

# Hallmarks of unfair commercial practices in advertising 3/14/21

Making a false claim or providing insufficient information can be recognised as an unfair commercial practice. This article explores some common mistakes made by persons selling goods or providing services (“sellers”) that are recognised as unfair commercial practices by the Consumer Rights Protection Centre (the “Regulator”).

Unfair commercial practices are divided into three basic types:

- A practice that is contrary to the requirements of professional diligence and materially distorts the economic behaviour of consumers;
- A misleading practice involves providing incorrect information or omitting important details; and
- An aggressive practice forces the consumer to buy something.

The Regulator will gather additional evidence of any practice that is contrary to the requirements of professional diligence, and will evaluate the economic behaviour of consumers. However, a material distortion of the average consumer’s economic behaviour is automatically presumed in the case of a misleading or an aggressive practice, so the Regulator can recognise it as unfair and charge a fine of up to EUR 100,000.

## Advertising breaches

Sellers must evaluate any information they make available to consumers, focusing on at least the following elements:

- Presentation (truthfulness of information);
- Content;
- Whether the information is appropriate for the communication channel being used (the requirements for online, radio, TV and outdoor advertising may vary).

Below we have described common breaches.

- Bait advertising

Sellers must not advertise goods or services at a very low price if their stocks are not sufficient. The seller has a duty to inform customers of how many units are available and how long the offer will stand.

- False “free” offers

Sellers are required to state the real price of goods and services. Services for which a fee is charged must not be offered as free, and an extra service must not be offered as free if its real cost is in fact included in the price of the main service.

- Using descriptions such as *discounts, sale, incredible price, average market price, seasonal price* etc

The seller has a duty to meet statutory requirements for using descriptions and to follow the rules for using terminology suitable for a particular description. For example, a reduced price must not exceed half the

period during which the normal price was charged (so discounts must not be applied constantly). An advertisement for discounts and sales must state the start and end dates.

- Failure to meet requirements for stating the price

Prices must be comparable regardless of brand and packaging size. For ease of comparison, not only the selling price but also the unit price (e.g. per kilogram or litre) must be stated for all goods. The information must be visible, easy to read, and comprehensible. This especially applies to an advertisement that states the selling price.

- False claims

The seller's claims must be supported by scientific or statistical studies or data. Making a false claim in public is recognised by the Regulator as a serious breach of consumers' collective interests that creates a substantial infringement of their lawful interests. And the responsibility for providing any evidence requested by the Regulator lies with the seller, not the manufacturer.

- Hidden advertising in the mass media (advertising articles)

The seller has a duty to inform consumers if any newspaper article or television or radio programme is sponsored by a company to advertise its goods. This must be made clear by using pictures or spoken or written text.

Also, a seller must satisfy statutory requirements for any advertising carried out by influencers on the seller's behalf. It is important to note that the seller is equally responsible for the information published by the influencers, so we recommend signing appropriate contracts with influencers.

- Deceitful offers of prizes and gifts

Sellers must not advertise any "free" prizes or gifts and then make the consumer pay to receive them.

Since statutory requirements for advertising can vary (e.g. different restrictions apply in the alcohol, tobacco and pharmaceutical trade and consumer lending) and the Regulator is actively reviewing distance sellers, we encourage you, if in doubt, to consult your industry lawyers before running your advertisement to make sure the information it gives meets the statutory requirements.