**Comparative Advertising**

***I want to advertise my business by telling people how much cheaper I am than the other services in the area: I am told that comparative advertising is permitted as a matter of secular law, but what about Jewish business law and ethics?***

The secular law in relation to comparative advertising can be complicated, and is necessarily fact-specific; but you are right to say that as a general rule there is no secular legal objection to drawing attention to prices or other features of competitors’ businesses in order to illustrate the attractions of one’s own.

Leaving aside possible complications in relation to the use of competitors’ trademarks – which are unlikely to arise in relation to small or medium-sized neighbourhood businesses – the principles determining the lawfulness of comparative advertising are primarily set by European Directive 2006/114/EC (Misleading and Comparative Advertising Directive). Article 4 imposes requirements for comparative advertisements broadly along the following lines: they must not mislead; they must compare goods or services intended for the same purpose; they must compare by reference to relevant, verifiable and representative features (which may include price); they may not discredit or denigrate competitors’ products or services; they must not take unfair advantage of the reputation of a trade mark or present products or services as being imitations or replicas of protected products or services; and they must not create confusion.

Interestingly, these principles cover much the same ground as the relevant Jewish ethical principles. In particular, there are two main issues that arise in relation to comparative advertising from a Jewish perspective.

First, there is the prohibition against g’neivas da’as (literally – “stealing the mind”; figuratively – misleading people). Provided that comparative advertising is designed to clarify genuine differences between you and your competitors, it is in the interests of consumers, making it easier for them to make purchasing decisions, and is in accordance with and encouraged by the principles of Jewish business ethics. As soon as it becomes an attempt to deceive or mislead, it is simply prohibited.

To give a simple example, if you and your competitor sell precisely the same product produced by the same manufacturer, and you charge significantly less than your competitor, then there is no objection to your promoting your business by drawing the public’s attention to the difference. There may, of course, be entirely justifiable personal or commercial reasons why your competitors feel obliged to charge more than you do, but that need not inhibit you from inviting consumers to make purchasing decisions on the basis of price, and giving them the necessary information for that purpose. But if you sell a product that is (or might be thought to be) inferior or simply different in quality to a product sold by your competitor, you must be very particular not to advertise the two products in such a way as might encourage a prospective customer to make a direct comparison between two prices as if the quality were identical. To put it simply, both legal and ethical principles require you to compare like with like, and to be scrupulous in doing so by considering all features of the two products or services that might be considered relevant to a consumer.

The halachic equivalent of the secular requirement not to discredit or denigrate competitors’ products or services is the law of loshon horo (broadly, defamation). The laws of loshon horo are complex and technical, but in the context of providing business information for prospective consumers the broad principles are again similar to those set out in the European Directive. The laws of loshon horo do not prevent me from telling people things that they might want or need to know in the context of commerce; and I am positively encouraged to tell people facts that may help them to avoid making unwise business decisions. So if I believe that people are paying higher prices than they need to by going to my competitors, there is no reason why I should not tell people the facts so they can make an informed consumer choice.

Once again, however, the emphasis is on the word “facts”. I need to be absolutely sure that I am not including in my advertisement anything that is inaccurate or might be misleading. For example, if I choose to advertise a price differential, as well as ensuring like-for-like in relation to the product or service, if my price is a promotional discount or conditional on purchasing a number of products or in any other way anything other than my standard price, I must make sure that the advertisement is absolutely clear on the point.

In summary, the principles of Jewish business ethics support anything that enhances consumer understanding of the market-place and may prevent exploitation of consumers by empowering them to make discerning purchasing decisions. But those decisions must be based on facts that are accurate and that avoid anything that is or might be misleading.

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