

# Russia

Ilya Goryachev

Gorodissky & Partners

## LEGISLATION AND REGULATION

### Legal framework

1 | What are the principal statutes regulating advertising generally?

The principal law on advertising in Russia is Federal Law No. 38-FZ of 13 March 2006 'on advertising' (the Advertising Law), which:

- provides relevant definitions of advertising and advertising participants;
- lists general requirements for advertising;
- imposes restrictions on advertising of specific goods and for specific types of advertising;
- regulates outdoor advertising and provides competence for local authorities in this regard; and
- empowers the Federal Antimonopoly Service as the advertising regulator.

Federal Law No.135-FZ of 26 July 2006 'on competition protection' provides a definition of unfair competition and cites its non-exhaustive forms; these provisions are also important in cases of unfair advertising.

### Regulators

2 | Which bodies are primarily responsible for issuing advertising regulations and enforcing rules on advertising? How is the issue of concurrent jurisdiction among regulators with responsibility for advertising handled?

The Federal Antimonopoly Service (FAS) is the principal regulator. There are no sectoral advertising regulators and FAS enforces advertising across all industries. FAS decisions may be appealed to a commercial court.

The exemption is the role of local authorities in regulating outdoor advertising, but this issue is more specific because it primarily deals with the relevant permissions to place advertising boards and other constructions.

### Regulators' powers

3 | What powers do the regulators have?

The Federal Antimonopoly Service (FAS) has the following powers:

- revealing, preventing and terminating breaches of the Advertising Law, as well as initiating and hearing cases on breaches of the Advertising Law;
- issuing injunctions to advertising participants;
- filing lawsuits where advertising is in breach of the Advertising Law, as well as lawsuits on publishing counter-advertising;
- asking for invalidation of permission to place advertising on outdoor constructions; and

- issuing injunctions to state authorities if local normative acts are in contradiction to the Advertising Law, as well as challenging activities of authorities, in courts, if they are in contradiction to the Advertising Law.

The main remedies used by FAS are injunctions to refrain from the specific advertising and the following administrative fines:

- general fines: 100,000 to 500,000 roubles for companies, 4,000 to 20,000 roubles for corporate officers and 2,000 to 2,500 roubles for individuals;
- fines in cases of breaches of special standards for broadcasting advertising: 200,000 to 500,000 roubles for companies and 10,000 to 20,000 roubles for corporate officers;
- fines for breaching limits of advertising text in printed media: 40,000 to 100,000 roubles for companies and 4,000 to 7,000 roubles for corporate officers;
- fines for breaching special standards on advertising of life sciences products and food additives: 200,000 to 500,000 roubles for companies, 10,000 to 20,000 roubles for corporate officers and 2,000 to 2,500 roubles for individuals; and
- fines for breaching special standards on disclosure of information in financial advertising: 300,000 to 800,000 roubles for companies and 20,000 to 50,000 roubles for corporate officers.

### Regulators' priorities

4 | What are the current major concerns of regulators?

The Federal Antimonopoly Service (FAS) is active in all spheres of advertising. For instance, in 2018 (the latest official statistic available), FAS considered 15,312 applications filed on alleged breaches of advertising, as result of which, 3,970 cases have been launched.

The major concerns of FAS may be represented as:

- breaches of the special rules for advertising of medicines;
- compliance with advertising provisions during sports events, including international sports events;
- injunctions relating to advertising disseminated via SMS without the consent of the subscriber;
- monitoring of alcohol advertising;
- prevention of unauthorised advertising of gambling; and
- disclosure of all essential information in advertising of financial services.

### Industry codes

5 | Give brief details of any issued industry codes of practice. What are the consequences for non-compliance?

Under the Advertising Law, the self-regulating bodies may adopt advertising rules that are mandatory for compliance by the members. Non-compliance with the codes approved by specific self-regulating

entities may have reputational and other consequences, including in terms of membership. Furthermore, there are existing trends for consolidating the industry-specific rules as well as legislative initiatives to extend the role of self-regulation in advertising.

In 2016, the Federal Antimonopoly Service (FAS) indicated in its letter No. CP/40322/16 of 15 June 2016 that FAS welcomes self-regulation in advertising, including by adoption of industry-specific codes that reflect not only the legislative provisions, but best practices as well.

As an example of a general code of practice, it is possible to cite the 'Russian Code of practice of advertising and marketing communication', approved by the Association of Communication Agencies of Russia that encompasses more than 200 marketing and advertising agencies.

