

Defect Guarantee in Online Shopping Through Social Media

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The subject of online shopping through social media is of interest in Iraq, especially after the relative change of view of the Iraqi Street Market in the lack of reassurance towards the product either by the state or the citizen. Although there is an intention to agree between the producer and the consumer, there may be defects in the product when delivery implementation reflects different views on the content of the rights enjoyed by the investor and its obligations. Therefore, investors seek to obtain guarantees in accordance with the legislation issued by the country and the provisions contained in the provisions of the dispute settlement between the parties, despite the multiple means that can be used by the parties in the resulting electronic sales contracts. The judiciary has the natural and inherent jurisdiction to settle disputes when the consumer resorts to the judiciary to enable his rights concerning the defective product.

Key words: *Shopping, Social media , Online shopping, Marketing.*

Introduction

The subject of online shopping through social media networking sites and the Internet is of interest to the countries of the world, especially the recent ones, and the recent increase in interest in the subject of shopping in Iraq as one of the aspiring countries to attract the sites of communication, especially in the consumer goods sector, and after the relative change of view of the Iraqi Street Market in the lack of reassurance towards the product either by the state or the citizen. Although there is an intention to agree between the producer and the consumer to determine the rights and obligations between the contracting parties in terms of scope or content through the contract between them electronically, there may be defects in the product when delivery implementation reflects different views on the content of the rights enjoyed by the investor and its obligations (Awan *et al.*, 2019).

Therefore, investors seek to obtain guarantees in accordance with the legislation issued by the country for this purpose, and the provisions contained in the provisions of the dispute

settlement between the parties, despite the multiple means that can be used by the parties in the resulting electronic sales contracts (Bakker, 2017). The judiciary has the natural and inherent jurisdiction to settle disputes when the consumer resorts to the judiciary to enable his rights concerning the defective product.

Some of the commercial sites in the countries of the world, especially the developing ones, are developing their economies, facilities and infrastructure through electronic commerce. As the foreign investor needs legal guarantees to facilitate his work and protect his rights in the face of the client, it can lead to legislation that reforms the project contracting, which may weaken the legal status of the client, in other words, the client seeks to achieve a kind of balance in the contract between him as a person of private law and the source of the product advertised electronically (Castillo-Vergara *et al.*, 2018).

Research Problem

The electronic system is a set of computer networks connected to each other and assembled around the world. This system has allowed many business enterprises to communicate between businesses and customers to market their products and encourage customers to enter into electronic contracting. This system is known as the "World Wide Web." A group of computers are connected to each other in a specific way. Computers work to keep their contents accessible to each other and to prepare contractual practices from the most important sources to establish the regulatory rules on which international e-laws are based on transactions conducted through the Internet. What matters to us in these transactions is e-commerce contracts based on the promotion of goods and services using the means of communication and information exchange technology (Guo *et al.*, 2018).

In the area of promotion of goods and services, it may arise in the field of electronic billing, which is the stage of the supply of goods by commercial companies to the consumer audience, defects of the goods offered in the electronic market. For this purpose, countries, including Iraq, sought to find a solution that can attract the consumer or the customer through an alternative means, providing a potential solution to disputes that may arise in respect of those investments, which are both a guarantee and an attraction for investors. The solution is in the case of a defect in the product, and considering the absence of a dispute if the product is approved in the social networking sites (Laguía *et al.* , 2019).

The frequent use of social networking sites and online shopping is increasing day after day, and the confusion among consumers of the product in buying a particular product from a particular site is reflected in the chats between the youth, especially concerning the large number of shopping sites and the lack of an official page to visit to ensure their product in the presence of defect, which easily creates an unprotected website to shop and sell products.

There is a frequent absence of complaint sites for the product and consumer protection in the newly emerging countries in this area.

Research plan

From here, electronic consumer protection was the fault of the hidden commodity that was marketed online. It includes the protection of the consumer from ensuring the hidden defects of protecting him from false commercials in the electronic negotiation phase and protecting him by informing him of the commodity by providing him with the essential information about the sale at the stage of concluding the contract and finally ensuring the hidden defects in the stage of execution of the contract.

