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# Criminal Protection from Misleading Advertisements on Social Media Under the Bahraini Consumer Protection Law

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**Abstract:** Providing effective criminal protection for the consumer from the danger of misleading advertisements spread through social media has become an imperative necessity. It contains many legal problems, especially in light of the increasing spread of such advertisements simultaneously with the significant increase of e-commerce. In this paper, we demonstrate the adequacy of criminal protection for the consumer provided by the Bahraini Consumer Protection Law in the face of misleading and deceptive acts through commercial advertisements using social media, and the extent of consumer awareness of it.

**Keywords:** consumer criminal protection, misleading commercial advertising, social media commerce.

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## 1 Introduction

Consumer protection in general and the consumer through e-commerce in particular is one of the important topics that still raise many questions and controversial issues, especially in light of the poor knowledge of the consumer and the great recovery of this trade in the recent period, to which the closures and restrictions imposed by most countries of the world contributed to confronting the spread of Covid 19 [1]. Also, the weak position of the consumer compared to the position of the provider necessitates that the legislator takes it into consideration, especially in light of the liberalization of markets in the era of globalization [2], and the increased risks facing the consumer from manipulation of prices and specifications and various illegal acts, including fraud and deception that he is exposed to through commercial advertisements, that are misleading on social media. For this reason, legal protection, especially criminal protection, is still considered one of the necessary means to reduce the risks and damages of these acts to the consumer [3].

The unprecedented development in the fields of communication and information technology as a result of the emergence of the Internet, and the accompanying emergence of new means of communication, in turn helped to develop advertising methods, especially with regard to the use of electronic commercial advertisements, including those published through social media. Social networking programs have become not just sites for communication and entertainment only, but also an ideal means that contribute to the increase in the spread of electronic commercial advertisements and their circulation among the consumer public, especially that most of them are free and easy to use, and enable the consumer to see what is offered in the markets of goods and services, to identify them and compare them. Among them, whether in terms of price, quality, or features. At the same time, commercial advertising through social media achieves the product advertiser and merchant benefit by distributing goods and services in an unrestricted manner, with a specific spatial scope, very quickly and with much less expense and effort than the cost of advertising by traditional means.

However, despite this positive aspect of commercial advertisements via social media, there are those who have used these means to publish deceptive and misleading advertisements, as they deliberately conceal from the consumer the true nature of the service or commodity that he aims to obtain and contract to buy it from the supplier or product, as we find Some of them lack objectivity and transparency when presenting data and information related to capacity or service. It pushes the consumer to buy, use a product, or service that he does not really need by the doings of the false temptations it offers. Thus, such advertisements present a harmful and threatening message to the entire society, economically, security, and morally, and many individuals have fallen victim to it. In addition, they harm honest competition and the interests of the provider and consumer. [4]. Therefore, it is subject to different laws and regulations that ensure a truthful and ethical message [5] Providing effective criminal legal protection to the consumer from

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misleading advertisements that provide the consumer with deceptive information about the good or service offered by the product has become necessary in order to preserve his rights, especially since many consumers lack sufficient experience and ability to distinguish the quality of goods and products and the benefit it contains. Hence the importance of research on this subject to determine the nature of misleading electronic advertisements and the extent of criminal protection for the consumer from them. The research also acquires special importance because it is an attempt to consolidate the position of the Bahraini legislator on this issue in light of the fact that there are various Bahraini legislations dealing with it, as well as in light of the lack of studies in the Kingdom of Bahrain that are exposed to it. As well as by studying through a special questionnaire the extent of the spread of these misleading advertisements through social media and the extent of the legal awareness of the user of these means of it.

The study seeks to read and analyse the provisions of the Bahraini Consumer Protection Law No. (35) of 2012 related to the criminal protection of consumer rights from misleading advertisements, with reference to the texts of other relevant Bahraini legislation, including the texts contained in the Penal Code issued by Decree-Law No. (15) of 1976 and its amendments, Law No. (60) of 2014 on Information Technology Crimes, and the Unified Law (Regulation) for Combating Commercial Fraud for the Cooperation Council for the Arab States of the Gulf and others. The researcher also seeks to stand on the position of the judiciary and to expose the most important jurisprudence opinions in this regard, with the aim of demonstrating the adequacy and effectiveness of criminal protection for consumer rights in the face of misleading advertisements spread through social media, and to identify the most important aspects of the shortage and ambiguity that plagued the provisions of the Bahraini legislation, and then work to present a vision of the solutions that can be addressed. The study also seeks to show the extent of such advertisements through social media, and the legal awareness of consumers about them.

The research raises several problems, including what is related to the difference and diversity of Bahraini legislation that can be applied to the facts related to the dissemination of misleading advertisements through social media, especially with the absence of a specific explicit text that addresses this issue in the Bahraini Consumer Protection Law, which raises the question about the legal text that is required to be applied, which is more appropriate to it? and which is consistent with its legal model? It also raises the question of the extent to which this diversity affects the effectiveness of criminal protection for the consumer misleading commercial ads?

Accordingly, the problem of the study is summed up in showing the adequacy of criminal protection in the face of acts of misleading and deceiving the consumer through misleading advertisements via social media under the Bahraini Consumer Protection Law. In an attempt to address this problem, the study raises a number of questions, the most important of which are:

What is meant by shady advertising in the context of electronic transactions via social media?

What are the most important crimes arising from posting shady ads on social media?

What is the prevalence of these crimes, according to the surveyed social media users?

How aware are social media users about these crimes?

#### *Research Methodology*

In this study, the researcher follows the descriptive approach, which is based on describing the phenomenon of misleading advertisements through social media and explaining its dimensions, in addition to the analytical approach, by collecting the relevant legal texts, analysing them and interpreting them in order to obtain real results and interpretations using the established principles of jurisprudence and the judiciary. Among the other tools on which the study depends on is the use of a special questionnaire that includes primary data and a set of paragraphs independent of each other to study many points raised by the subject of the shady advertisement, including the extent of its spread, and the extent of awareness of the sample of the questionnaire about these crimes. It was conducted at the level of a group of friends and colleagues. The researcher on the social media that he uses, namely Facebook and WhatsApp.

