

Fair Game or Foul Play?

How a business can best protect and defend itself from (and avoid liability for) sales and marketing tactics.

We live in a **competitive market**, we strive to be the best. It's how we compete and how we maintain our **competitive edge** that sets us apart from the rest.

Defamation



- Damage to reputation of business or a person
- Serious harm threshold (s.1 Defamation Act 2013)

Unlawful Interference

- Unlawful means
- Intention to harm
- Financial loss



Infringement of IP rights



- **Copyright** and/or design right infringement
- **Trade mark** infringement

Sales Force Dos and Don'ts

- **DO** your research
- **DO** stick to the facts
- **DON'T** assume liability will be avoided by omitting names
- **DON'T** repeat statements by others without carrying out due diligence



5 tips for comparative advertising campaigns

- 1) Consider the **purpose** of your campaign
- 2) Consider consumer interpretation – ensure it isn't **misleading**
- 3) Is the competitor to be **expressly named** or merely implied?
- 4) Be careful when using superlatives such as '**best**', '**cheapest**' or '**leading**'
- 5) Ensure data and statistics are accurate and evidence is held

Possible remedies

Complaint to the **ASA**



Injunctive relief to prevent further offending statements

Damages for serious financial loss or special damage

Things to consider

- **Litigation** should in all, but the most exceptional of cases, be seen as a **last resort**
- May be possible to **negotiate** with the competitor to obtain a retraction apology, etc.
- In proceedings, your products and/or organisation may be in the **legal spotlight**
- Possible to win a case, but may lose the **battle of reputations**

To discuss this topic in more detail or if you have any questions, please contact

Abigail Healey on 020 7160 3086