



THIRD EDITION

Advertising Law: A Global Legal Perspective





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The Global Advertising Lawyers Alliance (GALA) is the leading network of advertising lawyers in the world. With firms representing more than 90 countries, each member has the local expertise and experience in advertising, marketing and promotion law that will help your campaign achieve its objectives, and navigate the legal minefield successfully. GALA is a uniquely sensitive global resource whose members maintain frequent contact with each other to maximize the effectiveness of their collaborative efforts for their shared clients. GALA provides the premier worldwide resource to advertisers and agencies seeking solutions to problems involving the complex legal issues affecting today's marketplace.

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ALGERIA



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Algeria?

Advertising in Algeria is subject to various regulations, including:

- Law No 03-03 of 19 Jomada El Oula 1424 (corresponding to 20 July 2003) on Advertising and Publicity: This law is the primary legal framework governing advertising in Algeria.
- Consumer Protection Law: Advertising must comply with consumer protection regulations.
- Trademark Law: Trademark ownership and intellectual property rights are important for advertising approval.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Advertising in Algeria includes various forms of communication aimed at promoting products, services, or brands. The determination of what constitutes ‘advertising’ is based on the promotional nature of the communication and its intention to promote a product or service.

1.3 What is the basic regulatory framework for advertising regulation?

Advertising in Algeria is generally subject to regulations ensuring fairness, transparency, and consumer protection. Advertisers must comply with the specific laws and regulations governing different types of media and advertising practices.

1.4 Are there certain types of advertising practices that are specifically regulated?

Certain advertising practices, such as comparative advertising, may be subject to specific regulations and restrictions.

1.5 Are there certain industries whose advertising practices are specifically regulated?

Advertising related to certain industries, such as pharmaceuticals, may be subject to specific regulations and restrictions.

1.6 Are any government pre-approvals required?

Some advertising materials may require pre-approval or permits from the relevant authorities before being published or aired. For instance, pharmaceutical products often require approval from health authorities.

1.7 Does the media pre-clear advertising?

Media outlets in Algeria may have their own pre-clearance procedures to ensure compliance with advertising regulations. Proof of trademark ownership and adherence to content guidelines may be necessary.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The government enforces advertising laws through regulatory authorities and bodies. Potential remedies for non-compliance may include fines, warnings, or bans on advertising.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors can take legal action if they believe a competitor's advertising is false, misleading, or in violation of competition laws. Remedies may include cease-and-desist orders or damages.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers may take legal action if they are harmed by misleading advertising. Remedies may include refunds, compensation for damages, or other appropriate remedies.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Algeria have a primary advertising self-regulation system?

Algeria does not have a primary advertising self-regulation system.

2.2 Is there a self-regulatory advertising code? What are the key principles?

N/A

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

N/A

2.4 Is the self-regulation system effective? Is it widely used and followed?

N/A

2.5 Are the self-regulatory system's decisions reported?

N/A

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

N/A

2.7 Are there any other self-regulatory systems that govern advertising practices in Algeria?

No specific self-regulatory system governs advertising in Algeria, other than existing laws and regulations.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Algeria (eg, consumer protection laws, IP laws, unfair competition laws)?

See question 1.1 above.

3.2 Is substantiation required for advertising claims?

Yes, substantiation is typically required for advertising claims in Algeria.

- 3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?**
N/A
- 3.4 What are the rules governing the use of disclosures in advertising?**
N/A
- 3.5 What are the rules governing the use of endorsements and testimonials in advertising?**
N/A
- 3.6 What are the rules governing the use of product demonstrations in advertising?**
While there may not be specific rules governing product demonstrations, advertising content should adhere to relevant laws and not be misleading.
- 3.7 Is comparative advertising permitted? If so, are there any special rules that apply?**
Comparative advertising may be permitted, but should be truthful, non-misleading, and based on accurate and verifiable information.
- 3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?**
Comparative advertising should not infringe on the intellectual property rights of others.
- 3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?**
Claims related to geographic origin are generally allowed, as long as they are accurate and not misleading.
- 3.10 Are there any special rules governing product packaging?**
N/A
- 3.11 Are there any special rules or guidance on the use of 'dark practices'?**
N/A
- 3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?**
N/A

4 PRICE ADVERTISING

4.1 What are Algeria's rules regarding price advertising?

Price advertising should be transparent and not misleading. Pricing information must accurately reflect the actual cost to the consumer.

4.2 What are Algeria's rules regarding advertising 'free' products?

Advertising 'free' products should accurately represent the terms and conditions for obtaining the free item, and any additional costs or requirements should be disclosed.

4.3 What are Algeria's rules regarding sales and special offers?

Sales and special offers should not mislead consumers, and any conditions or limitations should be clearly communicated.

4.4 What are Algeria's rules regarding rebates?

N/A

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

N/A

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised or may not be advertised in certain media (eg, guns, medicines, etc)?

Certain products, such as tobacco and alcoholic beverages, may have restrictions on their advertising. There may also be limitations on the time and manner of advertising these products.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

False, misleading, or deceptive advertising is typically prohibited. Additionally, advertising that promotes violence, hatred, or discrimination is not allowed.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Specific details regarding Algeria's general obscenity laws and public morality standards are not available.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor is?

Advertising in Algeria should clearly identify the advertiser or sponsor. Transparency in sponsorship and advertising is encouraged.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

N/A

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

N/A

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Whilst Algeria may not have specific laws governing social media advertising, the general advertising laws apply, and advertisers should ensure that their social media promotions comply with these laws.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statement that a consumer makes on an advertiser's Facebook page)?

There may not be specific regulations governing this matter at present. However, advertisers should ensure that user-generated content used in advertising is truthful and complies with advertising laws.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user-generated content?

N/A

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice, and identity in advertising?

Using an individual's name, picture, likeness, voice, or identity in advertising without their consent may violate their privacy rights.

9.2 Are there situations when permission is not required?

Permission is generally required for using any individual's personal information in advertising, unless it falls under a recognized exception, such as public figures in certain contexts.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There may be specific requirements for using certain types of materials or locations in advertising. Companies should consult relevant authorities or obtain necessary permits when using such materials or locations in advertising.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Using recognizable products from other companies in advertising may be allowed, as long as this does not mislead consumers and complies with intellectual property laws.

11 CULTURAL CONCERNS

11.1 Are there any rules particular to the culture of Algeria affecting advertising (eg, Swedish gender equality law)?

Adherence to cultural norms and sensitivities is important when creating advertisements in Algeria. The use of religious or cultural symbols should be approached with sensitivity.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertisers should respect local customs and cultural norms when creating advertising content, especially when dealing with sensitive topics or symbols.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Algeria?

Advertisers should conduct thorough legal reviews by local professionals before publishing any advertisement to ensure compliance with Algerian advertising laws and regulations. Staying updated on evolving advertising regulations in Algeria is crucial for successful advertising campaigns in the country.

 ARGENTINA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Argentina?

The content of advertisements is regulated by a combination of laws, regulations, and industry self-regulation. The legislation that specifically governs this area is:

- the National Civil and Commercial Law;
- Executive Order No 274/2019 ('Fair Trading Executive Order');
- the Consumer Protection Act; and
- the Trademark Law.

There are also certain provisions applicable to advertising in respect of specific industry sectors, such as the Law Against Alcoholism.

Finally, self-regulation systema plays a relevant role in our system. The National Council for advertising self-regulation ('CONARP') and its self-regulation code is applicable to all kinds of advertising (see question 2 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The applicable law and regulation do not give any definition of 'advertising'. Notwithstanding this, 'advertising' is generally understood to be any communication promoting the sale of a product or service.

1.3 What is the basic regulatory framework for advertising regulation?

Argentina does not have a specific law on advertising. However, advertising should comply with the following legal framework:

- the National Civil and Commercial Law ;
- the Consumer Protection Act;
- the Defence of Competence Act;
- the Fair Trading Executive Order;
- the Trademark Law;
- the Law against Alcoholism;
- the Habeas Data Act;
- the Law in Defence of Women Rights;
- the Media Law; and
- the Front-of-Pack Labeling Law, among others.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) TV and radio: Advertising through television and radio is specifically regulated by the Media Law and regulatory decrees. Also, AFSCA (the former National Authority of Communications, now replaced by ENACOM) issued two resolutions which are relevant to the advertising business:

- (i) Resolution No 1323/14 provides the procedure for the registration of advertising agencies and producers. It basically places a duty on all advertising agencies and producers to register with the public records of ENACOM; and
- (ii) Resolution No 983/2013 creates a register for advertisements, the Register of Audiovisual Advertising for TV, and places a duty on agencies, as well as on companies and advertising producers, to file a form for each new advertisement to be broadcast on open or cable TV. The content and statements included in the form shall be considered a sworn statement.
- (b) Direct marketing: the Do-Not-Call Law establishes that ‘any individual or authorized user of a telephone service stating that they do not wish to be contacted by whoever advertises, offers, sells or gives away goods and/or services can register so that they do not receive unsolicited direct marketing telephone calls or text messages’.

Other types of advertising practices are not specifically regulated. Rather, the general law and regulations referred to in questions 1.1 and 1.3 above apply to all types of advertisements.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are several industries that are subject to specific laws which govern their advertising, and/or have specific provisions that apply in the Advertising Codes. These are some of the main ones, but the list is not exhaustive:

- (a) **Alcohol:** This is specifically regulated by the Law against Alcoholism, which prohibits all advertising or incentives to consume alcoholic beverages:
 - (i) aimed at people under the age of 18;
 - (ii) featuring people under the age of 18 who are drinking alcohol;
 - (iii) suggesting that the consumption of alcohol increases physical or intellectual performance; or
 - (iv) using alcohol consumption to stimulate sexuality and/ or violence in any way.

Additionally, alcohol advertisements must include clearly visible health warnings with the words ‘Drink in moderation’ and ‘It is illegal to sell this product to anyone under the age of 18’.
- (b) **Tobacco:** It is prohibited to advertise, promote or sponsor any product manufactured with tobacco. Advertising and marketing of tobacco products is still allowed:
 - (i) at points of sale;
 - (ii) in commercial publications addressed to companies involved in manufacturing, distributing, importing, exporting and sale of these products; and
 - (iii) through direct communication to people over 18, though only with their previous consent.

Tobacco packaging must include health warning, such as: ‘smoking causes cancer’ or ‘smoking causes addiction to nicotine’, and others, along with graphic images depicting the effects of smoking cigarettes.
- (c) **Prescription Only Medicines:** Advertising of prescription-only medications directed to the general public is prohibited by law.

- (d) **Over-The-Counter Medicines:** Advertising of over-the counter medicines is subject to post control by the Food and Drug Administration ('ANMAT'), after the launch of the advertising campaign, and should comply with the ethical criteria set out in ANMAT's Disposition No 4980/2005.
- (e) **Medical Devices:** Disposition No 4980/2005 issued by ANMAT governs the advertising of medical devices. Only devices of medical technology or medical products which, by their nature and proposed use, can be used or are indicated for use directly by the patient and/or non-professional user may be advertised.
- (f) **Food and dietary supplements:** All food advertising must fully comply with ANMAT's regulations. Some of these requirements are that advertising must not:
 - (i) modify the labels approved according to the legislation currently in force as to uses, intake and specific properties of the product;
 - (ii) state that the risk of catching illnesses decreases by a measured amount due to consuming the product;
 - (iii) mention, either directly or indirectly, a pathological or abnormal condition;
 - (iv) make therapeutic claims for a product, or suggest that a dietary supplement is a medicinal product, or claim that a dietary supplement can diagnose, heal, relieve, mitigate, soothe, prevent or protect against any illness whatsoever. Advertising may include 'helps prevent' or 'helps protect' only if such claims apply in the case of a nutrient deficiency; or
 - (v) claim that a food product can replace a conventional meal or claim that a diet can be based only on a specific food product.

Moreover, the Front-of-Pack Labeling Law states that all forms of advertising, promotion and sponsorship of packaged food and soft drinks, which are required to contain at least one warning label and which are specifically targeted at children and adolescents, are prohibited. In addition, the Law has certain provisions addressed at advertising of food that contains at least one warning label.

- (g) **Gambling:** Advertising of lawful gambling facilities (eg, horse-betting) is permitted.
 - Note that gambling is strictly controlled. Argentinean provinces regulate gambling at a local level.
 - As regards sports betting activities, some provinces have their own regulations in this regard, so their regional governments grant licenses and permissions.
 - In the city of Buenos Aires, online gambling sites that have not been granted a license in the city are considered to be violating the Buenos Aires 'Contravention Code', which forbids the local operation and promotion of gambling activities without a local valid license.
- (h) **Financial products and loans:** Under the Consumer Protection Law and other applicable resolutions, advertising of loan products (mortgages and pledges loans) must disclose the following:
 - (i) Financial Total Cost;
 - (ii) applicable annual interest rate;
 - (iii) repayment system (French or German) applicable to cancellation of capital and interest;
 - (iv) number, amount and periods of payment;

- (v) security deposit, if any;
- (vi) extra charges and additional insurance, if any; and
- (vii) company name, address, tax identification number.

Under the Financial and Banking Law, unauthorized entities are not allowed to advertise or promote marketing actions aimed to gain resources from consumers. The Central Bank of the Argentine Republic is entitled to authorize and control the organization and functioning of financial and banking entities.

1.6 Are any government pre-approvals required?

Government pre-approval is not required for individual advertisements, but certain kinds of advertising must contain pre-approved warnings or disclaimers in order to be lawful. Moreover:

- (a) Resolution No 983/2013 issued by the AFSCA created a register of audiovisual advertising for TV, and obliges agencies, companies and advertising producers to file a form for each new advertisement to be broadcast on local TV channels or cable. The content and statements included in the form shall be considered a sworn statement. Hence, it is mandatory to submit the online form provided by the ENACOM to ensure compliance with the Media Law and Resolution No 983/13.
- (b) The Media Law provides that advertisements that will be broadcast on TV and radio shall be 'nationally produced', ie: 'fully produced in the national territory or made under the form of a co-production with foreign investment, with the participation of authors, artists, actors, musicians, directors, journalists, producers, researchers and technicians, who shall be at least 60% Argentine or residing in Argentina from among the total staff involved.' Broadcasting of advertisements other than those nationally produced shall be subject to the existence of reciprocity conditions with the advertising campaign's country of origin. The agency or advertiser concerned shall invoke and prove such circumstance.

1.7 Does the media pre-clear advertising?

No, as a general principle there is no pre-clearance requirement.

1.8 How does the government enforce advertising laws? What are the potential remedies?

In addition to enforcement in case of a breach of CONARP's Self-Regulatory Code (see question 2.2 below), government agencies are in charge of enforcing the advertising of the product/service they regulate. As an example, the ANMAT is in charge of regulating and enforcing the advertising of prescription-only and over-the-counter medicines.

The most common remedies applied by government agencies are:

- a fine or penalty payments;
- cancellation/suspension of the license or authorization granted.

1.9 When does a competitor have a right of action? What are the potential remedies?

There are four courses of action that a competitor may take to challenge an advertisement in Argentina, namely:

- (a) Mediation process: Before filing an ordinary lawsuit, the plaintiff must first initiate a mediation proceeding. This is a pre-judicial procedure where both parties may try to settle the case to avoid a court action;

- (b) Court action: Competitors may bring a legal action to enforce their rights to stop any act which implies unfair or misleading trading practices as well as misleading omissions and aggressive sales tactics. Injunctions are viewed as the standard remedy in trademark infringement and unfair competition cases; or
- (c) Self-regulation procedure managed before CONARP's Self-Regulation Commission ('SRC'): The 10-member SRC can act *ex officio* or at the request of any third party who files a complaint in respect of any advert that violates any provision of the Code (if the advert was made by a member of CONARP) (see further question 2.3 below); and
- (d) Administrative procedure: There are many Government agencies who oversee certain products and/or services.

The self-regulation proceeding is very rapid; it takes no more than a month. Administrative proceedings are also quite brief. However, in the case of a judicial proceeding, it can take two to three years to get a final resolution.

The potential remedies available are injunctive relief, corrective advertising and damages.

1.10 When do consumers have a right of action? What are the potential remedies?

Generally speaking, any consumer with a legitimate interest can file a complaint or bring a court action. Consumer associations may also file a complaint (even a class action in some cases), representing a certain group of consumers.

Typical grounds for complaint or court action are:

- (a) when consumers are misled by a commercial with regards to the product, its nature or its characteristics;
- (b) breach of the requirements under the Consumer Protection Act which oblige advertisers to provide consumers with clear, accurate and detailed information about the essential characteristics of the goods and services commercialized and the terms and conditions of their commercialization; or
- (c) breach of the requirement in the CPA that information and announcements made in advertisements, leaflets or any other means of communication oblige the supplier to comply with the offer, and are considered part of the contract with the consumers.

Most cases are settled by signing a private agreement with the claimant at the mediation process (see question 1.9(a) above).

The potential remedies available are injunctive relief, corrective advertising and damages.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Argentina have a primary advertising self-regulation system?

As mentioned above, self-regulation has a relevant role in Argentina's system. The main regulatory body is the CONARP and its Self-Regulation Code is applicable to all kinds of advertising.

CONARP is a non-profit organization that promotes the use and practice of advertising self-regulation by companies and agencies. CONARP defends the ethics and the responsible exercise of commercial freedom of expression. It was founded in 2001 by the Argentine Association of Advertising ('AAP') and the Argentine Chamber of Advertisers ('CAA'), which are still its active members.

CONARP, a member of CONARED (Latin American Network of Advertising Self-regulatory boards), works as an autonomous entity, and does not serve sectorial interests. It deals with each particular case in compliance with the letter and spirit of the principles, values and rules written in CONARP's Self-Regulatory Code.

Regarding the applicable principles, CONARP requires advertising to respect:

- the legal rules in force;
- the principles and norms established in the Code of Advertising Ethics and Self-regulation;
- the sectorial chamber codes; and
- the norms and principles of the companies themselves.

2.2 Is there a self-regulatory advertising code? What are the key principles?

CONARP has issued a mandatory code for advertisers and advertising agencies, titled CONARP's Self-Regulatory Code. CONARP's Self-Regulatory Code incorporates as Annexes the advertising self-regulation codes of the Chamber of Over-the-Counter Drugs, the Chamber of Alcohol Distillers; the Chamber of the Tobacco Industry and the Co-ordinator of the Food Products Industry. Moreover, CONARP provides papers/guidelines on specific topics.

As stated by CONARP's Self-Regulatory Code, advertisements must respect the principles of:

- (a) **Legality** (advertising must respect the legal rules in force);
- (b) **Decency** (advertising must respect moral principles and good customs and respect commercial loyalty; shun the unethical, truculent and grotesque; and steer clear of using foul language);
- (c) **Honesty** (advertising must be honest, trustworthy and avoid giving false testimony);
- (d) **Truthfulness** (advertising must avoid misleading consumers, and any exaggeration contrary to good faith); and
- (e) **Social responsibility** (advertising must avoid anything that upsets the concepts and essential values of society; or any expression, attitude or hint that affects people's privacy or causes moral suffering to their family; it must take care of the environment; and must take special care of children's gullibility, and young people's lack of experience).

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The self-regulation commission ('SRC') within CONARP deals with claims against advertising made by any of its members. The 10-member SRC can act *ex officio* or at the request of any person who files a complaint in respect of any advertisement that violates any provision of the Code. Within two days from the date of receipt of the complaint, the SRC shall meet and deliberate. If, after deliberation, the SRC decides that no provision of the Code is violated by the advertisement, it shall inform the complainant of its decision.

If, on the contrary, the SRC concludes that there may be a violation of the Code, it informs the interested parties in writing of the infringing company or agency, detailing the provisions that it considers infringed. The SRC will also invite the interested parties to a hearing to present their views and arguments. If the SRC then decides that the advertisement is contrary to the principles of the Code, it will ask the company and agency to withdraw (cease broadcasting) the advertisement within 24 hours. If the company and agency agree to this, the SRC will inform the complainant and close the file.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulatory system has proved to be very effective, simple and cheap (compared to judicial proceedings). Most complaints are decided by CONARP, and, although it is not mandatory, their decisions are usually followed by the parties involved. Please note that 80% of the most important advertising agencies and companies are members of CONARP.

2.5 Are the self-regulatory system's decisions reported?

The statements and decisions of CONARP are public and published on CONARP's website: <http://www.conarp.org.ar/casos.htm>

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Beyond the general principles described in question 2.2 above, advertisers must be very careful when advertising specific categories of products, such as tobacco, alcohol, financial and banking services, loan products, gambling, food, and medicines, inter alia. Companies must always check to see if there is any specific regulation applying to the type of product/service they intend to advertise.

2.7 Are there any other self-regulatory systems that govern advertising practices in Argentina?

No.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Argentina (eg, consumer protection laws, IP laws, unfair competition laws)?

Generally speaking, advertising claims are governed by the National Civil and Commercial Law and the Fair Trading Executive Order. The Fair Trading Executive Order provides for a general prohibition of inaccurate, deceitful, or misleading advertising of any kind. Any advertising campaign that may lead consumers to mistakes, or confuses or deceives them about the nature, properties, quality, quantity, use, price, conditions of commercialization or any other characteristic of the product or service offered or promoted will be considered an unfair trade practice.

In addition, the Consumer Protection Act provides that the supplier is required by law to grant consumers exact, clear and detailed information about the essential characteristics of the goods and services provided, and the conditions of their commercialization. Moreover, the statements mentioned in advertisements, leaflets or any other media bind the offeror to the terms of the offer and are considered to be terms included in the agreement with the consumer.

3.2 Is substantiation required for advertising claims?

According to CONARP's Self-Regulatory Code, advertising messages and marketing communications should not include any statement, written claim or image that, directly or indirectly, is likely to mislead the consumer or lead them to believe that the product will falsely perform in a specific manner, except when exaggeration is used to amuse or catch consumers' attention. Besides, provisions arising from the Consumer Protection Act also apply (information provided to consumers must be exact, clear and detailed—see question 3.1 above). CONARP requires substantiation of advertising claims in many instances; eg, green advertising.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Yes, CONARP's Self-Regulatory Code states that advertising messages and marketing communications should not include any statement, written claim or images that, directly or indirectly, are likely to mislead the consumer or lead them to believe that the product will falsely perform in a specific manner, except when exaggeration is used to amuse or catch consumers' attention.

