Regulating Online Medicinal Advertisements in Malaysia: Legal Gaps, Enforcement Challenges, and Lessons from Australia

Syed Nabil bin Syed Abdul Nasir, Mohd Bahrin bin Othman

Faculty of Law, Universiti Teknologi MARA (UiTM) Shah Alam, Selangor, Malaysia

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ABSTRACT

The rapid growth of digital platforms has fundamentally transformed the promotion and consumption of health-related products, enabling online medicinal advertisements to reach consumers with unprecedented speed, scale, and cross-platform amplification. This paper critical review of the sufficiency of the legal framework in Malaysia regulating the online pharmaceutical advertisement, with respect to the Medicines (Advertisement and Sale) Act 1956 (MASA 1956) and its supporting mechanisms in the Consumer Protection Act 1999 and the Communications and Multimedia Act 1998. Using a qualitative doctrinal and comparative legal approach, the paper compares the regulatory framework of Malaysia to that of therapeutic goods advertising in Australia, which is regulated by Therapeutic Goods Act 1989 and Therapeutic Goods Advertising Code Instrument 2021. The analysis is based on four regulatory theories, Responsive Regulation, Deterrence Theory, Risk-Based Regulation and Risk Society Theory, and it shows that the framework in Malaysia is limited by definitional vagueness, non-binding rules, low fines in the statutes, and reactive enforcement mechanisms that are ineffective in the digital advertising ecosystem. The discussion concludes with specific reform suggestions to enhance the Malaysian regulatory control of online medicinal advertisements.

Keywords: Online Medicinal Advertisements, MASA 1956, Consumer Protection, Regulatory Enforcement, Comparative Law, Australia, Malaysia

INTRODUCTION

The advancement of technology and the internet has transformed the way products and services are advertised and consumed worldwide, with internet advertising being one such manifestation (Risk & Dzenowagis, 2001). Medicine promotion has swiftly shifted to the online environment, including social media, e-commerce, search advertising and live-streaming sales. Digitalisation broadens access to health information, but it also creates significant regulatory challenges, such as misleading health claims, influencer marketing, anonymous vendors, and cross-border promotion of illegal advertisements (Mackey & Nayyar, 2016).

Malaysia's Medicines (Advertisement and Sale) Act 1956 (MASA 1956) is the primary legislation regulating medicine advertisements, requiring prior approval by the Medicine Advertisements Board (MAB) under the Ministry of Health (MOH). However, MASA 1956 was drafted before the digital revolution and its provisions do not accommodate online promotion. The Consumer Protection Act 1999 and Communications and Multimedia Act 1998 offer additional protection, but are still insufficient to address platform-based advertising (Sukan & Pilus, 2014). This paper explores the shortcomings of Malaysia's regulatory structure and compares the regulatory frameworks of Australia, which shares a similar common law system but has a more responsive regulatory framework for advertising therapeutic goods.

For the purposes of this study "online medicinal advertisements" are defined as any communication that promotes, directly or indirectly, the sale, supply or use of medicinal products, and is disseminated using digital and internet-based media (Liang & Mackey, 2011). This includes website advertisements, social media promotion, e-commerce platforms, influencer marketing, livestream selling and user-generated advertisements (testimonials and endorsements).

Online Medicinal Advertising In Malaysia: Issues And Challenges

According to the Malaysian Communications and Multimedia Commission (MCMC), there is a major shift in traditional to digital advertising, as the national internet penetration increased to 87.4 percent in 2018 and has been rising since 2016 (87.4 percent) (MCMC, 2019). This change has tremendously increased the coverage of online medicinal advertisements as consumers are increasingly utilizing digital sources of health information and purchasing products online. Social media influencers have become a powerful promotional platform, and they are taking advantage of the public to shape health-related purchase decisions in a manner that traditional regulatory frameworks were never intended to deal with (Nawi & Faizol, 2019).

The development of online pharmaceutical advertising has brought about serious consumer protection issues. Pharmacy Enforcement Division (PED) has issued repeated warnings on online advertisements with false testimonials, especially those that promise guaranteed cures to cancer, instant relief of diabetes or improved sexual performance, all in direct contravention of Section 4B of MASA 1956 which prohibits advertisements that relate to specified serious illnesses (MOH, 2019). By 2019 to 2023, over 61,822 illegal medicinal adverts were taken down by enforcement officers on the internet, and in the first half of 2025, the MCMC had taken down a total of 2,033 unauthorised health product advertisements (Free Malaysia Today, 2025). Nevertheless, the number of violations only increases, which reveals a basic discrepancy between the regulatory potential and the size of the digital advertising industry.

