

WHITE PAPER ON ADVERTISING CLAIMS 2018

Written by Khurram Koraihy





Advertising has a vital role in driving the economy of Pakistan. Advertising informs citizens of the range of goods and services available in the Pakistan marketplace and therefore helps them in taking informed decisions. Without the information that advertising provides it would be impossible to know what is available, often for how much, how it compares versus other offerings etcetera and then take informed purchase decisions. Advertising also helps businesses grow and thrive by creating PULL; finding new customers and selling more to existing customers (by increasing consumption of the offerings by highlighting advantages of increased usage or alternate uses) or by just driving plain impulse consumption.

Thus, very succinctly the case is made for the utility, in fact some would argue the essentialness of advertising for greasing the wheels of commerce and enhancing consumer benefit and eventually driving general well being.

Having established in simple terms why advertising is necessary for buyers and sellers we can progress to the subset of advertising that depends on claims to make a compelling argument, which is the main focus of this white paper.

What's an advertising claim

An advertising claim is a statement made in advertising about the benefits, characteristics, and/or performance of a product or service designed to persuade the customer to make a purchase.



Kinds of Advertising claims

A detailed study of the Pakistan Advertisers Society (PAS) and the Competition Commission of Pakistan (CCP) dispute archives shows 5 distinct kinds of advertising claims are very popular in the Pakistani advertising scene:

"No. 1....." claims

"Pakistan's Best....." claims

"100%....." claims

Quantified Benefit or efficacy claims

Comparative claims



Why getting advertising claims is important?

Probably one of the best reasons for getting advertising claims right is the financial cost and public naming and shaming that happens for the brand and damage done to the corporate reputation of the brand owning company.

Some examples of fines imposed by CCP in just the calendar year 2017 are:



CCP Advertising Claim violations 2017

Jan. 4-2017

Deceptive marketing practices
CCP initiates action against real estate firm

By Farooq Awan.

ISLAMABAD: The Competition Commission of Pakistan (CCP) has issued a show cause notice to a Lahore-based real estate company, M/s Vision Developers (Pvt) Limited, for prima facie deceptively marketing a housing scheme in the name of 'Park View Villas' without obtaining approval of the authorities concerned, thus violating Section 10 of the Competition Act 2010.

CCP received a complaint wherein it was alleged that M/s Vision Developers (Pvt) Limited is offering residential and commercial plots in an unauthorised/unapproved housing scheme, namely the 'Park View Villas,' by concealing the material facts from the consumers/investors in the marketing campaign.

It was further alleged that the location of the 'Park View Villas' is being shown in the marketing campaign of M/s Vision Developers in an area where another housing scheme in the name of 'River Edge Housing Scheme' has been registered with the Lahore Development Authority.

An inquiry conducted by the CCP's Office of Fair Trade established that by running a deceptive marketing campaign, the real estate company not only deceived consumers but also harmed competition in the market.

During the inquiry, M/s Vision Developers failed to provide a satisfactory justification in support of its claims pertaining to the authenticity of 'Park View Villas,' thus violating Section 10 of the Competition Act. A show cause notice has been issued to the Undertaking and it has been called upon for hearing on a given date.

CCP is vigilant to the marketing campaigns being run by different housing societies throughout the country to protect the consumers' interest from anti-competitive practices, particularly deceptive marketing practices. CCP is mandated under the Competition Act to ensure healthy competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive practices.

Jan. 24-2017

Food firms fined for marketing tea whiteners as milk

ISLAMABAD: The Competition Commission of Pakistan (CCP) has imposed fines of Rs62.29 million on Engro Foods Limited (EFL), Rs2 million on Noon Pakistan Limited (NPL), and Rs500,000 on Shakarganj Foods Products Limited (SFP) for violating Section 10 of the Competition Act 2010, a statement said on Monday.

"The order disposed off the show-cause notices issued to these companies after an inquiry, conducted by the CCP, found the aforementioned companies were prima facie deceiving consumers by marketing and selling tea whiteners and dairy drinks including SFPL's product Qudrat (liquid tea whitener) NPL's product Dairy Rozana (dairy drink) and EFL's prod-

Jul. 27-2017

CCP slaps Rs10m fine on P&G for deceptive marketing practices

OUR STAFF REPORTER
ISLAMABAD

The Competition Commission of Pakistan (CCP) has passed an order imposing a penalty of Rs10 million on Procter & Gamble Pakistan Pvt Ltd for deceptively advertising its product 'Safeguard' as 'Pakistan's number one rated anti-bacterial soap' in violation of Section 10 of the Competition Act, 2010.

