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Advertising and Marketing 2026

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Poland: Law and Practice & Trends and Developments

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POLAND



Law and Practice

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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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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, as well as 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 businesses (B2C) under the UMPL. The remedies available in common courts for 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 the 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 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 are advertisers subject to these remedies under the UCL, but 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 within 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 infringe the prohibition of practices infringing the collective interests of consumers, through their action or omission.

1.4 What Is Advertising?

Market Sector Laws

Different definitions of "advertising" apply based on the market sector and its applicable laws. 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 servic-

es; 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 discussed the meaning of "advertising" in a very broad manner. 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, to encourage and persuade 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 understanding of "advertising", as established by Polish case law, is substantially in line with the more general definition expressly provided in Directive 2006/114/EC.

1.5 Pre-Approvals

In principle, no pre-approvals are required from the 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 the general requirement that any advertisement must comply with the 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 to comparative advertising in relation to third-party IP rights, reflecting the relevant conditions set out in Directive 2006/114/EC. For example, comparative advertising cannot discredit or 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 (AEC) serves as a self-regulatory authority through the Advertising Council (www.radareklamy.pl). Within its remit, the AEC can examine complaints against advertisements submitted by both consumers and businesses. Upon examining 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 remedy the breach of the Code 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

A private right of action is available to consumers in Poland to challenge advertising practices 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.

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, which repealed 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 greenwashing and advertising with pseudo-ecological messages. Directive 2024/825 of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU regarding the empowerment of consumers for the green transition through better protection against unfair practices and improved information has already led to the greenwashing phenomenon being closely examined in Poland by the President of the OCCP.

1.10 Taste and Cultural Concerns

A broad range of tastes and cultural aspects may influence the assessment of compliance with relevant laws in Poland. The UCL provides general and broad 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 were 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 on promoting 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, doctrine and practitioners outline that the regulations governing fair advertising (such as the UCL) should not aim to prohibit or prevent customers from expressing distaste.

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 scrutiny by the President of the OCCP. This phenomenon is part of a broader trend and an 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 consumer'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 consumer 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.

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 of this, 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 Annexe 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/and non-misleading character of their advertising claims.

2.4 Product Demonstrations

Under Polish law, product demonstrations (presentations) form one of the elements taken into account when assessing whether a given advertisement is misleading. For example, under the UMPL, all elements must be taken into account when assessing whether a market practice (including advertising) is misleading by action, such as the way a product is presented.

The UMPL also expressly prohibits "bait and switch" practices, which involve offering to sell a product at a certain price and then failing to provide 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 claiming 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 Environmental Claims

The regulations pertaining specifically to environmental claims and greenwashing 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). A bill to adopt

the said directive is currently being considered by the Polish parliament. Such practices are already 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 consumers.

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

2.8 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 subject to 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.

Irrespective of this, general rules concerning fair advertising, arising from the UCL and UMPL, apply to any type of claim, such as those related to natural or country of origin.

3. Limitations and Special Laws

3.1 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.

3.2 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 targeted at children cannot contain product placement or be interrupted by commercials. Children's programmes should not be accompanied by commercial messages relating to food or drink containing ingredients that are present in excessive amounts in the daily diet.

It is also worth noting that advertisements targeting children have recently come under close scrutiny from the President of the OCCP. This concerns, in particular,

advertisements in which influencers encourage children to purchase products, thereby creating a form of purchasing pressure. In proceedings recently initiated by the President of the OCCP, it was emphasised that the primary concerns relate to the way in which the message is directed at its audience. Influencers address children directly, using language designed to appeal to them, as well as rhymes and colourful animations. They say that other children have already bought the product, sometimes "a dozen or so" of a particular item, thereby appealing to children's need for acceptance among their peers. They create a sense of urgency by warning that the product "will be gone forever if you miss out", while also emphasising that the items on offer "bring happiness" or are "magical".

3.3 Dark Patterns

The use of dark patterns may lead to the violation of several Polish and EU legal regulations, including the GDPR and regulations related to consumer protection, unfair competition, or unfair market practices. In 2022, the European Data Protection Board published guidelines regarding the use of dark patterns (www.edpb.europa.eu), which may be helpful for online advertising. 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.

