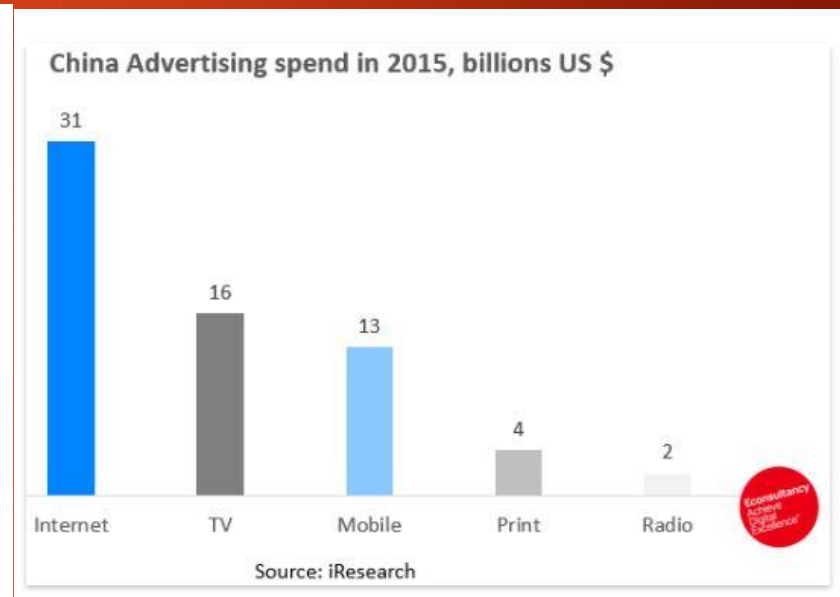
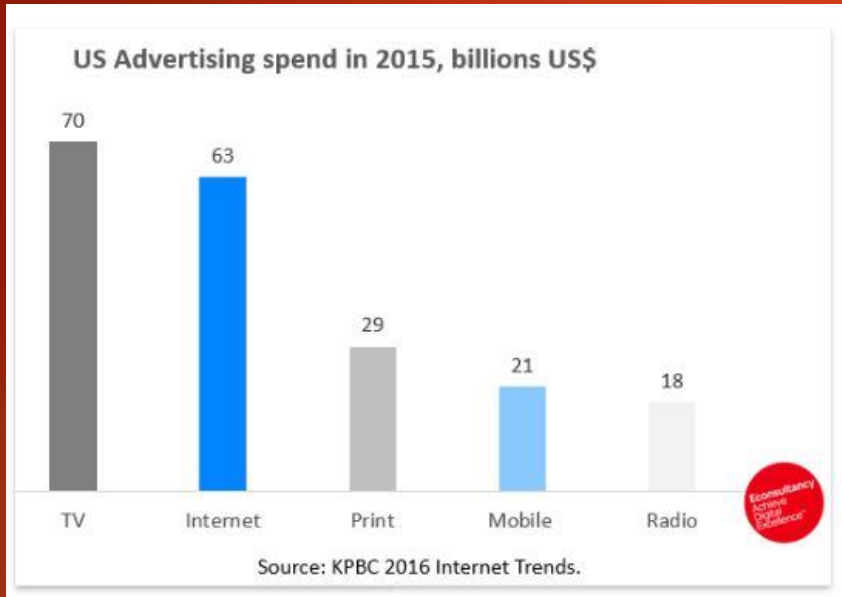


# China advertisement law

# Background



- IN 2015, AMONG THE US'S SPENDING ON ADVERTISING, LESS THAN HALF (47%) WAS ON INTERNET AND MOBILE ADVERTISING AND SLIGHTLY LESS ON TV ADVERTISING (39%).
- IN CHINA, BY COMPARISON, A FAR GREATER PERCENTAGE (66%) OF ITS ADVERTISING SPENDING WAS ON INTERNET AND MOBILE AND A MUCH SMALLER PERCENTAGE (24%) ON TRADITIONAL MEDIA, SUCH AS TV AND NEWSPAPERS.

