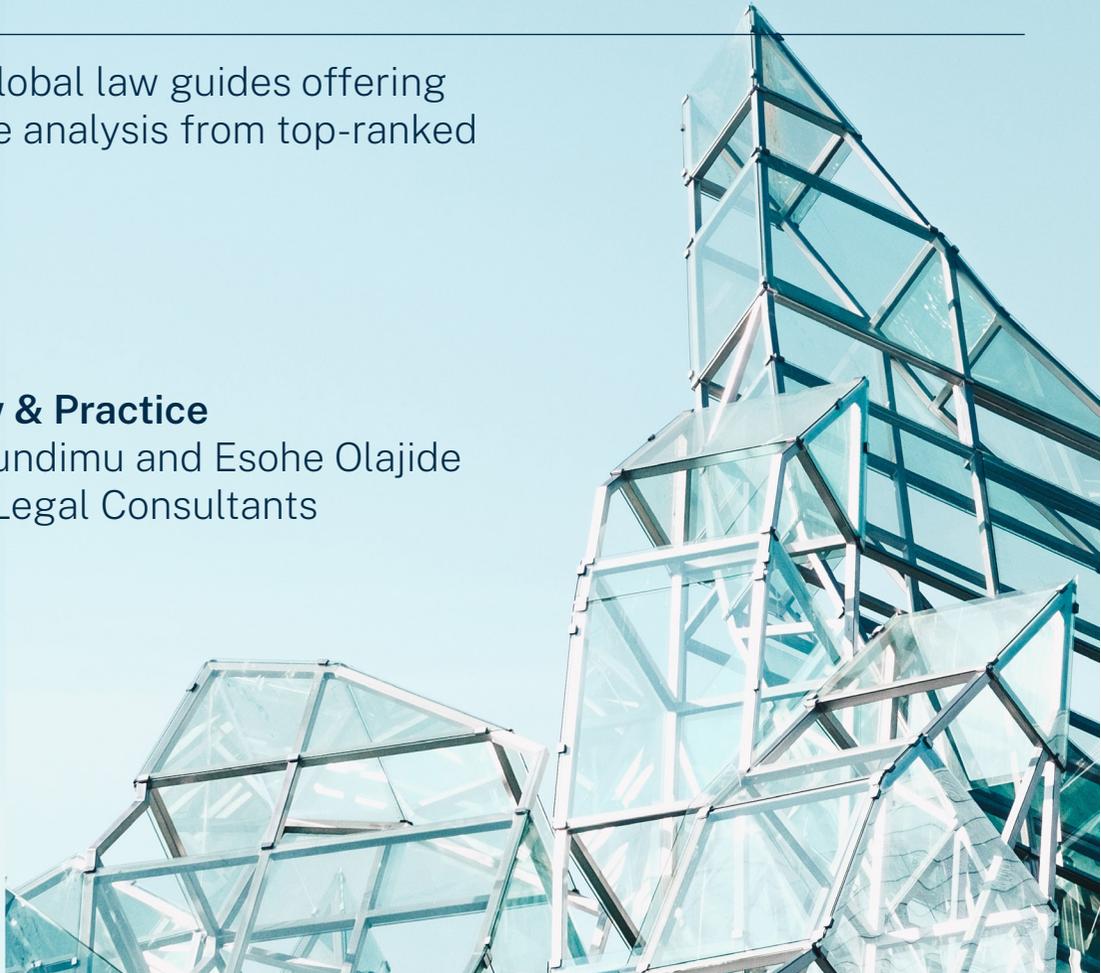

CHAMBERS GLOBAL PRACTICE GUIDES

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Ghana: Law & Practice

Olusola Ogundimu and Esohe Olajide
Integrated Legal Consultants



GHANA



Law and Practice

Contributed by:

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Integrated Legal Consultants was founded in April 2007 in Accra. The firm was established to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and its network of international clients benefit from the highest quality of corporate and commercial legal services. Integrated Legal Consultants has advised some major companies across the globe on advertising, intellectual property rights and commercial matters, and its directors have over 48 years' combined legal experience in

corporate and commercial legal practice. The firm also has several consultants that complement the legal services offered with a combined total of 10 attorneys and consultants plus 13 other administrative and support staff. In addition to its office in Accra, the firm benefits from correspondent relationships with other firms across Africa, including Nigeria, The Gambia, Sierra Leone, Uganda, South Africa, the UK and the USA. Integrated Legal Consultants is the sole member of the Global Advertising Lawyers Alliance for Ghana.

