

УДК 346.54

**ЗМІСТ ПРАВОВОГО  
РЕГУЛЮВАННЯ МАРКЕТИНГОВОЇ  
ДІЯЛЬНОСТІ В УКРАЇНІ І СВІТІ**

**Іван ТРИЛІНСЬКИЙ**

аспірант

Науково-дослідний інститут приватного  
права і підприємництва імені академіка  
Ф. Г. Бурчака НАПрН України (Київ)

**Тетяна ПОПОВИЧ**

кандидат юридичних наук, старший  
дослідник, учений секретар

Науково-дослідний інститут приватного  
права і підприємництва імені академіка  
Ф. Г. Бурчака НАПрН України (Київ)

<https://orcid.org/0000-0003-2292-4530>

Метою статті є вивчення та визначення змісту правового регулювання маркетингової діяльності в Україні та світі, дослідження особливостей правового регулювання маркетингу та маркетингової діяльності в Україні та світі та визначення тенденцій розвитку розвитку правового розуміння маркетингової діяльності в сучасному українському та світовому правовому полі.

Основними тенденціями, пов'язаними з правовим регулюванням маркетингової діяльності в Україні та світі, є загальний вплив маркетингу та маркетингової діяльності на більшість сфер людського існування, людські потреби та бажання, а також посилення зв'язку між маркетинговою діяльністю та загальним прогресом у сучасного суспільства, що в свою чергу впливає на розвиток праворозуміння та регулювання маркетингової діяльності. Цей розвиток потребує постійної наукової уваги, що, у свою чергу, сприяє вдосконаленню

UDC 346.54

**THE CONTENT OF LEGAL  
REGULATION OF MARKETING  
ACTIVITY IN UKRAINE AND THE  
WORLD**

**TRILINSKY, Ivan**

Postgraduate student

Academician F.H. Burchak Scientific Research  
Institute of Private Law and Entrepreneurship  
of the NALS of Ukraine (Kyiv)

**Popovych, Tetiana G.**

Candidate of Legal Sciences, Senior  
Researcher, Academic Secretary

Academician F.H. Burchak Scientific Research  
Institute of Private Law and Entrepreneurship  
of the NALS of Ukraine (Kyiv)

The purpose of the article is to study and determine the content of the legal regulation of marketing activity in Ukraine and the world, to study the peculiarities of the legal regulation of marketing and marketing activity in Ukraine and the world, and to determine the trends in the development of the legal understanding of marketing activity in the modern Ukrainian and global legal field.

The main trends related to the legal regulation of marketing activities in Ukraine and the world are the general influence of marketing and marketing activities on most spheres of human existence, human needs and desires, as well as the growing connection between marketing activities and general progress in modern society that in turn affects the development of legal understanding and regulation of marketing activities. This development requires constant scientific attention, which in turn contributes to the improvement of the legal understanding of marketing activity and thus improves the

правового розуміння маркетингової діяльності, а отже покращує здійснення підприємницької діяльності, яка, безсумнівно, є невід'ємною частиною життя людини в сучасному світі. Дослідження у сфері правового регулювання маркетингу та маркетингової діяльності також сприяють вдосконаленню нормативно-правової бази у сфері регулювання правовідносин підприємницької діяльності, що, безсумнівно, покращить правову ситуацію та принесе користь у популяризації підприємницької та маркетингової діяльності серед людей різних соціальних верств населення.

Зазвичай розробка законодавчих пропозицій щодо обмеження реклами викликає негативну реакцію виробників. Спротив перспективі жорсткішого регулювання реклами очевидний. Під час офіційних, відкритих аспектів переговорів часто існує лобювання з боку комерційних акторів. Хоча лобістів на громадських слуханнях побачиш рідко. Варто підкреслити важливість неформальних дискусій між депутатами та представниками індустрії, які відбувалися поза офіційними засіданнями, а взаємодія парламентаріїв із комерційним сектором може бути менш прозорою, ніж із громадянським суспільством. Має бути чітке усвідомлення того, що докладні, логічні чи технічні аргументи були набагато менш значущими у формуванні результатів, ніж соціальний капітал чи політичні розрахунки. Попередні переговори повинні переважати і формувати конкретні аргументи в маркетинговій діяльності.

