

Use of Absolute Terms in Advertisements



On February 25, 2023, the *Guide to the Law Enforcement of Absolute Terms in Advertisements*¹ ("Guide") was issued and put into effect by the State Administration for Market Regulation ("SAMR"). This Guide provides detailed guidelines for standardizing and strengthening the unified supervision and law enforcement of absolute terms in advertisements. The purpose of this article is to introduce you to the main points of the Guide and to help you identify the absolute terms in advertisements, so that you can assess the legality of the content of your advertisements and thus avoid administrative sanctions.

1. DEFINITION OF ABSOLUTE TERMS

Article 9.3 of the *Advertising Law of the People's Republic of China* provides that advertisements may not use terms such as "national level", "highest level", "best", or other terms with the same or similar meaning. It is these terms that are considered absolute terms in advertisements in the Guide.

While there is no official list of absolute terms published by the SAMR, there are many unofficial lists published on the Internet. However, due to the complexity of the regulation of absolute terms, these unofficial lists can only be of limited value. The presence of a term on an unofficial list does not mean that it cannot be used in advertising in a specific context and, conversely, the absence of a term does not mean that its use is not problematic. Therefore, when choosing the terms to be used in an advertisement, particular care should be taken to ensure that they are not considered to be absolute terms by the Chinese legislator. In this regard, it is worth noting the spirit of the legislator in introducing the concept of absolute terms.

The main objective of this prohibition on the use of absolute terms in advertising is to protect consumers and market order: the use of such terms is likely to mislead consumers, denigrate and belittle competitors and thus create unfair competition. Therefore, with reference to the original intention of the Chinese legislator, in order to determine whether a word/phrase should be considered an absolute term or not, the following elements should be taken into account:

- a. When using a superlative adjective such as «world class», «category A», «top level», it should be checked whether there are norms, standards or third party qualification and evaluation criteria defining these terms. If so, if the product meets these norms, standards or criteria, these terms may be used; if not, they are considered absolute terms as they lack objective criteria and may mislead the consumer as to the quality or use of the advertised product.
- b. Advertisers shall be responsible for the authenticity of their advertisements' contents. Any superlative term that does not reflect reality and is likely to mislead the consumer is considered an absolute term. For example, the term «best seller» is considered an absolute term when used by an advertiser who actually has a small market share but claims that his products are the «best sellers» on the Chinese market. The same applies to the term «best performance» used to promote a sunscreen lotion if the advertiser claims that its lotion performs better than any other on the market, but is unable to substantiate this claim.
- c. If the terms used disparage similar products or services of competitors and are likely to harm the interests of competitors, they are considered absolute terms.

1. 《广告绝对化用语执法指南》

2. DEFINITION OF ADVERTISEMENT

This Guide further reversely define the “advertising” in its article 4, “*where a commodity business operator (including a service provider, same hereinafter) releases information on its own name, abbreviation, logo, date of incorporation, scope of business, etc., at its business premises, self-established website or any other medium which it has the legal right to use, without directly or indirectly promoting its commodities (including services, same hereinafter), such information shall generally not be deemed as advertisements*”. In addition, the head of the advertising division of SAMR stated in an official interview¹ that the information referred to in Article 4 is non-commercial information, and that in general, non-commercial information is not considered to be advertising. As a result, the use of absolute terms in non-commercial information is allowed, since this use does not fall within the scope of the Advertising Law.

3. CIRCUMSTANCES IN WHICH ABSOLUTE TERMS MAY BE USED IN ADVERTISING

The Guide provides that, in certain circumstances, a commercial operator may use absolute terms in its advertising. It should be noted, however, that these exceptions do not apply if the advertiser is unable to prove the authenticity of the content of its advertising.

3.1 Absolute terms do not refer to the commodities/services promoted by a commercial operator²

Absolute terms may be used in an advertisement provided that they do not relate directly to the performance or quality of the products/services advertised by the commercial operator and are therefore not likely to mislead the consumer. This includes the following cases:

- a. the absolute terms only express the “subjective will” of the commercial operators, namely, their service attitude or business philosophy or corporate culture ;
- b. the absolute terms express the goals pursued by the commercial operator.

For example, an operator may use terms such as “customers first” or “compete to be number one” on its own website to promote its business. However, he should be careful to avoid any direct or indirect link between these terms and his products/services.

