

Insurance insights

General insurers need to be ever mindful of best practice advertising

It is essential for the general insurance industry to maintain proper standards of advertising. The general insurance industry is a prudential business. It is regulated by our prudential regulator APRA and it is also subject to scrutiny by the other regulators including the corporation's regulator ASIC, the competition regulator, the ACCC and the tax regulator, the ATO. 'Prudential' means involving care and forethought especially in business.

In 2012, ASIC issued Regulatory Guide 234 (RG 234), which summarises the law on misleading and deceptive conduct and sets out in plain English, how and why insurers and other entities in the financial services sector should take care when advertising their products and/or services.

General insurers need to take special care to ensure that their advertising and marketing material is not misleading and that it is accurate.

ASIC has recently said it is concerned that misleading advertising may impede consumers from making the right choices about the insurance products they wish to purchase. ASIC is also concerned that this in turn can undermine competition in the marketplace. For example, if an insurer engages in misleading advertising, that insurer may gain additional market share and hence, an unfair advantage over an insurer that complies with ASIC's guidelines for best practice advertising. ASIC wants a level playing field in the general insurance market.

The purpose of RG 234 is to make sure that those who advertise financial products and services do so in a way that is clear, accurate, not misleading, not deceptive and not designed to entice consumers to buy a product that is different from the one advertised. For insurance products, the main features are the price and the scope of the cover. These features need to be reviewed together, not in isolation.

Accurate comparison to other products is also important. The consumer needs to make sure that she/he/it is not comparing apples with oranges! A comparison between two products when considered in conjunction with an appropriately communicated disclaimer, should be sufficiently clear so as not to create any doubt or confusion in the consumer's mind. ASIC is particularly conscious of advertising that falsely creates an impression that the insurance cover is available in particular circumstances when such cover is not subject to any qualifications.



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ASIC considers that referring the consumer to a PDS in an advertisement is not sufficient to avoid creating a misleading impression. ASIC recently reviewed an advertisement by an insurer that included a table comparing the cover provided by that insurer against the cover provided by four of the insurer's competitors. By including a tick or a cross next to different types of cover, ASIC took the view that the advertisement gave the impression that the insurer provided unqualified cover for the items ticked. In fact, this was not the case. Some of the cover had limitations.

Best practice: General insurers need to ensure they have policies and protocols in place to comply with RG 234

First and foremost, all advertising material should be reviewed by the general counsel and/or the insurer's compliance function before it is released for publication. Advertising material must be reviewed by someone who is well versed in the law relating to misleading and deceptive conduct and also alive to the risks of social media. The general counsel will know whether external legal advice is required.

Fresh eyes are very important. Sometimes, the people working on the product's marketing can get too close to it and lose sight of the everyday basic notions of what may be misleading and deceptive. Best practice would also involve someone other than the general counsel and/or compliance function namely, another "ordinary person" within the insurer, also reviewing the advertising material prior to publication to ensure that it is not misleading.

Insurers also need to have a clear and visible social media policy. If an insurer is using social media to advertise or describe products and if the insurer allows people to post comments on their social media sites, then those sites need to be reviewed at least daily but preferably several times a day by someone who is well versed in the obligations placed upon insurers under RG 234.

Social media is fast, immediate, wide-reaching and powerful. Insurers need a social media policy not only to ensure that their advertising is accurate but also to make their employees generally aware of what is and is not acceptable in terms of social media usage. Twitter and Instagram are designed for very short, sharp communication. They are not the forums in which to go into details about products. They are better left for brand recognition or product names as long as the name itself is not misleading.

Recently, a large general insurer was asked to remove and amend advertising content in relation to its pet insurance offering. The general insurer advertised on its website that the pet insurance provided 100% rebate on vet bills. In fact, there was a fixed excess payable and also a variable excess for pets over 8 years and 10 years old. ASIC asked the insurer to remove the offending material from its website. The insurer was required to update its PDS and online sales product. This example involved the insurer compensating 740 pet insurance consumers to a total of more than \$231,000.

In essence, when embarking on a marketing/advertising campaign, insurers must:

- be accurate
- be unambiguous
- be simple and clear
- not mislead customers into thinking they are purchasing a product which they are not in fact purchasing
- be truthful

Insurers need to make sure that all fees, risks and drawbacks are clearly described and presented and that limitations in cover are readily apparent. The consumer must appreciate the actual cost of the product and the benefits that it provides.

CONTACT CATHERINE OSBORNE ON T: 02 9018 9944 IF YOU HAVE ANY QUESTIONS.

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