Thus, puffery claims do not require substantiation. However, there is a thin line separating puffery and a claim that requires substantiation. As a general rule, the more obvious the exaggeration, the safer the claim.

3.4 What are the rules governing the use of disclosures in advertising?

The use of disclosures is admissible if it helps to avoid any inaccurate, deceitful or misleading message in advertisements. Moreover, Resolution 915-E/2017 of the Secretary of Commerce provides specific requirements for legends and/or warnings established as mandatory by national and provincial laws as well as their regulations.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

CONARP's Self-Regulatory Code provides that statements can only include testimonials or authentic recommendations related to the real experiences of the people giving the testimony, or of those who represent them, which in turn must be able to be verified.

Advertising must avoid false testimonials. The representation of real people or dubbing of their image with others' voices must be expressly authorized by the persons represented or dubbed. The use of models, uniforms or clothing that characterize a profession or occupation must not mislead consumers, and must be validated by someone who belongs to that profession, according to the ethical rules of the latter.

The testimonials and opinions included in the advert must be sincere and verifiable. The statement in such cases must not contain references to any person, trademark, firm or institution without their permission.

3.6 What are the rules governing the use of product demonstrations in advertising?

Regarding product demonstrations, CONARP's Self-Regulatory Code states 'Any advertising featuring a product's practical use should be truthful and verifiable under the same conditions as the ones shown in the ad, refraining from showing traits that the product does not include and avoiding creating false expectations the product cannot meet'.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

- (a) Under the Fair Trading Executive Order and case law, to be considered lawful:
 - (i) the advertising must not be misleading, deceptive or confusing as between the advertiser and a competitor or between the advertiser's goods and those of a competitor;
 - (ii) the advertising must compare goods that satisfy the same needs or have the same purpose;

- (iii) the comparison must be made objectively, between one or more essential, relevant, representative and verifiable characteristics of those goods (which may include price);
 - (iv) the purpose of the advertising must be to inform the target public of the advantages of the goods being advertised;
 - (v) the advertising must not disparage or denigrate the intellectual and industrial property rights or circumstances of any competitor;
 - (vi) the advertising must not take undue advantage of the reputation of a competitor's brand;
 - (vii) the advertising must not present a product as an imitation of a product bearing a protected trademark; and
 - (viii) (in the case of goods protected by a designation of origin, geographical indication or specific designation) the comparison may only be made with other goods of the same designation.
- (b) CONARP's Self-Regulatory Code stipulates that advertising should:
- (i) respect third parties' intellectual property rights;
 - (ii) inform consumers about the verifiable advantages of the advertised product;
 - (iii) use uniform products and characteristics, while also being truthful and fair;
 - (iv) be accurate and test products under the same conditions; and
 - (v) be shown in an objective manner.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The Trademark Law establishes that 'ownership of a trademark and its exclusive use are obtained by means of its registration'. The law reserves the exclusive use of a trademark to its owner. However, comparative advertising usually involves the use of a third party's trademark.

The law forbids the adoption of a third party's trademark or trade name, but it does not prohibit their use in order to compare products. When products are compared, an advertisement must not try to disparage or discredit the trademark of a competitor, be deceitful, or spread or allow any suggestion of falsehoods.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

- (a) It should be noted that many geographical indications have been recognized for agricultural and food products since the protection of geographical indications and appellations of origin was established under Law No 25.380, such as: 'cordero patagonico', 'yerba mate Argentina', among others.
- (b) Law No 26,967 created the seal 'alimentos Argentinos una eleccion natural' and its English version 'Argentine food a natural choice'. The main aim of the law is to promote the distinction of food products of those manufacturers who voluntarily apply for their use, by certifying their quality, authenticity and originality. The 'seal' ensures that the products so identified are produced and have complied with certain conditions stated by the Secretary of Agriculture, Livestock and Fishing. Furthermore, the use of the GI's approved distinctive sign is mandatory.

- (c) It should be also noted that geographical indications and appellations of origin covering wines and some spirits are specifically regulated by the Wines and Wine-based Spirits Law and its regulatory Decree.
- (d) Finally, under Trademark Law, the following cannot be registered as trademarks: ‘names of national or foreign origin, words, names, symbols used or required to be used by the Nation, provinces, municipalities, religious and health organizations, as well as letters, words, names or symbols used by foreign nations and international organizations recognized by the Argentine government’.

3.10 Are there any special rules governing product packaging?

Yes. Different categories of products are subject to specific regulations. For example, prior approval of labels for food, beverages, cosmetic and personal care products, and household cleaning products is required by ANMAT.

As stated in question 1.5(f) above, the Front-of-Pack Labeling Law has specific provisions for packaged food and soft drinks containing at least one warning label. Moreover, Executive Order 151/2022 provides that all advertising, promotion and/or sponsorship directed to the public and broadcast in traditional and digital media of products containing at least one warning level will be under the control and monitoring of ANMAT.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

No. However, the National Civil and Commercial Law states that any advertising that contains false indications or indications of such nature as to mislead or be likely to mislead the consumer, when they relate to essential elements of the product or service, is forbidden.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No. Currently, there are few regulations related to artificial intelligence in Argentina.

4 PRICE ADVERTISING

4.1 What are Argentina’s rules regarding price advertising?

- (a) All prices displayed or advertised must be the final prices (unless the advertiser clearly specifies otherwise).
- (b) Resolution No 7/2002 of the Secretariat of Interior Trade provides that:
 - (i) all products that are being sold directly to consumers must indicate their prices;
 - (ii) prices must be exhibited in local currency (although, with regard to services to be performed outside the country or being offered from outside the country, prices can be exhibited in American dollars); and
 - (iii) for products or services whose price has been reduced:
 - suppliers must clearly show the original price of the product or service along with the discounted price,
 - the original price must be displayed using relevant characters, good contrast and visibility, and

- in the case of a percentage reduction in the price of a set of goods or services, suppliers can simply display the generic discount percentage without stating individual rebates for each item or service.
- (c) Where financed prices of goods or services are advertised by any means, the advertisement must also include the total financial cost (Resolution 915-E/2017).

4.2 What are Argentina's rules regarding advertising 'free' products?

Argentina does not have specific regulations regarding the use of the word 'free' in marketing materials. Free offers must comply with the National Civil and Commercial Law, the Consumer Protection Act, the Fair Trading Executive Order and CONARP's Self-Regulatory Code. The Consumer Protection Act regulates the relationships between producers, importers, distributors and sellers of the products and customers who acquire goods or services for their final use and do not resell them. It protects not only contracts with consumers for pecuniary interest, but contracts for services or products that are free of charge.

An offer may not use language that suggests that an item is 'free' if it is not, nor contain price indications that could mislead consumers. When 'free' products involve costs such as shipping or taxes, such costs must be clearly stated.

4.3 What are Argentina's rules regarding sales and special offers?

There are no special rules regarding sales and special offers. Provisions arising from the National Civil and Commercial Law, the Consumer Protection Act, Fair Trading Executive Order and CONARP's Self-Regulatory Code apply to them.

4.4 What are Argentina's rules regarding rebates?

Rebates are not specifically regulated by law. General rules may apply.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

No.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

There are several categories of products or services that are strictly regulated by law, such as alcohol, food and drugs. Some may not be advertised, eg:

- (a) products or services that advocate, promote or glorify violence, crime, obscenity or other unlawful activity;
- (b) products or services that discriminate against, stereotype, inaccurately portray or attack an individual or group on the basis of age, color, nationality, race, religion, sex, sexual orientation or disability;
- (c) products or services that portray minors in a manner that is dangerous, sexually suggestive or otherwise age-inappropriate;

- (d) firearms and related products; and
- (e) escort services (this prohibition was established to control and prevent prostitution and sex-trafficking).

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The Do-Not-Call Law created the 'Do-Not-Call Registry', expanding the protection of data owners' rights. This regulation allows a data subject to block contact from companies advertising, selling or giving away products and services. Companies offering products and services by telephonic means must register with the Access to Public Information Agency and consult the list of blocked numbers on a monthly basis before engaging in marketing calls.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) CONARP's Self-Regulatory Code states that 'advertising has to respect moral principles and moral customs'. It also states that 'advertising must not contain expressions or audio or visual representations, nor inappropriate references that:
 - offend society or the community's moral customs;
 - offend the native country, nation, or its symbols, national heroes or authorities;
 - offend in any way institutions, whatever their kind or makeup;
 - offend religious feelings;
 - encourage illicit activities and lack of respect to law and authorities; or
 - encourage discrimination of any kind.'
- (b) Moreover, the National Constitution, the National Civil and Commercial Law and the principle '*alterum non laedere*' of Argentina's penal law also seek to protect these interests.
- (c) Finally, the Media Law states that 'advertising must keep to the terms of this law and its regulation, mainly with regard to family and moral customs'.

Accordingly, without having specific legislative regulation on decency in advertising, national doctrine and jurisprudence have understood as illicit advertising those ads containing obscene messages that show lack of decency or harm moral customs.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

CONARP's Self-Regulatory Code provides that: 'sponsorships must be identified as such. Sponsors and sponsored parties, as well as each party involved, should avoid imitating motifs used by other sponsors that may cause confusion or mislead the public, even in the case of non-competing brands, companies, or events. They should not give the impression that they are a sponsor of an activity or its media coverage if they are not the official sponsor of the activity. In the case of sponsorship of programming content, the name and brand of the sponsor should be identified, and care should be taken to ensure that there is no confusion between sponsorship of an activity and sponsorship of its broadcast, especially where different sponsors are involved'.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

In Argentina, there is no specific statute dealing with requirements to disclose where advertisers have influenced the editorial content. Creating advertising content that looks like traditional editorial content has become increasingly common as publishers try to create more sources of revenue. In practice, it is becoming increasingly difficult for readers to distinguish between editorial content and advertising, due to this fact.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

As a general principle, advertisers should make clear to the audience when editorial or entertainment content constitutes a marketing action to promote a product or service.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Argentina currently does not have any statutory provisions intended to specifically govern social networks. As a result, the same legal controls should apply to advertising and marketing published through social media and through traditional media (television, radio, print). However, CONARP has published (in 2017) a paper which introduces best practice in commercial communications in social media. This document emphasizes that, in all cases, online communications must be legal, truthful, honest, trustworthy, and loyal. Moreover, CONARP's Self-Regulatory Code has specific provisions regarding digital media.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Regarding user generated content, there is potential liability for copyright, trademark, defamation, privacy, publicity and false product claims. It is always advisable to have a social media policy in place, and to monitor the activities of authorized social media agencies engaged on behalf of the advertiser and the contributors of user generated content.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

No, so far there are no cases worth mentioning in this regard.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The exclusive rights to exploit the different aspects of a person's identity are generally considered to be part of the 'highly personal rights' (ie, inalienable). In 1994, the Federal Constitution was amended to strengthen the protection of highly personal rights, both directly, by means of the habeas data, and indirectly, by giving constitutional status to international treaties, creating minimum standards of highly personal rights protection.

In addition, the use of an individual's name, picture, likeness, voice, and identity in advertising should be in compliance with the Data Protection Act.

Besides, the National Civil and Commercial Law and the Intellectual Property Law include express provisions protecting a person against the unauthorized use of their photograph. These provisions apply to the use of a person's image or voice in drawings, caricatures, paintings, dolls, sculptures, films, television, theatrical exhibitions, etc.

A violation against a person's right to their image arises, even if no negative message or circumstance are associated with such image within its context and use. Moreover, if authorization is given for a specific use, it may not be extended to any other use.

Additionally, the Law of Names prohibits the use of a person's name without that person's consent, including the malicious use of a name for designating a fictitious character or thing. A similar protection is given for pseudonyms.

9.2 Are there situations when permission is not required?

The National Civil and Commercial Law and the Intellectual Property Law provide that publication without permission is allowed if it relates to:

- (a) scientific, teaching, or cultural purposes; or
- (b) public interest events or to events that have taken place in public.

However, the right to publication of aspects of a public event is limited to the conveyance of information about that event and does not extend to commercial or other purposes.

The constitutional right of 'freedom of speech' may also be invoked if an action is based on the violation of the rules of privacy or intimacy. The courts balance free speech with privacy rights.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

No, there are no specific rules in this regard. Notwithstanding, there are some restrictions relating to the use of military buildings. Additionally, in some provinces, specific regulations may apply. Consequently, it is always advisable to clear every element of an advertisement before its launch.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The use of other companies' products is not regulated in Argentina. It is generally allowed only for non-commercial use of a third-party trademark or when it does not constitute a misleading association with the other company.

In some cases, the use of a recognizable product—eg, in a TV show—could be considered Non-Traditional Advertising.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Argentina which affect advertising (eg, Swedish gender equality law)?

In 2006 the Observatory of Discrimination in Radio and Television was created, with the following functions:

- to encourage the development of public policies, programs, special projects and activities originating in the organizational units of ENACOM;
- to promote the production and broadcasting of quality contents in the media, beyond the legal functions of control, evaluation and eventual sanction of the organism; and
- to encourage the compliance and observance of the set of rules that ensure the improvement of the treatment of audiovisual contents that are broadcasted as well as the encouragement of good practices that make their promotion possible.

The observatory is an institutional space that assists the ENACOM's board and acts with the National Institute against Discrimination, Xenophobia and Racism and also with the Ministry of Women, Gender and Diversity. The National Institute against Discrimination, Xenophobia and Racism has shown particular interest with regard to advertising messages based on gender, mainly after the Law in Defense of Women's Rights was enacted in 2009.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Religion is considered a core value of society. CONARP's Self-Regulatory Code states that 'advertising must avoid everything that may injure the essential concepts and values of society, such as ... religions...'.

Moreover, Law No 23.592 provides sanctions and damages regarding any act of discrimination on the basis of race, religion, nationality, ideology or sex.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Argentina?

It should be noted that highly regulated industries are constantly faced with changing compliance regulations. Always seek advice from a local law firm before launching an advertising campaign in Argentina.

 AUSTRALIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Australia?

Advertising is regulated in Australia through both legislative and self-regulatory systems.

The primary piece of legislation is the Australian Consumer Law ('ACL') (Schedule 2 to the Competition and Consumer Act 2010 ('CCA')), which prohibits, among other things, misleading or deceptive conduct (including conduct that is likely to mislead or deceive) and the making of false or misleading representations.

There is also industry and product specific legislation. For example, there are State and Territory Food Acts which prohibit misleading or deceptive conduct in relation to food advertising, packaging and labeling and which also requires compliance with the Australia and New Zealand Food Standards Code ('FSC'). Similarly, the advertising of therapeutic goods must comply with the Therapeutic Goods Advertising Code 2021 ('TGAC'), which has the force of law. In addition, the Corporations Act 2001, the Australian Securities and Investments Commission Act 2001 ('ASIC Act') and the National Consumer Credit Protection Act 2009 (incorporating the National Credit Code) all have provisions dealing with misleading or deceptive conduct in relation to advertising of credit and financial products.

Australia's advertising industry self-regulatory system administered by Ad Standards is discussed in question 2.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Legislation prohibiting misleading or deceptive conduct applies broadly to all conduct, rather than being limited by a definition of advertising and covers both the doing of, and the omission to do, any act. Accordingly, there is no definition of 'advertising' in the ACL. However, Ad Standards, the organization responsible for administering Australia's advertising industry self-regulatory system, refers to advertising as a 'form of marketing communication that aims to persuade and influence people to take a specific action, like buying a product or using a service'.

In the TGAC, 'advertise' is defined in relation to therapeutic goods to include 'any statement, pictorial representation or design that is intended, whether directly or indirectly, to promote the use or supply of the goods'. Moreover, the Australian Association of National Advertisers ('AANA') Code of Ethics defines 'advertising' as 'any material that is published or broadcast in any Medium or any activity which is undertaken by, or on behalf of, an advertiser or marketer, over which the advertiser or marketer has a reasonable degree of control, and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organization or line of conduct'.

1.3 What is the basic regulatory framework for advertising regulation?

The Australian Competition and Consumer Commission ('ACCC') is the Federal government regulator for the ACL and it both investigates and enforces contraventions of the ACL (although an individual (corporate or otherwise) may also take, and do take, private actions under the ACL). Fair Trading Offices also investigate and enforce the ACL at the State and Territory level.

There are also industry specific government departments, such as the State and Territory Food Authorities which administer the FSC, the Therapeutic Goods Administration ('TGA') which administers the TGAC, and the Australian Securities and Investment Commission ('ASIC') which regulates legislation applying to advertising of financial and credit products.

The remedies available to regulators such as the ACCC, ASIC and the TGA include infringement notices, court enforceable undertakings, declarations, injunctions, pecuniary penalties, corrective advertising and compliance programs.

Please see question 2 below for Australia's advertising industry self-regulatory system.

1.4 **Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?**

The sending of electronic commercial communications (including email and SMS) is regulated by the Spam Act 2003. The Spam Act 2003 generally requires such communications to identify the sender, to only be sent with consent of the recipient, and to include a functional unsubscribe facility. In addition, the Do Not Call Register Act 2006 generally prohibits the making of unsolicited telemarketing calls to a telephone number registered on the Do Not Call Register, unless the account holder of the telephone number has consented to receiving the call.

The 2023 Privacy Act Review Report recommended the introduction of an unqualified right for individuals to opt-out of their personal information being used or disclosed for direct marketing purposes. The Government has agreed in-principle to this proposal, subject to refining the definition of direct marketing, and will further consider the best way to harmonize the requirements under the Privacy Act, Spam Act and Do Not Call Register Act.

Trade promotions involving a game of chance are highly regulated through State and Territory lotteries legislation. Depending on the nature of the promotion and total prize pool value, permits may need to be obtained in one or more States and Territories before the promotion can be advertised or conducted.

Further, advertising in certain mediums (for example, commercial television and radio) is regulated under legislative codes of practice. Other mediums (including subscription television and outdoor marketing) are regulated by self-regulatory industry codes, which are discussed in question 2.

1.5 **Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?**

- (a) **Food advertising** must comply with the FSC, which regulates issues in respect of the use of health, nutritional and advertising claims in advertisements and on packaging/labeling. There are also various self-regulatory industry codes that deal with food and beverage advertising to children and fast food advertising directed at children, which are discussed in Chapter 2.
- (b) **Therapeutic goods advertising** is subject to the TGAC, which prohibits (amongst other things) misleading advertising, advertising which arouses unwarranted expectations or causes consumers to self-diagnose, the offering of incentives to sales staff and the offering of samples. The TGAC also deals with the use of testimonials, professional recommendations, scientific information and comparative advertisements. The TGAC also prescribes wording

which must be used in advertisements. Complementary medicines (such as vitamin, mineral, herbal, aromatherapy and homoeopathic preparations) are also subject to Complementary Medicines Australia's Marketing & Supply Code of Practice: Complementary Medicines, which outlines suitable standards of marketing and promotional practices with respect to the supply of complementary medicines.

- (c) **Advertising of financial and credit products** is subject to the Corporations Act 2001, the ASIC Act and the National Consumer Credit Protection Act 2009. The legislation generally prohibits misleading or deceptive conduct and is supported by ASIC's regulatory compliance guide (RG 234), which details what is expected in relation to disclaimers, advertising of returns, benefits and risks, comparisons, use of forecasts and information about fees, and media-specific related matters.
- (d) **The advertising of alcohol** is highly regulated. The Alcohol Beverages Advertising Code ('ABAC') is a self-regulatory code of conduct which also addresses the content and placement of alcohol advertising. The advertising of alcohol must also comply with other legislative requirements and codes, including the AANA Code of Ethics, ACL, State and Territory Liquor Licensing alcohol promotion requirements, FSC, Commercial Television Industry Code of Practice, Commercial Radio Code of Practice and Outdoor Media Association Codes of Ethics and Alcohol Advertising Policy.
- (e) **The advertising of firearms** is permitted in some States and Territories, although the advertiser must be a licensed firearms dealer or the proposed sale is to be arranged through a licensed firearms dealer. Most State and Territory legislation also requires the specific firearm serial number to be stated in the advertisement.
- (f) **The advertising of gambling** is highly regulated. The Interactive Gambling Act 2001 regulates the advertising of gambling services via online, a website, app or a telephone.
- (g) **The advertising of telecommunications products and services** is regulated by the Telecommunications Consumer Protections Code, which includes general rules about what information must and must not be included in advertisements.
- (h) **The advertising of health services** provided by health practitioners is subject to the Health Practitioner Regulation National Law 2009 which, prohibits (among other things) misleading or deceptive conduct, use of testimonials, creating unreasonable expectations and encouraging the indiscriminate or unnecessary use of health services. Since 1 July 2023, new Guidelines for registered medical practitioners who advertise cosmetic surgery have come into effect which regulate in detail how cosmetic surgery can be advertised.

See question 5 below for products or services which are prohibited from being advertised.

1.6 Are any government pre-approvals required?

Generally, there are no pre-approvals required to be obtained from the government or other authorities before conducting advertising in Australia.

Certain goods, for example goods that make therapeutic claims, will need to be listed or registered on the Australian Register of Therapeutic Goods before those claims can be advertised.

AdCheck is a voluntary advertising advisory service provided by Consumer Healthcare Products Australia ('CHPA') which reviews adverts for therapeutic goods directed to consumers to ensure compliance with the TGAC.

1.7 Does the media pre-clear advertising?

Generally, no pre-clearance is required.

However, advertising on commercial television is required to be classified by ClearAds. ClearAds' primary role is the classification of advertisements for the purpose of timing placement. Whilst ClearAds also reviews substantiation of claims in advertising, any approval of advertising or otherwise by ClearAds does not guarantee compliance with advertising laws.

1.8 How does the government enforce advertising laws? What are the potential remedies?

As discussed in response to question 1.3 above, the ACCC is the Federal government regulator which investigates and enforces alleged contraventions of the ACL. The ACCC may in some cases resolve matters administratively, for example, by accepting a signed commitment by a trader which can include terms and conditions relating to the trader agreeing to stop the contravening conduct and compensate those who have suffered damage due to a breach. The ACCC can also resolve matters through infringement notices, which generally involves the issuing of smaller financial penalties in relation to minor contraventions. The ACCC also has the power to accept court enforceable undertakings whereby traders agree to remedy the harm, accept responsibility and improve trade practices compliance.

