

POLAND



Law and Practice

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Softysiński Kawecki & Szlęzak is one of the leading legal advisers on intellectual property, unfair competition and advertising on the Polish market. It is also highly appreciated internationally, and has advised and represented clients in a range of intellectual property cases. The firm is involved in the protection of: EU and Polish trade marks, including renowned trade marks, geographical indications and other distinguishing indications; EU and industrial designs, utility models, patents, plant varieties, topographies

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1. Legal Framework and Regulatory Bodies

1.1 Primary Laws and Regulation

Advertising practices in Poland are regulated by laws of a general, cross-sectoral nature, and also by laws governing specific market sectors.

The primary legislation includes:

- the Law on Counteracting Unfair Competition of 16 April 1993 (the UCL), which transposes Directive 2006/114/EC of 12 December 2006 concerning misleading and comparative advertising, among others, and regulates fair advertising in B2B relations; and
- the Law on Counteracting Unfair Marketing Practices of 23 September 2007 (the UMPL), which transposes Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, and governs fair commercial practices (including advertising) in B2C relations.

Secondary legislation pertains to advertising practices in numerous specific market sectors, such as:

- tobacco products – the law of 9 November 1995 on health protection against the effects of tobacco and tobacco products;
- alcohol beverages – the law of 26 October 1982 on bringing up children in an environment of sobriety and counteracting alcoholism;
- medicinal products – the Pharmaceutical Law of 6 September 2001; and
- radio and television – the Broadcasting Law of 29 December 1992.

1.2 Enforcement and Regulatory Authorities

The following civil and administrative authorities are charged with enforcing the laws and regulations governing advertising practices.

Common Courts Competent for Civil Claims

Common courts in Poland examine disputes between businesses (B2B) under the UCL, and between consumers and business (B2C) under the UMPL. The remedies available before the common courts in both types of proceedings are broad and include the following.

- Under both the UCL and the UMPL:
 - (a) cessation of the unfair advertising practice;
 - (b) removal of effects of such practices;
 - (c) making of a single statement or a series of statements (typically, press statements with content determined by court);
 - (d) redress of damage caused in accordance with general rules; and
 - (e) awarding an appropriate sum of money for a specific social purpose.
- Under the UCL:
 - (a) recovery of unduly obtained benefits; and
 - (b) deciding on products, their packaging, advertising materials and other objects directly related to unfair competition, including their destruction or crediting towards damages.
- Under the UMPL:
 - (a) reduction of price; and
 - (b) cancellation of a contract with mutual reimbursements by the parties.

Some of the civil claims (remedies) under the UMPL can also be brought by the Ombudsman, the Financial Ombudsman, the county (municipal) consumer ombudsman or a national or

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regional organisation whose statutory objective is to protect the interests of consumers.

The President of the Office of Competition and Consumer Protection

The President of the Office of Competition and Consumer Protection (OCCP) is competent to examine those advertising practices that may be qualified as infringing the collective interests of consumers in the meaning of the Law of 16 February 2007 on Competition and Consumer Protection. If a breach is confirmed during the proceedings, the President of the OCCP may impose:

- a penalty on a business of up to 10% of the turnover generated in the financial year preceding the year of imposing the penalty; or
- a fine of up to PLN2 million on a managerial person if, in the exercise of their function at the time of the established infringement, that person intentionally allowed the business to infringe the prohibition of practices infringing the collective interests of consumers, through their action or omission.

1.3 Liability for Deceptive Advertising Meaning of Deceptive Advertising

Deceptive advertising is prohibited under the general, cross-sectoral laws governing advertising (the UCL and the UMPL) and under those governing specific market sectors.

While the UCL does not provide a separate definition of deceptive/misleading advertising, its application by the courts complies with the definition set out in Directive 2006/114/EC of 12 December 2006 concerning misleading and comparative advertising. Under this Directive, “misleading advertising” means any advertising that in any way deceives or is likely to deceive the persons to whom it is addressed or to whom

it reaches, including through its presentation, and which, by reason of its deceptive nature, is likely to affect their economic behaviour, or which, for those reasons, injures or is likely to injure a competitor. Similarly, under the UMPL (transposing Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market), a market practice is considered misleading if it in any way causes or is likely to cause the average consumer to take a contractual decision that they would not have taken otherwise.

If advertising is held to be deceptive (misleading) by the court, the court can apply various remedies requested by claimants, including:

- cessation of the unfair advertising practice;
- removal of its effects;
- making a statement in the press;
- monetary remedies (redress of damage and/or recovery of unduly obtained benefits); or
- the destruction of advertising materials.

Importantly, not only advertisers are subject to these remedies under the UCL: they also apply to advertising agencies or other businesses that created an advertisement.

In turn, if deceptive advertising can be qualified as a practice infringing the collective interests of consumers in the meaning of the Law of 16 February 2007 on Competition and Consumer Protection, the President of the OCCP may impose:

- a penalty on a business of up to 10% of the turnover generated in the financial year preceding the year of imposing the penalty; or
- a fine of up to PLN2 million on a managerial person if, in the exercise of their function at the time of the established infringement, that person intentionally allowed the business to

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infringe the prohibition of practices infringing the collective interests of consumers, through their action or omission.

1.4 What Is Advertising?

Market Sector Laws

Depending on the specific market sector and the laws applicable to such sector, different “advertising” definitions apply. For example, under the Broadcasting Law of 29 December 1992, an “advertisement” is a commercial message originating from a public or private entity in connection with its business or professional activity, intended to promote the sale or paid use of goods or services; self-promotion is also advertising. Similarly, the broadly worded phrase “advertising tobacco products, electronic cigarettes, refill containers or tobacco props” is set out in the Law of 9 November 1995 on Health Protection against the effects of tobacco and tobacco products.

General, Cross-Sector Laws

As the law governing fair competition, including fair advertising within a cross-sectoral scope (ie, it is applicable to all businesses to the extent sector-specific laws do not apply) and while transposing Directive 2006/114/EC of 12 December 2006 concerning misleading and comparative advertising, the UCL does not incorporate its own definition of “advertising”, thereby leaving this to case law and doctrine.

Polish case law under the UCL has already very broadly discussed the meaning of “advertising”. For example, in its judgment of 26 January 2006 (Case No V CSK 83/05), the Polish Supreme Court clarified the meaning of “advertising”, outlining that it is any statement addressed to potential consumers relating to goods or services, or a business offering goods or services, with the aim of encouraging and persuading the

recipients to purchase goods or use services. The incentive may be expressed directly (eg, by using terms corresponding to specific activities that will result in the sale of goods or services) or indirectly (by creating a suggestive image of the goods and services, or of the entrepreneur themselves, to the extent that the recipients feel an irresistible desire to purchase the goods and services). This example of “advertising” understanding given by Polish case law is substantially in line with a more general definition expressly provided in Directive 2006/114/EC.

