STATUTORY INSTRUMENTS

2008 No. 1276

The Business Protection from Misleading Marketing Regulations 2008

PART 1

DEFINITIONS AND PROHIBITIONS

Citation and Commencement

1. These Regulations may be cited as the Business Protection from Misleading Marketing Regulations 2008 and shall come into force on 26th May 2008.

Interpretation

2.—(1) In these Regulations—

"advertising" means any form of representation which is made in connection with a trade, business, craft or profession in order to promote the supply or transfer of a product and "advertiser" shall be construed accordingly;

"code owner" means a trader or a body responsible for—

(a) the formulation and revision of a code of conduct; or

(b) monitoring compliance with the code by those who have undertaken to be bound by it;

"comparative advertising" means advertising which in any way, either explicitly or by implication, identifies a competitor or a product offered by a competitor;

"court", in relation to England and Wales and Northern Ireland, means a county court or the High Court, and, in relation to Scotland, the sheriff or the Court of Session;

"enforcement authority" means the OFT, every local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measure Act 1985(**1**)) and the Department of Enterprise, Trade and Investment in Northern Ireland;

"goods" includes ships, aircraft, animals, things attached to land and growing crops;

"OFT" means the Office of Fair Trading;

"premises" includes any place and any stall, vehicle, ship or aircraft;

"product" means any goods or services and includes immovable property, rights and obligations;

"ship" includes any boat and any other description of vessel used in navigation; and

"trader" means any person who is acting for purposes relating to his trade, craft, business or profession and anyone acting in the name of or on behalf of a trader.

(**1**) 1985 c.72, section 69 was amended by paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19) and by paragraph 144 of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c.39).

(2) In the application of these Regulations to Scotland for references to an "injunction" or an "interim injunction" there shall be substituted references to an "interdict" or an "interim interdict" respectively.

Prohibition of advertising which misleads traders

3.—(1) Advertising which is misleading is prohibited.

(2) Advertising is misleading which—

(a) in any way, including its presentation, deceives or is likely to deceive the traders to whom it is addressed or whom it reaches; and by reason of its deceptive nature, is likely to affect their economic behaviour; or

(b) for those reasons, injures or is likely to injure a competitor.

(3) In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning—

(a) the characteristics of the product (as defined in paragraph (4));

(b) the price or manner in which the price is calculated;

(c) the conditions on which the product is supplied or provided; and

(d) the nature, attributes and rights of the advertiser (as defined in paragraph (5)).

(4) In paragraph (3)(a) the "characteristics of the product" include—

(a) availability of the product;

(b) nature of the product;

(c) execution of the product;

(d) composition of the product;

(e) method and date of manufacture of the product;

(f) method and date of provision of the product;

(g) fitness for purpose of the product;

(h) uses of the product;

(i) quantity of the product;

(j) specification of the product;

(k) geographical or commercial origin of the product;

(l) results to be expected from use of the product; or

(m) results and material features of tests or checks carried out on the product.

(5) In paragraph (3)(d) the "nature, attributes and rights" of the advertiser include the advertiser's—

(a) identity;

(b) assets;

(c) qualifications;

(d) ownership of industrial, commercial or intellectual property rights; or

(e) awards and distinctions.

Comparative advertising

4. Comparative advertising shall, as far as the comparison is concerned, be permitted only when the following conditions are met—

(a) it is not misleading under regulation 3;

(b) it is not a misleading action under regulation 5 of the Consumer Protection from Unfair Trading Regulations 2008(**2**) or a misleading omission under regulation 6 of those Regulations;

(c) it compares products meeting the same needs or intended for the same purpose;

(d) it objectively compares one or more material, relevant, verifiable and representative features of those products, which may include price;

(e) it does not create confusion among traders—

(i) between the advertiser and a competitor, or

(ii) between the trade marks, trade names, other distinguishing marks or products of the advertiser and those of a competitor;

(f) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, products, activities, or circumstances of a competitor;

(g) for products with designation of origin, it relates in each case to products with the same designation;

(h) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;

(i) it does not present products as imitations or replicas of products bearing a protected trade mark or trade name.

Promotion of misleading advertising and comparative advertising which is not permitted

5. A code owner shall not promote in a code of conduct—

(a) advertising which is misleading under regulation 3; or

(b) comparative advertising which is not permitted under regulation 4.

(**2**) S.I. 2008/1277.