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Advertising and Gambling in Thailand

In today's fast-moving and highly competitive commercial environment, brand owners must ensure that their advertisements, while fulfilling their roles of promoting brands and increasing public recognition of products and services, do not violate any relevant laws or regulations. While this might seem straightforward and simple, advertising today can be a challenging task, and with advertisements instantly transmitted countrywide, failure to operate within the law can have consequences on a huge scale. If such advertisements contain negative or illegal content, they can mislead the public, and Thailand's governmental authorities see it as their duty to exert strong oversight over advertisements by issuing laws and regulations to control and monitor what is presented to the public. This article discusses how brands can advertise legally and what to be aware of when advertising in Thailand.

Advertisement and Consumer Protection

As advertisements have a direct impact on the public and consumers, the relevant laws and regulations of which brand owners must be aware are primarily found in the Consumer Protection Act B.E. 2522 (1979) and its related regulations. The main provision controlling advertisements, section 22, sets out the criteria for advertising and clarifies the various types of statements that are considered unfair, false or exaggerated, misleading, and illegal. This provision also authorizes the issuance of ministerial regulations, and the five such ministerial regulations (Nos. 3–7) in use today primarily deal with content used in advertisements, such as that related to the Thai monarchy, the sale of real estate, or events connected to gambling.

In order to enforce the laws and regulations under the Consumer Protection Act, the Advertising Division of the Consumer Protection Board was established to monitor and investigate advertisements following complaints from consumers. This division is also authorized to issue notifications detailing information or criteria to be applied in controlling or forbidding content in advertisements. There are several current notifications setting out brand owners' obligations when advertising on radio or television, specifically with regard to discounts, promotions, and proof of advertising content in cases where the board suspects that it is false or exaggerated.

Lucky Draw Games and Promotional Events

In the course of advertising new, attractive, and trendy products, many brand owners incorporate games or promotional events. In Thailand, however, games and events that seem innocuous might in fact be equated with gambling, which could lead to the organizer (e.g., a brand owner) being investigated for involvement in illegal activities.

A strong cultural belief that gambling is contrary to public morality persists in Thailand, reflected in the Gam-

bling Act B.E. 2478 (1935)—one of Thailand's oldest extant laws. However, not all gambling is illegal. The Gambling Act divides gambling into three main categories: the first listing types of gambling that are prohibited, the second regulating lucky draws, and the third covering types of gambling in which public participation is approved, and of which advertisement or promotion are allowed.

Lucky draws—activities that give away free prizes or rewards based on luck or unpredictable results—are perennial favorites of advertisers and brand owners. These operate solely on the principle of selecting a winner by drawing a winning number, meaning that players cannot predict the results of the game. As such, a lucky draw is considered a “lot drawing” activity, which is listed in the second category of gambling activities under the Gambling Act. These kinds of games are often advertised on radio, on television, or online via social media platforms, such as Facebook and Instagram. Many brand owners—especially SMEs—use lucky draws to give away products or discounts in order to attract customers. Surprisingly, many brand owners who advertise this way do not realize that this type of activity requires governmental approval. In the Bangkok area, approval must come from the Department of Provincial Administration, while in other locations approval should be sought from the district chief. A request for approval of a gambling event will be examined within 90 days, and an officer from the Department of Provincial Administration must be invited to the approved gambling event as a witness.

Currently, there are only two legitimate methods to operate a lucky draw competition, as regulated by the Ministry of Interior. This limitation is in order to allow authorities to easily control such activities, and it is reasoned that the restriction will prevent the public from becoming addicted to gambling. The first method is to draw a prize from the product packaging, or from lots sent by the players. The second is to draw a prize from lots created by using SMS entries received from the players. Brand owners must abide by the authorization procedures stated in the Gambling Act, and are also obliged to obey the criteria for advertising lucky games or gambling events as set out in Ministerial Regulation No. 5 (B.E. 2534) issued under the Consumer Protection Act. This regulation requires brand owners to state all the required elements of their event in their advertisements (e.g., rules, relevant dates and times, duration of the game, venue, and prizes). In addition, the game holder must notify the responsible government officers of the prizes to be awarded in the draw and the list of winners after the results have come out.

The nature of advertisements and promotional campaigns changes rapidly, driven by trends in the market and consumer demand. Nevertheless, it remains almost impossible to launch or advertise lucky draws in Thailand within a short amount of time due to the requirement to seek authorization from a responsible authority, which is quite a complicated process with a long timeline for approval. As a result, many brand owners conduct lucky draws online to promote their brands illegally, falling foul of the above regulations.

Other Advertising Concerns

Beyond gambling, unique cultural considerations can crop up in a number of unexpected areas affecting advertising, and brand owners should also take care when advertising products such as liquor, food and drugs, cosmetics,

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hazardous materials, or medical tools, paying close attention to relevant acts, regulations, and notifications, in addition to the general principles and criteria regarding advertisements set out in the Consumer Protection Act.

Intellectual property laws, such as the Copyright Act B.E. 2537 (1994) and the Trademark Act B.E. 2534 (1991), should also be closely considered by brand owners. To create attractive and effective advertisements, designers often use figures, music, photos, and other artistic elements, and brand owners should be careful not to violate the copyright in works created by others or infringe trademark rights owned by others when creating their own works; they

can only make use of this intellectual property if they have legally obtained the right to do so.

In conclusion, it is very important for brand owners to carefully review the content and format of their advertisements before launching new advertising campaigns. Lucky draw campaigns offer a cautionary tale to advertisers and show the importance of complying with laws and regulations. Not only can failing to do so result in criminal charges, but when the law touches on cultural imperatives, failure to comply can damage the reputation of a brand owner and cause a loss of profits. Finally, brand owners should carefully check compliance with relevant copyright and trademark laws—such as through using an advertisement review and advisory service—to avoid penalties for infringement and possible public embarrassment. 🙅