



IRELAND

Duncan Grehan

Duncan Grehan & Partners Solicitors



Country Report

IRELAND

EALA Meeting – Cannes, France

May 2002

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1.	
Topic:	New Code of Advertising Standards and Sales Promotion Practice
Who:	Advertising Standards Authority of Ireland
When:	April 2002
Where:	Ireland
What happened:	<p>Ireland has implemented a new Code on Advertising Standards and Sales Promotion Practice. The Advertising Standards Authority of Ireland which is the independent self-regulatory body for the advertising industry implemented the Code in April of this year. The main changes made to the 1995 Code are as follows:</p> <p>Rules on offensiveness in advertisements have been broadened to take account of the Equal Status Act, 2000</p> <p>Rules on price quotations have been tightened to make the total costs clearer to consumers and to avoid exaggerating the availability of goods and services.</p> <p>Advertisements may still have to be withdrawn where it is decided they are unsuitable for children even where they are not directed to children</p> <p>There are now much stricter rules on advertisements featuring alcohol in response to concern about the effect they have on young people.</p> <p>Sales promotions and paid-for advertising on the Internet are now formally within the Code</p> <p>Advertisers must now have signed and dated proof of any tests, trials or endorsements relied upon in their advertisements.</p>
Comment:	The Advertising Standards Authority of Ireland has now updated its Code for Advertising and Sales Promotions practice to take account of advances in

	technology, new legislation and also public opinion in relation to alcohol advertising and advertising to children. It ensures that advertisers are kept aware of their obligations both as a result of legislation and their own self-regulation.
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2.	
Legislation:	European Communities (Data Protection) Regulations, 2001
When:	April 2002
Where:	Ireland
What happened:	<p>Ireland has now taken its first steps in implementing the Data Protection Directive 95/46/EC. The newly implemented regulations make several amendments to the Data Protection Act, 1988 which was the only previous legislation applicable to data protection law.</p> <p>Under the Data Protection Act, 1988 data controllers were under a duty to provide appropriate security measures to ensure personal data could not be accessed without authorisation or altered, lost or destroyed. This became increasingly difficult as information is transferred more and more by electronic medium. The new regulations allow data controllers to balance the cost of security measures and the technology available to use them against the type and value of the data involved and the damage which would occur if it was accessed</p> <p>It is now more difficult to prohibit transfers of data to countries outside the European Economic Area. If that country ensures an adequate level of data protection in line with EU regulations then the Data Protection Commissioner cannot prohibit it. In addition if US companies are in line with the US 'Safe Harbour' agreement then they are also seen as ensuring an adequate level of data protection</p> <p>Restrictions on transfers to countries outside the EEA also do not apply to transfers where the subject has given his consent to it or where the transfer would be necessary for the performance or conclusion of a contract between the parties.</p> <p>If a data controller retains the services of an agent or data processor to process data on their behalf then they must use a contract in writing or equivalent form which deals adequately with issues of security, confidentiality and other data protection matters.</p>
Comment:	The Regulations reflect the changing global economy and advances in technology since the Data Protection Act, 1988 was implemented. It is expected that the remainder of the Directive will be implemented at a later

	stage by the Data Protection (Amendment) Bill, 2002.
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3.	
Topic:	Billboard Advertisement
Who:	Advertising Standards Authority of Ireland
When:	April 2002
Where:	Ireland
What happened:	A billboard advertisement for Rover car manufacturers was the subject of a complaint to the ASAI. The ad featured three women in bikinis and a man in a white suit on the deck of a yacht with a Rover 75 on the quayside. Complainants stated that was demeaning and offensive to women and depicted women as something men could purchase along with the car and yacht. The advertisers stated that the objective was to present the idea of the Rover 75 as being luxurious but yet affordable. The visuals were intended as a spoof of advertisements from the 1960's and 1970's.
Comment:	The complaint was upheld . The Code on Advertising Standards requires that ads contain nothing likely to cause grave or widespread offence. It also requires ads to respect the principle of equality of men and women and the dignity of all persons. The Complaints Committee noted the point that the ad was intended as a spoof of the 1960's and 1970's form of advertising but stated that such ads were no longer acceptable due to adverse reactions from the public.

4.	
Topic:	Cinema Advertisement
Who:	Advertising Standards Authority of Ireland
When:	April 2002
Where:	Ireland
What happened:	An objection was received by the ASAI to the showing of two advertisements for Guinness at an afternoon showing of Lord of the Rings.

	<p>The complainant stated that the ads were inappropriate as the rating for the film was “PG” (Parental Guidance) and she was accompanied by two children aged 10 and 11. The advertisers responded that Lord of the Rings was not a film specifically made for children and it was not felt that the ads targeted children in any way. It stated that the Cinema Advertising Association (CAA) has an Alcohol Film Panel which ensures that ads for alcohol are only shown where the average age of 75% of the audience is 18 or over. The CAA had compared this film to Star Wars: Episode One and felt that the target market was adults who would first have encountered the work as a child. In addition they had now taken into account the proportion of children attending the film and had therefore withdrawn all ads featuring alcohol from being shown during this film.</p>
Comment:	<p>The complaint was not upheld. The ASAI Code of Advertising Standards required that ads for alcoholic drinks should not be targeted at young people. In addition under the new ASAI Code alcohol advertisements should not be placed in media primarily intended for children. Advertisers are also required to take account of the projected age profile of the audience. The ASAI Committee however acknowledged that films can sometimes appeal to an audience outside the anticipated age group. It noted that the ads were no longer being shown during the film and would not be shown during either of the two projected sequels.</p>