# Background

## The Death of “Wei, Zexi”



- ▶ On April 12, 2016, Chinese student Wei Zexi died after receiving experimental treatment for cancer which he found out through an ad on China's dominant search engine, Baidu. The hospital marketed an innovative treatment for synovial sarcoma, the rare form of cancer Wei suffered from. After pooling together more than \$30,000 for his treatment, Wei was not cured. The treatment was reportedly much less effective than the hospital had advertised.
- ▶ This tragedy immediately called for legislations on supervising and regulating online advertising activities.

# BACKGROUND

## China's advertising laws include:

- ▶ PRC Advertising Laws 《中华人民共和国广告法》  
(2015 Revision)
- ▶ Interim Measures for the Administration of Internet Advertising  
《互联网广告管理暂行办法》 (September 1, 2016)



## Enforcement Authority:

- State Administration of Industry and Commerce (SAIC)  
(国家工商行政管理局)

# What is “Advertisement”?

- ▶ **Advertisement** refers to: all commercial advertising activities for direct or indirect introduction to the products or services promoted by product operators or service providers via certain media and forms.



# What is “Online Advertisement”?

- **Online Advertisement** refers to: commercial advertisements that promote commodities or services, directly or indirectly, via Internet media such as websites, webpages and Internet application programs in the form of texts, pictures, audios, videos or other forms.

**WeChat, Weibo, APP, etc. are considered as platforms of online advertising.**

# What is “Online Advertisement”?

The **Online Advertisement** shall include:

- ▶ Advertisements in the form of texts, pictures, videos or other forms containing a link or links;
- ▶ E-mail advertisements;
- ▶ Paid search advertisements;
- ▶ Advertisements contained in commercial presentations.

Ad related to: chanel

**CHANEL at Macy's®**

[Macys.com/CHANEL](https://www.macys.com/CHANEL)

4.0 ★★★★★ rating for macys.com

Free Shipping on Beauty Purchases. Shop Top Beauty Brands & Gift Sets.

Shop your favorite CHANEL makeup, skin care, perfume, and more to ...

# General Principles on Advertising

- ▶ 1. Ads must be **truthful, lawful**, and represented in a **healthy** manner.
- ▶ 2. Ads must **not** contain any **false** information and not “**cheat or mislead** consumers.”
- ▶ 3. Ads must be **identifiable** by consumers as advertising, and distinguishable from news reports and other materials.
- ▶ 4. Ads displaying the quality of services or products shall **conform to** the **actual quality** of such services and products.



# General Principles on Advertising

- ▶ 5. Words such as ‘**State-level,**’ ‘**highest-grade**’ or ‘**best**’ are not permitted to be used to describe the quality of product or services.
- ▶ 6. It is prohibited to have a **minor endorser** under the **age of ten**, and it is prohibited to conduct any advertising activity in **middle and primary schools and kindergartens.**



[A famous minor endorser under 10 years old, which is no longer allowed since September 2015.]



[“The Best Smart Phone in the Eastern Hemisphere.” The word of “best” is considered false or misleading.]





# Fare and Promotion

- ▶ 1. Product price shall be **clearly communicated** to the customers. **Arabic numerals** shall be uniformly used to indicate the prices of goods and services **in Renminbi**.

2.1A单USB高速车载充电器  
不伤手机电池 防火外壳

¥48

立即购买



线缆      车载配件



可旋转出风口导航支架

¥129

立即购买

# Fare and Promotion

- ▶ 2. Promotional activities must **display the time period** of the promotion and use **special promotional tags** to mark products or services under promotion.
- ▶ 3. **Discounting prices:** Original price must be truthful such that the discounted price is authentically lower than the 'normal' price.
- ▶ 4. The price of products or services that are sold in promotional activities may not be higher than the lowest price of the same products or services sold **in the past seven days**.
- ▶ 5. Lottery-based gift programs where the highest prize exceeds **RMB 5,000** are prohibited. *(The revised Anti-Unfair Competition Law will raise this amount to RMB20,000.)*



# Dos and Don'ts with Online Advertising

## ▶ 1. Key principles of Online Advertising

- ▶ Online advertisers shall be responsible for the **authenticity** of the **contents** of their advertisements.
- ▶ An online advertisement shall be identifiable and clearly identified as an "**advertisement**".