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INTEGRATED LEGAL CONSULTANTS

1. Legal Framework and Regulatory Bodies

1.1 Primary Laws and Regulation

Advertising in Ghana is regulated by various laws some of which are limited to specific sectors/activities, as the Advertising Council Bill, which is aimed at consolidating laws that regulate advertising in Ghana, is pending before parliament. The primary laws include:

- the Public Health Act 2012 (Act 851)
- the Food and Drugs Authority (FDA) Guidelines for the Advertisement of Foods;
- the FDA Guidelines for the Advertisement of Drugs, Cosmetics, Household Chemicals and Medical Devices;
- the Gaming Act 2006 (Act 721) and Gaming Commission's Guidelines on Advertising;
- the Electronic Communications Act 2008 (Act 775) as amended by the Electronic Communications (Amendment) Act (Act 786) and the Electronic Communications Regulations 2011 (L.I. 1991);
- the Electronic Transactions Act, 2008 (Act 772);
- the Securities and Exchange Commission (SEC) Regulations 2003 (L.I. 1728);

- the Ghana Standards Authority Act 1973 NRCO 173;
- the Data Protection Act 2012 (Act 843); and
- the Advertising Association of Ghana (AAG) industry self-regulator, which has its Code of Professional Conduct and Ethics (the "Code") regulating members in the industry.

1.2 Enforcement and Regulatory Authorities

The regulatory authorities who currently enforce the laws and regulations governing advertising in Ghana include the following.

The FDA

The scope of the FDA is limited to advertising practices relating to foods, drugs, cosmetics, household chemicals and medical devices. The FDA can issue warnings, fines, or revoke product approvals if a party is found to have violated advertising guidelines or to advertise without prior approval of the FDA.

The Gaming Commission (GC)

The scope of the GC is limited to the advertising of gaming, promotions, games of chance and skill-based contests. The GC requires that licences and approvals be obtained before entities engage in such activities and, where there is

a breach of Act 721 or its Guidelines on Advertising, the GC may impose fines, revoke or suspend licences. Where a person promotes or provides facilities for unlawful gaming, they will be liable upon summary conviction to a fine of not more than 500 penalty units or a prison term of two years or both.

The National Communications Authority (NCA)

The NCA regulates advertising and communication through the telecommunications networks. Operators are obliged to comply with the provisions of L.I. 1991 and, where there is a breach, the NCA may impose pecuniary penalties as it deems fit or as specifically provided by L.I. 1991 for the specific breach. It may also suspend or revoke licences of operators where necessary.

The Data Protection Commission (DPC)

The DPC regulates the unauthorised use and processing of personal information or data of subjects in Ghana to protect their privacy. It also requires that data processors register with the DPC before processing the data of subjects in Ghana. Where there is a breach of the provisions of the law, defaulters may be given directives to comply or directed to pay compensation to any individual who suffered damages due to the breach. Also, where convicted of a breach, a fine of 250 penalty units, a prison term of two years or both will apply depending on the offence. Where Act 843 does not provide a penalty, a fine of 500 penalty units or a prison term of ten years or both will apply. A fine of 2,500 penalty units or a prison term of five years or both will apply for the sale of personal data.

The Ghana Standards Authority (GSA)

The GSA establishes and regulates standards of products/goods sold to consumers in Ghana to ensure high standards and promote the stand-

ardisation of products in the country. It regulates labelling, advertising and selling of goods, and also has requirements and procedures for mounting outdoor advertisements. Where there is a breach, remedies include fines or a term of imprisonment upon summary conviction. While the Ghana Standards Authority Bill of 2022 has been passed into law, it is yet to be assented to by the president.

The SEC

The SEC regulates advertisements issued or disseminated to the public offering services of dealers or investment advisers or offering securities for sale to or from the public. L.I. 1728 sets out the scope of advertisements in relation to investments and securities and what is prohibited to ensure they are fair and not misleading to the public. Persons who contravene the SEC regulations are liable to penalties which include interventions, revocation suspension or restriction of licences by the SEC or payment of a fine of GHS1 million as stipulated in Regulation 44.

The AAG, an industry self-regulator through its Code (1.1 Primary Laws and Regulation), regulates the advertising of members who are practitioners or stakeholders in the industry. Its Code covers various aspects of advertising including content, accuracy and fairness in advertising. Where members breach its advertising standards, it can issue warnings or advisories to the affected parties. It may also make recommendations regarding corrective measures or amendments such parties may effect to the advertising content to make it compliant. Where members continue to violate the Advertising Code of Conduct, they may be suspended or expelled from the AAG.

1.3 Liability for Deceptive Advertising

Some of the laws as indicated at **1.1 Primary Laws and Regulation** provide that advertising must be accurate and not misleading either directly or impliedly. Thus, any organisation that is required to seek approval before an advertisement is placed would be held liable for deceptive advertising where the same occurs within a particular sector by the appropriate regulatory agency where its rules specifically prohibit misleading advertising.

The FDA will hold the sponsor, advertising agent and the advertising media organisation jointly and severally liable for any breach of its advertising rules.

Similarly, the AAG, in Article 28 of its Code, provides that advertisements should not contain false representations that may confuse or cause others to believe that products/services or advertisements of another entity/person are those connected to or belonging to the advertising practitioner or vice versa.

Where members breach its advertising standards, it can issue warnings or advisories to the affected parties. It may also make recommendations regarding corrective measures or amendments such parties may make to the advertising content so as to make it compliant. Where members continue to violate the Advertising Code of Conduct, such a member may be suspended or expelled from the AAG.

The SEC, in Regulation 40(9) of its L.I. 1728, provides that any person who contravenes the provisions on advertising in the Regulations shall be liable for an intervention, the payment of a penalty of GHS1 million, a revocation, a suspension, or such restrictions on a licence as the SEC may impose.