Finally, the ACCC can commence court action to obtain remedies such as declarations that an advertiser has engaged in misleading or deceptive conduct or conduct that is likely to mislead or deceive, injunctions (including interlocutory injunctions) restraining an advertiser from making certain advertising claims, an order for damages and/or costs, an order for the publication of corrective notices and advertisements, an order for the provision of financial consumer redress (refunds), an order for the payment of pecuniary penalties, and criminal convictions.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors can commence court proceedings against another competitor in respect of alleged contraventions of the ACL, for example in relation to misleading or deceptive conduct and the making of false representations. The remedies available for actions commenced by competitors include declarations, injunctions (including interlocutory injunctions), orders for damages and costs.

Competitors may also consider using self-regulatory dispute resolution measures, including lodging a complaint via the Ad Standards Industry Jury (a competitive complaint resolution service provided by Ad Standards). Complaints via the Ad Standards Industry Jury are generally much faster and cheaper to obtain; however, decisions of the Ad Standards Industry Jury are not enforceable by a court.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers also have a right of action in respect of alleged contraventions of the ACL. Remedies available for actions commenced by a consumer are the same as those available to competitors.

Consumers can also make complaints to the government regulator (eg, the ACCC). If sufficient complaints are received or if the conduct complained of is likely to result in significant public detriment, the ACCC may decide to investigate the complaint and/or take action against the advertiser. However, the ACCC is under no obligation to investigate a complaint or take action against an advertiser and may decline to do so.

A consumer may also lodge a complaint with the Ad Standards Community Panel about an advertisement which they consider to be offensive, violent or sexist.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Australia have a primary advertising self-regulation system?

Australia has a strong self-regulatory framework for advertising regulation. There are a large number of industry advertising codes which cover in their scope general advertising, advertising through certain media, or advertising of specific products and services. These include, but are not limited to:

- AANA Code of Ethics (general advertising code which addresses matters of taste and decency);
- AANA Food & Beverages Advertising Code;
- AANA Children's Advertising Code (general advertising code which addresses products with principal appeal to children under the age of 15);
- AANA Environmental Claims Code;
- AANA Wagering Advertising Code;
- Federal Chamber of Automotive Industries ('FCAI') Voluntary Code of Practice for Motor Vehicle Advertising;
- ABAC Responsible Alcohol Marketing Code (which addresses the content and placement of alcohol advertising);
- CHPA Code of Practice (which applies to the non-prescription sector of the medicines industry);
- Complementary Medicines Australia Marketing & Supply Code of Practice: Complementary Medicines;
- Medical Technology Association of Australia Code of Practice (which applies to medical devices);
- Jewelers Association of Australia Jewelry Industry Code of Conduct;
- The Australian Subscription Television and Radio Association ('ASTRA') Codes of Practice (in respect of subscription or pay television);
- Outdoor Media Association's Code of Ethics (in respect of outdoor advertising such as billboards);
- Medicines Australia Code of Conduct (which sets out standards for the marketing and promotion of prescription pharmaceutical products);
- Franchising Code of Conduct;
- Commercial Television Industry Code of Practice (which regulates commercial free-to-air television content);
- Commercial Radio Code of Practice;
- Australian Influencer Marketing Council's ('AiMCO') Influencer Marketing Code of Practice;
- Australasian College of Cosmetic Surgery and Medicine Consumer/Patient Code of Practice;
- Guidelines for registered medical practitioners who advertise cosmetic surgery; and
- Telecommunication Consumer Protections Code.

2.2 Is there a self-regulatory advertising code? What are the key principles?

There are many industry-specific self-regulatory advertising codes.

The primary self-regulatory code is the AANA Code of Ethics, which deals with both consumer and competitor complaints.

- (a) In respect of consumer complaints, the AANA Code of Ethics:
 - prohibits the portrayal of people or depiction of material in such a way that discriminates against or vilifies a person or section of the community;
 - prohibits the employment of sexual appeal in respect of minors or in a manner which is exploitative or degrading;
 - prohibits the presentation or portrayal of violence unless it is justifiable;
 - requires advertisers to treat sex, sexuality and nudity with sensitivity;
 - requires advertisers to only use language which is appropriate in the circumstances;
 - prohibits the depiction of material contrary to prevailing community standards on health and safety; and
 - requires advertising to be clearly distinguishable as such.
- (b) In respect of competitor complaints, the AANA Code of Ethics:
 - requires advertisers to comply with relevant legislation;
 - prohibits advertisements from being misleading or deceptive, or being likely to mislead or deceive;
 - prohibits advertisements containing a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor;
 - prohibits exploitation of community concerns in relation to protecting the environment; and
 - prohibits the making of claims in relation to origin or content in a manner which is misleading.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Ad Standards is the peak national self-regulatory advertising body which administers a number of codes of practice developed by the AANA such as the AANA Code of Ethics, the AANA Food and Beverages Advertising Code, the AANA Children's Advertising Code, the AANA Environmental Claims Code and the AANA Wagering Advertising Code. It also administers the FCAI Voluntary Code of Practice for Motor Vehicle Advertising on behalf of the FCAI and the ABAC on behalf of the ABAC Scheme.

Ad Standards receives and determines consumer complaints in relation to the AANA codes of practice and the FCAI Voluntary Code of Practice for Motor Vehicle Advertising. Other industry bodies, such as the ABAC Scheme, determine complaints in relation to their own industry codes.

Ad Standards administers its industry codes of practice through the Ad Standards Community Panel ('Community Panel') and the Ad Standards Industry Jury ('Industry Jury'). The former responds to consumer complaints about advertisements alleged to be offensive, violent or sexist, whereas the latter is a form of alternative dispute resolution for competitors where allegations of misleading or deceptive conduct are made.

Self-regulatory industry codes of practice are binding only on the members of the specific industry group. Generally, compliance with applicable industry codes is incentivized by the potential for adverse publicity if an advertiser does not comply with the determination of a complaint. The ultimate sanction in relation to non-compliance with an industry body code of practice is expulsion as a member by the industry body.

Whilst self-regulatory codes are only binding on the respective industry group members, advertisers should note that broadcast licensees and operators of certain advertising mediums (including commercial television and radio and subscription services) may only broadcast content which complies with certain self-regulatory codes, including, in particular, the Commercial Television Code of Practice, the Commercial Radio Code of Practice and the ASTRA Codes of Practice.

In respect of industry codes of practice administered by Ad Standards, if the Community Panel or Industry Jury (as the case may be) determines that an advertisement does not comply with an industry code, the Community Panel or Industry Jury will request the advertiser to modify or withdraw the advertisement as soon as possible after making a determination. If the advertiser does not do so, Ad Standards may report such failure in a public case report, send the report to relevant media proprietors, publish the report on its website and if considered appropriate, refer the report to an appropriate government regulator (such as the ACCC).

2.4 Is the self-regulation system effective? Is it widely used and followed?

In general, the self-regulatory system is effective and widely used and followed in the respective industries. Administrators of industry codes often make use of media outlets to advertise non-compliance, which in general encourages compliance by advertisers of the industry codes.

2.5 Are the self-regulatory system's decisions reported?

Usually, determinations under an industry code of practice are published on the respective administrator's website. For example, the Community Panel's decisions are published at <https://adstandards.com.au/cases/> and the Industry Jury's decisions are published at <https://adstandards.com.au/codes-and-cases/industry-jury-case-reports/>. Media proprietors also access these publicly available determinations and report them on through their respective channels.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Generally, the self-regulatory codes of practice deal with matters of taste and decency, truthfulness in advertising and prevailing community standards on health and safety. Many of the industry codes also deal with advertising to children. More recently, given the rise of advertising through social media, there has been a regulatory focus on ensuring that paid advertising is clearly distinguishable from editorial content.

2.7 Are there any other self-regulatory systems that govern advertising practices in Australia?

There is a plethora of industry issued and administered codes of practice. See question 2.1 above.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Australia (eg, consumer protection laws, IP laws, unfair competition laws)?

The ACL is the main piece of legislation which governs advertising claims. Its provisions have wide scope and prohibit misleading or deceptive conduct in trade or commerce (including conduct that is likely to mislead or deceive), as well as the making of false or misleading representations, including but not limited to, in relation to:

- the standard, quality, value or grade of goods or services;
- the performance characteristics, accessories, uses or benefits of goods or services;
- sponsorship, approval or affiliation;
- testimonials;
- the price of goods or services;
- the place or origin of goods or services; and
- the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy, including in relation to non-excludable guarantees under the ACL.

In addition to the ACL, advertisers should consider whether any product specific legislation applies which may prescribe conditions under which claims can be made. For example, the FSC contains extensive regulation in respect of the making of nutritional, health, and related claims for foods.

The ACL also contains other consumer protection provisions, including:

- (a) non-excludable consumer guarantees, including but not limited to:
 - guarantees as to the acceptable quality of goods; and
 - services being conducted with due care and skill;
- (b) voiding of unfair contract terms in consumer contracts; and
- (c) prohibition of bait advertising.

Advertisers should also be aware of the laws in Australia which protect both registered and unregistered intellectual property of Australia, including the Trade Marks Act 1995, Copyright Act 1968 and the common law tort of passing off.

3.2 Is substantiation required for advertising claims?

Yes, advertisers are required to have to hand substantiating evidence in support of advertising claims, prior to the making of the claim.

In respect of statements regarding future matters, statements which do not ultimately turn out to be true are not necessarily misleading or deceptive, as long as the person making the representation had reasonable grounds for making it, or did not know it was untrue or incorrect (and was not reckless as to the truth or correctness of the statement).

There are no specified standards as to the type of proof necessary to substantiate a claim; however, evidence should be robust, credible and able to resist objective scrutiny.

If advertising claims are based on the results of surveys, particular care should be taken to ensure that the survey has been properly conducted (for example, but not limited to, language used, questions asked, methodology employed and sample size). Survey evidence should be objective,

unbiased and employ sound methodology. The results of a survey should only be relied upon if the results are statistically significant, as overstating or exaggerating survey results is likely to amount to misleading or deceptive conduct.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Some types of advertising claims do not require substantiation, for example, puffery. Whether or not an advertising claim will require substantiation will depend on all of the facts and circumstances of the particular case, and a certain degree of ‘puffing’ or exaggeration is generally accepted in the ordinary course of commercial dealings.

Generally, claims which are capable of objective assessment or comparative claims will require substantiation, as these types of claims have a greater likelihood of being misleading if incorrect, in comparison to clearly fanciful or non-comparative claims.

3.4 What are the rules governing the use of disclosures in advertising?

Where a claim can be substantiated by evidence, this evidence need not be disclosed in the advertisement unless to omit the information would result in the advertisement being misleading or deceptive. However, advertisers must be careful not to hide advertising material within other content, and, where it is not necessarily clear whether content is sponsored or part of a paid ad campaign, it must be clearly labeled as such.

The AANA Code of Ethics requires that advertising must be clearly distinguishable as such. The practice note elaborates that, for example, advertising should not be disguised as news, current affairs, independent market research, user-generated content, private blogs or independent reviews. There is no requirement that advertising be labeled as such, however it must be clear to the audience that it is commercial in nature.

The current concern with social media influencers not disclosing, or not appropriately disclosing, their commercial arrangements with advertisers has given greater prominence to the requirement under the AANA Code of Ethics. Such conduct can also amount to misleading or deceptive conduct under the ACL.

In addition, AiMCO’s Influencer Marketing Code of Practice (11 August 2021) sets out best practice disclosure requirements in respect of influencer marketing, reiterating both the clearly distinguishable advertising requirement of the AANA Code of Ethics and compliance with the misleading or deceptive conduct provisions of the ACL.

Disclosures by way of disclaimers in supers in a television commercial, statements at the end of radio commercials, or footnotes in print advertising may be necessary if, without the disclaimer, the overall impression of the advertisement would be regarded as misleading or deceptive. If this is the case, advertisers should also consider whether the placement, size and prominence of the disclaimer is sufficient enough to be effective.

Whether a disclaimer is, in fact, an effective means of correcting an otherwise misleading impression, or false and misleading representation, will depend on the specific circumstances of the advertisement and the overall impression created by the advertisement which is likely to be understood by a reasonable person of the target audience. If the initial impression of an advertisement is overwhelmingly misleading, any disclaimer may not be sufficient to overcome that initial misleading impression.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The ACL specifically prohibits, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, the making of:

- (a) a false or misleading representation that purports to be a testimonial by any person relating to goods or services; and
- (b) a false or misleading representation concerning:
 - a testimonial by any person; or
 - a representation that purports to be such a testimonial,
 relating to goods or services.

Advertisers should also note that the evidentiary onus in respect of representations purporting to be testimonials or concerning testimonials, is on the advertiser, in the sense that there is a rebuttable presumption that a representation purporting to be, or concerning, a testimonial is misleading.

In light of the above, testimonials should be genuine and legitimate, reflect typical cases and the actual experience of the individual giving the testimonial. In general, it is recommended that the advertiser should obtain permission from the individual to use the testimonial, and a signed record of the testimonial should be retained for substantiation purposes.

Businesses and review platforms that selectively remove or edit online reviews, particularly negative reviews, for commercial or promotional reasons are likely to be regarded as engaging in misleading or deceptive conduct.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific provisions addressing the use of product demonstrations in advertising. However, the general provisions under the ACL apply. That is, the depiction or use of product demonstrations should not be misleading or deceptive or likely to mislead or deceive.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Yes, comparative advertising is permitted.

However special care should be taken when making comparative claims, because it is generally considered that comparative claims are more likely to mislead or deceive if inaccurate as compared with other types of claims, and because the claims are likely to be scrutinized by the compared party. That being said, there are generally no special rules that apply to comparative advertising, and comparative advertising claims do not carry a higher burden for substantiation than any other type of claims.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The Trade Marks Act 1995 provides that a registered trademark is not infringed if a person uses a trademark for the purposes of comparative advertising.

The situation in respect of copyright under the Copyright Act 1968 is more complex. The Copyright Act 1968 provides that copyright in an artistic work is not infringed by its incidental inclusion in a film or broadcast. What is meant by 'incidental' is a question of fact; however, providing the artistic

work in question is not the main or central focus of the film or broadcast, it is more likely to be considered incidental. In addition, the Copyright Act 1968 permits a fair dealing with a copyright work for the purposes of criticism or review and parody or satire.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

Claims about where a product’s ingredients or components came from or where it was processed are ‘country of origin’ claims and are regulated under the misleading or deceptive conduct and/or false and misleading representations provisions of the ACL. Country of origin claims include claims that a product was ‘made’, ‘produced’ or ‘grown’ in a certain country:

- (a) ‘Made in’ claims refer to the production of the product, that is, the goods must have been substantially transformed in the country of origin being claimed;
- (b) ‘Product of’ claims are used to demonstrate that each significant component or ingredient of the goods originated in the country and the production processes took place in the country; and
- (c) ‘Grown in’ claims are used to demonstrate that each significant ingredient or significant component was grown in the country of the claim and the production or manufacturing processes occurred in that country.

In addition, food offered for retail sale in Australia is required to carry country of origin labeling under the Country of Origin Food Labeling Information Standard 2016 (‘Information Standard’), made under the ACL. The Information Standard aims to make it easier for consumers to see where their food originates from.

3.10 Are there any special rules governing product packaging?

- (a) **Food:** Under the FSC, foods suitable for retail sale sold in a package require labeling that bears certain information such as (but not limited to), the name of the food, lot identification, name and address of the supplier, advisory statements, warning statements, a statement of ingredients and nutrition information. There are general prohibitions relating to altering the labels. For example, a person selling the packaged food must not deface the label on the packaging prior to its sale. There are also legibility requirements for warning statements on the packaging. In addition, as previously mentioned in response to question 3.9 above, food offered for retail sale in Australia is required to carry country of origin labeling.
- (b) **Tobacco:** As mentioned in response to question 5.1 below, tobacco packaging is highly regulated under the Tobacco Plain Packaging Act 2011 and must be in plain packaging. For example, the color, text and finish of the retail packaging of a cigarette pack or carton and the depiction and use of the tobacco manufacturer’s trademarks on the packaging are regulated by the Act.
- (c) **Alcohol:** There are some special rules under the ABAC Responsible Alcohol Marketing Code in respect of the product packaging of alcohol. For example, the product packaging must not show or encourage excessive consumption, irresponsible behavior in relation to consumption of alcohol, or have a strong appeal to minors.

- (d) **Chemicals:** In addition, the Agricultural and Veterinary Chemicals Code Act 1994 prescribes the approval process and labeling criteria, including content requirements for labels for containers for agricultural chemical products. Under this Code, a label must comply with the requirements of the Labeling Standards or, if there is no Labeling Standard, the Agricultural Labeling Code or the Veterinary Labeling Code.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

The ACCC is currently considering the use of dark patterns on digital platforms as part of its general enforcement and compliance priorities for 2022–23 and its Digital Platform Services Inquiry 2020–25.

In the fifth interim report for the Digital Platform Services Inquiry, the ACCC commented on how existing prohibitions in the ACL may deal with some types of dark patterns. However, many dark patterns would fall outside existing prohibitions.

The ACCC strongly supports the introduction of a general prohibition on unfair trading practices into the ACL which would help capture the use of ‘harmful’ dark patterns. Government consideration of this is currently underway. Alternatively, the ACCC has recommended further consideration be given to specific measures designed to regulate the use of dark patterns on digital platforms.

In addition, the Privacy Act Review Report considered the use of dark patterns which encourages users to select ‘more privacy intrusive settings’ and ‘detracts from the effectiveness of consent’. To address this, the Office of the Australian Information Commissioner has recommended that the definition of consent (for the collection, use or disclosure of personal information) be amended to provide that consent must be voluntary, informed, current, specific and unambiguous. Further, online privacy settings should reflect the privacy by default framework of the Privacy Act, and any privacy settings should be clear and easily accessible for users. The government has agreed in principle to these proposals.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Australia is yet to introduce any artificial intelligence (‘AI’)-specific legislation. The current regulation of AI relies on the following:

- general regulations (such as the ACL, privacy law, online safety law, intellectual property law and common law of tort);
- industry-specific regulations (such as those on food, therapeutic goods and financial services); and
- voluntary or self-regulatory frameworks, such as Australia’s eight Artificial Intelligence Ethics Principles, which are designed to provide guidance to businesses designing, developing and implementing AI.

In June 2023, the Federal Department of Industry, Science and Resources published a discussion paper titled ‘Safe and Responsible AI in Australia’. The paper seeks industry views as to the opportunities and challenges presented by AI and whether further regulation is required to manage the potential risks of AI.

Until any AI-specific legislation is introduced, the use of AI should comply with existing regulations, including ensuring that:

- any claims generated by AI are truthful, accurate and capable of substantiation;
- any personal information is handled in accordance with the Privacy Act; and
- any advertising material generated by a chatbot does not inadvertently breach the ACL and/or the advertising provisions of the various self-regulatory codes of practice, and does not infringe any third-party intellectual property rights.

4 PRICE ADVERTISING

4.1 What are Australia's rules regarding price advertising?

In addition to the general requirement that any price advertising must not be misleading or deceptive or likely to mislead or deceive, the ACL contains provisions regarding multiple pricing and component pricing. A supplier who displays multiple prices for the same goods must either sell the goods for the lowest displayed price or withdraw the goods from sale until the price is corrected. In addition, a supplier must not promote or state a price that is only part of the cost, unless the total, single price is prominently advertised.

In practice this means that the advertised price must be the total cost, inclusive of any taxes, duties or levies. However, the single price need not include the costs of delivery.

In addition, there is a specific prohibition on false and misleading representations concerning the price of goods and services.

In respect of reduced price offers or what is commonly referred to as 'was/now' claims, goods or services offered must have been offered at the 'was' price for a reasonable period of time before advertising the 'now' price. The 'was' price must also be the realistic former sale price, which may not necessarily be the same as the ticketed price. For example, in respect of businesses where goods are rarely sold at the ticketed price and are often the subject of discounts, any 'was' price used in a 'was/now' type advertising campaign will need to reflect the actual price at which goods were sold for a reasonable period immediately prior to sale.

4.2 What are Australia's rules regarding advertising 'free' products?

There are no specific rules in relation to the advertising of 'free' products. However, in accordance with the general rules, advertising claims of 'free' products must not be misleading or deceptive or be likely to mislead or deceive.

In addition, use of the term 'free' in advertising is specifically referred to in the ACCC's Advertising and Selling Guide; and the ACCC warns that businesses should be particularly careful of the use of the word 'free'. This is especially so as consumers will usually think of 'free' as meaning absolutely free.

4.3 What are Australia's rules regarding sales and special offers?

Advertising of sales and special offers must not be misleading or deceptive or be likely to mislead or deceive. As noted above, the ACL also specifically prohibits false and misleading representations concerning the price of goods and services.

The ACL also prohibits 'bait advertising', which is where a person advertises goods or services for sale at a specified price, although there are reasonable grounds for believing they are not actually able to offer the goods or services at that price. A typical example is the 'bait and switch', where a retailer offers goods for sale at an extremely good price, knowing that it only has a limited number of the good for sale, for the purposes of drawing in customers so that they can be persuaded to purchase alternative, typically more expensive, goods from the retailer.

Referral selling schemes, where consumers are persuaded to buy goods or services by promising benefits (including commissions, rebates or other benefits) contingent on subsequent sales or events occurring after the contract is made, are also prohibited.

4.4 What are Australia's rules regarding rebates?

There are no prohibitions in respect of offering rebates.

However, the ACL specifically prohibits the offering of any rebate, gift, prize or other free item with the intention of not providing it, or of not providing it as offered. The provisions also require any person offering such a rebate, gift, prize or other free item to do so within the time specified in the offer or, if no time is specified, within a reasonable time after making the offer.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

In Australia, there are numerous non-excludable statutory consumer guarantees enshrined in the ACL, including but not limited to goods being of acceptable quality and services being provided with due care and skill. Advertisers should be aware of Australian consumer rights, because the ACL prohibits the making of false or misleading representations as to the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including the guarantees provided by the ACL). In practice, this means that any express warranties and refund policies must not conflict with a consumer's statutory rights. Retailers should also be aware that there are extensive provisions detailing the form and content of any express warranties against defects which may be provided by a retailer.

