

How advertising law affects advertisers in New Zealand



In New Zealand, advertising is regulated by law and self regulating codes of conduct. As a starting point, all advertising should comply with the Fair Trading Act 1986, the Advertising Standards Authority Codes of Conduct, and should not contain any other person's intellectual property without permission.

Facts at a glance

Advertising should:

- be truthful; and
- comply with specific legislation and industry rules around advertising of the product.
- Advertising should not:
 - feature or encourage any unlawful activity or encourage any dangerous activity
 - give any overall misleading impression
 - denigrate competitors
 - infringe any other person's intellectual property.

Which advertising media channels are regulated?

All media channels are regulated by law in New Zealand, including advertising on the Internet aimed at New Zealand consumers, point-of sale material, labelling and advertising on packaging.

The Advertising Standards Authority Codes of Conduct apply to all media channels.

Other legislation and industry codes of conduct can also apply to advertising of certain products.

How do I assess whether my advertising complies?

Different issues arise depending on what is being advertised and the type of advertisement. But in all cases, you should ask these questions about your advertising before placing it in the media.

- Is the advertisement, as a whole, false or misleading?
- Is any fine print used that alters the offer made in the advertisement?
- Is advertising the product or service subject to any specific legislation or industry standards and, if so, does it comply?
- Is advertising the product regulated by any product safety or consumer information standards, and, if so, does it comply?
- Does the advertisement include any material or images that might belong to someone else?
- Are any of the selling techniques used in the advertisement banned? For example, are you advertising a product at a price to lure in customers when you do not have sufficient supply of the product (bait advertising)?

What do I do if I want to stop an advertisement?

The approach to take for stopping an advertisement will depend on your concern with the advertisement and how urgently you need to stop it.

If an advertisement infringes your intellectual property, you can take infringement action through the court, seeking an immediate injunction to stop the advertisement being published again, and seek damages.

If an advertisement is untruthful or misleading, you can:

- take action in the court
- ask the Commerce Commission to take action
- complain to the Advertising Standards Authority Complaints Board.

If you think an advertisement is not socially responsible, degrades competitors or is otherwise offensive, you can file a complaint with the Advertising Standards Authority Complaints Board.

Penalties for not complying

Penalties vary depending on what law or code an advertising breaches.

Penalties for breaching the Fair Trading Act can include:

- an injunction
- a criminal conviction for a company, and sometimes its directors
- fines for each offence of up to \$200,000 for a company and \$60,000 for an individual.
- Breaching the Advertising Standards Authority Codes of conduct can result in:
 - media refusing to carry your advertisement in New Zealand
 - a press release being issued summarising the decision against your advertisement.
- Some advertising is also subject to industry or product specific legislation. For example, the Medicines Act contains restrictions on therapeutic claims.
- Call AJ Park to get the best advice on compliance with the laws and codes that apply to your advertising.