Therefore, we will deal with the help of God through this research to ensure the reduction of defects in electronic shopping over the Internet through three demands as follows:

- First requirement: protecting consumers from misleading false advertisements.
- Second requirement: to inform the consumer about the essential information about the sale.
- Third requirement: consumer protection in the implementation phase of the contract.

The commercial declarations in this research are a fundamental issue, as the declaration addressed to the consumer is the subject of protection as a means of activating the contract and a form of it, and a way of discharging goods and services.

One of the legal definitions of commercial advertising is the definition of the American Marketing Association, which defines commercial advertising as "a non-personal means of providing goods and services by a paid entity for a fee." This definition is based on the purpose of commercial advertising, offering products and attracting attention (Li *et al.*, 2018). It is a legal definition of some French jurisprudence that commercial advertising is any message directed by the profession to the public to urge the request of funds or services, such as the poster on the street or a page in a magazine or a television advertisement, and known European Directive issued in 10 September 1984 as: "any form of communication carried out in the context of commercial, industrial or artisanal activity or free work with a view to promoting goods and products." These definitions are based on the idea of commercial advertising (Lee *et al.*, 2018).

There are those who know commercial advertising in view of the psychological dimension of the advertising message, where the advertisement is defined as: "the technical means used by the advertiser to influence the psychological and mental to the consumer in order to stimulate the purchase of the product displayed." In the same context, others define the commercial

declaration as "the tempting offer of anything that can be dealt with legally for a given wage by means of a means of advertising in order to accept, purchase, use, exploit or exercise such a thing" (Lyngdoh *et al.*, 2018).

In any case, it is quite likely that the trade declaration is: "any activity that offers a product or service to the public by any means of advertising in an attractive and stimulating manner with a view to attracting their attention will motivate them to contract for material gain" (Joo *et al.*, 2016).

This definition is concerned with the element of attention to the great impact in pushing the consumer towards a contract, as it represents the first stage in the stream of mental thought, and this is intended involuntary attention where the alarm comes from the environment surrounding the individual, which is subjected to stimuli and stimuli in different daily life and this is the subject of attention which the advertiser uses and focuses on.

There is a need for the activity to have certain conditions in place for it to be described as a legitimate commercial declaration; the commercial advertisement must be legitimate and not contrary to public order and morality. This means that the advertisement must come free of phrases that create misconceptions for the consumer, such as phrases that give or suggest the idea that alcohol has positive results or health benefits, as well as phrases that suggest racial, ethnic or religious discrimination. The advertiser is licensed to practice the advertising profession and may have been licensed to publish the advertisement before directing it to the public (Nayak, 2008).

The lies and deception in commercial advertising is one of the most important sources of damage that may be inflicted on the consumer during the stage prior to the electronic contract, so it is also faced with the civil law of fraud as a lie picture of his image, the Criminal Code also faces the same picture, but in another framework - in the context of criminal criminalisation - all this despite the recognition of what is agreed upon, the permissibility of the commercial declaration with some exaggeration and intimidation, a reality that imposes itself until there is a limit between lying and deception on the one hand, and between this exaggeration and the exaggeration on the other hand . In turn, the Consumer Protection Act prohibits an "advertised" professional from making any misleading advertising claims to the consumer (Olszak *et al.*, 2018).

Therefore, the false electronic advertising declaration means that the advertisement contains false statements in a manner that would expose its interlocutors to deception. The doctrine uses the terms of misleading advertising and misleading advertising as a synonym, it went to the side of jurisprudence to say that misleading advertising is that which would deceive the consumer or can lead to it. In other words, a misleading advertisement is any advertisement

that is presented in a way that misleads or leads to misrepresentation of competitors in a way that may damage their economic interests, or that the advertisement contains information that prompts the consumer to become confused or deception is present with respect to essential elements or descriptions of the product (Schalock *et al.*, 2017).

The difference between a false declaration on the one hand and a deceptive or misleading statement on the other - as we support it - is that the latter do not contain any false statements, but they are distorted in terms that deceive the recipient. Thus, lies and misrepresentations are different from exaggeration in commercial advertising, which assesses whether the advertiser's lie and practice deception or that it is a provocation and exaggeration in the commercial declaration is the subject judge, which is to be guided by the circumstances of the clothing and awareness and culture of society, but should not reach this exaggeration to deceive the truth or blur it so that it is difficult to know (Secundo *et al.*, 2019).