1.4 What Is Advertising?

In Ghana, what constitutes advertising is determined by the specific regulation or law. For instance, in the FDA Regulations on Advertising, advertising is considered to be the publicity of goods and description of products in any form of notices in circulars, labels, wrappers, catalogues and prices lists, newspapers, magazine, documents made orally or by means of projected light, sound recording, radio and television advertising, mentions by radio presenters, bill boards, mobile vans, social media and written content.

What is considered to be advertising by the SEC Regulations 2003 in Regulation 39 is not as exhaustive as the list above. The SEC defines advertising to include every form of advertising including publications, notices, exhibition of photos or films discs, and generally any public notices including the publication of research findings.

1.5 Pre-approvals

Pre-approvals are required to be obtained from the relevant agencies before running advertisements in Ghana. For instance, the FDA pre-approves all advertisements whether print, outdoor or in the media in relation to food, drugs cosmetics and household chemicals and medical equipment. Also, the Gaming Commission pre-approves advertisements in relation to gaming and promotions. Thus, advertisements in these sectors cannot run without pre-approval.

1.6 Intellectual Property and Publicity Rights

The laws in Ghana protect the rights of a registered owner of an intellectual property (IP) right and give the owners exclusive rights to prevent others from using their IP without their prior consent.

- The Trade Marks Act 2004, Act 664 as amended regulates any form of unauthorised use of trade marks while not specifically providing for advertising and prohibits applying false trade descriptions to goods or causing infringement of a trade mark; offenders will be liable to a fine not exceeding 500 penalty units (a penalty unit is GHS12) or a prison term of two years.
- Furthermore, the Protection Against Unfair Competition Act 2000 (Act 589) prohibits any act in the course of commercial activities that causes or is likely to cause confusion about the activities or products/services of another enterprise, the presentation of which could amount to unfair competition. The confusion may be regarding trade marks or the presentation of products or services.
- Act 589 also regards acts which are likely to mislead the public about activities, goods or services of an enterprise which may arise out of advertising products, services, packaging regarded as constituting unfair competition. Act 589 provides for remedies such as injunctive relief, damages and such orders by the court to prevent unlawful acts.
- Similarly, the Copyright Act 2005 (Act 690) provides for infringement of copyright when used without the consent of the owner and not within the scope of permitted use of the copyright. Article 42 stipulates that offenders will be liable on summary conviction to a fine of a minimum of 500 and a maximum of 1,000 penalty units or a prison term of three years or both. Where the infringement continues, a further fine of a minimum of 25 and maximum of 150 penalty units (a penalty unit is GHS12) will apply for each day that the offence continues.
- Act 690 does not specifically provide for the use of an individual's pictures or likeness, this may however be covered by photography,

which is listed under artistic works, while the individual's voice will ordinarily be covered under sound recording where the voice was fixed in a medium with musical or spoken words.

1.7 Self-Regulatory Authorities

The AAG is an industry self-regulator of advertising practices. Its powers are limited to members of the AAG and it aims at ensuring ethical and professional advertising practices amongst practitioners in Ghana. Its Code of Professional Conduct and Ethics covers various aspects of advertising including content, accuracy and fairness. As a self-regulator, it allows for voluntary adherence to standards and ethical guidelines in the industry by advertisers, agencies and other stakeholders. As part of its process, the AAG reviews complaints and concerns regarding advertising practices which are brought before it.

Where members breach its advertising standards, the AAG can issue warnings or advisories to the affected parties. It may also make recommendations regarding corrective measures or amendments such parties may make to their advertising content to make it compliant. Where members continue to violate the Advertising Code of Conduct, they may be suspended or expelled from the AAG.

1.8 Private Right of Action for Consumers

Currently, as the Advertising Council Bill is pending before parliament and there is no specific provision in relation to the consumer's right to challenge advertising practice, any issues in relation to advertising would need to be raised by complaint to the relevant authority regulating advertising in a specific sector such as the FDA, SEC, GC, NCA, or the AAG if the offending party is a member of the association; the prac-

tices will be sanctioned based on the powers and provisions of the applicable law, regulation or guidelines.

However, the 1992 Constitution of Ghana provides in Article 33 that where there is a breach of a person's fundamental rights, as provided, the affected person may approach the high court for redress. Thus, consumers may explore this option where an advertising practice contravenes their fundamental rights.

1.9 Regulatory and Legal Trends

As far as the authors are aware, there have not been any regulatory trends in the past 12 months regarding deceptive advertising.

1.10 Taste and Cultural Concerns

Advertisements should generally not be obscene, not offend public order, decency or morality, or promote public disorder or illegal activities. In recent times, there have been concerns raised by citizens against advertising promoting LGBTQ activities in Ghana, though no laws have been passed to that effect.

Advertisers should be mindful of offending religious or ethnic sensibilities through their advertising.

1.11 Politics, Regulation and Enforcement

The authors are not aware of any political changes that have impacted the regulation or enforcement of advertising regulations.

