

Operators of advertising business consist of various persons, i.e., the owner of the product or service, advertising agency and media owner, and any of them may be the advertiser himself. At present, the advertising profession is very important. In the free trade system, advertising is also a form of inducement which will make the consumers decide to buy the product or service. Therefore, the consumers may become prey to the business operators if the advertisement is not based on fairness to the public as a whole. Therefore, it is reasonable that the advertising business must be controlled by law.

Studies have shown that the laws relating to the advertising are of two natures which are private law and public law. Control of these two natures results that the advertiser has different liability under different laws. Under the private law the advertiser will be liable both on Contract and Tort. Under the Law of Contract, it has to be examined whether or not such advertisement constitutes an offer which would then create a contract and under the Law of Tort, it has to be examined whether or not such advertisement has been wilfully or negligently created by the advertiser to an extent that it causes the damages. Nevertheless, the plaintiff under the Law of Contract is under a restriction that he himself must be a party to such contract and the plaintiff under the Law of Tort is under a restriction that the burden of proving the defendant's wilfully or negligence rests on the plaintiff while the fact and information are on the defendant or the advertiser himself. Therefore, it is a difficult burden on the plaintiff. In respect of the public law, the advertiser is liable under several Acts which provide specific protection against advertising i.e. Food Act, Drugs Act, Hazardous Materials Act. Besides, there is the Consumer Protection Act enacted in B.E. 2522 governs the advertising in general. The public law has provided the duties of the advertiser and penal punishment for the violators. However, in these laws, there are no explicit provisions to make the advertiser aware and understand as to what advertisement should be. Moreover, the enforcement of the law by government agencies is all based on the interpretation through the exercising of discretion. Though several Acts give an opportunity of appeal to the advertiser. However, the board of appeal are the administrator appointed by the Government, therefore, there is no accountability at all. The government agencies control on advertising is 'Pre-Censor' and 'Post-Censor' which require manpower, knowledge, expertise in such particular field. But they still lack manpower to perform the task efficiently.

The Writer proposes that to solve the problem at its cause namely that any advertisement to be publicized must possess correct quality required by law. Therefore, it would be appropriate to have a law prescribing the qualification and the duty of care of the advertiser. In this case, the burden of proving wilfully or negligently in Tort would be eliminated and the party suffering damages would no longer be required to prove. Because the said act is the act to protect the others person.(422 CCC.) After an enactment of the said act, the writer is of opinion that the advertiser will be in the right tract, so that the advertiser association can be established to be a self-regulator for the advertisement activity. It is believe that, this would be an answer to the problem in the past concerning the interpretations and delay in procedure carried out by government agencies.