#### *Research plan*

Because of the nature of this study, the researcher divided its plan into an introduction in which he explained the importance of the topic, the objectives of the research and its problems, and the method used in it, and a theoretical background on the subject in which he dealt with the nature of misleading advertising, and the crimes arising from misleading advertisements under the Consumer Protection Law, and a field study through a special questionnaire, and a conclusion that included Study results and recommendations.

## 2 Theoretical background

Commercial advertising, including advertisements through social media, is one of the important pillars on which the economy of contemporary countries is based, as it is a driving nerve for it, and a means of introducing goods and services and enticing consumers to acquire and acquire them, as it is one of the best means of competition between producers and suppliers. But at the same time, advertising, if it is misleading, poses a danger to the consumer, the producer, and the economy in general. In what follows, we will first address what misleading advertising is, and then address the crimes arising from misleading advertisements under the Consumer Protection Law.

### *What is misleading advertising*

To show what misleading advertising is, we will first define commercial advertising in general, and then define misleading advertising.

### *Commercial advertising definition*

The advertisement was defined as: “a means of introducing a good or service for the purpose of selling or buying.” [6] It was also defined as “the sum of the means used by merchants with the intent of forming customers,” [7] and considered by another aspect of jurisprudence “every act or behaviour aimed at psychologically affecting the public, whatever the means.” This influence, with the aim of convincing them of the advantages of the good or service, and the benefits it can achieve.” [8] In general, advertising is the use of a certain means to introduce a specific matter, this matter may be political, ideological or social. [9]

The European regulations also defines the advertising are in Directive 2006/114/EC, on misleading and comparative advertising. In Article 2/(a) of the Directive, advertising is considered to be “advertising” means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations” [10]

Accordingly, and through the foregoing, it can be said that the commercial advertisement contains two elements: a material element and a moral element. The material element consists of a set of tools and means that are used for advertising, whatever their nature, whether they are written or read such as newspapers, magazines and periodicals, or audio-visual such as television, cinema, mobile screens, or on Internet pages and social media, and in general all media can be used for advertising purposes. As for the moral element, it is represented in the intention of the advertiser or the goal he aims at behind the advertising operation, and by specifying the goal, the features of this element become clear, so when the goal is to achieve material profit directly or indirectly, it is a commercial advertisement. [11]

### *Definition of misleading advertising*

Disinformation is providing incorrect information or involving omission of the truth or any practice that could lead to deceiving the consumer, which is done with a positive, tangible activity [12]. The advertisement is conducive to misleading when it contains statements, notice or formations that are likely to mislead the consumer, and whether it actually causes him to mislead or may lead to that in the future without waiting for the actual results [13]. For this reason, various legislations have been keen to criminalize misleading advertising in order to protect consumer rights, In some countries, to avoid the harms of misleading advertising, professionals have also established a self-regulation that they have committed themselves to, with the aim of reassuring the consumer that the advertisement will perform its function. Professionals in some countries (France, for example) also went to find an advertising verification office and set the principles and ethics of the advertising profession [14].

In the Kingdom of Bahrain, the Bahraini Consumer Protection Law did not define the shady advertisement, but some provisions of this law can be applied to it as we will show it later, and it was also referred to in the unified law (regulation) to combat commercial fraud, [15] where the issue of advertising, marketing or promotion of goods is It has one of the most common forms of commercial fraud used today, such as imitation of goods in terms of form, name, trademark and quality [16].

Some comparative Arab legislations have explicitly defined misleading advertising, as did, for example, the Egyptian legislator, who defined it in Article 16 of the Executive Regulations of the Egyptian Consumer Protection Law as: “It is deceptive behaviour. misleads the consumer or leads to confusion or error. The Lebanese legislator defined it in Article 11 of the Consumer Protection Law as “that which is carried out by any means, deals with a good or service, and includes a false offer, statement, or allegation, or it is formulated in terms that lead, directly or indirectly, to misleading deception.” or mislead the consumer.

The European directive also defines misleading advertising in the European regulations are in Directive 2006/114/EC, on misleading and comparative advertising. In Article 2/(b) of the Directive, misleading advertising is considered to be “misleading advertising” means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor”. [17]

On the doctrinal level, misleading advertising is defined as “the advertisement that includes information that causes the consumer to fall into confusion and deception regarding essential elements or descriptions of the product,” [18] as others defined it as: “advertisement that would deceive the consumer or could lead to that.” [19] Or that it is “an advertisement that contains information that causes the consumer to fall into confusion and deception regarding essential elements or descriptions of the product.” [20] It was also defined as: “The misleading advertisement is any advertisement presented in a way that leads to misleading or is likely to mislead the addressees, or competitors to the extent that it harms their interests” [21] The misleading commercial advertisement presents a harmful advertising message because it includes false claims or statements about a good or service, and mentions its characteristics and data in a way that is not true, and in a way that would lead the consumer into error, and thus deceive him when contracting to obtain it in order to satisfy his personal desires or protests. Or family, or necessary for his professional needs, as it affects the terms of commercial competition and harms honest merchants who do not resort to false allegations in shopping or displaying their products or services. Thus, deceiving him when contracting to obtain them in order to satisfy his personal or family desires or protests, or those necessary for his professional needs. It also affects the terms of commercial competition and harms honest merchants who do not resort to false allegations in shopping or displaying their products or services. [22]

It is noted on these definitions that they are unanimously agreed that misleading advertising is the advertisement in which goods or services are exposed to the consumer in a way that leads or could lead to deception, or leads him to make a mistake about these goods or services. Accordingly, the advertisement can be considered misleading when it intentionally leads to confusion with another product or service or contains information that leads the consumer to fall into error and deception regarding essential elements or descriptions of the product such as its composition, accessories, origin, quantity, method and date of manufacture. Terms and precautions for use, its specifics, the desired results from its use, the price and how it is calculated, or the claim of approval or licensing contrary to reality. It can also be said that it is not a requirement that the misleading advertisement contain false statements, but it can also be imagined when it appears in a form or is formulated in terms that lead to deceiving the recipient.

We conclude that the shaded commercial advertisement can be defined as any advertisement that is published in a manner that deceives or would deceive the addressees, regarding essential elements or descriptions of the good or service, with the aim of enticing them to buy or obtain it, in a manner that may harm them.