1.5 Pre-approvals

In principle, no pre-approvals need to be obtained from government or other authorities before running an advertisement.

The Advertising Council offers advertisers a service whereby it assesses a given advertisement in light of the Code of Ethics in Advertising.

1.6 Intellectual Property and Publicity Rights

The use of intellectual property or an individual’s name, picture, voice or likeness in advertising is assessed in light of a general prerequisite that any advertisement must comply with law and good commercial practices. This means that the use of third-party IP rights, names, pictures, voices, likenesses or any other personal interests/moral rights (*dobro osobiste*) in an advertisement must satisfy the conditions of such permitted use as set out in the relevant laws governing a specific sector – eg, by obtaining the relevant licence, consent or authorisation.

Specific rules apply under the UCL apply to comparative advertising in terms of third-party IP rights, reflecting the relevant conditions set out in Directive 2006/114/EC. For example, comparative advertising cannot discredit or

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denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor, and cannot take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products.

1.7 Self-Regulatory Authorities

The Advertising Council and the Advertising Ethics Commission

In Poland, the Advertising Ethics Commission (the AEC) acts as a self-regulatory authority, through the Advertising Council (www.radarekla-my.pl). Within its competences, the AEC can examine complaints against advertisements submitted by both consumers and businesses. Upon examination of a complaint and conducting proceedings, the AEC may, among other actions, issue a resolution in which it:

- upholds the complaint and communicates to the business (defendant) that the advertisement should be amended in such a way as to remove the breach of Code standards as soon as possible; or
- upholds the complaint and communicates to the business (defendant) that the complainant should cease advertising.

Each party may file an appeal against the resolution issued by the AEC. The appeal is examined by the AEC Appeal Team, which consists of AEC members who did not participate in the first instance proceedings.

1.8 Private Right of Action for Consumers

Private Right of Action Under the UMPL

A private right of action is available for consumers in Poland to challenge advertising practices in Poland in common court proceedings, which

can be initiated under the UMPL. Remedies available for consumers before the common courts include:

- cessation of the unfair advertising practice;
- the removal of the effects of such practice;
- the making of a single statement or a series of statements (typically, press statements with content decided by the court);
- redress of damage caused in accordance with general rules;
- awarding an appropriate sum of money for a specific social purpose;
- a decrease in price; or
- cancellation of a contract, with mutual reimbursements by the parties.

Transposition of Directive 2020/1828

On 29 August 2024, Poland transposed Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC. This enabled representative actions to be brought in Poland against traders' infringements of the provisions of Union law referred to in Annex I of Directive 2020/1828, which sets out a broad list of EU Regulations and Directives, including Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and Directive 2006/114/EC concerning misleading and comparative advertising.

1.9 Regulatory and Legal Trends

One of the trends in the Polish advertising landscape in the past 12 months has been a growing focus on green-washing and advertising with pseudo-ecological messages. Directive 2024/825 of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair prac-

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tices and through better information the greenwashing phenomenon is already under close examination in Poland by the President of the OCCP, and the number of proceedings initiated before the OCCP in recent months.

1.10 Taste and Cultural Concerns

A broad range of taste or cultural aspects may play a role when assessing the compliance of advertising material with the relevant laws in Poland. The UCL provides general and captious wording in this respect, prohibiting any advertising that offends human dignity or appeals to consumers' emotions by causing fear or drawing on superstitions.

The correct understanding and application of these limitations was left to case law and doctrine. In its judgment dated 14 December 2005 (Case No VI Aca 616/05), the Court of Appeal in Warsaw held that restrictions on advertising may be put in place to protect the rights of others or the specifics of a trade or profession. Advertising should respect the dignity of the human person. Advertising should be prohibited if it:

- shows violence or racial hatred;
- contains content that discriminates on the basis of race, gender or nationality;
- is offensive to religious beliefs; or
- encourages conduct that harms the environment.

In another ruling issued on 20 August 2014 (Case No VI Aca 1740/13), the Court of Appeal in Warsaw emphasised that media communications should respect human dignity in both content and presentation. The prohibition of the promotion of discriminatory content applies to the portrayal of unequal treatment in a manner that is likely to increase or perpetuate such behaviour and discriminatory stereotypes. Broadcasts

that violate human dignity or contain discriminatory content shall be qualified as contrary to law, morality and the public good.

In turn, it is outlined by doctrine and practitioners that the regulations governing fair advertising (such as the UCL) should not aim to prohibit or prevent distaste among customers.

1.11 Politics, Regulation and Enforcement

For a number of years now, fair advertising and communications aimed at consumers have become the subject of increasing and closer scrutiny by the President of the OCCP. This phenomenon is part of a more general trend and the initiative to provide EU consumers with greater protection against unfair (including deceptive) business practices.

2. Advertising Claims

2.1 Deceptive or Misleading Claims

Under the UCL, advertising is considered misleading if it may affect the client's decision to purchase a product or service. Similarly, under the UMPL transposing EU Directive 2005/29, a market practice (including advertising) is considered misleading if it in any way causes or is likely to cause an average client to take a contractual decision that they would not have taken otherwise.

It should also be noted that, under Polish law, misleading advertising may also occur as a result of omission – eg, when an advertiser omits material information that the average consumer needs to make an informed contractual decision.

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2.2 Regulation of Advertising Claims UCL

The UCL provides that all elements need to be taken into consideration when assessing a misleading advertisement, particularly those concerning the quantity, quality, ingredients, manufacturing method, fitness for a particular purpose, uses, repair or maintenance of the advertised products or services, as well as the customer's behaviour.

UMPL

A similar approach was adopted in the UMPL, according to which all elements of a market practice should be taken into account when assessing whether or not it is misleading, including the circumstances in which the product is marketed. Irrespective, the UMPL sets out a broad list of commercial practices that shall be regarded as unfair in all circumstances, reflecting the list set out in Annex I to EU Directive 2005/29.

2.3 Substantiation of Advertising Claims

In both the UCL and the UMPL, the Polish legislature introduced a rule that the burden of proof should rest with the advertiser. Under the UCL, the burden of proving the truthfulness of statements made in an advertisement rests with the defendant. This means that advertisers need to be prepared to present evidence supporting the truthfulness/not misleading character of their advertising claims.

