

Going global? Think Local

Anita Siassios

a.siassios@tamimi.com

Advertisers and online businesses entities should address local issues before adopting or displaying a multi-jurisdictional digital advertising campaign.

With the Internet being accessible to many people of all ages in forms such as mobile phones, PCs and tablets, it is of no surprise that digital advertising has grown and developed into the success it is today. As readers will know, digital advertising campaigns allow advertisers to reach a broad audience by making use of the different types of digital ad formats in which the campaign can be delivered, such as mobile ads, banner ads, floating ads, and so on. Not only that, campaigns can be specifically targeted to a specific audience by way of IP targeting, social media preference targeting, and the like so that the campaign has a higher success rate of reaching its intended audience. Advertisers can also cross borders and advertise in multiple jurisdictions. Something that can be overlooked, however, is whether the digital advertising campaign will be compliant with local laws in the jurisdictions in which the campaigns will be run. The negative publicity caused by enforcement action in a particular jurisdiction could undo all of the hard work which was invested in the campaign in the first place.

Advertising in the UAE

There are several types of laws, regulations and resolutions (“Laws”) that govern advertising in the UAE. The relevant federal Laws are:

- Federal Law No 15 for 1980 concerning Publications and Publishing (Publishing Law)
- The Federal Law No 2 of 2006 on The Prevention of Information Technology Crimes (Cyber-Crimes Law)
- Federal Law No. 3 of 1987 on the Penal Code for the United Arab Emirates (Penal Code)
- President of the National Media Council’s Resolution No. (20) of 2010 On the Criteria For Media Content

Additionally, most Emirates and free zones within the UAE have their own Laws which also must be adhered to when advertising in these Emirates, including:

- Dubai’s Control of Advertisements Regulation [L.O. 30 of 1986]
- Abu Dhabi’s Regulating Advertising Regulation [A.D. L.O. 1 of 1969]
- TECOM’s Code of Guidance [2003]
- Twofour54’s Media Zone Authority Code of Conduct [2011]
- Sharjah’s Commercial Advertising Regulation [SH] L.O. 5 of 1994]

There are also separate regulations that govern the advertising of specific goods and/or services, such as the Cabinet’s Resolution No. (7) of 2007 Regarding Health Advertisements Regulation, which must be adhered to when advertising health or medical related products and/or services.

Obtaining a license

Advertisers of certain products and/or services in the UAE must also obtain licenses from the relevant authorities, irrespective of whether the advertising campaign is run online or on more traditional mediums such as billboards, magazines or television. Examples of the products/services include the following:

1. Medical and health related products and/or services
2. Financial products and/or services in the UAE and the DIFC
3. Any promotion, product or service that is part of the Dubai Shopping Festival and Dubai Summer Surprises

For online advertising campaigns involving any of the above, there may be instances where the advertiser is only responsible for obtaining the license, or where both the advertiser as well as the website owner publishing the advertisement are responsible (for example, if the advertiser is running the campaign on a micro-site on behalf of the advertiser).

Penalties for non-compliance vary, depending on the type of license required and depending on which entity is responsible for obtaining the license. For example, for advertising financial services on a website, there are no prescribed penalties of fines or imprisonment for the website owner for the advertiser not obtaining a license to advertise the financial services. Compare this to the advertiser, where penalties of fines and imprisonment for breach of the laws under the purview of the UAE Central Bank or Securities and Commodities Authority may be imposed on the said advertiser for failing to have the requisite licenses and approvals.

Case study

An advertiser who is a global company wishes to post a banner ad on a “.com” website specifically targeted to members of the UAE even though the company responsible for the advertising is based outside of the jurisdiction. This may seem like a straightforward campaign, however consideration must be given to various factors such as:

1. Will the products and/or the advertisements breach any local laws?
2. Will the banner ads take the viewer to another website, governed by terms and conditions of another country other than those where the campaign is targeted?
3. Will the banner ads advertise a slogan or product that is misleading and unrelated to the advertiser's product?

As the advertising campaign is specifically targeting members of the UAE, the campaign will be subject to UAE laws. Should the advertising campaign breach any UAE law (such as any of the ones identified above), who is liable for the breach? Would it be the advertiser based offshore who has no assets in the UAE and simply relies on resellers of its product in the UAE? Or will it be the website owner that displays the advertisement? Or both?

These are often difficult questions to answer, and will depend on the nature of the breach. In this case study, if the advertisement was found to have breached the Cyber-Crimes Law, the website owner may be faced with penalties that could range from fines imposed on the company and/or against its employees who are acting within the scope of their employment to imprisonment of the directors or agents of the company where it can be shown that those people authorized or commissioned the offence. Compare this to the above example of the advertiser failing to obtain a financial license from the UAE Central Bank, where the website owner is not likely to be prescribed any penalties in this instance, although they are likely to be imposed on the advertiser for failing to obtain a license.

Things to remember:

1. Advertising campaigns, even if driven in terms of content by an offshore company, can be the subject of UAE laws. Advertisers and media outlets/website owners publishing advertising campaigns should consider whether local law review of the campaign is required in the UAE as well as jurisdictions other than the UAE.
2. In the UAE, some advertising campaigns may require the advertiser to obtain a license from the relevant authority. Both advertisers as well as website owners should be familiar with these instances and are well-advised to make the relevant enquiries with counsel or with the authorities as to whether a license is required if they are unsure.