



ICTA Licensee Advertising Guidelines

'Truth in Advertising'

These **'Truth in Advertising'** guidelines (the **'Guidelines'**) set out how the Information and Communications Technology Authority (**'ICTA'** or **'Authority'**) would normally consider the appropriateness of marketing communications made relating to the provision of ICT Services.

The Guidelines apply to all marketing communications made via any form of medium or delivery.

In the event of a complaint or dispute about such marketing communications being made to the ICTA, the ICTA would normally expect to follow the Guidelines when making its subsequent determination.

However, as the ICTA cannot legally fetter its discretion in advance, the ICTA retains the ability to depart from the Guidelines where the circumstances warrant it.

Therefore, when determining the appropriateness of marketing communications relating to the provision of ICT Services, the ICTA would normally consider the following as relevant:

Definitions

In the Guidelines:

'Claim' can be implied or direct, written, spoken or visual;

'Consumer' means a person who uses, or may use, the ICT Services of a Licensee;

'Licensee' means a licensee as defined in the Information and Communications Technology Authority Law (2011 revision) or its equivalent;

'Marketer' includes but is not limited to an advertiser, promoter or direct marketer;

'Marketing Communications' includes but is not limited to:

- advertisement in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), fax transmissions and other electronic or printed material;
- advertorials (being an advertisement feature, announcement or promotion, the content of which is controlled by the marketer, not the publisher, that is disseminated in exchange for a payment or other reciprocal arrangement);
- cinema, television, radio, video, DVD advertisements;
- online advertisements, web search listings, preferential listings on price comparison sites, viral advertisements, in-game advertisements and other online advertisements and promotions;
- point-of-sale displays;
- posters and other promotional media (including moving images);
- promotions; and,
- sponsorships.

'Material Information' means information that the Consumer needs in order to make an informed decision in relation to the purchase or continued use of an ICT Service.

For Marketing Communications that quote prices for advertised ICT Services, the definition of Material Information includes:

- the main characteristics of the ICT Service;
- the identity (for example, a trading name) and geographical address of the Marketer and any other trader on whose behalf the marketer is acting;
- the price of the advertised ICT Service, or if the nature of the ICT Service is such that the price cannot be calculated in advance, the manner in which the price is calculated;
- delivery or installation charges, if any;
- the arrangements for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely reasonably to expect; and,
- that the Consumer as a customer of that Licensee has the right to cancel his or her contract, if they have that right.

General

1. Marketing Communications should not materially mislead the average Consumer, or be likely to do so.
2. Obvious exaggerations/Claims (**'puffery'**) about the ICT Service being marketed that the average Consumer who sees such Marketing Communications is unlikely to take literally are allowed, provided such exaggerations/Claims do not materially mislead the average Consumer, or be likely to do so.
3. Marketing Communications should not materially mislead the average Consumer or be likely to do so by, among other things:

- omitting Material Information;
- hiding Material Information; or,
- presenting Material Information in an unclear, unintelligible, ambiguous or untimely manner.

Whether the omission or presentation of Material Information is likely to mislead materially a Consumer, or be likely to do so, will depend on:

- the context;
 - the medium and if the medium of the Marketing Communication is constrained by time or space; and/or,
 - the measures that the Marketer may take to make that Material Information available to the Consumer by other means.
4. Marketing Communications should not materially mislead the Consumer, or be likely to do so, by omitting the identity of the Marketer.
 5. Subjective Claims about the ICT Service should not materially mislead the Consumer, or be likely to do so: in particular, Marketing Communications should not imply that expressions of opinion by the Marketer are objective Claims.

Substantiation

6. Before distributing or submitting a Marketing Communication for publication, Marketers should hold documentary evidence to prove Claims that Consumers are likely to regard as objective and that are capable of objective substantiation. The Authority may regard Claims as misleading in the absence of adequate substantiation.

Qualification

7. Marketing Communications should state significant limitations and qualifications of the advertised ICT Services, such limitations and qualifications may clarify but should not contradict the Claims that they intend to qualify.
8. All limitations and qualifications must be presented clearly, including being located and presented in such a manner as to be clearly legible and/or audible, where applicable.

Exaggeration

9. Marketing Communications should not mislead Consumers, or be likely to do so, by exaggerating the capability or the performance of an ICT Service.
10. Marketing Communications should not present rights given to Consumers in law as a distinctive feature of the Marketer's offer.