2.4 Product Demonstrations

Under Polish law, product demonstration (presentation) forms one of the elements that is taken into account while assessing whether a given advertising is misleading. For example, under the UMPL all elements need to be taken into account when assessing whether a market practice (including advertising) is misleading by action, including the way in which a product is presented.

The UMPL also expressly prohibits “bait and switch” practices, which consist of offering to buy a product at a certain price and then refusing to show the advertised product to consumers.

2.5 Endorsements and Testimonials

The UMPL contains a broad list of commercial practices that are regarded as unfair in B2C relations in all circumstances. The Polish legislature has also provided a list of practices pertaining to consumer reviews and consumer opinions, with the following activities being considered unfair in all circumstances under the UMPL:

- a trader who gives access to consumer reviews of products claiming that those reviews have been posted by consumers who have used or purchased the product, even though the trader has not taken reasonable and proportionate steps to verify that the reviews originate from those consumers; and
- posting or causing another person to post false consumer opinions or recommendations, or distorting consumer opinions or recommendations for the purposes of promoting products.

In terms of endorsements, the UMPL prohibits, in all circumstances, falsely claims that a trader (including their commercial practices) or a product has been approved, endorsed or authorised by a public or private body, or making such a claim without complying with the terms of the approval, endorsement or authorisation.

2.6 Disclosures

Polish law expressly prohibits any hidden advertising, which is understood as:

- a statement that encourages the purchase of goods or services and – at the same time –

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- creates the impression of neutral information (UCL); or
- the use of journalistic content in the mass media to promote a product where the business paid for that promotion and this is not clear from the content or from images or sounds that are easily recognisable by the consumer (UMPL).

2.7 Representation and Stereotypes in Advertising

Under the UCL, advertising that appeals to consumers' emotions by causing fear or drawing on the superstitions or credulity of children is considered unfair and is expressly prohibited.

2.8 Environmental Claims

The regulations pertaining specifically to environmental claims and green-washing are of interest to the EU legislature. Directive 2024/825 of 28 February 2024 has been adopted and awaits its transposition by EU member states (by September 2026), and the Directive on Environmental Claims is under preparation. Both practices are subject to the general provisions of the UCL and the UMPL, and shall be assessed as potentially misleading advertising and actions that are misleading to the consumer.

2.9 Dark Patterns

The use of dark patterns may lead to the violation of a number of Polish and EU legal regulations, such as the GDPR or regulations relating to consumer protection, unfair competition or unfair market practices. In 2022, the European Data Protection Board published guidelines regarding the usage of dark patterns (www.edpb.europa.eu), which may be helpful for online advertisement. With the coming into force of the EU Digital Services Act, a prohibition on the use of dark patterns has recently been introduced for online platform providers.

2.10 Children

Under Polish regulations any advert targeted at children must not:

- appeal to customers' feelings by creating fear or exploiting superstition or children's credulity (eg, containing an element of longing for parents, a need for acceptance among peers or a need to "rebel" against the dictates of parents and educators); or
- include a direct appeal to children to purchase advertised products or to persuade parents or other adults to buy the advertised products for them.

The Advertising Council has prepared Annex 3 of the Advertising Commercial Code – the Charter on the Protection of Children in Advertising. This document sets out the conditions that should be met so that the interests of children (particularly those under 12 years of age) are properly protected in marketing communications (www.radareklamy.pl).

Broadcast programmes that are targeted at children cannot contain product placement nor be interrupted by commercials. Children's programmes should not be accompanied by commercial messages relating to food or drink containing ingredients that are in excessive amounts in the daily diet.

2.11 Sponsor ID and Branded Content

Marketing content that is sponsored or branded must be clearly identified as such in order to follow the general principle of not misleading the consumer. Recently, this has been of particular importance in the context of the tagging of sponsored posts online by influencers. For example:

- online marketing materials (including auto promotion) shall be tagged as #advertis-

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ing, #co-advertising, #sponsoredmaterial or #paidcollaboration;

- abbreviations or ambiguous terms such as #promo should be avoided; and
- events, series, films or programmes broadcast in media being sponsored or branded must contain precise information on such sponsorship or product placement (eg, “programme contains product placement” or “the programme is sponsored by”).

2.12 Other Regulated Claims

Under the UMPL, which transposes EU Directive 2005/29, one of the market practices that is considered misleading and unfair in any circumstances is the presentation of a product as “gratis”, “free”, “without charge” or similar if the consumer has to pay any amount except for the direct costs incurred in responding to the marketing practice or in collecting or delivering the product.

References to products being “natural” or “organic” are also the subject matter of various market-specific regulations. For example, under EU Regulation 2018/848 of 30 May 2018 on organic production and labelling of organic products, a product shall be regarded as bearing terms referring to organic production where, in the labelling, advertising material or commercial documents, such a product, its ingredients or feed materials used for its production are described in terms suggesting to the purchaser that the product, ingredients or feed materials have been produced in accordance with this Regulation. In particular, the terms listed in Annex IV of this EU Regulation and their derivatives and diminutives, such as “bio” and “eco”, whether alone or in combination, may be used throughout the EU and in any language listed in that Annex for the labelling and advertising of

products referred to in Article 2(1) that comply with this Regulation.

Irrespectively, general rules concerning fair advertising arising from the UCL and UMPL apply to any types of claims, such as natural or country of origin.

3. Comparative Advertising and Ambush Marketing

3.1 Specific Rules or Restrictions

Poland has transposed Directive 2006/114/EC within the scope concerning comparative advertising. Under the UCL, comparative advertising in Poland is allowed as long as it is in line with good commercial practices (*dobre obyczaje*). Comparative advertising complies with good commercial practices if the following prerequisites are jointly met:

- it is not misleading;
- it compares goods or services meeting the same needs or intended for the same purpose;
- it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- for products with a designation of origin, it relates in each case to products with the same designation;
- it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;

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- it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name; and
- it does not create confusion among traders between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services of those of a competitor.

Comparative advertising relating to a special offer should, depending on its terms, clearly and unambiguously indicate the expiry date of the offer, or state that the offer is valid until the stock of goods is exhausted or the services are discontinued. In those cases where a special offer is not yet in force, it should also indicate the date from which the special price or other specific terms of the offer will apply.

3.2 Competitor Copyrights and Trade Marks

Advertisers are permitted to use the name of a competitor, a competitor's trade mark or a competitor's packaging in comparative advertising as long as such usage is not contrary to good practices and is made only for comparative information purposes and in accordance with the prerequisites set out in the UCL.