Guidance is also provided within the individual decisions of the OCCP, in which the authority imposes penalties on entrepreneurs for using dark patterns. In its decision issued in May 2025, the OCCP classified the practice of permanent and endless promotions as a dark pattern. These promotions, such as constantly renewed discount codes and countdown clocks for limited-time offers, create artificial pressure on consumers. By emphasising the uniqueness of a discount – such as those associated with a brand's birthday, pre-holiday weekends, or shopping nights – this practice pressures consumers into making purchasing decisions they might not have made if they were fully informed about the seller's practices.

For example, in a recently initiated investigation against entities in the betting industry, the President of the OCCP is examining whether they use dark patterns. Among other things, the OCCP is reviewing the solutions used on websites, in mobile apps, and in information provided to users. For this analysis, the OCCP is using an AI tool designed specifically to detect this type of activity. The OCCP is also investigating whether the solutions used by bookmakers encourage consumers to gamble more frequently or make it difficult for them to stop gambling. This includes, among other things, the additional formalities required to deactivate, suspend, or close an account, while resuming gambling may require significantly fewer procedures.

3.4 Sponsor Identification and Branded Content

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

- Online marketing materials (including self-promotion) must be tagged as #advertising, #co-advertising, #sponsoredmaterial or #paidcollaboration.
- Abbreviations or ambiguous terms such as #promo must be avoided.
- Events, series, films or programmes broadcast in media that are sponsored or branded must contain precise information on such sponsorship or product placement (eg, "the programme contains product placement" or "the programme is sponsored by").

3.5 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 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 as not constituting 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).

4. Comparative Advertising and Ambush Marketing

4.1 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 permitted as long as it aligns 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;
- 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 and 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 cases where a special offer is not yet in effect, it should also indicate the date from which the special price or other specific terms of the offer will apply.

4.2 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 reliably and fairly, 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.

4.3 Challenging Comparative Claims Made by Competitors

An advertiser may challenge comparative claims made by competitors by filing a legal action in a 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
- a ruling 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.

4.4 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, particularly in light of 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.

5. Social/Digital Media

5.1 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, and other intermediaries relating to the provision of content on the internet, regarding, inter alia, online advertising.

5.2 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 within 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 rights-holder.

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.

5.3 Disclosure Requirements

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

5.4 Requirements for Use of Social Media Platforms

Apart from the general principles that apply, there are no unique rules or regulations governing the use of major social media platforms in Poland, nor are there any social media platforms that are specifically prohibited from use 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, the blocking or deletion of content, or the identification of users.

5.5 Influencer Campaigns and Online Reviews

5.5.1 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.

5.5.2 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, as well as certain civil procedure laws.

5.5.3 Consumer Reviews

There are no special rules or regulations governing 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.

6. Privacy and Advertising

6.1 Email Marketing

The following main rules should be followed by advertisers engaging in email marketing.

- Email marketing requires a legal foundation, specifically the voluntary, clear, and explicit consent from the intended recipient (which may include entities, not just individuals). This consent should follow a double opt-in process to ensure that the recipient truly agrees to receive marketing emails. There should also be an additional confirmation of the recipient's intention to receive email marketing thereafter, for example by 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 chosen legal basis for data processing, additional consent may be required under the GDPR.
- The recipient of email marketing must be given the opportunity to easily unsubscribe 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.

- Telemarketing must have a legal basis, such as the voluntary, specific, informed and unequivocal consent of the particular addressee with whom the advertiser is in contact, who may be an entity as well as an individual. In practice, the advertiser should first contact the addressee to obtain consent to telemarketing and then make a further call to deliver the 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 chosen legal basis for data processing, additional consent may be required under GDPR.
- The recipient of telemarketing must be allowed to easily opt out of receiving further marketing calls at any time.

In cases of rule violation, the advertiser may be held liable under 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.

- The use of text messaging for marketing purposes must have a legal basis, such as the voluntary, specific, informed and unequivocal consent of

the particular addressee to whom the marketing messages are directed, who may be an entity as well as an individual. This is subject to a double opt-in requirement. In practice, there should be an additional confirmation of the recipient's intention to receive subsequent marketing text messages, for example by 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 chosen legal basis for data processing, additional consent may be required under GDPR regulations.
- The recipient of text messaging must be allowed to easily opt out of receiving marketing text messages at any time.

