



# To market, to market

Bernadette Baynie lists the top seven components of a comprehensive advertising and marketing policy that are key for an effective marketing campaign

**M**aintaining your market leadership, in an ever increasing digital and agile world, is imperative to your company's success. Being the first to promote, market and launch new products, services and solutions in your chosen industry is a vital ingredient to that success.

What is even more important is to ensure that the marketing and promotion of such assets is carried out in a swift and compliant manner. After all your company's reputation, credibility and brand value depend upon it!

As lawyers, it's important to stay on top of the game and ensure that your client company has a robust advertising and marketing policy in place that is understood and complied with by everyone. This will avoid those last-minute instructions to you, to approve new go to market campaigns on relatively short notice, which could potentially infringe upon the intellectual property rights of other parties; and attract unwarranted regulatory intervention. It will also avoid you being put in the situation of having to respond to unnecessary cease and desist letters that land on your desk, after the event, by your manager for urgent response.

To enable you hit your stride on this topic - here are the top seven components of an effective advertising and marketing policy, irrespective of the nature and size of the company and the industry in which it operates. These will enable the swift and compliant launch of products and services and promote your company's reputation and brand recognition in the market place:

➊ **Purpose** - Ensure that your policy is expressed to inform and instruct employees of the requirements for the preparation, content, publication and management of all forms of company advertising,

social media, marketing collateral and sponsorships. It is highly recommended that the policy states clearly at the outset that executive management and board are sincerely committed towards conducting all advertising and marketing, in conformity with prevailing laws and to the highest ethical standards, so as to maintain the company's reputation for honesty, integrity and fairness in its business dealings and operations. This will enhance the company's credibility, public profile and relationships with relevant industry regulators, should the policy require future review by them.

➋ **Scope** - Express a wide scope that covers all forms of advertisements and marketing collateral, including: (i) "print" via brochures, magazines, pamphlets, guides, promotional flyers and point of sale material; (ii) "digital" via internet, social media, mobile phones, display ads and banners; (iii) "broadcast" via television, radio, text messaging; (iv) "outdoor" via billboards, kiosks, posters, exhibitions. Ensure that the policy applies to all business units and employees. State that it will be enforced across the company without exception. It should also be expressed to be non-exhaustive in its terms and be read in conjunction with all applicable laws.

➌ **Risks** - highlight that any breach of the policy may expose: (i) the company to unwarranted reputational, legal, regulatory and financial risks; and (ii) the concerned individuals to disciplinary action and, in serious cases, to termination of employment.

➍ **Content** - include the following content guidelines (plus any specific industry regulated guidelines under applicable laws) to ensure that the company's advertisements:

(i) *are simple and easy to digest* – ensure that they are prepared with a sense of responsibility to the customer, to enable the customer to make an informed and independent point of sale decision;

(ii) *are factually correct and reliable* – ensure the customer can readily distinguish between facts, comments, opinions and analysis. Only include statements, images and claims that can be substantiated and that do not infringe upon the intellectual property rights of other parties. Avoid any content that a regulator may consider ambiguous and confusing to a customer and which could potentially exploit such customer’s lack of knowledge and/or experience;

(iii) *are clear and compliant in their terms* – ensure they include all relevant information before the point of sale, including industry required disclosures and information;

(iv) *are not misleading and deceptive and comply with principles of fair competition* – avoid anti-competitive statements which unfairly criticise or discredit competitors and their products and services, to avoid unwarranted regulatory intervention. Any factual comparisons in advertisement should clearly express the basis of the comparison. Avoid referring to “pre-existing” products and services as “new”;

(v) *are culturally empathic* – ensure that their content is non-discriminatory and will not cause any cultural or political offence or provoke anti-social behavior;

(vi) *are not contradictory* – ensure that prominent aspects of the advertisement align with all other content such as disclaimers and footnotes;

(vii) *don’t exaggerate information* – ensure they clearly disclose if any price of a product or service is reliant on the purchase of another product or service;

(viii) *contain information on “warranties” or “guarantees”* – ensure the ads are accompanied by statements that explain “where” their applicable conditions are available to read prior to the point of sale;

(ix) *explain “special offer” claims honestly* – ensure that: (a) items displayed as “free of charge”, or “free”, do not include additional direct or indirect costs to the consumer; (b) “special offers” and “discounts” state their start and conclusion dates and what conditions must be satisfied to receive them; (c) items displayed as “subject

to availability” must detail any other conditions that apply; (d) “unlimited offers” – should be made when the item is provided without any restrictions; and (e) words that contain “for life” – must explain whether it means the: “for the life of the product or service”; or the “natural life of the consumer” or the “duration of a contract” (which may be open-ended).

🔗 **Legal, Regulatory and Compliance Reviews** – ensure that matters are referred to the company’s legal, regulatory and/or compliance teams in a timely manner for advice and guidance, if there is any doubt as to whether the advertisements and/or marketing campaign is compliant with the policy. Ensure that “all related marketing material” is included – so that the advice provided is on point and covers the totality of the matter.

🔗 **Final Sign Offs** – state clearly that all marketing and advertising can only be launched following written approval and sign off for both the content and cost from its senior management and relevant authorised departments (eg: its compliance and regulatory departments). Accompany the policy with a formal Advertising Approval Request Form and related Sign Off Workflow Diagram or Process.

🔗 **Ownership** – state who, within the company, owns the policy and who is responsible for its periodic review and updating.

Having a comprehensive Advertising and Marketing Policy in place will ensure your company’s marketing campaigns and collateral effectively reach their target audiences on time and deliver their projected return on investment. More importantly, it will save you hours of having to address any regulatory breaches or respond to any infringing allegations and claims, after the event. 📩



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