The definitional ambiguity of MASA 1956 in the digital context is the most basic structural weakness of MASA 1956. Section 2 of the Act describes adverts in general terms, but fails to mention the internet or digital media as a platform of advertisement, which leaves loopholes in the interpretation that have been used by advertisers. The non-enforceable nature of supplementary guidelines, such as the Registered Medicinal Products Advertising Approval Guideline (2022), further restricts enforcement, as these tools cannot support criminal prosecution and can only provide administrative responses, such as warning letters and platform takedown requests. Those offenders who have been subject to such interventions often re-post the same message under new accounts or shift to other platforms, which makes administrative responses structurally ineffective (Sukan & Pilus, 2014). These issues are compounded by the statutory penalty regime: RM3,000 fine and one-year imprisonment under MASA 1956 is generally viewed as inadequate deterrents in an online advertising setting where a single viral advertising promotion can yield a significant commercial revenue.

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

Online medicinal advertisement regulation is related to a number of regulatory disciplines and theoretical frameworks. The literature on consumer protection in Malaysia has mostly analysed the sufficiency of the legislation in general (Idris & Che Hashim, 2012; Musa & Amin, 2016) and has not provided the detailed doctrinal analysis of the statutory provisions related to digital medicinal promotion. There is a paucity of comparative studies that compare Malaysia with developed jurisdictions, which have technologically adaptive regulatory architectures. This paper fills these gaps by undertaking a systematic doctrinal and comparative legal study based on four regulatory theories.

Responsive Regulation

The Responsive Regulation model by Ayres and Braithwaite (1992) suggests progressive, adjustive intervention policies that are based on the Enforcement Pyramid that moves between persuasion and education (at the bottom) to administrative sanctions (in the middle) to coercive measures (at the top) including criminal prosecution. Although it makes sense in stable, established organisations, this model faces a fundamental failure in the digital advertising ecosystem: on the one hand, it is based on statutory time, which assumes a sequence of breach detection, actor identification, and gradual escalation, on the other hand, the digital marketplace is based on algorithmic time, where content spreads within hours. Those offenders who are banned on one platform re-appear under new pseudonyms in a few minutes, what has been labelled as digital shape-shifting, which essentially restores the pyramid to its base and puts regulators into a never-ending loop of low-level administrative engagement (Ang et al., 2023).

Deterrence Theory

The deterrence theory is a theory based on the rational choice model developed by Becker (1968) that states that when the perceived cost of punishment is higher than the perceived benefits of breaking the law, people will obey the law. The equation of deterrence is grossly misconstrued in the online medicinal advertisement scenario. The percentage of detection is very low considering the amount of digital content and the profitability of non-compliant medicinal advertising is usually high. In case the expected fines are less than the revenue produced by a single advertising campaign, non-compliance is an economic rational choice. The comparatively low penalties under MASA 1956 have not kept pace with the economic magnitude of digital trade, and have effectively turned statutory penalties into a cost of operation as opposed to a deterrent (Shapira, 2022).

Risk-Based Regulation

Risk-Based Regulation (RBR) recognizes that regulators cannot cover all the regulated actors and activities, and thus it focuses the limited enforcement resources on the riskiest actors and activities (Black and Murray, 2019). In the medicinal advertising scenario, necessitates risk profiles depending on the type of product, extent of distribution, validity of health claims and vulnerability of the consumer. Nevertheless, the success of RBR depends on real time data, platform collaboration and regulatory ability which are still lacking in Malaysian enforcement framework. In the absence of a systematic risk-scoring system, regulatory focus is still complaint-based and reactive as opposed to being structured and preventative (Bohari et al., 2022).

Risk Society Theory

The concept of Risk Society Theory, which is linked to Ulrich Beck (1992), provides a macro-sociological perspective with the help of which the structural risks that the digitalization of medicinal advertising entails can be analysed. According to Beck, modernity has created new types of risk that are invisible, scientifically disputed, and distributed worldwide, features that directly apply to the risks of unregulated online medicinal promotion. Consumers navigating digital health platforms encounter information environments characterised by manufactured uncertainty, where the boundary between legitimate therapeutic claims and misleading promotional content is deliberately obscured. The vulnerable populations such as the elderly, those with chronic diseases, and the low health literate are disproportionally exposed to these risks, and a regulatory response that goes beyond reactive complaint-handling to include systematic consumer empowerment and proactive digital surveillance is needed.

