



#### OPEN ACCESS

SUBMITTED 30 November 2024

ACCEPTED 25 December 2024

PUBLISHED 26 January 2025

VOLUME Vol.07 Issue01 2025

#### CITATION

Jaafar Hussein Hasan, & Abdullah Aqeel Hussein Al-Sagaabi. (2025). Commercial defamation in the context of comparative advertising and advertising through commercial events within the framework of chinese law. The American Journal of Political Science Law and Criminology, 7(01), 22–29. <https://doi.org/10.37547/tajpslc/Volume07Issue01-04>

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# Commercial defamation in the context of comparative advertising and advertising through commercial events within the framework of chinese law

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**Abstract:** Reputation applies to both legal entities and natural persons. Since every market entity strives to establish a positive reputation in order to promote its goods, reputation is a crucial attribute for market entities in commercial economic activities. Advertising, in which businesses advertise their goods to emphasize their benefits and market them as effectively as possible, is one strategy to establish this reputation. These organizations may, nevertheless, use advertising by contrasting their product with that of another economic entity in addition to simply displaying their own. They may plan a ceremony to display and contrast their product with that of another organization, or they may employ conventional advertising techniques. They might also try to promote their product by disparaging the quality of goods made by other organizations.

As a result, this study offers an analytical examination of commercial defamation, its concept, and comparative advertising—the practice of comparing the product of one company with that of another—with reference to European and American law and the framework of Chinese law. In addition, the study investigates whether the idea of comparative advertising—or advertising in general—applies when a product is presented and contrasted with another product during a ceremony instead of using conventional advertising techniques.

**Keywords:** Commercial Defamation, Comparative Advertising, Commercial Ceremonies.

**Introduction:** Commercial businesses use advertising tactics to persuade the public to purchase their goods in an effort to increase profits and market their goods. This strategy boosts their sales and profits in addition to helping them reach a wider audience. Businesses may decide to compare their products with those of rivals because they compete with one another to maximize profits and establish market dominance, particularly those that manufacture identical products under various names and brands.

The purpose of these comparisons is to emphasize the benefits and superiority of their own products over those made by other businesses. In order to accomplish this, these businesses frequently use commercials or promotional activities, like planned showcases or open demonstrations, to showcase and contrast their products with those of other producers. This begs the question: Is it legal to make such a comparison? In what way does this comparison relate to commercial defamation? Furthermore, is it considered advertising when product comparisons are displayed at trade shows or promotional events?

We shall examine these matters in the context of Chinese law in this study. We will start by going over the idea of commercial defamation, then I'll analyze product comparisons and look at how these comparisons are typically presented at showcases or promotional events. The purpose of this study is to present a legal viewpoint under Chinese law.

## METHODOLOGY

This study relies on a theoretical legal research methodology, primarily based on library sources, by conducting a comprehensive and detailed review of both primary and secondary legal materials. The primary sources include relevant laws, treaties, agreements, and official policies that regulate commercial defamation in the context of comparative advertising and advertising through commercial events. Secondary sources consist of academic books, legal articles, legal journals, and reports issued by relevant legal and professional institutions.

The study also employs a comparative method to analyze the legal texts related to commercial defamation in advertising in the United States, the European Union, and the People's Republic of China. Through this approach, the study evaluates the effectiveness and relevance of the legislations in these three countries in addressing commercial defamation in the context of comparative advertising and commercial events.

Additionally, the study examines the key differences between the legal systems in these countries concerning the application of commercial defamation

and analyzes the impact of these legislations on advertising practices in each region. The study aims to provide practical recommendations to strengthen the legal systems related to commercial defamation in these areas, in line with international standards, and to contribute to the improvement of commercial advertising regulation in different contexts.

## Concept of Commercial Defamation

A type of rivalry between market participants with the goal of maximizing profits is called competition. It is a feature of a market economy by nature. Although it is a basic characteristic of market economies, competition is not completely unchecked. Instead, it is regulated by laws that guarantee equitable competition among market participants and maintain it within the bounds of law, thereby avoiding unfair competition. The practice of disparaging a competitor's brand and its goods is one of the main rules against fair competition. Thus, it can be claimed that the following constitutes commercial defamation:

An unfair competitive practice that involves fabricating facts or misleading information with the intention of damaging the reputation of other commercial entities in order to obtain illegal advantages. When someone or a company makes a disparaging statement about another company, its owner, or an officer, it is referred to as "commercial defamation." In order to prove commercial defamation, a person or organization must demonstrate that they intentionally made a false statement and that the statement caused damages. It can be challenging to prove damages in a commercial defamation case, but they could include lost sales or other revenues, harm to the company's reputation, and missed business opportunities. Establishing the veracity of the allegedly defamatory statement or contesting the claimed damages are common strategies used to defend against a commercial defamation claim.