#### *Offenses arising from misleading advertising under the Consumer Protection Act*

Misleading commercial advertisements constitute a serious assault on consumer rights. The consumer, as defined by the Bahraini legislator in Article (1) of the Consumer Protection Law, No. (35) of 2012, is:

"Every natural or corporate person who obtains products to satisfy his/its needs or the requirements of persons belonging thereto. "[23]

By Analysing this text, we find that the Bahraini legislator expanded the concept of the consumer; As the Bahraini legislator expanded the definition of the consumer not only in the possibility of considering the ordinary person as a consumer, but went beyond that to include the legal person, and also expanded the concept of the needs that the natural person or the legal person contracts with, as it was not limited to the personal needs of the person, but we find that they are It extended to his professional requirements. The term “electronic consumer” applies to the consumer when he uses an electronic device connected to the Internet to search about goods or a service he wants or offered to him while using these means, including social media, and in order to contract them through the use of these electronic means.

Although the Bahrain Consumer Protection Law of 2012 did not directly provide for misleading advertisements, it can be linked to the basic consumer rights approved by this law stipulated in Article (2), including the following rights:

- Right to obtain accurate data and information about the products purchased, used or provided thereto.
- Right to freely choose products that meet the quality conditions that conform to the legally approved specifications.
- Right to free choice of products that fulfil the conditions of quality that conforms to legally approved specifications.

The Bahraini Consumer Protection Law conferred criminal protection on these rights in Chapter VI of it. [24] Below, we will discuss how the Bahraini Consumer Protection Law addresses misleading advertising by criminally protecting the consumer's right to obtain correct information and data, and his right to freely choose products. Because of the nature of the study, we will only refer to these crimes without entering into an in-depth analysis of the elements of these crimes, leaving that to other studies.

*Criminal protection from misleading advertising in order to preserve the consumer's right to obtain correct information and data*

One of the basic consumer rights and a factor in the development of fair competition is the right to information, which is necessary and essential to protect it and help it decide whether to contract or not [25]. Referring to the Bahraini Consumer Protection Law No. (35) of 2012, we find that the Bahraini legislator, in order to provide special protection to the consumer and guarantee his rights before and after the contracting stage, stipulates in the second paragraph of Article (2) of it that "the right to obtain correct information and data about the products he buys, used, or provided to him".

By analysing what was stated in Article (2), and in order for the data obtained by the consumer from commercial advertisements to be correct and not misleading, including electronic advertisements, two conditions must be met in them, namely: the clarity of the commercial advertisement, and that the advertisement should not be false.

The commercial advertisement clearly means that the advertisement includes all information and adequate data about the service or commodity; So that the consumer has a conscious and informed will and insight before he enters or refrains from contracting. The content of this commitment lies in informing the consumer and providing him with all the basic elements related to the product, and the inclusion of the offer or advertisement for all the basic elements related to the provider, the good or the service as their nature, characteristics, composition and content, or in their type, origin, quantity, number, or identity or any other material data. It is the right of the electronic consumer, before concluding the contract, that the provider provides him with all the essential information related to the contract to be concluded by submitting it through electronic means, including social media, in a timely, transparent and honest manner to the other parties who cannot know it by his own means[26].

One of the essential information that the Bahrain Consumer Protection Law was keen to provide as a special guarantee for consumer protection is the supplier's business personality. It is a crime not to put the data identifying the supplier's business personality in Article (4), which states that:

"A supplier shall display on all correspondents, documents and instruments issued thereby in its dealings or contracts with a consumer, including electronic documents and instruments, such information that can identify its business identity."

Among the other crimes stipulated in the Bahrain Consumer Protection Law related to the consumer's right to inform is the failure to announce the price, introduce the product and indicate its warranty period. The supplier is required to announce the price of the product, introduce it, and indicate the warranty period, all in accordance with the rules and controls issued by a decision of the Minister of Industry and Trade. [27]

In addition, providing the consumer with an invoice containing the necessary data is important for his enjoyment of the right to be informed. Therefore, the Bahraini legislator was keen to criminalize the provider's behaviour of not providing the consumer with a dated purchase invoice that includes the type of product, its price and the warranty period, if any [28].

It is also stipulated that in order to protect the consumer from advertising misleading, in order to guarantee his right to obtain correct information and data about the products, the advertisement is not false. Electronic advertising through social media appears in its positive aspect when there is an honest display of goods and services for the purpose of marketing and promoting them, and thus motivating their purchase. On the other hand, it is contrasted with a negative aspect when it carries with it false data, which leads the consumer to buy a commodity other than the one he desires or in some Cases this product or service does not exist in the first place.

And because the consumer's enjoyment of his right to be informed requires ensuring the sufficiency and credibility of the information he needs to make it easier for him to take the appropriate decision, the Bahraini legislator emphasized his right to obtain correct information and data about the products he buys, uses, or provides[29]. Therefore, every behaviour that may violate that and provide the consumer with false information is criminalized. For this reason, the Bahraini legislator has imposed on the supplier or advertiser to spare the consumer misleading advertising under penalty of criminal liability to provide the consumer with all correct information related to the nature and characteristics of the product, and to avoid what may lead to creating an unreal or misleading impression on the consumer or to make a mistake or confusion according to the text of Article (6) of the Consumer Protection Law of 2012, but he is exempted



from the responsibility of the supplier if he is not a producer or manufacturer of the good or service. As long as he was not aware of that information from the producer or manufacturer of these products. It also exempts the advertiser from liability when the information included in the advertisement is technical, and the advertiser cannot verify its authenticity, and the supplier provided it with it. [30]

It is imagined that the material element of this crime is the activity of the offender only, represented by the misleading or deceptive advertisement of a product, and its moral element is that the offender deliberately does so without the requirement of his bad faith. The Bahraini Consumer Protection Law, without prejudice to any more severe penalty stipulated in the Penal Code or in another law, shall pay a fine of no more than ten thousand dinars to anyone who violates his obligations under the text of Article (6) mentioned above [31]. The initiation of it is not imagined as a deliberate crime, as well as the lack of a requirement to achieve a criminal result for its material element.