2. Advertising Claims

2.1 Deceptive or Misleading Claims

The FDA and the GC in their guidelines on advertising provide standards regarding misleading advertisements, including the following.

- Advertisements shall be accurate, complete, clear and designed to promote credibility among the general public. Thus, statements or illustrations must not mislead directly or by implication.
- Advertisements in relation to food must comply with the CODEX Guidelines on Claims. All claims must be complete, truthful, not misleading and must be substantiated. In relation to food, advertisement should not contain claims that pre-packaged foods can prevent or cure diseases, disorders or any abnormal physical states.
- Advertisements of food must not criticise any other company's competitive or alternative products, either directly or by implication, and should not imitate the general layout, text, slogans or visual presentation or devices of the advertisement of food products of other companies.
- Advertisements should not exploit superstitious beliefs or the emotions of consumers, or induce fear in consumers to persuade them to purchase the product.
- Advertisements for alcoholic beverages must contain certain warnings regarding drinking responsibly and the non-suitability for persons under 18 years and pregnant women. Outlets must also display warnings, while those being aired on television and social media must have the health warnings running for the entire duration of the advertisement.
- Advertisement should not depict drinking alcohol as fashionable or appealing to minors.

- In accordance with the GC, in addition to not being misleading, advertisements must not depict responsible gambling or make it appealing to minors.
- As per the GC, all claims must be substantiated and should not contain negative content about competitors.
- The GC requires that endorsement by persons in advertisements should not suggest that games of chance contributed to their success or are a regular avenue or source of income.
- The AAG Code, in addition to not offending public decency, not promoting immorality and not being obscene, demands that advertisements must conform with the laws of Ghana, must not exploit consumers' lack of experience or their superstitious or negative beliefs.
- The Electronic Transaction Act, 2008 (Act 772), in Section 110, prohibits charlatanic advertisement and provides that Section 137 of the Criminal Offence Act, 1960 in relation to such advertisements in newspapers apply with necessary modifications to any publications in electronic records or web-related publications.

2.2 Regulation of Advertising Claims

The FDA requires advertisements in relation to food to comply with the CODEX Guidelines on Claims. In relation to drugs, the FDA requires that the claims in advertisements must be justifiable in the light of scientific evidence. For the GC, all claims in advertisement must be substantiated.

The SEC requires advertisements to maintain the highest standards of accuracy and should be in clear language that is easily understood by the public.

2.3 Substantiation of Advertising Claims

For advertisements of food, the substantiation required to support advertising claims should be in line with the CODEX Guidelines on Claims. For advertisements in relation to drugs, the FDA requires that the claims in the advertisements must be justifiable in the light of scientific evidence. Under the GC, all claims in advertisement must be substantiated, though there are no outlined requirements for how the substantiation is to be done.

2.4 Product Demonstrations

The AAG Code indicates that an advertising practitioner should be prepared to provide a demonstration or sample of the advertised product on demand by the Standards Committee.

While the GC and FDA Guidelines appear to be silent on product demonstration, the FDA requires that the promotion of drugs must not include free distribution to the general public, except to healthcare professionals in accordance with Section 121 of Act 851. It also requires that records must be kept of the distribution of free samples to allow traceability.

2.5 Endorsements and Testimonials

The AAG Code provides that any advertisement that contains a testimonial and endorsement shall be genuine, and the models used shall be alive and suitable for the products and ideas they endorse in the advertisement.

The FDA Guidelines on the advertisement of drugs provide that such advertisement should not contain materials which refer to recommendations by scientists or health professionals or well-known personalities or organisations whose status could encourage consumption of products, to the detriment of health and safety.

Thus, while endorsements are permitted, they must comply with certain requirements.

2.6 Disclosures

The FDA requires that there must be full disclosure in advertising. It defines full disclosure as adequate information for the prescriber concerning the accepted indications and appropriate use of the product, including warning precautions, contraindications, adverse reactions, dosage forms and dosage schedules.

Thus, advertising must fully disclose all relevant information about a product, its adverse effects or reactions and any direction on usage or precautions that will enable the consumer to make informed decisions about purchasing and using the product. The information provided should be clear and conspicuous, it should also be relevant and should be placed in close proximity to the relevant claims.

The SEC provides in L.I. 1728 that advertisements must maintain the highest standard of accuracy and must be communicated in language that is clear and easily understood by the public. Advertisements must state sufficient relevant information in order that an adequate description of the investment or services offered is conveyed to the recipient. In addition, statements of opinion in an advertisement must be attributable to an identified person and reasonable steps must be taken to ensure that the person expressing the statement still holds that opinion at the date of the publication.

2.7 Representation and Stereotypes in Advertising

There are currently no laws or regulations addressing stereotyping in advertising in this jurisdiction.

2.8 Environmental Claims

There are currently no special laws regulating environmental claims in advertisements or “greenwashing” in this jurisdiction.

2.9 Dark Patterns

There are no special laws or guidance related to “dark patterns” in advertising in Ghana at this time. Thus, dark patterns would be regulated by the general provisions on advertising, ie, advertisements should not be manipulative, misleading or take advantage of consumers’ ignorance to induce the purchase of a product.