If these rules are violated, the advertiser may be held liable under 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 targeting entities or social media providers, data controllers or joint controllers) must follow the GDPR, with the information obligation being one of the most important. Under this obligation, the data controller (which may also be an advertiser) provides precise information about the purposes for which data is processed. 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 that has been acquired, observed, or inferred.

Another requirement arising from the GDPR regulations is that obliged entities must have a legal basis for their actions. The legal basis for processing personal data may vary depending on the circumstances. It could be based on consumer consent, which can be revoked at any time – especially in cases involving data profiling. Alternatively, it may stem from the legitimate interests of the data controller, in which case consumers have 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.

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 under 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 valid 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.
- 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 the processing of children's data, including high financial penalties imposed by the data protection authority.

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, 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; however, they have in common that the organisation's rules must be clearly stated in the organisation's terms and conditions. These must be accepted by every participant and are subject to a legal assessment, for example, 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" within 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 chance, 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. A fee is payable for the application, and the authority has two months to process the application.

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 application.

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, along with the lowest price of that good or service in the 30 days preceding 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 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 method of providing free products/services, or their samples, may raise 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 under specific conditions.

Practices in which services are automatically renewed for another period after the contract expires if the consumer does not object (ie, takes action) before the expiry of the original contract are deemed prohibited contractual provisions. To comply 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, if applicable, making a new offer.

Continuous services (including recurring payments) are permitted if they do not mislead consumers by

creating the impression that the consumer pays only for a one-time service when, in fact, they are 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 cancel continuous services at any time without incurring any additional fees.

8. Artificial Intelligence

8.1 AI and 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 Recital 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 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 advertisement and the non-infringement of any third-party rights, including IP rights.

8.3 Chatbots

Currently, there are no special rules or guidelines related to the use of chatbots.

9. Web 3.0

9.1 Cryptocurrency and Non-Fungible Tokens (NFTs)

In Poland, there are no specific rules or regulations governing the advertising, marketing, or sale of cryptocurrency and NFTs.

Notwithstanding this, the European Union's newly adopted Regulation (EU) 2023/1114 of 31 May 2023 on Markets in Crypto-Assets (the "MiCA Regulation") will take effect on 30 December 2024, addressing advertising activities related to crypto-assets. In its preamble, it states that information in the crypto-asset white paper, along with relevant marketing communications (such as advertising messages and promotional materials), must be fair, clear, and not misleading. This includes communications through new channels, such as social media platforms. 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), an asset-referenced token (Article 29) or a e-money token (Article 53).

Regardless, 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

No specific laws or regulations concerning advertising in the metaverse have been established in Poland. 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 through which such advertising is prohibited.

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

The labelling on the wrapper and packaging of 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, for which advertising and promotion are permitted subject to certain conditions and restrictions outlined 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 advertisement and promotion of entrepreneurs and other entities that use the name, trademark, graphic design, or packaging associated with an alcoholic beverage, its producer, or distributor are prohibited in Poland.

Food

Food products are subject to advertising rules and regulations arising from both EU and Polish national 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.

In addition, 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.

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 certain specifically listed programmes, including news (excluding sports and weather reports), socio-political programmes, consumer affairs programmes, religious programmes, and children's programmes.

Programmes that contain product placement must be clearly 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 upon resumption after an advertising or teleshopping break.

Product placement cannot compromise 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, alcoholic 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 service 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.
- Advertising of a medicinal product that serves as a reminder of a full advertisement may, in addition to the product's name and its common name, contain only a trade mark that does not refer 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 creditor or credit intermediary must indicate the following information to the consumer in a clear, comprehensible and prominent way:

- the borrowing rate, including whether it is fixed, 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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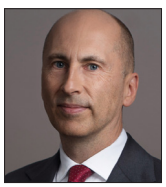
Sołtysiński Kawecki & Szlęzak is one of the leading legal advisers on intellectual property, unfair competition and advertising on the Polish market. It is also highly appreciated internationally and has advised and represented clients in a range of intellectual property cases. The firm is involved in 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.