Based on the foregoing, we find that the French legislator banned all deceptive forms of electronic advertising and supported forms of consumer protection, especially through the provisions of the law of consumption, where the provisions of the text that is prohibited where any advertisement contains - in any way - false claims or statements or displays or misleads when the nature, date, characteristics, price and conditions of sale, the results that can be obtained using it, reasons and procedures for selling or providing a check CE, advertiser pledge, qualifier or efficient manufacturer or retailer.

Therefore, we conclude that consumer protection from false and misleading advertising in the electronic negotiation stage is the first stage of guaranteeing the defects in e-shopping, by applying protective dyes related to defects even at the pre-contract stage.

First, we must emphasise that the obligation of the managers to inform the consumer of the correct data and information about the nature of the product and its characteristics, etc., is a general obligation in all consumer transactions - contractual or non-contractual - as it is mainly in the pre-contract stage when the commodity or the service is a subject of professional activity or representative of a consumer transaction. However, the obligation to inform can also be a contractual obligation if it is decided at the stage of conclusion and implementation of the contract either by the text of the law or by agreement of the contractors.

However, we summarise some of these definitions to make it more acceptable to adopt the obligation in question before the contract to inform the consumer. A part of the doctrine defines the obligation to inform that: "the obligation of one of the parties to provide all data and information necessary to assist the other party to conclude or execute the contract, but to warn and draw its attention if necessary (Yusoff *et al.*, 2016). This definition is sufficient to

exclude one of the criticisms addressed to him as confusing the obligation to contractual information.

Some others define the obligation to inform that: "a prior obligation to contract relates to the obligation of a contractor to submit to the other contractor when the contract is formed the data necessary for the creation of a full and informed consent to all details in this contract due to certain circumstances and considerations which may be due to the nature of the contract, character, nature or any other consideration which makes it impossible for one of them to receive certain data or to confer legitimate trust on the other party, who, on the basis of all such considerations, is bound by the obligation to make statements" (Zhou, 2015).

Another party also defined it as "a previous general legal obligation to contract, in which the debtor - whether or not a party to the contract to be concluded, one or both of them and the non-parties - hereby informs the creditor - whether one or both parties to the contract - true of all material information relating to the contract to be concluded, which he is unable to take note of by means of his own means to build upon his consent to the contract (Zocche *et al.*, 2018).

A jurisprudential aspect defines the last obligation to the media as "an obligation that obliges one party to the contract of consumption to inform the other party of the essential data relating to the contract in a timely manner using that language and means appropriate to the nature and location of the contract."

Therefore, we believe that the obligation to inform the professional here towards the consumer expresses a legal obligation imposed by the text of the law or by agreement that the professional must make statements and information about the product, the place of professional activity and its characteristics to the consumer in general and also depending on the nature of the product and the manner of presentation or advertising or contracting to enable the consumer public to know the reality of the product and thus avoid the creation of an unreal or misleading impression of the consumer or the occurrence of confusion or error. To allow the consumer to start the conclusion of contracts of consumption there should be sufficient awareness of the fact of the product subject to the contract and its validity to be the place of the relationship of consumption to be concluded, and whether this product fulfils his desires or not. Therefore, the professional is "supplier, importer, etc." It has a pre-contractual obligation to inform the consumer in general or to inform the consumer public of the reality of the product in question, and the location of the potential consumer relations - the definition of the intrinsic elements of the product and thus its nature and origin, its intrinsic characteristics and the legal and material situation (Kamarudin *et al.*, 2009). The commitment to information prior to the contract is one of the most important obligations for the attention of the legal organisation, to the extent that its provisions are general principles or general

theories governing the obligation of information in different countries. In light of this, we are examining the provisions of the obligation to inform the media by examining the wisdom, conditions, legal nature and the sanction of violating it.

