ADDLESHAW GODDARD

ADVERTISING UPDATE – JULY 2017

Unhealthy children's food and drink non-broadcast media ad rules come into force

The new CAP rules banning the advertising of high fat, salt and sugar food or drink in children's non-broadcast media (including print, online, social media and cinema) came into force on 1 July 2017. The rules bring non-broadcast advertising rules in line with television restrictions. To get advertisers up to speed with the changes, CAP have released a webpage, collating guidance and information on the rules, together with an online training module.

Advertising Standards Agency bans two adverts for reading the terms and conditions too quickly

BT-owned Plusnet has had two radio adverts banned because the terms and conditions were read too quickly. Amongst other things, Plusnet's terms indicated that prices may vary during the term of the contract. The Advertising Standards Agency has said the terms and conditions in both ads were spoken "at a much faster pace compared to the rest of the ad" and were "material information" that should be presented in "a clear and intelligible manner".

Instagram bringing in new tagging tool to boost advertising transparency

Instagram is introducing a new tagging tool for influencers and brands. This will allow users who work with sponsors to tag that brand in their post. If the brand confirms the relationship, the post will feature a "paid partner with" tag. Charles Porch, Creative Programmes Director at Instagram, explained that the aim is to make advertising on the platform "more transparent and obvious". The tool will be rolled out across the summer and follows the Committee of Advertising Practice guidance issued in March 2017, stating that if an influencer's social media content is fully based around an affiliated product, it is necessary to put 'Ad' in the title of the post to make it clear that material is an advertisement.

Internet giants to lose millions over extremism fears

Advertisers are poised to pull hundreds of millions of pounds in spending from Google and Facebook over fears about ads being run next to inappropriate content, including extremist sites. Notably, Facebook has faced an advertising boycott by Havas, the world's sixth largest advertising group. GroupM, which purchases ad space on behalf of global clients, has slashed its growth prediction for UK digital advertising from 15% to 11%, in part because of a consumer backlash over inappropriate content.

Lottoland fined £150,000 for advertising failings

Lottoland has agreed to a £150,000 penalty issued by the Gambling Commission for failing to make clear to consumers that they were betting on the outcome of the EuroMillions lottery, rather than participating in the lottery draw itself. The Gambling Commission said that Lottoland used "ambiguous terminology in their marketing and advertising, which was misleading". The move follows a decision of the Advertising Standards Agency, who in February upheld a complaint that a Lottoland radio advertisement misleadingly implied that it offered the opportunity to take part in the lottery draw, rather than betting on the outcome.

Google to stop scanning e-mails to target ads

Google has decided to stop scanning Gmail users' e-mails in order to target them with personalised adverts. The change has been promised before the year's end. Google's e-mail scanning has been controversial, with Microsoft mocking Google's decision to scan through a series of adverts in 2011. Privacy International, a UK-based campaign group, even unsuccessfully tried to get the UK data privacy regulator to intervene. Google say this change will bring the consumer version of Gmail in line with its business edition.

A fifth of marketing and advertising firms would go out of business if hit by GDPR fine

Almost a fifth of marketing and advertising company survey respondents have said they would go out of business if hit by the maximum penalty for non-compliance with the General Data Protection Regulation (**GDPR**). The GDPR comes into force on 25 May 2018 and the maximum penalty for non-compliance stands at the greater of 20m EUR or 4% of the company's global revenue.

Responding to a YouGov survey, 17% of marketing and advertising companies surveyed said that they would go out of business if they were hit by the maximum sanction. Responding to further queries, 70% of those polled said they were uncertain of their ability to detect a data breach and just 37% said they could likely remedy a data breach within the required timescale of three days.

Tribunal gives guidance on factors ICO should consider when determining fines for breach of the Privacy Regulations 2003

The First-tier Tribunal (Information Rights) upheld the decision of the Information Commissioner (ICO) that LAD Media Ltd had contravened the Privacy Regulations 2003 by sending around 400,000 direct marketing texts without the necessary consent from the recipients. However, the Tribunal reduced the company's fine from £50,000 to £20,000, taking into account: that it was the company's first breach, the size of the company and the profit it generated during the financial year that the contravention occurred. The Tribunal set out a number of other factors that are relevant in setting fines, including: the circumstances; the seriousness of the contravention; whether the contravention was deliberate or negligent; the sector of the fine recipient; any redress offered to those affected by the contravention; and, steps taken to avoid further contraventions.

The Tribunal made it clear these criteria are not prescriptive and noted there was no binding guidance from the higher courts or tribunal. However, the decision provides some useful guidance as to the types of things the ICO should be taking into account when determining the level of fine for a breach of the Privacy Regulations.

Who to contact

DOMINIC MCLEAN
Associate

0161 934 6520
07710 857922