

RG 234 - Advertising financial products and advice services

What Now?

- Review your promotional material in light of RG 234
- Industry bodies are encouraged to develop and enforce their own guidelines
- Stronger penalties: "the outcomes we will aim for when confronted with suspected breaches will involve potentially stronger penalties than we have sought in the past." - ASIC Commissioner Peter Kell - 12-23 Media Release
- ASIC will be regularly reviewing ads
- RG 234 has a number of examples demonstrating ASIC's interpretation of the law - highly recommended reading
- If you also have an ACL, look out for the next one on Credit
- ASIC has advised that the guidance on internet advertising is a work in progress and may be adjusted in the future

What?

- good practice guide to help promoters comply with their obligations not to mislead/deceive when advertising
 - Applies to any communication whose purpose is to inform consumers about or promote financial products or financial advice services
 - focuses on advertising of investment and risk products and financial advice services as well as non-cash payment facilities and credit facilities
- applies to
 - promoters of financial products and advice services
 - publishers and media outlets (primary responsibility is with the promoter, but a media outlet may also have some responsibility)
 - publishers with active involvement in advertisement (e.g. contributing content) will be seen as in the same position as the promoter in relation to good practice guidance
 - advertising material (any medium) meant to inform or promote financial products and advice services
 - includes standard forms of advertising as well as microblogging, presentations to groups of people, video streaming, Internet forums & audio messages for telephone callers on hold.
 - doesn't include regulated disclosure documents e.g. PDS, FSG
 - general and personal financial product advice
- Guide to be read in conjunction with other product-specific advertising guidance published by ASIC
 - RG 45; RG 46; RG 156; RG 227; RG 231; RG 232; RG 53; RG 158; RG 168; RG 170; RG 173; RG 228

Misleading and Deceptive?

- Intention to mislead not necessary to be misleading and deceptive
- Not necessary to actually mislead consumers
- Advertisement just needs to be **likely** to mislead
- What is the **reaction** of an ordinary and reasonable member of the advertisement's audience?
 - First impression** is what's important - not detailed study of advertisement
 - Qualifications** must be **prominent**
- A disclosure document does not stop an advertisement from being misleading
- Silence on important details can become misleading, even if content factual

What ASIC will look at:

- subject of advertisement
- content of advertisement
- format of advertisement
- audience viewing advertisement
- media vehicle used to communicate information
- likely effect of advertisement
- Does the advertisement accurately describe product?
 - Is the advertisement balanced and realistic about delivery of product?
 - Are the risks, fees & other drawbacks clear?
 - Is product simple enough for advertisement?
- Is advertisement realistic about outcomes & nature of service?
 - Are limitations clear?
 - Are costs realistic?
 - Are any claims made substantiated?

The aim is to prevent advertising that is misleading/deceptive

Good practice guidance

- need a balanced message about risk, benefits and return
 - don't create unrealistic expectation - information about risk must be clear
 - E.g. "safely" and CFDs should not be used in the same sentence! (example 8 - RG 234)
 - when a benefit is advertised, the risk in obtaining the benefit must be also be advertised
 - mutually exclusive benefits should be made clear
- the fine print
 - warnings, disclaimers and qualifications need to be clear, simultaneous and in a form similar to main body of ad
 - Avoid fine print
 - cannot be inconsistent with headline claims or other content
 - statements referring consumer to another website or page won't be enough to correct a misleading claim in an advertisement
 - ACCC v TPG Internet Pty Ltd
- fees and costs
 - needs to be easily understandable & give a realistic impression of overall fees and costs
 - any qualifications must be clearly noted (preferably in headline alongside the claim)
 - don't assume that consumers know the difference between fees and costs
 - if ad refers to applicable fees, state if costs do/don't apply as well
 - clearly state effect fees and costs may have on return
 - cannot describe a free/low cost financial service if price recouped through fee/costs of financial product consumer placed in
 - must compare apples with apples - products should have sufficiently similar features to make comparison relevant
 - differences must be clearly disclosed
 - must look at whole picture: cannot be misleading
 - impression of the product created by the rating should be accurate
 - when using product "ratings" -
 - rating should be explained, or provide link to explanation
 - accompany statement with "ratings are only one factor to be taken into account..."
 - awards for financial products must state grantor & currency of award
- past performance and forecasts
 - must draw attention to fact that past performance is not indicative of future performance (see RG 53)
 - a forecast must be relevant, have reasonable basis, and be clear that it may not be realised
- terms, phrases & endorsements
 - pitch language at knowledge of audience - Note terminology restricted by law: e.g. cannot use word "independent" where adviser receives commission
 - don't assume high level of financial knowledge
 - DO NOT claim to be endorsed/approved by ASIC!
 - celebrities must know financial product they are endorsing
- target audience
 - consider characteristics of audience who sees advertisement: e.g. financial literacy, knowledge, demographics
 - be selective about audience for complex products
 - keep it simple. the more complex, the more space needed to explain product/service
- images
 - should not be used where likely to misrepresent nature, stage or scale of product/issuer's business
 - E.g. images associated with success, wealth, safety and security may distract from information about risk
 - should be able to represent nature, stage or scale of product without need of a disclaimer
- nature/scope of advice
 - be accurate - if there are limitations include them
 - e.g. don't describe service as full financial plan if only advising on narrow range of issues

Regulatory power

- ASIC Act and Corporations Act applies
- For list of statutory offences, see table starting on p. 32 of RG 234
- ASIC has powers to (amongst other things):
 - gather information e.g. issuing a substantiation notice
 - issue a stop order or seek an injunction
 - initiate compensation claim
 - accept enforceable undertaking
 - issue public warning notice
 - suspend/cancel a promoter's AFSL
 - vary AFSL conditions
 - civil penalty (fine)
 - criminal charges
 - community service order/probation
- seek:
 - civil penalty (fine)
 - criminal charges
 - community service order/probation

Media-specific guidance

- e.g. radio, blogs
 - clear distinction between "program content" and "advertisement" must be made to consumers
- warnings or disclaimers should be easy to understand, regardless of medium
- content limitations mean that some advertising mediums such as micro-blogging, "banner advertising" or outdoor (billboard) advertising will be inappropriate for many products/services
- promoters and consumers should be able to keep a record of the advertisement including disclaimers and warnings



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