The order has been passed by a two-member CCP bench comprising CCP Chairperson Vadiyya Khalil and member Ikrumul Haq Qureshi. The CCP received a formal complaint from Reckitt Benckiser Pakistan Ltd, wherein it was alleged that Procter & Gamble publicised its product "Safeguard" as "Pakistan's number one rated anti-bacterial soap" in violation of Section 10 of the Competition Act as it lacked reasonable basis to substantiate the claim.

While referring to the CCP's public notice published in leading newspapers warning companies to comply with the provisions of Section 10 of the Competition Act when advertising their products, Reckitt Benckiser alleged that the Procter & Gamble disregarded the CCP's warning by running an advertisement campaign for Safeguard, which was not only misleading consumers but also harming the business interests of its competitors.

After hearing the complainant and respondent, the CCP's bench passed the order stating the advertising claims must be based on competent and reliable scientific evidence particularly if the product involves health and safety claims. Besides, the products must carry clear and conspicuous disclaimer/disclosure along with the claims, which the consumers could easily notice and understand.

CCP order found Procter & Gamble's reliance on studies and surveys to rank itself as Pakistan's number one rated antibacterial soap irrelevant, materially false and misleading, in violation of Section 10 of the Competition

Aug. 16-2017

CCP imposes Rs10mln penalty for deceptive marketing

ISLAMABAD: Competition Commission of Pakistan (CCP) on Tuesday imposed a fine of Rs10 million on Colgate-Palmolive Pakistan (Pvt) Ltd for a deceptive marketing campaign. The order was given for violating Section 10 of the Competition Act, 2010 for false marketing of one of its products, 'Max All Purpose Cleaner' (Max APC).

According to a statement, CCP received a formal complaint from Reckitt Benckiser Pakistan Limited stating that the marketing campaign for Max APC was making deceptive/false claims, including: 24 hours long lasting freshness, 99.9 percent bacteria free, protects against cold and flu, skin infections, and food poisoning, with a disclaimer reading, 'based on laboratory testing with concentrate usage'.

Reckitt Benckiser, which produces 'Dettol', a competing product to Colgate's Max APC, complained that Colgate-Palmolive had issued a trade letter to discredit 'Dettol' with comparative claims, thus harming its business interests.

CCP conducted an inquiry into the matter and issued show cause notice to Colgate-

Aug. 17-2017

CCP issues show cause notice to Kitchen Stone Foods

ISLAMABAD (Staff Reporter): The CCP has issued show cause notice to a frozen foods manufacturing company, M/s Kitchen Stone Foods, for deceptive marketing practices.

The CCP issued notice to food manufacturing company for prima facie violation of Section 10 of the Competition Act, 2010 by running deceptive marketing campaign for its frozen food products, said a statement issued by CCP here on Wednesday. The CCP received formal complaints from M/s Seasons Foods (Pvt) Limited and M/s Quick Food Industries (Pvt) limited alleging that Kitchen Stone Foods was deceiving consumers by claiming that its products were "100 percent non-processed food".

The CCP conducted an enquiry into the matter, which concluded that the advertisement posted by Kitchen Stone Foods on its Facebook page drew direct misleading comparison by showing the complainants' packaging with articles citing risks and causes of cancer along with misleading narrations without substantiation.

As the above 5 examples from various categories clearly demonstrate getting advertising claims wrong can be quite expensive and potentially severely damaging to company reputation as imposition of fines is covered in local news media.

Beyond the financial and reputational cost that a company risks incurring when it makes dubious or unsubstantiated claims is the damage that is done to the consumers perception of advertising as a whole. Hyperbolic claims or puffery results in consumers losing faith and the loss of collective credibility of all advertising. This is damaging for advertisers, advertising agencies, and media as well as eventually for the economy as a whole.

Thus it is in the interest of the advertiser and the advertising agencies that craft campaigns to get the art and science of advertising claims right!

So next time when the Don Draper at your favourite agency conjures up a claim with some semantic sophistry think many times before pulling the trigger on that approval. Your friendly competitors as well as the Competition Commission of Pakistan are alert and ready to challenge any infringements of the law.

