regulatory peculiarities of legislatively divided distribution means of advertising information by such communication channels as TV, radio, press, television and radio channels, via electric communication networks, by erection of advertising structures and on vehicles. This information shall be covered in a separate article.

Let's summarize. Thus the analysis of the two profile legislative acts indicates that advertising is a form of public information distribution of which is regulated by the Law on Advertising.

However it is worth mentioning that in spite of the existence of special advertising provisions it is essential in our opinion to consider general regulatory provisions on information in the Russian Federation while analyzing relationship on advertising information distribution.