The essential component of the problem of commercial defamation is that its main objective is to damage the reputation of the commercial entity, regardless of the definition and its variations. Any company's ability to market its goods is based on its reputation. Nevertheless, there is no precise definition of commercial defamation in Chinese law. Rather, it forbids certain behaviors that have detrimental effects on the commercial market and fair competition among market participants, regardless of whether these effects are related to rival businesses and their goods or have an effect on consumers. These acts are classified as commercial defamation. Businesses and employers are prohibited from creating or disseminating false or misleading information by the Unfair Competition Law. Additionally, it forbids the spread of any inaccurate or

misleading information that could mislead customers.

### Manifestations and Characteristics of Commercial Defamation

As China's market economy has grown, the level of competition has increased. Some business owners use legal means to further their financial interests, such as making significant, long-term investments to improve their company's reputation and boost their competitiveness. In the meantime, some turn to commercial defamation, whereby they harm their companies' image and the reputation of their rivals in an effort to strengthen their position in the market and increase their market share.

Commercial defamation practices are distinguished by their quick impact, low cost, and ease of implementation. It can take a long time and sometimes be challenging to restore a company's positive image and business reputation once they have been damaged. In the end, this hurts consumers by causing a steep drop in the companies' reputation, affecting market stability, and upsetting healthy competition. Thus, according to Article 11 of Chinese law, one of the types of unfair competition is commercial defamation. Based on the methods used and the contexts in which these actions occur, commercial defamation behaviors can be categorized into the following forms:

a) The most prevalent type of commercial defamation involves business owners spreading false information in public settings, like through press conferences, open letters, or advertisements, with the intention of creating and spreading false information to damage rivals' reputations. For instance, major media outlets across multiple regions have given the Chaofu Rida-produced movie "Forida" favorable coverage since its release. This glass film can survive impacts, and the best-quality model can even withstand bullets, according to a Ministry of Public Security report. In contrast, Jianchen Building Materials Company advertised a similar product called "Glass Covering" in the "Financial News," calling the impact-resistant glass a "fraud" and a "marketing scam." This cast doubt on the "Forida" movie, harming its popularity and financial standing. In a different instance, the Monster Juice Company published pamphlets in 1995 disparaging the children's product "Wahaha," alleging that the product contained hormones that accelerated children's development and resulted in a number of illnesses. The reputation of the "Wahaha" brand suffered greatly as a result of this action,

and sales of the brand fell precipitously. In a similar vein, a different Nanjing company held a press conference and claimed that "Silver Thermos" containers sold in the market contained "arsenic compounds," despite the fact that its own product was a "non-toxic thermos," damaging its rivals' images;

b) In an attempt to gain market dominance, some entrepreneurs publish deceptive or comparative ads that exaggerate the qualities of their goods in order to damage the reputation of their rivals. Ads are a powerful and widely disseminated tool that can swiftly reach a large audience in the modern era due to the extensive dissemination of information. Commercial defamation has the potential to significantly affect rivals through these commercials. For instance, the reputation of the other product suffered greatly when Klei, a company in Jiangsu Province, promoted its "Kira" product by making an inaccurate comparison with "Angli One" from Shanghai University. Similarly, Dandani in Jiangsu Province falsely claimed that traditional laundry detergent contained phosphorus and benzene, which cause pollution, while their product, "Fao Soap," contained none of these dangerous substances;

c) Some entrepreneurs purposefully disseminate misleading information in front of their competitors' customers in an effort to harm those competitors' and their products' reputations. They may also spread lies or misrepresent the truth in an effort to influence customers, to strengthen their position in the market, some rivals might, for instance, spread untrue rumors among other businesses' clients. For example, some shops might say that goods from other shops are fake or unfit for human consumption, or they might say that some eateries serve bad food, or that other hotels provide illegal services;

d) Some entrepreneurs use instructional brochures or packaging to spread misleading information in an effort to harm their rivals' reputations. For instance, businesses that advertise their goods with brochures or packaging that disparages rival goods. This is comparable to the actions of Longfeng in Shandong and Dandani in Jiangsu, who used packaging bags to damage the reputation of their rivals' goods;

e) In an effort to draw clients, some

entrepreneur's instructor encourages others to spread untrue rumors that damage their rivals' reputations or to make fictitious complaints about their rivals' goods to the appropriate authorities. This kind of behavior entails trying to disseminate untrue rumors in an effort to change consumers' perceptions of the product, which can cost rivals a lot of money.