It should be noted that the data and information of consumer contracts are particularly important because of the vast disparity in the level of science and experience between the consumer and the professional profession he contracts with, resulting in an imbalance, so the Consumer Information Obligation Report is the means to restore science equality between contractors and rebalance the contract (Maggio *et al.*, 2012).

As for the re-establishment of equality in science among the contractors, a number of jurisprudence members decided that this is one of the essential foundations of the professional commitment to information before the contract. The disparity in knowledge between the professional and the consumer has increased significantly due to the industrial and technological progress and the emergence of modern inventions and complex machinery. The average person - the consumer - recognises the technical details and minutes of the goods offered. Thus, the balance of knowledge is in favour of the professional at the expense of the consumer, where the consumer entering a contract of consumption inevitably lacks the data and basic information that guides him to identify the product description of the contract goods and services with his wishes and the adequacy to satisfy his needs. Therefore, the inequality of knowledge between the parties to the contract of consumption - professional and consumer - justifies the report of the obligation to inform the consumer to the party who knows the professional i.e. the craftsman or the experienced professionals (Wang *et al.*, 2007). All this is the protection of rights.

Consumer choice, and consumer participation, especially regarding the ignorance and inequality of information presumed to exist in consumer contracts, which justify the report of commitment to information, is legitimate or legally justified (Zhu *et al.*, 2019).

In terms of rebalancing the contract, the obligation to inform the consumer and supply him with data and information plays an important role in protecting the satisfaction of the latter, who is unable, because of his weak position, to reach them. This protection is sometimes seen as an application of the prescribed protection applications of the party entering into the compliance contracts. However, the legal protection of the encumbered party in the contracts of compliance with the consumer's protection is different from the contractual obligation of the contracting party, i.e. the professional, prior to the contract. The consumer has prior protection of the contract, and the contractual obligation to inform is an independent and genuine obligation, but this does not preclude the possibility of conceiving the obligation of information under the contracts of compliance, nor does it preclude the possibility of conceiving the applicability of the description of compliance with a contract of consumption,

particularly in the case of professional and professional qualification as the monopoly of the necessary goods or services.

Thus, consumer contracts represent a distinct group within the legal system and require the allocation of protection to the consumer through the imposition of a media obligation on the contractor, regardless of the description or renunciation of such contracts. This confirms the special nature of consumer contracts that lead to contracting without enabling the consumer to have access to information that could influence his or her own direction because of his or her inexperience, the strong position of the other, and the culture that the consumer may give him.

It requires that the obligation of information in general in the comparative jurisprudence of several conditions, including with regard to the position of professional and consumer data in the place of information, including the nature of these data and its importance for the creditor, namely consumer, is that it is necessary to know the professional data and information in the information and that these data and information will affect the will of the consumer, and be unaware of - the ignorance of the project.

Results and Discussion

The first condition: professional knowledge or the possibility of learning about the data and information in the place of information:

The obligation to inform the professional must require the professional to have knowledge of the data or information that the legislator needs to disclose to the creditor who is usually the consumer. Often, the legislator requires that such statements be made in the pre-contract phase, then we are in the process of committing to pre-contractual communication. It is known that these data or information vary from contract to contract as appropriate, and that the data to be made in the area of conclusion and implementation of the contract of sale are different from those required in the event of the conclusion of the insurance contract or consumer loan or medical treatment. The data that the debtor is supposed to know is based on the idea of the essential characteristics of the products under contract and the appropriateness of the data or information of the creditor, the consumer. If a professional is not aware of these data, he is not obliged to give it unless he is able to know it and to be short of knowledge as long as the professional is familiar with it.

1. The second condition is that the data and information should affect the consumer's will:

The obligation of the media must ensure that the data and information subject to the obligation affect the consumer's will, i.e. the consumer's knowledge of the contract will affect

the contractual decision, and the non-essential data, which have no effect on the consumer's will. The importance of data and its impact on customer satisfaction is determined through several factors, including the consumer's keenness to request these data and enquire about them and the role of such information in determining the scope and effects of the contract and its obligations.

