



**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

David A. Paterson  
Governor

Eric R. Dinallo  
Superintendent

**OGC Op. No. 08-07-17**

The Office of General Counsel issued the following opinion on July 21, 2008, representing the position of the New York State Insurance Department.

**Re: Names of insurers in advertisements**

**Questions Presented:**

1. May an insurance company use its "brand name"<sup>1</sup> in an advertisement for its licensed affiliated insurance companies without also listing them in the advertisement?
2. Must an advertisement, which uses the insurance company's brand name, also list the names of all the licensed affiliated insurance companies, if the advertisement is to be placed in a national publication rather than a New York publication or other advertising targeting New York residents?

**Conclusions:**

1. No. An entity that uses only an unauthorized trade name in an advertisement for its licensed insurance companies does business without a license in violation of N. Y. Ins. Law § 1102(a) (McKinney 2006). Such a practice also could constitute a violation of Insurance Law § 2122(a), as well as an unfair or deceptive trade practice under Article 24 of the Insurance Law.
2. Yes. The Insurance Law and regulations promulgated thereunder require that the names of all insurers be included in any advertisement targeting New York residents, even if the advertisement is placed in a national publication. However, the Department has recognized certain limited exceptions relating to advertisements that call attention to unauthorized insurers.

**Facts:**

The inquirer reports that the Insurance Department informed her that the name of all affiliated insurance companies, not just the "brand name" of the insurer, must be included in any advertisement. Pursuant to an opinion of the Department's Office of General Counsel ("OGC") issued on March 29, 2001, the company that the inquirer represents uses in its advertisements the brand name "DEF Insurance companies," and includes a footnote listing the names of all the insurance companies that are affiliated with DEF Insurance.

However, the company would like to amend its advertisements to state "DEF Insurance" as the "brand name," with a footnote such as "DEF Insurance refers to the insurers of the DEF Group of Insurance Companies." The affiliated insurance companies are XYZ Insurance Company; HIJ Insurance Co.; KMN Insurance Co.; NOP Insurance Co.; and QRS Insurance Co., all of which are authorized to do business in New York.

The inquirer asks whether the requirement that all insurers be named in the advertisement pertains only to New York publications and/or advertisements that are specifically targeted at New York residents, or whether this requirement also extends to advertisements in national publications.

**Analysis:**

OGC previously has opined that an insurer may use a service mark or trade name in its advertisements, provided that the full name of the authorized insurer is contained in the advertisement and the use of the service mark or trade name is not

misleading to the public.<sup>2</sup> See OGC Opinion No. 00-02-14 (Feb. 28, 2000). See also New York Codes Rules and Regulations (“NYCRR”) tit. 11 § 215.13 (Regulation 34) (requiring accident and health insurers to specify the full name of the actual insurer in any advertisement). Regulation 34 was promulgated to prevent misleading and deceptive advertising, and to ensure that insurers provide the public with an accurate description of the insurance being offered in advertisements. 11 NYCRR § 215.13(a) provides that:

The name of the actual insurer and the form number or numbers advertised shall be identified and made clear in all of its advertisements. An advertisement shall not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive as to the true identity of the insurer.<sup>3</sup>

Thus, the use of an unauthorized trade name in an advertisement, without indicating the company or companies that the trade name represents, violates Regulation 34. Although there is no similar regulation for property/casualty and other insurance companies not governed by Regulations 34 or 34-A, which applies to life insurance and annuities, the principles enunciated in Regulation 34 provide an appropriate guideline for all insurance companies authorized in New York State.

In this case, the proposal to use the brand name “DEF Insurance,” without listing all the authorized insurance companies that the brand name represents, is arguably misleading because the true identity of the authorized insurer is unclear from the advertisement.

