



THE PROMOTIONAL MINEFIELD

Advertising and marketing consumer products effectively



Any successful consumer product needs to be marketed effectively, which includes avoiding the potential legal and commercial pitfalls that could lead to civil, criminal or regulatory action. The ever-growing thicket of regulations in both UK and EU law means that it is imperative that businesses ensure their advertising strategy is legally compliant as well as commercial and innovative.

- ▶ The **regulation of promotional offers and marketing tools** has grown increasingly complex. "Too good to be true" promotions or poorly drafted sponsorship deals can result in time-consuming commercial or contractual liability actions
- ▶ **Statutory offences** including misleading pricing and descriptions or illegal competitions and prize draws, can now lead to prosecution, resulting in fines and potentially imprisonment
- ▶ You must be able to **substantiate claims** made in advertising and marketing campaigns about your products, including claims made in comparative marketing campaigns regarding competitor products
- ▶ [An **Olay** advert was banned by the ASA following complaints regarding misleading claims made in conjunction with an airbrushed image in an advert for one of their products]
- ▶ Achieving creative, attractive product packaging and advertising within the restraints of an increasingly complex **web of UK and EU laws and regulations** can be difficult
- ▶ **Protecting your brand** can be a challenge. Defence or pursuit of trade mark or copyright infringement, defamation or passing off cases can be very costly, both for your finances and reputation
- ▶ **Regulatory bodies** such as ASA, OFT and the Information Commissioner, as well as foreign regulatory bodies, can impose sanctions on companies which breach regulations, resulting in censure and bad publicity
- ▶ Adapting existing advertising and marketing strategies to incorporate **innovative media** is a goal for many companies, especially as this is a constantly evolving space. [E.g. **The Cooperative Group** used **Snapchat** to send students a 'self-destructing' promotional code, and **O2** extended their '**be more dog**' campaign into the digital space by launching a Q&A style app, with users able to share their answers via social media]
- ▶ **Cost savings** can be made by identifying at an early stage whether advertising and marketing proposals are compliant with applicable laws and regulations

The whole delivery of service was excellent from beginning to end. We have a very good ongoing relationship with Addleshaw Goddard and they know us well as a client, so they were able to support us just as we need.

How we can help

CONTRACT NEGOTIATIONS

- ▶ Celebrity endorsement contracts and sponsorship deals
- ▶ Affinity marketing agreements
- ▶ Sales promotions advice, including terms for prize draws and competitions across a variety of media

REGULATORY ADVICE

- ▶ Advice on liaising with regulatory bodies (e.g. ASA)
- ▶ UK and EU packaging and labelling regulations
- ▶ UK, EU and international legal restrictions on advertising
- ▶ Compliance with comparative advertising regulations

BRAND PROTECTION

- ▶ Defence or pursuit of IP or trade mark infringements
- ▶ Copy clearance and claims substantiation, e.g. misleading pricing and product descriptions
- ▶ IP rights in media and PR agency contracts
- ▶ Acting in disputes and unauthorised endorsement claims

REDUCING COSTS

- ▶ Competitive fee proposals
- ▶ Embedded Transaction Services Team of paralegals
- ▶ Development of standard precedents and approaches
- ▶ Sharing industry know-how, market practice and horizon scanning updates

Who we have helped

We have advised **Benenden Healthcare** in relation to various online trade mark infringements by third parties, including the use of keywords in online advertising and the use of the Google Adwords complaints procedure; **Diageo** on a global brand ambassador contract with David Beckham in relation to Haig Club whisky; **Sainsbury's** on the £5m deal to secure David Beckham to promote Sainsbury's products including the Active Kids campaign and its sponsorship of the London 2012 Paralympic Games; and **The Hut Group** on various advertising and sales promotion issues.

Who to contact

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