In our view, the judge determines this in accordance with an objective criterion - that is, the extent to which such information and data are relevant to the usual consumer interest - although it is noted that in the case of independent consumer protection legislation, whether in French law, Egyptian law or other laws, he has become a specialist in identifying the essential data that a professional has to provide to enlighten the satisfaction and will of the consumer. This means that a professional shall make all data and information specified by the legislative texts contained in consumer protection laws without the need for special agreement to so decide. If we believe that such data and information constitute the minimum amount of information and data that is the subject of a professional obligation to the media, where other data determined by the agreement or adopted by the convention may appear, without the provision of the law, and thus the professional must make it or otherwise disregard its obligation to inform.

Third Requirement: Consumer Protection at the Stage of Contract Implementation

After the completion of the electronic contract, after the acceptance of the contract, the parties to the contract move to the critical stage of the implementation of the contract. Each party is committed to fulfilling the obligations resulting from the contract and its implementation and protecting consumers against hidden defects.

The supplier is obliged to transfer the ownership of the sale to the consumer, and the transfer of ownership to the consumer requires that the sale be specific, that it be owned by the seller, that the law or agreement does not suspend the transfer of ownership to perform a specific act, detected when contracting.

The contract of sale, whether traditional or electronic, creates a commitment on the part of the seller to guarantee the defects of the hidden sale in order to protect the consumer. This is stipulated in the modern legal principles. The obligation to guarantee hidden defects is necessitated by the nature of things and the intent of the contractors. The consumer who electronically contracts with the supplier to buy a particular product is presumed to be free of defects and is in favour of the purpose he has purchased for it, even if he knows the defects of what he contracted to buy, in which case we will address the identification of the hidden defect in the sale, and we will review the guarantees of consumer safety of defective products.

First: Identify the Hidden Defect in the Sale

Some of the flawed jurisprudence is known as "what is lacking in the cost of sales in experiments and the masters of experience." However, civil legislation in most Arab countries did not define the defect until special laws were passed dealing with consumer issues, including a definition of the defect in the sale.

It has been defined as: "error or deficiency in terms of quality, quantity, efficiency, non-compliance with standards and standards to be complied with by law, or regulations in force in respect of the product."

It is noted from the previous definition that it was clear, but that the existence of defect was identified only in the product, the service is not mentioned, and it would preferable to address the Palestinian legislator flaw in service in order to expand consumer protection.

It can be deduced from the foregoing that the disadvantage of the sale is the defect in the product or service, whether in the description, in the characteristics that make it unsuitable for the intended purpose or cause the product to be destroyed, reduced in value or benefit, service to the applicable regulations and laws or lack of status in the sale. The consumer provider is committed to its presence in the sale, so that it affects the quality of the sale or the product and its quantity and efficiency, or the violation of the agreed terms with the consumer of the terms of the product or service.

Defects in the products result in damages divided into three types: the first defects are in the design of the sale, the second type is manufacturing defects, and the third type is the defects that appear in the instructions and the defective warnings.

The obligation to guarantee hidden defects in the sale does not result in all cases unless there are several conditions, namely, that the defect is effective, hidden and old, and that the defect is not known to the buyer, and the consumer has to prove the defect in the product, and can do so by all means of proof, but the consumer is not required to prove the supplier's liability for the defect.

It is important to point out in this regard that the defect that is customarily tolerated is not guaranteed by the provider, and that most modern laws did not distinguish between simple defect and serious defect, where the term defect came at all in the laws of consumer protection without specifying the type of defect.

The Islamic jurisprudent has the option of a defect in the sale. The concealment of the defect for the consumer is considered fraudulent. The consumer who buys the sale knowing the

defect he has suffered can't invoke it, finding that there is a defect later offers two options, either to break the contract or compensate for the value what is harmful to the sale.

Second: Guarantees of Consumer Safety of Defective Products

The most important concern for consumers is the potential for health problems. The use of some products may sometimes create a real disaster, as well as the risks of scientific progress. There is the possibility of a defect in the commodity as soon as it is released.

The legislations have dealt with the state of discovery or knowledge of a defect in a product or commodity that may pose a danger to the health and safety of the consumer. The supplier shall take the following measures:

- a) Inform the competent authorities and inform the public through the media of these defects and warn him of the risks that may produce them.
- b) Withdrawal of the commodity from the market.
- c) The recovery of the goods sold or leased, and the return of the price paid.
- d) Replacement of the goods at his own expense and refund of the payment in the event of irreparable repair.
- e) Properly disposed of, and not harmful to the environment, and at its own expense.

