Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill

Institute of Practitioners in Advertising

Introduction

The IPA is the professional body for advertising, media and marketing communications agencies based in the United Kingdom. We have approximately 300 agency brands within our membership.

The IPA maintains and funds an office in Scotland and has approximately 20 member agencies that are Scottish businesses or that have offices in Scotland. The IPA for Scotland organises skills and training, events and talks, and collaborates with other advertising and marketing communications trade associations and organisations.

The IPA for Scotland and its members support the post graduate MSc in Creative Advertising at Edinburgh Napier University, offering placements, visiting lecturers and encouraging talent in the sector in Scotland and also support the Marketing Prize at the University of Strathclyde.

As a not-for-profit membership body, the IPA’s role is two-fold: (i) to provide essential core support services to its corporate members who are key players in the industry; and (ii) to act as the industry spokesman.

Effect of the Bill on the Scottish Marketing Communications Sector

We would reiterate the points we made in our letter of 23 June in response to the call for views on the Alcohol (Licensing, Public health and Criminal Justice) (Scotland) Bill. The latest Scottish Government Growth Sector Statistics (updated in September 2013) detail the size and shape of the creative industries in Scotland. Their GVA in 2012 (the most recent year for which figures are available) was £5.8 billion. They employed 68,000 people in 2013, representing 2.69% of all employment in Scotland. The creative industries in Scotland are, then, larger than life sciences in terms of GVA (£3.3 billion) and employ more people than the energy sector (68,000 compared with 66,000). And there are 665 registered enterprises listed in the advertising sector.

The advertising and marketing communications sector has an important contribution to make to the overall economic success of Scotland. The IPA would ask that proposals seeking to restrict advertising of any product or service, including nicotine vapour products (“NVPs”), should not only be made in consideration of whether such restrictions would actually achieve the purposes intended – in this case, protecting public health - but also in consideration of the damaging impact such restrictions are likely to have on the advertising and marketing communications industry.

Chapter 2 of the Bill

We have particular concerns with chapter 2 of the Bill which, as noted in the explanatory guidance to the Bill, contains regulation-making powers which enable certain forms of advertising and promotion of NVPs to be prohibited or restricted. Our response to the call for views is restricted solely to chapter 2. We note that by sections:

17(1) The Scottish Ministers may by regulations make provision prohibiting or restricting an activity, in the course of a business, which relates to -

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1 http://www.ipa.co.uk/
(a) a nicotine vapour product advert,
(b) nicotine vapour product brandsharing
and
18(1) The Scottish Ministers may by regulations make provision prohibiting or restricting, in the course of a business—
(a) giving away to the public any product or coupon (separately or with something else), where the purpose or effect is to promote a nicotine vapour product,
(b) making products or coupons available to the public (separately or with something else) for a nominal sum, where the purpose or effect is to promote a nicotine vapour product
and
19(1) The Scottish Ministers may by regulations make provision prohibiting or restricting the entering into, in the course of a business, of a sponsorship agreement, where the purpose or effect of anything done as a result of the agreement is to promote a nicotine vapour product.

The regulations referred to in each of these sections may make provision for offences and penalties for those who contravene a relevant prohibition or restriction.

The IPA supports the role and responsibility of government in striving to achieve continuous improvements in public health. We do not believe, however, that the introduction of prohibitions and restrictions on advertising as contemplated by these sections would contribute to benefitting public health.

The Self-Regulatory System

The key benefit of NVPs is to help people stop using tobacco products. The Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (the BCAP Code), have implemented new rules to ensure the safe and responsible marketing of electronic cigarettes (which includes NVPs).

In addition to the general rules contained in the CAP and BCAP Codes, for example, prohibiting misleading advertising, the product-specific rules add another layer of regulation with which advertisers of e-cigarettes and other NVP products must comply. These product-specific rules apply whether or not the relevant product contains nicotine.

The rules are broad and include, for example, that:

- marketing communications for e-cigarettes must be socially responsible.
- marketing communications must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light.
- marketing communications must not encourage non-smokers or non-nicotine-users to use e-cigarettes.
- marketing communications must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture.

3 https://www.cap.org.uk/
- people shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25.
- marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear.

Conclusion

Whilst the IPA fully supports policies intended to promote public health, we do not believe that the provisions set out in chapter 2 of the Bill would achieve that aim. We believe that NVPs serve a valuable public health benefit, helping people give up the use of tobacco products. The advertising of NVPs is well regulated by the CAP and BCAP Codes, overseen by the Advertising Standards Authority. These codes are mandatory. Prohibiting or otherwise restricting the advertising of these products could have the opposite effect to that intended and have a negative impact on the advertising and marketing communications industry in Scotland.

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