Чітке визначення змісту правового регулювання маркетингової діяльності та ефективне законодавче закріплення маркетингових відносин забезпечать вирішення проблем перевиробництва та запобігання їх виникненню в майбутньому, сприятимуть підтриманню відповідності попиту та пропозиції, покращенню рівень забезпечення загальнодержавних і суспільних потреб,

implementation of entrepreneurial activity, which is undoubtedly an integral part of human life in the modern world. Research in the field of legal regulation of marketing and marketing activity also contributes to the improvement of the legal framework in the field of regulation of legal relations of entrepreneurial activity, which will undoubtedly improve the legal situation and bring benefits in the popularization of entrepreneurial and marketing activities among people of different social strata of the population.

Usually, the development of legislative proposals to limit advertising causes a negative reaction from manufacturers. The opposition to the prospect of more stringent advertising regulation is obvious. There is often lobbying by commercial actors during the formal, open aspects of negotiations. Although it is rare to see lobbyists at public hearings. It is worth emphasizing the importance of informal discussions between MPs and industry representatives that took place outside official sessions, and the interaction of parliamentarians with the commercial sector can be less transparent than with civil society. There must be a clear sense that detailed, logical or technical arguments were far less significant in shaping outcomes than social capital or political calculations. Preliminary negotiations should prevail and form specific arguments in marketing activities.

A clear definition of the content of the legal regulation of marketing activity and effective legislative consolidation of marketing relations will provide a solution to the problems of overproduction and prevent their occurrence in the future, will help to maintain the correspondence of supply and demand, improve the level of provision of national and public needs, support the promotion of investments in the private and public sector of the economy, which in turn, it will ensure the improvement of the standard of living of citizens and increase the competitiveness of national producers. This is extremely necessary for the ability of our

сприяти заохоченню інвестицій у приватний і державний сектори економіки, що в свою чергу забезпечить підвищення рівня життя громадян та підвищення конкурентоспроможності національних товаровиробників. Це вкрай необхідно для того, щоб наші виробники могли посідати найкращі місця на міжнародному ринку товарів і послуг, а також забезпечувати національний прогрес та інтереси нашої держави на світовій арені.

Ключові слова: маркетинг, правове регулювання маркетингу, зміст маркетингу, маркетингова діяльність, споживач, ринкові відносини

manufacturers to occupy the best places in the international market of goods and services, as well as to ensure national progress and the interests of our state on the world stage.

Keywords: marketing, legal regulation of marketing, marketing content, marketing activity, consumer, market relations

The purpose of the article is to study and determine the content of the legal regulation of marketing activity in Ukraine and the world, to study the peculiarities of the legal regulation of marketing and marketing activity in Ukraine and the world, and to determine the trends in the development of the legal understanding of marketing activity in the modern Ukrainian and global legal field.

Based on the purpose of the research, we set and solved the following tasks in our work: to investigate and determine the content of legal regulation of marketing activity in Ukraine and the world, to investigate the trends in the development of legal regulation of marketing activity in Ukraine and the world. The methodological basis of the article is a systematic and logical approach to the analysis of processes and phenomena in the modern legal understanding and regulation of marketing activities. During the study of the problem of determining the content of legal regulation of marketing activity in Ukraine and the world, theoretical and empirical methods of knowledge were organically combined.

The main trends related to the legal regulation of marketing activities in Ukraine and the world are the general influence of marketing and marketing activities on most spheres of human existence, human needs and desires, as well as the growing connection between marketing activities and general progress in modern society that in turn affects the development of legal understanding and regulation of marketing activities. This development requires constant scientific attention, which in turn contributes to the improvement of the legal understanding of marketing activity and thus improves the implementation of entrepreneurial activity, which is undoubtedly an integral part of human life in the modern world. Research in the field of legal regulation of marketing and marketing activity also contributes to the improvement of the legal framework in the field of regulation of legal relations of entrepreneurial activity, which will undoubtedly improve the legal situation and bring benefits in the popularization of entrepreneurial and marketing activities among people of different social strata of the population.

Marketing is part of politics. This illustrates the protracted nature of debates in this policy sphere. According to the Alana Institute, a non-profit organization that has sought to prohibit marketing communication directed at children since 2005. The inability of public health advocates to secure effective marketing regulations, however, suggests the need to re-examine such claims and highlights the need for further research into corporate political activity (CPA) [1, 2]. Similarly, a focus on marketing is appropriate given its significance to both health policy and to the global food industry, while the fractured and confused context of marketing regulation suggests the need to explore the relevance of industry opposition.

