



Advertising Framework in Jamaica – Current Framework & Challenges

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Ladies and Gentlemen, Good morning.

Please allow me to thank our hosts Foga Daley for allowing us, the Fair Trading Commission (FTC), the opportunity to participate by speaking at this, the first Caribbean and Advertising Law Seminar; and to present our views to this esteemed group. The FTC has had a long standing working relationship with several of the larger companies with huge advertising budgets and advertising agencies, some of whom are present, as well as with the Advertisers Association of Jamaica.

I begin by quoting Mr. Seth Godin who said "Facts are irrelevant. What matters is what the consumer believes."

I direct your attention to the power point slide show. I will speak briefly on the following areas:

- Overview: General Framework for Advertising in Jamaica
- The Fair Competition Act (FCA)
- Consumer Provisions & Competition Issues
- The FCA & Social Media
- UK Survey on Attitudes toward Digital Advertising
- Conducting Investigations

From as far back as 1895 Jamaica has had a legislation which speaks to some form of consumer protection. The Sale of Goods Act was enacted in that year; and it governs activities such as:

- formation & formalities of contracts: sale & agreement, capacity to buy & sell
- nature of the goods being sold
- conditions of sale and warranties
- transfer of property & title
- performance of the contract

The Standards Act of 1969, was last amended in 2002 and it speaks to the establishment of standards to protect consumers as well as the following:

- creates the Bureau of Standards, Standards Council
- standard specifications & compulsory standard specifications
- issue of licenses
- packaging, labelling, description
- inspection & testing

The Consumer Protection Act (CPA) came into effect in 2005, and its main objective is to protect consumers & their rights. In summary it speaks to:

- Complaints handling mechanism
- Direct interface with consumers
- Mediation

Then, there is the Fair Competition Act (FCA), which the Fair Trading Commission enforces. The FCA speaks to potential harm to consumers as well as harm to firms in the Jamaican marketplace and for this forum, the important aspects of the FCA are:

- Disclosure requirements
- Material information

Notably, the FCA establishes jurisdiction over all sectors of our economy and it defines advertising in Section 2 as *“Any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services.”* I emphasize here, the words *“Any form of communication”*.

Issues in advertising that have arisen in the past and which likely will arise from time to time include: (a) potential harm to consumers through certain types of conduct and information asymmetry; (b) the effect on market players that may adversely affect competition; and (c) harm to consumers through limited choices, poor quality and high prices.

The ‘most frequently used’ (by the FTC) consumer protection provisions of the FCA are Misleading Representation (S. 37); Double Ticketing (S. 39); Sale at a Bargain Price – Bait & Switch (S. 40); and Sale Above Advertised Price (S. 41).

The FTC’s activities benefit consumers as well as sellers, who expect and deserve the opportunity to compete in a marketplace free of deception and unfair practices. Our work with business enterprises include: (a) issued guidelines that govern the minimum requirements for advertisements; (b) the meaning and use of the term *“disclosure of all material information”*; (c) the proper use of *“conditions apply”* and various font sizes in print advertisements; (d) using clear and unambiguous

language when describing products or services; (e) limitations and qualifying claims; and (f) general discussions on awareness of requirements for advertisements and applicable provisions of the FCA.

Online commerce is booming worldwide: mobile and social media marketing is huge. It is to be noted that application of the FCA extends to advertisements in social media as well. Recall the definition of advertisement as “**Any form of communication...**”. Under the FCA document includes photographs, maps, plans, graphs or drawings, discs, tapes, sound tracks or other such device, films, negatives, tapes or other device.

The general principles of advertising law apply to online as well, but new issues arise almost as fast as technology develops. Most recently, new issues have arisen concerning space constrained screens and social media platforms.

Allow me to share with you the results of a recent survey of attitudes towards digital advertising. The Internet Advertising Bureau (IAB) is the United Kingdom’s trade association for digital advertising, and it represents the UK’s leading brands, media owners and agencies. In 2017, the IAB conducted a survey of 89 members on their attitudes towards digital advertising. Some of the results are as follows:

Current use of digital advertising:

- To raise awareness of products or services 87%
- For performance marketing to drive sales 79%
- To educate audience about product or service 55%

Understanding of the following trends and issues

- Brand Safety: 67% - good knowledge
- Viewability: 59% - good knowledge
- Ad Blocking: 44% - good knowledge

Barriers to investing more budget in digital advertising?

- Difficulty measuring effectiveness: 37%
- Lack of budget: 22%

Do you agree with the following statements?

- Digital advertising works: 62% strongly agree
- Digital is more complicated than other media: 41% agree
- Digital is better for direct response than brand: 33% agree

Expected change in digital advertising budget by end of 2018?

- Increase by > 10% 38%
- Increase by 0-10% 33%

- Stay the same 21%

To summarize, the same consumer protection laws that apply to commercial activities in other media apply online, including activities in the mobile marketplace. Further, many of our rules and guidelines are not limited to any particular medium used to disseminate claims or advertising, and therefore, apply to the wide spectrum of online activities. Hence the general principles of advertising, consumer protection & competition laws apply to social media advertising as well.

The USFTC & the UK Competition & Markets Authority have, over time, created several useful guidelines for advertising, in newspapers, billboards, television as well as social media. These guidelines are used as a basis by many Competition Agencies and are relied upon in case law, where necessary & applicable.

- Businesses should consider these criteria when developing online ads and ensuring they comply with the law
- Type, nature, prominence of disclosures
- Clear, conspicuous, and meaningful disclosures should be repeated (audio/online)
- Duration of visual
- Language is understandable
- Advertisement is focused on key points – immaterial stuff does not distract from key points
- Describe products & services truthfully online
- Address new issues arising from changes in technology
- Form of advertisement must be specific to the digital platform used

The 2017 UK Survey revealed that Digital advertising (a) is huge; (b) is an accepted marketing tool; (c) is effective; and (d) is being used more & more by companies. Added to that, public education activities by agencies such as the FTC is critical to consumers, to market players, and to policy makers.

I will close with a quote from Mr. John Wanamaker, who more than 50 years ago said “Half the money I spend on advertising is wasted; the trouble is, I don't know which half.”

In the present day, primarily with digital tools, advertisers and advertising firms can accurately estimate the impact of advertising campaigns. In much the same way, competition and consumer protection agencies have ways of measuring the impact on consumers by advertising campaigns; and therefore we encourage observance of the laws and guidelines.

Thank you very much. I wish for you, a successful conference.