Further, the use of “DEF Insurance” in advertisements, without listing the licensed insurers that the name represents, also could run afoul of Insurance Law § 1102(a), which prohibits any person or entity from conducting any insurance business within the state unless the person or entity obtains a license to do so. The provision reads as follows:

No person, firm, association, corporation or joint-stock company shall do an insurance business in this state unless authorized by a license in force pursuant to the provisions of this chapter, or exempted by the provisions of this chapter from such requirement. Any person, firm, association, corporation or joint-stock company which transacts any insurance business in this state while not authorized to do so by a license issued and in force pursuant to this chapter, or exempted by this chapter from the requirement of having such license, shall, in addition to any other penalty provided by law, forfeit to the people of this state the sum of one thousand dollars for the first violation and two thousand five hundred dollars for each subsequent violation.

The Department has long considered the use of an unauthorized trade name to constitute doing business by an unlicensed person. See OGC Opinion No. 01-03-19 (Mar. 29, 2001). In addition, Insurance Law § 2122(a)(2) prohibits the use of any advertisement or other public announcement by an insurance broker or other person in New York State that “calls attention to any unauthorized insurer or insurers.” Not only could the use of an unauthorized trade name violate Insurance Law § 2122(a)(2), but it also could constitute an unfair or deceptive trade practice in violation of Article 24 of the Insurance Law.

The inquirer’s company proposes to use in its advertisement the brand name “DEF Insurance,” under which no license to conduct insurance business has been granted by the Insurance Department. Accordingly, any advertisement that refers to this unauthorized insurer would, on its face, violate the Insurance Law.<sup>4</sup>

Nevertheless, OGC has recognized certain limited exceptions. For example, OGC has allowed the reference to an unauthorized insurer in advertisements in insurance industry trade publications that are directed towards insurance agents or brokers, and not prospective insureds. See OGC Opinion No. 03-01-23 (Jan. 7, 2003). OGC also has permitted the reference to an unauthorized insurer in advertisements placed in a national publication, provided that a disclaimer is made that the unauthorized insurer is not licensed in New York State and does not solicit business in the State. *Id.* With respect to internet advertisements, the Department has concluded, in its Circular Letter No. 5 (2001), that a licensee may place insurance advertisements on a non-licensee’s website, provided that the website does not include, or the advertisement is not overshadowed by recommendations, endorsements or promotions from the non-licensee concerning insurance products or services. If the insurance products or services are not being offered by an authorized insurer, then the internet advertisements must contain a disclaimer that the products or services are unavailable to New York residents.

However, none of these exceptions applies to the advertisement that the inquirer's company proposes, which intentionally targets New York residents. Therefore, even if the advertisement were placed in a national publication, the company would run afoul of the Insurance Law by its unauthorized use of the brand name "DEF Insurance."

For further information, you may contact Senior Attorney Camielle A. Campbell at the New York City office.

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<sup>1</sup> For purposes of this opinion, the Insurance Department interprets "brand name" to mean "trade name."

<sup>2</sup> See generally N. Y. Gen. Bus. Law § 130(1-a)(c) (stating that "the use of a corporation, limited partnership or limited liability company of a divisional, departmental or trade name or designation, in conjunction with the real name of the corporation, limited partnership or limited liability company, shall be deemed to be the use of the real name of the corporation, limited partnership or limited liability company, for purposes of this section, . . ."). (Emphasis added).

<sup>3</sup> A similar provision is found in 11 NYCRR § 219.4(p) (Regulation 34-A), which governs life insurance and annuity contracts.

<sup>4</sup> By using the name "DEF Insurance," the inquirer might also violate N.Y. Gen. Bus. Law § 130, which provides that no person may conduct business under an assumed name unless a certificate is filed with the county clerk in each county where the person or entity is doing business, and N.Y. Penal Law § 190.20, which states that, "a person is guilty of false advertising when, with intent to promote the sale or to increase the consumption of property or services, he makes or causes to be made a false or misleading statement in any advertisement . . . addressed to the public or to a substantial number of persons . . .".