

## client alert

ADVERTISING LAW | CHINA |

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### NEW PRC ADVERTISING LAW: GAME-CHANGER FOR DRUGS, MEDICAL DEVICES AND HEALTH FOODS ADVERTISING

On 24 April 2015, the Standing Committee of the National People's Congress approved the first amendment to the PRC Advertising Law, which was originally promulgated in 1994. The amended law ("New Advertising Law") came into effect on 1 September 2015 and contains a large number of new and updated provisions, aimed at bringing the country's advertising regulations up to date with modern best advertising practices.

The changes will have a significant impact on advertising practices for drugs, medical devices, health foods, and companies active in these sectors should become familiar with them.

The main changes under the New Advertising Law include the following:

#### **Increased scope of prohibited advertising**

The New Advertising Law expands the scope of pharmaceutical products that may not be advertised at all to include (i) precursor chemicals and (ii) drugs, medical devices, and treatments for drug detoxification. The advertising of narcotics, psychotropic substances, medical toxic drugs, and radiopharmaceuticals is still banned.

#### **Restrictions on prescription drug advertising**

Prescription drugs may only be advertised in professional medical and pharmacological publications approved by the State Council, and not in publications targeted at the general public.

#### **Prohibited safety claims and product comparisons**

The New Advertising Law restricts claims related to the safety of a product, in addition to the existing restrictions on claims related to a product's efficacy. Under the New Advertising Law, advertisements of medications, drugs, and medical devices may not:

- Contain absolute assurances or guarantees of the product's efficacy and/or safety; or
- Compare a product's efficacy or safety with that of other drugs or medical devices.

#### **Prohibited "hidden advertising"**

The New Advertising Law prohibits all media from publishing advertisements for medical treatments, pharmaceuticals, medical devices, or health foods in the guise of health education or health-related public information programmes.

## Prohibited advertising to minors

Mass media targeted at minors may not publish advertisements for medical treatments, pharmaceuticals, medical devices or health foods.

## Prohibition of celebrity endorsements

The New Advertising Law prohibits any use of celebrity endorsements to recommend medical treatments, pharmaceuticals or medical devices.

## Comprehensive regulation of health food advertising

The New Advertising Law establishes a comprehensive regime for the advertising of health foods. All health food advertisements must now contain the warning, "This product is not a substitute for drugs." In addition, mirroring the legal framework for the advertising of conventional drugs, the new regime for health food advertising prohibits health food advertisements from:

- Containing absolute assurances or guarantees of efficacy and/or safety;
- Asserting use for disease prevention or treatment;
- Expressing or implying that the product is necessary to stay healthy; and
- Comparing the product to conventional drugs or other health food products.

## Prohibited baby formula advertising

The New Advertising Law prohibits the advertising of infant dairy products, beverages and other foods that claim to be a substitute for breast milk (in full or in part) in mass media or public places.

## Required statements in medical device advertisements

All advertisements for consumer medical devices must include the warning, "Please read the product instructions carefully or purchase and use under the guidance of medical professionals." When a product has certain contraindications or was approved to be used with certain precautions, advertisements for such product must additionally include the warning, "See instructions for details about contraindications and/or precautions."

## Increased penalties

Companies that violate any of the above rules will be heavily sanctioned, with maximum fines of up to five times the amount of the advertising costs in serious cases. If the advertising costs are difficult to calculate or relatively low, violators may still face up to an RMB 1 million fine. Finally, Authorities may also confiscate any illegal gains and revoke the business licences of the infringing companies.

## Next steps

Companies active in the pharmaceutical, medical devices and health foods sectors should seek advice to review their current advertising practices and those of their advertising agencies to ensure compliance with the new rules. Companies should also ensure that existing products packaging and advertising materials are compliant, and if not, that such materials are replaced or eliminated from the sales channel.

Do not hesitate to contact us if you have questions on any of the above topics.

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