### Commercial Product Comparison

To advertise their products and emphasize their benefits, some market entities may turn to contrasting their offerings with those of other market entities. Consequently, it's important to consider whether these comparisons are legal:

### Concept of Comparative Advertising

Comparing commercial products is regarded as one of the competitive tactics employed by companies to draw attention to the benefits of their offerings and expand their customer base. These comparisons represent one facet of business competition because they are made through advertising. A lot of us have seen countless ads that contrast products in real-world situations. This raises the question of whether these comparisons are permitted or prohibited. Identifying the appropriate classification results in the unavoidable conclusion of whether these comparisons are considered unfair competition or fair competition.

In the United States, the first well-known comparative advertisement debuted in 1930. Comparative advertising has been used extensively in Western countries' commercial activities since the 1970s and is still widely used today. Because of this, academics in Western nations started researching this particular advertising strategy at an early age, examining it from the standpoint of its legal regulation. At the moment, the majority of Western academics favor the use of comparative advertising. For instance, in his book *The Law of Mass Media*, Don R. Pember outlined his support for comparative advertising. He made the case that comparative advertising shouldn't be condemned, stating that it greatly aids consumers in choosing between products and services and helps them exercise their right to information. Therefore, as long as comparative advertising does not contain false statements or confuse consumers, trademark owners are not allowed to interfere with its use. In his book *Introduction to Unfair Trade*, Charles R. McNees noted that when comparative ads are truthful and objective, they give consumers crucial information that enables them to make well-informed decisions about what to buy. He went on to say that comparative advertising can support ongoing product updates, lower costs, and

technological innovation. Consequently, its use ought to be promoted. In his paper *New Developments in Unfair Competition Law in Europe*, Greg Srikol, on the other hand, took a more circumspect approach to comparative advertising, pointing out that its application might be morally dubious. He contends that choosing legal principles for comparative advertising should be centered on upholding a competitive order, which necessitates that comparative ads be carried out while adhering to several guidelines and being supervised by the idea of fair competition.

On comparative advertising, Chinese academics hold varying opinions. Some people think it encourages product innovation, lowers the cost of consumer choice, and is an expression of freedom of speech. As a result, it ought to be freely acknowledged by the law. However, some contend that comparative advertising is a form of unfair competition because it is founded on the idea of "highlighting the best while ignoring the flaws," which can result in deceit. Comparative advertising has both benefits and drawbacks, according to the middle-ground viewpoint, but overall, the former outweighs the latter. As a result, it ought to be acknowledged by law, with a suitable regulatory structure to stop its misuse and severe sanctions for offenders.

What does comparative advertising mean according to Western laws? (Considering their innovative contribution to this field's legal regulation): Comparative advertising is defined as follows in the United States: Comparative advertising is described as "advertising that compares alternative brands on objectively measurable attributes or price and identifies the alternative brand by name, illustration, or other distinctive information" in the comparative advertising policy statement released by the U.S. Federal Trade Commission (FTC). Two essential components are specified in this definition: The competitor must be easily recognized in the first place, and the products being compared must fall into the same category or type in terms of price or quality.

Comparative advertising was defined as "any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor" in the 1997 amendment to the European Commission's Directive (Directive 84/450) in the European Union. Despite having a unique advertising law, China lacks a precise definition for comparative advertising. According to Yang Ming, comparative advertising is any form of advertising that contrasts a product or service in the same category with a rival product or service. The comparison can be made using particular features of the products or services or by highlighting the competitor's advantages over the competition.



We can infer from the earlier analysis that a comparison of particular product attributes or a specific reference to the competitor are not always necessary for the legal definition of comparative advertising. Instead, what matters is that the commercial presents a comparison between goods or services, either overtly or covertly, with the intention of influencing the choices of consumers, whether the comparison applies to all or just some of the attributes.

### **Fair and Unfair Comparisons**

Comparisons in advertising are not illegal, as the previous paragraph demonstrated, and in certain nations they are subject to legal regulations. But the question remains: are comparisons of competing products in advertisements entirely permissible, or do they need to be subject to rules to ensure that they stay within the bounds of fair competition? The rules that must be followed in comparative advertising are known as the general principles of comparative advertising. False advertising should be applied to any statement that hurts competitors, regardless of whether it is supported by credible evidence or not. Some academics have recognized instances of deceptive and misleading comparative advertising, such as inflating minor differences, presenting goods in an untruthful manner, or suggesting to customers that there are no or only partial advantages. Second, comparative advertising should not harm competitors' trade names, trademarks, logos, goods, or services in any way, including by confusing consumers, undermining their worth, or attempting to gain unfair advantages.

