

100% Natural, Green and Legal: green advertising

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We live in world that is increasingly concerned with environmental issues. To be kinder to our planet, consumers are wanting to purchase “eco-friendly” products.

To reflect this trend, companies are adopting marketing strategies highlighting the environmental benefits of their products.

What is Green Marketing?

The practice of developing and advertising products based on their real or perceived environmental sustainability or benefits is known as “Green Marketing”.

Some examples of this include making marketing claims regarding: garments made from sustainable materials, the shifting to ‘greener’ business operations by reducing energy consumption and waste to reduce the global carbon footprint; or using recyclable packaging and design solutions.

When a company’s green marketing claims are not substantiated, they are engaging in “greenwashing” by conveying a false impression or providing misleading information about how their products are more environmentally. Moreover, consumer protection laws have for some time prohibited advertisers from providing consumers with misleading or false information about a product. As the global response on climate change picks pace, regulators are increasing their efforts to regulate green marketing activities pursued by businesses.

The Department for Environment, Food and Rural Affairs of the UK has published the *Green Claims Code 2000* and the *Green Claims Guidance* of 2011 to help businesses engage in green marketing practices in an ethical manner. Similarly, in the United States, the Federal Trade Commission has issued a *Green Guide* that advertisers can use that set forth principles on unfair practices and deceptive conduct when making environmental claims through advertisements.

What do businesses need to know to be able to navigate the regulatory landscape when engaging in such green marketing practices in Saudi Arabia, the UAE and the broader GCC region?

Saudi Arabia

There are no specific rules or guides on ‘green marketing’. However, on-ground and digital advertising are regulated by the Ministry of Media and the General Commission for Audiovisual Media (“GCAM”), respectively. Relevant laws that would be applicable in the context of green marketing include the Law of Printed Material and Publication, Royal Decree No. 32 of 1421H and its Regulations (“Print and Publication Law”); the Audiovisual Media Law, Royal Decree No. (M/33) Dated 25-3-1439H and its Regulations

("Audiovisual Media Law"); and the Commercial Data Law, Royal Decree No. M/15, 14 Rabi' II 1423H and its Regulations ("Commercial Data Law"). There is some scope for the anti-commercial fraud related legislation to be applicable as well.

Under the Print and Publication Law, advertisements that would mislead consumers are prohibited. This would be applicable to print marketing. Similarly, misleading and false advertising is also prohibited under the Audiovisual Media Law. This would be applicable to digital marketing.

In terms of information displayed on products, the Commercial Data Law requires that product information on the product itself, its packaging or marketing materials must be truthful in all aspects. This would include any green claims made by manufacturers or advertisers.

The upshot of the above restrictions is that businesses must carefully consider all aspects when making green claims. It is essential that any green marketing claims are substantiated with evidence to avoid falling in the category of misleading or false information regarding green practices.

In terms of penalties for non-compliance, the Print and Publication Law includes fines of up to SAR 500,000 (approx. USD 133,300), permanent or temporary closure of place of business and publishing an apology from the violator. Under the Audiovisual Media Law, penalties include a fine not exceeding SAR 10 Million (approx. USD 2,665,600), recover of any financial gains made from the violation, suspension of the place of business or revocation of media licence. The Commercial Data Law stipulates a fine not exceeding SAR 100, 000 (about USD 26,000) for every violation.

UAE

Similarly, in the UAE, there are no specific rules or guides on 'green marketing'. However, all advertisements (both offline and online) must comply with the National Media Council's ("NMC") Advertising Guide issued in 2018 ("AD Guide"), including in respect to the content standards issued under NMC's Cabinet Resolution Concerning Media Content No. 23 of 2017 ("2017 Content Res") which clarifies the standards set out under Federal Law No. 15 of 1980 Regarding Printed Matters and Publications ("PPL").

The PPL prohibits *publications or advertisements from including any phrases, expressions or pictures that would mislead public.*

Additionally, the NMC' AD Guide provides conditions that every type of advertisement must comply with. These include:

- *"The advertisement should not include or contain false or misleading claims, or is intended to exaggerate, claim exclusiveness, despise competitors and all that involve fraud and deception."*
- *"The advertisement should be real and unexaggerated, and must not create any confusion by any means with any other brand names, products or activities."*
- any corporate person or entity advertising goods and services must *"comply with codes of conduct and standards of honesty, including compliance with the rules governing business, especially in regards to consumer protection and fair competition controls, prohibition of commercial fraud and illegal monopoly."*

Separately, under Article 17 of the new Consumer Protection Law (Federal Law no 15 of 2020 on Consumer Protection), it prohibits an advertiser *from describing the commodity or service in a manner containing false data or from advertising it in a misleading way*". This includes labels, packaging, prices and promotions.

There is also some scope for the anti-commercial fraud legislation (i.e. Federal Ministerial Decree No. 26 of 1984) to be applicable, as it prohibits traders from declaring false information on goods or any awards or ranks concerning the origin, description or importance of goods.

The abovementioned restrictions are all potentially relevant for businesses to consider before making any green marketing claims. It is essential that any green marketing claims are substantiated with evidence to avoid falling in the category of misleading or false information.

In terms of penalties for non-compliance, breaching the NMC laws can result in monetary fines anywhere between AED 5,000 (about USD 1,400) of up to AED 20,000 (about USD 5,600). Breaching Article 82 of the PPL includes imprisonment between one month and up to 3 months, and a fine not exceeding AED 5,000 (about USD 1,400). Under the new Consumer Protection Law breaching Article 17 can result in imprisonment for no longer than 2 years or a fine ranging from AED 10,000 (about USD 2,725) and not exceeding AED 2,000,000 (about USD 544,960), or both.

Aside from legal risks, there are significant reputational risks that a company and brand may suffer in the event that a consumer successfully raises a complaint about green marketing practices.

Rest of the GCC

The regulatory position is similar in the rest of the GCC countries. As of yet there do not appear to be any specific rules or guidelines issued by regulatory authorities on what is acceptable when businesses pursue green marketing practices. More general requirements prohibiting advertisers from making false or misleading claims, and manufacturers from providing false or misleading data on products or their packaging would remain relevant for businesses to consider, before engaging in green marketing practices. Again, there is some scope of anti-commercial fraud related legislation to be applicable.

Way forward?

It is likely just a matter of time before the competent authorities in Saudi Arabia, the UAE and other GCC countries adopt a specific framework on green marketing. This would result in meaningful change to green marketing practices in the local markets. It would also help businesses better understand what is acceptable in making green marketing claims about products.

Any such framework should be based on commonly accepted principles of making green marketing claims intended to help reduce consumer confusion and prevent the use of false or misleading terms such as “recyclable”, “organic”, “bio-degradable,” and “environmentally friendly” in the marketing sector. These principles include:

- Green claims in marketing should be truthful, accurate, and able to be substantiated. They should also be clear about the environmental issues concerned and relevant to the product.
- Green claims in marketing should be explicit about the meaning of any symbol used in the claim, and be in plain language.
- Green claims in marketing should not be vague or ambiguous, imply universal acceptance if this is not the case, imply more than they actually cover, make comparisons unless they are relevant and specific.
- Green claims in marketing should not imply exceptionality if based on standard practice, use language that exaggerates the advantages, or imply that a product is certified by a certifying body when it is not.

The more transparent companies are about their brands, products and processes; the more credible they

are perceived by consumers. Properly done, green marketing can be powerful, as the green efforts become part of your brand's story and build an emotional connection with consumers.