2.10 Children

The FDA, GC and AAG all have provisions relating to advertising to children.

The FDA requires advertising to children to be:

- Truthful and not misleading as children do not have the same level of scepticism as adults in making decisions. Thus, claims must be supported by evidence.
- Advertising should not exploit vulnerability or lack of experience of children and must not use fear, peer pressure or other tactics to manipulate children into making purchases.
- Desist from promoting products that can be harmful to the health and well-being of children.
- Advertisement should not depict drinking alcohol as fashionable or appealing to minors.

The AAG Code provides that special care should be taken in advertisements directed to or featuring children. Such advertisements must not undermine positive social behaviour, lifestyle and attitude. Also, the Code provides that products suitable for children should be advertised in media targeted at them and advertisements directed at children should not be inserted in the

media where the editorial matter is unsuitable for them. Materials unsuitable for children shall be clearly identified as being unsuitable for them.

The GC requires that advertising in respect of gaming should not be targeted to entice those under the legal gaming age which is 18 years and should not be placed in media specifically targeted at such persons such as children's magazines, newspapers, journals or similar media. Children's songs or cartoon characters cannot be used in advertising games of chance and gaming advertisements must not run during airing of programmes or movies with Family (F), Parental Guidance 18 (PG 18) and Adult Accompaniment (AA) ratings. The GC also prohibits placing outdoor advertising within 20 meters of preschools, 1st and 2nd Cycle Schools, children's playground and any other facilities designed for the use of persons below 18 years or the advertisement of gaming in relation to public functions where people under the legal gaming age are likely to be in attendance.

For the GC in addition to not being misleading, advertising must not depict responsible gambling or make it appealing to minors. The GC also prescribes that operators providing sponsorship shall not offer prizes, give out souvenirs and/or distribute promotional materials to participants of programs organised for persons below the age of 18 years.

2.11 Sponsor ID and Branded Content

The FDA Guidelines appear to be silent on sponsor identification or branded content. However, since advertisements are pre-approved, the FDA would ordinarily raise any such issues it may have with the advertisement before it is published.

The GC Guidelines appear to be silent on sponsor identification or branded content. However, since advertisements are pre-approved, the GC would ordinarily raise any concerns it may have.

The AAG Code provides that media organisations must only accept or expose advertisements that indicate the proper identity of the sponsor except in a teaser advertisement. In addition, advertisements should not bear sign-offs such as "committee of friends", "concerned citizens", or any other broad terms without verifiable names and addresses.

2.12 Other Regulated Claims

All claims in advertising must not be misleading and must be substantiated.

The FDA requires that claims in respect of health, medical benefits or the therapeutic effects of a drug or medical product must be substantiated by scientific evidence. The FDA also requires that all foods and drugs sold or imported into Ghana must be labelled with the country of origin.

3. Comparative Advertising and Ambush Marketing

3.1 Specific Rules or Restrictions

While there are no specific rules by the FDA in respect of comparative advertising claims, the general rules that advertising should not be misleading or deceptive, the advertisement of food must not criticise any other company's competitive or alternative products, either directly or by implication, or portray their own product as being better than those of competitors by negatively undermining the latter's would apply.

Also, the SEC in Regulation 40 (9) of L.I. 1728 provides that a comparison made between alternative investments must be fair, reasonable, accurate and compatible, and must not omit factors which are or may be relevant to an appreciation of the comparison or contrast.

The AAG Code provides that advertisements must not discredit, disparage or attack other products/services, ideas, personalities or organisations unfairly, or exaggerate the nature or importance of competitive differences. In addition, advertisements must not imitate the slogans/illustrations of another advertising practitioner in a manner that is likely to mislead the consumer.

3.2 Competitor Copyrights and Trade Marks

Advertisers are not permitted to use the name of a competitor or the trade mark or packaging of a competitor in advertising in Ghana. Use of copyright or trade marks of another person or entity can only be done with their consent.

3.3 Challenging Comparative Claims Made by Competitors

There are no specific rules on challenging claims made by a competitor by an advertiser, but the various regulators allow for complaints to be brought to their attention, and, where investigations reveal a breach of the rules or guidelines on advertising, the applicable remedies would ordinarily apply.

3.4 Ambush Marketing

The authors are not aware of any special rules related to ambush marketing in this jurisdiction.

4. Social/Digital Media

4.1 Special Rules Applicable to Social Media

The FDA Guidelines on advertising apply to all forms of advertising including online or social media. Thus, they should comply with the guidelines outlined at **2.1 Deceptive or Misleading Claims**, **2.2 Regulation of Advertising Claims**, **2.6 Disclosures** and **2.10 Children**, and must be pre-approved.

The provisions of the Data Protection Act 2012 (Act 843) on data protection and electronic communication would also apply to advertising online or social media.

4.2 Liability for Third-Party Content

While the FDA Guidelines do not directly provide for liability for content posted by others on the advertiser's site or social media, the advertiser is required to comply with the Guidelines and the provisions of the Public Health Act 2012 (Act 815) when advertising products regulated by the FDA; such advertising must also be pre-approved. Failure to comply will leave the advertiser liable to penalties or other sanctions provided by the FDA Guidelines and the Public Health Act where applicable.