Political influences on marketing regulation have traditionally been shaped by social influence operating outside and between formal negotiations, attempting to contribute to the understanding of CPA through its explicit focus on informal governance [3]. Traditionally, legislative frameworks have been vulnerable and inadequate, aimed at substantially restricting advertising to children, placing the CPA taxonomy in a context in which policy-making is informed by informal relationships and largely shaped by social capital.

Usually, the development of legislative proposals to limit advertising causes a negative reaction from manufacturers. The opposition to the prospect of more stringent advertising regulation is obvious [4]. There is often lobbying by commercial actors during the formal, open aspects of negotiations. Although it is rare to see lobbyists at public hearings. It is worth emphasizing the importance of informal discussions between MPs and industry representatives that took place outside official sessions, and the interaction of parliamentarians with the commercial sector can be less transparent than with civil society. There must be a clear sense that detailed, logical or technical arguments were far less significant in shaping outcomes than social capital or political calculations. Preliminary negotiations should prevail and form specific arguments in marketing activities.

At this stage of the development of the economy of Ukraine, marketing occupies one of the most prominent places, since it directly affects the positive and profitable result of entrepreneurial activity. Marketing is defined as the main basis of business activity - it is a concrete understanding by a citizen of his entrepreneurial activity, aimed at determining and ensuring the needs of consumers and citizens as a whole.

The main element of the implementation of marketing activity is a clearly defined method of legal regulation, because the legislation that regulates the implementation of marketing and marketing activities affects the ability of entrepreneurs to clearly understand their rights and obligations, which in turn affects the legality and correctness of their actions. For example, during contact with potential buyers and clients, the entrepreneur can act in the legal field to ensure their wishes and needs.

Another important aspect is that entrepreneurs will be aware of their obligations not to violate antimonopoly legislation with their actions, as well as to act according to the principles of commercial secrecy. Marketing and all its components, such as price policy, determination of the most necessary and profitable goods or services for sale, methods of sale, places of sale, marketing communications are carried out in accordance with specific legal acts.

Legal regulation of marketing activity is a fairly young element in the modern legislation of Ukraine. In connection with the relentless increase in the influence of marketing on modern business activity in Ukraine and the world, as well as the consolidation of the market economy in Ukraine, it is increasingly urgent to ensure the legal consolidation of all aspects of marketing and marketing activities in the legislation of Ukraine. To date, we can say that the development of the legal understanding of marketing activities and its legal consolidation are beginning to gain momentum.

The subject of marketing law includes three related types of relationships. One of them defines specific marketing relationships, that is, relationships that are the main element of marketing activities. They can be considered conducting marketing research, determining the target audience, etc.

One of the main elements of the subject of marketing activity is the relationship between subjects of marketing activity and state bodies. Such relations can be considered the actions of state bodies in the sphere of state regulation of prices on the goods market, ensuring compliance with antimonopoly legislation, compliance with standardization, ensuring healthy competition, etc.

The main task of marketing activity and regulatory legislation can be called ensuring legality and equality among participants in legal relations during the implementation of business activities, which also consists in compliance with legislation in the field of marketing activities for further profit.

It is also worth noting that at the current stage of development of the market economy in Ukraine, there is a direct need for legal awareness, as well as the experience of using this legal

knowledge in business practice among entrepreneurs, marketers, as well as employees who specialize in advertising, since compliance with the law during the implementation of marketing activity is the greatest necessity to ensure a positive result and profitability from the implementation of entrepreneurial activity. It is also obvious that today entrepreneurs and marketers who have knowledge and experience in the field of legal implementation of marketing and marketing activities increase their value on the labor market due to their ability to solve organizational and economic issues in the field of advertising, as well as the direct influence of legislation in the field of marketing for business, production and marketing activities.

Over time, more and more sellers of goods and services began to enter the Ukrainian market, many of them foreign, who most often had extensive experience in marketing activities, which in turn influenced the need for private and public enterprises in Ukraine to research and improve their understanding the legal basis of marketing activity. Correct and effective regulation of relations in the field of marketing ensures the solution of many problems of entrepreneurial activity, such as overcoming the problem of overproduction, ensuring economic growth, meeting the needs of society, maintaining the correspondence of supply and demand, encouraging investment in production and ensuring the competitiveness of national enterprises.

