



Promotion of prescription glasses (considered as medical devices) and discriminatory advertising

Decisions of the Jury of Advertising of Autocontrol on prescription glasses (January 2019) and on discriminatory advertising (December 2018)

Prescription glasses

In January 2019, the Jury of Advertising - a specialized body within an association for self-regulation in advertising called Autocontrol, which is responsible for hearing cases relating to breaches of the provisions contained in self-regulatory advertising codes - issued a decision on a claim submitted by the Association of Media Users against Grupo Opticalia-Sun Planet. The claim was related to certain promotional materials broadcasted on television, press and web, showing famous people advertising prescription glasses. From the decision of the Jury we would highlight the following three ideas:

1. Prescription glasses are medical devices. This conclusion was reached by the Jury after consultation with the Spanish Medicines Agency. The Spanish Medicines Agency, in its answer to the consultation of the Jury, concluded that 'prescription glasses must be considered as medical devices'.
2. The rules on advertising of medical devices to the general public apply to prescription glasses. These rules do not allow the advertising of medical devices including recommendations made by individuals that, because of being famous, can encourage the use of such devices.
3. 'Famous people', in connection with whom the abovementioned prohibition applies, refers to individuals who have become notorious in any field (including singers, actors, etc...). Thus, it does not

only refer to famous people in the healthcare field, as the company against which the claim was made unsuccessfully argued.

Discriminatory advertising

Discriminatory advertising is another issue on which the Jury of Advertising of Autocontrol has had the opportunity to recently decide. In December 2018, the Jury of Autocontrol resolved a claim submitted by the Association of Network Consumers against Procter & Gamble in connection with a discriminatory advertising (prohibited by the Code of Advertising Practice of Autocontrol) which was made against women and broadcasted on internet. We would like to highlight two main ideas in connection with the decision of the Jury:

1. An advertising can only be deemed as discriminatory after a comprehensive analysis of the materials. The mere fact of a material including elements that alone can be deemed discriminatory is not enough for the entire advertising material which includes such elements to be considered as discriminatory.
2. Presenting women as the 'absolute main characters' or as the 'exclusive target' of a material which advertises unisex products, or sending out a message, even implicitly, that women are the 'typical users' of products which are not objectively reserved to them, are elements that the Jury may use to qualify a promotional material as discriminatory.