Any reference to a competitor's names, trade marks or packaging shall be made in a reliable and fair manner, without discrediting or damaging the reputation of the competitor or its trade marks, with no intention to promote the advertiser's own brand or to suggest a link with a competitor.

3.3 Challenging Comparative Claims Made by Competitors

An advertiser may challenge comparative claims made by competitors by bringing a legal action

before the civil court. In such proceedings, the advertiser may demand:

- cessation of the unfair advertising practice;
- removal of the effects of such practice;
- the making of a single statement or a series of statements (typically, press statements with content determined by the court);
- redress of damage caused in accordance with general rules;
- the recovery of unduly obtained benefits; or
- deciding on products, their packaging, advertising materials and other objects directly related to unfair competition, including their destruction or crediting towards damages.

The advertiser may also face a complaint being filed by its competitor before the AEC. If such a complaint is upheld, the advertiser may be obliged to amend the advertisement in such a way as to remedy the breach or to cease disseminating the advertisement.

3.4 Ambush Marketing

There are no specific rules related directly to ambush marketing in Poland. Such activities would be assessed on a case-by-case basis as potential acts of unfair competition under the UCL, especially in accordance with the principles of fair advertising.

Depending on the context and the scope of the ambush marketer's activity, the provisions of other laws may also apply, particularly in the fields of copyright, industrial property or unfair market practices.

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4. Social/Digital Media

4.1 Special Rules Applicable to Social Media

General rules regarding advertising activity also apply to online advertising.

Rules on internet advertising may be connected with or result from provisions that restrict or prohibit the advertising of certain goods or services (eg, alcohol, tobacco products, pharmaceutical products or gambling), or that restrict or prohibit advertising directed to selected groups, such as children.

Moreover, as of 17 February 2024 Poland and other EU member states are covered by the Digital Services Act, which introduces new obligations for online platforms, hosting providers, etc, intermediating in the provision of content on the internet regarding, inter alia, online advertising.

4.2 Liability for Third-Party Content

As a rule, if the posted content does not originate from the advertiser they are not liable for it. Nonetheless, potential liability may depend on different factual situations and may arise in the following circumstances, for example:

- if the content posted on the advertiser's site or social media channels originates from or concerns the advertiser (at their order or on their initiative), even if only indirectly;
- if the advertiser is not aware of the unlawful nature of the content and immediately prevents access to the content in the event of receiving official notification or gaining credible knowledge of the unlawful nature of the content; or
- if the posted content is protected under copyrights and the advertiser – being the provider of online content services in the meaning

of Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market – has not obtained relevant consent from the entitled entity.

Moreover, an entity that advertises its business by means of unfair advertising cannot exempt itself from liability for such an act of unfair competition by entering into an advertising development contract with a company that professionally engages in such activities.

4.3 Disclosure Requirements

There are no specific rules that apply to online disclosures and disclosures on social media; the general rules apply in this respect.

4.4 Requirements for Use of Social Media Platforms

Apart from the general principles that apply, there are no unique rules or regulations that apply to the use of any of the major social media platforms in Poland, nor are there any social media platforms that are not permitted to be used in Poland. The general principle is that children below 13 years of age should not have access to a social media platform without the consent of their legal guardians. Additional principles regarding their use may also be provided directly by such platforms in their regulations, given the obligations imposed on them by the Digital Services Act. This may include rules regarding permissible content, their blocking or deletion, or identifications of users.

4.5 Special Rules for Native Advertising

Hidden advertising is prohibited under both the UCL and the UMPL. The UMPL expressly provides that advertising that involves the use of journalistic content in the mass media to promote a product when the business has paid for this promotion, and this is not clearly evident

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from the content or from images or sounds that are easily recognisable by the consumer, is considered an unfair market practice in all circumstances. Advertisements must be clearly marked that they do not constitute editorial material. To achieve this, wording such as “Sponsored”, “Sponsored article”, “Advertisement”, “Product placement” (for broadcasts) or “content developed in collaboration with the brand” is used. Advertisers also distinguish the advertising material from other content (eg, by using different graphic effects).

5. Social Media Influencer Campaigns and Online Reviews

5.1 Special Rules/Regulations on Influencer Campaigns

In the context of the general ban on hidden advertising, the advertising of goods or services on the internet by influencers has become increasingly important in recent years. The President of the OCCP has published guidelines on the labelling of advertising content by influencers, especially on social media.

5.2 Advertiser Liability for Influencer Content

Advertisers may be liable for the content posted by their influencers as they are a party to the contract for the provision of advertising services and the advertising related to their product. There are no explicit influencer-related regulations that require advertisers to monitor the activities of influencers. However, such a duty for advertisers arises under general Polish civil law rules concerning contractual and tort liability, and from certain civil procedure laws.

5.3 Consumer Reviews

There are no special rules or regulations that apply to the solicitation or use of consumer reviews. Both such activities must be in line with the general rules prohibiting the dissemination of false or misleading information, or involving product claims (under the UCL) and the prohibition of unfair market practices (under the UMPL).

For example, the following activities would be held unfair in terms of the solicitation or use of consumer reviews:

- buying opinions;
- creating false opinions or;
- using positive feedback on one product to apply to another product.

5.4 Liability for Consumer Reviews

As a rule, the advertiser is not liable for consumer reviews. However, if it is proven that opinions are published which are untrue, manipulated or misleading on the initiative of the advertiser, said advertiser can be held liable for such actions.

In the context of the latest changes introduced by the “Omnibus” Directive 2019/2161 of 27 November 2019, businesses that provide access to consumer opinions on products have an obligation to declare whether they monitor whether or not the published opinions came from consumers who had actually used or bought the product in question and, if so, what procedures they applied in this respect. Consequently, as long as the advertiser declares that it provided such monitoring, it is obliged to follow this duty.

6. Privacy and Advertising

6.1 Email Marketing

The following main rules should be followed by advertisers with respect to email marketing.

- There must be a legal basis for the use of email marketing, such as the voluntary, specific, conscious and unequivocal consent for email marketing of the specific addressee (not only a natural person) to whom the email marketing is directed (double opt-in requirement). There should be additional confirmation of will for obtaining email marketing afterwards – eg, signing up for a subscription.
- If a specific person has been identified as the addressee and their data is being used, the advertiser must always comply with the information obligation towards them resulting from data protection legislation. Depending on the choice of the legal basis for data processing, additional consent may be necessary, based on GDPR regulation.
- The recipient of e-mail marketing must be given the opportunity to easily resign from receiving marketing messages at any time.