It is worth noting that in order to determine the essence of the issue of the content of the legal regulation of marketing activities in Ukraine, it is necessary to examine the toolkit of concepts that was formed in the domestic legal literature. It should be noted that in the Ukrainian legislative base there is a system of distinguishing various activities related to entrepreneurial activity, such as commercial, informational, transport, marketing law, etc., most of which are fixed in the main branches of law.

It should also be noted that the norms regulating marketing activity should be distinguished in such specific main areas as economic, civil, procedural, administrative and financial law. Based on this, it can be noted that according to the construction of the Ukrainian legal system, such a right as marketing can be defined as a complex field of law.

The Tax Code of Ukraine [5], in particular paragraphs 14.1.108 contains a clear definition of the legal concept of marketing. Marketing is defined as an activity that is carried out in the form of providing services that ensure the functioning of the taxpayer's activities in the field of market research, promotion of sales of products (works, services), price policy, organization and management of the movement of products (works, services) to the consumer and after-sales service of the consumer within the economic activity of such a taxpayer.

This article also contains a definition of the concept of various types of marketing services, namely: (1) services for placing the taxpayer's products at the points of sale; (2) services for the study, research and analysis of consumer demand, entering products (works, services) of the taxpayer into sales information databases; (3) services for collecting and distributing information about products (works, services).

Another aspect of the study of the essence of the content of legal regulation of marketing activity in Ukraine and the world is the definition and study of one of the constituent elements of marketing activity - the marketing information system. First of all, it is necessary to study the definition of the marketing information system given by scientists. V. Darchuk notes that the marketing information system is a set of structures of methods, the main task of which is the systematic and effective collection, analysis, processing and preservation of marketing information of the enterprise, which is provided to employees and specialists at the enterprise for the further use of this information for making management decisions [6].

It is also worth noting that marketing information makes it possible to investigate the advantages of competitive enterprises, reduce the financial risk of sending new goods and services to the market, investigate the attitude of buyers and customers to goods and companies in general, monitor changes in the market for goods and services, and form company action plans and adequately evaluate its activities, improve the level of trust of buyers and clients in the advertising of goods and services, improve the efficiency and effectiveness of production and the company in general [6]. It should be noted that marketing information can be divided according to the order of

access into open and restricted information. As a general rule, the definition of open information is based on the principle of presumption, that is, all possible information can be attributed to it, except for that which has restrictions in the law on access to it.

In some cases, “private” associations are assigned regulatory functions by the state, giving them a quasi-public character (professional licensing bodies). Finally, even at the public level of authority, one can distinguish regulations by the scope of the political authority (as in city, county, state, regional and national governments). In some cases, political jurisdiction has inherent rights under the prevailing social contract (the national and state governments) [3]. Other units of government do not have sovereignty, but have been delegated their authority by some higher level of government city charters granted by states.

Along a second dimension of political authority lie regulatory instruments which are more or less compatible with exchange. Though continuous, we can distinguish five discrete categories:

1. Market Creating: public policies designed to create markets, by establishing rights, incentives and opportunities for exchange; e.g., creating a market for air pollution “rights.”

2. Market Facilitating: policies which promote or improve the operation of markets by reducing transactions costs, enhancing incentives or internalizing benefits and costs; e.g., public investment in transportation to expand the geographic scope of markets by reducing transport costs.

3. Market Modifying: regulations which attempt to change the conduct of subjects, the objects, medium or terms of exchange, in order to produce outcomes different from those the market would otherwise produce; e.g., agricultural marketing orders.

4. Market Substituting: policies which create substitutes for markets, in which instruments of political authority are used to allocate or distribute resources or control conduct of individuals or organizations outcomes are achieved, but by the exercise of authority, rather than by exchange; e.g., the provision of public-school education through rationing rather than through market exchange.

5. Market Proscribing: policies which attempt to prohibit exchanges by particular subject: or of particular objects, with no attempt to use authority as a substitute method for achieving a given outcome; rather, authority is used in an effort to prevent that outcome from occurring; e.g., laws prohibiting the sale of dangerous drugs.