11. Marketing Communications should not suggest that the Marketer's Claims about the ICT Service being marketed are universally accepted if a significant division of informed or scientific opinion about such a Claim exists.

Pricing

12. **Price statements** about the ICT Service being marketed should:
 - a. include statements about the manner in which the price will be calculated as well as the definite prices,
 - b. include governmental surcharges, fees and miscellaneous charges that are collected from consumers on behalf of government or appropriate authority, and any costs the law allows the licensee to pass onto its consumer as a surcharge; and,
 - b. not mislead by omission, undue emphasis or distortion and must relate to the ICT Service featured in the Marketing Communication.
13. Marketing Communications that state prices of the ICT Services should also state the applicable delivery, freight or postal charges or, if those cannot be reasonably calculated in advance, state that such charges are payable.
14. If the price of one ICT Service depends on another, Marketing Communications should make clear the extent of the commitment the Consumer must make to obtain the advertised price.
15. Claims about the quality of an ICT Service provided or to be provided, such as "**up to**" and "**from**", should not exaggerate the availability or amount of benefits likely to be obtained by the Consumer when using the ICT Service.
16. Marketing Communications should not describe an ICT Service as being "**free**" or "**without charge**", or imply such a case or similar, if the Consumer has to pay anything other than the unavoidable cost of responding and collecting or paying for the delivery of the ICT Service. In addition, such communications should not misrepresent the Consumer's opportunity to purchase the ICT Services at the terms presented. If the supply of the sale item is limited, or the seller can fulfil only limited demand, this must be clearly stated in the advertisement.

Comparisons

17. The Authority will likely consider unqualified superlative Claims as comparative Claims against all competing ICT Services, and any superiority Claims (i.e. any Claims that the Licensee's ICT Service is better than a competitor's) must be supported by objective evidence unless such Claims are obvious puffery.
18. Objective superiority Claims about an ICT Service must make clear the aspect of the ICT Service or the Marketer's performance providing that service that is claimed to be superior.

19. Marketing Communications that include a comparison with an identifiable competitor must not materially mislead the Consumer, or be likely to do so, about either the advertised ICT Service or a competing ICT Service, and should:
- compare ICT Services that meet the same need or are intended for the same purpose;
 - compare one or more material, relevant, verifiable and representative feature of those ICT Services, which may include price; or,
 - not create confusion between the Marketer and its competitors or between the Marketer’s product, service and trade marks, trade name, or other distinguishing mark and that of a competitor.
20. Marketing Communications that include a comparison with an unidentifiable competitor should not materially mislead the Consumer, or be likely to do so, and the elements of such comparison should not be selected to give the Marketer an unrepresentative advantage.

Imitation and Denigration

21. Marketing Communications should not materially mislead the Consumer, or be likely to do so, about who provides the advertised ICT Service, nor should they unfairly discredit or denigrate another ICT Service, Marketer, trade mark, service mark, trade name, or other distinguishing mark.
22. Marketing Communications should not take unfair advantage of the reputation of a competitor’s trade mark, service mark, trade name, or other distinguishing mark or of the designation of origin of a competing product.
23. Marketing Communications should not present an ICT service, including any products used to provide that service, as an imitation or replica of a product or service with a protected mark or trade name.

Endorsements and Testimonials

24. Endorsements and testimonials should relate to the advertised ICT Service and such endorsements and testimonials must be reasonably current.
25. Claims that are likely to be interpreted as factual and appear in an endorsement or testimonial must not materially mislead the Consumer, or be likely to do so.
26. Marketing Communications should not feature an endorsement or testimonial without the express permission of the person quoted, sourced or referenced.
27. Marketers should not refer in a Marketing Communication to advice received from the ICTA, or imply endorsement by the ICTA.

Guarantees and After-Sales Service

28. Marketing Communications should not use the word “**guarantee**” in a way that could cause confusion about a Consumer’s rights.
29. Any guarantees advertised about an ICT Service should include all related warranties, after-sales service agreements, and any care packages and similar products.
30. Marketing Communications should make clear each significant limitation to an advertised guarantee and supply the full terms of that guarantee before the Consumer is committed to taking up the guarantee.
31. Marketers should promptly refund Consumers who make valid claims under an advertised money-back guarantee.