

# Marketing and advertising - ensuring legal compliance

BUSINESS GUIDE

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**Promotion is vital to the short, medium and long-term success of any enterprise. However, self-regulatory as well as legally-binding rules apply to any form of marketing and advertising in the UK.**

Breaches can, in some cases, land a business in court and facing hefty fines. Any failing can have a devastating impact on a business's reputation and bottom line. That is why it is essential that every business owner knows and understands the rules about marketing.

The very first rule, before any marketing or advertising is undertaken, is to ensure the name of your business is unique. For example, anyone attempting to name their business or use a logo that is the same as or very similar to a major brand is asking for trouble.

## Advertising - the basics

The law requires that any form of marketing must constitute an accurate description of the product or service being advertised. It must meet legislative requirements (these vary depending on the type of product/service being marketed), be decent, honest and socially responsible.

The latter means that no business should include in its marketing anything that encourages illegal, unsafe or anti-social behaviour.

Consumers have three months from the time of seeing an advertisement to complain about it, so it pays not to make a mistake in the first place.

## Specific requirements

If your business is involved in the sale of food, alcohol, cosmetics, environmentally friendly products, medicines or tobacco your marketing will be subject to specific requirements, which you should check before you do any advertising.

You cannot, for example, state a product you are selling is 'low-alcohol' if it contains more than 1.2 per cent alcohol by volume or less than 0.5 per cent. It is against the law to advertise tobacco in any form.

**ACCURACY**

Make sure your marketing is accurate, honest, decent and socially responsible



**BE HONEST**



**TIP: Ensure your marketing cannot be viewed as misleading**

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## Codes of Practice

### Non-broadcast media

The rules of the UK Code of Non-Broadcast Advertising and Direct and Promotional Marketing (CAP) cover advertising in print, online, sales promotions, telesales and email.

They are currently self-regulatory, but the Advertising Standards Agency has the power to investigate and take appropriate action. Some of these additionally fall into legislative categories and they are outlined later on.

As well as taking into account accuracy, decency and social responsibility, the code includes the following requirements:

- Make it clear that any form of marketing is advertising
- Ensure advertising does not cause harm or offence
- Pay particular attention to the privacy of individuals (i.e. claiming a well-known person endorses a product without their permission)
- [Follow administration guides](#) when running any form of promotion
- Meet the [distance selling guidelines](#) (i.e. over the internet)
- Be able to prove environmental claims if applicable

### Broadcast media

The rules covered by the UK Code of Broadcast Advertising (BCAP) apply to any marketing on television or radio, including teleshopping, content on self-promotional television channels, television text and interactive TV. The rules are enforced by the Advertising Standards Authority and backed up by the Consumer Protection and Unfair Trading Regulations 2008. Similar legislation protects businesses from B2B marketing.

As well as following general rules mentioned above, businesses broadcasting their marketing must take scheduling watersheds into account and:

- [Follow guidelines](#) if their products or services are aimed at children
- Not advertise products or services listed in [prohibited categories](#)
- Meet guidelines relating to the pricing and content of ads that promote premium-rate telephone services
- Not be 'aggressive'
- Not be misleading

## CODES OF PRACTICE

While some are self-regulatory others are backed up with legislation

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**TIP:** Follow all the rules for trouble-free marketing

*"Because direct marketing is often personalised, it is highly effective, but make sure you stay inside the law."*

## Aggressive marketing

Marketing is considered aggressive if it significantly impacts the consumer's freedom of choice. Legislation pays particular attention to material or content that uses undue influence, harassment or coercion. Therefore, businesses must not cause consumers to buy products or services through these means.

## Unfair marketing

Advertisements are deemed unfair if they go against the requirements of professional diligence and are designed to distort the economic behaviour of consumers in relations to the products or services being marketed.

## Direct marketing

Because direct marketing is often personalised, it is highly effective. However, a rise in consumer complaints about the practices of some direct marketing companies and fraudsters has seen the law tightened. The basic rules are:

- You must ask customers if they want to be contacted by fax, telephone, post or email - and give them the chance to object - before you send them marketing material
- You must get consumers' permission at the time you collect their contact details to be able to send them future offers or promotions
- You cannot share their information with any other organisation unless they agree
- Consumers must be given the chance to opt out of receiving direct marketing - and it must be made easy for them to achieve

## Telesales

When you make a sales call, you must tell the person you the name of the business you are calling from and provide your address or telephone number when requested. If you give customers a number to call it must be a freephone number.

You must not contact anyone who has asked not to be called by direct marketing companies via the Telephone Preference Service. If you fail to heed their request, you will be breaking the law and can be fined £5,000 for each unsolicited call.

### What can I do to protect myself?

- Never use photographs sourced from the internet unless you have the express permission
- If the person who took the required photograph is now deceased, check to see who the copyright has passed to and seek their permission
- Never copy any written material unless it is a product description and the manufacturer has given permission, or is a legislative requirement, or you have permission
- Never use a logo you are unsure about
- If you only have a small budget for branding, have specific ideas in mind before approaching a designer
- Never use music on your website or in broadcast marketing that you do not have permission to use
- Do not use slogans used by big brands

## Mailshots

Do not send direct marketing through the mail to anyone who is listed with the Mail Preference Service.

## Email marketing and text messages

You can't send email marketing or text messages to individual customers unless they have given you prior consent. Check with the Email Preference Service before pressing 'Send'.

If you have an individual's permission to send them emails, you must state who you are, be clear that you are selling something and explain any conditions attached to promotions. Every email must contain an 'opt out' or 'unsubscribe' feature.

## Visitors to your website

Visitors to your website must be told how your site uses cookies, and given them the opportunity to accept or decline them. If you misuse a consumer's information, you can be fined or made to pay the victim compensation.

## Copyright

Copyright infringement is on the rise. Many people use copyrighted material without even realising, putting themselves at risk of costly legal action.

### What is copyright infringement?

You are in breach of legislation that protects copyright if you use or adapt anything protected by copyright without permission. This can include reproducing, distributing, displaying or even performing the protected work. You cannot adapt it either.



### Top links

1. [Non broadcast advertising codes](#)
2. [Broadcast advertising code](#)
3. [Mail preference service](#)
4. [Information on cookies](#)
5. [More information on copyright laws](#)