Comparative advertising is not specifically governed by any laws in China, and the relevant legal texts are dispersed throughout different legal provisions. The Advertising Law, the Anti-Unfair Competition Law, and a few associated administrative rules and regulations all contain these passages. The Anti-Unfair Competition Law's Article 9 forbids businesses from running deceptive ads that could give the wrong impression, and Article 14 forbids the distribution of inaccurate information. The same law's Article 2 highlights that honesty, good faith, and business ethics must be followed in all business dealings.

Regulating advertising in China is specifically done by the Advertising Law, which regrettably lacks a section specifically for comparative advertising. Article 12, which forbids advertisements from devaluing the goods or services of other producers; Article 14, which forbids comparative advertising pertaining to pharmaceuticals and medical devices; and Article 47, which imposes civil liability on those who damage the reputation of other producers, are the only provisions

in this law that deal with comparative advertising.

In regulatory documents like the "Cosmetics Advertising Administration Measures," "Drug Administration Measures," and "Advertising Management Regulations," certain clauses are incorporated to stop advertising practices that devalue other products. Comparatively speaking, the "Advertising Examination Standards" have the most extensive provisions pertaining to comparative advertising because they prohibit comparative ads in advertisements for drugs, pesticides, medical devices, and cosmetics and contain eight articles that more thoroughly regulate the principles, content, and forms of comparative advertising.

Certain regulatory documents, like the "Code of Ethics for Advertising," have contributed to the regulation of comparative advertising. Article 11 of this document forbids "one-sided promotion or exaggeration of the flaws of similar products or services in a comparative or suggestive manner against others." Furthermore, the "Advertising Publication Guidelines" forbid direct comparative advertising and stipulate that it must be founded on the idea of fair and legitimate competition. They mandate that indirect comparative advertising be backed by scientific evidence and foundations, defining the comparison method, the language used, and the data and survey results.

### **Comparison through Commercial Presentation, ceremony**

We are aware that businesses can showcase and market their goods using a variety of advertising techniques. With the development of technology and the introduction of the internet, advertising techniques have expanded in variety. Advertising as a medium is distinguished by its capacity to reach a wider audience, contingent on media coverage, including social media and television channels. This indicates that these advertising strategies are excellent at giving a product wide exposure. An unfair competition scenario that hurts the competing product arises if these widespread advertising techniques result in an unfair comparison of products. What happens, though, if these popular advertising techniques are not used to compare products? Can it still be considered advertising, for instance, if a comparison is made between the hosting company's product and that of other companies by planning an event at a particular location to which customers are invited? Can this presentation be categorized as an advertisement since it only reaches the attendees of the event and does not reach a wide range of consumers? We will make an effort to address this in light of some international laws, then Chinese law.

### Unfair Comparative Advertising through Commercial ceremony in International Laws

Since European and American laws were among the first to regulate unfair comparative advertising, we will concentrate on them in order to examine this topic in international law. It should be mentioned that unfair comparative advertising through commercial celebrations is not specifically mentioned in these two legal systems. Nonetheless, it can be deduced from the European Directive 2006 that advertising is not limited to any specific format. This makes me believe that a commercial celebration and the product comparisons it contains are within the purview of advertising. According to the directive mentioned above: In accordance with this Directive,

- a) "advertising" refers to any representation made in connection with a trade, business, craft, or profession to encourage the supply of goods or services, including immovable property, rights, and obligations;
- b) "Misleading advertising" refers to any form of advertising that, in any way, including how it is presented, deceives or is likely to deceive the people it is intended for or reaches, and that, because of its dishonest nature, is likely to influence their purchasing decisions or that, for those reasons, harms or is likely to harm a rival;
- c) "Comparative advertising" refers to any advertising that specifically or implicitly names a rival or the products or services that they provide.

Martin Senftleben makes a similar argument, stating that the EU's harmonization of unfair competition law has resulted in a notable concretization of the prohibited misleading acts as outlined in Article 10bis (3) PC. When a commercial practice deceives or is likely to deceive the people it is intended for and has the potential to influence their economic behavior because of its deceptive nature, it is considered misleading. Additionally, deceptive behavior is actionable if it harms or is likely to harm a competitor due to its impact. 58 The deceptive behavior may be related to a number of factors.

There isn't a clear definition of advertising in US law. Nonetheless, "unfair or deceptive acts or practices in or affecting commerce" are forbidden by Section 5 of the Federal Trade Commission Act (FTC Act) (15 USC 45). All parties involved in commerce, including banks, are subject to this ban. When unfair or dishonest acts or practices are found, the Board is empowered to take the necessary action under Section 8 of the Federal Deposit Insurance Act.