4.3 Disclosure Requirements

The authors are not aware of any special rules related to online disclosures and disclosures in social media in Ghana.

4.4 Requirements for Use of Social Media Platforms

There are currently no unique rules or regulations that apply to the use of social media platforms. The use of social media platforms is permitted in Ghana, provided rules relating to privacy, data

protection and advertising under the applicable laws and regulations are complied with.

4.5 Special Rules for Native Advertising

There are currently no special rules that regulate “native advertising” in Ghana.

5. Social Media Influencer Campaigns and Online Reviews

5.1 Special Rules/Regulations on Influencer Campaigns

Influencers are currently not allowed to take part in advertising of alcoholic beverages in Ghana as the FDA placed a ban on this to protect their followers from being unduly influenced to consume alcoholic beverages.

Also, the GC prohibits the use of celebrities in advertisement relating to gaming by operators.

5.2 Advertiser Liability for Influencer Content

It is an advertiser’s responsibility to ensure that the contents of the advertisements are not misleading or contain false claims. Advertisements should also be pre-approved to ensure advertising content by influencers complies with the applicable laws and regulations so as to avoid liability for breach of these laws.

5.3 Consumer Reviews

The authors are not aware of any special rules that apply to the solicitation and use of consumer reviews in Ghana.

5.4 Liability for Consumer Reviews

The authors are not aware of any special rules applying to liability for consumer reviews in Ghana.

6. Privacy and Advertising

6.1 Email Marketing

In relation to email marketing, the Data Protection Act 2012 (Act 843) requires the consent of the subject to be obtained by a person who seeks to process such data. Section 40 requires the prior written consent of the data subject before their data can be used, obtained or provided for direct marketing.

The Electronic Communications Regulations (L.I. 1991) provides that whoever wishes to send unsolicited communications for direct marketing by email, text message or phone call must first obtain the consent of the subscriber. Where it is sent without prior consent, such communication must include the contact details of the sender such as their name and where they can be reached free of charge. Where the unsolicited communication is by means of an email, the sender is required to ensure that their identity is not concealed and also provide a valid address to which the subscriber can request the person to desist from sending such messages.

L.I. 1991 provides in Regulation 6(1) for a fine of not more than 500 penalty units (one penalty unit is GHS12) or an imprisonment term of not more than five years or both where a person steals, intercepts, alters, diverts or unlawfully discloses transmitted messages or data to someone other than the sender or recipient for which it was intended.

Regulation 6(5) also places an obligation on operators to employ international best practices to promote privacy, secrecy and security of communication and personal data accounts which relate to subscribers. A breach of this leaves the person liable to a fine of not more than 500 penalty units (one penalty unit is GHS12) or a fine

as indicated in the licence issued to the operator where the same is higher.

Penalties for breach of Act 843 include a fine of not more than 250 penalty units or a prison term of two years or both for persons found liable for failing to register as a data controller but engaging in the processing of personal data and for purchasing or obtaining/disclosing personal data knowingly.

Furthermore, a fine of not more than 2,500 penalty units or a prison term of not more than five years or both apply for persons liable for the sale of personal data. Where Act 843 does not specify a penalty for an offence, offenders will be liable to a fine of not more than 500 penalty units or a term of imprisonment of not more than ten years or both, upon conviction.

Section 50 of the Electronic Transactions Act 2008 (Act 772) provides for unsolicited communication and prohibits the sending of unsolicited electronic communications to consumers without their prior consent. Where electronic commercial communication is sent to a consumer, the sender must provide an option to cancel the subscription and the source from which the persons obtained the consumer's personal information. In addition, where a customer does not respond to an unsolicited communication, an agreement cannot be deemed to have been concluded and such customer is entitled to recover costs associated with the cancelling of the unsolicited communication.

A person who sends unsolicited electronic communications without consent under Section 50 is liable to a fine of not more than 5,000 penalty units (GHS60,000) or a prison term of not more than ten years or both upon conviction. Where a person sends unsolicited electronic communica-

tions to another or continues to send the same after the cancellation of a subscription, they are liable to a fine of not more than 5,000 penalty units (GHS60,000) or a prison term of not more than ten years or both upon conviction.

6.2 Telemarketing

In relation to Telemarketing, the Data Protection Act 2012 (Act 843) requires the consent of the subject to be obtained by a person who seeks to process such data. Section 40 requires the prior written consent of the data subject before their data can be used, obtained or provided for direct marketing.

The Electronic Communications Regulations (L.I. 1991) provides that whoever wishes to send unsolicited communications for direct marketing by email, text message or phone call must first obtain the consent of the subscriber. Where it is sent without prior consent, such communication must include the contact details of the sender such as their name and where they can be reached free of charge. Where the unsolicited communication is by means of an email, the sender is required to ensure that their identity is not concealed and also provide a valid address to which the subscriber can request the person to desist from sending such messages.

Penalties and terms of imprisonment are the same as in **6.1 Email Marketing**.

