



# Water Authority-Cayman

*Incorporated by Law No.18 of 1982 in the Legislative Assembly of the Cayman Islands*

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Via email to [consultations@ofreg.ky](mailto:consultations@ofreg.ky)

## RE: Consultation: Proposed Truth in Advertising Rules

To whom it may concern,

With respect to the consultation on Proposed Truth in Advertising launched by the Utility Regulation and Competition Office on 21 July 2025, Water Authority-Cayman is hereby submitting its comments on the proposed process.

***“Please provide your views on any matters you consider relevant to this draft Determination.”***

Water Authority-Cayman supports the introduction and enforcement of advertising guidelines aimed at ensuring that all marketing materials in the sector are truthful and transparent. We agree that consumers should have full confidence in the integrity of claims made by service providers.

However, we have several concerns with the proposed updates to the guidelines. As noted in our feedback to the 2019 draft, we continue to believe that rules governing truthful advertising should apply uniformly to *\*all\** companies, not only those regulated by your office. We acknowledge the Regulator’s previous response—that in the absence of a comprehensive Consumer Protection Act, it is appropriate to address advertising standards within the regulated sectors. While we understand this position, we respectfully ask for clarification: should a Consumer Protection Act come into force, ***will these sector-specific guidelines be retired, or will regulated companies then be subject to two overlapping standards?*** If the latter, this raises questions of fairness.

Additionally, the current draft appears to focus on one specific type of licensee, without adequately accounting for the full diversity of license holders in the sector. A more balanced and inclusive approach is needed to ensure the guidelines are applicable and relevant to all regulated entities.

We are also concerned about issues of fairness in the way the guidelines are structured. While the aim is clearly to protect consumers, certain provisions risk being unfair to the companies subject to them. For instance, in cases where the regulated entity is also a statutory Authority, the guidelines as written ***would allow dissatisfied consumers to pursue multiple avenues of recourse simultaneously; judicial review, court proceeding and now action through the Regulator.*** We would like to have clarification from OfReg regarding dissatisfied consumers being able to simultaneously pursue multiple avenues of recourse.

A further concern relates to the lack of standards for enforcement. The guidelines state that consequences will be applied at the discretion of the Regulator on a case-by-case basis. This discretionary approach, without a clear public standard or rubric, could lead to inconsistent or biased outcomes. We ***believe a defined framework that outlines how fees or sanctions will be calculated should be developed and made public.*** Such transparency would help ensure consistency and fairness across the board.

We have provided more detailed comments and queries on specific sections of the guidelines in the following pages.

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### ***“Suppliers of the World’s Most Popular Drink”***

## **Specific Queries**

- **A: Introduction & Objective**

- A3: These guidelines apply to providers of water-related products.
  - Can clarification be provided on what you mean by “water-related products”?
- A5: It should be noted that these rules do not restrict the use of other remedies that a consumer may have, such as a contractual or statutory right. These rules will be binding on all authorisation holders from the effective date.
  - This point seems to suggest that a member of the public can pursue multiple avenues of recourse simultaneously. Can this be clarified? We would recommend an escalation path similar to the one currently in place with the Ombudsman.

- **B: Definitions**

- In the definition of “Marketing Communications,” it is noted that the description “includes, but is not limited to,”
  - We have concerns that the open-ended definition could lead to general business engagement being seen as marketing communications.
- Definition references “DVD advertisement”. Does this continue to be a relevant channel?

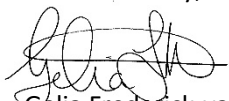
- **C: The Office’s Expectations**

- C14: The Determination notes that “Whether the omission or presentation of Material Information is likely to materially mislead a Consumer, or be likely to do so, will depend on:...the medium, and if the medium of the Marketing Communication is constrained by time or space.”
  - This is very unclear. Marketing campaigns will use a variety of media to convey a message, and many factors are used to determine which media is the most appropriate for the campaign. In addition, by their very nature, marketing campaigns have a limited timeframe. Does this mean that every medium must be used for every campaign? And what time frame would be considered long enough not to be misleading? Some clarity is needed to help the Authorised Holders better understand how the use of media, “constrained by time or space”, would cause the material information to be misleading.
- C15: The Determination notes that “Marketing Communications should not materially mislead the Consumer, or be likely to do so, by omitting the identity of the Marketer.”
  - Why would a marketer spend the effort to create Marketing Communications material to promote services and goods, and hide its identity? How would the customer know where to find the promoted services and goods? Is there a specific case study the Regulator is referring to that can be shared to clarify this point?
- C16: The Determination notes that “Marketing Communications should be reasonably accessible to persons with disabilities, particularly where essential terms or pricing information is provided.”
  - While the Authority agrees that efforts should be made to make marketing communications accessible to persons with disabilities, would consequences be applicable if every piece of content did not have an accessible form? That is not always feasible. How does that make the marketing communications inherently misleading? Can the Regulator provide clarity?
- C17: The Determination notes that “Subjective Claim about the Utility Services 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.”

- Does this not remove some creative license? A subjective claim is not inherently untrue.
- **D. Substantiation, Qualification, and Exaggeration**
  - D25: The Determination notes “Marketing Communication should not suggest that the holding of Sectoral Licence is a sign of satisfactory or great Utility Service.”
    - Shouldn’t possession of a Sectoral Licence be a sign of satisfactory utility services in the eyes of the Regulator?
  - D27: The Determination notes “Where generative content, automated scripts or AI-driven marketing is used, Marketers remain responsible for ensuring compliance with these Rules and shall not rely on the autonomous natures of such tools as a defence for non-compliance.”
    - Can the Regulator provide clarity on what it considers “AI-driven marketing”? Is it content creation tools, chatbots, analytical tools, or copywriting editors?
- **J. Remedies and Consequences**
  - J49: The Determination notes “If a Marketing Communications is not truthful, is deceptive, unfair, or cannot be substantiated, the Office **at its own discretion** may take one or more of the following enforcement actions, as appropriate:”
    - There should be a standard for how the Regulator determines the penalty for an Authorised Holder. Lacking a clear and understandable standard could lead to a perception of biased penalisation.
    - The determination also makes no note of an investigation. Will the Regulator undergo enforcement efforts without first conducting an investigation? Can clarification be provided?
  - J50: The Determination notes “The Office **may** publish determinations of non-compliance on its website as part of its transparency obligations”.
    - If transparency is the goal, then it would seem publications should be a mandatory obligation and not optional.

We look forward to the Office’s feedback on the comments provided.

Yours sincerely,



Gelia Frederick-van Genderen  
Director, Water Authority

cc: Mr Darrel Rankine, Cert Hon, JP, Chairman, Water Authority Board *via email to*  
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