Need & benefits of having a guideline to follow

A clear and easy to comprehend set of guidelines reduces conflicts as all advertisers have a very clear list of Dos and Don'ts. Ideally a white paper/guidelines should be referred to every time an advertising claim is being framed. Secondly, it should save valuable time, when crafting claims, which is always important in business where the imperative is speed to market. Guidelines should ideally help advertisers save money and avoid potentially reputation-damaging situations where fines are imposed and negative publicity happens due to misleading claims.



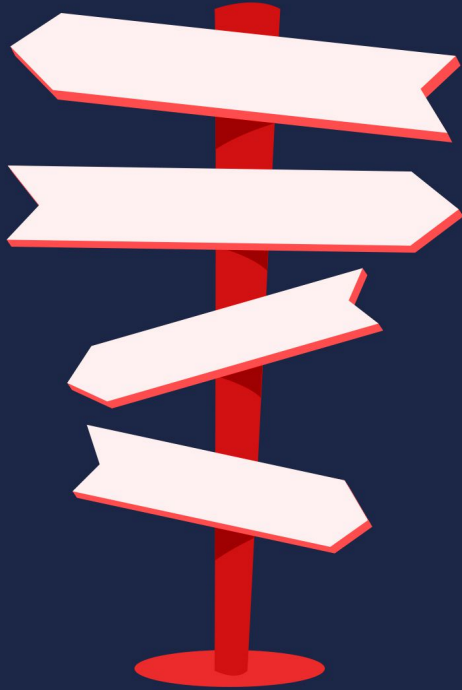
Definition of an 'average consumer'



Most guidelines make some sort of reference to an entity called an 'average consumer'. Before proceeding further it would be useful to very clearly understand what an 'average consumer' is:

- 1 | As per the New Zealand ASA Code the 'average consumer' is a **layman**
- 2 | As per the US FTC the equivalent term is a **reasonable consumer** - the typical person looking at the ad

An excellent rule of thumb when visualizing the 'average consumer' is to imagine **your grandmother** and how she would interpret a particularly brilliant Ad claim.



What is Deceptive Marketing or Ad Claims that Mislead Consumers

As per the laws of Pakistan Ad Claims are regulated by Section 10 of the Competition Act, 2010 (Pakistan) which focuses on Deceptive marketing practices.

Section 10 of the Act states:

10. Deceptive marketing practices.

- 1 | No undertaking shall enter into deceptive marketing practices.
- 2 | The deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resorts to-
 - a | the distribution of false or misleading information that is capable of harming the business interest of another undertaking;
 - b | the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use or quality of goods;

- c | false or misleading comparison of goods in the process of advertising; or
- d | fraudulent use of another's trademark, firm name or product labeling or packaging.

If you recall the Jack and the beanstalk story from your childhood you will remember that the story begins with Jack getting duped into selling his cow for 'magical' beans and getting a lot of grief from his poor mother. Clearly, the law is trying to protect naïve consumers and safeguard consumer interest and the interest of competing entities ensuring fair competition. Any comparison must be based on fact and not mislead or deceive overtly or in an implied fashion. Using a trademark, company name or product labeling or packaging in a duplicitous manner is highly objectionable and will have severe consequences.



Guideline for Making Ad Claims



As the Hippocratic oath that Doctor's take states "First, Do No Harm" a creative paraphrasing into an aspirational advertising practitioner's oath would read:

"First, Do Not mislead!"

- 1 Always think of the average consumer.**

Typically, when a regulatory body like the CCP or an industry body like the PAS evaluate an advertising claim they look at the ad from the point of view of the "reasonable consumer"- the typical person looking at the ad. Rather than focusing on certain words, the focus is on the ad in context - words, phrases, and pictures - to determine what it conveys to consumers.
- 2 Expressed and implied claims are equally important.**

Generally both "express" and "implied" claims are evaluated. An express claim is literally made in the ad. For example, "ABC Mouthwash prevents colds" is an express claim that the product will prevent colds. An implied claim is one made indirectly or by inference. "ABC Mouthwash kills the germs that cause colds" contains an implied claim that the product will prevent colds. Although the ad doesn't literally say that the product prevents colds, it would be reasonable for a consumer to conclude from the statement "kills the germs that cause colds" that the product will prevent colds. Advertisers must have proof to back up express and implied claims that consumers take from an ad.
- 3 Unsaid information or claims made using facts selectively is also an issue.**

What is also considered is what the ad does not say - that is, if the failure to include information leaves consumers with a misimpression about the product. For example, if a company advertised a collection of books, the Ad would be deceptive if it did not disclose that consumers actually would receive abridged versions of the books.
- 4 Is the impact of the claim "material"?**

Another significant parameter is whether the claim would be "material" - that is, important to a consumer's decision to buy or use the product. Examples of material claims are representations about a product's performance, features, safety, price, or effectiveness.
- 5 Is reliable and independent evidence available to back the claim?**

Critically, any evaluation also looks at whether the advertiser has sufficient evidence to support the claims in the ad. The law requires that advertisers have proof before the ad runs.

