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Avv. Renato Vico

## India, draft guidelines on misleading advertising

The Indian Government has published a draft of the guidelines for the protection of consumers from misleading advertising/marketing communications, concerning also the necessary due diligence phase to be made before the approval of advertisements.

The guidelines, that will be approved according to the Consumer Protection Act (2019), apply to all advertising communications, regardless of their format or methods of broadcasting, and they are addressed to both manufacturers and service providers whose products or services are advertised, in addition to advertising and marketing agencies.

Below is a concise description of the main provisions.

A valid advertisement has to meet certain conditions:

- it must represent the product in a truthful and honest way, without misleading consumers by exaggerating the capabilities or performance of the product/service;
- It must not imply that the statements contained therein are universally accepted;
- It must not deceive consumers about the nature or extent of the risk to consumers' personal safety;
- It must not be offensive to generally accepted standards of public decency in India and it must not contain anything that could cause a widespread public offense;
- It must be distinguishable in terms of structure, musical accompaniment, video and slogans from ads previously published by other advertisers;
- It must not be misleading as to who is the actual producer of a product.

As far as comparative advertising is concerned:

- it must be factual, accurate and provide evidence;

Marazzi & Associati

Rotonda dei Mille, 1  
I - 24122 Bergamo  
Tel. +39 035 210156

Via Fatebenefratelli, 19  
I-20121 Milano

C.F. e P.Iva:  
02548780168

www.madv.eu  
info@madv.eu



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- It shall not present a product or service that is an imitation of a product or service with a protected trade name or trademark.

As far as "bait" advertising is concerned:

- the advertisement must not attempt to entice consumers to buy a good or service if there is no reasonable chance of selling the advertised good or service at the price offered;
- The advertiser must guarantee that it has an adequate stock of goods or services to meet the foreseeable demand generated by such advertising.

Advertisements of free products:

- The offer of items as "free" is allowed only if the consumer interested in the purchase will not have to bear any expenses other than those related to the response to the ad itself, and to the delivery of the product;
- The advertisement must clarify the scope of the commitment that a consumer makes to take advantage of a free offer;
- The advertisement should not describe a good or service as free if:
  - a) consumers must pay for the packaging, handling or administering of the free good or service;
  - b) the response cost (including the price of a good or service that the consumer may have to purchase in order to take advantage of the offer) has been increased, unless the increase is due to factors unrelated to the cost of the promotion; or
  - c) the quality or quantity of the good or service that the consumer purchases to take advantage of the offer has been reduced.

The guidelines also contain requirements for particular types of advertising:

- surrogate advertising: advertising that circumvents advertisements restrictions for such goods or services by pretending to promote other goods or services is not allowed;

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- Inflated advertising: exaggeration is allowed when the consumer is unlikely to take it literally;
- Advertising directed at children: the offering of products and services to children which encourage bullying or dangerous behaviors, or containing tobacco and alcohol is not permitted.

Generally speaking, advertisements that promote criminal, violent, intolerant, negligent behaviors, or encourage the use of products prohibited by other laws are not allowed.

Sanctions may be given to advertisers if any disclaimer present both in advertisements and comparative advertising and written in small characters, is not reporting real facts, since it will be considered misleading.

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