



Primary Authority Partnership

Warwickshire County Council Trading Standards

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Primary Authority Advice Reference WTS/PM/TPO/13

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Advice requested:

Is it a criminal offence to circulate inaccurate marketing material about a competitor?

Legislation considered:

Business Protection from Misleading Marketing Regulations 2008 ("BPRs")

Consumer Protection from Unfair Trading Regulations 2008 ("CPRs")

Other Material considered:

National Trading Standards Guidance on Property Sales – Compliance with the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 [September 2015] ("NTS Guidance")

Assured Advice Issued:

Marketing aimed at business customers

Regulation 2(1) of the BPRs defines "comparative advertising" as: "advertising which in any way, either explicitly or by implication, identifies a competitor or a product offered by a competitor".

Comparative marketing material about an estate agent's competitor would therefore fall within this definition.

Consequently, in order for it to be legally permissible it must meet the following conditions (BPRs Regulation 4):

- a) It is not misleading under Regulation 3 of the BPRs (if the marketing material is aimed at other businesses);
- b) It is not a misleading action or a misleading omission under the CPRs (where it is aimed at consumers);
- c) it compares products meeting the same needs or intended for the same purpose;
- d) it objectively compares one or more material, relevant, verifiable and representative features of those products, which may include price;
- e) it does not create confusion between the advertiser and a competitor or between the trademarks, trade names, other distinguishing marks or products of the advertiser and those of a competitor;
- f) it does not discredit or denigrate the trademarks, trade names, other distinguishing marks, products, activities, or circumstances of a competitor;
- g) for products with designation of origin, it relates in each case to products with the same designation;
- h) it does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- i) it does not present products as imitations or replicas of products bearing a protected trade mark or trade name.

“Product” means any goods or services and includes immovable property, rights and obligations (Reg 2(1) BPRs).

If marketing material about a competitor complies with all the above requirements in (a) to (i), it will not constitute an offence. However, if marketing material were misleading and inaccurate, then it would be an offence under regulation 6 BPRs.

For example – if Agent A sends a letter to a housing developer that incorrectly states that Agent B no longer advertises on a major web portal when in fact Agent B does still use that portal, with a view to gaining the developer's business, this would be misleading comparative marketing.

Marketing aimed at consumers

Any material aimed at a consumer that is materially inaccurate and causes them to take a transactional decision they would not have taken otherwise would be an offence (Reg 9, CPRs).

For example – if Agent A sends a letter to a consumer stating that their current agent (Agent B) has stopped all web portal advertising when Agent B has not, with a view to gaining the consumer's instruction, this would be a misleading action.

Date Advice is Effective from (issue date): 20 04 2016

Last Review Date: 17 04 2020

Next Review Date: 16 04 2021

Primary Authority: Warwickshire County Council Trading Standards Service

Co-ordinators: The Property Ombudsman and Propertymark

Supporting Regulator: Not applicable

For Publication on the Primary Authority Register: Yes

Geographic Applicability: This advice applies throughout the United Kingdom.

Scope: This advice is applicable to all member businesses.

How to obtain up to date copies of this advice: Current copies of this advice may be obtained via the member organisations' websites:

www.tpos.co.uk/members/assured-advice/assured-advice-information

and

www.propertymark.co.uk/working-in-the-industry/primary-authority-advice/.