



TABS™ Update Technology And Brands

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The National Consumer Agency springs into action!

Companies involved in unfair, misleading, aggressive and prohibited commercial practices should note recent developments which indicate that the National Consumer Agency (“the Agency”) is not afraid to use its powers.

The Agency recently obtained an undertaking from Magazines 365 following an investigation by the Agency into complaints from consumers. The complaints were that Magazines 365:

- i. Had inadequate procedures for dealing with complaints from consumers;
- ii. Failed to refund customers when magazines were not delivered; and
- iii. Offered for sale subscriptions for magazines which were either no longer available or not for sale for the general public.

Following an investigation, the Agency formed the view that Magazines 365 had engaged in unfair and misleading commercial practices.

Under the Consumer Protection Act 2007 (“the Act”), companies are prohibited from carrying out unfair, misleading, aggressive and prohibited commercial practices. Parties engaged in these practices will be subject to penalties under the Act which include on summary conviction, a fine not exceeding €3,000 and/or imprisonment not exceeding six months and on any subsequent summary conviction for the same offence, a fine not exceeding €5,000 and/or a term not exceeding twelve months.

If a person is guilty of an offence on indictment, they are liable to a fine not exceeding €60,000 and/or imprisonment for a term not exceeding eighteen months; and on a subsequent indictment, to a fine not exceeding €100,000 and/or imprisonment for a term not exceeding twenty four months. If a person continues to act illegally after being convicted, fines for each day the offence continues will apply.

The above action sends a warning signal to companies that the Agency is determined to take action to ensure that businesses deal fairly with consumers. Companies should therefore review their operations to ensure that their selling practices comply with the Act and should seek legal advice where they are unsure or require clarification of their legal obligations. Act now before the Agency comes a knocking!



Sale of Goods and Supply of Services Review announced!

A review of the sale of goods and supply of services ("SOSSOG") legislation was recently launched by the Tánaiste and Minister for Enterprise, Trade and Employment, Mary Coughlan, T.D. The review will be led by an expert group chaired by Professor Robert Clark of UCD. SOSSOG legislation (which includes the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980) is important as it governs business-to-consumer and business-to-business contracts.

The review has been launched following the recent publication of the proposed EU Directive on Consumer Rights ("the Directive"). As the Directive will effect consumer rights in Ireland, the Minister indicated that it was important to understand the implications of the Directive and the Group will help the Government formulate its response to the Directive. It is also the perfect opportunity to modernise and consolidate SOSSOG legislation in accordance with the Government's Better Regulation programme.

If the Directive is enacted, it will bring together four existing EU Consumer Directives which contain minimum harmonisation measures meaning that member states may adopt stricter consumer protection rules, thereby resulting in a fragmented regulatory framework. The Directive will however move away from the minimum harmonisation approach and lay down standard rules. It is hoped that doing this will give consumers the confidence to shop across Europe and permit traders to offer goods on a cross-border basis without the impediment of different national rules. The Group will prepare an analysis and evaluation of the proposed Directive in the first quarter of 2009 and is expected to complete its work by mid-2010.

Watch this space for further updates on the progress and outcome of the review.

Dates for your Diary

16th January 2009

Maureen Daly, Partner and Head of Technology and Intellectual Property will speak at a breakfast seminar organised by the Licensing Executive Society and Forfar Intellectual Property on Friday 16th January 2009. Maureen will examine database rights and provide practical tips on how companies can look after them. The seminar will start at 9am (with registration and breakfast commencing at 8:30 am) at Wilton Park House, Wilton Place, Dublin 2. There is no fee for attending the seminar. For further details on the seminar or if you wish to register for the event, please contact Maureen Daly (m.daly@beauchamps.ie).

10th February 2009

The Technology & Intellectual Property Unit are hosting a breakfast seminar entitled "*Advertising Campaigns - Beware of the Legal Minefield!*" on Tuesday 10 February 2009. For details on the programme and to register for the event, please click on the following link "[Advertising Campaigns - Beware of the Legal Minefield!](#)"

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