

ABUSIVE ADVERTISING

Trends And Rules in Today's Uruguay

H&H

Relevance of Advertising

- It is important in customer's decisions
- It is a legal way to increase market share
- Advertisements cannot have any content
- Ads must be reviewed as a whole by examining not only sound but also image and overprint
- Regionalization of advertising

¿Ways to disseminate ads?

- Billboards
- Posters in magazines, newspapers, internet and social network
- Media

How advertising should be in Uruguay?



It must be identified as an ad



Analysis of ads must be always made from an ordinary person's point of view



It cannot be deceitful, confusing or false



Comparative Advertising, in benefit of consumers, is valid with certain limits

What is Deceitful Advertising?



false

Any information or communication that is part of an ad, which is entirely or partially



Advertisement that can lead customers to a mistake regarding nature, quantity, origin or price of products or services even due to lacking of essential information



justify its allegations

What is said in an ad must be supported by evidence since advertiser can be asked to

What is Comparative Advertising?

- ☑ It is a type of advertising in which two products or trademarks are directly or indirectly compared
- ☑ It is legal in Uruguay inasmuch as it entails objective comparison and it is not based on psychological, subjective or emotional features.
- ☑ Comparison must be subject to verification

National Bureau of Advertising (*CONARP*)

It is a private agency that has an statute which is not mandatory for non-members but it is a reference that is typically taken into account.

CONARP's Main principles are:

- 1) Decency and honesty in advertising by avoiding breach of trust and abuse of knowledge or experience of consumers.
- 2) Advertisement must be true and cannot abuse of exaggeration
- 3) Comparisons must be designed in a way that can avoid misinterpretation. Comparison cannot be based on facts that are biased
- 4) Denigration is prohibited
- 5) Advertising must avoid insincerity when person talk about their experiences
- 6) Advertisements cannot use the name, acronyms, trademarks and logo of competitors and cannot take advantage of the prestige of a competitor.
- 7) Advertisement cannot violate Intellectual Property
- 8) Plagiarism is prohibited

Burden of Proof

- Advertiser must prove truthfulness and accuracy of the information that is part of the ad
- Advertiser must hold, for the information of customers and competitors, facts and scientific data that can support the claims
- Advertiser can be asked by Governmental agencies and other interested persons to submit evidence of the claims

Possible cases of Abusive Advertising

- ☑ Claims like “better than”; “the best”; “The most popular” and the like, which entail comparison with one or more competitors, many times are not supported by evidence
- ☑ Surveys and studies must be methodologically correct and valid for Uruguay
- ☑ Scientific studies can be, ultimately, recognized by academics in Uruguay
- ☑ Ads that purport to ridicule and in any way affect the prestige of competitor
- ☑ Abuse in exaggeration e.g. in sentences like: “It will become better than new” and emphasize virtues and defects.

What are the measures you can take?

- In order to avoid abusive advertising our Firm can review the ads before airing them
- Be aware of advertisements of competitors that can be considered abusive
- As competitors you can ask for the evidence that supports the ads

What are the possible Venues?

Typically, this type of action is not filed with Judiciary in order to avoid delays and lack of expertise of judges. There are two venues where typically this actions are filed:

Consumer's Defense Agency: Public Agency that is part of the Ministry of Economy

CONARP's Tribunal: It is a sort of arbitration regulated by its own rules and that purports to decide the cases fast and based on the opinion of experts in advertising.

- ☑ The first proceeding is created by the Consumer's Defense Act and, even though it can be brought by competitors, the final goal is the defense of consumers.
- ☑ Conarp's proceeding is private and consequently sanctions are basically moral. In the other case, the Agency can impose adverse publicity to the defendant.

- ☑ In our experience, Conarp's resolutions are obeyed, mainly when cease of the ad is requested
- ☑ Even though Conarp's proceeding is in principle for members, it is possible that non-members file cases in this venue

Conclusions and Recommendations

- It is very important to legally review the ads before airing them in order to avoid abusive advertising
- Our Firm can review the ads before execution
- It is important to be aware of ads aired by competitors since they may be violating these rules
- Please contact us if there is any ad that you consider that can be abusive
- Many times advertising campaigns entail more than one ad and perhaps some of them can be considered as illegal

Our Experience

- ☑ Our Firm has experts in this area of law and can assist you on this matter
- ☑ Our practice includes the analysis of advertising campaigns of our clients
- ☑ We have successfully intervened in the majority of CONARP cases in Uruguay and in many important cases decided by the Consumer's Defense Agency

For additional information:

Dr. Héctor Ferreira
hferreira@hughes.com.uy

Dr. Haroldo Espalter
hespalter@hughes.com.uy