Comparative Analysis: The Australian Model

Australia's regulatory framework for therapeutic goods advertising presents a meaningful benchmark for Malaysia due to their shared common law foundation and Australia's significantly has more developed regulatory architecture. The main legislative tool is the Therapeutic Goods Act 1989 (TGA 1989) and the main regulator is the Therapeutic Goods Administration (TGA) with significant enforcement capabilities such as issuing infringement notices, accepting court-enforceable obligations and referring cases to criminal prosecution. Therapeutic Goods (Therapeutic Goods Advertising Code) Instrument 2021 is a binding code of conduct to all advertising of therapeutic goods, including online advertising through social media, search engines, and influencer marketing. In contrast to the supplementary guidelines in Malaysia, the Advertising Code is statutory and places strict, binding requirements on advertisers in terms of content standards, claims that are not allowed, disclosure requirements and pre-approval procedures. The Code specifically forbids direct-to-consumer advertising of prescription drugs and mandates advertisements of OTC medicines to provide balanced risk-benefit information, instructing viewers to consult a professional medical practitioner.

The Australian post-market compliance model also makes a further difference between its model and the Malaysian reactive model of enforcement. The TGA uses a systematic digital surveillance model based on a risk-based approach that allocates resources in enforcement to high-risk content. The therapeutic goods framework is complemented by the Australian Consumer Law, which is governed by the Australian

Competition and Consumer Commission (ACCC), which provides a set of civil penalties of deceptive practices, scaled to the level of harm suffered. This stratified enforcement system - comprising statutory force, graduated sanctions, platform-specific standards, and systematic digital monitoring would provide a much more responsive, effective system of regulation than the regime that Malaysia is currently operating under.

The comparative analysis identifies four key areas where Malaysia is at disadvantage in comparison to Australia. First, the additional guidelines in Malaysia are not as binding as the statutory Advertising Code in Australia. Second, the statutory fines of MASA 1956 are relatively low in comparison with the magnitude of commercial offenses of digital advertising. Third, Malaysia does not have clear platform-specific advertising guidelines that cover social media, influencer marketing, and e-commerce platforms. Fourth, the enforcement model in Malaysia is still largely reactive and does not have the systematic digital surveillance and risk-prioritisation mechanisms that typify the post-market compliance framework of Australia.

CONCLUSION

This paper critically discussed how online medicinal advertisements in Malaysia are regulated using a doctrinal and comparative legal analysis as a benchmark based on the Australian regulatory framework. The discussion shows that MASA 1956, despite its broad scope of definition, is structurally limited by three interrelated limitations: definitional vagueness on online platforms; the non-binding nature of supplementary guidelines, limiting enforcement to administrative interventions; and an inadequate statutory penalty framework to discourage the violation at the scale and profitability of digital commerce.

The four regulatory theories used in this paper shed light on why they are not just technical shortcomings but structural failures. The digital advertising ecosystem flouts the sequential logic of responsive regulation, distorts the deterrence calculus of rational choice models, floods risk-based prioritisation without the capacity to monitor in real time, and disproportionately exposes vulnerable consumers to manufactured health information risks that cannot be properly addressed by conventional regulatory frameworks.

On the contrary, Australia exhibits a consistent regulatory framework that encompasses statutory authority, those that are gradual and scalable, platform-specific advertising rules, and post-market systematic digital monitoring. This comparative analysis yields four reform directions to Malaysia. First, MAB rules must be promoted to delegated law under MASA 1956, which will give them statutory authority and the ability to prosecute violations of digital advertising as a crime. Second, the statutory fines must be increased significantly to reflect the economic magnitude of the digital advertising offences, and this will have the effect of a deterrent. Third, platform governance should be reinforced by digital enforcement by imposing compliance requirements on intermediaries, which is facilitated by regulatory technology and interagency coordination between the MOH, MAB, PED and MCMC. Fourth, institutionalisation of compliance education and specific public awareness campaigns are needed to enable consumers to navigate digital health information settings, thus mitigating the vulnerability asymmetries that deceptive online medicinal advertising capitalizes on.

Online medicinal advertisements regulation in Malaysia does not merely require an incremental shift in the form of legislative changes but a radical reshaping of the regulatory framework. A regulatory structure that is legally consistent, technologically responsive, and institutionally feasible. The Australia regulatory framework offers a systematic and contextually pertinent point of reference to this reconceptualization. Through implementation-oriented lessons as seen in the Australian model, Malaysia can build a framework that is effective in preventing the harm to consumers of the misleading online medicinal advertisements as well as maintaining the legitimate commercial and public health functions of digital advertising.