6.3 Text Messaging

In relation to text messaging, the Data Protection Act 2012 (Act 843) requires the consent of the subject to be obtained by a person who seeks to process such data. Section 40 requires the prior written consent of the data subject before their data can be used, obtained or provided for direct marketing.

The Electronic Communications Regulations (L.I. 1991) provides that whoever wishes to send unsolicited communications for direct marketing by email, text message or phone call must first obtain the consent of the subscriber. Where it is sent without prior consent, such communication must include the contact details of the sender such as their name and where they can be reached free of charge. Where the unsolicited communication is by means of an email, the sender is required to ensure that their identity is not concealed and also provide a valid address to which the subscriber can request the person to desist from sending such messages.

Penalties and terms of imprisonment are the same as in **6.1 Email Marketing**.

6.4 Targeted/Interest-Based Advertising

There are no specific requirements regarding the use of consumer data for the purposes of targeting or retargeting consumers with advertising that might be relevant. However, where the data of the consumers was gathered with their consent for a specific purpose, it cannot be used for another purpose without their prior consent and the provisions of the Data Protection Act 2012 in respect of the gathering and use of data of a subject in Ghana will apply.

6.5 Marketing to Children

The Data Protection Act 2012 (Act 843) in Section 37(1) prohibits the processing of personal data of a child who is under parental control under the law. Section 37(2) allows the processing of such data where it is necessary (ie, for the vital interest of the data subject or to exercise a right or obligation conferred by law on an employer) or with the consent of the data subject.

Thus, where it is necessary to process the data, the rules on obtaining consent before obtaining

or processing personal information, including that data should only be collected and used for a specific and legitimate purpose and ensuring security of data collected from unauthorised access/use, would apply.

In addition, the 1992 Constitution of Ghana (Constitution) recognises and protects the right to privacy of its citizens. Article 18 (2) of the Constitution provides for the privacy of individuals and prohibits interference with the same, except in accordance with the law, for reasons of public safety, economic wellbeing, health or morals and for the prevention of crime and the protection of others.

It is important to note that Section 43 of Act 843 provides that an individual who suffers damage or distress through the contravention by a data controller of the requirements of the Act is entitled to compensation from the data controller for the damage or distress.

Also, where personal information of a child is processed without complying with the provisions of Act 843, a fine of not more than 250 penalty units or a prison term of two years or both for persons found liable for engaging in the processing of personal data will apply.

The AAG Code provides that children shall not be used as models for all forms of advertisement of alcoholic beverages.

6.6 Other Rules

There are no other important privacy rules related to advertising in Ghana.

7. Sweepstakes and Other Consumer Promotions

7.1 Sweepstakes and Contests

The Gaming Act 2006 (Act 721) established the GC, which regulates, controls, monitors and supervises the operation of games of chance in the country. This Act repealed the Lotteries Betting Act 1960 (Act 31), which previously regulated private betting and prohibited the advertising of private lotteries.

Promotions/contests offered to the public need to be approved and registered by the GC before they can run. Where they are offered without a licence, this amounts to an offence under Act 721 and the person in breach is liable to a fine of not less than 1,000 penalty units (approximately GHS12,000) or an imprisonment a term of not less than three years or both upon summary conviction.

The GC Guidelines on Advertising must be complied with before advertisements in respect of contests and sweepstakes can be publicised, and advertisements are pre-approved.

Applications are made in writing by the promoters of such contests/sweepstakes to the GC with a detailed proposal containing information about the contest, the modalities, timelines for running the contest and the prize pool and selection process for the winners.

Applications fees are determined by the GC based on the prizes being offered in each contest.

The proposal and all the above information is considered before approvals are issued. The GC will inform the promoter of the game of the applicable fees and, upon remittance of same,

the application is processed, and approval given where the GC is satisfied with the proposal. The GC may make recommendations with respect to aspects of the game of chance or contest to the promoters prior to issuing its approval.

The National Lotto Act 2006 (Act 722) established the National Lotto Authority (NLA). The NLA regulates, supervises and conducts the National Lotto in Ghana. Act 772, in Section 4, prohibits anyone other than the NLA from operating any form of lottery in Ghana. Per Section 5, the NLA is authorised to licence lotto marketing companies for the distribution and sale of coupons and for other purposes that the board of the NLA deems appropriate. The board of the NLA has about 21 working days after the receipt of the application to grant a licence to the applicant where it is satisfied that the applicant has met the conditions required for a licence and has paid the applicable fees. The applicable fees for the issuance of licences to the lotto marketing company are determined by the board of the NLA.

7.2 Contests of Skill and Games of Chance

The GC regulates all chance-based contests in Ghana. Where the contests of skills have an element of chance in them, they are also regulated by the GC. For any contest/game of chance regulated by the GC to take place in Ghana, a licence/approval must be sought from the GC.

The Gaming Act 2006 (Act 721) defines a game of chance as “a game other than lotto in which participants, in anticipation of winning a reward based on the results of the game, which depends on luck and which cannot be determined before the end of the game, pay money for the right to participate in the game.”

It further defines gaming as “playing a game, whether of skill or chance or partly of skill and partly of chance for staked hazarded by the players but does not include lotto.”

