

Advertising Regulations in the UAE

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The article quoted the market research firm Yankelovich who estimated that a person living in a city at the time was exposed to up to 5,000 advertising messages per day.

With so many advertising messages competing for the attention of consumers, it may be safe to conclude that there is significant pressure on both advertising agencies and advertisers to ensure that their advertisements are the most memorable. Further considering that the average time to make an impression through billboard advertising is apparently between three and five seconds, the pressure to ensure that an advertisement is effective increases significantly. As a result of the competition for the attention of consumers, advertisers may be tempted to exaggerate the characteristics and qualities of products or services, or use language that may be more memorable than accurate.

“Slow release energy” – really?

A recent example of an advertising complaint from the United Kingdom illustrates the conflicting interests of consumers and advertisers that may be involved in advertising related matters. In The Independent it was reported on 1 August 2012 that “Weetabix has been ordered to amend the claim with ‘slow release energy’ after it was ruled misleading by the advertising watchdog.” In this matter the claim was that the product was “Packed with slow release energy to keep you going.” Consumers complained that the claim “slow release energy” was misleading as Weetabix has a high glycaemic index (GI) rating. A high GI rating means that a product raises blood sugar and quickly releases energy. It turned out that the Weetabix claim was based on the product being consumed with milk, rather than on its own. The Advertising Standards Authority in the United Kingdom accordingly found that consumers could infer that the claim related to the product itself and that the claim was accordingly ambiguous.

Considering the large financial resources brought to bear behind advertising campaigns and the impact that successful campaigns can have in achieving higher sales or higher consumer engagement, it is not only consumers that require protection from misleading advertising, but also trade competitors. Exaggerated or misleading claims in advertising about the benefits of or characteristics of a product may be prejudicial to the sales of competing products and may indirectly suggest deficiencies in competing products. For example, a claim that product X is the only product on the market that provides a particular benefit clearly states that other similar products are deficient compared to product X as they do not provide the relevant benefit.

Examples of regulation in the UAE

In some jurisdictions, such as for example the United Kingdom, advertising is primarily regulated through independent self-regulating bodies, as well as specific legislation. In the United Arab Emirates there is no such self-regulating body and advertising is regulated through a combination of provisions drawn from laws focusing on the protection of consumers on the one hand and the activities of businesses that may constitute unfair competition on the other.

The Executive Regulation to the Consumer Protection Law provides that consumers have a right to be provided with facts that assist them in proper purchases and consumption. The Executive Regulation further specifically deals with advertising, providing that:

“No person shall be permitted to advertise in any medium any goods or service in such manner leading to

deceiving or confusing consumers.”

The Department for Consumer Protection is the appropriate governmental department dealing with consumer complaints and the Consumer Protection Law provides for a minimum fine in the event of a contravention of the law. Consumers aggrieved by misleading advertising may accordingly address their complaints directly to the Department for Consumer Protection.

In addition to the provisions of the Consumer Protection Law, the Suppression of Fraud Executive Regulation (the “Fraud Regulation”) addresses commercial statements whether made directly or indirectly, providing that such statements:

“must be accurate in all respects whether placed on products, shops, inside shops or on packaging, invoices, correspondence, advertising material or other things used to offer good to the public.”

Commercial statements are specified in the Fraud Regulation to include for example the “power and specifications” and “composition” of products and as such, advertising containing relevant claims that are inaccurate in any respect will be in contravention of the Fraud Regulation.

The ambit of the Fraud Regulation is much wider than the mere focus on “commercial statements” as defined therein, as it also provides that a trader may not resort to any tactic that would confuse or mislead the public, as well as providing that “A trader, manufacturer or producer may not”:

“Use... any form of manipulation of the truth”; and

“All acts that could create confusion or mix-up in any manner with... commercial or industrial activity of competitors.”

Having regard to the provisions of the Fraud Regulation along with that contained in the Suppression of Fraud Law, contravention of the Fraud Regulation may expose an offending advertiser to both a fine and imprisonment.

In addition to the application of the above mentioned laws to advertising activities, the Commercial Transactions Law provides additional protection to competitors in trade that may be affected by misleading advertising. The Commercial Transactions Law provides that a “trader must not resort to fraud and cheating when making his goods, nor may he spread or publish false particulars that are prejudicial to the interests of another competitor trader”. Where a trader is guilty of transgressing this provision, it shall be liable to pay damages.

Although there is no self regulating body in the UAE that provides a forum for the submission and hearing of advertising related complaints, the UAE legal system provides a number of mechanisms through which both consumers and traders can complain against irresponsible and misleading advertising. There is accordingly no reason for either consumers or traders to accept irresponsible and misleading advertising in the UAE, especially where advertisers should take careful consideration of the significant cultural and language differences that exist in the consumer population in the UAE.

A complex regulation landscape

The legislation and regulations referred to above do not, and is not intended to, represent a summary of the law in the UAE as it applies to advertising, but rather highlight that both consumers and traders are protected in the UAE against irresponsible and misleading advertising. At the same time, it is important for advertisers to take note that their advertising activities are regulated in the UAE through a complex

web of laws and regulations that demand of them to ensure the accuracy of communications with customers. When advertising relate to regulated products and services such as healthcare or tobacco, the level of regulation increases significantly, as does the associated sanctions flowing from non-compliance.

Best practice in compliance

There is a likelihood that the UAE Government's increased focus on consumer protection and efforts to make consumers aware of their rights as consumers may result in the more critical assessment of advertising claims by both consumers and government officials. Against the background of advertising regulation in the UAE and the more general social responsibility of advertisers to consumers, advertisers should ensure as a best practice that internal advertising approval includes an appropriate legal review and legal compliance approval.

Please contact the Al Tamimi & Company Intellectual Property department if you require any assistance related to the legal compliance of advertising campaigns, legal risk assessments related to advertising campaigns and advertising related complaints.