

ADVERTISING UPDATE – SEPTEMBER 2017



The future of advertising - 360-degree and virtual reality ('VR') video

In an attempt to capitalise on the growing VR market, brands across sectors and industries are turning to 360-degree video and VR to produce innovative and eye-catching advertising campaigns, with some of the most successful examples of VR and 360-degree video being used in the travel industry. Both Marriott Hotels and Hong Kong Airlines recently employed the technology to boost their advertising campaigns. As the technology advances and the price of equipment falls, the use of such methods is expected to rapidly spread, with VR predicted to be "bigger than TV" advertising within the next decade. Developments in technology, VR, 360-video and Augmented Reality (AR) present new legal issues and questions for brands, users and the courts. Interactions with consumers through VR may be cross-jurisdictional therefore more difficult to regulate effectively with increasingly blurred lines between the virtual and real-world interactions. In the gaming industry for example, legal action has already been taken against video game producers utilising VR and AR for new gameplay.

Advertainment

A new era of opportunities? Mixing entertainment and advertising. Millennials are tech savvy and are demanding constant entertainment from brands. Snapchat allows brands across industries to engage with the younger demographic by capitalising on effective "advertainment" with personalised lenses and in-app games which consumers can readily share amongst their peers and across social media platforms. Brands such as Pepsi have been leading the way to promote limited edition products in the Snapchat mobile app and by printing "Snapcodes" on millions of its packaging. Snapchat have also developed geo-filters which combined location data with brand adverts to overlay local brand information over user images, to specifically target consumers with advertising content from brands local to them. Businesses need to remain vigilant to the potential legal risks of "advertainment", particularly in relation to protecting their intellectual property, brand image and ensuring age-related content is appropriately targeted. Snapchat's "screenshot" function may give rise to copyright infringement risks, and with the increasing use of geo-filters and location data, brands must ensure that they are compliant with relevant data protection legislation. All content will still be subject to regulation by the UK's Advertising Standards Agency so brands remain responsible for ensuring that all ad content is not misleading.

Representing the modern family in British advertising

McCain's sparks discussion with its thought provoking "We are Family" advertising campaign in an attempt to deal with the misrepresentation of modern family life in advertisements, which will run for 10 weeks across various platforms. The ad follows the ASA's recent investigation and report which suggested that new rules need to be implemented to tackle gender stereotyping in the media, although representatives from McCain state that the ASA's report did not prompt the development

of the campaign. The move comes as part of a growing wave of brands seeking to put families of all shapes and sizes at the heart of their adverts. The ASA's report is a prompt for brands to take this issue into account when designing adverts and it is possible that further guidance or new rules which deal with these issues are on the horizon.

ASA rules that claims made by skincare brand were misleading

Complaints made by a cosmetic doctor regarding Olay's claim that their Regenerist skincare products "re-energises skin's appearance cell by cell" have been upheld by the ASA. The ASA ruled that the ad claim implied that the product would have a deeper physiological effect rather than a surface level effect and that the accompanying qualifying text was unlikely to counter that impression. The ASA held that Olay was unable to substantiate the claim and that the ad was therefore misleading. In its decision, the ASA placed significant weight on the perceived consumer interpretation of the advert's claim. The adjudication shows that strong results of consumer perception tests (showing apparent agreement with a claim) will not necessarily be conclusive from the ASA's perspective.

Spooky Times

With Halloween and Bonfire Night around the corner, the Committees of Advertising Practice (CAP) has issued guidance reminding promoters to ensure that ads based on these seasonal events are compliant. Care should be taken not to cause undue fear or distress to the audience and not to show fireworks being used in an irresponsible manner. Care needs to be taken to ensure that the ads reach their target audience with videos including zombies and other horror related characters kept away from children. Brands need to consider the implication of the ASA's guidance on their own campaigns and ensure that any adverts are compliant.

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