7.3 Registration and Approval Requirements

Games of chance and or contests of skills (with an element of chance) are regulated by the GC. Thus, for any contest/game of chance regulated by the GC to take place in Ghana, a licence/approval must be sought from the GC. To organise this without the GC’s approval would be a breach of the the Gaming Act 2006 (Act 721) and will leave the organiser liable for breach of Act 721. Also, all advertising or promotional content for the games or contents must be preapproved by the GC; to advertise without pre- approval would amount to a breach of Act 721 and would attract applicable sanctions.

Approval/Registration Process

Applications are made in writing by the promoters of such games to the GC with a detailed proposal containing information about the game or contest, the modalities, timelines for running the game/contest and the prize pool and selection process for the winners. The GC also regulates the advertising/promotion of the games/contests in Ghana which must be pre-approved before they are run. The proposal is considered, and all the information is considered before approvals are issued (see 7.1 Sweetstakes and Contents). The GC will inform the promoter of the game of the applicable fees and, upon remittance of same, the application is processed, and approval given where the GC is satisfied with the proposal. The GC may make recommendations with respect to aspects of the game of chance or contest to the promoters prior to issuing its approval.

7.4 Free and Reduced-Price Offers

There are no special laws that regulate free or reduced price offers. Any promotion being offered to the public in Ghana should ordinarily be approved by the GC if it contains an element of chance.

7.5 Automatic Renewal/Continuous Service Offers

Section 50 of the Electronic Transactions Act 2008 (Act 772) provides for unsolicited communication and prohibits the sending of unsolicited electronic communication to consumers without their prior consent. Where electronic commercial communication is sent to a consumer, the sender must provide an option to cancel the subscription and the source from which the persons obtained the consumer’s personal information. In addition, where a customer does not respond to an unsolicited communication, an agreement cannot be deemed to have been concluded and such customer is entitled to recover the costs associated with cancelling the unsolicited communication.

8. Artificial Intelligence

8.1 AI & Advertising Content

There are currently no rules in relation to the use of artificial intelligence (AI) in connection with developing advertising content. Thus, the applicable rules on data protection/privacy provided for under the Data Protection Act, 2012 (Act 843) would apply to AI generated advertising content. Also, the provisions of the Copyright Act in relation to use of other people’s copyright in AI generated content would apply.

8.2 AI-Related Claims

The laws in Ghana do not currently provide special rules related to making claims that a product

is developed through the use of AI or has AI-related capabilities.

8.3 Chatbots

Ghana's laws do not currently provide special rules related to the use of chatbots. However, use of chatbots would ordinarily need to comply with the provisions of the Data Protection Act 2012 (Act 843) the Electronic Transactions Act 2008 (Act 772), the Electronic Communications Act 2008 (Act 775) and L.I. 1991.

9. Web 3.0

9.1 Cryptocurrency and Non-fungible Tokens (NFTs)

There are currently no special rules regulating the advertising, marketing or sale of cryptocurrency and/or NFTs in Ghana. The general principles on data protection, copyright, electronic communications and transactions would ordinarily apply where applicable (see **1.6 Intellectual Property and Publicity Rights**, **3.2 Competitor Copyrights and Trade Marks**, **6.1 Email Marketing**, **6.2 Telemarketing** and **6.3 Text Messaging**).

9.2 Metaverse

Ghana's laws do not currently provide special provisions regarding advertising within the metaverse.

10. Product Compliance

10.1 Regulated Products

There are specific rules by the FDA relating to advertising food, drugs, cosmetics, household products and medical devices, some of which have been discussed at **2.1 Deceptive or Misleading Claims**, **2.6 Disclosures**, **2.3 Substantiation of Advertising Claims**, **2.10 Children and**

3.2 Competitor Copyrights and Trade Marks.

There are also provisions in relation to the labelling of foods and drugs so that the consumer has all the information to guide them in making an informed decision about the purchase. The provisions on claims as discussed at **2.1 Deceptive or Misleading Claims** and **2.3 Substantiation of Advertising Claims** are also relevant.

The Public Health Act 2012 (Act 851) also prohibits the advertising or promotion of tobacco products in Ghana. Thus, all forms of direct and indirect advertising, promotions and sponsorship in relation to tobacco products are prohibited. It further provides that tobacco products should not be packaged or labelled in a manner that is false, misleading or is likely to create an erroneous impression about its health effects, hazards or characteristics.

Article 45 of the AAG Code has similar provisions in respect of tobacco products. Article 46, however, permits the sponsorship of events by tobacco manufacturers provided adequate care is taken to ensure only persons above 18 years are admitted to such events.

Article 47 of the AAG Code provides that advertisements for condoms must not encourage indecency in the use of the product and the emphasis should be on health and family planning applications. All advertisements for condoms must carry health warnings which promote total abstinence or faithfulness as the best options.

10.2 Product Placement

Ghana's laws do not currently provide special rules related to the placement of products in entertainment content.

10.3 Other Products

The authors are not aware of any other specific rules that apply to advertisements of any other category of products or services that is subject to specific advertising regulations.

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