This Code was signed by representatives of numerous advertising associations and provides for more detailed provisions on general requirements for advertising and provides recommendations for specific types of marketing campaigns. As such, the Code also reflects provisions and principles of the International Chamber of Commerce (ICC) and the world business organisation's Consolidated ICC Code of Advertising and Marketing Communication Practice.

The Code was signed in 2012, and was reviewed and officially welcomed by FAS. The provisions of the Code, as well as of other industry-specific rules and good practice, may be taken into account while reviewing specific cases.

Another example is the Recommendations on compliance with legislation on advertising of over-the-counter medicines, that were also welcomed by FAS and prepared with FAS support.

Additionally, there are examples in judicial practice when courts referred to the above-mentioned ICC Code in applying the national advertising law.

**Authorisation**

**6 | Must advertisers register or obtain a licence?**

Advertising activity as such is not subject to registration or licensing. However:

- certain types of goods may be subject to registration (eg, medicines), and advertising of any unregistered goods is illegal;
- certain advertising platforms require a licence to operate as such (eg, registration of the media); and
- outdoor advertising constructions may require permission from local authorities.

**Clearance**

**7 | May advertisers seek advisory opinions from the regulator? Must certain advertising receive clearance before publication or broadcast?**

The Federal Antimonopoly Service (FAS) regularly issues letters expressing its position on specific issues relating to the application of the Advertising Law. Such letters are generally issued by the FAS head office to draw the attention of local FAS divisions to specific issues.

These letters may be taken into account by third parties while reviewing specific advertising material, in order to evaluate potential risks.

Further, one of the functions of FAS is to consider applications from third parties (individuals and companies) and, in response to such applications, FAS may express its position in a general form, since it does not provide an advisory service; rather, it is a state authority dealing with enforcement.

Nevertheless, the role of FAS in promoting clarifications regarding the application of the Advertising Law is increasing and its online resources are informative.

Clearance by filing a query to FAS is not obligatory. It is the duty of the advertising participant to ensure that the specific advertising is in line with the applicable legislation and practice and third parties' rights.

**PRIVATE ENFORCEMENT (LITIGATION AND ADMINISTRATIVE PROCEDURES)**

**Challenging competitors advertising**

**8 | What avenues are available for competitors to challenge advertising? What are the advantages and disadvantages of the different avenues for challenging competitors' advertising?**

Advertising may be challenged by filing a complaint to the Federal Antimonopoly Service (FAS). Persons whose rights and interests have been affected by advertising may seek reimbursement of damages, as well as corrective advertising, in court. FAS is also allowed to bring corrective advertising lawsuits.

**Public challenges**

**9 | How may members of the public or consumer associations challenge advertising? Who has standing to bring a civil action or start a regulatory proceeding? On what grounds?**

Members of the public or consumer associations may challenge advertising by filing a complaint to the Federal Antimonopoly Service.

Civil actions may be started by any person whose rights and interests have been affected by the advertising at issue. An example is lawsuits brought by individuals in cases of advertising messages sent to an individual without his or her consent.

**Burden of proof**

**10 | Which party bears the burden of proof?**

Each party is obliged to prove the circumstances to which the party refers as the standing of their claim. In cases where Federal Antimonopoly Service (FAS) decisions as state authority acts are challenged, FAS nevertheless has a burden to prove the legitimacy of its decision.

**Remedies**

**11 | What remedies may the courts or other adjudicators grant?**

Courts may grant reimbursement of damages (as well as moral harm reimbursement) and order corrective advertising. The Federal Antimonopoly Service may issue injunctions as well as impose administrative fines.

**Length of proceedings**

**12 | How long do proceedings normally take from start to conclusion?**

The timing of proceedings depends on the specific case facts and a necessity for special opinions (eg, social opinion polls or linguistic examination). Proceedings may take approximately four to six months.

**Cost of proceedings**

**13 | How much do such proceedings typically cost? Are costs and legal fees recoverable?**

Filing a complaint to the Federal Antimonopoly Service (FAS) does not incur state duty payment and costs and legal fees sustained during the proceedings before FAS are not recoverable. Proceedings before court (eg, a lawsuit on corrective advertising) are subject to a state

duty payment (for companies) of 6,000 roubles. Costs and legal fees sustained during court proceedings are recoverable from the losing party within the court's determined amount.

**Appeals**

14 | What appeals are available from the decision of a court or other adjudicating body?

Federal Antimonopoly Service decisions may be appealed to the commercial court. Court decisions may be appealed to the court of appeal or the Court of Cassation (an appeal on the existing case record) as well as to the Supreme Court.

