

## Advertising to children in the Bahamas

Dianne Daley McClure

Dianne Daley McClure is Intellectual Property Law Partner at Foga Daley in Kingston, Jamaica.

### Legislative framework

In The Bahamas, there is no single piece of legislation or statute that governs advertising. The legal framework for marketing, advertising and promotion is contained in a number of different laws, codes of practice and regulations including:

- The Consumer Protection Act;
- The Code of Practice for Content Regulation;
- The Health Services (Tobacco Advertising and Sales) Rules;
- The Liquor Licences Act;
- The Theatres and Cinemas (General) Regulations; and
- The Lotteries & Gaming Act.

The Consumer Protection Act, the Health Services (Tobacco Advertising and Sales) Rules, the Theatres and Cinemas (General) Regulations and the Lotteries & Gaming Act cover forms of advertising to the public. Although children are not specifically identified as a category of consumer, they are not excluded, and therefore, these rules must be included in the framework of rules to guide advertisers in marketing to children. By way of contrast, The Code of Practice for Content Regulation and the Liquor Licences Act deal extensively with matters relating to children, with the Code of Practice providing detailed rules on what is not permissible.

### General consumer protection

The Consumer Protection Act provides for the general protection of consumers and prohibits any person in the course of trade or business, from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive. Again, although it does not specifically refer to children, the Act governs all forms of advertising of products and services and protects all types of consumers which would include children from misleading and deceptive advertisement of goods and services. The Act also prohibits persons in the course of trade or business in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services from falsely representing or making false and misleading representations.

### Code of practice for content regulation

The Utilities Regulation and Competition Authority (URCA) is the regulatory authority with responsibility for the electronic communications sector (ECS) in The Bahamas which includes fixed and mobile telephone services, internet services and broadcasting and pay television. In 2012, following extensive public consultation, URCA issued a Code of Practice for Content Regulation of its Licensees providing audio-visual media services in The Bahamas.

In relation to children, the Code categorizes children into younger children (those aged under 12 years) and older children (those aged 12 years and over but under 18 years). The Code is intended to ensure that Licensees adopt responsible policies through scheduling, advisories and programme classifications so as to limit the exposure of children/young persons to potentially harmful or unsuitable broadcast material (such as offensive language, violence, nudity and pornography, drugs, alcohol and smoking) that is intended for, and acceptable only to, adult audiences. Advertisements and sponsorships are required to be legally compliant, decent and truthful as well as presented with a sense of obligation to the consumer, and to society.

The Code generally restricts the broadcasting of:

- advertisements and sponsorships promoting prostitution or any sexual services;
- advertisements or sponsorships pertaining to unlawful gambling, gaming, betting, bookmaking, lotteries or any similar activity or service; and
- advertisements or sponsorships promoting the consumption or use of tobacco or tobacco products.

As it relates to advertising to children, Part 7.2 of the Code states the following:

- licensees shall exercise special care and judgment when broadcasting advertisements which are directed at or are likely to influence children outside the watershed period (i.e. between the hours of 9 p.m. and 5 a.m.);
- advertisements addressed to or likely to influence children should not contain any statement or visual presentation which might result in exposing them to mental, moral, physical or emotional harm;
- advertisements should not exploit the natural credulity of children or their lack of experience and should not strain their sense of loyalty to family, friends, animals, ethnicity, nationality, religion, race, gender, sexual preference and others;
- advertisements must not condone, encourage or unreasonably feature behaviour that could be dangerous for children to emulate;
- advertisements, whether addressed to or likely to influence children or adults, must not implicitly or explicitly discredit safety guidelines established by governmental, health, safety, education and other agencies responsible for such matters;
- advertisements must not condone or encourage practices that are detrimental to children's health; and
- advertisements must not condone or encourage bullying.

Licensees should also be guided by the provisions of Part 5 of the Code in relation to advertisements directed at children, or in which children participate. Part 5 specifically addresses programme scheduling, advisories, classifications, ratings, sexual content and the like with a view to shielding young persons from content and material that is inappropriate and potentially harmful to them.

The Code further restricts advertisements and sponsorships for alcohol during programmes directed towards children or outside the watershed period. It restricts the broadcasting of ads and sponsorships that encourage the consumption of alcohol by persons under the legal age to purchase alcohol.

Advertisements for alcohol should not detract from the need for responsibility and moderation in consumption. They should not imply that alcohol can contribute to an individual's popularity or confidence, daring, toughness and aggression, social success or acceptance, sexual activity, sexual success or seduction. Furthermore, advertisements for alcohol should not imply that the success of a social occasion depends on the presence or

consumption of alcohol or that alcohol enhances personal qualities or attractiveness; or that refusal of alcohol is a sign of weakness.

Advertisements or promotions for films and video games must be advertised during such period as is appropriate under the Code and in accordance with the rating given to the film or video game. Advertisements for pornography must only be broadcast in accordance with the rules pertaining to pornographic content. Advertisements for food and dietary products should not be presented in a manner which would or is likely to encourage excessive or unhealthy consumption of such products.

The Code also addresses the use of children in advertising and states that once a child participates in a programme or in an advertisement, the Licensee must obtain consent or ensure that the producer of the programme or advertisement, or someone acting on the Licensee's behalf has first obtained consent to the child's participation in the programme or advertisement from a parent or guardian.