这部手机的宣传文案中小米提到其边缘触控技术已申请了46项专利，并声称这项“黑科技”带来了全新的操控方式。实际上，这46项专利还在申请中，并没有获得授权。小米的这一涉嫌虚假宣传 为被北京市工商行政管理局海淀分局揭发，一则工商行政管理处罚资料显示，2016年1月25日，小米遭到北京市工商行政管理局海淀分局3万元的处罚，理由是小米4C手机使用未授权的专利做广告宣传。在这里，更引来网友的谩骂声，一款涉及虚假宣传的手机不断出现质量问题，用户当然是不能忍!

# Dos and Don'ts with Online Advertising

## ▶ 1. Key principles of Online Advertising

- ▶ Advertisements shall be published or distributed by means of the Internet **without affecting the normal use** of the network by users.
- ▶ Advertisements published on Internet pages in the form of pop-up or other forms shall be clearly marked with a "**Close**" sign to ensure a "**Click to Close**", and there should be no deception to induce a click on the contents of an advertisement.



# Dos and Don'ts with Online Advertising

## ▶ 2. Special Rules on AD through emails:

- ▶ Must have **consent from the recipients**;
- ▶ Must identify **“AD”** in the subject of the emails;
- ▶ Must identify the identification and the **contact information**, which shall remain valid for at least 30 days;
- ▶ Must indicate the way of **un-subscription**;
- ▶ Must stop sending the AD emails if the recipient chooses to unsubscribe.



“AD” in the Subject



CKGSB MBA



Top MBA in China - A Word-Class MBA Program for China business



Dr. David Costa



Online LLM in 1 Year - Master of Laws in International Commercial Law. Do you want to know more?



our mailing address

Gibson&Perkins, PC, 100 W. Main Street, Suite 204, Media, PA 19063

[access our website](#) or [unsubscribe](#)

Original content in this email is copyright 2011 by [Gibson&Perkins, PC](#).

Sender's Contact Info



Way to Unsubscribe



# Penalties of Violation

- ▶ Publishing false or misleading advertisement - a penalty of **3-5 times advertising fees**, or up to **RMB 200,000-1,000,000** penalties and/or **cancellation or suspension** of business license on the advertisers;
- ▶ Any data, statistics, research result, summary, quotation and other quoted information used in an advertisement shall be **authentic and accurate**, with the source indicated. Any violation of the above are subject to a penalty of up to RMB100,000.
- ▶ Ads **not identifiable** from other non-advertisement materials - a penalty of up to RMB100,000.
- ▶ Online ads without a conspicuous mark to ensure the close of such advertisements by one click - a penalty of RMB5,000-30,000.



# Personal Data and Privacy

- ▶ **Personal Data:** refers to all kinds of information recorded by electronic devices or otherwise that can be used to **independently identify** or be combined with other information to identify an individual, such as: individuals' names, dates of birth, ID numbers, finger prints, addresses and telephone numbers, etc.

-- *PRC Cyber Security Law (June 1, 2017)*





- ▶ Personal Data Protection Obligations of Website Operators:
- ▶ Obtain the **consent** of those whom the information is collected, and disclose the purposes, means and scope of collection, and the use of the personal information
- ▶ Must **not** collect personal information **unrelated** to the service provided by the website operators.
- ▶ Must not divulge, distort or damage the personal information they have collected, and shall not **provide** the personal information to others **without the consent** of those whose the data is collected.
- ▶ Adopt technical measure to **ensure the security** of the personal information collected.

-- **PRC Cyber Security Law** (June 1, 2017)