There is no precise definition of advertising in the Lanham Act. However, it stipulates in the pertinent section of 15 U.S.C. Section 1127, Section 43(a) of the Lanham Act: "Any person who... uses in commerce any... false or misleading description of fact, or false or misleading representation of fact, which: (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities

### Unfair Comparative Advertising through Commercial ceremony in Chinese Law

The idea and legal definition of advertising, along with the event's goal and character, should all be considered in order to ascertain whether a product promotion event qualifies as advertising under Chinese law. This evaluation is predicated on pertinent legislation, including the People's Republic of China's (2018) Advertising Law and its (2017) Anti-Unfair Competition Law, as well as their interpretations. Although there is no precise definition of advertising in Chinese law, the People's Republic of China's (2018) Advertising Law declares:

This law will apply to commercial advertising activities where commodity dealers or service providers directly or indirectly introduce their marketed goods or services within the People's Republic of China through specific media and formats. For the purposes of this law, an "advertiser" is any individual, business, or organization that creates, produces, and distributes advertisements or permits another individual to do so in order to promote its products or services.

It is clear from the text analysis that the goal of advertising is to promote goods. Therefore, the purpose of any promotional event that a commercial entity organizes to showcase its product and its features by comparing it to another product from a rival entity is to promote the product. As a result, it qualifies as advertising under the definition given in the text above, and as such, the organization is required to follow the rules and guidelines of fair comparative advertising for goods. This is due to the fact that the goal in this instance is marketing, improving the product's image, and drawing clients in contrast to the rival product.

Therefore, using unfair comparisons or giving false information during the promotional event is forbidden for the commercial entity. Article 8 of the People's Republic of China's (2017) Anti-Unfair Competition Law would have been broken if the organization had done so. It reads as follows:

Any business entity that engages in false or misleading commercial publicity regarding the performance, functions, quality, sales conditions, user comments, and

honors received of its goods is prohibited from misleading or deceiving consumers. Therefore, I think that when the Chinese law expressly states "any false or misleading commercial publicity," it does not specifically mention any type of deceptive commercial publicity, as stated in the aforementioned text. Therefore, planning a commercial ceremony and comparing it to other products is considered advertising and publicity, which can result in liability if it goes beyond the bounds of fair comparative advertising. In two situations, Feng Yu Qiang contends that there is no such thing as commercial defamation: No False Facts: The act is not deemed defamatory if the published information is accurate. No Publication of Information: Information is not deemed defamatory if it is not extensively shared.

However, we think that the legislator has not mandated that false information or defamation be widely disseminated, based on my analysis of earlier texts from the Chinese Advertising Law and the Anti-Unfair Competition Law. The fact that there is information that hurts other competitors or defamation is what counts. The issue should, in my opinion, also be considered from the standpoint of other Chinese laws, such as the Chinese Civil Code, which states that reputation is a right that both natural and legal persons enjoy and that damaging it is forbidden. Articles 101 and 102 describe this as follows:

- Article 101: The right of reputation is enjoyed by both citizens and legal persons. The law protects citizens' human dignity. It is illegal to damage a citizen's or legal person's reputation through libel or insult.
- Article 102: The right to honor is enjoyed by both citizens and legal persons. Illegally depriving a citizen or legal person of their honor is forbidden.

According to what the Supreme People's Court of China said in Answers of the Supreme People's Court on Certain Issues Concerning Trials of Cases Involving the Right to Reputation (the 1993 Answers), defamation can be proven if (i) the defendant committed an illegal act, (ii) the plaintiff's reputation was harmed, and (iii) there was a causal relationship between the defendant's illegal act and the reputational harm. Therefore, we think that a business entity's reputation is the target of commercial defamation. Therefore, if a commercial celebration's promotional event targets a company's commercial reputation, it is considered unfair comparative advertising and is punishable by law.

## CONCLUSION

We have reached a conclusion that there is no set form for advertising as a result of my research and analysis. As a result, advertising encompasses any actions intended to promote goods or make comparisons with goods from other businesses. As a result, it needs to abide by the laws pertaining to comparative commercial advertising and fair competition. According to this viewpoint, holding a business ceremony to compare commercial products is considered advertising and is governed by its laws.

However, we think that specific laws pertaining to commercial advertising in general—including those governing comparative advertising in China—are required. Instead of depending on sporadic provisions across various legal texts, China's economic development necessitates legislative progress on this issue through the issuance of specific legislation that addresses this aspect.

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