**ISSUES TO TAKE NOTICE OF BEFORE ADVERTISING COSMETICS**

Advertising has always been considered the tool for enterprises to bring their products and services closer to the customers. Almost all enterprises spend a large part of their expenses on advertising activities. However, not every product or service is allowed to be freely advertised. Some products, goods and services are prohibited from being advertised according to Article 7 of the Law on Advertising 2012 and some other products, goods and services have to satisfy specific conditions and be issued with a written confirmation of the advertising contents before being advertised. Accordingly, cosmetics fall under the list of special products being subject to the application for certificates of confirmation of the contents of advertisements. Within the scope of this article, the author will outline a few noteworthy legal issues relating to the confirmation of cosmetics advertisements’ contents.

1. **Cosmetics advertising methods requiring the application for confirmation of advertisements’ contents**

Nowadays, enterprises can advertise their cosmetics via countless different means such as newspapers, websites, electrical devices, terminal equipments, printed products, voice recordings, means of transportation, billboards, etc. Although the current regulations of law do not have any specific provision on which mean of cosmetics advertising will require the application for confirmation of advertisements’ contents, Article 13.2.c of Circular No. 09/2015/TT-BYT nevertheless sets forth some requirements for the application file for the proposed content. Accordingly, advertisements are divided into three categories including:

* Advertisements on spoken newspapers, visual newspapers;
* Advertisements on advertising media other than spoken or visual newspapers; and
* Advertisements via seminars, conferences, organized events

Therefore, it can be seen that all methods of cosmetics advertising according to Article 17 of the Law on Advertising 2012 are subject to the application for confirmation of cosmetics advertisements’ contents.

1. **Conditions and subjects applying for the confirmation of cosmetics advertisements’ contents**
   1. **Conditions to apply for the confimation of cosmetics advertisements’ contents**

To confirm cosmetics advertisements’ contents, cosmetic products must have a template for notification of cosmetic products in accordance with the laws on health. The contents of cosmetics advertisements must include the names, features and functions of the cosmetic products; the names, addresses of the organizations, individuals responsible for putting the products on the market; cautions according to the requirements of international treaties; and must satisfy the following criteria:

* The contents must be in accordance with (1) The template for notification of cosmetic products; and (2) Documents proving the safety and effectiveness of the cosmetic products complying with the guidance on publicizing cosmetic products’ features of international associations (if any).
* Any images, clothing, name, correspondence or writing of healthcare entities or establishments, doctors, pharmacists or other healthcare workers must not be used;
* The features or functions of the products must be consistent with their nature, classification, features and functions as already made public in accordance with law.

Moreover, enterprises must make sure their cosmetics advertisements’ contents do not mislead the customers into believing such products are drugs.

**2.2 Subjects applying for the confirmation of cosmetics advertisements’ contents:**

The entity proposing for the confirmation of advertisements’ contents is the entity whose name is written on the notification slip of such product or the representative office in Vietnam of such entity or the entity with legal status authorized in writing by the entity whose name is written on the notification slip of such product.

1. **The application file for confirmation of cosmetics advertisements’ contents**

The enterprise applying for the confirmation of advertisements’ contents shall submit one file to the Health Department of a province or city under central authority where the entity named on the notification slip of such cosmetic product has its headquarters or where the conference, seminar or event is expected to take place if the cosmetic product is advertised at a conference, seminar or organized event. Contents of the application file for confirmation of cosmetics advertisements’ contents include:

* Written application for confirmation of advertising contents listed in Annex 01 of Circular No. 09/2015/TT-BYT;
* Business registration certificate of the enterprise or establishment licence of the representative office of a foreign trader;
* Contents of application for confirmation of advertisement:
* If it is an advertisement on a spoken newspaper or visual newspaper, 01 copy recording the contents of the proposed advertisement in video disc, audio disc or software file is required together with 03 attached proposed scenarios of the advertisement, specifying the proposed contents and media of the advertisement, image component (for a visual newspaper), speech component and music component;
* If it is an advertisement on advertising media other than spoken or visual newspapers, 03 colourprinted models of the proposed contents of the advertisement are required together with attached software files recording the proposed contents of the advertisement;
* If it is an advertisement via a seminar, conference or organized event, then in addition to documents as set out in this sub-clause, other documents required are: sample advertisement to be used in the program which has been approved by the competent authority and remains valid (if the contents of such sample have been approved), a program specifying the name of reported contents, time (full date), location of organisation (specific address), the contents of reports and documents to be presented or distributed to the attendees, and a declaration of names, scientific titles and qualifications of presenters.
* Sample product labels or product labels approved by a competent healthcare authority if such approval of the product labels by a competent healthcare authority is required by the law.
* Valid power of attorney in case the entity applying for confirmation of advertising contents is an authorized entity;
* Documents for reference, proof or verification of the information of the advertising contents;
* Public notification slip of the cosmetic product issued by the competent State authority; and
* Proper and reliable documents proving the features and functions of the product if such features and functions stated in the contents of the cosmetics advertisement are not included in the contents of the public notification slip of the cosmetics product for which the competent State authority has issued a receipt number.
  1. **Issues to take into consideration with files applying for the confirmation of advertising contents:**
     1. **With regard to the format:**

Documents included in the application file for confirmation of advertising contents shall:

* 1. Be clearly printed and arranged in the order set out in the articles of Circular No. 09/2015/TT-BYT, with coloured partition paper sheets between parts, with cover pages and a list of documents;
  2. The documents included in an application file for confirmation of advertising contents must remain valid, being copies certified or stamped with the seal of the entity applying for confirmation of advertising contents. The documents included in the file must be stamped with overlapping stamps on the edges of pages with the seal of the entity applying for confirmation of advertising contents;
  3. A sample of the advertising contents must be displayed on an A4 paper sheet. A sample of large-size outdoor advertisement may be displayed on A3 paper sheet or other size and specify the scale compared to the actual size.
     1. **With regard to the submission of appraisal fees, issuance fees for confirming contents of advertisements**

An advertisement which corresponds to an application file for confirmation of the advertising contents and for which an appraisal fee and confirmation charge is payable is as follows:

Cases which are deemedan application file for confirmation of cosmetics advertising contents comprise:

* An advertisement of a product, good or service for an object;
* An advertisement of a product, good or service for an object and under multiple advertising forms (for example, leaflets, posters, books, newspapers, etc.);
* An advertisement for two or more products corresponding with one public notification slip of cosmetic product for which a receipt number is issued.

Accordingly, in case the enterprise makes changes to the sample advertisement of a cosmetic product, such enterprise must re-submit an application file for confirmation of advertising contents.

Furthermore, enterprises should be aware that the following cases will not be deemed an application file for confirmation of advertising contents:

* Multiple various advertisements of a product, good or service for an object. In this case, each of the advertisements is deemed an application file for confirmation of advertising contents;
* An advertisement of multiple products, goods or services for an object. In this case, each product, good or service is deemed an application file for confirmation of advertising contents.