

SA ASA Code protects international advertisers

and other marketing communications by or from companies, organisations or sole traders on their own website, or in other non-paid space on-line under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fundraising activities.”

The extension of the UK Code may have far-reaching consequences for South African online advertisers or electronic trading platforms where the websites are accessible by citizens of the UK. The UK's Consumer Protection Regulations relating to “distance selling” would apply. In addition, the normal prohibition against misleading advertising would apply, the details of which are similar to what our code determines.

An aspect that South African advertisers should be aware of is the possibility that the trademarks used in their online advertising may be infringing the rights of third parties in the UK. One is probably faced with two types of online advertisers, the incidental advertiser whose website is accessible in the UK by someone doing some internet browsing and the advertiser who targets the UK market as part of its strategy. The latter should be aware of the risks involved in advertising and providing goods or services where the trademark used may be infringing the rights of third parties. It requires at least a clearance search to be done and, if available, those trademarks should be registered to protect their abuse by third parties.

Although the UK code does not apply to marketing communications in

foreign media, there are exceptions which may be the rule in the case of South African websites. Normally, direct marketing communications that originate outside the UK and are published on non-UK registered websites, if targeting UK customers, are subject to the jurisdiction of the relevant authority in that country if that authority operates a suitable cross-border complaint system. In the case of SA, it does not and, consequently, the UK ASA will be able to take action.

The new UK sanctions include naming and shaming the advertiser on the UK ASA website, removing, with the co-operation of the search engine, paid for search advertisements that link directly to the page hosting the non-compliant marketing communication on the advertiser's website and the placing of paid for advertisements on the internet search engines that highlight the non-compliance of the advertiser.

It is no longer good enough to rely only on a trademark clearance search before embarking on an advertising campaign. Advertisers should be aware of the limitations imposed by the South African ASA Code insofar as the copying of international advertising, branding, packaging and labelling goes.

In those instances where South African online advertisers' websites are accessible from the UK, those advertisers should be aware that the UK ASA Code can take action against offending advertising material. The websites should therefore not only comply with South African ASA requirements, but also with those of the UK. Those advertisers who choose to ignore these advertising regulations do so at their own peril.