

Be sure, be careful how you market....

A strong and efficient marketing campaign can be the difference between profit and loss for many businesses.

Often marketing will come in the form of newspaper advertising or “flyer” leafleting campaigns, which are targeted at certain consumers.

Such marketing campaigns are regulated by the UK Code of Non-Broadcasting Advertising, Sales Promotion and Direct Marketing (CAP Code) and often the campaigns will be aggressive, but within the rules. However, occasionally some campaigns will exceed what is considered acceptable and fall foul of the CAP Code.

Two recent examples of this involved the Advertising Standards Authority – the body responsible for regulating and enforcing advertising laws – reprimanding two businesses for “misleading” and “inducing fear” into consumers as a result of advertising campaigns which they undertook.

The first case involved a health & safety management company sending flyers to consumers by post. These flyers were contained within a brown envelope with the words “Legal Compliance – Action Required” printed on the front of it. The company argued that the mailing was intended to advise consumers that they would be breaking the law if they did not display a health and safety poster in their workplace, and that the details in the mailing would help them remedy this.

The Advertising Standards Authority, however, rejected this argument and came to the decision that the words “Legal Compliance – Action Required” would be likely to make consumers think that they were in breach of the law (even if they were not). This would therefore cause fear and distress to some consumers and, as such, the advert was in breach of the CAP Code.

A similar second case involved a home security company who placed an advert in a press publication with various quotations, taken from journalism sources, such as “Burglary every 37 seconds” and “thousands of prisoners may be freed by EU ruling” published next to a picture of a masked burglar. The company argued that they were acting in good faith by alerting the public to the dangers of fire and crime. However, the Advertising Standards Authority, again, disagreed and stated that the advert had been presented in such a way as to induce fear into consumers. The advert was therefore in breach of the CAP Code.

What are the lessons to learn from these two cases? Firstly, businesses should be aware that if they are going to use an aggressive marketing campaign it should be done so as not to induce fear or distress into consumers. This may seem obvious to most people, however, businesses must be aware that even re-printing properly sourced statistics, figures and quotations will not of itself make the advert free from breaching the CAP Code. Secondly, businesses should be careful to make it clear that their leaflet, flyer or advert is in fact a marketing communication and not mislead

consumers into believing otherwise. If there is insufficient information to make this clear, the Advertising Standards Authority will demand that the advert be removed.

A final point to note is that an updated, 12th Edition of the CAP Code came into force on 1 September 2010, and full details can be accessed online at the following link: <http://bcap.org.uk/The-Codes/CAP-Code.aspx>. Businesses should therefore be aware of the CAP Code's terms and ensure that their non-broadcast advertising does not breach any part of it.

Legal advice can, of course, be sought on the terms and application of the CAP Code, and on other marketing and advertising-related issues.

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