



## I. Legal News

### SAMR Urges Effective Censorship of Ads for Drugs, Medical Devices, Dietary Supplements and Foods for Special Medical Purposes

The General Office of the State Administration for Market Regulation ("SAMR") has recently issued the Circular on Effectively Censoring Advertisements for Drugs, Medical Devices, Dietary Supplements and Foods for Special Medical Purposes ("Circular").

The Circular urges to monitor the implementation of article 16 and article 18 of PRC Advertisement Law<sup>1</sup>, which stipulates that, advertisements concerned must convey product information to the general public in a real, scientific and accurate manner, and the ways in which such advertisements are presented and the publicity effects they create shall not be misleading.

Specifically, according to the Circular, such advertisements shall not:

- (1) involve any assertion about or any commitment to functions, effects and the safety of the aforesaid products;
- (2) be recommended or certified by celebrity endorsement;
- (3) be released in a disguised way by introducing knowledge about health or healthcare. In the meanwhile, relevant governmental departments shall strictly censor advertisements.

([http://samr.saic.gov.cn/xw/yw/wjfb/201812/t20181207\\_277344.htm](http://samr.saic.gov.cn/xw/yw/wjfb/201812/t20181207_277344.htm))

### SAMR Solicits Opinions on the Administrative Measures for Electronic Business Licenses

The State Administration for Market Regulation has recently issued the Administrative Measures for Electronic Business Licenses (for Trial Implementation) (the "Measures") which is soliciting public opinions by December 12, 2018.

The Measures follows the reform of digitization and simplification of administrative formalities. With introduction of electronic business license, enterprises do not need to bring or repeatedly submit a copy of the paper business license when making application to different governmental departments and they can verify their identity and directly use the shared information data by scanning the mobile version of the electronic business license.

With the purpose of standardizing the application and management of electronic business license, the following points are clarified in the Measures:

1. The electronic business license and the paper business license have the same legal effect, and both constitute valid certificates showing the legal status of the enterprise;
2. Issuance of electronic business license shall be free-of-charge; and
3. The electronic business licenses apply to all kinds of enterprises, individual businesses as well as farmer cooperatives.

([http://samr.saic.gov.cn/gg/201812/t20181206\\_277314.html](http://samr.saic.gov.cn/gg/201812/t20181206_277314.html))

## II. Hot Topics

### Guazi, A Platform for Trading Second-Hand Cars, Was Fined More Than RMB 12 Million for Misleading Advertisement

Recently, the Haidian Branch of the Industrial and Commercial Administrative Authority (hereafter 'Haidian AIC') publishes one administrative punishment decision against Jinguazi Technology and Development (Beijing) Co. Ltd, a platform for trading second-hand cars ("Guazi"), with a fine amounting to RMB 12,500,000 for publishing misleading advertisements.

The punishment decision shows that on December 3rd, 2016, Guazi signed an agreement with Letv concerning one 15-second advertisement published on Letv online platform, in which there is such slogans like 'Guazi have achieved sale records far more ahead than other platforms with only one year's founding history'. However, Haidian AIC found that there existed at least two competent companies whose sale records were much more than Guazi. Thus, Haidian AIC holds that Guazi has violated Advertisement Law in China, ordering Guazi to stop publishing misleading, unlawful advertisements and imposing a fine accordingly. Guazi is not satisfied with the punishment imposed by Haidian AIC and applies for an administrative reconsideration.

Notably, Guazi's advertising behavior can also constitute the 'misleading false propaganda' under the anti-unfair competition law in China. In November 2017 and September 2018, Guazi got two awards due to its misleading advertisement slogans, one in Haidian District Court and another in Chaoyang District Court, alleged for violating competition order under the anti-unfair competition law.

([http://bjrb.bjd.com.cn/html/2018-12/01/content\\_301993.htm](http://bjrb.bjd.com.cn/html/2018-12/01/content_301993.htm))

#### ①Article 16 of PRC Advertisement law:

Any advertisement for medical treatment, pharmaceuticals or medical devices shall not contain the following items:

1. any assertion or guarantee for efficacy and safety;
2. any statement on cure rate or effective rate;
- ...
4. use of the advertisement endorsers to make endorsements or testimonials;
- ...

#### Article 18 of PRC Advertisement law:

Advertisements for healthcare food shall not contain any of the following items:

1. any assertion or guarantee for efficacy and safety;
2. any involvement of functions of disease prevention or treatment;
3. any claim or hint that the product advertised is necessary to safeguard health;
- ...
5. use of the advertisement endorsers to make endorsements or testimonials;
- ...

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