**MISLEADING ADVERTISING**

**Editorial and advertising**

15 | How is editorial content differentiated from advertising?

No specific principles on differentiation between editorial content and advertising are given in law. However, there is an obligation for publishers of non-advertising publications (eg, magazines or newspapers not termed as 'advertising media') to include the term 'advertising' in all advertising material. In this regard, in the case of an investigation, if the editorial content was drafted under a contract with the advertiser, it may be treated as advertising with related consequences.

**Advertising that requires substantiation**

16 | How does your law distinguish between 'puffery' and advertising claims that require support?

The law does not distinguish between puffery and advertising claims that require support. Therefore, if puffery was exercised under contract with an advertiser, it may be treated as advertising with applicable consequences.

**Rules on misleading advertising**

17 | What are the general rules regarding misleading advertising? Must all material information be disclosed? Are disclaimers and footnotes permissible?

Misleading advertising is not allowed. The principle under the Advertising Law is that it is not permissible to use statements that are untrue with regard to various facts, as defined in article 5 of the Advertising Law (eg, false statements on a product's origin, quality and consumer features). The degree of disclosure of material information may vary depending on the product or service at issue (eg, pharmaceutical or financial services advertising require a higher level of disclosure). Disclaimers and footnotes are permissible, but if they are presented as fine print that complicates their legibility, that may give rise to a breach, depending on the specific case facts.

**Substantiating advertising claims**

18 | Must an advertiser have proof of the claims it makes in advertising before publishing? Are there recognised standards for the type of proof necessary to substantiate claims?

Use of the expressions 'best', 'first', 'number 1', etc, requires proof in advertising, as well as an indication of the criteria used for comparison. Such proof may be specialists' opinions, market research studies, etc.

**Survey results**

19 | Are there specific requirements for advertising claims based on the results of surveys?

The law does not provide such requirements, operating with the principle that advertising must be true and fair. In terms of practice, surveys must be full (ie, they need to be made with regard to each competing product available on the market), and conclusions of surveys must be objective; otherwise, risks of claims are possible.

**Comparisons with competitors**

20 | What are the rules for comparisons with competitors? Is it permissible to identify a competitor by name?

The main rule is that only incorrect comparison is banned. Comparison requires indication of the criteria used for comparison and the advertiser is liable, not only for the accuracy of information of its product, but also for the accuracy of information on compared competing products. It is not permissible to use a comparison based on disparate criteria or to use partial comparison, because this would distort the impression given.

Therefore, comparison with competitors, to the extent that such comparison is not unfair or misleading, is allowed, including by identifying a competitor by name, to the extent that identification does not amount to trademark infringement or business reputation damage.

**Test and study results**

21 | Do claims suggesting tests and studies prove a product's superiority require higher or special degrees or types of proof?

Yes, and such claims require an indication of the sources of such tests and studies in the advertisement.

**Demonstrating performance**

22 | Are there special rules for advertising depicting or demonstrating product performance?

Depicting and demonstrating product performance needs to be compatible with the obligation of true advertising.

**Third-party endorsements**

23 | Are there special rules for endorsements or testimonials by third parties, including statements of opinions, belief or experience?

Advertising that contains untrue information on recommendations or approval of individuals and legal entities is not allowed. Permission to use such recommendations from their sources is required. Evidence of such endorsement or testimonial is required, both in terms of agreeing the information with publishers and also in the case of investigation from the Federal Antimonopoly Service. Use of adherence to a code of practice or attainment of quality mark is subject to the general obligation of true and good-faith advertising.

**Guarantees**

24 | Are there special rules for advertising guarantees?

Untrue information in advertising guarantees is not allowed.

### Environmental impact

25 | Are there special rules for claims about a product's impact on the environment?

Untrue information for claims regarding a product's impact on the environment is not allowed.

### Free and special price claims

26 | Are there special rules for describing something as free or a free trial or for special price or savings claims?

Such description needs to be true and not misleading. Incorrect information misleading a consumer with regard to something being free, being part of a free trial or being available at a special price may bring about liability.

### New and improved

27 | Are there special rules for claiming a product is new or improved?

Claiming a product is new or improved requires proof; otherwise, there is a risk that the advertising could be held to be misleading.

### Claims of origin

28 | Are there special rules for claiming where a product is made (such as country of origin)?

Claiming origin of a product from a specific country needs to be true and not misleading.

## PROHIBITED AND CONTROLLED ADVERTISING

### Prohibited products and services

29 | What products and services may not be advertised?