INTERPRETATION OF CLAIMS



When claims being interpreted are Objective Claims (Market Leader, Best Selling, Leading, No. 1) a “reasonable basis” or independent evidence that supports the claim is required to substantiate. These require the advertiser to have a reliable third party conducted survey, competent and reliable scientific evidence such as tests, studies or other scientific evidence that has been evaluated by people qualified to review it. Tests and studies must be done on protocols that experts in the field accept as accurate

When claims are ‘Matter of Opinion’ OR are subjective claims that consumers can judge for themselves the burden of proof is much lower. For example XYZ cola tastes great. Puffery or exaggeration that is a matter of opinion and not quantifiable has been upheld in cases in the US, e.g. ‘best ever’ claims.

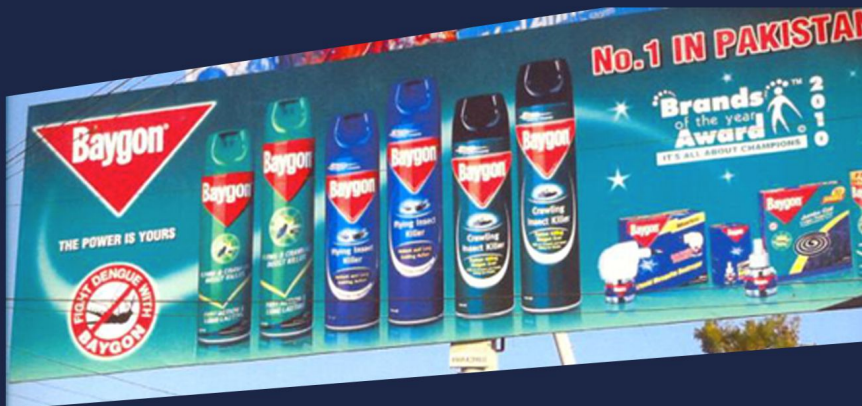
Ad Claim Substantiation

No. 1 Claims Typically, a 'No. 1 Claim' that will stand up to scrutiny needs to be substantiated with market share or consumer panel data collected by a reputable market research company. E.g. Nielsen Retail Audit data

Example 1

In 2011 Reckitt Benckiser (RB) challenged SC Johnson's claim of 'No. 1 in Pakistan' for their brand Baygon for all their products with a formal complaint to the CCP. To substantiate their complaint RB provided Nielsen data that showed RB's Mortein had a market share of 39.7% versus a market share of 5.7 % for Baygon in the period under discussion.

SC Johnson's reply to the complaint was that the claim was based on a 'Brand of the year award' for the aerosol segment of Baygon.



CCP did not find the substantiation provided by SC Johnson sufficient to make a claim of "No. 1 in Pakistan" and SC Johnson agreed to withdraw its marketing campaign within 10 days.

The CCP also clarified a couple of points for future reference:

- A claim for 'No. 1 in Pakistan' is a quantifiable and specific claim which requires a "reasonable basis"
- "Reasonable basis" is an established concept in US advertising legal case history and it provides that, the advertiser must have had some recognizable substantiation for the claims made prior to making it in an advertisement.
- Baygon aerosol was the recipient of the Brand of the year award and juxtaposing the brand of the year logo with the whole Baygon range implied that the whole range received the award.
- 'Brand of the Year' award does not in any way substantiate a 'No.1 in Pakistan' claim
- Failure to mention qualifying information in this case was considered deceptive by the CCP based on an earlier judgment and SC Johnson was reprimanded but no penal action was taken.

Example 2

“Shangrila is Pakistan’s No. 1 Tomato Ketchup” claimed by Shangrila Pvt. Ltd. for Shangrila Ketchup in 2012 (CCP complaint). Complainant in this matter was National Foods Limited (NFL).

