

NO&T Thailand Legal Update

March, 2023 No.23

Reform of Thailand's Rules on Advertisements: Guidelines on the Use and Proof of Advertising Statements in regard to Affirming Facts Which are Difficult to Prove

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1. Overview

On 13 January 2023, the Notification of the Advertisement Committee regarding Guidelines on the Use of Advertising Statements and Guidelines on the Proof of Advertising Statements in regard to Affirming Facts Which are Difficult to Prove B.E. 2565 (2022) dated 2 September 2022 was published in the Royal Government Gazette ("**Notification of Guidelines on Advertising Statements**"). The Notification of Guidelines on Advertising Statements became effective from 14 January 2023.

As advertisements these days contain inviting and enticing statements that are, in fact, subjective and difficult for advertisers to prove, the Advertisement Committee of the Office of the Consumer Protection Board enacted the Notification of Guidelines on Advertising Statements to create a climate of fair and clear advertisement of goods and services for the benefit of consumers.

2. Summary of the conditions and requirements relevant to advertising statements under the Notification of Guidelines on Advertising Statements

The Notification of Guidelines on Advertising Statements stipulates the conditions and requirements for advertising statements, which shall be complied with by business operators or advertisers, as follows:

2.1 General requirements

All advertising statements must comply with the general requirements as follows:

- (1) The contents shall include the Thai language and shall not cause consumers any misunderstanding in relation to the essential elements of the advertised goods or services, and a Thai translation shall be provided whenever a statement is written in English¹;
- (2) The written message must be completely and clearly visible, readable and audible, and must not cause consumers any misunderstanding in relation to the essential elements of the advertised goods or services². On the other hand, any statements displaying additional information relating to the main statement, i.e., conditions thereof, must comply with certain requirements depending on the type of media³, as shown in the table below.

¹ Clause 3 of the Notification of Guidelines on Advertising Statements

² Clause 3 Paragraph 2 of the Notification of Guidelines on Advertising Statements

³ Clause 3 Paragraph 3 of the Notification of Guidelines on Advertising Statements

Types of Media	Requirements
Electronic media or similar sources	- Statement must be conspicuous and readable. - Voice must have speed and rhythm that can be clearly heard.
Television	- Statement must be conspicuous and readable for a duration of not less than 5 seconds. - The height of the statement must not be less than 1/25 of the height of the screen.
Radio	- Voice must have speed and rhythm that can be clearly heard.
Billboard or signage which only contains a photo	- Statement must be conspicuous and readable and must have a size of not less than 1/3 of the largest characters.
Newspaper or publications	- Statement must be conspicuous and readable and must have a height of not less than 2 millimeters and also be close to the main essential statement.

- (3) The advertisement of goods or services must adhere to consumers' understanding, for example, if the advertisement says that a free service is provided, consumers would derive the understanding that they can receive such service without making any payment; accordingly, such understanding must be accurate. In the event that any conditions have to be fulfilled by consumers for them to receive such free service, business operators or advertisers would need to fully describe such conditions⁴.

2.2 Other requirements relevant to specific types of advertisements

The Notification of Guidelines on Advertising Statements also provides the conditions and requirements for specific types of advertisements, as follows:

- (1) An advertisement indicating the quantity, volume, size, ingredients or components of the goods or service must accurately reflect the contents of such goods or service⁵;
- (2) If a test or any experiment conducted in a specific environment or under specific conditions (e.g., where temperature, humidity or another factor is specified) is referred to, such test or experiment conducted by any institute or organization and such specific environment or conditions shall be indicated in the advertisement through the use of characters which are conspicuous and readable. In case of doubt, business operators or advertiser bear the burden of verifying and confirming the results of such test or experiment⁶;
- (3) Advertisements that contain (i) an exemption, (ii) a limitation of liability or (iii) a reservation of the right to change the conditions attached to goods or services without prior notice or any advertisements of a similar nature that are disadvantageous to consumers should not be used, for example:
 - "The company reserves the right to change the price and conditions without prior notice"
 - "The company reserves the right to change the price of goods"
 - "The product image is only a sample and may differ from the actual product being promoted"⁷;
- (4) Advertisements that appeal to one's spiritual beliefs or advertisements of a similar nature that are persuasive to consumers with the same spiritual beliefs in a way that would encourage them to buy goods or services should not be used, for example:
 - "Brings instant results after use"
 - "Increases sale, increases charm"⁸;
- (5) When making advertisements that provide a guarantee in relation to goods or services, business operators or advertisers need to indicate the guarantor, guarantee period, type, scope, procedure, method and conditions of the contractual performance of such guarantee. Examples are as follows:

