



Regulation of Product Placement in China

By [Lily Han](#)¹

Have you ever watched the movie “*The African Queen*”, where, in one of the scenes, the renowned liquor brand - Gordon’s Gin paid Katharine Hepburn to toss their product into the sea? As you know, this is generally regarded as product placement or “隐性营销”, in Chinese. This movie, arguably, was the ‘mother’ of product placement, and since then there have been countless placements in thousands of movies and television shows worldwide¹. Smart businessmen and their marketing agents wish that their products be shown in a movie or television show, even in the most unusual ways. When done properly, product placement is more impressive and effective than the traditional methods of advertising.

Product placement is a form of advertisement, where branded goods or services are placed in plays, films, television shows, video games or books etc. Product placement occurs through the inclusion of a brand’s logo, or a favorable mention or appearance of a product. This is done as a natural part of the work without disclosure at the time that the goods or services are featuredⁱⁱ.

Product Placement is a relatively new marketing concept in China compared to other countries. Hence to date, China does not have any clear laws or regulations dealing with this issue specifically. However, since product placement is a form of advertisement, just like the traditional advertisements, it should be regulated under the existing advertising law system accordingly.

Nature of Advertisements:

It was not until October 27, 1994 that the National People’s Congress of the People’s Republic of China promulgated the first rules that dealt with advertising operations – <**The Advertising Law of People’s Republic of China**> (“the Advertising Law”)ⁱⁱⁱ. The Advertising Law is very general in nature with the term “advertisement” defined in Article 2 as:

The term ‘advertisement’ used in this law refers to commercial ads that publicize, directly or indirectly and through certain media or forms, some kind of commodities or services at the expense of the suppliers of the commodities or services.

According to Article 13 of the Advertising Law, an advertisement must be clearly recognizable as a kind of advertisement. Whenever an advertisement is published in the mass media, for it not

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to mislead consumers, a clear indication should be shown to distinguish it from other non-advertising information.

As a form of advertisement, product placement must comply with the Advertising Law as well. However, it is obvious that, as some critics comment, new methods of product placement do not meet “the clearly recognizable characteristic” formulated in Article 13. Effective product placement must integrate products into the story line of television shows or movies without making clear indication or disclosure. When showing a brand name product in a film, television program, or other medium, consumers may not perceive it to be an advertising medium. As a result, it is difficult or even impossible for consumers to distinguish advertising from non-advertising information and may result in misleading the consumers.

False Advertising:

In accordance with the Advertising Law, advertisements shall not resort to any falsehood to a deception or misleading to the consumers (Article 4):

For acts of publishing false advertisements to deceive or mislead consumers, thus causing damages to the lawful rights and interests of consumers who have bought the commodities or accepted the services, the advertisers shall bear civil responsibility and advertising agents and publishers shall bear joint and several responsibility if they have designed, produced and published the advertisements even though they knew or should have known the falseness of the advertisements (Article 38).

According to <**The Law of People’s Republic of China on the Protection of the Rights and Interests of Consumers**>^{iv}, which was promulgated by the National People’s Congress on October 31, 1993 (“the Consumers Law”), a consumer whose legal rights and interests are harmed by a business operator that provides a commodity or a service with the use of false advertising may demand compensation from the business operator. Where an advertising operator disseminates a false advertisement, a consumer shall have the right to request the administrative department in charge to impose a penalty. If such advertising operator fails to provide the true name and address of the business operator, that advertising operator shall bear liability for compensation (Article 39).

These two laws have set up a basic legal framework on governing false advertising. Not only traditional advertisement marketing but also new product placement marketing should abide by the laws. However, since product placement involves “a concealed (undisclosed) character”, further guidance provided by legislative authorities is expected.



Unfair Competition:

Article 21 of the Advertising Law clearly stipulates that in carrying out advertising activities, advertisers, advertising agents and advertisement publishers should not engage in any form of unfair competition.

<**The Anti-Unfair Competition Law of the People's Republic of China**>^v, promulgated by the National People's congress on September 2, 1993 ("the Anti-Unfair Competition Law") further formulated that:

managers shall not use advertisement or the other methods to make a false propaganda for the quality, composition, function, usage, producer, time of efficacy and place of production of commodities (Article 9).

Restricted and Prohibited Provisions:

1. Restriction:

In Article 34 of the Advertising Law:

Advertisements for medicines, medical apparatuses, pesticides, veterinary medicines and other commodities through broadcast, films, television, newspapers, periodicals and other media and other advertisements that are required for examination by law and administrative organs shall be examined by relevant administrative departments in charge according to relevant laws and administrative decrees before they are published and are prohibited from being published without examination.

2. Prohibition:

- i. The Advertising Law, Article 13 states: "*Mass media should not in any way publish an advertisement in the disguise of a news report.*"
- ii. The Advertising Law, in Article 18 stipulates that advertisements of tobacco are prohibited in broadcast, films, television, newspaper or periodicals. It is prohibited to post tobacco advertisements in any waiting rooms, cinemas and theatres, meeting halls, sports sites and gyms and other public places.
- iii. <**The Regulations on Control of Advertisement**>^{vi}, which was promulgated by the State Council on October 26, 1987 ("the Advertising Regulations") indicate that it shall be forbidden to advertise cigarettes through broadcast, television, newspapers or periodicals (Article 10).



However, the advertisement of tobacco prohibited in the Advertising Law and the Advertising Regulations refers to independent and isolated advertisements between i.e. television program times, which are still a traditional advertising format. When it comes to tobacco advertisements within the context of i.e. a movie, there is no rule to prohibit this issue.

Children Protection:

In accordance with Article 8 of the Advertising Law, an advertisement should not have any content that is injurious to the physical and mental health of underage persons.

However, the Advertising Law does not specify what content is to be regarded as injurious to teenagers (below 18 years old according to the Civil Law of General Principles of PRC) and how to remedy the violation. Once this issue becomes apparent, the regulatory authority will have large discretion in this regard.

Conclusion:

As the existing advertising laws are too general in nature to control the rapid development and increasing implementation of product placement marketing, until governing regulatory authorities issue more detailed policy statements concerning this area, there will be much uncertainty as to many core issues.

Reference:

ⁱ Katherine Fordham Neer: How Product Placement Works - <http://money.howstuffworks.com/product-placement.htm>

ⁱⁱ Product Placement - <http://www.answers.com/product%20placement>

ⁱⁱⁱ Advertising Law of the People's Republic of China – <http://www.lawinfochina.com/display.asp?ID=430&DB=1&keyword=广告法>

^{iv} Law of the People's Republic of China On the Protection of the Rights and Interests of Consumers – <http://www.lawinfochina.com/display.asp?db=1&id=445&keyword=消费者权益保护法>

^v Anti-Unfair Competition Law of the People's Republic of China – <http://www.lawinfochina.com/display.asp?db=1&id=648&keyword=反不正当竞争法>

^{vi} Regulations on Control of Advertisement – <http://www.lawinfochina.com/display.asp?db=1&id=1308&keyword=广告>