BIRCH LEGAL

Legal Alert

The Guidelines for complying with mandatory advertising requirements have been published

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On **14 November 2023**, the FAS of Russia approved the Guidelines for complying with the mandatory requirements "**Definition of advertising**" (hereinafter – the "**Guidelines**") and published several drafts of other guidelines in the field of advertising (guidelines on compliance with advertising requirements for certain types of products (alcohol products, medical solutions, and dietary supplements)) as well as guidelines on certain issues regarding the application of the mandatory general requirements for advertising (for example, about the dissemination of advertisements on payment documents and about advertisements for information products). It is expected that said drafts will also be approved by the FAS of Russia.

These documents were developed to implement a "regulatory guillotine"[1] mechanism in advertising in connection with which many provisions reiterate previously existing clarifications contained in letters from the FAS of Russia which were declared invalid at the end of 2022.

Below is a brief analysis of the main provisions of the new "Guidelines".

Definition of advertising

The FAS of Russia once again noted that for information to be considered an advertisement it must meet the criteria for advertisements listed in paragraph 1 of Article 3 of the Federal Law "On advertising" which lists all said criteria.

The FAS of Russia also mentions that it is necessary to take the circumstances surrounding the information's placement into account when classifying information as an advertisement.

[1] A "regulatory guillotine" is a tool for large-scale revision and repeal of regulations that negatively affect the general business climate and regulatory environment. The task of the "guillotine" is to create a new system of clear and precise requirements for business entities in the areas of regulation, to remove excessive administrative burden from business entities, and to reduce the risks of causing harm (damage) to protected values.

Paid placement of information

The presence of any civil-law agreement or the fact of payment for the placement of information is not included in the list of criteria for advertisements.

Accordingly, for classifying information as an advertisement or as some other kind of information that is not an advertisement, neither the presence of any civil-law agreement for the placement (distribution) of an advertisement nor the fact of payment for its placement is required. Additionally, an advertisement may be considered as information whose placement (distribution) is carried out without the conclusion of a corresponding civil-law agreement and/or on a gratuitous basis.

Object of advertising

An advertisement is considered as information allowing for the clear identification and distinction of the specific object of advertising from among similar products as well as for generating interest towards it for the purposes of its promotion on the market.

The FAS of Russia points out that that when assessing whether information distinguishes a specific good, work or service based on its content, it is necessary to take into account not only the content of such information but also all the circumstances of its placement.

Advertising integration

Information about a product or person can be considered organically integrated into a certain production if it comprises an integral part of the overall plot of the production (a separate part of it) and serves as an additional characteristic of a main character or created situation. Moreover, such products or organizations may not be presented in a way where attention is concentrated specifically on them, on their merits and other characteristics, and they may not replace the main characters in the production (a separate part of it), violate the plot or be removed from it without harming the holistic perception of said production.

As such, images of products that are acquired or used by characters of a production in a situation from the plot may be recognized as organically integrated in a video production (for example, the consumption of beer in a bar or restaurant without focusing the audience's attention on the name brand of the product, or when the demonstration of the product, item or furnishings in a bar are the natural background for the action in the scene).

An analogous position was contained in: Letter of the FAS of Russia dated 25.05.2011 No. АК/20129 "On the recognition of advertising as inorganically integrated into television and radio broadcasts".

Distinctions between advertisements and informational content (1)

An extensive list of criteria that can distinguish between advertisements and informational content which does not qualify as an advertisement is defined in the published advertising guidelines:

Advertisement	Informational content (not an advertisement)
Distribution of souvenirs, clothing with logos or trademarks among an indefinite number of people, including as gifts to contractors and consumers.	The use of souvenirs by the legal entity itself (its employees) for its own needs in the direct implementation of its activities. Information indicating the product or its manufacturer is not advertising: • on official forms, other documentation, and on the Internet when specifying a domain name • on branded clothing and items if this is related to the design of points of sale, as well as in places of production and at exhibitions
Information distributed via SMS messages or PUSH notifications about additional services offered by cellular operators to subscribers with whom they have an agreement for the provision of services if such a service acts as an object of advertising which includes, in particular, the following offers: • purchase mobile content for an additional fee • activation of a service related to the provision of "basic" services for an additional fee • switching to another payment plan • contacting a mobile service (portal) if through this service (portal) the subscriber can be provided with mobile content or additional services for an additional fee	Information distributed via SMS messages or PUSH notifications sent by cellular operators to their subscribers containing information about the procedure for fulfilling or changing the conditions for fulfilling obligations to provide "basic" services under the concluded contract, in particular: • about changes in the cost of these services provided within the payment plan chosen by the subscriber • on supplementing these services with free services • about the subscriber's roaming status • on changing the payment procedure for these services
Information posted on the website, on a page on social networks, or in an application for a mobile device (hereinafter – a "Resource") of a seller of goods from different manufacturers which is aimed at attracting attention to a specific product and distinguishing it from similar products. For example, this can be achieved by placing a stationary banner placed on each page of the site not related to the content of such pages, etc.	Information containing the same set of information about organizations and the goods they produce or sell (services provided) grouped under certain headings posted on a catalog website.

Distinctions between advertisements and informational content (2)

Advertisement	Informational content (not an advertisement)
Information about other business entities posted on a Resource of a manufacturer or seller of goods if such information draws attention to such entities and not to the activities of the specified manufacturer or seller.	Information about manufactured goods, the business activities of a company, promotions and events, as well as contractors (partners) of said company posted on a manufacturer's Resource if such information is intended to inform visitors about: • the range of their products (services, organized events) • conditions for their acquisition (participation in them) • prices and discounts • rules of use (hereinafter – "**Basic information about the goods**")
	Uniform information about manufactured or sold goods posted on the Resource of the information aggregator's owner if it is intended to provide information about the Basic information about the goods and is grouped into certain headings, sections and categories.
On the search results page, in addition to the information provided by the search engine at the user's request, information is also placed that is aimed at drawing attention to a specific product and highlighting it among similar products (for example, a pop-up banner or information-contextual advertising).	
	Information about the goods sold by different manufacturers posted on the Resource of the seller of these goods if the specified information is intended to inform visitors about the Basic information about the goods.

Distinctions between advertisements and informational content (3)

Advertisement	Informational content (not an advertisement)
Information on a personal page on a social network aimed at generating interest in a product and promoting it on the market, for example, advertising integration with bloggers who positively describe the product and its advantages calling for purchase.	Information on the personal page of a social network user that does not generate interest in any product and represents a personal opinion or attitude towards any product.
	Posts on the official website of a company or event containing information about sponsors/partners with images of trademarks (logos) of such sponsors/partners in a special section of the site dedicated to the description of sponsors/partners if such information does not generate interest directly for the sponsors and they are not independent objects of advertising.

Advertising of non-profit organizations

The FAS of Russia clarifies that an advertisement is information distributed in any fashion or form with the use of any means targeting an indefinite number of persons aiming to draw attention to the entrepreneurial activity of a non-profit organization or to non-commercial organizations without specifying the activities of said organizations provided that such non-profit organization carries out entrepreneurial activities.

An analogous position was contained in: Letter of the FAS of Russia dated 24.05.2021 No. AK/41745/21 “On the qualification of information about free services provided by a non-profit organization as advertising”.

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