Advertising of the following products and services is not allowed:

- goods or services that are forbidden for manufacture and sale;
- narcotics, psychotropic substances and their precursors, as well as plants and their parts contained in them;
- explosive compounds and materials, except for pyrotechnic products;
- body organs or human tissue as an object for sale or purchase;
- unregistered goods that are subject to state registration;
- goods that are subject to mandatory certification or other obligatory confirmation of compliance with technical regulations, if such certification or confirmation was not undertaken;
- goods for which a licence or other special permission is necessary where such permission was not obtained;
- tobacco, tobacco products and goods, as well as smoking accessories, including pipes, hookahs, cigarette paper and lighters;
- medical services for artificial pregnancy termination; and
- services on drafting a graduation (qualification) thesis and other qualification works required for passing educational exams.

### Prohibited advertising methods

30 | Are certain advertising methods prohibited?

It is not permissible to use, in radio, television, video, audio media, cinema or other content, 'subliminal' advertising defined as advertising that exercises unconscious effect, including by use of special cut scenes, double sound recording or by other means.

Spam emails, as well as other advertising messages sent to a subscriber without his or her consent, are not allowed. Shock tactics in

advertising may give rise to consideration of breach of special rules on protecting minors and may also bring concerns regarding ethical rules for advertising, since offensive and obscene advertising is not allowed.

### Protection of minors

31 | What are the rules for advertising as regards minors and their protection?

For the purpose of protecting minors from abuse of their confidence and lack of experience, the Advertising Law bans:

- discrediting parents and tutors and undermining confidence in them;
- igniting minors to persuade parents or other persons to purchase the advertised goods;
- creating a false impression that the advertised goods are available to a family with any level of income;
- creating the impression that possession of the advertised goods gives advantage among peers;
- creating an inferiority complex for minors owing to non-attractiveness or to non-possession of the advertised goods;
- demonstrating minors in dangerous situations, including cases where actions create risk to life or health; and
- underestimating the level of skill necessary to use the advertised goods.

There are also prohibitions on addressing minors in the advertising of certain goods (eg, alcohol). Further, the advertising of content (video games, films, etc) requires compliance with the special legislation on age rating and must be age-appropriate.

### Credit and financial products

32 | Are there special rules for advertising credit or financial products?

The Advertising Law provides detailed regulation of advertising of credit or financial products. This type of advertising is under specific attention from the Federal Antimonopoly Service. The requirements may be generally represented as follows:

- a specific indication of who renders the products must be given;
- no promises or guarantees of investment profitability, if it cannot be determined at the moment of entering into the relevant contract, must be made; and
- other conditions of service, influencing the income or expenses or sum of credit or loan, if advertising mentions at least one such condition, must be mentioned.

There are also specific rules on disclosure of information for financial advertising relating to investment platforms, real estate investments, securities and other financial services.

### Therapeutic goods and services

33 | Are there special rules for claims made about therapeutic goods and services?

Advertising for all products, except for medicines and medical services, shall not contain indications of medicinal properties.

For medicines and medical services (and for medical devices), the Advertising Law provides detailed rules, including a ban on creating the impression that it is unnecessary to visit doctors and a ban on addressing minors in advertising. Moreover, the claim shall not guarantee a positive effect, safety, effectiveness or lack of side effects.

## Food and health

### 34 | Are there special rules for claims about foodstuffs regarding health and nutrition, and weight control?

Advertising of biologically active additions and dietary supplements shall be accompanied with a warning that the advertised product is not a medicine. Further, such advertising shall not:

- create an impression that the product is a medicine or has a medical effect;
- refer to specific cases of curing or improving conditions as a result of consumption;
- display gratitude from individuals as a result of consumption;
- influence the consumer to cease following a healthy diet; or
- create an impression of the product's advantages by referring to tests, obligatory for the registration of such products, or use results of other research in the form of a direct recommendation to consume.

Advertising of baby food shall not represent the advertised products as a full substitute for breast milk and, in the case of advertising substitutes for breast milk and products for babies of up to 12 months old, a warning on the necessity of professional advice.

## Alcohol

### 35 | What are the rules for advertising alcoholic beverages?

Advertising of alcoholic beverages (including beer) shall not:

- state advantages of consuming alcohol (eg, to achieve success or improve mood);
- criticise abstention from alcohol;
- represent alcohol as safe or helpful for health (including by indication of vitamins or food additives in alcohol beverages);
- represent alcohol as a one-off way to satisfy thirst;
- address minors; or
- use images of human beings or animals, including by way of animation.

