



Commercial lawyer Jo Tall highlights the legal hotspots to watch out for

Are your adverts legal?

Christmas is almost upon us and for many businesses with consumer driven products this is a vital time of year to boost turnover. And then there are the January sales to snap up customers who were not enticed first time around. What better way to lead customers to your door than by advertising 'unbeatable offers', 'buy one get one free' (or "BOGOF" as it is known to marketers!) or 'hurry whilst stocks last'...The list of offers is endless, but what are you actually allowed to say?

The first thing to decide is whether you will be advertising online, in print or broadcasting as different rules apply. Given that the subject is vast, I will concentrate on printed and online advertising here. Secondly, make sure your advertising and copy team are familiar with the rules and bookmark the links to the various authorities, as you will need to refer to them regularly. They have an excellent array of resources including free seminars, guidance notes and even free advice on your proposed adverts. For those of you familiar with advertising, you may not be aware that new rules have just come into force on 1st

September 2010, so do check out the links.

The law

In essence, advertising is regulated by a combination of legislation and self-regulation. The main legislation relating to advertising is the Consumer Protection from Unfair Trading Regulations 2008 ('CPR's) which prohibit unfair commercial practices generally, including advertising. A business can engage in an unfair commercial practice by materially distorting the economic behaviour of the average consumer in relation to a product (or if it is likely to do so). If you give false information which deceives (or is likely to deceive) the average consumer and causes, or is likely to cause, him to take a decision that he would not otherwise have taken (even if the information given is factually correct) again you will end up in trouble. So check all statements that you make in relation to:

- The existence or nature of your product.
- The main characteristics of the product.
- The extent of your business's commitments, your motives, sales process and any statements or

symbols used for sponsorship or approval of the product.

- The price (including how it is set).
- The need for a service, part or repair.
- The nature of the business, including your status and qualifications.
- The consumer's rights.

The CPRs have a handy list of 31 practices which will always be considered unfair.

The Codes

There are various self-regulatory codes which regulate advertising, in particular, the British Code of Advertising, Sales Promotion and Direct Marketing (CAP Code), which is administered by the Committee of Advertising Practice (CAP). The codes are enforced by the Advertising Standards Authority, which can refer persistent offenders to the OFT or Ofcom. Worst of all they can publish a list of offenders on the ASA website! Not good for business.

The CAP Code states that:

- Advertising has to be legal, decent, honest and truthful. It is particularly important to avoid causing offence on the grounds of race, religion, sex, sexual orientation and disability. Do you remember the Easy Jet advert and its "weapons of mass distraction" and the picture of a well endowed female in a bikini? That was held to be offensive under this heading!
- Advertising copy must be prepared with a sense of responsibility to consumers and society and must respect the principles of fair competition generally accepted in business.
- Advertisements should not mislead by inaccuracy, ambiguity, exaggeration or in any other way.
- Advertisers must hold documentary evidence to prove that they can objectively substantiate any claims they make before submitting an advertisement for publication.

If this is all beginning to overwhelm you, the key question to ask yourself is whether you can put

your hand on your heart and say the advert is truthful and based on sound evidence. If, for example, you say "for a limited period only", but in fact allow the promotion to run on indefinitely, you will have misled your customers into believing there is a deadline when there is none.

If you say "free T-shirt with every purchase" and the purchase price actually includes an uplift for the cost of the t-shirt, again you are misleading the customer.

Lastly, be aware that the subject matter of your adverts as well as the target audience may have added implications. So for instance, adverts regarding health products, alcohol and cosmetics all have special rules. If you make any environmental claims, these need to be backed up by concrete evidence. If you are targeting children, again there are special rules that must be followed. As a parent myself, I quite like the rule that prohibits adverts from saying: "Why not get your Mum or Dad to buy you..." or the one that says you must not actively encourage children to make a nuisance of themselves to parents or others and must not undermine parental authority!

The bottom line is to make sure you get legal advice on your proposed copy. This article is just a bare summary. Tell you what, I will make you an offer you can't resist...

Useful links:

www.cap.org.uk for the Committee of Advertising Practice and the 'CAP Code'

www.copyadvice.org.uk for free copy advice

www.bis.gov.uk for guidance on the legislation

www.consumerdirect.gov.uk for all consumer related issues

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