Advertisers should also be aware that the CCA prohibits resale price maintenance, namely the imposition of minimum resale prices by a manufacturer or distributor to a retailer. Advertisers may recommend an appropriate price for particular goods or services, but must not stop retailers from charging or advertising below that price, including indirect means such as threatening to stop supplying the retailer.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Tobacco advertising is banned in Australia and labeling and packaging is also highly regulated under the Tobacco Plain Packaging Act 2011.

In Australia, nicotine vaping products, including nicotine e-cigarettes, are regulated as prescription medicines. The advertising of prescription medicines is generally prohibited in Australia. However, a pharmacy that dispenses e-cigarettes on prescription may, under the Therapeutic Goods Act 1989,

promote the availability of e-cigarettes to those wishing to fill their prescription. Individual States and Territories may otherwise limit or prohibit the advertising of smoking products, including e-cigarettes and vapes (irrespective of whether or not they contain nicotine).

The advertising of prescription-only medicines to the general public is prohibited under the Therapeutic Goods Act. Prescription-only medicines are also subject to the Medicines Australia Code of Conduct, which provides a principles-based framework for the marketing and promotion of prescription-only medicines.

5.2 **Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?**

As set out in question 1.4 above, the Do Not Call Register Act prohibits the making of unsolicited telemarketing calls to a telephone number registered on the Do Not Call Register, unless the account holder of the telephone number has consented to receiving the call.

A business must crosscheck its marketing lists against the Do Not Call Register to ensure that it does not call those numbers. If a business outsources telemarketing calls, both the business and the service provider are responsible for complying with the Act. However, there are exemptions for some public interest organizations, including charities, political parties and educational institutions.

Failure to comply with these obligations can result in substantial penalties and injunctions. Infringement notice penalties range up to AU\$313,000 for each day on which contraventions occurred. A court may award significantly higher penalties, with a maximum penalty of AU\$3,130,000 for each day on which contraventions occurred.

The Telecommunications (Telemarketing and Research Calls Standard) 2017 and Telecommunications (Fax Marketing) Industry Standard 2021 also apply to prescribe the timing and content of telephone and fax marketing communications.

5.3 **Are there any laws or regulations governing indecency or obscenity that apply?**

The AANA Code of Ethics covers issues relating to indecency and obscenity. The AANA Code of Ethics:

- prohibits the portrayal of people or depiction of material in a manner which discriminates against or vilifies a person or section of the community,
- prohibits the employment of sexual appeal in an exploitative or degrading manner,
- prohibits the portrayal of violence except in justifiable contexts,
- requires sex, sexuality and nudity to be treated with sensitivity,
- requires language to be appropriate for the circumstances (strong or obscene language should be avoided) and
- prohibits the depiction of material contrary to prevailing community standards on health and safety.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The clearly distinguishable advertising requirement under the AANA Code of Ethics equally applies to sponsorship advertising.

As set out above, advertisers should be careful not to conceal advertising material within other content, and, where it is not readily apparent that such content is sponsored or part of a paid commercial arrangement, it must be clearly labeled as such. The AANA Code of Ethics practice note provides further guidance for ensuring advertising content is clearly distinguishable from non-advertising content.

Other industry codes, such as the Commercial Television Industry Code of Practice and the Media Entertainment & Arts Alliance (MEAA) Journalist Code of Ethics, require the disclosure of commercial arrangements. Further, the Commercial Radio Code of Practice requires an advertisement to be presented in a manner which is clearly identifiable as advertising material.

In addition to the above, the usual ACL provisions apply, including in respect of conduct that is misleading or deceptive (or likely to mislead or deceive) and false or misleading representations.

Please also see our comments at question 7.1 below regarding disclosures when editorial content which has been influenced by advertisers.

Please note that electronic commercial communications (being SMS and email) are regulated by the Spam Act 2003, which requires (amongst other things) that the sender of the communication be identified.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules that apply to native advertising in Australia (ie, advertising that has the look and feel of editorial or entertainment content). However, the same requirements regarding clearly distinguishable advertising under the AANA Code of Ethics apply equally to native advertising.

Accordingly, it is incumbent on an advertiser to ensure that native advertising clearly and prominently discloses that the content is a paid advertisement for the advertiser as opposed to editorial or entertainment content.

Further, in relation to advertising content being distinguishable from editorial content, the general provisions of the ACL in respect of misleading or deceptive conduct and false or misleading representations will apply. As an exception to this, in relation to editorial content, there is a provision exempting information providers (including media proprietors) in relation to publications made in the course of carrying on the business of providing information. However, in respect of some editorial content, there may be a requirement to disclose where advertisers have influenced the editorial content. For example, MEAA's Journalist Code of Ethics requires journalists to disclose when any direct or indirect payment has been made for interviews, pictures, information or stories. In

another example, broadcast current affairs and talkback programs are also required under the Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2022 to disclose certain commercial agreements and other arrangements that have the potential to affect the content of such programs.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Usually, special disclosure requirements apply to the media proprietor or producer of editorial content, as opposed to the advertiser.

As noted above, journalists may be obligated under the MEAA Journalist Code of Ethics to disclose when any direct or indirect payment has been made for interviews, pictures, information or stories.

In addition, broadcast current affairs and talkback programs are also required under the Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2022 to disclose certain commercial agreements and other arrangements that have the potential to affect the content of such programs.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules or regulations that apply to advertising in online or social media. The provisions of the ACL and the various AANA and other industry codes of practice apply equally in the online and social media space.

In addition, the Digital Industry Group Inc's ('DIGI') Australian Code of Practice on Disinformation and Misinformation (updated 22 December 2022) requires its digital platform signatories (including Apple, Adobe, Google, Meta, Microsoft, Redbubble, TikTok and Twitter) who offer digital advertising services, to use commercially reasonable efforts to deter advertisers from repeatedly placing digital advertisements that contain verifiably false or misleading or deceptive information.

The ACCC conducted an internet sweep in January 2023 to identify misleading testimonials and endorsements by social media influencers. The sectors that were targeted during the sweep included fashion; beauty and cosmetics; food and beverage; travel; health, fitness and wellbeing; parenting; gaming; and technology.

In April 2023, the ACCC published its sixth interim report in respect of the Digital Platforms Services Inquiry. In relation to social media influencers, the ACCC found that the disclosure of sponsored posts by influencers needs to be improved, and that 'lack of disclosure may mislead consumers who may be unaware that endorsements by influencers are paid for, preventing them from making informed choices when purchasing products online'.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

In Australia, advertisers have been held liable (and will continue to be held liable) for user-generated content that has been posted on advertisers' websites or social media pages where such content consists of misleading or deceptive testimonials or false or misleading representations where the advertisers were aware of the content (or should have been aware) and did not remove it, or did not remove it promptly.

Further, under the AANA Code of Ethics, an advertiser can be held liable for the content posted by its influencers provided that the advertiser has a reasonable degree of control over the content that the influencers post. However, as an influencer, or an advertiser, has yet to be sued by a regulator (such as the ACCC) for engaging in misleading or deceptive conduct under the ACL in respect of content posted by an influencer, it is not entirely clear whether an advertiser would be held liable for that content.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

In *ACCC v Allergy Pathway Pty Ltd (No 2)* [2011] FCA 74, misleading or deceptive testimonials were posted by clients of Allergy Pathway's Facebook wall. Whilst the advertiser was not responsible for the testimonials' initial publication, failure to remove the comments after the advertiser became aware (or should have become aware) resulted in Allergy Pathway being deemed to be the publisher of the user generated comments and in contravention of the ACL.

More recently, in *Fairfax Media Publications Pty Ltd v Voller* [2021] HCA 27, the High Court affirmed the New South Wales Supreme Court's finding that media organizations can be liable for the publication of defamatory comments posted by third parties on their public Facebook pages. Although this decision relates to defamation, it makes it clear that any person or organization that operates a public Facebook could potentially be held liable for comments made by third parties.

The responsibility of advertisers for user generated content has been echoed in a number of Community Panel determinations under the AANA Code of Ethics (Case Nos 0272/12 and 0271/12). For example, in case 0271/12, derogatory and offensive material posted by users on Fosters Australia's Facebook pages, which was not promptly removed, constituted a breach of the AANA Code of Ethics by Fosters Australia. In its determinations, the Community Panel noted that the Facebook site of an advertiser is a marketing communication tool which acts to promote or oppose a product or service and is reasonably controlled by the advertiser.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

There is no right of publicity in Australia. However, if the individual has a reputation (for example, a celebrity) and their name, picture, likeness, voice or identity is used in advertising without their permission, then such use may misrepresent an association with the advertiser and/or the advertiser's products or services and amount to a passing off at common law and/or misleading or deceptive conduct under the ACL. Generally, it is recommended that an advertiser obtain the consent of any persons referred to or appearing in an advertisement or promotion.

The Privacy Act 1988, which currently applies only to entities with a turnover of AU\$3 million or more (known as 'the small business exemption'), regulates among other things the use or disclosure of any information from which a person's identity can reasonably be identified (including in combination with other available sources of information). This will certainly include an individual's name, picture and identity, but perhaps not an individual's voice alone. The Privacy Act 1988 prohibits the use and disclosure of personal information (including use/disclosure in advertising) unless the individual has consented, or an exception applies.

The Privacy Act Review Report recommended the removal of the small business exemption. The Government has agreed in principle to this proposal, subject to an impact analysis and consultation with small businesses.

In addition to the prohibition on misleading or deceptive conduct generally, the ACL also specifically prohibits the making of false and misleading representations in relation to sponsorship or approval of goods or services, or in relation to sponsorship, approval or affiliation of the person making the representation. These provisions are usually only effective where the unauthorized use of an individual's identity is in respect of an individual who possesses or has developed a significant reputation in Australia.

The common law tort of passing off also protects against unauthorized trading on another's goodwill.

9.2 Are there situations when permission is not required?

Consent is not required if an individual is not likely to be able to rely on any of the actions discussed above at question 9.1 namely:

- (a) if the Privacy Act 1988 applies, an exception applies in relation to the use or disclosure of personal information of the individual. The main exception is if the individual would reasonably expect the advertiser to use or disclose the information, and the purposes for which it is used is directly related to the primary purpose of collection of the information;
- (b) in respect of the other causes of action under the ACL, if the manner in which an individual's name, picture, likeness, voice and identity is used does not, and is unlikely to, mislead or deceive or constitute a false or misleading representation that the advertiser or promoted goods/services has a sponsorship or approval from, or affiliation with the individual referred to in an advertisement; and
- (c) in respect of the common law tort of passing off, if the individual does not have sufficient goodwill or the advertisement does not damage the goodwill.

Given the complexity of actions available to an individual, obtaining consent from the individual is usually recommended.

Of course, if (for example) a photo is taken of a well-known individual in a public place, and there are no privacy, ACL, passing off, confidentiality or contractual restrictions, permission would not be required. See *Tom Cruise and Nicole Kidman v Southdown Press Pty Ltd* (1993) 26 IRP 125.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

- (a) **National parks:** Under the Environment Protection and Biodiversity Conservation Act 1999, prior approval from the Director of National Parks is required for commercial filming and photography in some of Australia's parks and reserves, for example, the Uluru-Kata Tjuta National Park, which is a World Heritage Area. There may be conditions on the approval, such as that advertising and promotional materials must be submitted to the relevant park's media office for consideration prior to the publication and use of such materials.

- (b) **Commercial television:** All advertising on commercial television must be classified and approved by ClearAds. However, this approval process is focused on classification issues rather than compliance with other laws, such as the ACL. In some cases, ClearAds requests substantiation of advertising claims (for example, if the advertisement has a statement that says ‘Our restaurant is located in the oldest historic building in Australia’, then ClearAds may request substantiation of that statement), however any approval by ClearAds is not a guarantee of compliance with the ACL or any other laws or regulation.
- (c) **Alcohol:** The ABAC Scheme Limited offers an optional, user-pays pre-vetting service for checking compliance with the ABAC in relation to alcohol advertising. However, approval of an advertisement is no guarantee against an adverse finding against the advertisement under the usual ABAC complaint procedures. It is possible for the ABAC Adjudication Panel to uphold a complaint against material which has been pre-vetted and approved.

10.2 Is it permissible to use other companies’ recognizable products in advertising (eg, an actor wearing branded training shoes)?

On the basis that the use is not misleading or deceptive and does not constitute a false or misleading representation that there is a sponsorship or approval by, or affiliation with, the company whose products are being depicted, incidental use of other companies’ recognizable products in advertising is permitted.

The incidental display of company branding and trademarks is unlikely to constitute trademark infringement, as an incidental depiction is unlikely to be considered to be a use of a trademark in the sense of indicating the trade origin of a product. In addition, there is a specific exemption of copyright infringement for artistic works reproduced in a film or television broadcast when the inclusion of the artistic work is only incidental to the principal matters represented in the film or television broadcast.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Australia which affect advertising (eg Swedish gender equality law)?

There are no rules peculiar to Australian culture, although see our comments at question 11.2 below in relation to depictions of indigenous Australians.

11.2 Are there any other cultural norms that should be considered (eg religious concerns)?

Cultural sensitivity and care should be taken by advertisers when seeking to depict indigenous Australians in advertising, so as not to offend their religious and cultural beliefs. Whilst there is no legislation in Australia which specifically regulates depiction of Aboriginal people, such matters should be treated with special care in Australia.

There is, for example, an advisory note published as part of the Commercial Television Industry Code of Practice in Australia which recommends that Aboriginal and Torres Strait Islander paintings and symbols not be used in programs without seeking appropriate advice or permission.

Generally, it is recommended that any depictions of Aboriginal people in advertising (whether wearing ceremonial markings/symbols or not) be reviewed by an appropriate indigenous arts body to confirm that such depictions are culturally sensitive and accord with Aboriginal religious and cultural beliefs and are not offensive to their laws and customs.

In many Aboriginal and Torres Strait Islander communities, the reproduction of a deceased person's name and image is offensive to Indigenous cultural beliefs. Cultural warnings should be used to alert Aboriginal and Torres Strait Islanders viewers and/or listeners if images and/or voices of deceased persons are used.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Australia?

The misleading or deceptive conduct provisions in the ACL are very broad and extend to all consumer interactions, including advertising, packaging and statements made by sales staff.

In addition, the ACCC has significant power, is very vigilant, and will prosecute advertisers who it perceives are contravening the ACL. The ACCC regularly conducts internet sweeps to identify any potential contraventions and to enforce compliance with the ACL. Each year the ACCC reviews its compliance and enforcement priorities. Some of its compliance and enforcement priorities for 2023–24 included:

- Consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability;
- Consumer and fair-trading issues relating to manipulative or deceptive advertising and marketing practices in the digital economy; and
- Empowering consumers and improving industry compliance with consumer guarantees, with a focus on high value goods, including motor vehicles and caravans.

Given the broad reach of the misleading or deceptive conduct provisions of the ACL and the proactive oversight by the ACCC, it is imperative for businesses to ensure that their advertising practices comply with regulatory standards to avoid substantial penalties. Do not assume an advertisement that has been approved in other countries will be acceptable under Australian law.

 AUSTRIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Austria?

In Austria, there is no statute that specifically regulates advertising in a comprehensive way. Instead, there are several federal statutes which contain legal provisions concerning advertising, the main one being the Federal Act Against Unfair Competition.

There are also specific laws that apply to advertising on television, radio and in audiovisual media; and to certain products and services such as alcohol, tobacco, medicines, medical devices and financial services.

The Trademark Act and the Copyright Act are also of importance when using third-party trademarks, copyright works and other intellectual property rights in advertising.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Austrian legislation does not contain a definition of ‘advertising’, but the EU Comparative Advertising Directive contains a definition that is used by Austrian courts. Generally, ‘advertising’ is any form of commercial communication or representation which, directly or indirectly, promotes the sale of goods or services. Commercial promotions, presentations, recommendations, announcements, sponsorship and sweepstakes which directly or indirectly promote the sale of goods or services will constitute ‘advertising’. Even reports with editorial content are considered to be advertising if payment is made for their publication.

1.3 What is the basic regulatory framework for advertising regulation?

The main advertising law in Austria is the Federal Act Against Unfair Competition, which implemented the EU Comparative Advertising Directive and Unfair Commercial Practices Directive. The Act Against Unfair Competition prohibits unfair commercial practices, aggressive commercial practices, and misleading commercial practices—and contains provisions regulating, amongst other things, the disparagement of businesses and misuse of brands. The use of promotional gifts, price discounts and clearance sales are also covered by this Act.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The E-commerce Act and the Distance and Away Business Act contains a legal framework for the sale of goods and services over the internet and off premises. In particular, both acts impose certain information requirements on businesses when distributing goods and services ordered via the internet or that are sold outside of business premises. The Telecommunications Act prohibits telephone calls and fax messages for advertising purposes without the prior consent of the recipient; and it restricts the sending of electronic mail, including SMS, for marketing purposes without the prior consent of the recipient.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- Advertising drugs is restricted by the Act on Pharmaceuticals and advertising medical products is restricted by the Act on Medical Products.
- Tobacco advertising and sponsorship are—with few exceptions—prohibited by the Tobacco Act.
- Specific acts regulating the banking and financial services sectors restrict the advertising of certain financial services.
- The Gambling Act contains provisions regulating the advertising of casinos and gambling.
- Advertising restrictions also apply to certain professions such as physicians, dentists, public notaries, lawyers, veterinarians and morticians.

1.6 Are any government pre-approvals required?

No. Government pre-approvals are not required for individual advertisements, although advertisers must obviously comply with restrictions imposed by law. According to the Austrian legal system, every competitor may pursue illegal advertising before the ordinary courts. The courts will then decide whether an advertisement is in accordance with the law or not. It would be against this assignment of jurisdictional powers if a governmental authority required the pre-approval of individual advertisements. However, there are some laws which provide for particular information requirements, listed in these laws, when marketing specific products and services (eg, pharmaceuticals and financial services).

1.7 Does the media pre-clear advertising?

There are laws which impose restrictions on certain media operators, such as television, radio, newspaper and audiovisual media operators. Media operators covered by such laws have to ensure that advertisements and sponsorship in their media are identifiable as such, and that no subliminal messages are used for advertising purposes. To protect themselves, media operators that are covered by such laws examine advertisements to ensure they are in accordance with these restrictions.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Advertising restrictions are enforced in different ways. Where an entity violates advertising laws, this may amount to an act of unfair competition. Certain associations, in particular the Federal Chamber of Commerce, the Chamber of Agriculture, the Chamber of Labor, the Federal Trade Unions Association, the Federal Competition Authority and the Consumer Protection Association, are entitled to sue before the ordinary courts alleging illegal advertising. Furthermore, any other association with the purpose of promoting the economic interests of its members may be entitled to proceed before court. It is then up to the ordinary court to decide on the claims based on illegal advertising, particularly on whether to issue a cease-and-desist order. Certain violations of advertising restrictions will be enforced by administrative authorities, which may impose fines on those responsible for violating advertising laws.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor is entitled to commence a civil action before the state courts and has the right to combine a civil action with an application for preliminary injunctions. Every competitor has the right to commence court action against a defendant for illegal advertising if a competitive relationship with the defendant exists. It is not necessary for the competitor bringing the claim to provide evidence that the illegal advertising by the defendant caused any damage.

A competitor is entitled to apply for a court order requiring the defendant to cease and desist from illegal advertising. Such a cease-and-desist order may be granted by the court by way of a preliminary injunction based on prima facie evidence. A competitor may also:

- claim damages, if they can prove that they suffered damage as a result of illegal advertising by the defendant; and/or
- apply for a court order requiring that the judgment against the defendant advertiser is published in certain media in order to inform the public about the illegal activity.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers only have a right of action against illegal advertising if their personal rights are adversely affected, or in case of financial losses due to such illegal advertising. This will only be assumed in exceptional cases. As an example, the consumer may claim for a cease-and-desist order in cases of 'cold calls' or if the consumer is harassed with unsolicited fax messages or emails. A consumer may also apply for a cease-and-desist order and/or damages if their likeness or name is used in advertising without their consent. The same applies if intellectual property rights of a consumer (eg, trademarks, patents, works of art, designs) are used in advertising without obtaining the prior consent of the consumer. Also, it is possible for a consumer to demand damages for financial losses resulting from misleading advertising claims. Apart from this, a consumer is not entitled to start court action against illegal advertising. Every consumer, however, may inform one of the associations entitled by law to bring an action about any kind of illegal advertising, and the association may then decide to proceed against illegal advertising before the court.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Austria have a primary advertising self-regulation system?

In Austria self-regulation is of minor importance. The advertising industry has founded an Advertising Council, which has established guidelines to be followed by the advertising industry as an instrument of self-control. These guidelines require, in particular, that a sense of decency is shown when advertising. Generally, the Advertising Council will not strictly examine whether an advertisement is in accordance with the law or not. The main focus of the Advertising Council will be whether an advertisement complies with public morality and ethical standards. Most of the decisions of the Advertising Council tend to concern sexism or racism in advertising. As the Advertising Council does not primarily judge advertisements on the basis of the law, the Advertising Council may object to advertising practices even though such practices are in accordance with the law.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The Advertising Council has issued an advertising industry Ethics Code. This Ethics Code constitutes a core area of the Austrian system for the protection of consumers against the misuse of advertising. The Ethics Code includes general principles of advertising relating to ethics and morality, violence, health, safety, environment, gender discrimination, children and young people, elderly people, addictive substances, and advertising for automotive vehicles. The Ethics Code is based on the principles of social responsibility, human dignity and personal integrity. Advertising that directly or indirectly discriminates against individuals or promotes discrimination is prohibited. Suffering, misfortune and death must not be misused for the purpose of advertising. In addition, the Advertising Council has issued codes relating to specific areas of advertising. Such codes include ones on alcoholic beverages, motor vehicles, advertising food by audio-visual commercial communications and commercial communications directed at children. All these codes emphasize the principles of decency, morality and responsibility.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Any person may complain about an advertisement to the Advertising Council. The Advertising Council may also become active *ex officio* without having received a complaint. The Advertising Council will only deal with commercial and professional advertising. Political campaigns, advertising in the area of art and culture and for non-profit organizations will not be dealt with by the Advertising Council. The Advertising Council will also not deal with advertising which is illegal under the Act Against Unfair Competition. If the complaint is justified, the Advertising Council may request the advertiser to immediately stop the advertising measure objected to, or to be more sensitive in the future. The decision of the Advertising Council cannot be enforced and does not involve sanctions and therefore only amounts to a recommendation.