But we wish that the Bahraini legislator had explicitly stipulated that commercial advertisements for the product or service should be clear, enabling the consumer to carry out the contract with full awareness and consciousness, and committed to following ethics and public taste, provided that violating this would entail criminal liability even if it did not result in a specific result. With the need to authorize the competent administrative authorities to summon the advertiser who owns any advertisement that could mislead the public and notify it to immediately stop the advertisement, and to refer the matter to the Public Prosecution if it is proven that deliberate misrepresentation constitutes a crime.

The Bahraini Consumer Protection Law punishes the supplier who commits any of the crimes against the consumer's right to inform the above-mentioned with a fine not exceeding ten thousand dinars, provided that no more severe penalty is stipulated in any other law [32]. However, the Consumer Protection Law did not arrange criminal responsibility unless the offender was a natural person, as the criminal responsibility of a legal person does not fall as a general rule, and is not imposed on him except by a special provision. That is why we believe that the Bahraini Consumer Protection Law should stipulate the criminal liability of the legal person in relation to the crimes mentioned in this law. In addition, the Consumer Protection Law in many cases satisfied the penalty of a fine as the original penalty, and in other times, in addition to the penalty of imprisonment. Because of the nature of these special offenses, complementary penalties may provide more effective criminal protection if they are provided for in addition to the original penalties. That is why we believe that the Bahraini Consumer Protection Law should expand by providing for complementary penalties, especially with regard to crimes related to electronic shopping and the accompanying misleading advertisements, such as stipulating the penalty for closing the website temporarily or permanently, suspending access to electronic payment platforms, and temporarily suspending the activity of the electronic resource. Or permanently by striking off from the commercial register.

#### *Criminal protection from misleading advertising in order to preserve the consumer's right to choose*

The Bahraini legislator guarantees the consumer's right to choose, as the third paragraph of Article (8) of the Bahraini Consumer Law No. (35) of 2012 states: "The right to free choice of products that meet the quality conditions that conform to the legally approved specifications."

One of the most important basic objectives of the Consumer Protection Law in order to preserve the consumer's right to choose, is to give him – as we explained previously – informed and informed consent, and to inform him of all the important and influential information and data affecting his will to contract. Also, protecting the consumer's right to choose requires protecting him from fraud, deception and misrepresentation of information, whether through advertising or data used on the product. Or any other means that would affect the accuracy of the information required in the decision made by the consumer while purchasing the products.

For this reason, the Bahraini legislator criminalized a set of actions to guarantee the consumer's right to choose and to prevent him from being subjected to fraud and fraud, as Article (18) of the Bahraini Consumer Law No. (35) of 2012 stipulates that: "Without prejudice to a harsher penalty provided for in the Penal Code or in any other law, a prison sentence and a fine not exceeding five thousand Dinars, or either penalty, shall be inflicted upon each of the following:

1. Anyone who has produced, possessed with the intent to sell or sold materials, packages or packaging used in misrepresenting or copying any commodity while being aware thereof and anyone who incites and abets in such action with the use of flyers, publications or by any other method.
2. Anyone who deliberately promotes a product by any means of publication, media or by any other method intended to inform the public by means of false information about the truth of such product, its elements, ingredients, specifications or origin.
3. Anyone who deliberately cheats in respect of a commodity by changing its nature, one of its qualities or labelling details.

4. Anyone who deceives or uses methods which are likely to defraud a consumer in any manner”.

By analysing the text of Article (18) mentioned above, we find that publishing misleading advertisements through social media can be subject to criminal liability and the perpetrators will be punished under this Article. This matter can be visualized in four cases, all of which require that the offender commits his activity intentionally, represented by misleading advertisement and its place is a good or service. Whoever commits any of them shall be punished with imprisonment from ten days to three years and a fine not exceeding five thousand dinars or one of these two penalties without prejudice to any severer penalty stipulated in the Penal Code or any other law. As we mentioned earlier, criminal responsibility for these crimes does not fall unless the offender is a natural person, and the law did not provide for complementary penalties in addition to imprisonment and fines as original penalties or in any other law. As we mentioned previously, criminal responsibility for these crimes does not fall unless the offender is a natural person, and the law does not provide for complementary penalties in addition to imprisonment and fines as original penalties that can provide more effective criminal protection for this type of crime. We will explain these cases in the following points.

#### *Advertising that contributes to the imitation of goods*

In Paragraph (1) of Article (8) of the Consumer Protection Law, the Bahraini legislator has criminalized publishing an advertisement containing information, data, or any propaganda material that may contribute to the commission of a production or possession crime with the intention of selling materials, packages or packaging that are used in fraud or imitation. A commodity, and whether this contribution took the method of incitement or providing assistance to that, and in this case the publisher of the advertisement is considered an actor with others who is not a partner in this crime, because the partner means the accessory contributor to the commission of the crime whose role is limited only to the agreement with the perpetrator or Incitement or assistance to him without interfering with the execution of the crime, i.e. his work must be nothing more than a preparatory act, while in this case the act of incitement or assistance is considered The act of abetting or aiding is part of the criminal conduct of this offence. There is no doubt that posting such advertisements on social media contributes to consumer shading and deception.

#### *False advertising*

In Paragraph (2) of Article (8) of the Consumer Protection Law, the Bahraini legislator has criminalized publishing an advertisement that deliberately promotes a product for the purpose of informing everyone, containing false statements about the reality of this product, its components, elements, specifications, or origin. In this text, the legislator did not require that advertising be done by a specific means, and thus it can be applied to misleading advertisements that are published on social media when they contain an allegation, and claim contrary to the truth, the aim of which is to mislead the recipient by falsifying the truth by providing unreal data about a product or a specific service. Misleading advertisement is the advertisement that contains false allegations, statements, or offers that deliberately contradict the truth and are intended to mislead the consumer, which constitutes an assault on the consumer's right to information, which assumes that the information provided to the consumer is free of lies and ambiguity that leads to confusion, excessive exaggeration, or Not enough to enlighten the consumer [33].