5.	
Topic:	Billboard Advertisement
Who:	Advertising Standards Authority of Ireland
When:	February 2002
Where:	Ireland
What happened:	<p>An objection was received to two poster advertisements for WKD vodka. The first one showed a pair of feet enclosed within two other pairs of feet and then to the side a bottle of WKD Vodka with the wording “Have you got a WKD side?” The second poster showed an X-Ray of a pelvis with a ring piercing below the pelvic bone and again a bottle of WKD Vodka and the same wording. The complaint was that the posters had serious sexual implications and caused offence.</p> <p>The advertisers responded by saying that the ads were supposed to be a little irreverent and fun. They were the kind of thoughts their target drinkers found amusing and they were attempting to associate the products “personality” with that of the target drinkers. The poster of the feet could be</p>

	seen as people hugging, dancing or just standing up. The piercing was a lifestyle statement as body piercing was increasingly popular amongst young people.
Comment:	The complaint was upheld . The ASAI Code requires that advertisements for alcoholic drinks should not suggest any drink can contribute towards sexual success or make the drinker more attractive to the opposite sex. Having considered the response of the advertisers the ASAI Complaints Committee concluded that the advertisement featuring the three sets of feet did contain a sexual inference and was particularly unsuitable as it was a billboard advertisement and would be seen by the public at large. It also considered that a body piercing of the type implied in the second poster normally carried sexual inferences. Both ads were therefore likely to cause offence and were in contravention of the Code.

6.	
Legislation:	Public Health (Tobacco) Act, 2002
Topic:	Tobacco advertising, marketing and sponsorship
Who:	Department of Health
When:	March 2002
Where:	Ireland
What happened:	New legislation has been enacted in Ireland providing for the regulation and control of the sale, marketing and smoking of tobacco products. A new office has been established, the Tobacco Control Agency, which enforces the further prohibitions on the advertising of tobacco products, including advertisements for tobacco in foreign publications which are sold in Ireland. The rules on sponsorship of events by tobacco companies are now much more stringent and it is now an offence to give financial assistance to a body in return for tobacco advertising or promotion. Several marketing practices are also prohibited including selling cigarettes in packs less than 20 and selling confectionery to children in shapes or packages which resemble cigarettes or their packaging.
Comment:	The Act repeals legislation in Ireland which was now becoming outdated, the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978 and the Tobacco (Health Promotion and Protection) Act, 1988. While it has been enacted it is due to officially commence in late 2002.

7.	
Legislation:	Solicitors (Amendment) Act, 2002
Who:	Department of Justice, Equality and Law Reform
When:	April 2002
Where:	Ireland
What happened:	New legislation has been enacted regulating advertising by solicitors in Ireland. The Act prohibits advertisements by solicitors which are likely to bring the profession into disrepute, is published in an inappropriate location, reflects unfavourably on other solicitors, refers to claims or possible claims for personal injuries, or offers an inducement to people to contact the solicitor in respect of such claims. Advertisements published by solicitors cannot include more than the name, address and contact details of the solicitor, the academic and professional qualifications of the solicitor, any speciality areas of legal services and details of any charges.
Comment:	The legislation was enacted in April 2002 and is due to commence in Autumn 2002. It provides strict prohibitions on advertising by solicitors which is now one of the most regulated professions in relation to its advertisements.

8.	
Litigation :	High Court
When:	March 2002
Where:	Ireland
What happened:	The High Court has reserved its Judgement in a case brought against an airline, Ryanair, by a woman who claimed she had contracted free flights for life in 1988 when at the airport in London Ryanair told her that she was their one millionth customer and that she had won unlimited travel for herself and a companion on any Ryanair flight for the rest of her life. There was a film crew present and a presentation was made to the Plaintiff. She was sent a written contract at the time but this was returned unsigned as she did not immediately wish to nominate a companion. She enjoyed her free travel but in October 1997 when she sought to fly to Glasgow she was informed that

	<p>no seats were available and was subsequently told that her free flights were now being limited to 12 flights per year. The Plaintiff claimed approximately €400,000 in damages based on the actuarial value of the loss of free travel for the rest of her life.</p> <p>The Defendants argued that the Plaintiff was seeking to turn into money a prize which she had received entitling her to fly on a low cost airline for the rest of her life and that there was no contract with the Plaintiff who had merely received a gift. As the trial commenced they unsuccessfully sought to amend their defence to include a plea that the system under which the prize was awarded was an unlicensed lottery under the Gaming and Lotteries Act, 1956. Mr Justice Kelly stated that this plea had traditionally never been looked on in a very meritorious light because it was not very meritorious. He also said it was not a very attractive defence because it was an assertion by the Defendant that it was guilty of a gaming activity prohibited by law thereby involving itself in an illegal activity. Later that day the Supreme Court also refused the Defendant's application to put a stay on Mr Justice Kelly's ruling not to permit Ryanair to amend its defence as it could not hear an appeal from a ruling by a High Court Judge while the case was still at hearing.</p>
Comment:	As stated earlier Judgement was reserved in the case. We will keep you informed of any decision – watch this space!