1. CCP found in favour of NFL based on higher market share (volume & value) versus Shangrila Ketchup as measured by A.C. Nielsen, a reputable market research firm.
2. It was noted that Shangrila had used Brand of the Year Award as a basis of making the claim. Upon investigation Brand Foundation, has clarified that their awards never empowers the recipient to make a claim of being No.1 in Pakistan. ‘Reasonable basis’ and ‘recognizable substantiation’ were judged to be missing in the Shangrila claim.



Example 3

‘Surf Excel is Pakistan’s No. 1 Stain Removing Powder’ claimed by Unilever for their brand Surf Excel in 2013 (PAS arbitration), challenged by P&G.

Unilever used AC Nielsen market share data, Milward Brown Image scores and Foresight Consumer Panel to substantiate its claim.

The PAS committee decision upheld the fact that the substantiation provided by Unilever justified a claim of being ‘Pakistan’s No. 1 detergent’ but the second claim of being ‘No. 1 stain removing detergent’ required stronger scientific test results:

“However, the Committee is of the opinion that the specific mention of ‘stain Removing detergent’ in the communication makes it an ‘efficacy claim’ that has to be supported by proper laboratory testing verified by a well reputed independent body like SGS and TUV following a global wash testing standard.”

Unilever was requested to amend Surf Excel advertising accordingly.

Furthermore PAS advised both parties:

‘both the companies should make an effort on developing communication strategies that use creative solutions beyond using superlative claims like we have seen in these cases. The statements made are not seen to be complete in terms of what they allege, but are dependent on disclaimers, qualifying specific conditions or fulfilling just one or two criteria like specific stains, top of mind, consumer perception, market share/volume, etc. The Committee is of the view that continuing this practice can potentially lead to confusion in the minds of consumers in terms of claims that brands make that in a long run may lessen public trust in advertising.’



Pakistan's Best/Best claims

Example 1

'Pakistan's best stain removal in one wash' claimed by P&G for their brand Ariel in 2013 which was challenged by Unilever (PAS arbitration)

P&G used laboratory tests by the well-reputed SGS Institut Fresenius to substantiate its claim. The entire testing protocol including but not limited to the list of stains on which the product was tested and all the washing conditions are well documented following International Association for Soaps, Detergents and Maintenance Products (AISE) guidelines, which is also subscribed to by UPL. The PAS arbitration sub-committee upheld P&G's claim based on robust scientific evidence provided. The only amendment required from P&G was to enhance size and visibility of disclaimer.



Example 2

'Best in washing machines' claimed by Unilever for their brand Surf Excelmatic in 2014 which was challenged by P&G (PAS arbitration).

Unilever presented ISO protocols, AISE Stain Removal Test data and test results verified by TUV-SUD, South Asia, an independent credible body of international repute to substantiate its claim. Initially the claim on Surf Excel was considered substantiated but further technical exploration resulted in a PAS decision in Jan 2015, which required Unilever to withdraw its claim.



Example 2

Safeguard - Pakistan's Best Antibacterial Soap' claimed by P&G for their brand Safeguard in 2016 challenged by Reckitt Benckiser (PAS arbitration).

P&G used lab tests to demonstrate superior residual efficacy that gives better after-wash protection. The test protocols followed were Internationally established and were carried out by an independent third party testing agency. The PAS sub-committee upheld the complaint from RB and judged that P&G's claim need to be amended and a qualifier added to bring it in line with test results provided by P&G and make it unambiguous for consumers.



100% claims

Example 1

“100% pure juice’ claimed by Al-Hilal Industries for brand Fresher Juice in 2011 (CCP violation).

CCP took notice of the ‘100% pure’ claim and issued a show cause notice to Al-Hilal Industries. In its reply Al-Hilal Industries stated that:

“fruit juices that are not a 100 percent pure contain artificial substances whereas our brand Fresher contains no artificial substances. Furthermore, citrus fruit is probably the only kind of fruit from which we can extract juice and consume it as it is. However, most fruits such as mango, strawberry, guava, falsa, peach etc by their nature cannot be extracted in liquid, drinkable form. To achieve this purified water and other natural ingredients are required to be added to the pulp to bring it to liquid form as well as to bottle it. Due to the hot filling process sucrose has to be added to maintain its taste.”

Despite repeated reminders, Al-Hilal Industries provided no other supporting documents to CCP.

