

Competition - Pakistan

Protecting consumers from misleading advertising

Contributed by [Vellani & Vellani](#)

October 21 2010

In general, advertising is legitimately used as a tool to persuade consumers to choose one brand over another. However, it is sometimes used to mislead them into using products or services on the basis of false or deceptive claims or promises.

There have been many examples of advertisements making dubious or fanciful claims about the quality or effectiveness of a product or service. In most cases, the claims go unchallenged and, as a result, consumers are influenced by them. However, the parties responsible for advertisements are increasingly required to substantiate their claims and may be penalised if they cannot provide satisfactory reasoning and evidence.

The driving force behind the change seems to be the inclusion of provisions in various legislative instruments to protect consumers from false and misleading advertising.

Provisions on misleading advertising were enacted in the Trademarks Ordinance 2001, which became effective on April 12 2004. The term 'misleading advertising' is defined as:

"any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches, and which, by reason of its deceptive nature, is likely to affect their behavior or which, for those reasons, injures or is likely to injure a competitor."

Misleading advertising is also identified as an act of unfair competition under the ordinance.

In determining whether an advertisement is misleading, a court must take account of all of its features and, in particular, of any information concerning:

- the characteristics of goods or services, such as:
 - their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, use, specification or geographical or commercial origin;
 - the results to be expected from their use; or
 - the results and material features of tests or checks carried out on the goods or services;
- the price or the manner in which the price is calculated, and the conditions on which the goods or services are provided; and
- the nature, attributes and rights of the advertiser, including its identity and assets, its qualifications and ownership of industrial, commercial or IP rights, and its awards and distinctions.

The ordinance provides that a misleading and comparative advertisement may be challenged before the High Court by any person with a legitimate interest in prohibiting it. This is done by seeking an injunction to prevent the publication of the advertisement (including an order for cessation in advance), and to seek damages and the publication of a rectification notice by the advertiser.

These provisions of the ordinance have not yet been tested in court. However, the distribution of false or misleading information to consumers has been successfully addressed through Pakistan's antitrust laws. The Competition Act 2010, which replaced the Competition Ordinance 2010, contains similar provisions under the heading "Deceptive Marketing Practice". The act prohibits undertakings from:

- distributing false or misleading information that is capable of harming the business interests of another undertaking;
- distributing false or misleading information to consumers, including information

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- without a reasonable basis, related to the price, character, method or place of production, properties, suitability for use or quality of the advertised goods;
- presenting false or misleading comparisons of goods in the course of advertising; or
- fraudulently using another party's trademark, firm name, product labelling or packaging.

The Competition Commission is empowered to address, prohibit and penalise misleading representations. In 2009 the commission chose to examine an advertisement by China Pak Mobile Limited. The advertisement, which included the phrase '8 anay per call', appeared in various media. It was intended to publicise the fact that users of the company's Zong telephone network could call one number on any network at a rate of 8 anay a call, and that they could change their designated number at any time. However, the advertisement failed to state clearly and legibly that:

- the advertised rate applied to calls of a particular duration;
- the 8-anay rate was exclusive of government taxes; and
- a charge of Rs15 (plus tax) would automatically be deducted on activation of the pre-paid account.

The commission took similar action against an advertisement for Ufone, a service provided by Pakistan Telecommunication Company Limited, which claimed that it offered local and international calls at the cheapest rates. The commission observed that the advertisement did not clearly mention that the advertised rates applied to per-minute calls - the advertisement's disclaimer was neither obvious nor clearly legible.

The commission held that both advertisements failed to make clear and legible disclosure of the true terms and conditions of the respective offers; therefore, they breached competition law.

Pakistan's consumer protection laws contain provisions identifying unfair trade practices, which include making false, misleading and deceptive representations that:

- a product is of a particular kind, standard, quality, grade, quantity, composition, style or model;
- a product was manufactured, produced, processed or reconditioned at a particular time; or
- a product or service is necessary for someone's wellbeing.

The laws also provide for the establishment of consumer courts with authorisation to determine claims received from aggrieved parties and to issue orders.

The rules and regulations framed by the Pakistan Electronic Media Regulatory Authority require all advertisements to comply with national law. Moreover, they prohibit advertisements that contain references which are likely to lead the public to infer that the product advertised or one of its ingredients has a special property or quality, where such a claim is impossible to substantiate.

Complaints councils have also been established pursuant to the Pakistan Electronic Media Regulatory Authority (Councils of Complaints, Organisations and Functions) Regulations 2002 in order to receive and investigate complaints by organisations or members of the general public against any aspect of an advertisement. The councils are charged with rendering opinions on such complaints after holding public hearings.

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