

A Free, Uncapped Update on TRA Regulation of Misleading Telecommunications Advertising in the UAE

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The UAE's Telecommunications Regulatory Authority ("TRA") has recently reviewed and updated its Consumer Protection Regulations to strengthen and clarify provisions concerning telecommunications advertising.

The TRA first issued a set of regulations concerning consumer protection ("Consumer Protection Regulations") in October 2014. Under those regulations (which our team covered in our September 2014 issue <https://www.tamimi.com/en/magazine/law-update/section-8/september-4/new-telco-consumer-protection-regulations.html>), the two licensed public telecommunications network operators in the UAE, Etisalat and du ("Licensees"), were made subject to a set of rules aimed squarely at providing their telecommunications consumers with clear and unambiguous information about matters such as the scope of services, contracts, and invoices, as well as providing a consumer complaint procedure.

In December 2015, the TRA further updated the Consumer Protection Regulations (these changes were gazetted in April 2016). The amended provisions for advertising came into force on 31 March 2016.

Key Changes

The first alteration of note is the change of terminology. The previous term 'Marketing Communications and Practices' has been replaced with the term 'Advertisement'. Added are its derivative terms, 'Advertising' and 'Advertises'. The definition 'Advertising Means and Materials' is a replica (with some minor changes) of the old definition of 'Marketing Communications and Practices'. In essence, this change has the effect of clarifying the scope of activity that will be considered to be advertising and allowing some significant changes in the operation of the Consumer Regulations concerning advertising.

To give further clarity to consumers, Article 16 (which relates to Advertising) has been expanded and altered. Article 16.1 now states that, 'Licensees shall take all reasonable measures to ensure compliance with this Article 16. This includes taking all reasonable measures to ensure compliance with this Article 16 by Third Parties used to carry out any activity or activities which are subject to Article 16.' Third Party is defined as 'any [entity] who can reasonably be construed as being a distributor, dealer, agent, subcontractor or representative of an Advertiser'. An Advertiser is an entity that Advertises.

It is now expressly provided that Article 16 applies to any direct or indirect advertising, or any other activity which has the same or similar effect and relates to, promotes, refers, or relies on any product or service or person regulated under the UAE telecommunications law.

This broad reframing could include, for example, advertising on social media and even the seeding of positive comments online or trolling of competitor posts.

Article 16 also now includes extended wording regarding comparative advertising including a new definition of the term 'comparative advertising' itself (i.e. advertising that makes a comparison with a competitor or a product or service of a competitor). However, the overall effect of the article remains largely the same. Whereas before, comparative advertising was to be 'clear and fair' and 'objectively compare one or more material relevant verifiable and representative feature of those services', there is now a requirement that the comparative advertising does not 'unfairly criticize, discredit or denigrate', refrains from 'judgments and opinions', must 'rely solely on objective statements and facts that can be clearly substantiated, and must address offers or services that are 'comparable'.

An express requirement has been added to the Consumer Protection Regulations that any footnotes, qualifiers, or disclaimers (i.e. the 'small print') in advertisements must be clearly visible and legible, audibly apparent, and understandable. Such small print cannot contradict, materially qualify, or otherwise alter the basis for the advertisement.

That requirement does not prevent the inclusion in an advertisement of reference to detailed terms and conditions being provided elsewhere. However, such detailed terms and conditions cannot have the effect of contradicting or materially qualifying or otherwise altering the basics, or any claim made or implied in the relevant advertisement.

In the event that any statement made by a Licensee is misquoted in the media, then, to the extent that the misquote does or may result in an apparent breach of the Consumer Protection Regulations (for example, the misquote is misleading about the terms of a special offer), the relevant Licensee is now under a positive obligation to take reasonable steps to procure a retraction, correction or other appropriate action concerning the misquoted statement in the same medium in which the misquotation was published.

Wording has been added requiring that promotions using prizes must be 'prepared with a sense of responsibility and comply with the spirit, not merely the letter of' the Consumer Protection Regulations. This is an imprecise obligation and it will be interesting to see how this will be applied by the TRA.

More specifically, promotions with prizes should be communicated in a manner that is clear and readily understandable by the intended audience. In addition, promotions using prizes cannot create confusion between 'gifts' and 'prizes'. Presumably for 'gifts', there is no element of chance or competition involved.

Importantly, under the updated Consumer Protection Regulations, the TRA now has the power, where it considers it reasonable during the investigation of a complaint or an alleged breach of the advertising provisions, to issue 'Temporary Instructions'. Such Temporary Instructions may include the obligation to desist temporarily in repeating the relevant advertisement or to take, or refrain from taking, any relevant steps the TRA considers appropriate in the circumstances.

In deciding to issue Temporary Instructions, the TRA will have regard to the complexity of the case, the likely impact on consumers, the telecommunications market and the strength of the available evidence. Consumer protection will be given paramount consideration in such cases.

Temporary Instructions will apply for such period as the TRA may specify. Breach of the Temporary Instruction constitutes a breach of the Consumer Protection Regulation.

Under the TRA's Consumer Dispute Procedure, in Annex 1 to the Consumer Protection Regulations, a consumer who is dissatisfied with the services of a Licensee should, in the first instance, raise the matter with the concerned Licensee in accordance with that Licensee's consumer complaint procedures. If the consumer who has submitted the complaint to a Licensee is dissatisfied with the manner in which the Licensee handled the complaint, including the outcome of that process, the consumer can then submit a

consumer dispute to the TRA.

While many jurisdictions have statutory prohibitions on false or misleading advertising generally, advertising standards are often only a voluntary self policing mechanism of the advertising industry. These recent updates to the Consumer Protection Regulations give the TRA a far more complete arsenal of powers to crackdown on misleading telecommunications advertising in the UAE for the protection of consumers, if needed.