Lying in advertising can be achieved in two ways: - It can be positive, in which the advertiser mentions incorrect information. And it can be negative when the advertiser intends to leave out essential data for a product or service, so that they are important to the consumer and on the basis of which he often makes his decision to buy or refrain from doing so. In order to assess the availability or absence of deception, the objective criterion on which it is based shall be considered Which is based on the average consumer's average intelligence and attention. Accordingly, there is no misleading if there is an exaggeration in the advertisement, a search that discovers everyone who has a little attention, and the average consumer is not deceived by it [34].

#### *Advertising promoting fraudulent goods*

Paragraph (3) of Article (8) of the Consumer Protection Law criminalizes deliberately cheating goods by changing their nature, one of their qualities, or a statement of their data. Fraud occurs by changing the composition of the product by mixing it with another substance of lower quality, or by removing some of its components, or by other means that make it less valuable[35]. Commercial fraud is also a deliberate crime that occurs by an act of a conscious will focused on a specific commodity or service with the aim of undermining its properties, benefit or price, without the other dealer's knowledge of it, i.e. it is based on misleading and concealment of what the offender's intention was to violate.

The Unified Law (Regulation) for Combating Commercial Fraud of the Cooperation Council for the Arab States of the Gulf states in Article (1), Paragraph (10) that the fraudulent goods are: “Any merchandise that has been altered or imitated in some way, causing it to lose some of its material or moral value, Whether it is by adding, decreasing, or



changing itself, nature, gender, type, properties, shape, elements, amount, size, number, energy, calibre, origin, or source, or advertising or promoting it in a way that is contrary to its truth” [36].

Thus, we find that the unified law (regulation) to combat commercial fraud also clearly referred to the advertisement or promotion of goods contrary to their reality, such as imitation of goods in terms of form, name, trademark and quality. These images become more dangerous in the case when the misleading advertising is done by electronic means, especially using social media, for its ease of use and the speed of its spread, and the user of these sites often cannot distinguish between the original and counterfeit goods, whether the person is a consumer or a professional. In order for the advertiser or promoter of fraudulent goods to bear the responsibility, it must be proven that he was aware of the truth of these goods, given that this crime is intentional.

#### *Advertising with the aim of deceiving the consumer*

In Paragraph (4) of Article (8) of the Consumer Protection Law, the Bahraini legislator criminalized deception or the use of means that would deceive the consumer in any way. There is no doubt that deception can occur by spreading misleading advertisements on social media. Deception is the supplier’s intentional act of convincing the consumer that the products have more features than the truth. Deception takes place in every act in which the consumer makes a mistake about the nature of the goods, their truth, their essential characteristics, their origin, their source, their quantity, their number, or any other of their essential data [37]. Deception is carried out by doing actions or lies that make something appear other than its truth, or make it appear that contradicts what it is in reality and truth. And we conclude that the criminal behaviour in the offense of deception consists in deception, which would lead the recipient into confusion and deception, while its moral pillar is the deliberate intention of the advertiser to deceive the recipient in order to force him to contract.

It is worth noting that publishing a deceptive advertisement may also constitute a fraud crime or an electronic fraud crime. It is considered a fraud crime if the fraudulent means in the deceptive advertisement reach the degree of fraudulent means required by the fraud crime stipulated in Article 392 of the Penal Code[38], or when the advertisement includes taking A false name or an incorrect capacity[39]. As for the crime of electronic fraud, the text of Article (8) of Law No. (60) of 2014 regarding information technology crimes applies as a special text and it is authorized to apply if the fraud was done through a means or information technology system [40].

The crime of deception differs from the crime of fraud in that in the first crime the offender aims to achieve an illegal profit through an apparently sound business process and by means that are not limited to specifics, unlike the crime of fraud whose means are specified by the text of the law and the offender seeks to seize the victim’s money without A consideration or consideration that is not commensurate with the paid[41].

### **3 Presentation and discussion of the survey results**

#### *Objective of the questionnaire*

Objective of the questionnaire: The main objective of the questionnaire was to demonstrate two things: to clarify the wide spread of shady ads targeting social media users, and secondly, to indicate the extent of legal awareness of these media users regarding this type of crime.

#### *Data collection*

The data in this study came from a questionnaire that was prepared and distributed to a random sample of social media users, and focused in its entirety on samples of the researcher’s friends and acquaintances and their friends and acquaintances, which the researcher distributed through the social media that he uses.

#### *The study population*

The primary study population consists of the researcher's friends and acquaintances, and their friends and acquaintances who are social media users. As for the study sample, it consisted of (135) users, which is the full number of responses that the researcher was able to survey their opinions. As for the primary data that defines the characteristics of the study population of social media users, it was related to their distribution by gender, age, educational level, the social media they use, and the purpose of their use.

#### *Characteristics of the study population according to gender, age and educational level*

Table No. (1) shows the characteristics of the study population of social media users and their distribution by gender, age, and educational level.

**Table (1)** It shows some preliminary data related to the gender, age, and educational qualifications of the respondents

Sample members		personality variables	
Percentage %	Repeated		
64.6	87	Male	Gender
35.5	48	Female	
100	135	Total	
4.4	6	Under 21 years old	Age
39.2	53	21to40 years old	
56.3	76	Above 40 years old	
100	135	Total	
45.9	62	Postgraduate	Educational level
35.5	48	B A	
18.5	25	Less than that	
100	135	Total	

It is clear from the previous table and based on the statistical results that the highest percentage of those surveyed were males, with a percentage of (64.6%), and in the age group of adults over 40 years, which amounted to (56.3%). As for the educational qualification, the percentage of who have a postgraduate certificate from the sample is (45.9%). It is worth noting that this percentage does not reflect the reality of those who use social media in general, but rather reflects the nature of the sample to which the questionnaire was distributed, as the method of distribution was by sending it through social media that the researcher uses to his group of friends and acquaintances, and thus came close to the age, educational qualification and gender of the researcher himself.

*Characteristics of the study community according to the type of social media and the purpose of its use*

As for the characteristics of the study population of social media users and their distribution according to the social media they use, the following table No. (2) explains this.

