

Business protection from misleading marketing regulations

Advisory note (2008)

The Business Protection from Misleading Marketing Regulations 2008 (BPRs) came into force on 26th May 2008 alongside the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). They implement Directive 2006/114/EC of the European Parliament and of the Council concerning misleading and comparative advertising. **The BPRs replace the business to business element of the Control of Misleading Advertisements Regulations 1998 (CMARS).** The BPRs prohibit businesses from advertising products in a way that misleads traders and set out conditions under which comparative advertising, to both consumers and business, is permitted. The BPRs also require code owners (namely traders and bodies responsible for codes of conduct or monitoring compliance with such codes) not to promote misleading advertising and comparative advertising which is not permitted.

Further guidance on the BPRs can be accessed at:

www.offt.gov.uk/advice_and_resources/small_businesses/advertising/business-protection.

This guidance helps traders to understand what their obligations are under the BPRs when advertising their products or services in the UK, or other EC Member States.

The BPRs replace the requirements set out under the CMARs to not use advertisements which mislead other businesses or which are not permitted comparative advertisements. The main differences between the CMARs and BPRs are set out below:

CMARs	BPRs
Protected the interests of both consumers and traders.	Main focus is on protecting the interests of business. Misleading advertisements directed at consumers are now dealt with under the CPRs.
Placed a duty on the OFT to consider complaints concerning breaches of the CMARs. In relation to advertising that harmed business interests the OFT could only act under the CMARs once a complaint had been received.	Places a duty on the OFT to enforce breaches of the BPRs along with other enforcement authorities, namely, local authority Trading Standards Services and the Department of Enterprise Trade & Investment in Northern Ireland.

Breaches could only be enforced using civil sanctions by way of a court order stopping the publication and/or preventing any future publication of the advertisement.	Some breaches of the BPRs are a criminal offence as well as a civil matter.
	Prohibits comparative advertisements that mislead consumers in breach of the CPRs

In general terms an advertisement can be considered misleading if it in any way, including its presentation, deceives or is likely to deceive the trader to whom it is addressed or whom it reaches **and**, by reason of its deceptive nature, is likely to affect their economic behaviour **or** as a result of the economic effect on traders it injures or is likely to injure a competitor in some way.

An advertisement is comparative if it either explicitly or by way of implication identifies a competitor or goods, or services offered by a competitor. Comparative advertising is allowed, but only if it is not misleading and meets certain other conditions set out within the regulations.

If you require further information on how to comply with the regulations you should refer to the guidance (via the link above) and the regulations themselves, at:
www.opsi.gov.uk/si/si2008/uksi_20081276_en_1