

“MY STUFF'S CHEAPER THAN YOUR STUFF” – THE PITFALLS OF COMPARATIVE ADVERTISING

Advertising is a key tool in marketing and we all know that if utilised correctly it can assist in increasing business revenue.

Comparative advertising can form a superior form of marketing to the conventional "own goods and services" advertising. It not only allows a business to promote its own products or services, but at the same time highlight to prospective customers how the products or services compare to those provided by a competitor.

A prominent example of comparative advertising is that widely used by supermarkets usually comparing products on the basis of price and quality.

However, comparative advertising, by its very nature is contentious and can lead to disputes between the advertiser and the competitor with whom it seeks to compare its products / services.

Ford & Warren have recently seen an increase in claims related to this type of advertising. Just recently the law firm acted for a client who was accused of trade mark infringement after claiming their product was better than a competitors in their marketing materials.

Farhat Mahmood, Assistant Solicitor at the firm, sets out the legal considerations for businesses to bear in mind when considering utilising comparative advertising.

The Law

Comparative advertising usually involves reference to the competitor, most often by its name or the name of its product or service. These business brand names are more often than not protected as registered trade marks. Generally, making use of another's trade mark is deemed an infringement.

In comparative advertising however, use of another's registered trade mark is permissible provided that the use is accordance with "honest practices". This term is not defined within the Trade Marks Act 1994 but guidance is provided by regulations.

Comparative advertising is allowed where:

- it is not misleading;

- it compares goods / services meeting the same needs or intended for the same purposes;

- it provides an objective comparison of one or more material, relevant or representative features such as price or quantity.

Aggrieved competitors can commence claims for civil wrongs such as trade mark infringement and malicious falsehood with the injured party seeking injunctive relief, damages or loss of profits.

Businesses need to be aware that dependent on their chosen form of advertising (Internet, television, brochures) other regulatory rules will need to be complied with such as those set by the Advertising Standards Authority. The Office of Fair Trading can intervene and penalise businesses who fail to fairly advertise.

For more information and guidance on this topic please contact Farhat Mahmood (Assistant Solicitor) on 0113 234 6601.