If these rules are violated, the advertiser may be held liable based on data privacy regulations, telecommunications law, regulations governing the provision of services by electronic means or the UCL. In addition to civil and administrative sanctions, there is also a criminal liability for sending unsolicited commercial communications.

6.2 Telemarketing

The following main rules shall be followed by advertisers with respect to telemarketing.

- There must be a legal basis to perform telemarketing, such as the voluntary, specific,

conscious and unequivocal consent for telemarketing of the specific addressee (not only a natural person) with whom the advertiser is in contact. In practice, they should be called first call to gain consent for telemarketing, and then called again to provide a marketing message.

- If a specific person has been identified as the addressee and their data is being used, the advertiser must always comply with the information obligation towards them resulting from data protection legislation. Depending on the choice of the legal basis for data processing, additional consent may be necessary based on GDPR regulation.
- The recipient of telemarketing must be given the opportunity to easily resign from receiving further marketing calls at any time.

In cases of violation of the rules, the advertiser may be held liable based on data privacy regulations, telecommunications law or the UCL. The advertiser may be subject to administrative fines for performing telemarketing without obtaining the required consent from recipients.

6.3 Text Messaging

The following main rules shall be followed by advertisers with respect to text messaging.

- There must be a legal basis for the use of text messaging for marketing purposes, such as the voluntary, specific, conscious and unequivocal consent for text messaging of the specific addressee (not only a natural person) to whom the text messaging is directed (double opt-in requirement). In practice, there should be additional confirmation of will for obtaining subsequent marketing text messaging eg, signing up for a subscription.
- If a specific person has been identified as the addressee and their data is being used, the

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advertiser must always comply with the information obligation towards them resulting from data protection legislation. Depending on the choice of the legal basis for data processing, additional consent may be necessary based on GDPR regulation.

- The recipient of text messaging must be given the opportunity to easily resign from receiving marketing text messages at any time.

If these rules are violated, the advertiser may be held liable based on data privacy regulations, telecommunications law, regulations governing the provision of services by electronic means or the UCL. In addition to civil and administrative sanctions, there is also a criminal liability for sending unsolicited commercial communications.

6.4 Targeted/Interest-Based Advertising

When processing consumers' personal data, "obliged entities" (such as advertisers that are targeting entities or social media providers, data administrators or co-administrators) have to follow the GDPR regulations, with the information obligation being one of the most important. Under this obligation, the data administrator (which may also be an advertiser) provides precise information about the purposes of data processing. This means that obliged entities must provide consumers with information that their data will be processed for the purpose of targeting or retargeting marketing content intended for them. This concerns data acquired, observed or inferred.

Another requirement arising from the GDPR regulations is that obliged entities must have a legal basis for their actions. Depending on the circumstances, such legal basis may be consumer consent, which may be revoked at any time – eg,

in case of the profiling of data or arising from a legitimate interest of the data administrator, with consumers having the right to object at any time.

When establishing the terms of reference for individual measures (eg, for targeted advertising in the EU), guidelines published by the European Data Protection Board may be helpful (www.edpb.europa.eu).

6.5 Marketing to Children

The collection or use of personal information from children comes under the special protection of the GDPR and Digital Services Act regulations, with the following stipulations:

- as a rule, children below 13 years cannot give consent to data processing – the consent must come from the child's parent/legal guardian;
- children between 13 and 18 years may give consent to data processing but it must be confirmed by the child's parent/legal guardian;
- children above 16 years may give their effective consent (without confirmation from their parent/legal guardian) to data processing but only if the consent relates to information services offered directly to the child;
- automated processing of data including profiling may not involve children; and
- when the processing involves a child, all information and messages should be formulated in clear and simple language that the child can easily understand.

Civil, administrative and criminal liabilities are provided for violating obligations regarding children's data processing, including high financial penalties imposed by the data protection authority.

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6.6 Other Rules

For the proper conduct of marketing activities in Poland through the internet, an advertiser needs to comply not only with the GDPR regulations but also with regulations concerning telecommunications law and the provision of electronic services, which are intertwined and sometimes create independent obligations on the part of the advertiser.

7. Sweepstakes and Other Consumer Promotions

7.1 Sweepstakes and Contests

In Poland, sweepstakes and contests are subject to different legal ramifications, but what they have in common is that the organisation rules shall be pointed out in the organiser's terms and conditions. These need to be accepted by every participant and are subject to a legal assessment – eg, regarding consumer protection.

7.2 Contests of Skill and Games of Chance

In Poland, contests of skill are a different activity from games of chance. "Contest" is not defined precisely in Polish law but it is treated as a type of "public promise" in the meaning of the Polish Civil Code. It is less formalised than games of chance.

In turn, games of chance are subject to the Polish Gambling Act, and are distinguished from contests in that the outcome depends in particular on the odds, which means that a game of chance always includes an element of randomness that a contest cannot contain. Moreover, in games of chance, the organiser must provide the person supervising the game of chance with training in the regulations. Such a person must hold a certificate of training.

7.3 Registration and Approval Requirements

Only games of chance require authorisation (permit) from the competent director of the chamber of fiscal administration for the defined game of chance specified in the motion and for the defined organiser. The motion for a permit needs to be paid, and the authority has two months to process the motion.

If the prize pool does not exceed the base amount indicated in the Gambling Act, a game of chance in the form of a fun lottery or bingo game requires the relevant application to be made (free of charge) to the competent head of customs and the tax office. The authority has 30 days to process the motion.

7.4 Free and Reduced-Price Offers

Special laws that apply to reduced-price offers have been introduced to the Polish legal system in relation to the implementation of the "Omnibus" Directive, and have been regulated in the Polish Civil Code, the Consumer Rights Act and the law on the information of prices of goods and services. These regulations apply to all sellers (Polish, EU and non-EU) who direct their sales to customers in Poland and to all sales channels (B&M stores, online shops, etc).

The ground rule is that whenever a reduction in the price of a good or service is advertised, the lowest price shall be displayed alongside information about the price reduction, together with information about the lowest price of that good or service in the 30 days prior to the reduction. If a good or service is offered for sale for a period shorter than 30 days, the reduced price shall be displayed together with information about the lowest price for that good or service which has been in force during the period from the date the

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goods or services were offered for sale until the date the reduction was introduced.

The practical issues related to price-reduction offers have been pointed out in official explanations by the President of the OCCP (uokik.gov.pl). The way of providing free products/services or their samples may trigger issues regarding the correct classification of such benefits and their accounting for tax purposes, especially value added tax.

