

Direct to Consumer: Top tips for Advertising & Consumer Protection compliance

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One of the key factors in attracting a loyal and repeat customer base is to build a positive perception of your brand and products and to gain customer trust. Fieldfisher specialists, Sonal Patel Oliva and David Bond take a look at the importance of complying with relevant advertising and consumer protection laws when operating a direct to consumer (“D2C”) business.

There is no doubt that 2020 has been a strange year for all. The impact of COVID-19 has meant that we have all had to make changes in our daily lives and constantly adapt to the ever-changing new "normal". For businesses and consumers, it has meant a change in shopping habits and a greater reliance on e-commerce.

Although the retail sector in general has taken a big blow during 2020, one particular area appears to have benefited somewhat – D2C channels and businesses selling consumer goods.

D2C models have been growing in popularity for a few years now. From businesses selling organic locally

produced foods and recipe boxes to skincare and beauty products to mattresses and trainers. They have been flourishing as a result of social media, convenience and a focus on quality product, customer experience, data insights and digital audiences.

They were already on the rise prior to COVID-19. However, with physical retail premises forced to close during repeated lockdowns and tier restrictions, D2C businesses selling consumer goods have benefited even further. So much so, that as well as the smaller players in the market whose business is wholly or primarily based on D2C models, big brands like Kraft Heinz, PepsiCo and Nestle have also all launched D2C offerings.

D2C business models require businesses to manage every aspect of their business and brand from manufacture through to promotion and sale. Therefore, it is essential to carefully navigate the relevant regulatory and compliance requirements.



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Why should you care about compliance?

Operating your business in a compliant manner can reap rewards, whilst non-compliance can bring about unwanted obstacles:

The pitfalls of non-compliance

- **Investigations:** The UK Competition and Markets Authority (“**CMA**”) is taking action in a number of areas that affect D2C businesses:
 - unfair free trial offers;
 - cancellations and refunds;
 - misleading information;
 - unfair commercial practices; and
 - influencer disclosures in social media content.
- **Visible Complaints:** Social media platforms enable publicly visible complaints, which can be easily shared and difficult to erase.
- **Negative PR:** Brand damage, loss of goodwill and loss of trust gives competitors the edge.
- **Wasted Costs:** Non-compliant copy is costly to remove and revise and could result in losing valuable media space.

The benefits of compliance

- **Transparency & Trust:** Making genuine and fair claims and using honest and transparent influencers gives your customers trust and confidence in your product.
- **Customer Experience:** Providing clear and easy to navigate offers and terms enhances the customer experience and creates a customer who is happy to keep coming back for more.
- **Let Your Customers Do The Talking:** Providing a great customer experience allows your customers to do the talking for you through peer-to-peer marketing.
- **Maintain The Edge:** Staying on the right side of the law allows you to concentrate your time and resources on your brand and product, instead of on consumer and competitor complaints and investigations.

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What steps can you take to ensure compliance?

Here are our top ten tips for advertising and consumer protection compliance:

1. Protect your brand, your vision, your key messaging

Think about how you want consumers to see you and ensure consistency across your marketing communications. Also, ensure that your business operations align with your messaging and reflect your values and key principles.

2. Know and follow the rules

Advertising rules apply to all of your marketing communications and promotional content. Therefore, in addition to what you might consider to be traditional forms of media and third party media space, you should remember that your own websites, your social media pages, emails, texts, SMS, adopted UGC and promotional influencer content will also be covered by the rules.

3. Check your promotional content carefully

In order to gain consumer trust, your marketing communications and any claims about your products must be clear, legal, honest and transparent. Don't be misleading, ambiguous, aggressive or offensive.

4. Support your claims

Only make claims that are capable of substantiation and ensure that you hold robust evidence to support your claims. Depending on the nature of your product, you may also need to comply with additional sector specific rules.

5. Provide clear and transparent terms and policies

Make sure that any subscription terms and policies

(delivery, pricing, aftercare, returns, cancellation, privacy etc.), promotional offers and other consumer facing terms are drafted in a consumer-friendly manner and are clear, fair and easy to understand and navigate.

6. No hidden terms or charges

Clearly provide all significant conditions and restrictions attached to your subscription, promotional and other consumer offerings. Be transparent and don't bury them in your terms or policies.

7. Genuine and clear offers

Present your offers and the terms of your offers (e.g. free offers/trials, price offers, guarantees, price matches etc.) clearly and fairly. Ensure that they are easy to understand.

8. Influencers: carefully select and manage

Select, engage with, retain and manage your influencers effectively. Ensure that your influencers are suitable for your product type, can be featured in your brand campaigns and have the appropriate target audience.

9. Customer reviews, testimonials and other user generated content

Only use true and genuine content from real customers and ensure that you have all of the necessary consents and permissions in place for use in connection with your brand and product. Treat any adopted content to the same standards as your other advertising when assessing compliance.

10. Customer Data

Think about how you are collecting and using customer data. Make sure you have the right notices, terms and processes in place.

Contacts



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If you have any queries or would like any further assistance in this area, please do not hesitate to get in touch with Sonal or David.



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