The decisions of the Advertising Council have no binding effect on the ordinary courts in the event that an advertisement is then the subject of court proceedings following a decision of the Advertising Council. The ordinary court, therefore, may decide that advertising practices are lawful, even though the Advertising Council decided that the advertisement offends ethical standards. Even if an entity continues with a campaign which has been objected to by the Advertising Council, this will not lead to any sanctions.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The Advertising Council is of minor importance in Austria. Nonetheless, as the principles of the advertising industry Ethics Code are, in many respects, in accordance with the law, these principles are widely respected by the advertising industry. As the statistics published by the Advertising Council show, this can be seen in particular in relation to advertising for alcoholic beverages and advertising aimed at children. In other areas, advertisers base their promotions on the law and not on the ethical standards of the Advertising Council.

2.5 Are the self-regulatory system's decisions reported?

The decisions of the Advertising Council may be published on the Advertising Council's website at www.werberat.at. Furthermore, the Advertising Council may inform the media of its decisions in order to encourage the media to publish such decisions.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Most of the complaints brought before the Advertising Council relate to sex and sexism. The key areas that companies should be aware of are advertisements with sexual images (eg, advertising for a brothel near schools, excessive nudity in advertisements), sexism, advertising generally offending human dignity, gender discrimination, violence, advertising for alcoholic beverages, advertising for motor vehicles and advertising directed at children.

2.7 Are there any other self-regulatory systems that govern advertising practices in Austria?

The Austrian Ethics Council for Public Relations issues self-regulatory rules that only have recommendatory character. The most notable publication is the Code of Conduct for Ethics in Digital Communication defining (non-binding) rules and principles for communication in online and social media channels.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Austria (eg, consumer protection laws, IP laws, unfair competition laws)?

The main source of advertising law is the Federal Act Against Unfair Competition. This Act prohibits unfair commercial practices, aggressive commercial practices and misleading commercial practices. The Act also contains regulations concerning the disparagement of a business, the misuse of business designations and brands, bribing employees or agents and the disclosure of business or trade secrets. The use of promotional gifts, price discounts, as well as clearance sales are also covered by this Act.

The Copyright Act protects creative works (eg, works of literature, paintings, sculptures, music and databases) against use or exploitation by third parties without the applicable owner's consent.

The Trademark Act and the Industrial Designs Act prevents trademarks and designs being used or exploited by third parties without the applicable owner's consent.

The owner of the rights may object to the use of their works, trademarks or designs by other persons or businesses in advertisements.

3.2 Is substantiation required for advertising claims?

Generally, no substantiation is required in the advertising claim itself. However, if court action is started it could then turn out to be necessary to have the claim substantiated within a short period of time in order to avoid the court issuing an injunction. The advertiser has to prove that the claims made in the advertisements are true and provide substantiation, if this is appropriate and reasonable under the specific circumstances of the case.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

'Puffery' is exaggerated advertising that cannot be taken seriously or literally by the public. If a claim is clearly identifiable as puffery, it will not be regarded as misleading. Also, purely subjective value judgments such as 'Austria's best coffee' do not require substantiation. Claims in advertising which are clearly identifiable by the consumer to be undoubtedly blatant and which are not objectively verifiable will not require substantiation and generally are not forbidden. If doubt remains as to whether or not a statement is to be taken seriously, it will be considered as being serious.

3.4 What are the rules governing the use of disclosures in advertising?

Disclosures will be necessary if an advertising claim would otherwise be deceptive. It is a general principle that an advertising claim must not be deceptive. The omission of information which is relevant for a consumer may also be deceptive—in which case, in order to avoid deceptiveness by omission, disclosures will be necessary. Generally, disclosures must be clear and conspicuous so that they can easily be noted by the consumer.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsements and testimonials must not be used if using them would make an advertising claim deceptive or aggressive. The statement of the third party will be considered as part of the advertising claim.

The claim that a business or a product has been approved, endorsed or has received an award from a public or private body when it has not, or making such a claim without complying with the terms of the approval, endorsement or authorization, is prohibited.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstrations may be used in advertisements, and will form part of any advertising claim. The rules regulating advertising in general will apply to product demonstrations, which means that product demonstrations are not allowed if they are deceptive or aggressive, or if they disparage a competitor's product or service in a subjective way. Some laws provide for specific rules for product demonstrations (eg, showing doctors or nurses presenting pharmaceuticals is prohibited).

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising, where goods or services from one company are compared with those of a competitor, is permissible, provided it complies with certain conditions. Comparative advertisements must be objective, must not be misleading or aggressive and must not disparage a competitor or a competitor's products or services.

The products or services that are being compared must actually be comparable (ie, they must meet the same needs or be intended for the same purpose). It is not sufficient to simply claim that one's own products or services are better than those of a competitor. All relevant circumstances and reasons for the comparison must be provided, in order to allow the public to make an objective decision.

Products with an indication of origin may only be compared with products of the same origin. If the compared products or services are on special offer, the period of the special offer must be clearly and conspicuously notified to the public.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

If an advertising claim complies with the requirements for comparative advertising, it is permitted to use a competitor's trademark and show a competitor's products. It is also permitted to compare a no-name product with a branded product. However, the use of a competitor's trademark may be an illegal sales practice if the reputation of the competitor's trademark is exploited in an unfair way.

This could be, eg, if a competitor's famous trademark is used in a comparative advertisement where all the necessary information for the comparison could be provided to the public without using the famous trademark.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

According to the Act Against Unfair Competition, it is forbidden to mislead consumers about the origin of a product. Furthermore, based on EU law and on the Trademark Act, various designations of origin and geographical indications relating to food and agricultural products cannot be freely used and are protected against misleading uses (eg, 'Tyrolean Bacon').

With regard to wines and spirits, it is illegal to use a geographical origin for wine and spirits which does not correspond to its actual origin.

3.10 Are there any special rules governing product packaging?

The general provisions set out in the Act Against Unfair Competition also apply to product packaging. Thus, it must not create a likelihood of confusion with a competitor's product or trademark, and must not mislead the consumer about the origin of a product. Furthermore, it can be considered misleading under the Act if the packaging suggests it contains a significantly higher quantity than is actually the case.

An advertising claim as well as the product name must not mislead the consumer. This must be assessed based on the target public. With regard to foodstuffs, the Codex Alimentarius Austriacus documents the public perception of the quality of foodstuffs.

In particular, with regard to foodstuffs and wines, there are specific Acts that need to be considered, ie, the Food Safety and Consumer Protection Act and the Wine Act.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

The Federal Act Against Unfair Competition sets out a blacklist of unfair or misleading commercial practices that are considered unfair in all circumstances. Several of these practices refer directly to advertising activities.

Furthermore, the Advertising Council has issued a non-binding Ethics Code for the advertising industry, containing several 'dos and don'ts' for various kinds of products and particular target groups.

Regarding dark patterns on social media platforms and in relation to the use of cookie banners, which are used on websites to request user consent for, *inter alia*, advertising cookies, the European Data Protection Board has issued non-binding guidelines based on the EU General Data Protection Regulation and the EU ePrivacy Directive.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules on artificial intelligence as it relates to advertising.

4 PRICE ADVERTISING

4.1 What are Austria's rules regarding price advertising?

There are a number of rules that apply to price advertising. For example, price advertising must not be deceptive, and if actual prices are compared with former prices for the same product or service, the former prices must have applied for a certain period of time.

Advertising products or services with price discounts or special offers is permitted. Although, when advertising claims like 'special offers', 'best price guarantee' or similar claims are used, the courts will examine whether the use of such claims will have a deceptive effect on the consumer.

If a special offer with reduced prices is advertised, there must be sufficient products in stock in order to meet the expected consumer demand. It is also illegal to invite consumers to purchase a product at a specified price and then refuse to show the advertised item to a consumer, refuse to take orders for it and/or refuse to deliver it within a reasonable time.

4.2 What are Austria's rules regarding advertising 'free' products?

If products or services are advertised as 'gratis', 'free of charge' or similar, the consumer will expect the product to actually be delivered without any costs being charged. If costs are to be charged for transport or packaging, or for similar services in connection with the delivery of the product, a clear and conspicuous disclosure will have to be made in order to avoid the advertising claim being deceptive. Generally, granting free products for advertising purposes is permitted.

4.3 What are Austria's rules regarding sales and special offers?

Special offers and sales are generally permitted. If products are offered for a special price, the trader should have sufficient quantity of such products in stock to satisfy the expected consumer demand.

Seasonal sales are also permitted, provided that the advertising claims made in connection with such sales are not deceptive. For example, it would be deceptive if the special offer prices were compared to former prices which had not actually been seriously applied (ie, the comparison price only applied for a very limited time, or in a very limited geographical location).

Special rules apply to sales or special offers in connection with the closing of a business or the moving of a business to another location, and require permission from the authorities. Special rules also apply to sales related to incidents, such as fire, flooding etc. For such sales, a notice to the authorities demonstrating the reason for this specific incident must be made.

4.4 What are Austria's rules regarding rebates?

The granting of rebates is a permitted sales practice. However, the granting of rebates must not be deceptive or aggressive. Rebates may be granted in various ways. For example, offering two items for the price of one, or offering a free item or an item at a reduced price if a purchase of a product is made, are permitted. Offering participation in sweepstakes when making a purchase is also permitted. In these cases, it is not necessary to offer a 'no purchase necessary' route.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The following restrictions may be of importance:

- the distribution of goods or services by way of a pyramid scheme is prohibited;
- products that form part of bankruptcy assets must not be advertised in such a way as to give the impression that they are cheap;
- products must not be incorrectly advertised as only being available for a limited period of time; and
- direct exhortations aimed at children encouraging them to buy, or persuade their parents or other adults to buy, advertised products are prohibited.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

There are several categories of products and services that are specifically regulated by law, and which are subject to prohibited and controlled advertising. The following bans and restrictions are of particular importance:

- spirits must not be advertised on radio and television;
- restrictions apply to advertising other alcoholic beverages on the radio, television and audio-visual media;
- advertising tobacco products is, with a few exceptions, prohibited;
- advertising certain financial services is restricted;
- advertising drugs and medical products is restricted; and
- advertising casinos and gambling must meet specific requirements and must be responsible.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- Advertising via unsolicited telephone calls (cold calls) or fax messages to private persons is generally prohibited.
- Sending electronic mail—including SMS—for marketing purposes without the prior consent of the recipient is prohibited.
- Advertising which exerts psychological pressure on consumers to buy is prohibited as an aggressive sales practice.
- Subliminal advertising is prohibited.
- Special rules apply for lay advertising, which involves the referral of relatives, friends and acquaintances in order to receive premiums or other benefits.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- There are rules with respect to certain freelance professions, such as physicians, dentists, public notaries, lawyers, veterinarians and morticians, who have to maintain a certain level of decency in advertising. Puffery is not allowed for these professionals.

- Television programs, radio programs and audio-visual media are required to maintain a certain level of decency.
- Commercial communications must not discriminate and must not adversely affect human dignity or jeopardize public health, public safety or environmental protection.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Special sponsorship rules apply to television, radio and audio-visual media. The editorial content in such media must in no way be influenced by the sponsor. Sponsored programs must not contain direct encouragement to buy products or services. The name of the sponsor must be indicated at the beginning and at the end of the program and it must be made clear that the program is sponsored. Indications of sponsorship during the program are not allowed. News programs and programs containing political information must not be sponsored. Furthermore, restrictions apply to sponsorship relating to categories of products and services for which specific advertising bans or restrictions apply.

Similar rules apply with regard to product placement.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

It is a general requirement that advertising must be identifiable as such. Surreptitious advertising is forbidden. If television, radio or audio-visual media programs are sponsored, the sponsor is not allowed to influence the editorial content of the program in any way. Sponsorship of news programs and programs with political content is forbidden. Commercial communications in media (including television, radio, print media), for which consideration is paid, must clearly be marked as being advertisements. This also applies in cases in which only a contribution to the costs of printing an article with editorial content is paid. Thus, if such articles with editorial content, for which any kind of consideration is paid, are not clearly marked 'advertisement', this will be a misleading sales practice. This principle also applies to commercial communications on the internet; it must always be clearly identifiable in whose interest the commercial communication is published.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Editorial reports, announcements and recommendations for which consideration is paid must be clearly marked as advertisements. Surreptitious advertising is forbidden. If television, radio or audio-visual media programs are sponsored, the sponsor must be indicated at the beginning and at the end of the program. Similar rules apply for product placement. Commercial communications on the internet must be clearly identifiable as such. The person or business that ordered the commercial communication must be shown.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

The rules for 'off-line' advertising apply to advertisements in social media. This means, in particular, that any kind of deceptive or aggressive advertising is forbidden on social media. It is important that the necessary company information is provided in social media so as to clearly identify the advertiser. Companies must provide:

- the company's name and address;
- contact information;
- registration number of the trade register and the competent authority for the trade register;
- the supervisory authority (if applicable);
- the VAT number; and
- the professional association or chamber the company is a member of.

A violation of this duty of disclosure may constitute an act of unfair competition and may therefore be pursued in the courts. A violation may also lead to a fine by the administrative authority.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The operator of a website or a Facebook page on which statements by third parties are published has a responsibility to carefully review and control such statements. In the event that such statements are illegal or contain illegal content, the operator has the obligation to immediately remove the statements. If the operator is negligent in complying with this duty, the operator may be held responsible for such statements. A disclosure saying that the operator does not assume responsibility for third-party statements will not be sufficient.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Advertisers using Facebook and other social media platforms must be aware that they have to comply with specific information duties. These include, in particular, providing information about:

- the company's name and address;
- contact information;
- registration number of the trade register and the competent authority for the trade register;
- the supervisory authority (if applicable);
- the VAT number;
- the professional association or chamber the company is a member of; and
- specific information on prices of products and services.

Non-compliance with these information requirements may entitle every competitor and certain associations to start court action under the Act Against Unfair Competition, provided that the missing information may influence a consumer's decision. If contracts are concluded over the internet, it must be possible to permanently store the terms and conditions of the contract. A violation of this regulation may also establish an act of unfair competition.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

An individual's personality is protected. The use of an individual's name, picture, likeness, voice and identity generally requires their consent. This principle also applies to any imitation of the individual's voice, if used in advertising. It is general court practice that a person's legitimate interests are being violated if their name, picture, likeness, voice and/or identity are used in advertising without their permission. If an individual's name, picture, likeness, voice or identity is used in advertising without their consent, they may start court action before the ordinary court. Such court action can be combined with an injunction for a cease-and-desist order. The individual may also claim compensation for damages, including moral damage. The individual also has a claim to have the court decision published in the same medium in which their name, picture etc, were used unlawfully in advertising.

9.2 Are there situations when permission is not required?

It is a general principle that any use of an individual's name, picture etc requires their permission. An exception would apply if, eg, the person wasn't identifiable in a picture. It is only in very exceptional cases that the use of a picture of an individual in advertising will be allowed without obtaining their permission, when it is assumed that such use does not adversely affect the person's legitimate interests. In one such case, the Supreme Court decided that the use of pictures of famous football players on stickers for collecting albums would not violate the players' legitimate interests.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Specific rules apply to state symbols and state emblems, which may require prior permission or clearance before use for commercial purposes. The use of pictures of public buildings is generally free and does not need clearance.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The use of recognizable products of other companies will be illegal if it is an infringement of a registered trademark, which would require that the product is used in advertising for identical or similar products or services. In addition to trademark infringement, the use of branded products will be an act of unfair competition if an image transfer takes place. This will certainly be the case if products of very well-known brands or products with big reputations are used. This will usually be considered illegal parasitic behavior as a result of taking unfair advantage of the reputation of other companies or brands. Using other companies' branded products will, therefore, usually involve considerable risk. Branded products of a competitor may, however, be used in comparative advertising,

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Austria which affect advertising (eg, Swedish gender equality law)?

There are no specific rules that are particular to Austrian culture which affect advertising.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

There are no cultural norms in Austria that should be considered in relation to advertising.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Austria?

The pre-approval of advertisements which would be binding on the courts is not possible in Austria. Self-regulation does not play an important role in Austria. Advertisers, therefore, must strictly observe the law, which, to a high degree, will be determined by court practice, more than by general legal provisions. As a number of associations and any competitor may start court action alleging illegal advertising, it is important to have advertising campaigns cleared in advance by obtaining legal advice as to whether they are in compliance with legal provisions and current court practice.

 BAHRAIN 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the Kingdom of Bahrain?

- (a) All institutions creating audio, visual, print and digital content in Bahrain must comply with the standards or media content contained in Law No 47 of 2002 organizing the Press, Printing and Publishing Law ('PPP Law').
The PPP Law prohibits the display of any content which violates public order. While 'public order' is not defined under the PPP Law, analogy can be drawn from the provisions of the law as to what content is prohibited from being displayed in Bahrain. These include:
 - (i) content against Bahrain's Official religion (Islam), its constitutes and pillars (in practice, the same would apply towards any criticism projected towards all Abrahamic religions, schools of faith and creeds);
 - (ii) criticizing the King or holding him responsible for any decisions, outcomes or determinations issued by the Government;
 - (iii) instigating crime, mugging, arson or any crime against state security;
 - (iv) calls to overthrow the regime or proposing a change of the regime;
 - (v) instigating some sect or sects of people or instigation that leads to disrupting public security or spread discord in society and threatening national unity;
 - (vi) violating public ethics (eg, by the display of pornographic material, blasphemous content, gambling and alcohol related material) and violating the respect of individuals or their private lives;
 - (vii) publishing secret official communications or specialist information related to the defense force, the publication of which will harm of public interest;
 - (viii) publishing false news or falsified or forged papers with the aim of disrupting public security and effecting public interest; and
 - (ix) dissemination of information promoting terrorism.
- (b) Further, Resolution No 1 of 2015 on the Supervision and Control of Media Content ('Media Content Law'), supplementing the PPP Law, requires all media institutions creating audio, visual, print, and digital content in Bahrain to abide by certain standards, including the following:
 - (i) to respect the government regime in Bahrain and its institutions and regulatory bodies;
 - (ii) to refrain from broadcasting and publishing any information, news, or other materials that would compromise Bahrain's relations with other countries, especially the Gulf Cooperation Council, Arab countries, and other allies of Bahrain;
 - (iii) to not offend the leaders of the Gulf Cooperation Council, Arab countries, and other allies of Bahrain and their officials;
 - (iv) to not prejudice national unity and social cohesion;
 - (v) to respect ethical principles and conventions in media related work;
 - (vi) to respect intellectual property rights; and
 - (vii) to not support, directly or indirectly, whether locally or abroad, any person or any media outlet that is critical of Bahrain or any of the countries of the Gulf Cooperation Council and other Arab countries and other allies of Bahrain.

- (c) There are also sector-specific laws that regulate advertising in their respective sectors (eg, financial services, healthcare, telecommunications, etc).
- (d) Bahrain also separately regulates billboard advertising under Law No 14 of 1973 on the Advertisements Law ('Advertisements Law'). The Advertisements Law is primarily concerned with the licensing procedures to follow prior to installing billboard advertisements.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The Advertisements Law broadly defines 'advertisements' as 'any means the purpose of which is to inform the public about a product/service or commodity, whether through presentation or publication in writing, drawing, symbol or sound'.

1.3 What is the basic regulatory framework for advertising regulation?

The Ministry of Information Affairs ('MOIA') is responsible for the implementation and enforcement of the PPP Law and the Media Content Law. The Ministry typically takes a reactive approach towards applying enforcement measures (eg, upon receiving a complaint from the public).

We note from practice that online advertising which violates Bahrain laws and public order may be blocked by the Telecommunications Regulatory Authority ('TRA') (ie, the authority which allows for licensed telecommunications operators to facilitate over-the-top ('OTT') services through their network), further to a request from the competent authorities in Bahrain (namely, the Ministry of Interior and the MOIA).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Yes. 'Bulk Messages' are specifically regulated under Resolution No 3 of 2015 promulgating the Bulk Messaging Regulation ('BM Regulation'). 'Bulk Messages' are defined as short text messages ('SMS') or multimedia messages ('MMS') sent or intended to be sent to 100 or more recipients in Bahrain at one time via short message or multimedia systems over a licensed operator's telecommunications network for one of the following purposes:

- offering to supply goods, services or business opportunities; and/or
- advertising or promoting goods, services, events, business opportunities or any other purpose designated by the TRA from time to time.

There are certain requirements under the BM Regulation, including regarding opt-in and opt-outs, and when Bulk Messages can be sent. The BM Regulation only applies directly to local licensed telecommunications operators; however, it may be relevant to advertisers if they intend to utilize a bulk messaging service from such operator.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

All specialized advertising, such as those related to medicine, drugs, food, promotional campaigns, special offers, real estate or universities and educational institutions, must obtain prior approvals from the competent authorities.

1.6 Are any government pre-approvals required?

It depends on the type and nature of the advertisements. The Advertisements Law provides that it is not permitted to advertise in Bahrain without first obtaining an advertisement permit from the Ministry of Municipality Affairs. Pre-approvals are also typically required for specialized advertising, as referenced under question 1.5 above.

1.7 Does the media pre-clear advertising?

There are no clear industry standards for media outlets to follow. Some will require copies of approvals for those sectors that require approval (most particularly healthcare, as this is a well-regulated area). However, some media outlets prefer to rely on the fact that the onus for compliance generally rests with the advertisers themselves.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Please refer to our response under question 1.3. Note that a complete ban on infringing content typically only takes place where:

- (a) it is a flagrant breach of Bahrain laws; or
- (b) where the MOIA has exhausted other available measures.

Insofar as (b) is concerned, further to our verbal discussions with the MOIA, we understand that it may, alternatively:

- provide a warning to the advertiser; or
- oblige the advertiser to remedy the situation and/or allow it the opportunity to respond to the allegation(s).

1.9 When does a competitor have a right of action? What are the potential remedies?

This would have to be considered on a case-by-case basis. However, if the matter was reported to the MOIA, then, separate to banning the infringing content, they may levy fines on the advertiser, or the media outlet that carries the advertising.

1.10 When do consumers have a right of action? What are the potential remedies?

It is always open to consumers to lodge a complaint with the competent authorities. Consumers also specifically have a right of action against deceptive or misleading advertising under Law No 35 of 2012 promulgating the Consumer Protection Law ('Consumer Protection Law'). Consumers are entitled to file a complaint with the Consumer Protection Directorate at the Ministry of Industry and Commerce ('CPD') and file a civil claim with the courts.

