

Business-to-business marketing

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This guidance is for England, Scotland and Wales

The Business Protection from Misleading Marketing Regulations 2008 (BPRs) prohibit misleading business-to-business advertising and impose further restrictions on how businesses compare their products to rival products from other companies.

If you are selling to businesses the Regulations prohibit you from giving misleading information to the other business that would deceive that business and affect, or be likely to affect, its economic behaviour. You are also prohibited from giving misleading information that injures, or is likely to injure, a competitor.

The BPRs have a consumer equivalent: the Consumer Protection from Unfair Trading Regulations 2008 (CPRs); see 'Consumer protection from unfair trading' for more information.

It is useful to look at both sets of regulations as they are similar and there are elements in each that overlap. All references to the 'Regulations' below are to the BPRs unless specified.

What do the Regulations cover?

These Regulations deal mainly with the potential misleading of traders, although there are rules on comparative advertising that can be targeted both at traders and consumers.

Part 1 of the Regulations prohibits misleading advertising and lays down strict guidelines for comparative advertising. It also ensures misleading advertising is not promoted by any code owner (a body responsible for a code of conduct).

Parts 2 and 3 deal with the criminal offences and defences, and the enforcement duty respectively.

What is prohibited?

Regulation 3 of the BPRs prohibit advertising that is misleading to traders. There are four main issues to take into account when deciding if the advertising is misleading:

- the product characteristics (13 in total, including availability, composition and specification)
- the price or manner in which the price is calculated
- the conditions on which the product is supplied or provided
- the nature, attributes and rights of the advertiser (five in total, including identity and assets)

Comparative advertising

Regulation 4 states that comparative advertising is permitted only when all of the following conditions of the advertisement are met:

- it is not misleading under the BPRs or the CPRs
- it compares products that meet the same needs or are intended for the same purpose
- it objectively compares one or more material, relevant, verifiable and representative feature(s) of those products (may include price)
- it does not create confusion among traders, either between the advertiser and competitor, or between trade marks (or similar) of products of the advertiser and those of a competitor
- it does not discredit, denigrate or take unfair advantage of a competitor's trade mark (or similar)
- for products with designation of origin, it relates in each case to products with the same designation
- it does not take unfair advantage of the reputation of a trade mark (or similar) of a competitor or of the designation of origin of competing products
- it does not present products as imitations or replicas of products bearing a protected trade mark or trade name

Regulation 5 states that a code owner is not permitted to promote (in a code of conduct) advertising that is misleading under the BPRs or comparative advertising that does not meet the listed conditions.

The CPRs prohibit 'misleading actions' and 'misleading omissions' that cause, or are likely to cause, the average consumer to take a different transactional decision - that is, any decision taken by the consumer concerning the purchasing of the product or whether to exercise a contractual right in relation to the product, including decisions not to act. This does not only relate to pre-shopping but includes after-sales and continues for the lifetime of the product.

Comparative advertising would be considered a misleading action (regulation 5 of the CPRs) if it either:

- contains false information or is likely to deceive the average consumer
... or
- the marketing of the product creates confusion, or the trader fails to comply with a commitment in a relevant code of conduct

... and if, in both cases, the consumer makes a transactional decision they would not have normally made.

Comparative advertising would be considered to be a misleading omission (regulation 6 of the CPRs) if material information is omitted, hidden or unclear, and as such the consumer makes a transactional decision they would not have normally made.

Further information

More comprehensive guidance is available from the Office of Fair Trading (OFT) website, including a downloadable guide.

The OFT closed in 2014 but the guidance is still relevant.

Trading standards

For more information on the work of trading standards services - and the possible consequences of not abiding by the law - please see 'Trading standards: powers, enforcement and penalties'.

Key legislation

Business Protection from Misleading Marketing Regulations 2008

Consumer Protection from Unfair Trading Regulations 2008

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In this update

No major changes

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to legislation can be found on each link's 'More Resources' tab.

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