The CCP decided that the claim was deceptive marketing in its decision and noted that:

Globally and locally accepted definitions of what constitutes 100% fruit juice as per Fruit Juices and Fruit Nectar England & Scotland Regulations 2003, The US Code of Federal Regulations Title 21 Sec 102.33 and The Punjab Pure Food Rules, 2007 do not support or justify the claim of 100% purity made by Al-Hilal Industries in this case.-

Labelling in the front and the back of the packs had differing information and claims on the back of pack (ingredients) are barely visible to the naked eye and therefore give an impression of being deceptive.

The reasonable consumer should not be expected to conduct a comparative analysis of information contained in secondary labeling but should be able to make an informed and not misleading choice based on information conspicuously displayed.

The addition of Sucrose that Al-Hilal admitted to the CCP does not gel with the “Stay Fit, Drink Healthy” message on the Fresher brand packaging. For the ordinary consumer when read together with 100% pure it is most likely to denote that the juice does not contain added sugar. The CCP found the use of “Stay Fit, Drink Healthy” ‘giving an overall deceptive impression’ and ‘potentially misleading’.

Keeping in view all the facts and circumstances of the matter at hand, the Commission is of the view that consumers are entitled to expect that actual contents of packaged juice match the overall impression created by the packaging and the marketing of the product. The undertakings must say what they mean and show what they sell to prevent deceptive marketing.

In its final decision the CCP showed leniency and chose not to penalize Al-Hilal as it had promised complete compliance but the company was reprimanded to ensure more responsible behaviour in the future with respect to the marketing of their products.



Quantified Benefit delivery or efficacy claims

Example 1

'Zero-dandruff' claimed by Unilever Pakistan for their brand Clear Cool Black with Menthol shampoo in 2010 challenged by P&G. (PAS arbitration)
P&G raised 3 objections in their complaint:

- Objection 1: Misleading claim in terms of consumer interests
- Objection 2: Validity of the claim in terms of scientific proof
- Objection 3: Size of the Disclaimer

Unilever's defended these assertions based on:

1. Cosmetic definition of dandruff and how dandruff removal is generally in advertising.
2. Disclaimer
3. Scientific studies by independent third parties
4. Industry established benchmarks of dandruff removal acceptable to both parties.

Based on the arguments presented by both parties the PAS standing committee decided in favour of Unilever with the only amendment advised being increasing visibility/size of disclaimer.



Comparative claims

Example 1

'Horlicks can do what alone powder milk cannot do' claimed by GSK for their brand Horlicks in 2015 challenged by Nestle. (PAS arbitration) Nestle's complaint consisted of 4 objections:

- Objection 1: The intent, concept and production of the advertisement aims to Specifically attack NIDO products
- Objection 2: Denigration of NIDO Products.
- Objection 3: The Horlicks advertisement is misleading, inaccurate, contradictory and ambiguous.
- Objection 4: The disclaimers in the Horlicks advertisement does not comply with the standards prescribed by PAS.



Amongst these 4 objections the third objection focused on the claim made by GSK regarding superiority of Horlicks versus milk. Regarding this claim the standing committee stated:

The claim "Horlicks can do what alone powder milk cannot do" implies that Horlicks has more nutritional value than powdered milk. The Committee holds the view that Horlicks can make this claim as long as it is able to substantiate it through research and clinical tests as stated by them. The same holds true for the claim "only Horlicks is clinically proven to make your kids taller, stronger and sharper".

PAS standing committee decision on the complaint broadly upheld Nestle's objections with advice for GSK to discontinue usage of yellow pack and yellow dress in the advertising and to make communication that is clear and not ambiguous and follow the PAS guidelines on disclaimer size, visibility and clarity.

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3. Code of Practice, Advertising Standards Authority New Zealand
4. Competition Commission Pakistan, Past Decisions
5. Broadcasting Standards, The National Association of Commercial Broadcasters in Japan
6. The Canadian Code of Advertising Standards
7. Clearcast Notes of Guidance, (Clearcast is an NGO that pre-approves most British advertising)
8. PEMRA Content Regulations
9. PEMRA Code of Conduct For Media Broadcasters/Cable TV Operators
10. Malaysian Code of Advertising Practice, Advertising Standards Authority Malaysia
11. PBA Advertisement Rules and Code of Ethics
12. PTV Code of Advertising Standards and Practice