Similarly, an advertiser may state that “using our cosmetics gives consumers confidence and makes them braver to face life’s extreme challenges”. Even if this information contains terms that could be considered absolute terms because they do not directly relate to the nature or function of the advertiser’s product, they are covered by the exception provided for in point 5 of the Guide.

However, as a precaution, we advise to be very careful when using absolute terms that seem to fall within the exceptions of Article 5. Indeed, in practice this provision is very controversial and subject to different and more or less strict interpretations by the different local AMR offices, and it is always possible that the local AMR’s interpretation will be different from yours.

3.2 Absolute term are not misleading or unfair to competitor³

The use of absolute terms in an advertisement to designate the products promoted is possible, provided that these terms are not likely to mislead consumers or have the objective consequence of disparaging other commercial operators. This exception has already been the subject of several circulars or guidelines issued by the local offices of the AMR and concerns in particular the following six cases:

1. 市场监管总局广告监管司负责同志就《广告绝对化用语执法指南》答记者问，2023年03月20日，https://gkml.samr.gov.cn/nsjg/xwxc/s/202303/t20230320_353957.html

2. Article 5 of the Guide

3. Article 6 of the Guide

a. Self-comparison

Absolute terms are only used to compare different products/services from the same brand or company. In this way they do not affect the interests of other companies. For example, a company may state that it offers consumers high quality products, but in different ranges: comfort, high-end, and top level. In this advertisement, the term “top level” can be used because it does not exclude competitors’ products. The same applies to an estate agent who would classify the flats he offers as: largest flat, smallest flat and top of the range flat¹.

When using absolute terms for self-comparison purposes, it is important to ensure that (i) the content of the claims is true and not misleading, and (ii) it is made clear that this is an internal comparison between one’s own products/services, without reference to those of competitors.

b. Consumers information

Absolute terms are only used to explain how to use, when to use, how long to keep and other consumption tips. For example, the term “best before date” is used to indicate a period of best taste, and is a consumption tip to help customers make better use of the product and will not mislead the customers or harm the interests of other competitors.

c. Products classification

Absolute terms are used to classify products into different categories provided for by national and local norms and standards or industry standards, and the advertiser can prove that the advertised product falls into the category claimed.

For example, the Chinese national standard for Anji white tea divides tea into four quality categories: “high-quality, superior quality, first-class, and second-class”. Therefore, the use of the absolute term “highest quality” for Anji white tea is generally allowed, provided that the advertised tea meets the qualification criteria of the “high quality” category. To this end, the advertiser must be able to produce the tea’s qualification certificates in the event of inspection. On the other hand, the use of the term “high quality” for teas that do not meet this criterion is not permitted².

d. Reference

This occurs when an absolute term is included in the name of the product, its specifications, its trademark or the title of a patent, and such absolute term is used in advertising to refer to the product and distinguish it from competing products.

For example, the case of the brand “XX superlative organic milk”. The word “superlative” is only used as part of the trademark to differentiate the product and does not refer to the quality of the product. The advertiser is obliged to use its trademark in its entirety in order to provide consumers with clear and comprehensive information about its products. In this usage, the term “superlative” is not considered to be an absolute term and may therefore be used by the advertiser.

This exemption also has been taken as a compliance strategy for companies to cleverly and reasonably use absolute terms in past practice. However, it must be ensured that the trademark is used in the form in which it is registered and, if the title of the patent is used, the terms used must correspond to those registered.

1. 《关于重申部分广告审查要求的审查提示》一、（二）2. 条，上海市工商行政管理局（已撤销）2017.02.27 发布 2017.02.27 实施
2. 《关于重申部分广告审查要求的审查提示》一、（二）2. 条

e. State Award

If a product has won a prize or award in accordance with national regulations and the title of the prize or award includes an absolute term, the latter may be used in advertising activities.

f. Factual and objective information

Absolute terms are used to give factual and objective information about a specific period or territory, such as sales volume, sales figures, market share. For example, it is possible to use terms such as “best supplier 2022 in market xxx”, “best sales of platform XX during Q1 2022”, etc.

However, we recommend that advertisers who use this type of information carefully keep the relevant documentation to prove the accuracy of the figures provided. In addition, it is advisable to ensure that the advertisement clearly indicates the geographical and temporal limits and the range of products affected by the data communicated. Otherwise, the use of these terms could be considered misleading advertising.