2 SELF-REGULATORY FRAMEWORK

2.1 Does the Kingdom of Bahrain have a primary advertising self-regulation system?

No.

2.2 Is there a self-regulatory advertising code? What are the key principles?

N/A.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

N/A.

2.4 Is the self-regulation system effective? Is it widely used and followed?

N/A.

2.5 Are the self-regulatory system's decisions reported?

N/A.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

N/A.

2.7 Are there any other self-regulatory systems that govern advertising practices in the Kingdom of Bahrain?

N/A.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in the Kingdom of Bahrain (eg, consumer protection laws, IP laws, unfair competition laws)?

In addition to those mentioned above, we highlight the following laws and relevant provisions:

- (a) Law No 22 of 2006 on the Protection of Copyright and Related Rights (as amended) ('Copyright Law') stipulates that a rightful party may, in the event of a violation or unlawful use of a protected work, file a case before the competent court in Bahrain requesting compensation sufficient to rectify the damages suffered, issue a seize order or impose penalties.
- (b) Law No 37 of 2012 on the Children's Act prohibits the publishing, displaying or circulating prints, visuals, audios, or readable materials that are 'sexually explicit' or encourage 'moral deviation in a child'.
- (c) Law No 15 of 1976 (as amended) on the Penal Code criminalizes the act of publishing advertisements which induce others to commit 'immoral acts'. These would include any acts criminalized by law (eg, gambling and intoxication).
- (d) Law No 7 of 1987 on the Law of Commerce provides that traders may not resort to fraud and cheating when marketing their goods, nor may they spread or publish false particulars that are prejudicial to the interests of another competitor trader.

3.2 Is substantiation required for advertising claims?

No, although it might be required as evidence if a claim is made.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

No.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific laws in place.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no specific rules in place; however, this should be checked on a case-by-case basis (ie, certain rules may apply depending on the nature of the advertisement and the industry it relates to).

3.6 What are the rules governing the use of product demonstrations in advertising?

As with all advertising, it must be fair and accurate.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Bahrain laws do not directly address comparative advertising. Our view is that comparative advertising is permitted insofar as it does not amount to unfair competition, misleading advertising, or contravene intellectual property laws.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There is no specific law regulating comparative advertising, but the provisions of Law No 6 of 2014 Concerning Trademarks prohibit the unauthorized use of registered trademarks. As a result, it can be argued that using a competitor's trademark with the aim of comparing products could be interpreted as unlawful use.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

No.

3.10 Are there any special rules governing product packaging?

Yes. Different products have different packaging requirements, and these should be addressed on a case-by-case basis.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

No. As mentioned above, however, there is a general prohibition on deceptive advertising.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No.

4 PRICE ADVERTISING

4.1 What are the Kingdom of Bahrain's rules regarding price advertising?

Suppliers must advertise the price of products. Anyone who advertises any goods at a specific price, whether through newspapers or any other means of advertisement, must ensure that the advertised price reflects the actual price offered (Resolution No 14 of 2008 on Non-Manipulation of Declared Prices).

In advertising sales, the Consumer Protection Law is clear in that both pre-discount and post-discount prices must be clearly shown.

4.2 What are the Kingdom of Bahrain's rules regarding advertising 'free' products?

There are no specific requirements concerning the advertising of free products, however this would be subject to Bahrain's rules regarding sales and special offers as further detailed under question 4.3 below.

4.3 What are the Kingdom of Bahrain's rules regarding sales and special offers?

Sales and special offers are regulated under Decision No 51 of 2007 on the Controls Relating to Discounts ('Discounts Law') and Decision No 1 of 1993 on Promotional Campaigns (the 'PCL') respectively. Price draws, competitions, sweepstakes, giveaways, raffles and the like would generally fall under the scope of the PCL.

An establishment proposing to offer discounts and special offers must first obtain a permit from the CPD.

The process for obtaining a discount and/or promotional campaigns permit from the CPD is straight-forward and can usually be completed within two weeks. Information on the proposed promotion, such as its general nature, the nature, quantity and value of any prizes, and the period over which the promotion will be run, needs to be submitted to the CPD, along with a copy of the applicant's Commercial Registration ('CR').

Official fees are relatively modest and vary depending the duration of the promotion. Generally, the fees for a promotional and/or sales campaign permit vary between BHD 50 and BHD 125. If the campaign is prize draws, the fee range is typically BHD 30–BHD 60.

4.4 What are the Kingdom of Bahrain's rules regarding rebates?

Bahrain laws do not expressly regulate rebates, although such schemes could trigger the requirements for holding promotional campaigns as set out under the PCL. Note, a 'promotional campaign' is broadly defined to include any action aimed at increasing sales by setting special discounts or offering customers any cash or in-kind benefits during a specified period.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no restrictions per se. However, retailers are under an obligation to advertise the retail prices of goods clearly on the item(s) or display shelves, either in Arabic or English (Resolution No 17 of 2011 on the Necessity of Announcing Commodity Prices at Retail).

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Please refer to our response under question 1.1 above, which can provide an indication on the types of products or services that may require extra caution when advertised (eg, alcoholic beverages, narcotic substances, etc). Further, there is an express prohibition on the advertisement of tobacco.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

No.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

With reference to our response under question 1.1 above, content of this nature would not be tolerated.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There are no express rules in this respect.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

No.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

No.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

No.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

This is conceivable in some circumstances. Law No 60 of 2014 on the Law on Combating Cybercrime creates a liability on the 'offender' who 'produces, publishes, or makes available' the infringing content. Determining the 'offender' would have to be addressed on a case-by-case basis.

- 8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?**

No.

9 RIGHTS OF PRIVACY/PUBLICITY

- 9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?**

Such features would likely qualify as personal data, in which case express consent would be required.

For completeness, Article 70 of the Copyright Law stipulates that 'anyone taking a photograph of a third party has no right to publish, exhibit or distribute the original, or reproductions of such photographs, without the permission of the party portrayed in the photograph, unless written agreement exists to the contrary.'

- 9.2 Are there situations when permission is not required?**

Bahrain laws do not expressly set out any situations where permission would not required.

10 SPECIAL CLEARANCE

- 10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?**

No.

- 10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?**

Provided that intellectual property rights are considered, there are generally no restrictions in this regard.

11 CULTURAL CONCERNS

- 11.1 Are there any rules that are particular to the culture of the Kingdom of Bahrain which affect advertising (eg, Swedish gender equality law)?**

We have not identified any specific considerations save for the broad content restrictions set out in our response under question 1.1 above. For completeness, note that Bahrain has a culture that does not condone the denigration of others, and this should be carefully considered in advertising.

- 11.2 Are there any other cultural norms that should be considered (eg religious concerns)?**

Islam is the cultural and religious norm of Bahrain—denigration of any of the Abrahamic religions would not be tolerated, and any insult to Islam is not acceptable. In addition, the standards of Islam should be respected—nudity, profanity, sexual innuendo, gambling and alcohol are all areas that are not acceptable to consumers and could lead to prosecution.

It is also important to show respect for the government of Bahrain and its friendly nations.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the Kingdom of Bahrain?

It is easy to be overly cautious when trying to analyze the legal landscape for advertisers in Bahrain. Whilst caution is prudent, many entities do tend to over-censor their content.

In addition, content that refers to cultural or religious issues should be checked with local practitioners, as it is rare for foreign lawyers to understand the social intricacies.

 BELGIUM 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Belgium?

The most important source of advertising regulation in Belgium is legislation, the content of which increasingly implements EU Directives. Following various challenges before the European Court of Justice, a comprehensive overhaul of the statutory regulations took place, resulting in the enactment of the Belgian Act of 6 April 2010 on Market Practices and the Protection of Consumers ('MPA'). Since the codification of the Code on Economic Law in 2014, the MPA and other laws on market practices and consumer protection became Book VI of the Code on Economic Law ('CEL'), as of 2014.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Any communication which has as its purpose, directly or indirectly, the promotion of the sale of products, regardless of the place or means of communication used is considered 'advertising'. This very broad definition is also construed broadly, determined on a case-by-case basis. There is no general definition of online/digital marketing communications. Essentially, that means that online advertising in paid-for space, such as banners or pop-ups, online videos, paid-for searches, virals, in-game promotions, and online sales promotions and prize promotions are considered advertising. Non-paid-for channels in Belgium, such as marketers' own websites, are also covered.

1.3 What is the basic regulatory framework for advertising regulation?

- (a) The main source of regulation of advertising is Book VI of the CEL.
- (b) In addition, many sector and media specific laws regulate advertising nationally or on a language community level (for audiovisual media advertising).
- (c) A third important source of regulation is self-regulation, with the Jury for Ethics in Publicity ('JEP') being the main regulatory body in Belgium.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) The use of shock tactics, spam emails and dangerous sounds or visual effects, intimidation, pressure, including physical violence, inappropriate influencing in order to restrain or potentially limit the freedom of choice of the average consumer are prohibited under the general prohibition of aggressive market practices.
- (b) It is prohibited to use media personalities (live or animated) in such a way that the distinction is blurred between programs or editorial content on the one hand and sales promotion on the other hand.
- (c) Advertising cannot create a sense of urgency or inappropriate reduction of prices.
- (d) Specific rules apply to marketing communications aimed at children and/or young people:
 - (i) Advertising cannot call upon children to persuade their parents or other adults to buy the products advertised;
 - (ii) Sales promotions aimed at children must specify the terms of the promotion in language that can be easily understood by children;
 - (iii) It is prohibited to undermine positive social behavior, lifestyles and attitudes, or exploit the inexperience or credulity, of children and young people;

- (iv) Advertising must not include any statement or visual treatment that could have the effect of harming children or young people mentally, morally or physically;
- (v) Children and young people should not be portrayed in unsafe situations or engaging in actions harmful to themselves or others, or be encouraged to engage in potentially hazardous activities or behaviors;
- (vi) Products unsuitable for children or young people should not be advertised in media targeted at them, or suggest that possession or use of the promoted product will give a child or young person physical, psychological or social advantages over other children or young people, or that not possessing the product will have the opposite effect;
- (vii) There are also detailed rules on broadcast advertising in relation to children with specific time restrictions and prohibitions. Rules also exist in relation to foodstuffs to ensure that children are protected from being misled about the nutritional value of food and from pester-power; and
- (viii) When advertising non-prescription medicines, advertisers should not target children or seek to distribute such products to them.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

The following industries are subject to specific advertising regulations:

- (a) **Medicines:** Sales promotion for drugs is highly regulated and complex, and requires pre-vetting and approval;
- (b) **Financial products:** Complex rules for advertising credit or financial products exist with rules including, amongst others, obligations when distance selling to mention the details of the supervising authority, the price, risks, and duration. Conditions must be specified, and it must be stated that customers will have a reflection time of 14 calendar days in which they can cancel the purchase;
- (c) **Health and nutrition:** Special rules exist for claims made about therapeutic goods and services and for claims about foodstuffs regarding health, nutrition and weight control. European regulations implemented into Belgian law establish a list of health claims that are scientifically proven and approved for food. Claims which are not permitted may not be used. Some health claims, especially those on plants, are still under review and are, therefore, not currently included in the list. Belgian law also prohibits use, in commercials for foodstuffs, reference, denominations and pictures that mislead the consumer as to the nature, quality, composition, manner of production, origin or any other characteristic of the food product. In particular it is prohibited to use:
 - (i) the words 'sick', 'sickness', the name of diseases, the name or representation of disease symptoms, except when used in authorized health claims;
 - (ii) representations of people, clothing or equipment referring to healthcare services (including paramedical and pharmaceutical services);
 - (iii) references that could provoke or exploit fear;
 - (iv) references to recommendations, approvals or medical certificates involving allegations that have not been authorized under the EU Regulation on nutrition and health claims; and
 - (v) references to the Minister for Public Health or the competent public health authorities, unless expressly authorized by them.

Rules also exist covering food supplements, replacement foods, diet foods for medical use and infant food. Broadcast advertising for sweets containing sugars must display a stylized image of a toothbrush throughout the entire broadcast.

- (d) **Alcohol:** There is no specific law in Belgium which generally prohibits advertisements for alcoholic beverages. However, there is a self-regulatory code and legislation governs advertising on television and radio. The JEP established, in co-operation with the industry, a code with respect to advertising alcoholic beverages. This code applies to all beverages with more than 1.2% alcohol content. According to this code, advertisement for alcoholic beverages is allowed, provided that the principles as set forth in the code are complied with. The code states, amongst other things, that:

- (i) the advertisement may not be aimed at minors (persons aged under 18 years);
- (ii) the advertisement is prohibited in newspapers and magazines which are mainly aimed at children;
- (iii) the advertisement may not refer to beneficial mental, physical or relaxing effects of drinking alcohol;
- (iv) the advertisement may show a connection between alcoholic beverages and a cozy or welcoming atmosphere, and may not show that alcohol consumption leads to social or sexual success; and
- (v) advertisements in newspapers, magazines, advertising posters and internet must mention the educative slogan 'Our craftsmanship should be enjoyed wisely'.

For advertising on billboards, on radio, TV and cinema, very similar educational slogans should accompany any beer advertisement. Broadcast advertising is banned for alcoholic beverages with more than 20% alcohol on French speaking radio and television.

Other important examples of industries where advertising is heavily regulated and/or restricted are health professionals such as dentists, automotive advertising and consumer credit offers.

1.6 Are any government pre-approvals required?

There is no government authorization or registration system for advertising. In relation to advertising on commercial television, the General Manager of the Second Television Authority may determine advertising categories which require prior approval before being broadcast. Using these powers, the Second Authority pre-approves advertisements targeted at minors, advertisements with sexual content or sexual innuendo and other sensitive topics.

1.7 Does the media pre-clear advertising?

In the audiovisual sector, advertisements are vetted by the broadcasters before being aired. An advisory opinion can also be obtained from the JEP in respect of any advertising (irrespective of which media it will run in).

1.8 How does the government enforce advertising laws? What are the potential remedies?

Book VI of the CEL provides for the following remedies and penalties which are applied by courts and the Federal Public Service Economy:

- a warning procedure through a registered letter or minutes of findings;
- a cease-and-desist procedure; and
- administrative fines.

Many infringements of Book VI of the CEL can give rise to a public criminal procedure. The public prosecutor and the Federal Public Service Economy can also seize products. Civil claims for damages may also be pursued.

The Flemish Regulator for Media ('VRM') and the Higher Audiovisual Council ('CSA') are, respectively, the main Flemish and French regulatory bodies responsible for monitoring compliance with the Flemish, Walloon-Bruxelles audiovisual regulation. The VRM and CSA can:

- issue a warning with request to stop an infringement;
- issue an obligation to broadcast the decision;
- impose an administrative fine;
- impose a publication of the decision in journals or newspapers; and
- withdraw or suspend licenses of broadcasters or stations.

The VRM and CSA also supervise the advertising, sponsoring and product placement rules by the audiovisual media and regularly publish decisions (mostly by imposing a fine).

An appeal before the Correctional Court is available against a criminal judgment from the first degree court. An exceptional third degree review in law only is given under particular conditions before the Court of Cassation.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors will almost invariably seek a stop-order on the basis of a cease-and-desist procedure before the President of the Commercial Court as provided for in Book VI of the CEL, a procedure which has the shape of a fast-track referee procedure. In matters of absolute urgency, the President can pronounce an *ex parte* stop order. Cease-and-desist orders are accompanied by restraining payments as penalty to enforce the order. They accrue on an infringement, per infringement, or on a daily basis. This procedure can also lead to publication measures. Competitors can also commence a procedure to obtain damages, which is a normal matter before the court, not before the President of the court.

Besides civil remedies and administrative sanctions, the recent changes in the Book VI of the CEL put an increased emphasis on criminal penalties.

1.10 When do consumers have a right of action? What are the potential remedies?

The reply to question 1.9 above generally also applies to consumers. As soon as a consumer has an interest, they will have a right of action. A consumer protection association has the right to sue, provided that it is recognized by the Government, as has any legal person having an interest, including professional or branch organizations with legal personality. Advertising can also be challenged by a group of companies or a professional sector.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Belgium have a primary advertising self-regulation system?

Self-regulatory rules are of importance when marketing communications are assessed by self-regulatory bodies, such as the JEP (which is the main self-regulatory body for advertising in Belgium), the VRM and the CSA (the main Flemish and French regulatory bodies responsible for monitoring compliance with audiovisual regulations).

The JEP is responsible for controlling the conformity of publicity in all mass media and rules on complaints as well as offering opinion/advice upon request. The JEP bases its decisions on legislation and self-regulatory codes (see question 2.2 below).

2.2 Is there a self-regulatory advertising code? What are the key principles?

There are various self-regulatory codes which are sector/industry specific. The most important advertising codes are:

- (a) **Food and beverages:** The Federation of the Belgian food industry, Fevia's Advertising Code on Foodstuffs and the ICC Framework for Responsible Food and Beverage Marketing Communications 2012 contain the following general rules in relation to foodstuffs:
 - (i) food products not intended to be substitutes for meals should not be represented as such (eg, snacks);
 - (ii) food and beverage marketing communications should not undermine the promotion of healthy balanced diets, or the importance of a healthy active lifestyle;
 - (iii) food and beverage marketing communications should not encourage or condone excess consumption, and portion sizes should be appropriate to the setting portrayed;
 - (iv) text, sound and image of advertisements for foodstuffs must properly represent the characteristics of the product (taste, size, content, nutritional or health benefits);
 - (v) all marketing communications should be prepared with a due sense of social and professional responsibility;
 - (vi) nutritional information and claims should also be judged by the likely perception of the reasonable consumer, especially where children are concerned. Where claims or terminology used in marketing communications might reasonably be interpreted by a consumer as health or nutrition claims, they should be supported with appropriate scientific evidence;
 - (vii) marketing communications should not:
 - misuse technical data, eg research results or quotations from technical and scientific publications;
 - present statistics in such a way as to exaggerate the validity of a product claim; or
 - use scientific terminology or vocabulary in such a way as to falsely suggest that a product claim has scientific validity;
 - (viii) consumer taste or preference tests should not be used in a way that might imply statistical validity if there is none;
 - (ix) testimonials should be based on well accepted and recognized opinion from experts; and
 - (x) descriptions, claims or illustrations relating to verifiable facts in marketing communications should be capable of substantiation.
- (b) **Cosmetics:** The Advertising code for cosmetics and hygiene products has recommendations on references to illnesses, product presentation, permitted use of a specific list of words, claims on product composition and comparative testing and controls, labels, certifications and graphic presentations, use of medical or paramedical professions, witnesses, pictures and other elements of advertising.
- (c) **Medicines:** A very detailed code of ethics also exists for medicinal products advertising.

- (d) **Other:** there are other self-regulatory rules on advertising in relation to the following:
 - (i) slimming products and devices, treatments and methods;
 - (ii) isolation, fuel and heating energies;
 - (iii) medical references in advertising for bed linen;
 - (iv) ethics in charitable fundraising;
 - (v) alcoholic drinks (including a specific code for advertising of beers);
 - (vi) motor vehicles, spare parts and accessories; and
 - (vii) certain financial products and services.

Theme-specific codes exist on the depiction and reference to human body, humor in advertising, and advertising to children related to children's parties, Christmas, Easter and Saint Nicolas. Environmental advertising is also governed by a self-regulatory code.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The self-regulatory authority, the JEP, can:

- (a) Demand that an advertiser stops or changes a particular advertisement. Such decisions are not only based on the applicable laws and regulations, but also on self-regulatory codes;
- (b) Request an advertiser to submit its next campaign for pre-clearance;
- (c) Request the media and/or professional federations to stop distribution of an infringing advertisement;
- (d) Decide to issue a recommendation in relation to an advertisement. In this case, the JEP will formulate advice with recommendations to the advertisers and media concerned.

A decision by the JEP can be appealed before the same JEP.

The Council of Advertising can also proceed with the publication of certain decisions.

The JEP has no authority to issue legal advice or to act as arbitrator between competitors or between a seller and a purchaser, but upon request by both parties, the JEP can render confidential written advice.

The jurisdiction of the JEP is limited to advertisements spread in mass media.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulatory system is quite effective and widely used. An example of the scrutiny deployed by the JEP can be found in a detailed decision upon appeal by the JEP in the matter involving a TV advertisement for Nutella, using an animated film to highlight the seven ingredients of Nutella. The animated advertisement highlighted the high quality of the seven ingredients that led to the unique taste. For the ingredient palm oil, the natural and environmentally friendly elements were mentioned and briefly explained. The claim against the advertisement reproached the emphasis on the natural and balanced nature of the product, in particular, in respect of palm oil which, allegedly, is an ecological and future health catastrophe. The JEP ruled that no health claims could be found, but took a strict view on the use of the word 'natural' and found the use to be potentially misleading. Whilst the JEP found ad's depiction of the environmentally friendly manner of cultivating and harvesting palm oil to be misleading in the first instance, this opinion was reversed on appeal upon receiving further background and argument from the advertiser.

2.5 Are the self-regulatory system's decisions reported?

Decisions are reported on the website of the JEP and can be consulted online by product category, advertiser or theme.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Not applicable.

2.7 Are there any other self-regulatory systems that govern advertising practices in Belgium?

Several professions and industries have ethical rules of their own (eg, the legal profession and accountants). The code of ethics for medicinal products is also very important.

Under Belgian law, the assessment of environmental claims is subject to the self-regulatory Code for Environmental Advertising ('CEA'), based on the ICC Code on fair advertising principles.

The CEA is applicable to all advertising, referring to the consequences for the environment of a product, including its packaging, or a service, irrespective of the medium used, and throughout its life-cycle (ie, design, production, distribution, use and destruction).

The basic principles of the CEA are:

- all advertising must be compliant with the applicable legislation;
- all advertising must be decent, truthful and correct;
- all advertising must meet with the applicable environmental regulations and mandatory environmental programs
- all advertising must be compliant with the principles of fair trade practices generally accepted in commercial matters; and
- no advertising may harm the trust or confidence of the public in the efforts of companies to improve their ecological performances and the educational efforts of social entities or the Government in order to sensitize the public for the protection of the environment.