A third dimension along which policies differ is their respective degree of cohesion or compulsion. At one extreme, there are laws or policies which carry virtually no compulsion, because they are superfluous (i.e., people would have acted in the legally prescribed way with or without the law; unenforced (for lack of adequate enforcement capacity, prosecutorial discretion or social consensus that it is a “bad law”; or though enforced, the sanctions imposed are not sufficiently severe to have much effect on conduct. At the other extreme, policies can be extremely coercive, when enforcement and sanctions are highly effective and the conduct prescribed or proscribed by the law is greatly different from individual preferences. Most laws, of course, lie in that middle ground in which the individual’s conduct is modified, but with no great sense of loss of personal freedom due to a high degree of compulsion. When categorizing policies with respect to coerciveness, it should be noted that laws often require us to do what is good for us and others; we are happy to comply with the law, and happy to have the law so that others will comply as well (e.g., traffic laws).

These three dimensions of authority, the degree of publicness, the degree of compatibility with exchange, and the degree of compulsion, explain much of the ideological battle over the use of authority in general, or the selection of public policies in particular. Libertarians prefer instruments of authority which are more private, less public; most compatible with markets; and least coercive. Conservatives tend to prefer policies which protect prevailing property interests (whether compatible with markets or not) and that are coercive (e.g., heavy penalties for socially unacceptable behavior).

Based on this, it can be said that in those situations where the legislation does not clearly define the legal status of this or that information, it is considered that, as a general rule, the presumption of

openness can be used to determine the legal status of information. It is also worth noting that in the case of a conflict of interests, the presumption of openness of information can be used, which will determine the direct need to prove the legality of the closure of information, and not the right to access this information.

The legislation defines that restricted access to marketing information includes confidential information, such as information about a natural person, as well as information to which access is restricted to a natural or legal person, except for subjects of authority. Confidential information may be disseminated at the request (consent) of the relevant person in the order determined by him in accordance with the conditions stipulated by him, as well as in other cases determined by law [7, Art. 21].

**Conclusions:**

A clear definition of the content of the legal regulation of marketing activity and effective legislative consolidation of marketing relations will provide a solution to the problems of overproduction and prevent their occurrence in the future, will help to maintain the correspondence of supply and demand, improve the level of provision of national and public needs, support the promotion of investments in the private and public sector of the economy, which in turn, it will ensure the improvement of the standard of living of citizens and increase the competitiveness of national producers. This is extremely necessary for the ability of our manufacturers to occupy the best places in the international market of goods and services, as well as to ensure national progress and the interests of our state on the world stage.

**Посилання:**

1. Camila Maranhã Paes de Carvalho and other (2022) «Private and personal»: Corporate political activity, informal governance, and the undermining of marketing regulation in Brazil. *Global public health*. Vol. 17. №. 9. P. 1902–1912. <https://doi.org/10.1080/17441692.2021.1988128>. URL: <https://www.tandfonline.com/doi/epdf/10.1080/17441692.2021.1988128?src=getftr>
2. James M. Carman and Robert G. Harris (2016) Public Regulation of Marketing Activity, Part III: A Typology of Regulatory Failures and Implications for Marketing and Public Policy. *Journal of Macromarketing*. Volume 6, Issue 1, September 15. <https://doi.org/10.1177/027614678600600108>. URL: <https://journals.sagepub.com/doi/10.1177/027614678600600108>.
3. James M. Carman and Robert G. Harris (2016) Public Regulation of Marketing Activity: Part II: Regulatory Responses to Market Failures. *Journal of Macromarketing*. Volume 4, Issue 1, September 15. <https://doi.org/10.1177/027614678400400105>. URL: <https://journals.sagepub.com/doi/10.1177/027614678400400105>.
4. James M. Carman and Robert G. Harris (2016) Public Regulation of Marketing Activity: Part I: Institutional Typologies of Market Failure. *Journal of Macromarketing*. Volume 3, Issue 1, September 15. <https://doi.org/10.1177/027614678300300108>. URL: <https://journals.sagepub.com/doi/10.1177/027614678300300108>.
5. Податковий кодекс України. Відомості Верховної Ради України. 2011. № № 13–17. Ст. 112.
6. Крижко О. В., Дарчук В. Г. (2016) Інформаційні системи в маркетинговій діяльності. *Економіка. Менеджмент. Бізнес*. № 4 (18). С. 113–120.
7. Про інформацію : Закон України. Відомості Верховної Ради України. 1992. № 48. Ст. 650.

Статтю було подано	05.12.2022	The article was submitted
Статтю було доопрацьовано	11.12.2022	The article was revised
Статтю було прийнято	15.12.2022	The article was accepted