4. ADMINISTRATIVE PENALTIES

4.1 Legal basis

According to Article 57 of the *Advertising Law of the People's Republic of China (Amended in 2021)*, if the advertisements published by the advertisers includes the prohibited absolute terms, the local AMR may order the advertisers to stop publishing of advertisements, and impose a fine ranging from RMB 200,000 to RMB 1 million on the advertiser. In serious cases, the local AMR may also cancel the business licence of the advertiser, and the advertisements review authorities can also revoke the approval document for review of advertisement and refuse to accept applications for review of advertisement from the advertiser within a year.

The Guide clarifies in Article 8 that in imposing administrative penalties for absolute terms in advertisements, AMRs shall, in accordance with the Advertising Law and other laws and regulations, take into account actual conditions such as the content and specific context of advertisements, the facts, nature, circumstances and extent of social harm of illegal acts, and the subjective culpability of the parties concerned, etc., accurately apply the criteria for law enforcement, and reasonably exercise discretion in imposing administrative penalties.

In addition, if the advertiser uses absolute terms that do not reflect reality or have no reliable basis, the advertiser may also be considered guilty of misleading advertising and may be subject to administrative penalties for this violation. In general, in the case of a double violation (use of absolute terms and misleading advertising), the AMR will impose the most severe penalty on the advertiser, i.e. the penalty for misleading advertising.

4.2 Examples of administrative penalties

- A fine of RMB 20,000 and an order to stop broadcasting an advertisement containing the absolute term “the most advanced”.

In this example, the advertiser used the following slogan: “Our Company combines the most advanced computer and telephony integration technology..”

- A fine of RMB 150,000 and an order to stop disseminating misleading advertisements and advertisements containing absolute terms.

In this example, the advertiser used the following absolute terms and some of them were considered to be misleading advertising: “Beijing Land King”, “Consecutive Top Selling” and “Best residence”, and terms “Top ten New Trends” and “the real prestigious school next to the Emerald West Lake - Fengtai high school affiliated to Renmin University”.

5. LIGHTER, MITIGATION AND EXEMPTION FROM ADMINISTRATIVE PENALTIES

Articles 9 and 10 of the Guide further stipulate that, under certain conditions, AMRs may/should not impose penalties or impose lighter or mitigated penalties for the illegal use of absolute terms in advertisements:

- a. No administrative penalties may be imposed on the first-time use of absolute terms in advertisements if the harmful consequences are minor and corrections are made in a timely manner.
- b. If an advertiser uses absolute terms in advertisements published in its business premises, on its self-established website or on other media that it is legally entitled to use, which last for a short period of time or have a small number of viewers, without causing harmful consequences, and the operator makes timely corrections, it shall be exempted from administrative penalties in accordance with the law. In case of minor harmful consequences, a lighter or mitigated administrative penalty may be imposed in accordance with the law.
- c. Other circumstances for which lighter, mitigated or no administrative penalty shall be imposed in accordance with the Administrative Penalty Law of the People’s Republic of China and other laws and regulations, as well as the provisions of the Guiding Opinions on Standardizing the Discretion of Administrative Penalties for Market Regulation¹ promulgated by the SAMR.

However, Article 11 of the Guide stipulates that the above-mentioned articles on the reduction, mitigation and exemption from administrative penalties do not apply in the following cases when absolute terms are used in advertisements relating to the medical, investment and educational industries:

- a. Absolute terms relating to curative effect, cure rate, efficacy rate, etc. appearing in an advertisement for medical treatment, medical cosmetology, drugs, medical devices, health foods or formula foods for special medical purposes.
- b. Absolute terms relating to return on investment, investment security, etc. appear in an advertisement for a product with an expected return on investment.
- c. Absolute terms relating to educational or training institutions or to the effects of education or training appear in an advertisement for education or training.

This is simply because these industries are closely linked to the health and financial security of consumers. Therefore, the SAMR considers that the local AMR must exercise prudential supervision in these areas and cannot mitigate the administrative sanction or grant an exemption.



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1. 《关于规范市场监督管理行政处罚裁量权的指导意见》，国家市场监督管理总局，国市监法规〔2022〕2号，2022.10.08 发布，2022.10.08 实施