Authors



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Introduction

Fair advertising and marketing have recently become the subject of increasingly thorough analysis and attention in Poland, not only by market competitors, but also by consumer organisations and the President of the Office of Competition and Consumer Protection (OCCP) – as evidenced by the increasing number of proceedings initiated in this respect before the common courts and the OCCP, as well as 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: an old problem with a new "green" face

Informing consumers about products and advertising those products have long generated lively debate and given rise to numerous interesting cases concerning 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 increasingly important and urgent in light of the growing need to meet stringent environmental and ecological requirements as businesses and their clients seek to adopt more sustainable and resource-efficient strategies.

What is greenwashing?

Greenwashing is a term with multiple meanings that has been in use for many decades. Essentially, it refers to the practice of misleadingly informing consumers about the activities undertaken by a trader that allegedly operates in an environmentally responsible manner and adopts 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 provided legal instruments enabling such unfair practices to be effectively countered.

The EU legal framework also addresses false or misleading claims, including sectoral EU rules that deal with specific types of goods or services, as well as general legislation with horizontal coverage, which applies 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 to the main characteristics of the product, for example:

- 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 also very well apply 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 – for example, where a trader unfairly claims that its product has received an "eco-friendly", "100% degradable", or "sustainable" certificate that does not exist or has expired.

Greenwashing in advertising

Advertising and promotion are the driving forces behind almost every sector of the economy. Building recognition and positive associations with a brand typically requires years of dedicated effort, supported by creative, coherent, and consistent advertising communication. Even a single mistake in the content or delivery of an advertising message can have lasting consequences for a business.

In the EU legal system, the framework for fair advertising activity in each sector of the economy is primarily determined by the provisions of Directive 2006/114/EC on misleading and comparative advertising, adopted on 12 December 2006 (the "Advertising Directive"). The purpose of this EU legislation is to protect against "misleading advertising". Advertising is considered misleading if 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 empowers the courts and administrative authorities of EU member states to require traders to provide evidence of the accuracy of factual claims made 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 legislative initiative aimed at strengthening consumers and businesses, as well as national authorities and courts, and providing them with the necessary 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 approach to achieving this goal is to amend the Unfair Commercial Practices Directive by introducing new terms related to greenwashing (eg, "environmental claim", "generic environ-

mental claim", or "sustainability label") and expanding the list of unfair market practices to include those specifically related to greenwashing. The new regulations envisaged by the Greenwashing Directive are to be transposed into national laws by member states by 27 March 2026 and will take effect from September 2026.

A bill to amend the regulations is currently being considered by the Polish Parliament. Among other things, it proposes a ban on:

- the use of proprietary, unverified "eco" labels created by the company itself;
- the use of general terms such as "ecological", "green", "nature-friendly", and "energy-efficient" without proof of high environmental performance;
- claiming that a product is climate-neutral solely because the company has "offset" CO_2 emissions elsewhere;
- declaring ecological goals such as "zero emissions by…" without a specific, verifiable action plan;
- concealing the fact that a software update will impair the device's performance; and
- urging customers to replace consumables sooner than is technically necessary.

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 intended to inform consumers.

In previous years, advertising labelling was poorly regulated, and clear guidelines were lacking. Consequently, influencers and marketing agencies have 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:

- be displayed in a prominent position – eg, at the beginning of a description or recording;
- stand out from the rest of the content;
- be written in a clear and sufficiently large font;
- be in Polish, if the profile is in that language; and
- 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:

- #advertising or [advertising];
- #advertising material or [advertising material];
- #AdvertisingCollaboration or [advertising collaboration];
- #PostSponsored or [sponsored post];
- #SponsoredMaterial or [sponsored material];
- #PaidCollaboration or [paid collaboration];
- #video #report #post #material + #advertising; #sponsored = eg, #VideoAdvertising;
- #SponsoredRelation;
- XYZ brand advertising; or
- paid collaboration with XYZ brand.

The recommended terms for self-promotion are:

- #autopromotion or [self-promotion];
- #self-promotion or [self-promotion]; and
- #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).

Incorrect labelling of advertising content can have legal consequences for the influencer, the advertising agency, and the advertiser. The President of the OCCP may determine that an entrepreneur has engaged in a practice infringing the collective interests of consumers where the entrepreneur commits an unfair market practice. This applies, among other things, to misleading consumers through the labelling of advertising

materials or through surreptitious advertising. 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, in particular, to demand that 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).

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

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