**Table (2)** It shows some preliminary data related to the social networking program used by the individuals in kind

Percentage	Program name
11.11	WhatsApp
9.63	Instagram, whats App
3.70	Other programs, Instagram, WhatsApp
0.74	Other programs, Instagram
3.70	Instagram
0.74	Other programs
0.74	Other programs
2.22	WhatsApp, twitter
5.93	Instagram, WhatsApp, twitter
2.96	Other programs, WhatsApp, Instagram, twitter
4.44	Facebook
20.74	WhatsApp, Facebook
14.07	Facebook, WhatsApp, Instagram
2.96	Other programs Facebook, Instagram, WhatsApp, twitter
2.96	Other programs, Facebook, Instagram
0.74	Other programs, Facebook
1.48	WhatsApp, Facebook, twitter
8.15	Instagram, WhatsApp, twitter, Facebook
1.48	Other programs, Instagram, WhatsApp, Facebook, twitter
1.48	Instagram, WhatsApp, twitter

It is clear from the previous table and based on the statistical results that the highest percentage of those whose opinions were surveyed were those who used the WhatsApp program, as their number reached 119 out of 135 of the total sample, at a rate of (88.14%), and the second place was those who used the Facebook program, with a percentage of (58.51%). In third place, the Instagram program reached a percentage of (54.07%), and the percentage of those who mentioned

that they use other programs reached (17.03%). The highest percentage of those who used more than one social media program reached (82.22%), and the percentage of those who chose a social media program and only one when asked about the social media program they used was only (17.78%).

As for the characteristics of the study community with regard to the extent to which they use social media for the purpose of shopping, the respondents' response to the following question: "Have you ever shopped with the aim of obtaining goods or services with the help of commercial advertisements published through social media programs" as follows: He answered yes Often (26.67%), and yes rarely, their percentage was the highest, reaching (51.2%), meaning that the total of those who answered yes reached (77.78%), while those who answered no reached only (22.22%), meaning that The results indicate that more than two thirds of the sample use social media to purchase and obtain goods and services.

#### *Measuring the extent of the spread of the phenomenon of misleading advertising through social media*

As for the characteristics of the study community regarding the extent of the spread of the phenomenon of misleading advertising through social media, the respondents answered the following question: "Have you ever been exposed, through your personal account, to an advertising publication containing deceptive and misleading information regarding the good or service that the advertisement promotes?" such as lying about its composition, source, quality, type, date of manufacture, price, quantity, or any other material information of interest to you, as shown in Table (3):

**Table (3)** Explains the extent of the phenomenon of misleading advertising on social media

Percentage %	Reference case
24.44%	More than three times
7.41%	Three times
46.67%	No
9.63%	One time
11.85%	Twice

It is clear from the previous table and based on the statistical results that the percentage of those who were exposed, through their personal account, to an advertising publication containing deceptive and misleading information regarding the product or service that the advertisement is promoting, reached (72) and at a rate of (53.33%), and the number of respondents was that they did not is exposed to (63) and (46.67%). The results also indicate that the percentage of those who were exposed to misleading advertisements more than three times was the highest, reaching (24.44%) of the total sample surveyed, and (45.83%) of the sample who answered that they were exposed to such advertisements. Those who responded that they were exposed to it twice came in the second place, at a rate of (11.85%) of the total sample surveyed, and (22.22%) of the sample who answered that they were exposed to such advertisements, and in the third place they answered that they were exposed once and with a percentage of (9.63%). Out of the total sample surveyed (18.05%) of those who were exposed to such advertisements, and in the last rank was those who answered that they were exposed three times to misleading advertisements at a rate of (7.41%) of the total sample surveyed and (13.88%) of the sample who answered That they were exposed to such ads.

As for the type of social media program used to spread misleading advertisement, Table No. (4) shows this according to the opinion of the person who answered "yes" to the previous question regarding his exposure to misleading advertisement

**Table (4)** It shows the extent of the phenomenon of misleading advertising according to the type of social media program used

Percentage %	Programs
3.70	WhatsApp
0.74	Instagram, what's App
14.07	Instagram
2.96	Other programs
0.74	Twitter
0.74	Other programs, twitter, Instagram
19.26	Facebook
5.93	WhatsApp, Facebook
1.48	WhatsApp, Instagram, Facebook
4.44	Instagram, Facebook
45.93	Answered no

It is clear from the previous table and based on the statistical results that the highest percentage of those who were surveyed and who answered that they were exposed through your personal account, to an advertising publication containing deceptive and misleading information regarding the product or service that the advertisement is promoting, was through the Facebook program, which amounted to (57.53%). The Instagram program came in second place with a percentage of (39.7%), then WhatsApp with a percentage of (21.91%), and a percentage of (6.84%) answered that this was done through other social media programs. The results also indicate that about a third of the sample of those who answered that they were exposed to misleading advertisements indicated that this was done through more than one program, where their percentage reached (34.72%). As for the extent of misleading advertisements spread through social media, from the point of view of the respondents, and the extent of their impact on them, Table No. (5) illustrates this.

**Table (5)** It shows the extent of the phenomenon of misleading advertising and its impact on the sample members

Percentage %	Answer	Question
54.81	Yes	Do you have apprehension about shopping on social media for fear of falling victim to misleading commercial advertisements?
11.11	No	
34.07	May be	
80.74	Yes	In your opinion, do you see the spread of misleading ads on social media increasing?
2.22	No	
17.04	Unsure	

It is clear from the above table and based on the statistical results, we conclude that a high percentage of those who were surveyed believe that misleading advertisements through social media are in constant spread, reaching (80.74%), while the percentage of those who do not believe this was very small, as it did not exceed (2.22) %, and those who are not sure about that were (17.04%). There is no doubt that the spread of misleading advertisements through social media, according to the sample's opinion, has negatively affected their decision to obtain goods and services by shopping through social media. The answer of the highest percentage of the sample was "yes" to the following question: "Do you have apprehension? To shop on social media for fear of falling victim to misleading commercial ads" reached (54.81%) While the percentage of those who had no such fear was low, it amounted to only (11.11%), and almost a third of the sample were unsure of this, as the percentage of those who answered "maybe" to the mentioned question reached (34.07%).

*Measuring the extent of legal awareness regarding misleading advertising*

The table below shows the legal awareness of the study sample members regarding misleading advertisements spread through social media.

