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Federal Antitrust Service of Russian has issued certain relevant clarifications to the requirements for advertising of alcohol

Overview

Starting from July, 23, 2012, certain amendments became effective to the Federal Law of March, 13, 2006, No. 38-FZ “On Advertising” (“**Advertising Law**”), in relation to advertising and promotion of alcohol products. Bearing in mind the significant impact of such amendments to the alcohol market, the Federal Antitrust Service of the Russian Federation (“**FAS Russia**”) has issued certain relevant clarifications with its Letter No. AK/29977 “On the Latest Amendments to the Requirements for Advertising of Alcohol” dated September, 13, 2012. On October, 16, 2012, this Letter was supplied with the Letter of the FAS Russia No. AK/33491 (“**Letters**”).

By means of the Letters, the FAS Russia clarifies the criteria which should be taken as guidelines in determining the Internet advertising, or compliance of certain other types of alcohol advertising with the statutory requirements (e.g. sponsorship advertising, advertising on the territory of railway stations and airports, etc.). Below we outline certain provisions of the Letters which may directly affect the activity of companies in HoReCa industry.

Advertisement content

The recent amendments to the Advertising Law relate, *inter alia*, to the content requirements of the alcohol advertising. One of such requirements set forth by Article 21 section 6 of the Advertising Law provides that alcohol advertisement shall not use any images of humans or animals, including those in animated cartoons.

The Letters clarify that this limitation does not apply to demonstration of the particular item of goods (cans, bottles, etc.) as it appears on the market (including cases when the images of humans, animals or trademarks containing such images are used in the label), as well as to reporting of the name of the item of goods or relevant alcohol producer.

However, this exception does not cover situations of mere trademark demonstration as well as of the part of packing of alcohol if it includes the images of humans or animals. Such advertising should be regarded as a breach of the Advertising Law.

Promotion events

Section 5 Article 21 of the Advertising Law prohibits advertising of those promotion events which imply alcohol purchase as participation admission (with exception of such events which are directly aimed at sale of alcohol products).

The FAS Russia clarifies in this connection that advertising of a promotion event implying alcohol purchase as participation admission is in line with statutory requirements, provided that the prize (or sale items) in such event is alcohol products only.

Advertising of non-alcohol beer

The applicable legislation defines that alcohol products (in particular, beer) containing less than 0.5 % ethyl fall outside the scope of the Advertising Law as non-alcohol.

The Letters stipulate that what is to be advertised is non-alcohol beer, not its alcohol analogue. Consequently, if it is not clear that the subject of advertising is indeed non-alcohol beer, one shall be regulated by Article 21 of the Advertising Law with the respective legal consequences.

Advertising on the territory of railway stations and airports

Pursuant to the general rule (Article 21 section 2 clause 4 of the Advertising Law), the alcohol advertising in the caterings (as well as in the duty-free shops) on the territory of railway stations and airports is permitted only inside of the catering premises.

The FAS Russia clarifies that such advertising shall be placed so as to look to customers inside of the catering premises. In case of its placement on the external walls of the catering premises in order to attract attention of those customers who are outside of the catering premises, advertising will be held violating the above provision of the Advertising Law.

Print media advertising

The Letters remind that since January, 1, 2013 the print media advertising is prohibited even on the territory of the stationary retail stores, which are permitted for other kinds of advertising.

This rule has certain exceptions. The print media advertising is prohibited on the territory of the stationary retail stores unless:

- it is made before December, 31, 2012;
- it is not a newspaper or magazine component (e.g., promotional brochure enclosed to the newspaper or magazine);
- it contains purely inquiry and analytic information having nothing to do with promotion of alcohol or public service advertising (e.g., market overview, scientific research, etc.);
- it is an article or news with no purpose to attract attention to alcohol product (by not naming or otherwise individualizing it);
- it is a journalistic article or news about drinking culture, or an ingredient of shake or dish recipe (not naming or otherwise individualizing an alcohol product).

Internet advertising

Generally, it is prohibited to advertise alcohol and non-alcohol products (including beer) on the Internet. The FAS Russia further specifies that such prohibition extends to those web-sites that are registered in the domain extensions .SU, .RU and .PФ or in other domain extensions if made in Russian. In case of a breach of the rule it is an owner (administrator) who is held liable.

However the FAS Russia will not qualify as advertising:

- purely inquiry and analytic information having nothing to do with promotion of alcohol or public service advertising (e.g., market overview, scientific research, etc.);
- a web-site or profile in the social network of the alcohol products producer or retailer when the web-site or profile contains information about assortment, purchase conditions, prices and discounts (unless such information is aimed at emphasizing on certain products or organization among homogeneous products and organizations, e.g., by means of a pop-up banner);
- a video posted on the special sections of the video hosting web-sites (e.g., www.youtube.com);
- information about product, its producer, importer or exporter on the product or its packing as well as any item of decoration of the product.

Meanwhile, FAS clarifies that advertising takes place in case of information about alcohol products received by a customer from mobile applications or mobile software (no matter was this information preinstalled or downloaded from the Internet when in use).

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It should be noted that the Letters are not the statutory acts and do not entail liability in case of their breach. However they have a recommendation character and reflect those practice and approach that the FAS Russia is expected to refer to when defining whether a particular kind of advertisement falls within the scope of the Advertising Law. We recommend you to bring your advertising policy in compliance with the provisions of the Letters to evade problems with the FAS Russia.

We remain seized of the matter and will continue informing you about further updates pertaining to HoReCa statutory regulations and relevant application practices by the competent administrative authorities.