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REFERENCES

1. Ab Aziz, N. H. (2013). The adequacy of the laws and regulations relating to online advertising in Malaysia from the consumer protection perspective. Universiti Teknologi MARA.
2. Ang, J. Y., Ooi, G. S., Abd Aziz, F., & Tong, S. F. (2023). Risk-taking in consumers' online purchases of health supplements and natural products: A grounded theory approach. Journal of Pharmaceutical Policy and Practice, 16(1), 134.
3. Ayres, I., & Braithwaite, J. (1992). Responsive regulation: Transcending the deregulation debate. Oxford University Press.
4. Beck, U. (1992). Risk society: Towards a new modernity. Sage Publications.
5. Becker, G. S. (1968). Crime and punishment: An economic approach. Journal of Political Economy, 76(2), 169–217.
6. Black, J., & Murray, A. D. (2019). Regulating AI and machine learning: Setting the regulatory agenda. European Journal of Law and Technology, 10(3).
7. Bohari, N. H., Alias, A., & Ghani, A. S. A. (2022). Initial regulatee perception of the self-regulation approach in the regulatory enforcement of medicine advertisements. UUM Journal of Legal Studies, 13(1), 311–344.
8. Free Malaysia Today. (2025, August 10). 2,000 unauthorised ads on health products pulled down since Jan 1. https://www.freemalaysiatoday.com/category/nation/2025/08/10/2000-unauthorised-ads-on-health-products-pulled-down-since-jan-1
9. Hassali, M., & Shakeel, S. (2020). Pharmaceutical and cosmeceutical marketing and advertising in Malaysia: An overview of current governing laws and regulations. Biomedical Journal of Scientific & Technical Research.
10. Hochberg, J. W. (2004). Nailing Jell-O to a wall: Regulating Internet pharmacies. Journal of Health Law.
11. Idris, S. H., & Che Hashim, R. (2012). Consumer protection in the online sale of medicinal products in Malaysia. International Journal of Public Law and Policy, 2(4), 393–406.
12. Ismail, S. F., Daud, M., Jalil, J. A., Azmi, I. M., & Safuan, S. (2018). Protecting consumers from misleading online advertisement for herbal and traditional medicines in Malaysia: Are the laws sufficient? In Proceedings of the 6th International Conference on Cyber and IT Service Management (CITSM 2018).
13. Liang, B. A., & Mackey, T. K. (2011). Prevalence and global health implications of social media in direct-to-consumer drug advertising. Journal of Medical Internet Research, 13(3), e64. https://doi.org/10.2196/jmir.1775
14. Mackey, T. K., & Nayyar, G. (2016). Digital danger: A review of the global public health, patient safety, and cybersecurity threats posed by illicit online pharmacies. British Medical Bulletin, 118(1), 110–126.
15. Malaysian Communications and Multimedia Commission. (2019). Internet users survey 2018.
16. Marimuthu, S. B. (2016). Should advertisements of prescription drugs directed at consumers remain banned in Malaysia? Australian Journal of Asian Law, 17, 1–14.
17. Ministry of Health Malaysia. (2019). Pharmaceutical services programme annual report 2018.
18. Ministry of Health Malaysia. (2024). Medicine advertisements board (MAB) guidelines and policy. https://pharmacy.moh.gov.my/en/documents/medicine-advertisements-board-mab-guidelines-and-policy.html
19. Musa, N., & Amin, N. (2016). Consumer protection against misleading advertisements of health products in Malaysia. Journal of Applied Environmental and Biological Sciences, 6(1S), 49–55.
20. Nawi, N. F., & Faizol, A. (2019). Influencer marketing: The case for regulation in Malaysia.
21. Risk, A., & Dzenowagis, J. (2001). Review of internet health information system quality initiatives. Journal of Medical Internet Research, 5(4).
22. Shapira, R. (2022). The challenge of holding big business accountable. Cardozo Law Review, 44(1).
23. Sukan, N. H., & Pilus, M. (2014). A legal study of internet advertisement: Medicine. Universiti Teknologi MARA.
24. Therapeutic Goods Administration. (2021). Therapeutic goods advertising code. Australian Government. https://www.tga.gov.au/publication/therapeutic-goods-advertising-code

25. Ventola, C. L. (2011). Direct-to-consumer pharmaceutical advertising: Therapeutic or toxic? Pharmacy and Therapeutics, 36(10), 669–684.