⁴ Clause 4 of the Notification of Guidelines on Advertising Statements

⁵ Clause 5 of the Notification of Guidelines on Advertising Statements

⁶ Clause 6 of the Notification of Guidelines on Advertising Statements

⁷ Clause 7 of the Notification of Guidelines on Advertising Statements

⁸ Clause 8 of the Notification of Guidelines on Advertising Statements

- "If you are not satisfied, you are entitled to a refund"
 - "Satisfaction guaranteed"
 - "Safe Valve! Prompt refund of THB 200,000 in case of explosion!"
 - "If damage occurs to products during transportation, we will replace the damaged products with new products immediately"⁹; and
- (6) For advertisements that affirm facts, compare the product or service quality with other similar products or services, or make references to any academic report, research results, statistics, or certification of any institute or person, including any awards won, business operators or advertisers have the duty to prove the claim¹⁰. Examples are as follows:
- "The Best Product" or "Perfect Service"
 - "First in Thailand" or "The only one in Thailand"
 - "No.1 Sales"
 - "Better than..."
 - "100% effective"
 - "Passed standards established by overseas testing institution".

Under the Notification of Guidelines on Advertising Statements, business operators or advertisers are required to prove the claim found in the type of advertisement identified in six (6) within fifteen (15) days from the date of receiving the notification from the Advertisement Committee. For other advertisements that the Advertisement Committee consider to be false or exaggerated, the Advertisement Committee may order the advertiser to prove such claim¹¹ as well.

Note that the advertisement of certain products such as medical devices, food, cosmetics are controlled by specific regulations issued by the authority in charge. Thus, in case business operators or advertisers will advertise these products, it is necessary to also comply with the requirements of advertisement of such products under its relevant regulations.

3. Conclusion

The Notification of Guidelines on Advertising Statements aims to raise awareness among business operators or advertisers when making advertisements to promote their products or services. Business operators or advertisers need to be careful when making advertisements in which the truth of the stated fact is difficult to be proven. This is because if a business operator or advertiser (i) cannot prove such fact or (ii) make the advertisement in violation of this Notification of Guidelines on Advertising Statements, such advertisement may be deemed to be an advertisement that is unfair to consumers or that may cause adverse effects on society. As a result, the business operator or advertiser may be subject to orders of the Advertisement Committee, for example, revisions to the advertisement may have to be made, a prohibition of the usage of particular statements, etc., may be put in place, or criminal liability under the Consumer Protection Act of 1979 may be imposed.

⁹ Clause 9 of the Notification of Guidelines on Advertising Statements

¹⁰ Under Clause 10 of the Notification of Guidelines on Advertising Statements

- (1) In case that reference is made to an overseas organization, the following documents and evidence must be produced:
 - (a) Laboratory certificate provided by the governmental organization in charge of the foreign country;
 - (b) Certificate and details of test results, research results, and evidence of award, all of which are provided by the governmental organization in charge of the foreign country; and
 - (c) The business operator or advertiser must prepare and certify the correctness of the Thai translation in accordance with the Ministerial Regulation (B.E. 2540 (1997)) issued under the Administrative Procedure Act of 1996
- (2) In case that reference is made to a Thai organization, the following documents and evidence must be:
 - (a) Evidence such as (i) proof of the organization or person who conducted the test, (ii) the collection of information, (iii) research, and (iv) the consent to and permission of use in relation to such statement in the advertisement;
 - (b) Certificate and details of test results, research results, and evidence of award, all of which are provided by the governmental organization in charge of Thailand; and
 - (c) In case such documents are provided in a foreign language, the business operator or advertiser must prepare and certify the correctness of the Thai translation in line with (1)(c) above.

¹¹ Section 28 of the Consumer Protection Act of 1979

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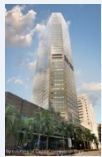
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