

Comparative Advertising and Medical Products

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In an ever increasingly competitive world, the differentiation of products from those of competitors is not only important, but essential.

In communicating with consumers in advertising there may accordingly be some advantage in providing comparative – scientifically supported – information on the benefits or performance of one product as compared to the products of others. The key question however, is whether this practice is lawful in the UAE and for the purpose of this article in particular, whether the practice is lawful in respect of medical products?

There are a range of laws in the UAE that deal with advertising and in order to consider the extent to which comparative advertising may be lawful in the UAE, a number of different laws and regulations need to be considered.

In general terms the Commercial Transactions Law regulates unfair competition which has direct implications for what would constitute appropriate content for advertisements. The Commercial Transactions Law provides for example that a trader may not resort to fraud and cheating when marketing his goods, nor may he spread or publish false particulars that are prejudicial to the interests of a competitor. With respect to advertising specifically, this law provides that a trader may not publish matter that is inconsistent with reality regarding the goods, including their origin, description or importance. A trader may also not resort to any other misleading means, with the intent thereby to usurp the customers of a competitor.

An advertisement containing false information either about the advertised product or about a product possibly being compared therewith will amount to a form of unfair competition and in terms of the Commercial Transactions Law, such advertisements will expose the advertiser to claims for damages.

Other laws that address advertising include the Suppression of Fraud Executive Regulations providing that commercial statements contained in advertisements must be accurate in all respects. These regulations further provide specifically that a trader may not publish false information concerning the importance of goods, or make false representations as to rank, medal or reward. The Consumer Protection Law further provides that a supplier may not display, offer, promote or advertise any misleading goods that would harm the interests or health of consumers, which may include information about goods that may be misleading.

Based on the above it can be concluded that comparative advertising as such is not prohibited by law, provided that the content of a proposed advertisement complies with the various requirements set by laws such as the Commercial Transactions Law, the Suppression of Fraud Executive Regulations and the Consumer Protection Law.

With respect to health advertisements, the Health Advertisements Regulations deal with the advertising of medical products. In these regulations the term “medical products” is widely defined including a wide range of matter that is related to the human health such as:

- pharmaceuticals (as well as herbal medicine, health food, nutritional supplements and beauty centres);
- medical apparatus;

- medical institutions;
- persons practicing a medical profession; and
- methods of medical treatment.

Both the Law Concerning Publications and Publishing and the Health Advertisements Regulations provide that the Ministry of Health is the only authority that may license advertisements of pharmaceutical and medical products. It is to be noted that the Health Advertisements Regulations define “advertisement” widely including –

“any information about a medical product in written, photographic and broadcasting form...”

The Health Advertisements Regulations provide an extensive list of conditions that advertising of medical products needs to comply with in order to be licensed by the Ministry of Health. These conditions include that the relevant advertising shall not:

- contravene the applicable laws and regulations in the UAE in general and particularly the laws relating to publications and publishing;
- be prejudicial to third parties’ products and institutions;
- contain false statements that deceive the public, and shall not be subject to interpretations;
- mislead directly, or by means of indication, confirmation, comparison, contradictions, or omissions; and
- warn against or cause harm to an alternative to the medical product advertised.

Comparative advertising is not prohibited by the Health Advertisements Regulations, but must be well-balanced and not misleading whether with regard to the pharmaceutical products advertised, the relevant medical products or categories of medical products with which they are compared. The Health Advertisements Regulations specifically requires that any points of comparison in comparative advertising must be real and must be scientifically substantiated. Dealing with scientific information specifically, the regulations provide that such information must be presented in an accurate, well-balanced and non-fallacious fashion and the scientific terms used must be appropriate, informative and easily understandable by the targeted consumers.

Importantly, if any comparison is made, the comparisons may not prove that another medical product or category of medical products is harmful or ineffective.

In summary, the position in the UAE is that comparative advertising is lawful provided that such advertising does not amount to unfair competition, contravene provisions of relevant legislation related to the protection of consumers or the prevention of fraud or, in the case of pharmaceuticals and medical products, the regulations related to advertisements of medical products. In all instances of advertising related to the medical products, the approval of the Ministry of Health will be required and it will be at the discretion of the Ministry which advertising content it will approve.