

Social media advertising traps for businesses

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Don't get caught out when advertising on social media. With more than 1.23 billion Facebook users, nearly 974 million people using Twitter and 700 million registered Instagram accounts, for most businesses the question is not whether to use social media for business purposes, but how.

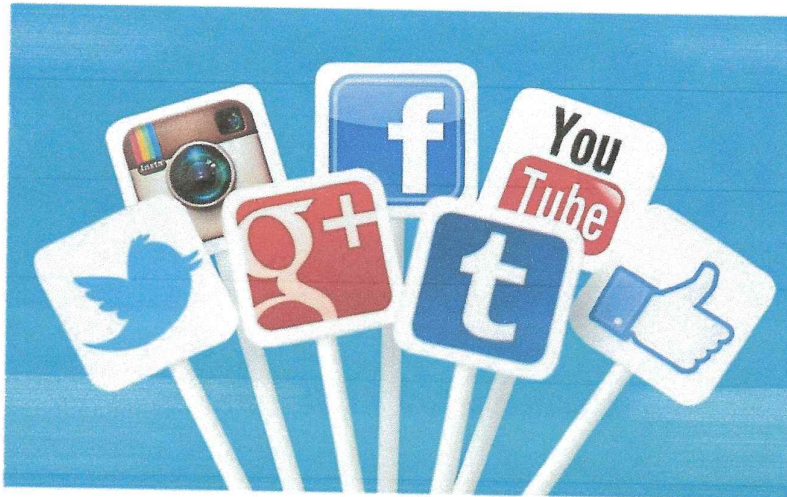
The asking of the latter question should get businesses thinking about the legal implications of social media use, but unfortunately we still see issues arising.

An internet provider, which was a new-entrant to the market at the time, advertised on social media that they were the "fairest" internet provider in New Zealand.

Even if this was true it would be difficult to prove if challenged, which put the company at risk of breaching the Fair Trading Act (FTA) in relation to "unsubstantiated representations".

Moreover, the phrase implied that all other internet provider companies were unfair or "less fair". Again, this could be challenged under the FTA as being an unsubstantiated representation. It could also be "misleading" under the same legislation.

This example illustrates that



Social media might seem like a bit of fun, but you're still subject to consumer law and advertising standards.

if you think that social media is a more relaxed forum for your advertising then you are mistaken. Businesses do not have the luxury of using social media in the same way as personal accounts are used, because they are subject to the same layer of consumer law and advertising standards which govern paid advertising.

In the case of professionals, there may also be professional and ethical obligations owed to a governing body that must still be fulfilled even when posting on

Facebook or other social media platforms. Therefore, each time you post, tweet, or otherwise engage with users, you should have the FTA, Consumer Guarantees Act, Advertising Standards Authority (ASA), the platform's terms of use and your professional obligations top of mind.

What happens if I breach regulations on social media? In some instances very little happens. Most breaches are rectified by an order to remove or amend the offending

advertisement. However, decisions of the ASA are also provided to the media. Depending on the nature of the "offending" this could have serious consequences for the reputation of a business.

Of course, in some instances, the impact of the "offending" advertisement, in terms of consumer response, is positive. Consumers can sometimes feel refreshed by advertisements that push the proverbial envelope.

So why be concerned? Being caught in breach of advertising

"If you think that social media is a more relaxed forum for your advertising then you are mistaken."

standards may or may not have an effect on your business' reputation, but it will at the very least penalise you in time. You will need to respond to allegations and engage in the dispute resolution process. The inconvenience alone is often penalty enough, especially for an unintended breach.

As a result, we remind our business clients of their obligations when advertising, even on social media, so that they are informed of potential risk and can make a calculated decision whether to proceed with a proposed advertising campaign.

We remind them not to slip into "personal-mode" when engaging with consumers. The latter is where many business owners get caught out.

■ Column courtesy of **RAINEY COLLINS LAWYERS** phone 0800 733 484, www.raineycollins.co.nz. If you have a legal inquiry you would like discussed in this column please email Alan on aknowsley@raineycollins.co.nz

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