**Table (6)** The extent of legal awareness regarding misleading advertising

Percentage %	Answer	Question
71.11	Yes	Did you know that intentionally promoting a product through a post on social media for the purpose of informing others of false statements about the truth of this product, its components, components, specifications or origin constitutes criminal behaviour punishable by law?
11.11	No	
17.78	Not sure	
26.67	Notify the relevant authorities to pursue a large promoter	In the event that you are exposed to a misleading commercial advertisement posted on your own account, you will:
25.19	Inform the program management with a view to banning it	
19.26	Commenting to warn the public about it	
28.89	Ignore the topic	

It is clear from the above table and based on the statistical results, we conclude that most of the sample members are aware that promoting a product or service through a misleading advertisement is a criminal act, as the percentage of those who answered "yes" to the question "Did you know that promotion is intentionally produced by a publication on social media for the purpose of Informing others of false data about the reality of this product, its elements or components, its specifications or its origin constitutes a criminal behaviour punishable by law." Approximately two-thirds of the individuals in the sample amounted to (71.11%), and despite this high percentage of the sample members' awareness of the reality of the illegality of misleading advertisements, it did not reflect positively on the behaviour that he could take in the event that he was personally exposed to a misleading advertisement published on his own account, as the highest percentage of individuals of the respondents, said that they will ignore the issue, which amounted to

(28.89%), and they came in the second place from Jab that he will inform the competent authorities to pursue his legal promoter, and their percentage reached (26.67%), and in the third place who answered that he will inform the program administration with the aim to ban it, and their percentage reached (25.19%), and came in the last rank of answer that he will comment on the publication with the aim of warning the public of it, and their percentage reached (19.26%) .

It is worth mentioning that other previous studies showed that the consumer in general has a degree of awareness and marketing culture, as he realizes the marketing deception in the aspect of advertising practiced on him by the marketer in its various forms [42].

#### *Analysing the impact of personal variables on research questions*

The study identified three personal variables: gender, age, and educational level, and in the following we will show the results of the statistical analysis on the extent to which these personal variables affect the research questions in the following three points:

#### *Analysing the effect of the gender variable on the research questions.*

**Table (7)** Test results (T)

Sequence Sig	Test value	Standard deviation	SM A	Gender
0.243	1.171	0.784	4.09	Male
		0.625	3.98	Female

- Source: From the researcher's work based on the study data and using the 22 SPP Ver program.

It is clear from the previous variance test table that the statistical results confirm the absence of any statistical significance for the gender variable attributable to the research questions, where the differences were at 0.243 and it is not significant at the significance value of 0.05, and the matter is due to the convergence of the views of the study sample in their answers to the research questions, as all respondents are of both sexes, we believe in the importance of having a criminal protection mechanism against misleading commercial advertisements through social media, and the value of the T coefficient of (1.171) reinforces this result.

#### *Analysis of the effect of the age variable on the research questions*

**Table (8)** The results of the one-way analysis of variance (ANOVA) among the sample members according to the age variable

Sig.	Test F	Mean square	Degrees of the freedom	Sump of squares	The source of the difference	Dimensional variable
0.049*	2.659	1.643	3	4.929	Between groups	<b>Have you previously shopped for goods or services with the help of commercial advertisements posted through intergroup social media programs?</b>
		0.618	131	158.178	Within groups	
			134	163.107	Total	
0.087	2.210	0.891	3	2.674	Between groups	<b>Have you ever been exposed through your personal account to an advertising post that contains deceptive and misleading information?</b>
		0.403	131	103.272	Within groups	
			134	105.947	Total	
0.862	0.249	0.066	3	0,197	Between groups	<b>Do you have a fear of shopping on social media for fear of falling victim to misleading commercial ads?</b>
		0.264	131	67.553	Within groups	
			134	67.750	Total	
0.902	0.192	0.072	3	0.217	Within groups	<b>In your opinion, do you see that the spread of misleading ads on social media is increasing?</b>
		0.376	131	96.284	Between groups	
			134	96.501	Total	
0.459	0.867	0.232	3	0.696	Between groups	<b>Did you know that deliberately promoting a product through a social media post for the purpose of informing others of false</b>
		0.268	131	68.511	Within	



					groups	<b>statements about the truth of this product, its components, components, specifications or origin constitutes criminal behaviour punishable by law?</b>
			134	69.208	Total	
0.440	0.903	0.216	3	0.648	Between groups	<b>In the event that you are exposed to a misleading commercial advertisement posted on your account, you will:</b>
		0.239	131	61.242	Within groups	
			134	61.890	Total	

It is clear from the previous table and based on the statistical results that the age variable had no differences attributed to the research questions. The matter is due to the convergence of the study sample’s views in their answers to the research questions, with the exception of the question “Have you ever shopped with the aim of obtaining goods or services with the help of commercial advertisements published through programs?” “Social media” showed that there were statistically significant differences for the category of more than 40 years at a function level of 0.049.

*Analysis of the impact of the educational qualification variable on research questions*

**Table (9)** The results of the one-way analysis of variance (ANOVA) among the sample members according the Educational level variable

Sig.	Test F	Mean squares	The degree of freedom	Sump of squares	The source of difference	Dimensional and variable
*0.044	1.611	0.219	3	0.657	Between groups	<b>Have you ever shopped for goods or services with the help of commercial advertisements published through social media programs?</b>
		0.358	131	91.692	Within groups	
			134	92.349	Total	
0.241	1.641	0.473	3	1.418	Between groups	<b>Have you ever been exposed through your personal account to an advertising post that contains deceptive and misleading information?</b>
		0.494	131	126.364	Within groups	
			134	127.781	Total	
*0.037	1.461	0.292	3	0.877	Between groups	<b>Do you have a fear of shopping on social media for fear of falling victim to misleading commercial ads between groups?</b>
		0.634	131	162.230	Within groups	
			134	163.107	Total	
0.341	1.121	0.293	3	0,878	Between groups	<b>From your point of view, do you see that the spread of misleading ads through social media is increasing among groups?</b>
		0.261	131	66.872	Within groups	
			134	67.750	Total	
*0.040	1.686	0.282	3	0.845	Between groups	<b>Did you know that deliberately promoting a product through a social media post for the purpose of informing others of false statements about the truth of this product its components specification or origin constitutes criminal behaviour is punishable by law?</b>
		0.411	131	105.101	Within groups	
			134	105.947	Total	
0.204	1.543	0.571	3	1.714	Between groups	<b>In the event that you are exposed to a misleading commercial advertisement posted on your account, you will:</b>
		0.370	131	94.787	Within groups	
			134	96.501	Total	

It is clear from the previous table and based on the statistical results that there are differences for the study sample due to the educational qualification variable on the research questions. The matter is due to the different views of the study sample in their answers to the research questions, as the question is: Have you ever shopped with the aim of obtaining goods or services with the help of commercial advertisements published through social media programs? It has been shown that there are statistically significant differences for the postgraduate category at the level of function 0.044.

