

PRAKAS No. 095 on Dishonest Practice in Advertisement and Sale Promotion

7 June 2024

In addition to Law on Consumer Protection promulgated in 2019, issuances of Sub-Decree No. 232 and Prakas No. 249 in late 2022 under which advertisement of products and services is regulated, the Ministry of Commerce, on 12 April 2024, issued Prakas No. 095 comprising of 17 articles.

1. What's New?

Prakas No. 095 regulates dishonest practice by the businesses in advertisement and sale promotion by all forms and communication means, which were not addressed in the Law on Consumer Protection, including below common forms of false advertisement/sale promotion, based on which consumers were induced to purchase the products and/or services:

- Deceptive or misleading descriptions or deceptive comparisons (e.g. being “Number 1” or a higher quality than others or it actually is); or
- Deceptive pricing (e.g. having hidden fees or surcharges, which can cause the final price higher than the advertised price or claiming that price is marked down while it is not).

This Prakas also, among other things, introduces definitions and rules on certain terms such as advertisement, sale promotion, flash sale, clearance sale, special discount offer, prize and lucky draw as well as clarifies rules on price tag (being price tag in local currency, exceptions, and possibility to also price tagging in foreign currency).

2. Highlight of Key Takeaway

a. Dishonest practices in advertisement and sale promotion

Some of the examples of dishonest practices under the Prakas are:

- Not rewarding the promised prizes, unless reasonable evidence provided otherwise.
- Providing incorrect information or falsified documents about winners to the investigation official of the Consumer Protection, Competition and Fraud Repression Directorate-General (“CCF-DG”).
- Having minor accepting prize of regulated products such as alcohol or energy drinks.
- Business’s name or advertising material is not in Khmer language or the Khmer language is not above or twice bigger than the foreign language.
- Not complying with the applicable standard of information about the products and services.
- Make use of advertising work of the others without first obtaining their consents.

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b. Requirement on the businesses

Businesses have to ensure clarity on the following in advertisement and sale promotion:

- Price (before and after discount, final price to pay).
- Bundle (what exactly are included in the bundle, in what quantity and at which total final price).
- Timing (for prizes drawing, during which sale will be).
- Prize (transparent and fair for all consumers, existence of prizes and actual rewarding, public drawing of the prizes).
- Membership (validity, applicable benefits as well as terms and conditions).

For advertisement with prizes drawing, the followings have to be timely submitted upon requirement from the investigation official of CCF-DG:

- Prize planning—Total number of products or services that are prized, prize's type and quantity and applicable terms and conditions.
- Winner's document and information— Winner's identity, address, phone number, the winning prize, date and location for prize rewarding.

Accordingly, one may understand that the submission is not necessarily always before commencing the advertisement and may take place only upon consumer's valid complaint or reasonable suspicion of the CCF-DG.

3. Non-compliance and Penalty

Committing any of the dishonest practices or not complying with any of the above requirements will subject the businesses to penalty provided in Article 44 and 45 of the Law on Consumer Protection, e.g. a monetary fine respectively capped at KHR 50 million or KHR 80 million (approximately USD 12,500 or USD 20,000).

4. Entering into Force

The Prakas came into force on the date it was issued.

To ensure uninterrupted advertisement and sale promotion activities of your businesses, it is advisable that proper and regular legal advice be sought for a timely and correct understanding of the most updated mandatory requirements for a better planning in terms of cost, compliance, and risk mitigation purposes of the business.

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