Although every Licensee that provides audio-visual media services in the Bahamas must comply with and observe the Code Licensees that provide content services, carriage services or on-demand audio-visual media services are only required to comply with and observe the Code to the extent required by the URCA. Generally, advertisers and advertising agencies should also have regard to the Code and ensure that their advertisements comply with the rules of the Code.

Importantly, the Code does not apply to content which is delivered by Licensees solely via the internet, and which is available for access by any person situated within or outside the Bahamas via the internet unless that content is targeted at persons within the Bahamas by virtue of it being promoted or advertised within the Bahamas.

The failure by Licensees providing carriage services, content services and on-demand audio-visual media services in the Bahamas to comply with and observe the Content Code will attract the imposition of a civil penalty.

### **The Liquor Licences Act**

The Liquor Licences Act provides that every person who causes or procures a child aged under 14 years, to partake in entertainment on a premises licensed to sell alcohol shall, on summary conviction, be liable to a fine. By implication, such procurement would include but not be limited to mediums of marketing and advertising for this purpose.

### **The broadcasting (Licencing) rules**

The Broadcasting (Licencing) Rules restricts the general advertisement of spirits or tobacco products for broadcast, but may allow advertisements for beer and wines by reference to the local business, i.e. liquor store or distributor. In practice, there is hardly any advertising of alcohol in the Bahamas.

### **Restrictions on tobacco advertising**

The Bahamas is a Party to the World Health Organization Framework Convention on Tobacco Control and is bound by the Treaty's provisions. The Convention enforces a comprehensive ban on tobacco advertising and promotion (any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly) and tobacco sponsorship (any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly). However, for constitutional reasons, The Bahamas is not in a position to undertake a comprehensive ban. It is therefore required to apply certain restrictions on tobacco advertising and promotion and tobacco sponsorship, including the prohibition of false or misleading tobacco advertisements, requiring health warnings accompany all tobacco advertising and restricting the use of incentives for the purchase of tobacco by the public.

Currently, there is a prohibition of tobacco advertising on Bahamas National Television and radio. Further, the Health Services (Tobacco Advertising and Sales) Rules prohibits the advertising, printing, publishing, reproducing or distributing of any advertisement for manufactured tobacco intended for smoking unless the advertisement includes a clearly legible health hazard warning. Similarly, the rules prohibit the importing, selling, offering or exposing for sale of any cigarettes unless the cigarettes package bears a health hazard warning. This restriction on tobacco advertising would encompass any print campaign or promotional offer aimed at children. In practice, advertisements for tobacco/cigarettes are generally sparse. Bahamian Tobacco has been advertised on the sides of buses and at bus stops.

### Lotteries and games

The Bahamas does not have a “state” or “private” lottery. Generally, the permission for a “lottery” extends to raffle tickets for charitable events. Once permission is obtained to hold a “lottery” or raffle then advertising is permitted. Outside of that the Lotteries & Gaming Act generally prohibits persons connected with any lottery promoted or proposed to be promoted in The Bahamas from advertising for sale or distribution any tickets or chances in the lottery. It also prohibits persons from printing, publishing or distributing or having in their possession for the purpose of publication or distribution any advertisement of the lottery. These provisions assist in shielding children and youth from the promotion and advertisement of the lottery which is considered to be solely for adult enjoyment.

### Theatres and cinemas

The Theatres and Cinemas (Censorship) Regulations requires that a synopsis of every film (or series of films) and of every play intended to be presented at any exhibition or public performance along with copies of all posters advertising the film or play must be sent to the Bahamas Plays and Films Control Board not less than fourteen (14) days before the proposed exhibition or public performance for the Board to examine for approval or refusal. The Theatres and Cinemas (General) Regulations prohibits the exhibiting or displaying of any advertisement relating to cigarettes on any licensed premises.

In conclusion, notwithstanding the absence of an omnibus legislation dealing with advertising to children, the existing framework for advertising in The Bahamas clearly recognizes that children are impressionable and vulnerable members of society and therefore contains rules which seek to ensure that they are not exposed to potentially harmful products, material and content.

### Note

1. Published in conjunction with the Global Advertising Lawyers Alliance ([www.galamarketlaw.com](http://www.galamarketlaw.com)). GALA is an alliance of lawyers located throughout the world specializing in advertising law.

### About the author

Dianne Daley McClure is a Founding Partner of the boutique law firm of FOGA DALEY established in 2000. She has a bachelor of laws honours degree from the University of the West Indies (UWI) and a master’s degree in comparative law from McGill University specializing in IP and International Copyright. Her professional memberships include The Global Advertising Lawyers’ Alliance (GALA) (exclusive Member for English Commonwealth Caribbean Countries), The International Association of the Advancement of Teaching and Research in Intellectual Property (ATRIP) and The International Trademark Association (INTA). Dianne has over 20 years’ experience in IP law and practice. Dianne Daley McClure can be contacted at: [daley@fogadaley.com](mailto:daley@fogadaley.com)

---

For instructions on how to order reprints of this article, please visit our website:

[www.emeraldgroupublishing.com/licensing/reprints.htm](http://www.emeraldgroupublishing.com/licensing/reprints.htm)

Or contact us for further details: [permissions@emeraldinsight.com](mailto:permissions@emeraldinsight.com)