The CEA basically covers similar provisions as those applicable following the ISO 14021 Code.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Belgium (eg, consumer protection laws; IP laws; unfair competition laws)?

The basic laws governing advertising claims in Belgium are found in Book VI of the CEL. This includes the MPA which deals with misleading and comparative advertising. The provisions are, all in all, a mere implementation into Belgian law of the EU Distance Selling Directive (97/7), EU Directive 97/55 on misleading and comparative advertising and the EU Unfair Commercial Practices Directive (2005/29).

In short, it can be said that advertising is allowed, provided that is not considered to be misleading (eg, misleading concerning the characteristics, the origin and the composition of the product) or aggressive (eg, advertising in which children are directly encouraged to buy the advertised product or in which their parents or other adults are influenced to buy the advertised product for them).

Marketing communications cannot:

- (a) contain false information or be likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and cause or be likely to cause the average consumer to take a transactional decision that they would not have taken otherwise:
 - the existence or nature of the product,
 - the main characteristics of the product,
 - the nature, attributes and rights of the trader, and
 - the consumer's rights;
- (b) create confusion with any products, trademarks, trade names or other distinguishing marks of a competitor;
- (c) omit material information and, thereby, be likely to cause the average consumer to take a transactional decision that he would not have taken otherwise;
- (d) be an aggressive commercial practice; or
- (e) infringe upon any other of the list of forbidden practices listed in the legislation.

3.2 Is substantiation required for advertising claims?

An advertiser must have proof of the claims it makes in advertising before publishing. There are no recognized standards for the type of proof necessary to substantiate claims. This obligation to have proof of the claims does not entail a general obligation to have expert reports. An advertiser can provide substantiation itself, as long as the study is objective and precise. There are many recognized scientific standards, mostly international and sector-specific for the type of proof necessary to substantiate claims, but the standards are not provided by law and are not binding upon courts. Courts can appoint experts to conduct an expert proceeding. If the challenge originates from a competitor, the competitor will have to provide evidence for the challenge. The general rule remains, however, that a claimant has the burden of proof to substantiate a claim. There are no specific requirements for advertising claims based on the results of surveys. Claims suggesting tests and studies proving a product's superiority (establishment claims) do not, in principle, require higher or special degrees or types of proof, but, in practice, courts will request a higher degree of specific substantiation.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The law itself does not clearly distinguish between 'puffery' and advertising claims that require support. It is widely admitted that advertising can use superlatives or hyperbolic wording without requiring support, provided it is not used in a comparative context and it can be assumed that the consumer will understand that it is puffery; ie, if the consumer will not take the literal wording too seriously.

If, however, an advertiser accompanies such puffery with supporting evidence, then it suggests that its words are more than just puffery and the advertisement will be misleading if the substantiation is, in fact, insufficient. Book VI of the CEL explicitly mentions that exaggerations and other mentions in advertising should not be taken literally.

3.4 What are the rules governing the use of disclosures in advertising?

Not all material information has to be disclosed, and the advertising medium used, along with its respective limitations in time and space, are taken into account by courts when scrutinizing disclosure obligations in advertising.

As a general rule, applicable to any type of advertising on a product's nature, the description of the product should not be false or misleading: all advertising that can mislead the consumer as to the identity, nature, origin, composition, or characteristics of the products and its effects on the environment is prohibited.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no special rules for endorsements or testimonials by third parties, including statements of opinion, belief, or experience. No permission is required for using testimonials, and no special rules for endorsements exist. However, Book VI of the CEL provides that it is, in all circumstances, unfair to mislead by claiming or affixing a quality label without having obtained proper permission for such use. Advertising claims that a product/service is recommended or recognized, licensed or allowed by a public or private institution will also be unfair and misleading if this is not the case.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules on product demonstrations in advertising.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Yes. Comparisons with named competitors, either a group or an individual competitor, are allowed if the conditions are respected. Pursuant to Book VI of the CEL, comparative advertisements should:

- (a) not be misleading;
- (b) relate to comparable goods or services;
- (c) compare relevant and verifiable features of goods and services, such as price;
- (d) not lead to confusion with goods or services of a competitor;
- (e) not disparage competitors or their goods or services;
- (f) not get unfair advantage from the reputation of a competitor or the name of origin of competing products; and
- (g) not present goods or services as an imitation of goods or services of a protected trade.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Yes, but identification of a competitor or the particular products of a competitor through use of its name will prevail as a right. Beyond the issue of identification, copyright and trademark rules, as well as rules on other distinctive signs (ie, trade names, company names, domain names and names of physical persons), can impact on comparative advertising (the Benelux Convention on Intellectual Property Rights grants an absolute protection to identical signs for the same products and services. For similar signs or for similar products and services, the risk of confusion is the decisive factor. A protection for very well-established trademarks can cover other products and services). As mentioned in question 3.7 above, comparative advertisements should not take unfair advantage of competitors.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

There are no specific rules governing all claims relating to geographic origin. Some specific indications of geographic origin are protected (they relate to regions, places and, exceptionally, a country). These specifically granted protections typically relate to foodstuffs or agricultural products. Some traditional specialties are also protected and guaranteed, such as traditional beers.

3.10 Are there any special rules governing product packaging?

Many product categories, such as foodstuffs and cosmetics, have detailed rules with obligatory information on labels. These rules generally do not deal with advertising. One example is the rules on tobacco packaging and labeling, whilst any advertising for tobacco products is prohibited. Claims on packaging are generally regulated in the same way as claims accompanying the products through other media or in other places.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

‘Dark patterns’ as a general category are not governed by special rules or guidance, but the principal misleading and deceptive practices, particularly digital manipulative practices, are caught and clearly prohibited and blacklisted under the EU Unfair Commercial Practices Directive 2005/29, Consumer Rights Directive 2011/83 and Unfair Terms in Consumer Contracts Directive 93/13. The implementation of the EU Omnibus Directive 2019/216 (transposed in Belgian law on 28 May 2022) is an important evolution in combatting of deceptive advertising.

False and deceptive advertising is a criminal offense. This includes hard to find and read disclaimers, confusing cancellation policies or difficult to cancel subscriptions, buried terms, disguised ads, tricks to obtain data, bait & switch, false scarcity, false reviews, false countdown timers, sneak into basket practices (such as insurances), fake discounts, hidden costs and other mainly digital dark techniques, including those by design. Malicious intent can constitute an aggravating factor leading to a higher level of administrative or criminal sanctions. The Directorate-General for Economic Inspection of the Federal Public Service Economy makes the combat of deceptive advertising a priority.

Regarding continuous service offers and automatic renewals, the company must provide the consumer with information on the duration of the agreement or, if the agreement is subject to automatic renewal, the conditions for termination of the agreement by the consumer and tacit renewal clauses must be printed in bold in a frame separated from the text of the agreement and on the front side of the first page of the agreement. The term also must describe the consequences of automatic renewal.

Regarding unfair terms in consumer contracts, the CEL has a list of terms which are considered unfair, and similar terms are presumed to be unfair if included in B2B agreements.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Belgium does not have a regulatory framework for artificial intelligence as it relates to advertising.

4 PRICE ADVERTISING

4.1 What are Belgium's rules regarding price advertising?

Not all advertising has to include the price, but, if a price is mentioned, particular conditions apply. Any company offering goods or services has to indicate their price in writing and in a clear, readable and unequivocal manner, in euros (though other currencies may also be given alongside the price in euros). The price to consumers has to be all inclusive. For some products, the price per measuring unit (eg, per liter or 100g) also has to be given.

4.2 What are Belgium's rules regarding advertising 'free' products?

Advertising free products is permitted, as long as the promotion does not give rise to sales at a loss or to distortive practices, such as a massive give-away in an effort to oust a competitor from the market. A price reduction of a product or service may not be presented to the consumer as a free offer of a quantity of the product or of a part of the service.

4.3 What are Belgium's rules regarding sales and special offers?

From a price regulation point of view, the prices of almost all products are unregulated. Producers can increase or decrease prices freely. The following principles apply to quantitative promotions and discounts:

- (a) a producer has the right to alter the quantity of pre-packed products if the new quantity is mentioned in a legible, easily visible and unequivocal manner;
- (b) the price reduction has to be real; and
- (c) the announcement of a price reduction must refer to the price used during a continuous period of one month immediately preceding the date of application of the reduced price for that same product.

4.4 What are Belgium's rules regarding rebates?

In brief, the referenced price must be the lowest price applied for the same product in the same shop during the month preceding. The advertiser has to be able to evidence this. An announced rebate should be valid for at least one day and at most one month. The starting date of the promotion has to be mentioned and the rebate should not give rise to a sale at a loss, except in case of special exceptions such as clearance sales under conditions and sales of perishable goods.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are detailed rules on the manner of depicting price rebates, sales periods and liquidation sales.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

There is an absolute ban on sales promotion for tobacco. Sales promotion for drugs is highly regulated, complex and requires pre-vetting and approval.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Legislation regulates unsolicited marketing communications. The use of automated call systems without human intervention and the use of faxes for direct marketing without the prior, free, specific and informed consent of the receiver of the message is prohibited. Consent can be withdrawn at any time without reasons being given and at no cost. Phone calls for direct marketing purposes to numbers that are part of specific databases are prohibited (the so-called ‘do-not-call-me’ and ‘Robinson’ lists).

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The rules on decency are principally those of self-regulation. Belgian law distinguishes between content that is ‘contrary to public decency’ and content that is ‘not contrary to public decency’. The first is forbidden, the second is allowed. The supreme Belgian court (Cassation Court) has determined that content is ‘contrary to public decency’ if the ‘content’s only aim is apparently to stimulate in an extreme manner the sensuous feelings of the viewer or if it violates the sense of shame of the average civilian because of the vicious, obscene, humiliating or perverse acts or positions on the sexual level’.

Today, and from a strict legal point of view, the depiction of nudity, of erogenous zones or of erotic acts as such is not contrary to public decency. It is the particular manner of the representation that can harm public decency (eg, by the fact that violence is involved). A strict legal point of view is mentioned, because a more encompassing review of advertisements up-front or upon complaint is conducted by the JEP. The scrutiny of the JEP is broader than strictly legal. The JEP can advise the media not to broadcast or run an advertisement—and the media will obey such advice. This broad ethical and moral scrutiny is typical for the audiovisual, outdoor and print advertising media.

However, just because content is allowed on the basis it is not contrary to public decency does not imply that this content can be made available to the whole Belgian population. Within the content allowed, distinctions must be made between content that does not consist of indecent images, pictures or subjects that can stimulate the imagination of minors (G-rating) and content that does consist of images, pictures or subjects that can stimulate the imagination of minors (X-rating). Whilst these ratings are not statutory in nature, advertisements which disregard ratings run the risk of being sanctioned, either by self-regulation or by the courts.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

In Belgium, all distributed printed matter, including leaflets etc, must mention the responsible editor and its address. Non-compliance can lead to a criminal offence. A different manner of making the advertiser or sponsor identifiable applies in audiovisual adverts.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

As a rule, editorial content should be differentiated from advertising and the fact that advertisers have influenced the editorial content should be disclosed. It is considered to be an unfair market practice in all circumstances to mislead by broadcasting or publishing editorial content that has actually been paid for, unless the advertisement makes this clear through a message or by clearly identifiable images or sounds.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Besides the general obligation as described above, there are rules in place which relate to broadcast material. Product placement is allowed in films, sitcoms, sport programs and entertainment programs, but is prohibited in programs for children.

When there is no payment but only the provision, free of charge, of goods or services, such as production props and prizes with a view to their inclusion in a program, this is allowed in all programs with the exception of programs for children broadcast by the public broadcaster.

Sponsorship is generally allowed, except in programs for children broadcast on the public broadcaster. For other children's programs, it is prohibited to show the logo/say the name of the sponsor in the program or to mention the sponsor within a five-minute window before and after the program.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Legal controls apply to advertising and marketing published through social media in much the same way that they do for offline and other online media platforms. The general rules on market practices and consumer protection also play a central role in the context of social media advertising regulation.

The same applies in relation to the laws and rules on the protection of distinctive signs, such as trademarks and trade names, on privacy data, on fair market practices, on copyright and on media.

In cases where a competitor uses Adwords or other domains (such as eBay or Twitter) to conduct advertising, this advertising can be challenged under Book VI of the CEL. This states that a market practice can be considered misleading if the practice misleads the consumer on the geographical or commercial origin of a product and if a marketing practice, including a comparative advertisement, leads to confusion with another product, trademark, trade name or other distinctive sign of a competitor. The catch-all prohibition of any disloyal market conduct through which a company damages the professional interests of another company can also be successfully relied upon in respect of marketing via social media.

There is still very little regulation or law in relation to social media. However, Opinion 5/2009 on online social networking, adopted by the Article 29 Data Protection Working Party, (an independent European advisory body on data protection and privacy) sets out provisions on contextual, segmented and behavioral marketing, rules on retention of data and on children and minors. This has been adopted and endorsed by the Belgian Privacy Commission and should be considered in relation to advertising via social media.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Potentially, yes, but not always. The simple inclusion of temporary technical copy or content posted on a social network or website by third parties without originating, selecting or modifying the content, does not necessarily open the advertiser to liability for the content. However, advertisers do not enjoy the same exemption from liability as that enjoyed by internet service providers, as an advertiser has, in principle, the obligation of supervising/monitoring the content it includes, copies or hosts.. If an advertiser can show that it did not have knowledge of the illicit content and if the advertiser promptly acts with appropriate measures in case of such knowledge, mostly through the withdrawal or blocking of access to the illegal content, then it can escape liability.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

The European Court *Google Adwords* case, which ruled that where a company uses the trademark of a competitor for promoting its own products and services there is no trademark infringement unless the internet user is being misled, was confirmed in the Benelux *Primakabin/Portakabin* decision. It follows that the use of distinctive signs of competitors in social networks is not illegal per se.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Belgian Copyright Act states that a person's image cannot be used without their consent. According to Belgian case law, a person's image rights are infringed when their image is used for commercial purposes without their prior consent. The consent to use an image of a person is interpreted restrictively and thus it must explicitly cover commercial use.

Private persons whose image has been used must establish that:

- they are identifiable in the image; and
- they did not give their prior consent to use the image.

For a person to be identifiable, it is not necessary that the whole person is depicted. Portraying a part of the body can be sufficient to establish an infringement of image rights. Moreover, it is not required that the person is depicted faithfully (eg, in a caricature, a drawing or a painting). A person can also be identifiable due to their special way of clothing, attitude, general posture or due to their usual habits.

9.2 Are there situations when permission is not required?

The image rights of public persons are limited by the right to information. Consequently, public persons cannot challenge the use of their image for current reporting in relation to their professional activities.

However, in the context of advertising, use of a person when reporting on events will still most likely be considered as an infringement of image rights if the person depicted is identifiable in the image and the depiction is used without their prior consent.

The following elements might reduce the risk for claims or the exposure to infringement of image rights:

- (a) the person depicted is not identifiable in the image (but altered images in which the person is still identifiable will not be sufficient to eliminate claims for infringement of image rights); and
- (b) use of an image which falls under the presumption of consent. There is a presumption of consent if the following cumulative conditions are met:
 - (i) the person concerned is used to being photographed or filmed in the framework of their professional activities;
 - (ii) the person concerned deliberately and willingly posed to have their photograph taken; and
 - (iii) it concerns a photograph taken during or in connection or in the course of their professional activities and the photograph taken is used for related commercial purposes only.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Not applicable.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)? If so when?

See question 3.7 above on comparative advertising. Otherwise, the use of recognizable products of other companies in advertising requires the prior consent of that other company.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Belgium which affect advertising (eg, Swedish gender equality law)?

Belgian law does not contain a general regulation dealing with the language used in advertising or promotional materials. However, particular rules affecting the use of language are found in Book VI of the CEL. This contains a provision requiring that all mandatory notifications or information on the labels or packaging of products, and all user manuals and warranty cards, must be at least in the language(s) of the territory wherein the products are marketed.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Not applicable.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Belgium?

Current major concerns of regulators are:

- online advertising and social media advertising;
- green advertising (ie, making environmental claims);
- high fat, salt and sugar food advertising; and
- financial services advertising.

Special caution is also needed in the area of food labeling.

Advertisers must ensure that there is a sufficient stock of products to satisfy the likely increase in demand due to the sales promotion. Stock levels should be calculated and increased in direct relation to the scale of the sales promotion.



BOLIVIA



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Bolivia?

Advertising in Bolivia is regulated by several laws and supreme decrees targeting different industries; for example, there are specific regulations for the advertising of tobacco products, alcoholic beverages, financial instruments, insurances, etc. There is no Advertising and Marketing law that can be generally applied to all products and services. However, the most important principles that regulate advertising law, such as the right of the consumer to obtain accurate information about the products publicized, can be found in the General Law on the Rights of Users and Consumers (Law 453 of 2013). In addition, the municipal governments in several municipalities in the country have extensive regulations regarding the placement of advertising banners in public places.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Because there is no general Advertising Law in Bolivia, the exact definition of what can be considered ‘advertising’ is unclear. The courts have also not defined the term. The closest definition can be found in Supreme Decree 115, regulating the promotion of breastfeeding and commercialization of its substitutes, which defines ‘Advertising’ (but only for the purposes of that regulation) as ‘any kind of communication made by natural persons or companies, through the radio, TV, cable, internet, press...’ This means that the term ‘advertising’ is broadly defined, and that, in Bolivia, advertising communications refer to any form of communication intended to promote, announce, inform or persuade about products, services, brands, organizations or commercial activities. This includes a wide range of activities and media, such as advertisements on television, radio, print media, digital media, billboards, direct mail, promotions, social media advertising, among others.

Again, ‘advertising’ is defined in the regulations of the Financial System and Gaming Control Authority as ‘Any form of dissemination through which they offer their products and/or services or disseminate information about them, whatever the means of communication, mass or personal, used: press, radio, television, internet, social networks, posters, pamphlets, booklets, brochures, brochures, flyers, emails, coupons, electronic networks, billboards, advertising sponsorship, films, interviews, letters or other means’.

1.3 What is the basic regulatory framework for advertising regulation?

All advertising must be framed in what is mandated by the General Law on the Rights of Users and Consumers, namely that ‘Users and consumers have the right to receive reliable, truthful, complete, adequate, free and timely information about the characteristics and contents of the products that they consume and services that they use.’

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The Plurinational State of Bolivia does not currently have a specific norm that regulates the production and dissemination of commercial advertising in mass media, including the Internet. However, the General Law on the Rights of Users and Consumers prohibits the dissemination of:

- **misleading advertising**, which it defines as ‘any form of advertising, information or communication that is totally or partially false that misleads with respect to the characteristics, method of use or other information about the product or service’ and
- **abusive advertising**, which is understood as ‘discriminatory advertising or information that instigates or induces violence or fear, taking advantage of the lack of discernment and violating environmental, moral and ethical values, which is capable of inducing users, consumers, to behave in a way that is harmful or dangerous to their health. health or physical integrity.’

In addition, the following regulations are relevant:

- The Telecommunications, Information and Communication Technologies Law (Law 164 of 2011) regulates advertising in electronic media, such as radio and television. It:
 - establishes restrictions on the time allowed for advertisements,
 - limits advertising content at certain times (see question 5.3 below) and
 - prescribes other provisions related to advertising in these media.
 - establishes that advertising via email or other electronic media will be subject to specific regulations, although no such regulation has yet been applied to electronic advertising.
- The placement of advertising banners in public places is regulated by the particular municipal government of the place where the banner is going to be displayed.
- The advertising of alcoholic beverages on television is also the subject of specific regulation.
- The Comprehensive Law to Guarantee Women a Life Free from Violence (Law 348 of 2013) and the Child and Adolescent Code (Law 548 of 2014) both prohibit the use of images of women and children in a manner unseemly and inappropriate.
- The Law against Racism and all forms of Discrimination (Law 045 of 2013) prohibits the media from disseminating messages that contain these practices, although it is not expressly stated whether they apply to advertising or editorial content.
- The Comprehensive Law against Trafficking in Persons (Law 263 of 2013) expressly prohibits the publication of advertisements referring to the sex trade.

Other kinds of advertising practices are not specifically regulated in Bolivia.

1.5 **Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?**

Yes, there are several industries that have specific regulations:

- (a) **Tobacco Products:** The advertising of tobacco products is regulated by the Law on Prevention and Control of the Consumption of Tobacco Products (Law 1280 of 2020), which, was ratified by Supreme Decree 27053, and prohibits all forms of advertising, promotion and sponsorship, by any means of dissemination and at street sales points, of tobacco products, directly or indirectly. This Law also, together with specific regulations issued by the Ministry of Health, and several supreme decrees requires the inclusion of health warnings on packaging. It is intended to normalize the use of warning messages on tobacco packages and regulate where tobacco advertising is permitted, among other things.

- (b) **Alcoholic Beverages:** Advertising of alcoholic beverages is regulated by Law of Control of the Sale and Consumption of Alcoholic Beverages (Law 259 of 2012) and its Supreme Decree 1347, which establishes that a warning message must be used, and forbids the use of animated characters in advertising, among other prohibitions.
- (c) **Insurance Sector:** The Insurance Law (Law 1883 of 1998) establishes that the advertising of any products offered by insurance companies must highlight the most important characteristics of the product in a manner that makes it easy for the average consumer to understand.
- (d) **Stock Market:** The Securities Law (Law 1834 of 1998) establishes that the Supervising Authority has the duty to ensure that the characteristics and risks of prospects are not misleading in advertisements.
- (e) **Film Regulation:** The advertising of products on movie theater screens is regulated by the Cinema Law (Law 1302 of 1991). The law establishes, for example, a minimum percentage of advertisements that must be created by Bolivian producers.
- (f) **Drugs:** The advertising of drugs is regulated by the Medicines Act (Law 1737 of 1996) and Supreme Decree 25235, which refers the advertisers to the regulations of the Ministry of Health. The advertising of drugs without the prior approval of the Ministry of Health is a serious infraction. In addition, the State Agency for Medicines and Health Technologies ('AGEMED') issues specific regulations and guidelines for the promotion of medicines in the country.
- (g) **Games and Promotional Activities:** Under the Law on Lottery and Gambling Games (Law 060 of 2020) and Supreme Decree 781, the Gaming Control Authority is in charge of overseeing the promotional activities performed in the country. The law imposes registration and publicity requirements for companies that make use of promotional activities (such as competitions or raffles) for advertising purposes.
- (h) **Food and beverages:** The Law for the Promotion of Healthy Eating (Law 775 of 2016), and its regulations aim to promote healthy eating and establish restrictions on food advertising aimed at children, as well as nutritional labeling requirements.
- (i) **Political Advertising:** In the field of political advertising, regulation is based on the Electoral Regime Law (Law 026 of 2010) and its regulations, as well as the regulations issued by the Supreme Electoral Tribunal ('TSE') of Bolivia. These regulations establish specific restrictions and requirements for political advertising during electoral processes and political campaigns.

