

## **ADVERTISING REGULATIONS**

### **General**

Until recent times most control of the content of advertising was by way of voluntary self-regulatory codes. The Consumer Protection from Unfair Trading Regulations and the Business Protection from Misleading Marketing Regulations were implemented in England in 2008. The Regulations, which are both derived from European Union Directives, modernised and updated the law on advertising. The purpose of the Regulations is to provide common European Union rules so as to facilitate the free movement of goods and services.

Self regulation is still of great importance in the United Kingdom. The Advertising Standards Authority enforces two codes for broadcasting and non-broadcasting advertising. Certain industries are subject to specific codes.

Both television and radio advertising are subject to EU legislation. The Office of Communications (Ofcom) publishes a broadcasting code covering radio and television broadcasting. Ofcom outsources broadcasting advertising regulations to the ASA. The ASA operates and enforces the Broadcasting Advertising Code (BCAP). The code sets out rules that govern broadcasting advertising. The rules provide, in broad terms that advertisements must be legal, decent, honest and truthful and do not mislead or cause offence.

### **CAP Codes**

The non-broadcasting code is the British Code of Standard Sales Promotion and Direct Marketing. The Committee on Advertising Practice (CAP) publish the code. All the principal trade and professional bodies representing advertising agency services supply media owners and members of the CAP. They agree not to accept advertising in contravention of the Code. The Code is enforced by the ASA which is independent of government and industry. It covers most media advertising, posters, cinemas, non-broadcast advertisements, marketing, promotions etc.

Advertising must be legal, decent, honest and truthful, be prepared responsibly and respect principles of fair competition generally accepted in business. They must not mislead by inaccuracy, ambiguity, exaggeration or otherwise. Advertisers must hold documentary evidence to prove that they can substantiate all claims before submitting an advertisement for publication.

There is no necessity to require clearance from the ASA. The CAP does provide a copy advice service.

The general public, competitors or other interested parties can lodge complaints with the ASA. If it finds an advertisement breaches the BCAP code or the ASP code the ASA will ask that it be withdrawn. The ASA cannot levy fines. However it does have a number of other sanctions including the following: It can ask publishers media owners to refuse further space until it has been changed or the advertiser is a regular offender.

The ASA publishes rulings on its website which the public can access. An adverse ruling may attract adverse media coverage. It can withdraw trading privileges and certain discounts and incentives available through membership. The ASA may refer the advertiser to the Office of Fair Trading which may be able to take grounds based on legal breaches. If an advertiser or complainant is unhappy with ASA's decision they can appeal to the ASA's independent review procedure within twenty one days of being informed of the decision.

### **Miscellaneous Regulation**

EU legislation requires that advertisements are clearly distinguishable as such and recognisable, separate from programmes or editorial material. The Audio-Visual Media Services Directive will update the law in this area in 2009. Under the AVMS directive, product placement will be prohibited. Member states may choose to permit it in films, sports programmes, light entertaining or where no payment is involved. Product placement will not be permitted in children's programmes. It must not affect the editorial independence of the service provider and must not directly encourage purchasers.

News and current affairs programmes will not be allowed to contain any product placement and no programmes may contain product placement of certain products such as tobacco or prescription medicine. In addition a warning must be screened at the beginning and end of the programme and after every advertised break.

Subliminal advertisement is not permitted in the UK.

The Price Marking Order regulates goods offered for retail sale and CAP provides guidance on price advertising. Prices must be clear and relate to the advertising product. Prices must match the illustrated products. Prices addressed to the public should normally include VAT and other duties. Where one price is dependent on the purchase of another, the extent of the commitment by the purchaser must be made clear. Prices “up to” and “from” should not exaggerate the availability of benefits likely to be obtained by consumers.

### **Price Comparison**

The CAP Code provides guidance on price comparison. A comparison with the trader's own price must ensure the previous prices at the last price to which the product was available to consumers during the previous six months and such price must have been available for at least twenty eight days. A recommended retail price used as a basis of comparison must be genuine. It is a criminal offence to make misleading comments about the existence and nature of a product, its main characteristics and its price.

The Comparative Advertising Directive 2006 has been implemented in England and Wales. Comparative advertising is only permitted as long as the following conditions are satisfied: It must not be misleading; If it compares goods and services meeting the same needs and intended use, it must objectively compare one or more material, relevant, verifiable and representative features of those goods; It must not discredit or denigrate trademarks, trade names and distinguishing marks, service or activities or circumstances of a competitor;

For products' designation of origin, it must relate in each case to products of the same designation; It must not take unfair advantage of the reputation of a trademark,

trade name or distinguishing feature of a competitor or designation of origin of competing goods. It must not present goods or services as imitations or replicas bearing a protected trade name or trademark; It must not cause confusion amongst traders between the advertiser and competitor or between the advertisers trademarks, trade names or distinguishing features.

### **Miscellaneous**

It is an offence to publish whether for gain or not, an obscene advertisement. An advertisement will be taken as obscene if taken as a whole it intends to deprave or corrupt persons who are likely to have a regard to the circumstances to read or see the matter contained in it.

The ASA has established a checklist for advertisers wishing to use green claims. Environmental benefits must not be exaggerated. Advertising should be backed up with documentary evidence. Where a scientific claim is made, it must not be presented as accepted if the science is inconclusive. Pseudo science must not be used. Claims such as “environmentally friendly” or “wholly biodegradable” must not be used if it is unlikely that it is possible to prove that the product has no environmental impact.

There are specific regulations in the certain areas: The ASA codes in relation to alcohol requires that marketing should be socially responsible and should not encourage excessive drinking or suggest drinking can overcome boredom, loneliness or other problems. It must not exploit the young, immature or others who are mentally or socially vulnerable.

Food and dietary products are subject to specific regulations. The Food Standards Agency provides guidance on the use of certain words such as “fresh”, “pure” and “natural”. EU Regulation on health and nutrimental claims became law in July 2007. It imposes restrictions upon claims that can be made in relation to foods and introduces mandatory labelling requirements.

Financial services are subject to special regulation under the auspices of the Financial Services Authority. Advertising may imply the undertaking of activity which requires prior authorisation.

Pharmaceuticals are regulated by medicines legislation.

Tobacco advertising is very strictly controlled and banned and most formats are banned.

There are general legal requirements applicable to the sale of all goods and services which apply to advertising; under the Sale of Goods Act, goods must match their description. Under the Consumer Protection from Unfair Trading Regulations use of misleading descriptions and certain aggressive selling tactics are prohibited and under the Business Protection Marketing Regulations 2008 advertising that misleads traders is prohibited. There are general laws in relation to copyright and defamation which must also be considered.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.