It is noted from the previous text that if a supplier is exposed to a defect in a product or commodity that may pose a danger to the health and safety of the consumer, he shall inform the competent authorities, such as the consumer protection department of the Ministry of National Economy. It should be noted here that the previous procedures do not prevent the consumer from returning to the supplier for the damages caused by his use of the defective product.

The consumer in e-contracting roams through the Internet in order to shop and buy, and when he settles on a particular product or service, he enters into a contract, and it is often not the manufacturer of the product who contracts the consumer. The trader (supplier) is the one who contracts with the consumer and delivers the commodity. There is a relationship between the consumer and the producer. However, the consumer can refer to the product (supplier) on the basis of tort liability, as the producer's responsibility is based on a breach of the obligation to safety.

It is not sufficient for the manufacturer of the product to prove that he has not violated safety, he must also prove that the damage is due to a foreign reason, and that the consumer can also refer to the trader (supplier) on the basis of the contractual liability, or on the basis of tort liability, consumer returns on the product on the basis of tort liability are permissible, as the

basis is that an error occurred, and as per the Egyptian legislator in Article 163 of the Egyptian civil code: “if the sale is not conforming to the specifications in accordance with the law, the provider is in that case has violated the legal text, and therefore may return the consumer to the product on the basis of tort liability, as well as the return of the consumer to the merchant on the basis of liability contractual, and some considered the text contractual legal text, and therefore in case of violation may be returned to the consumer on the merchant on the basis of tort liability, in addition to what is noted that expanding the idea of defect to include lack of safety in goods and services, as well as expanding the scope of the obligations imposed on the seller in favour of the consumer.”

It is understood from these texts that the harm caused, in particular to human health, must be removed, in addition to the supplier being held responsible through the warranty, and notes that the warranty is intended to be the guarantee that is the direct result of the damage from the provider, in the event that the provider causes the damage as a result of an error or negligence of the goods or any other reason.

It should be noted that the expansion of the supplier's responsibility for defective products and services is in the interest of the consumer. The authors believe that the mere fact of the error, even if unintended by the supplier, allows the consumer to claim compensation, even if there is no harm. This is an obligation to achieve a result.

Third

the consumer's ignorance of the information in place of the commitment to the media: a professional obligation to inform the consumer of data and information should be that the consumer is an "ignorant" consumer, unaware of the data or information that is the subject of the obligation. The professional obligation is to inform the consumer of the data related to the intended consumption contracts or the specifications of the product or how to benefit from it. Contract, doesn't in any way, imply full bias at the expense of the other party. Excessive consumer favouritism also leads to disruption of the desired balance of contract.

In this regard, we conclude that informing the consumer of the essential information about the sale includes in his content the protection of the consumer from the guarantee of the defect at the stage of conclusion of the contract by looking at the hidden defect in the sale before executing the contract through the Internet.

Conclusion

1. Emphasise the importance of consumer protection in the light of civil economic changes and the image of working to activate this protection against the methods of lying and

deception in order to protect the consumer from the real defects in the sale before the conclusion of electronic contracting.

2. The Arab legislators in general and the Iraqi in particular have not been able to confront the great legal developments in Western countries in the field of consumer protection in general and protect it from the real defects of the commodity in particular.
3. There is an obligation on the professional supplier to inform the consumer of the data related to the product subject to the consumption relationship in order to ensure the real defects in the product at the stage of conclusion of the contract.
4. The consumer's right to information and insight is through the identification of the supplier, the description of the product or service contracted, and the basic characteristics of the goods or services. The right to inform the characteristics and characteristics of the goods and services offered is the essence of the idea of adhering to the information. The consumer has a contract, in which the consumer may become a victim of fraud and imitation.
5. Expanding the supplier's responsibility for defective products and services is in the consumer's interest, and the authors believe that the mere fact of the error, even if inadvertent by the provider, allows the consumer to claim compensation, even if there is no harm, because the supplier's obligation to the consumer is a commitment achieving a result.

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