
DRAFT STATUTORY INSTRUMENTS

2008 No.

**The Business Protection from
Misleading Marketing Regulations 2008**

PART 3

ENFORCEMENT

Duty to enforce

13.—(1) It shall be the duty of every enforcement authority to enforce these Regulations.

(2) Where an enforcement authority is a local weights and measures authority the duty referred to in paragraph (1) shall apply to the enforcement of these Regulations within the authority's area.

(3) Where the enforcement authority is the Department of Enterprise, Trade and Investment in Northern Ireland the duty referred to in paragraph (1) shall apply to the enforcement of these Regulations within Northern Ireland.

(4) In determining how to comply with its duty of enforcement every enforcement authority shall have regard to the desirability of encouraging control of advertising which is misleading under regulation 3 and comparative advertising which is not permitted under regulation 4 by such established means as it considers appropriate having regard to all the circumstances of the particular case.

(5) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

Notice to OFT of intended prosecution

14.—(1) Where an enforcement authority is a local weights and measures authority in England and Wales it may bring proceedings for an offence under regulation 6 only if—

- (a) it has notified the OFT of its intention to bring proceedings at least fourteen days before the date on which proceedings are brought; or
- (b) the OFT consents to proceedings being brought in a shorter period.

(2) The enforcement authority must also notify the OFT of the outcome of the proceedings after they are finally determined.

(3) Such proceedings are not invalid by reason only of the failure to comply with this regulation.

Injunctions to secure compliance with the Regulations

15.—(1) This regulation applies where an enforcement authority considers that there has been or is likely to be a breach of regulation 3, 4 or 5.

(2) Where this regulation applies an enforcement authority may, subject to paragraph (3), if it thinks it appropriate to do so, bring proceedings for an injunction (in which proceedings it may also

apply for an interim injunction) against any person appearing to it to be concerned or likely to be concerned with the breach.

(3) Where the enforcement authority is a local weights and measures authority in Great Britain it may apply for an injunction only if—

- (a) it has notified the OFT of its intention to apply for an injunction at least fourteen days before the date on which the application is made; or
- (b) the OFT consents to the application for an injunction being made within a shorter period.

(4) Proceedings referred to in paragraph (2) are not invalid by reason only of the failure to comply with paragraph (3).

Undertakings

16. Where an enforcement authority considers that there has been or is likely to be a breach of regulation 3, 4 or 5 it may accept from the person concerned or likely to be concerned with the breach an undertaking that he will comply with those regulations.

Co-ordination

17.—(1) If more than one local weights and measures authority in Great Britain is contemplating bringing proceedings under regulation 15 in any particular case, the OFT may direct which enforcement authority is to bring the proceedings or decide that only it may do so.

(2) Where the OFT directs that only it may bring such proceedings it may take into account whether compliance with regulation 3, 4 or 5 could be achieved by other means in deciding whether to bring proceedings.

Powers of the court

18.—(1) The court on an application by an enforcement authority may grant an injunction on such terms as it may think fit to secure compliance with regulation 3, 4 or 5.

(2) Before granting an injunction the court shall have regard to all the interests involved and in particular the public interest.

(3) An injunction may relate not only to particular advertising but to any advertising in similar terms or likely to convey a similar impression.

(4) The court may also require any person against whom an injunction (other than an interim injunction) is granted to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the advertising—

- (a) the injunction; and
- (b) a corrective statement.

(5) In considering an application for an injunction the court may require the person named in the application to provide evidence as to the accuracy of any factual claim made as part of the advertising of that person if, taking into account the legitimate interests of that person and any other party to the proceedings, it appears appropriate in the circumstances.

(6) If, having been required under paragraph (5) to provide evidence as to the accuracy of a factual claim, a person—

- (a) fails to provide such evidence, or
- (b) provides evidence as to the accuracy of the factual claim that the court considers inadequate,

the court may consider that the factual claim is inaccurate.

(7) The court may grant an injunction even where there is no evidence of proof of actual loss or damage or of intention or negligence on the part of the advertiser.

Notifications of undertakings and orders to the OFT

- 19.** An enforcement authority, other than the OFT, shall notify the OFT—
- (a) of any undertaking given to it under regulation 16;
 - (b) of the outcome of any application made by it under regulation 15 and the terms of any order made by the court; and
 - (c) of the outcome of any application made by it to enforce a previous order of the court.

Publication, information and advice

20.—(1) The OFT must arrange for the publication, in such form and manner as it considers appropriate, of—

- (a) details of any undertaking or order notified to it under regulation 19;
- (b) details of any undertaking given to it under regulation 16;
- (c) details of any application made by it under regulation 15 and of the terms of any undertaking given to, or order made by, the court;
- (d) details of any application made by it to enforce a previous order of the court.

(2) The OFT may arrange for the dissemination, in such form and manner as it considers appropriate, of such information and advice concerning the operation of these Regulations as appear to it to be expedient to give to the public and to all persons likely to be affected by these Regulations.