

Penalties imposed for misleading marketing – a reminder that the Regulators are watching

Alexandra Nash & Kizzy Bagga | November 2017 | Insurance & Financial Services

ASIC

The Australian Securities and Investments Commission (ASIC) have issued four infringement notices to Suncorp Group's AAMI for false or misleading advertisements relating to its home insurance on both its website and the radio.

In the promotion of its Home Building Insurance 'Complete Replacement Cover' product, AAMI stated that the company would repair or rebuild an insured property no matter the cost to the insurer.

This type of home building policy helps in reducing the risk of underinsurance, but ASIC concluded that this advertising had the effect of giving consumers the impression that AAMI would always repair or rebuild homes when a claim was submitted. The advertising also failed to disclose that AAMI had the option to pay the insured the cost of repairs or rebuilding and require the insured to arrange its own rectification works.

The infringements resulted in AAMI having to pay \$43,200 in penalties and undertaking a revision of its disclosure documents and online advertising material.

ACCC

Popular aggregator site Finder.com.au ('Finder') has been hit with a \$10,800 fine by the Australian Competition and Consumer Commission (ACCC) for engaging in false and misleading conduct on its website.

The aggregator, which provides a platform to compare services across a number of industries, made claims that its health insurance comparison service would allow customers to compare roughly 65,000 policies.

The ACCC found that the number of policies actually compared was substantially less than 65,000 and to claim otherwise was misleading and deceptive.

The ACCC issued the infringement notice as it had reasonable grounds to believe Finder had breached the ACL.

The ACCC was particularly critical of Finder as the timing of when the claims were made coincided with the industry's annual switch period, when annual health premium rate rises are announced and consumers turn to comparator websites to find the best deal.

The Legislation

The *Corporations Act 2001* (Cth) (at sections 1041E, 1041F and 1041G) requires an insurance company to ensure that any statements that induce a consumer to apply for, or deal in a financial product must not be materially false or misleading. This requirement applies to any statements made during the course of advertising.

Similarly, the *Australian Securities and Investments Commission Act 2001* (Cth) (at sections 12DA, 12DB and 12DF) makes it unlawful for an insurance company to make false or misleading representations or engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any financial services.

ASIC Regulatory Guide 234

An insurance company or aggregator website intending to create or publish any content that could be construed as 'advertising a financial product or service', should consider the content and the implications of ASIC Regulatory Guide 234 ('*Advertising financial products and services (including credit): Good practice guidance*').

RG 234 provides good practice guidance in relation to the content of advertisements for financial products, financial advice services, credit products and credit services.

This guidance applies to advertising communicated through a number of forms, including magazines, billboards, the internet, social media and brochures.

ACL

The Australian Consumer Law (ACL) is contained in the *Competition and Consumer Act 2010* (CCA) and is administered and enforced by the ACCC. The ACL does not apply to financial services, however the private health insurance industry comes under the purview of the ACCC when advertising. Health insurers are prohibited from engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive, when promoting their services (section 18 of the ACL).

Aggregator sites which compare insurance products must also comply with the ACL and CCA, and insurers should be mindful of the impact of any association their brand has with an aggregator, and how that aggregator is operating in the market.

Implications

Advertising can be a powerful tool in promoting your brand and influencing the financial decisions that customers make. The AAMI example serves as a timely reminder for insurance companies to ensure that any claims made in advertising a financial product or service is not likely to mislead or deceive. Insurers should also be aware of how aggregator sites operate and influence the market, remembering that those sites are required to observe the ACL.

Advertising material that is not in compliance with the standards set by ASIC and the ACCC expose insurance companies and aggregator sites to the risk of a hefty fine and the associated negative publicity.

If you are unsure whether your advertising material is in compliance with the standards and legislative provisions, you are welcome to contact a member of our insurance team for advice.

For more information,
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