7.5 Automatic Renewal/Continuous Service Offers

As a rule, it is possible under Polish consumer law for contracts with consumers to include provisions that automatically extend contracts or continue to provide services but under some specific conditions.

Practices in which services are automatically renewed for another period after the contract expires if the consumer does not object (ie, takes proactive action) before the expiry of the original contract are deemed prohibited contractual provisions. To be in line with consumer regulations, the seller should ensure that the consumer is able to make an informed decision regarding the renewal of the contract for a further fixed period by informing the consumer of the expiry date and possibly making a new offer.

Continuous services (including recurrent payments) are permitted if they do not mislead consumers by creating an impression that the consumer pays only for a one-time service when they are in fact debited for recurrent services. Recurrent payable subscriptions must be preceded by the express and informed consent of the consumer, as must any changes to such subscription (especially regarding the recurring payments). Moreover, the consumer must be

able to easily resign from continuous services at any time without incurring any additional fees.

8. Artificial Intelligence

8.1 AI & Advertising Content

There are currently no specific regulations governing the use of artificial intelligence in connection with the development of advertising content.

The newly adopted EU Regulation 2024/1689 of 13 June 2024 laying down harmonised rules on artificial intelligence (the “AI Act”) does not address this area, but it outlines in Point 29 of the Preamble that common and legitimate commercial practices – eg, in the field of advertising – that comply with the applicable law should not, in themselves, be regarded as constituting harmful manipulative AI-enabled practices. As with other entrepreneurs operating in Poland and within the EU, advertisers are still facing some uncertainty regarding both IP ownership (or lack thereof) with respect to materials (output) generated by or with the use of AI algorithms, and the possible infringement of third-party rights (eg, copyrights) as a result of the use of AI-generated content based on content/input being protected by third-party rights such as copyrights, design rights, etc.

8.2 AI-Related Claims

While there are no specific regulations or rules related to making claims that a product is developed through the use of AI, is powered by AI or has AI-related capabilities, an advertiser would still need to observe the general prerequisites and conditions imposed on advertisements or any other information targeted at customers, as set out in the UCL and the UMPL, such as the prohibition of misleading or hidden advertise-

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ment and the non-infringement of any third-party rights, including IP rights.

8.3 Chatbots

There are currently no special rules or guidance related to the use of chatbots.

9. Web 3.0

9.1 Cryptocurrency and Non-fungible Tokens (NFTs)

There are currently no rules or regulations in Poland that apply specifically to the advertising, marketing or sale of cryptocurrency and/or NFTs.

Regulation (EU) 2023/1114 of 31 May 2023 on Markets in Crypto-Assets (the “MiCA Regulation”) shall apply from 30 December 2024. This newly adopted EU regulation pertains also to advertising activity within the scope of crypto-assets and provides in its Preamble, among other matters, that the information contained in the crypto-asset white paper and the relevant marketing communications, such as advertising messages and marketing material, and including through new channels such as social media platforms, should be fair, clear and not misleading. The MiCA Regulation further imposes specific requirements on, among others, marketing communications relating to an offer to the public of a crypto-asset (Article 7), asset-referenced token (Article 29) or e-money token (Article 53).

Irrespective, an advertiser would still need to observe the general prerequisites and conditions imposed on advertisements or any other information targeted at customers, as set out in the UCL and the UMPL, such as the prohibition of misleading or hidden advertisements and

the non-infringement of any third-party rights, including IP rights.

9.2 Metaverse

There are currently no special laws or regulations in Poland that apply to advertising within the metaverse. Advertising and marketing authorities in Poland should address this type of business activity in light of the general prerequisites and conditions imposed on advertisements or any other information targeted at customers, as set out in the UCL and the UMPL, such as the prohibition of misleading or hidden advertisements and the non-infringement of any third-party rights, including IP rights.

10. Product Compliance

10.1 Regulated Products

There is a broad list of products and services in the Polish legal order for which advertising or promotion is subject to specific EU or national regulations, including the general prohibition of advertising. The legal framework for advertising in relation to selected types of goods and services is as follows.

Tobacco Products

It is prohibited to advertise tobacco products, electronic cigarettes, spare containers or tobacco props or to promote tobacco products, electronic cigarettes, spare containers or tobacco props, and also to advertise or promote products imitating these products or symbols associated with the use of tobacco, tobacco products, electronic cigarettes or spare containers. The law of 9 November 1995 on health protection against the effects of tobacco and tobacco products sets out detailed examples of media in which such advertising is prohibited.

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Under the same law, sponsorship of sporting, cultural, educational, health and socio-political activities by a tobacco company is also prohibited, including manufacturers or importers of tobacco products or related products.

The labelling on the wrapper and packaging and the tobacco product must not contain any element or feature that, for example, promotes or encourages consumption of the tobacco product.

Alcoholic Beverages

The advertising and promotion of alcoholic beverages is prohibited in Poland, with the exception of beer, the advertising and promotion of which is permitted subject to a number of conditions and restrictions set out in detail in the Law of 26 October 1982 on Upbringing in sobriety and counteracting alcoholism.

It is also prohibited to advertise and promote products and services whose name, trade mark, graphic shape or packaging resembles or is identical to the designation of an alcoholic beverage or any other symbol objectively referring to an alcoholic beverage.

The advertising and promotion of entrepreneurs and other entities that in their advertising image use the name, trade mark, graphic shape or packaging associated with an alcoholic beverage, its producer or distributor are also prohibited in Poland.

Food

Food products are subject to advertising rules and regulations arising from both EU and national Polish regulations. For example, under EU Regulation 1169/2011, food information cannot be misleading, particularly:

- as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production;
- by attributing effects or properties to the food that it does not possess;
- by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients; or
- by suggesting the presence of a particular food or ingredient, by means of the appearance, the description or pictorial representations, when in reality a component naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient.

Moreover, food information must be accurate, clear and easy for the consumer to understand. These EU law requirements also apply to food advertising.

Irrespective, Polish laws set out several rules and restrictions on advertising food products. For example, the Polish Law of 25 August 2006 on Food and Nutrition Safety provides, among other matters, that the advertising of infant formula may only be carried out in popular science publications specialising in the dissemination of childcare knowledge or in scientific publications, and must be limited to information substantiated by scientific studies. The information contained in advertising must not imply that artificial feeding is equivalent to or more beneficial than breastfeeding.