Also, the question “Do you have apprehension to shop through social media for fear of falling victim to misleading commercial advertisements” was statistically significant at the level of 0.037 for the postgraduate category as well.

And finally, the question, “Did you know that deliberately promoting a product through a publication on social media for the purpose of informing others of false data about the truth of this product, its elements or components, its specifications or its origin constitutes criminal behaviour punishable by law?” The results showed that there is a statistical significance at the level of 0.040 for the postgraduate as well as undergraduate category.

The statistical results for the rest of the questions came without statistically significant differences due to the educational qualification variable.

## 4 Conclusion

The study analysed the texts of the Bahraini Consumer Protection Law to show the extent to which the consumer is criminally protected from misleading advertisements while shopping and obtaining the goods and services promoted through social media. Legal awareness of its users towards this type of crime. At the conclusion of this study, we conclude the following results and recommendations:

- 1- The Bahraini legislator, in the Bahraini Consumer Protection Law and other legislation, provided the consumer with criminal protection from misleading commercial advertisements that infringe on his rights, given that criminal responsibility in its two forms, punishment and precautionary measures are still effective tools that limit the damage or danger of these advertisements.
- 2- The criminal behaviour in many of the crimes stipulated in the Bahrain Consumer Protection Law is characterized by generality and lack of clarity, especially with regard to misleading advertisements, which would affect the effectiveness of the criminal confrontation with them.
- 3- The Bahraini Consumer Protection Law did not take the criminal responsibility of the legal person, and limited it to the natural person as it is in the general provisions of the Bahraini Penal Code, which greatly affects the provision of protection to the consumer.
- 5- The penalties stipulated in the Bahraini Consumer Protection Law, especially in its financial aspect, are no longer keeping pace with the development of crime in general and crimes against consumer rights arising from misleading advertisements in particular. The huge profits that dishonest suppliers obtain, which may take much of the fines that the courts may rule, are meagre compared to these profits. In addition, these fines may not be commensurate with the size of the capital of major companies or their annual turnover, and therefore cannot achieve the purpose of the punishment in terms of public and private deterrence.

In light of this, we suggest the following recommendations:

- 1- The need for serious work by all official and civil bodies related to the protection of consumer rights and educational institutions to spread the legal culture and awareness of the dangers of misleading advertisements and the method of perpetration and safe methods of electronic shopping, especially through social media.
- 2- The need for the Consumer Protection Law to directly criminalize the act of publishing misleading advertising by itself and without requiring a criminal consequence, provided that this does not affect the occurrence of other crimes when the misleading advertisement is a means to commit other crimes such as fraud, electronic fraud, commercial fraud and others. Accordingly, we suggest the following legal text: “Anyone who publishes an advertisement by any means, that deals with a good or service, and that includes a false offer, statement, or allegation, or formulated in terms that may directly or indirectly lead to fraud or deception of the consumer shall be punished with a fine of not less than one hundred.” Dinars and not more than ten thousand dinars, or one of these two penalties, and the penalty is doubled in the event of repetition or an announcement using social media or any other electronic means.
- 3- The need for the Bahraini Consumer Protection Law to stipulate the criminal liability of the legal person in relation to the crimes mentioned in this law, in addition to the need to provide for complementary penalties in relation to crimes related to electronic shopping, such as the penalty for closing the website temporarily or permanently, and

suspending access to payment platforms Temporarily or permanently suspending the activity of the electronic supplier by striking off the commercial register.

## Conflict of interest

The authors declare that there is no conflict regarding the publication of this paper.

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- [38] Article (392) of the Bahraini Penal Code states: “Any person who manages to seize movable money or a bond or to sign this bond or to cancel, destroy or modify it by using a fraudulent method shall be punished by imprisonment and a fine not exceeding five thousand dinars, or by taking a false name or an incorrect capacity, or by disposing of real estate or movable property not owned by him and not having the right to dispose of it”. If the crime is subject to money or a bond to the state or to one of the parties mentioned in Article (107), this is considered an aggravating circumstance. The attempt shall be punished by imprisonment not exceeding one year and a fine not exceeding two thousand dinars.
- [39] The Bahraini Court of Cassation ruled in Appeal No. 2/C/2004, issued on 4/5/2004 that: “Adopting an incorrect capacity alone is sufficient to provide the element of fraud without the need for external acts or fraudulent manifestations.
- [40] Article (8) stipulates that: “Anyone who, without legal justification, seizes money owned by others, or obtains any advantage for himself or others, or signs, cancels, destroys, or amends a bond by taking a false name or an incorrect capacity, or with the help of fraudulently, by any of the following: a) Entering, defecting, disabling, cancelling, deleting, destroying, changing, modifying, distorting or blocking the data of the information technology means. b) Carrying out any interference with the work of the information technology system. The aggravating circumstance stipulated in each of Articles (391), second paragraph, and (392) second paragraph of the Penal Code applies to this crime.
- [41] See. Hassan Al-Marsafawi, Special Penal Code, Mansha’at Al-Maaref,, 686 (1979).
- [42] See studies: Hamad Al-Zoubi, Akef Ziyadat, Consumers’ Attitudes towards Marketing Deception Practices on the Advertising Side: A Field Study in the City of Irbid, Marketing Department, College of Administrative and Financial Sciences, Irbid Private University, (2003), Salah Ali Al-Ashkar, Journal of Economics and Politics, Asmarya University Islamic, Issue 11 June (2018).