

How to fight competitor's lies about our company?



Jonathan Moules
Business Questions

I run an estate agency and recently came across an online advert for one of my competitors claiming that its fees were 25 per cent cheaper than ours, which isn't true. I am very concerned that this will have a negative impact on my business. This advert included the name of my company, which is a registered trademark. Does this comparative advertising constitute an infringement of my trademark and could I pursue legal action?

This is a complex and rapidly changing area. It is theoretically possible to sue for damages and seek an injunction to stop registered trademark infringement in comparative advertising cases – but a recent case suggests this might not be a fruitful route. However, another recent case shows that some legal actions might succeed if the advertiser takes “unfair advantage” of your registered trademark by riding off the back of your reputation. Whether that latter type of case would apply to you depends on your particular situation.

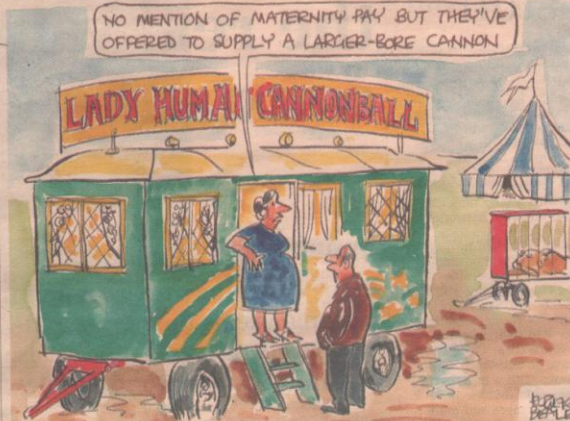
There is also a separate law that deals specifically with misleading comparative adverts. You cannot take direct action against a competitor under that law but, if you report the transgression to the Office of Fair Trading or Trading Standards, they have powers to enforce it. The Advertising Standards Authority (ASA) would rule on the validity of a complaint concerning comparative advertising. If the ASA upholds your complaint, the competitor would suffer bad publicity and would be ordered not to run the advert again. An advantage of the OFT or ASA route is that they fund the enforcement action.

Paul Gershluck is a partner at Mathew Arnold & Baldwin, a law firm

On maternity and pregnant again

An employee, who is currently on maternity leave, has informed me that she has become pregnant again. Her job cannot be undertaken in her condition, but I wonder if I must put her back on full pay. We have no alternative work to suit her, but if we dismissed her because she is unable to carry out her contract, would this be classed as unfair dismissal?

It is unclear whether the employee is still in her current and first maternity leave period. If so, this means payment would be as under her current maternity leave (ie statutory maternity pay), not full pay as you



suggested – because, arguably, there is no need to suspend her from work she is not undertaking. If she has returned and is awaiting her second maternity leave, you must ensure you have fully assessed the workplace risks posed to her. Failure to do so could be sex discrimination in itself.

If the risks cannot be reasonably reduced or removed by altering the employee's working conditions or hours, you should normally try to offer suitable alternative work on terms that are not “substantially less favourable”. Again, failure to consider this might result in a successful claim for compensation.

If, as indicated, suitable alternative work is not available, you are then required to suspend the

employee on full pay.

Dismissing her is a very dangerous approach and would almost certainly result in a claim of sex discrimination and, automatically, unfair dismissal for pregnancy-related reasons. These are likely to be more costly than paying her while suspended.

David Buckle is head of employment at Cubism Law

Which VAT rate do we charge?

I am the owner-manager of an online business that sells equipment to sports clubs and schools.

Our customers tend to place large orders with us, and we typically accept deposits of 10 per cent, with the outstanding

amount payable within three months.

We are concerned about how the change in the value-added tax rate in January will affect us. For example, what VAT rate do we charge for orders we have received where a deposit has been paid before Christmas, but the balance will not be settled until after January 1?

Similarly, if we refund customers for sales undertaken before January 1, which rate applies?

Do I need to contact all of our customers to clarify the VAT chargeable on sales and refunds that span the VAT rise?

Your question relates to the VAT margin scheme. This is an optional scheme, typically adopted by dealers of second-hand goods such as antiques, art

and collectables, where VAT is not distinguishable or reclaimable on the original purchase of the goods.

Simplistically, under the scheme, VAT is payable only on your margin.

You are entitled to reclaim the VAT charged on any business overheads, repairs and restoration costs; however, you must not add any of these costs to the purchase price of the goods you sell under the scheme.

Under the VAT margin scheme, if you do not make a profit on the resale of a particular item then no VAT will be payable. However, even if no profit is made, you might still reclaim VAT incurred in restoring or repairing the goods.

It is noted that, in general terms, where VAT has been paid and reclaimed on an item you have purchased, you are not able to use a margin scheme for that item when you sell it.

In this instance, you must account for VAT on the full selling price under the normal rules.

Please be aware that should you choose to adopt the margin scheme, HM Revenue & Customs insists that your record-keeping and accounts must be detailed and accurate to clearly give evidence of the margins your business has achieved.

Catherine Davis is managing director of Urban Ledgers, a bookkeeping service

YOUR QUESTIONS

Please send your questions to entrepreneur@ft.com