

菸品廣告規範之研究

中文摘要

就傳播法的角度而言，廣告規範可以說是傳播活動中涉及法律層面最廣，也是最為複雜的議題之一；而「菸品」廣告的存在由於具有相當的爭議性，因此亦稱得上是廣告規範中極具代表性的議題。本論文以菸品廣告規範為中心，藉由此項議題探討的「點」，試圖找出廣告規範的脈絡，進一步勾勒出廣告規範體系的「面」。故本論文處理菸品廣告所牽涉的法律層次，從抽象的國際公約及憲法，到具體的法律、法規命令及行政規則等均包含其中。

論文的架構大致將實務上已發生的菸品廣告案例類型化並釐清問題意識，以我國對菸品廣告規範的法理基礎、實務操作等「在地思考」的探討為「經」；加以對國際規範、外國立法例及實務操作等「國際觀點」的掌握為「緯」，完成本項議題的研究。

研究發現，我國現行菸品廣告規範面臨最大的問題在於菸品間接廣告問題、雜誌廣告規範的漏洞，以及法條競合所引發的適用問題。解決這些問題除了可以藉由國內司法體系的運作外，研究結果顯示修正相關法律規定會是解決問題最好的方式。本論文透過對世界衛生組織制定的全球菸草控制架構公約，以及對歐盟、英國、芬蘭、挪威、美國、加拿大、新加坡、泰國、南韓、日本、澳大利亞、紐西蘭等國家有關於菸品廣告規範內容作一整理與分析後，提出全面禁止菸品廣告的規範方式不但不會違背我國憲法對人民基本權利的保護，更是符合未來國際趨勢的見解；而此亦與世界銀行公布的《遏止菸草流行 政府與菸草控制經濟學》報告中，指陳全面禁止菸品廣告為減少菸草需求的非價格措施最佳方式有異曲同工之處。

本論文最後針對現行菸品廣告規範主要的具體法律條文，即菸害防制法第九條及第十條提出修法建議；同時為求執法實務與立法目的一致性，文末並提出執法與實務稽查等多項建議提供我國政府相關單位參考，使本論文確實達到理論與實務的充分結合。

關鍵詞：傳播法、廣告規範、菸品廣告、間接廣告、菸害防制法

A Study on the Regulation of Tobacco Advertising

Abstract

There is no doubt that in the area of communications law the regulation of advertising is one of the most complicated and widespread issues. Among them, tobacco advertising is perhaps the most controversial topic. This dissertation focuses on the regulation of tobacco advertising in Taiwan.

This dissertation finds that, in recent years, tobacco companies spent huge sum of money in advertising, resulting in an increase in tobacco consumption. Although according to the Tobacco Hazards Control Law of Taiwan, tobacco advertising is strictly restricted; the phenomenon is that tobacco companies tend to use legal loopholes. This dissertation analyzes the situation and discusses legal problems involved in tobacco advertising. Several issues are emphasized. First is the problem of tobacco indirect advertising. By indirect advertising is meant tobacco company advertises a third product the purpose of which is, however, to promote tobacco products. Secondly, the issue of tobacco advertising in magazines is discussed. The law of Taiwan, due to the 1986 U.S.-Taiwan Trade Agreement, allows a certain amount of tobacco advertising in magazines. Nevertheless, the law does not take into consideration certain circumstances, thereby causing loopholes during enforcement. Last but not least, focus is placed on the application of Tobacco Hazard Control Law. Specifically, the problem of concurrent application -- a unique but not uncommon legal issue in Taiwan's legal system -- is analyzed.

Methodologically, this dissertation adopts the comparative law approach. By examining WHO's FCTC (Framework Convention on Tobacco Control) and comparing the laws of Taiwan with that of the international convention, the laws of European Union, United Kingdom, Finland, Norway, United States, Canada, Singapore, Thailand, South Korea, Japan, Australia, and New Zealand, the author concludes that a comprehensive ban on tobacco advertising is constitutionally sound and compatible with international trend.

Lastly, this dissertation tries to provide solutions to Taiwan's present legislative and enforcement works. In sum, some of the laws need to be amended; while enforcement works may be improved by introducing a systematic change.

Keywords: Communications Law, Regulation of Advertising, Tobacco Advertising, Indirect Advertising, Tobacco Hazards Control Law.