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10.2 Product Placement

Product placement is regulated in the Polish Broadcasting Law of 29 December 1992, which defines this type of advertising activity as “a commercial communication consisting of the representation of or reference to a good, a service or the trade mark thereof so that it is featured within a user-created broadcast or video in return for payment or for similar consideration or in the form of provision of a good or service free of charge”.

Product placement is permitted under the Broadcasting Law, except for some specifically listed programmes, such as news (excluding sports and weather reports), socio-political programmes, programmes on consumer affairs, religious programmes or children’s programmes.

Programmes that contain product placement need to be identified as such in television programmes by a logo and in radio programmes by an acoustic signal indicating that product placement has taken place, at the beginning, at the end and on resumption after an advertising or teleshopping break.

Product placement cannot impair the broadcaster’s editorial independence and autonomy by influencing the content or placement of the programme, and does not relieve the broadcaster of responsibility for the content of the programme.

Certain types of products or services cannot be the subject of product placement, including tobacco products, alcohol beverages, health services and medicinal products.

Unlike product placement, subject placement is prohibited under the Polish Broadcasting Law. Subject placement is defined as a “commercial communication of a reference to a good, a ser-

vice or their trade mark in a script or in a dialogue list of a programme in return for payment or similar consideration”.

10.3 Other Products

The following may be outlined among various sector-specific goods and services that are subject to specific advertising rules.

Medical Products

Under the Polish Pharmaceutical Law of 6 September 2001, the advertising of a medicinal product means the activity of informing or encouraging the use of a medicinal product with the aim of increasing the prescription, supply, sale or consumption of medicinal products. This law sets out detailed rules and restrictions concerning the advertising of medicinal products, including the following:

- such advertising cannot be misleading;
- it must present the medicinal product objectively and communicate its rational use;
- it cannot consist of offering or promising any benefit directly or indirectly in return for acquiring the medicinal product or providing evidence that an acquisition has taken place;
- it cannot be directed at children nor contain any element which is directed at them; and
- advertising of a medicinal product that is a reminder of a full advertisement, in addition to its own name and the name in common use, may only contain a trade mark that makes no reference to the medicinal indication, pharmaceutical form, dosage, advertising slogans or other advertising content.

Consumer Credit

Under the Law of 12 May 2011 on Consumer credit, advertisements concerning consumer credit containing information on the cost of consumer credit, particularly the interest rate, the

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creditor or credit intermediary, shall indicate the following information to the consumer in a clear, comprehensible and prominent way:

- the borrowing rate, including whether it is fixed or variable or both –this information shall be provided in addition to a breakdown of the charges included in the total cost of the credit;
- the total amount of credit; and
- the annual percentage rate of charge.

Trends and Developments

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Sołtysiński Kawecki & Szlęzak is one of the leading legal advisers on intellectual property, unfair competition and advertising on the Polish market. It is also highly appreciated internationally, and has advised and represented clients in a range of intellectual property cases. The firm is involved in the protection of: EU and Polish trade marks, including renowned trade marks, geographical indications and other distinguishing indications; EU and industrial designs, utility models, patents, plant varieties, topographies

of integrated circuits and other industrial property rights; copyrights, including copyrights in software; business names and other intangible enterprise assets; a person's image and other personality rights; and commercial secrets. It also advises on advertising law, including protection against misleading advertising and unfair comparative advertising, and protection against copying products, dissemination of untrue information and other forms of unfair competition.

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POLAND TRENDS AND DEVELOPMENTS

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Advertising and Marketing in Poland: an Introduction

Fair advertising and marketing have recently become the subject of increasingly thorough analysis and focus in Poland not only by market competitors, but also by consumer organisations and the President of the Office of Competition and Consumer Protection (OCCP). This is evidenced by the increasing number of proceedings initiated in this respect before the common courts and the OCCP, and also by the rules and guidelines recently published by the OCCP.

Within the scope of fair advertising and promotion, two phenomena that are having an increasingly important impact on business in various market sectors in Poland are discussed below:

- greenwashing; and
- marketing and advertising activity by influencers.

Greenwashing

Misleading and false product information – old problem with new “green” face

Informing people about products and advertising those products have always triggered a lively discussion and provided many interesting cases related to the accuracy and truthfulness of the information provided, as well as the limits of “permitted exaggeration” in advertising. This has become increasingly interesting, particularly from the perspective of fair-market practices and fair competition.

The issue is becoming more important and urgent in light of the ever-growing need to meet stringent environmental and ecological requirements in businesses’ and clients’ quests for a sustainable and resource-efficient strategy.

What is greenwashing?

Greenwashing is a term that has different meanings, and has already been used for many decades. Basically, it focuses on the practice of misleadingly informing consumers about the activities undertaken by a trader who is allegedly acting in harmony and out of respect for the environment, with a sustainable and resource-efficient approach.

Current legal framework in the EU and Poland

Although the tendency to use false or misleading messages related to ecological and environmental protection in business has significantly intensified in recent years, EU law has long been armed with legal instruments enabling such unfair practices to be effectively counteracted.

The EU legal framework also addresses false or misleading claims, and includes sectoral EU rules, dealing with specific types of goods or services, and general legislation with a horizontal coverage, applying to the extent not covered by specific laws.

Greenwashing practices vis-à-vis specific consumer protection laws in the EU

With respect to B2C relations in the EU, the key legal document is the Unfair Commercial Practices Directive 2005/29/EC of 11 May 2005. This Directive sets out traders’ general obligations to provide true, accurate, unambiguous product claims and other information, and also to have and provide (if required) sufficient evidence confirming the accuracy of such claims. In particular, under the Unfair Commercial Practices Directive, traders are not allowed to use misleading commercial practices – ie, those which contain false information and are untruthful, or in any way deceive or are likely to deceive consumers, even if the information is factually correct, in relation

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to the main characteristics of the product, for example, such as:

- its composition;
- the method of manufacture;
- its specification; or
- the results and material features of tests or checks carried out on the product.

This sample list of types of product information may very well apply also to unfair green or environmental claims. Moreover, the Unfair Commercial Practices Directive sets out a blacklist of specific commercial practices that are always considered unfair, including:

- displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation;
- claiming that a code of conduct has an endorsement from a public or other body which it does not have; or
- claiming that a trader (including its commercial practices) or a product has been approved, endorsed or authorised by a public or private body when it has not, or making such a claim without complying with the terms of the approval, endorsement or authorisation.

Again, green or environmental claims may also fall within the scope of such blacklisted commercial practices – eg, where a trader unfairly claims that its product has received an “eco-friendly”, “100% degradable” or “sustainable” certificate which does not exist or has elapsed.

