

Unfair advertising in Russia – guidance in four key areas

Russian advertising law is not extensive and can be ambiguous, but an analysis of recent cases reveals that the legislation is, for the most part, interpreted intuitively

Russian law does not pose significant problems for companies that stick within reasonable boundaries in their advertising. But companies new to the jurisdiction may consider the legislation insufficiently powerful. This article examines four key areas: disparaging advertising, the advertising of restricted products, comparative advertising and unfair competition.

Disparaging content

Russian law defines ‘disparaging advertising’ as advertising that publicly discredits the honour, dignity or reputation of a person, business or legal entity. The criteria for assessing what constitutes such advertising are contained in various legal regulations, and professional moral standards and customs of trade.

A notable example of disparaging advertising occurred in 2007 when an insurance company sent promotional information to local organizations which contained statements informing them that another insurer, rendering its services within the same region, was soon to be declared bankrupt. The latter had to assure concerned clients that its financial status was stable; it also filed a complaint with the Federal Antimonopoly Service (FAS) – the main administrative body charged with handling disputes related to advertising. The FAS upheld the complaint and issued a fine against the advertiser. In such cases, a complainant may be able to bring a civil lawsuit against the advertiser, in addition to administrative action, since competitors suffering damage are potentially entitled to indemnification.

Advertising restricted products

Strict regulations cover the advertising of certain products. In a bid to sidestep those rules some advertisers, seeking to promote a product the advertising of which is strictly

controlled will advertise it using a similar or an identical trademark on a different type of product – one that is not governed by strict regulations. In most cases, a consumer who views or hears these advertisements does not associate them with the carrier product, which is nominally being advertised, but with the regulated product.

Alcoholic products are tightly regulated, and so this type of advertising practice has become particularly widespread in reference to this sector. Almost all companies involved in the production or import of alcoholic products under widely known trademarks have been observed to advertise on goods and services, and through contests, lotteries and other events that have a name similar to or the same as alcoholic beverage brands.

However, it is not always the case that using a trademark normally associated with restricted goods to market another product is a sign that the advertiser is attempting to evade prohibitions and restrictions on advertising. Sometimes the practice is merely connected with the reorientation of an advertiser’s business.

For example, the FAS banned advertisements for POL-STA mineral water because its name was also being used on an alcoholic product. However, the mineral water manufacturer, Vladikavkazskiy Pischekombinat successfully annulled the prohibition judicially because the alcoholic products were no longer being made (Case A61-495/08-4, April 28 2008). The manufacturer thereby proved that it was advertising mineral water and not an alcoholic product, and nothing could prevent the manufacturer from using the widely known mark.

Comparative advertising

Comparison is contained implicitly or explicitly in the majority of advertising messages, but the more competitive a sector

the more outright become the comparisons. Given that most products are largely equal in terms of their key consumer-facing properties, advertisers search for new parameters by which their product can be compared favourably to other products in the same market segment. Russian law does not prohibit comparative advertising *per se* – the sole exception being a ban on the use of comparisons in commercials for pharmaceuticals. This type of advertising was outlawed in 2006 following amendments to the Law on Advertising.

Russian advertising laws do not consider it a violation to use the name of a competitor, even if the name is a protected mark. However, the comparison should be accurate – based on actual advantages of the advertised product – and it should not be prejudicial to the honour, dignity and business reputation of the competing product.

Current legislation bans comparisons of advertised products in the following situations:

- The advertisement contains incorrect comparisons against a competitor product in circulation.
- The advertisement makes dubious claims about the product’s advantages over a competitor product.

A notable example of acceptable comparative advertising involved a poster produced by Russian brewer, Ochakovo during the European football championship in 2008. The poster featured close-ups of major Russian beer brand logos, with each company’s name and country of origin written underneath. The poster also included a logo of the advertiser along with its country of origin (Russia); the advertiser was the sole brewer owned by a Russian entity featured on the poster. The poster read: “Which beer do you drink? Which team do you play on?” The

only beer brand under which the word 'Russia' was written was the advertiser's own product. The competitor beer brands cited on the poster brought a complaint with the FAS against the advertiser. However, the FAS did not find any incorrect comparison because the advertisement did not involve the use of any unreliable information.

An example of where an advertisement was banned due to inaccurate information concerned a stain remover for clothing. The advertisement featured one housewife warning another against unnamed competitor stain removers, which she claimed would "distort" clothing colours.

However, a Russian detergent manufacturer, ZAO Aist, complained that the advertisement used packaging similar to its own on the unnamed competitor products. This manufacturer was able to prove that the appearance of the packages in the advertisements was similar to the industrial design protected by a patent issued on its behalf. The two detergents were subsequently tested, and it was found that the advertisement's claim of superiority for its own product was not true. Thus, the FAS concluded that the advert amounted to an incorrect comparison and upheld the complaint (Case RTs.08.07.45, December 20 2007).

An ambiguity

The meaning of the term 'incorrect' in the phrase "incorrect comparison" is ambiguous under Russian law. The law does not define whether the word signifies a mere discrepancy between the comparison results and the actual facts (for example, a discrepancy between the advertised and the actual properties of goods), or whether the term has a broader meaning and covers the moral constituent as well (given that the word 'correctly' is a synonym of 'politely' and 'properly').

Unfortunately, existing law enforcement practice gives no definite answer to this question. Sometimes a regulatory body while publicly censuring an advertiser for discreditable conduct will not consider such conduct to be an incorrect comparison. However, at other times the authorities will rule that an advertiser has drawn an incorrect comparison. For example, in 2009 a mobile operator used the slogan: "Don't let them fleece you!" in its advertising campaign. The FAS believed that this slogan hinted that high tariffs were being offered by other operators and was therefore inadmissible.

Implicit comparison

Implicit comparison can include situations where an advertiser avoids explicitly mentioning competitor names, but through



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the use of superlatives (eg, 'first', 'best', 'major', 'unbeaten') infers that all competitor products are inferior. Implicit comparison with competitors' products is common and is acceptable under Russian law – but the advertiser must have exhaustive evidence that its product is superior to all others on the market. If an advertising message fails to reveal the criterion of superiority, the advertiser is liable to prove the claim. And if the claim is found to be false in any way, the advertising will be deemed to be fraudulent. Using superlatives in advertising is therefore risky.

For example, a manufacturer of baby diapers whose commercials claimed: "There are no diapers that are drier" was held liable for fraudulent advertising, despite basing its claims on a specially commissioned study. The FAS considered the study to be inadequate because while the slogan makes an absolute comparison with all other diaper manufacturers, the study considered only four of the company's competitors. Yet similar products of other manufacturers – which were not covered by the study – were also present in the Russian market.

Unfair competition

Advertising can mislead consumers through various means. For example, in reference to:

- the character, method or place of manufacture of the product;
- a product's consumer properties, quality or quantity; and/or
- the manufacturer of the product.

Misleading advertising may also take advantage of a natural person's lack of experience and knowledge. In addition, it may unlawfully use confidential information, or it may divulge information which constitutes a trade secret, an official secret or any other secret protected by law.

Promotion of an ordinary product as a unique commodity may well serve as an example of unfair competition within the advertising sphere.

An example of unfair competition involved a trading company 'TV Shop' which sold "wonder mittens" for \$100 (Rb2,587). Commercials for the "wonder mittens" claimed that they guarded against heat and cold, protected hands in the event of an industrial accident and that they had been worn by astronauts on the Moon. However, consumers who purchased the mittens soon discovered that an equivalent product could be bought at a city market for the lower price of approximately \$2 (Rb50). The FAS fined this company for unfair competition (Case 2-03/34, May 28 2007). [WTR](#)