Various restrictions exist on the advertising media. Alcohol advertising cannot be published:

- on transport vehicles;
- on the first or last pages, or on covers, of magazines and newspapers (with an exception for beer and Russian-produced wine);
- on television or radio (except for sport events broadcasting under specific conditions and except for wine produced in Russia); or
- in or near educational or some other institutions.

Restrictions are also imposed on promotional campaigns. Online advertising of alcohol is also banned.

Permitted alcohol advertising shall be accompanied with warnings of harm as a result of alcohol consumption.

Some exceptions from legislative restrictions are made for the advertising of wines produced in Russia from Russian-grown grapes.

## Tobacco

### 36 | What are the rules for advertising tobacco products?

Advertising of tobacco, tobacco products and goods, as well as smoking accessories, including pipes, hookahs, cigarette paper and lighters, is forbidden in Russia.

## Gambling

### 37 | Are there special rules for advertising gambling?

The general rules for the advertising of gambling are:

- minors cannot be addressed;
- it cannot be implied that gambling is a way of generating earnings or other income;
- statements that overestimate the chance of winning or underestimate the risk of losing must not be included;
- no reference can be made to winners that, in fact, did not receive an award;
- no statements that gambling is important for achieving success can be made;
- non-participation in gambling cannot be criticised;
- no impression of a guaranteed win can be made; and
- the use of images of human beings or animals is not permitted.

The advertising needs to provide information on the specific gambling at issue (organisers, terms, etc), as well as provide the terms under which prizes are drawn.

Various restrictions on where the advertising may be published also apply, depending on the types of advertised gambling (sport book-making, casinos, etc).

## Lotteries

### 38 | What are the rules for advertising lotteries?

Advertising of lotteries shall not:

- address minors;
- give the impression that lotteries are a way of generating earnings or other income;
- overestimate the chance of winning or underestimate the risk of losing;
- refer to winners that, in fact, did not receive awards;
- state that lotteries are important for achieving success;
- criticise non-participation in gambling; and
- give the impression of guaranteed wins.

## Promotional contests

### 39 | What are the requirements for advertising and offering promotional contests?

The advertising of promotional contests requires an indication of the terms under which the contest is held, as well as information on the organiser of the contest, the rules of holding the contest and the amount of prizes or awards, as well as the terms, place or ways to obtain them.

## Indirect marketing

### 40 | Are there any restrictions on indirect marketing, such as commercial sponsorship of programmes and product placement?

Sponsorship advertising requires an indication of the sponsor. Tobacco sponsorship advertising is not allowed. The duration of sponsorship (as well as other advertising) in television programmes shall not exceed 20 per cent of broadcasting time within one hour and 15 per cent of broadcasting time within one day. Special rules are set for sponsorship advertising during television programmes for minors.

## Other advertising rules

41 | Briefly give details of any other notable special advertising regimes.

It is forbidden to use non-Russian words or expressions without translation or transliteration in advertising, if such use may lead to the distortion of meaning of the information in the advertisement. An exception is made for trademarks and foreign companies' names; they may be used in advertising without translation or transliteration.

Advertising shall not be offensive (with regard to nationality, cultural properties, etc); there is a specific ban on this under the Advertising Law.

Political and religious advertising are out of the scope of the Advertising Law.

## SOCIAL MEDIA

### Regulation

42 | Are there any rules particular to your jurisdiction pertaining to the use of social media for advertising?

The Advertising Law does not contain special rules mentioning the use of social media. Therefore, all requirements and restrictions (including those that exist for advertising on the internet) apply.

43 | Have there been notable instances of advertisers being criticised for their use of social media?

Criticism may arise for the use of social media in advertising in cases where such advertising does not conform to the general principles of advertising (eg, the use of slang words in advertising messages).

44 | Are there regulations governing privacy concerns when using social media?

General data protection and privacy rules apply.

## UPDATE AND TRENDS

### Recent developments

45 | Updates and trends

Currently, there is a major trend towards consolidation of the practice rules relating to advertising in some industries, in particular in life sciences.

There are legislative initiatives on changing the situation with the ban on beer advertising on television as well as with regard to the use of images of humans or animals.

Attention shall be paid to the legislative initiative on self-regulation in advertising, to the extent that a self-regulation body will hear advertising law disputes instead of the Federal Antimonopoly Service.

# GORODISSKY

**Ilya Goryachev**

goryachevi@gorodissky.ru

25 B. Spasskaya Street, Building 3

Moscow 129090

Russia

Tel: +7 495 937 6116

Fax: +7 495 937 6104

www.gorodissky.com