Greenwashing in advertising

Advertising and promotion are the driving forces behind almost every sector of the economy. The process of building recognition and positive associations with a brand is almost always asso-

ciated with many years of effort accompanying creative, coherent and consistent advertising communication. Even a single slip in the content or manner of conveying an advertising message may leave a mark on a business.

In the EU legal system, the framework for fair activity in the field of advertising for each sector of the economy is primarily determined by the provisions of Directive 2006/114/EC on misleading and comparative advertising of 12 December 2006 (the “Advertising Directive”). The purpose of this EU legislation is to protect against “misleading advertising”. Advertising is considered misleading whenever it can, in any way, deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour.

In determining whether advertising is misleading, all its features must be taken into account, particularly any information it contains concerning the characteristics of products – eg, their nature, composition, method of manufacture, fitness for purpose, or specification. As can be seen from the above list, a given “green advertisement” can be found unfair in many cases, and it will ultimately be up to the court to evaluate a given advertising message. Importantly, with respect to the burden of proof rules, the Advertising Directive enables the courts and administrative authorities of EU member states to require traders to produce evidence as to the accuracy of the factual claims they make in their advertising.

Directive 2024/825 of 28 February 2024 – upcoming new weapon against unfair “green” traders

The increase in greenwashing activity in Europe has resulted in the EU’s legislation initiative aimed at strengthening consumers and businesses, as

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well as national authorities and courts, and providing them with adjusted tools to counteract such unfair practices. One such newly adopted piece of legislation is Directive 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information (the “Greenwashing Directive”).

One of the key goals of the Greenwashing Directive is to more effectively counteract the practice of pseudo-ecological marketing (ie, misleading claims of environmental performance). The EU’s way to achieve this goal is to amend the Unfair Commercial Practices Directive by setting out some new greenwashing-related terms (eg, “environmental claim”, “generic environmental claim” or “sustainability label”) and extending the list of unfair market practices to those related specifically to greenwashing. The new regulations envisaged by the Greenwashing Directive should be transposed by the member states to their national laws by 27 March 2026, and are to be applied from September 2026.

Online tagging of advertising content by influencers

As a rule, every promotion (including self-advertising) of a product or service made by influencers online in exchange for any benefit (remuneration, products, services, discounts or invitations to a given event, etc) must be tagged. This is also for information purposes towards the consumer.

In past years, the issue of advertising signage was not precisely regulated and there was a lack of clear guidelines in this area. In view of this, influencers and marketing agencies labelled

online collaborations arbitrarily. The President of the OCCP has now published recommendations on labelling advertising content by influencers on social media. Among others, the basic rules are as follows.

- Advertising material must be labelled in a clear, unambiguous and comprehensible way to each recipient, which means that it should:
 - (a) be displayed in a prominent position – eg, at the beginning of a description or recording;
 - (b) stand out from the rest of the content;
 - (c) be written in a clear and sufficiently large font;
 - (d) be in Polish, if the profile is in that language;
 - (e) use terms that clearly indicate the profile is conducted in that language; and
 - (f) use terms that clearly indicate the commercial nature of the publication.
- It is recommended to use “two-tier labelling” – ie, using both the functionality of the platform as well as self-marking. The recommended terms for advertising materials are:
 - (a) #advertising or [advertising];
 - (b) #advertising material or [advertising material];
 - (c) #AdvertisingCollaboration or [advertising collaboration];
 - (d) #PostSponsored or [sponsored post];
 - (e) #SponsoredMaterial or [sponsored material];
 - (f) #PaidCollaboration or [paid collaboration];
 - (g) #video #report #post #material + #advertising;
 - (h) #sponsored = eg #VideoRelationship;
 - (i) #SponsoredRelation;
 - (j) XYZ brand advertising; or
 - (k) paid collaboration with XYZ brand.
- The recommended terms for self-promotion are:

POLAND TRENDS AND DEVELOPMENTS

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- (a) #autopromotion or [self-promotion];
 - (b) #self-promotion or [self-promotion]; and
 - (c) #own-brand or [own-brand].
- Non-recommended terms are those provided in languages other than Polish (except when the entire profile is in a foreign language) or in abbreviation form, such as #AD, #promo or #spons, as well as those provided in a form that does not emphasise the fact that the influencer benefits from it (eg, #collaboration or #material produced in co-operation with).

The incorrect labelling of advertising content can have legal consequences for the influencer, the advertising agency and the advertiser. The President of the OCCP may declare the use of a practice infringing the collective interests of consumers by an entrepreneur who commits unfair market practices. This applies to misleading consumers in connection with the labelling of advertising materials or the use of surreptitious advertising, among others. In such a situation, the President of the OCCP may order the entrepreneur to:

- pay a fine of up to 10% of turnover;
- abandon the practice that is infringing the collective interests of consumers;
- remove the ongoing effects of the infringement, including placing statements in the form and content indicated in the decision of the President of the OCCP); or
- publish the decision of the President.

Consumers who have been affected by a trader engaging in an unfair market practice relating to the labelling of advertising material may:

- claim compensation for the loss suffered as a result of the unfair commercial practice, in particular by claiming:

- (a) cancellation of the contract with an obligation to repay the sums paid to each other; and
 - (b) costs incurred by the trader in connection with the purchase of the product;
- require the cessation of the practice;
 - remedy the consequences of that practice;
 - make one or more statements of suitable content and form; or
 - make an order to pay an appropriate sum of money for a specific social purpose related to the promotion of Polish culture, the protection of national heritage or the protection of consumers.

In relation to the use of an act of unfair competition by a competing trader in the field of advertising, entrepreneurs (competitors) may:

- claim compensation for the harm caused on general terms, particularly to demand the contract be rescinded, with an obligation to reimburse the mutual benefit of the services rendered;
- claim costs incurred in connection with the purchase of the product;
- require the cessation of the practice;
- remedy the consequences of that practice;,,
- make one or more statements of suitable content and form; or
- make an order to pay an appropriate sum of money for a specific social purpose related to the promotion of Polish culture, the protection of national heritage or the protection of consumers.

Action against entrepreneurs who mislabel advertising material can also be taken on the basis of existing self-regulation (in particular, before the Ethics Committee of the Advertising Council).

POLAND TRENDS AND DEVELOPMENTS

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Following the issuance of the recommendations and the period of adjustment, the President of the OCCP has already initiated more than a dozen proceedings against advertisers and influencers who have not labelled their materials in accordance with the recommendations, including imposing fines.