1.6 Are any government pre-approvals required?

Government pre-approvals are required for advertisements related to public health topics, which include advertising of alcoholic beverages, tobacco products and drugs. Also, laws that regulate specific industries authorize government entities to enforce the regulations. Eg:

- (a) In the case of tobacco, the Ministry of Health has the duty to both pre-approve the advertisements and monitor compliance with the law after the advertising has been released.
- (b) Advertising of medicines and pharmaceutical products in Bolivia generally requires prior approval from AGEMED. This entity regulates and supervises the promotion of pharmaceutical products to ensure that they comply with regulations and do not present risks to the health of consumers.

1.7 Does the media pre-clear advertising?

Yes, the media does pre-clear advertising. There are no legal norms that regulate the discretion of the press to pre-clear advertising.

In Bolivia, media outlets are often responsible for ensuring that the advertising they broadcast complies with current legal regulations. Therefore, they often have internal processes to review and approve advertising before it is broadcast. These processes may include reviewing advertising content and requesting documentation to support claims made in advertisements. This includes checking that advertising:

- is not misleading,
- is not harmful to the public, and
- complies with specific restrictions set out for certain types of ads.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The laws that regulate each industry appoint a specific government authority to be in charge of the enforcement of the laws for that industry. For example, for advertisements for tobacco products, the Ministry of Health has the authority to enforce the respective laws. The potential remedies are:

- injunctions prohibiting the dissemination of the advertising, and
- the imposition of fines against the non-complying companies.

In the case of products or services that are not specifically regulated, the Vice-ministry for the Defense of Consumers' Rights is authorized to file legal claims against advertisers in court, acting on behalf of the general public. The Vice-ministry is also authorized to adopt preventative and penal measures against companies that break advertising laws, which include the temporary ban of the advertising.

1.9 When does a competitor have a right of action? What are the potential remedies?

The Common Intellectual Property Regime established by Decision 486 of the Andean Community is binding and fully applicable in Bolivia. As a consequence, competitors have a right of action regarding unfair trade practices. Any acts which, by any means, are capable of causing confusion with respect to the business, goods, or industrial activity of a competitor, or any false affirmations that are capable of discrediting a competitor's business, goods, or industrial activity, are considered unfair trade practices. There is a 2-year statute of limitations for a right of action, and potential remedies include injunctions prohibiting the display of the advertising and the payment of damages.

The Competition Regulation establishes a special procedure for the application of sanctions in matters of defense of competition.

Moreover, the Anti-competitive Practices Manual consists of sections referring to competition analysis, classification of anti-competitive practices, mergers and acquisitions, unfair competition and procedural aspects.

1.10 When do consumers have a right of action? What are the potential remedies?

Under General Law on the Rights of Users and Consumers, a consumer has a right of action against providers of products or services when they have been the victim of misleading advertising and have suffered damages as a result. The affected consumer may file a claim in court, or file a complaint with

the Vice-ministry for the Defense of Consumers' Rights. The Vice-ministry is authorized to perform further inquiries about the alleged infraction, and it may represent the consumers in legal actions against the advertiser of the product or service. The courts (or the regulating authorities, in the case of specific industries) may issue injunctions to stop the display of the advertising.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Bolivia have a primary advertising self-regulation system?

No.

2.2 Is there a self-regulatory advertising code? What are the key principles?

No.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

N/A

2.4 Is the self-regulation system effective? Is it widely used and followed?

N/A

2.5 Are the self-regulatory system's decisions reported?

N/A

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Because there is no self-regulation system in Bolivia, there are no key areas of focus that companies should be aware of at this point.

2.7 Are there any other self-regulatory systems that govern advertising practices in Bolivia?

There are no self-regulatory systems in place.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Bolivia (eg, consumer protection laws, IP laws, unfair competition laws)?

The basic laws governing advertising claims are consumer protection laws, specifically the General Law on the Rights of Users and Consumers and Supreme Decree 65. These laws contain some of the most important principles of advertising law, and appoint the Vice-ministry for the Defense of Consumer's Rights as the entity in charge of the protection of consumers against misleading advertising, among other things. In addition, Decision 486 of the Andean Community establishes the basis for unfair competition claims.

3.2 Is substantiation required for advertising claims?

Because advertising claims are filed in court, substantiation for the claim is necessary. However, under the General Law on the Rights of Users and Consumers, any person may file a claim with the Vice-ministry for the Defense of Consumer's Rights alleging misleading advertising. In such a case, only a very brief explanation of the situation is required, and the authority will make further inquiries to substantiate legal claims against the advertiser. Regarding competitors' claims for unfair competition, substantiation is also required under Decision 486 of the Andean Community.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There are no specific regulations about this point, and puffery is permissible in Bolivia, as long as the intent of the advertising is absolutely clear and no reasonable person would interpret the content of the advertising literally. If a consumer suffers any kind of damage as a consequence of what they believe to be a misleading advertisement, they may file a legal claim and the courts will determine whether the advertisement is capable of confusing the average consumer.

3.4 What are the rules governing the use of disclosures in advertising?

Under the General Law on the Rights and Users of Consumers, a supplier is required to provide accurate information regarding the characteristics, nutritional composition and conservation instructions for their goods and products. This is congruent with the general principle of veracity and truthfulness, established in this Law. The advertiser is required to disclose all material information to avoid misleading consumers.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no specific rules governing the use of endorsements, so their use is allowed in advertising, as long as such use does not constitute an unfair trade practice as defined in Decision 486 of the Andean Community. The use of false affirmations of any kind, including affirmations made by endorsements or testimonials, constitutes an unfair trade practice, and creates a right of action for any affected competitor.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules governing the use of product demonstrations. The general principle of veracity and truthfulness, established in the General Law on the Rights and Users of Consumers, applies. Therefore, product demonstrations in advertising cannot be misleading.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted in Bolivia, as long as it is not based on false affirmations or is capable of causing improper confusion with respect to the business, goods or industrial activity of a competitor. If the use of comparative advertising misleads the public, it is considered contrary to honest commercial practices under Decision 486 of the Andean Community, and it may also be considered a violation of consumer rights under the General Law on the Rights and Users of Consumers.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The most important trademark regulation in Bolivia that impacts comparative advertising is Decision 486 of the Andean Community which regulates intellectual property-linked trade practices and condemns the use of unfair competition practices. The use of trademarks in comparative advertising must be accurate and not misleading. A trademark should not be used in a way that could lead to confusion about the source of the product or service. Additionally, the use of competing trademarks to compare products or services must be supported by verifiable facts and must not be misleading.

When using copyrighted material in comparative advertising, it is essential to obtain the necessary permissions and licenses from the copyright holder. Unauthorized use of copyrighted material may give rise to legal claims for copyright infringement.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Declarations related to geographical origin are regulated by labeling and advertising regulations. This applies to both products manufactured in Bolivia and imported products. Regulations establish requirements for the precision and veracity of claims. Depending on the manufacturing or service sector, there are specific regulations related to product labeling that establish the information that a label must contain, including the origin of the product. This is regulated and controlled by the Bolivian Institute of Standardization and Quality.

3.10 Are there any special rules governing product packaging?

GMO labeling has been established in Bolivia by Supreme Decree No 2452, which states that 'Every product intended for human consumption, directly or indirectly, that is produced, contains, or derives from, genetically modified organisms shall be duly identified and shall remark this characteristic'. This Supreme Decree is applicable to products manufactured locally and those that are imported. GMO products are identified by a mark showing a yellow triangle inside a white square on the upper part of the package. This yellow triangle contains the letters 'GMO' and the description 'Genetically Modified Organism'. Additionally, outside the triangle, it must be stated that 'This product is, contains or derives from genetically modified material'. Despite the fact that the Supreme Decree was enacted in 2015, due to a lack of ruling, it has only been compulsory since 1 January 2018.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

In Bolivia, advertising regulations often address misleading or unfair advertising practices, but do not always make specific reference to 'dark practices' in terms of advertising. However, general regulations and consumer protection laws prohibit advertising practices that are unfair, deceptive, false, misleading or that may harm consumers. Advertisers cannot make false or misleading claims in their advertisements, as this could be considered an obscure practice and an act of unfair competition. Consumers have the right to receive clear information and not be victims of misleading advertising.

There are Consumer Defense authorities ('ADECO'), whose entity is in charge of protecting the rights of consumers in Bolivia and can intervene in cases of misleading advertising or commercial practices that are harmful to consumers. ADECO can mediate disputes, issue sanctions and take measures to protect consumers.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

In Bolivia there are no specific regulations that address advertising related to artificial intelligence ('AI'). However, the use of AI in advertising is a constantly evolving topic and is subject to changes in regulation as new technologies are developed and their implications are better understood.

4 PRICE ADVERTISING

4.1 What are Bolivia's rules regarding price advertising?

There are no specific rules regulating price advertising.

4.2 What are Bolivia's rules regarding advertising 'free' products?

Supreme Decree 27053 prohibits the use of 'free samples' for the promotion of tobacco products. In addition, if the free product is offered as part of a promotional program, the company that is offering the product must obtain authorization from the Gaming Control Authority. There are no other regulations regarding advertising of free products.

4.3 What are Bolivia's rules regarding sales and special offers?

The Gaming Control Authority is in charge of approving and monitoring the use of special offers. All kinds of competitions and promotions, where a consumer is offered a special reward, discount or free product if they collect something or act in a certain way, are regulated by the Law on Lottery and Gambling Games and Supreme Decree 781, which, among other things, imposes registration requirements for companies to ensure that the promotional activity is transparent and fair for consumers.

4.4 What are Bolivia's rules regarding rebates?

To avoid misleading advertisements in which the consumer is 'promised' the return of either the total or part of the amount spent, and thus attract more consumers, the relevant authorities have passed regulations that regulate misleading advertising related to returns to protect the consumer; for example, the Gaming Control Authority's Regulation for granting authorizations for business promotions.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Although there are no specific regulations for retail advertising practices, it is important to note that the principles established in the General Law on the Rights of Users and Consumers may be applicable to all retail advertising practices, because of the broad definition of what advertising means. Thus, rebates and special offers are allowed, but the lack of regulation does not mean that advertisers are immune to legal actions by consumers or by the Vice-ministry for Defense of Consumer's Rights, if retail advertising practices are considered misleading.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Most products do not have any kind of restriction, but there are some exceptions. Under Supreme Decree 27053, the advertising of tobacco products through television and radio broadcasts is expressly prohibited. Advertising of alcoholic beverages, on the other hand, is allowed, but is subject to specific restrictions established in Supreme Decree 1347.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The advertising of tobacco products through television and radio broadcasts is prohibited (see questions 1.5(a) and 5.1 above). Besides this particular industry, there are no specific prohibitions for types of advertising of other products.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Yes, there are restrictions that can be found in the Telecommunications, Information and Communication Technologies Law and in Supreme Decree 1436. These laws establish 'hours for the protection of minors', which are from 07.00 am to 10.00 pm. During these hours, the television and radio broadcasts (of both programs and advertising) cannot contain explicit violence, obscene language or explicit sexual content.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There are no rules requiring that advertisements identify the advertiser. The Cinema Law establishes that the advertising of films must clearly identify the name of the director of the film, but makes no reference to any need to identify the advertiser or sponsor.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules regulating this practice.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special disclosure obligations for these practices.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules governing the use of social media for advertising purposes. However, a peculiar kind of social media advertising has recently been taking place in Bolivia. Many businesses (particularly cinemas and restaurants) had been offering little prizes, such as discounts, free meals or free tickets, through a ‘Social Media Competition’ which usually consisted of a question posted on a social network website (mainly Facebook). The first person to answer the question correctly received the prize. The Gaming Control Authority has now imposed registration and control requirements on these kinds of promotional games, and this kind of advertising has ceased almost completely.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser’s Facebook page)?

There is no specific regulation regarding this activity.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no key decisions regarding this activity.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual’s name, picture, likeness, voice and identity in advertising?

The Political Constitution of Bolivia recognizes the right to privacy and establishes a legal ‘Action for the Protection of Privacy’, commonly known in other jurisdictions as Habeas Data. Any person that is not able to remove or rectify data that affects their right to privacy or good image may file an action for the protection of privacy. Although this constitutional provision is not particularly designed to govern the use of an individual’s name in advertising, it creates a defense against harmful and unauthorized use of a person’s name. There are no other rules governing the use of an individual’s identity in advertising.

9.2 Are there situations when permission is not required?

As noted in question 9.1 above, there are no specific rules governing the use of an individual’s identity, but there is a constitutional right to privacy and a mechanism to enforce it. Therefore, permission is always required, because the unauthorized use of a person’s identity may give rise to a cause of action.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no specific rules regarding this point.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

There is no specific regulation regarding this matter. The pejorative use of recognizable products may lead to civil actions by the affected companies, according to Decision 486 of the Andean Community, because it might be considered unfair competition. However, the incidental use of other companies' products (an actor wearing branded sneakers, for example) that does not compare the products in any way, is not prohibited by any regulation.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Bolivia which affect advertising (eg, Swedish gender equality law)?

One of the characteristics of the Plurinational State of Bolivia is the existence of a diversity of 'nations' within the country, some of them with their own language and culture. The policy of inclusion of all these cultures led to the enactment of the Law Against Racism and all forms of Discrimination (Law 045 of 2010). This establishes sanctions against the media for public distribution of discriminatory content. There are still many unclear aspects regarding the scope of this law, but it is a law that may affect and influence the content of advertising because of its broad scope.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

There are no other cultural norms that should be considered.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Bolivia?

We consider it very important for advertisers to perform an exhaustive review of the legislation applicable to their specific industry, before placing advertisements of any kind. The fact that Bolivia does not have a general Advertising Law makes it more difficult for advertisers to stay updated about the regulation concerning advertising.

BOSNIA AND HERZEGOVINA

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Bosnia and Herzegovina?

Advertising in Bosnia and Herzegovina is regulated through a number of laws and regulations. The regulatory framework includes consumer protection laws, competition law, and specific regulations related to media, drugs, medical devices, and advertising practices. Enforcement of advertising regulations is overseen by relevant authorities ensuring compliance with legal requirements.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The Consumer Protection Law of BiH states that the offering of goods or services in any form, especially via flyers, placards or posters is considered advertising.

1.3 What is the basic regulatory framework for advertising regulation?

Bosnia and Herzegovina ('BiH') is composed of two entities: the Federation of Bosnia and Herzegovina ('FBiH') and the Republika Srpska ('RS'), and one special administrative district, Brčko District ('BD'). Applicable rules may be adopted on the state level, BiH, in which case they apply in FBiH, RS and BD; or on the entity or administrative unit specific level, in which case the rules apply only in FBiH or RS or BD.

The most important laws and regulations pertaining the advertising in BiH are:

(a) State-level (BiH):

- the Consumer Protection Law of BiH (general advertising rules and commercial practices);
- the Communications Law of BiH (general communications principles) and its bylaws, specifically the Code of Commercial Communications of the BiH (specific rules regarding audio-visual and radio services commercial communications);
- the Electronic Legal and Commercial Transactions Law of BiH (general principles of electronic communications);
- the Medicinal Products and Medical Devices Law of BiH and its bylaws (specific rules regarding advertising medicinal products and medical devices);
- the Food Act of BiH and its bylaws (specific rules regarding labeling/advertising food);
- the Trademark Act of BiH (trademarks);
- the Law on Copyright and Related Rights of BiH (intellectual property);
- the Competition Law of BiH (competition principles); and
- the Data Protection Law of BiH (personal data protection).

(b) FBiH specific:

- the Law on Prohibited Advertising of FBiH (prohibited advertising rules);
- the Internal Trade Act of FBiH (unfair competition principles);
- the Law on Games of Chance of FBiH and its bylaws (advertising games of chance);
- the Law on Contracts and Torts of FBiH (applies as a general Act); and
- the Law on Control and Restricted Use of Tobacco Products and other Smoking Products of FBiH (advertising tobacco products and other smoking products).

- (c) **RS specific:**
 - the Consumer Protection Law of RS (general advertising rules and commercial practices);
 - the Law on Prohibited Advertising of RS (prohibited advertising rules);
 - the Food Act of RS and its bylaws (labeling/advertising food);
 - the Law on the Ban on Advertising of Tobacco Products of RS (advertising tobacco products and other smoking products);
 - the Trade Act of RS (unfair competition principles);
 - the Law on Games of Chance of RS and its bylaws (advertising games of chance); and
 - the Law on Contracts and Torts of RS (applies as a general act).
- (d) **BD specific:**
 - the Trade Act of BD (unfair competition principles);
 - the Law on Games of Chance of BD and its bylaws (advertising games of chance); and
 - the Law on Contracts and Torts of BD (applies as a general act).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) **Comparative advertising:** This is specifically regulated in BiH. The Consumer Protection Law of BiH states that ‘comparative advertising’ is any advertising that explicitly or implicitly identifies a market competitor, or goods or services offered by the market competitor. The Consumer Protection Law of BiH stipulates the criteria that must be met for comparative advertising to be lawful. Comparative advertising that does not comply with the criteria makes for unlawful comparative advertising, for which advertisers may be fined/liable for damages in general (see question 3.7 below).
- (b) **Email/telephone/SMS advertising:** Another example of specifically regulated advertising practice is email, telephone or message advertising. The Consumer Protection Law of BiH states that, without the consumer’s prior consent, the advertiser cannot use means of distant communication with the consumer, such as: telephone, fax, email and similar. Also, the Consumer Protection Law of RS stipulates that continuous addressing of the consumer via telephone, fax, email and similar is considered to be unlawful and an aggressive commercial practice.
- (c) **Advertising to children:** Special rules related to advertising to children are found throughout various sector specific laws and regulations. The Communications Law of BiH and its bylaws (Code of Commercial Communications of BiH) set out general principles:
 - commercial communications that encourage behavior that could endanger the health, psychological and/or moral development of children are prohibited, and
 - commercial communications intended for children or involving children should avoid anything that could endanger their interests and must be considerate of their special sensitivity.

The Code of Commercial Communications of BiH goes further into specifics, and establishes the ‘no-broadcast’ principle that prohibits the advertisement of alcoholic beverages, medicines, medical treatments and devices, dietary supplements, medical institutions, ignition devices, inflammable and other hazardous substances, religious messages, and games of chance, 15 minutes prior, during, and 15 minutes after a children’s program.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) **Tobacco:** Advertising tobacco and other smoking products is specifically regulated in BiH under the Law on Control and Restricted Use of Tobacco Products and other Smoking Products of FBiH and the Law on the Ban on Advertising of Tobacco Products of RS. In both FBiH and RS, it is prohibited to advertise tobacco and other smoking products directly or indirectly. This prohibition includes online advertisements, as well as the organization of sponsor or promotional events and activities with the goal of direct or indirect promotion of tobacco and other smoking products.
- (b) **Chance-based games:** These are also specifically regulated by sectoral laws. In BiH, it is expressly forbidden to advertise chance-based games in any form of media radio/television or press content for children and minors. Promotional chance-based games and contests are generally permissible in BiH, as long as the games do not qualify as a 'gambling game' or a 'classic game of chance' (eg, games in which the participants are specifically charged for entry), in which case there are other requirements to consider in accordance with applicable laws and regulations. Registration/filing with the competent authorities is required to offer a chance-based game and their approvals are mandatory to conduct the game. The procedure differs depending where in the BiH is the game being organized, as all three entities/units in BiH (FBiH, RS, and BD) have individual laws on games of chance which cover the promotional games as well.
- (c) **Food:** The Food Act of BiH and its connected bylaws, as well as the Food Act of RS and its connected bylaws, provide special advertising rules regarding food. In general, food advertisements must not:
- mislead the consumer/customer about its characteristics, effects or properties;
 - must not attribute medicinal and/or preventive properties; and
 - must not hint at special characteristics when in fact all similar foods have such characteristics.

Please note that food sector has many bylaws for specific types of food that may contain further special advertising rules.

- (d) **Alcohol:** Alcohol advertising is specifically regulated from the advertising perspective, in addition to the general rules and special rules for food advertising, that also apply. The bylaws relating to alcohol contain a set of highly complex rules that are different for different types of alcohol/alcohol drinks. Commercial communications related to alcoholic beverages must not:
- be aimed specifically at minors;
 - link the consumption of alcohol with improved physical abilities or driving a motor vehicle;
 - claim that alcohol has medicinal properties or similar;
 - encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
 - put emphasis on the high alcohol content as a positive quality of alcoholic beverages; and/or
 - create the impression that consumption of alcohol contributes to social or sexual success.

- (e) **Medicines and medical devices:** These are also specifically regulated in BiH, from the advertising perspective. The specific rules can be summarized as follows:
- advertising of medicinal products and medical devices requires prior notification to the Agency for Medicinal Products and Medical Devices of Bosnia and Herzegovina;
 - in advertisements of medicinal products and medical devices it is required to include the following message: 'Before use, carefully read the instructions. For information on indications, precautions and side effects of the drug and medical device, consult a doctor or pharmacist.';
 - advertising of medicinal products and medical devices must be in accordance with the approved instructions and summary of the main characteristics of the product; and
 - it is prohibited to advertise pharmaceutical products and medical devices that are available on medical prescription only.
- (f) **Professional services:** Special advertising practices may also be found in 'regulated' professions such as attorneys-at-law (practicing lawyers) and public notaries. For example, public notaries and attorneys are not allowed to advertise at all. Attorneys-at-law must be members of bar associations which have the authority to self-regulate the advertising practices for their members.
- (g) **Weapons:** Weapons, ammunition, and similar products cannot be advertised.

1.6 Are any government pre-approvals required?

- (a) **Chance-based games:** Government pre-approvals and licenses are required for conducting any chance-based games, and only approved chance-based games can be promoted or advertised (please see question 1.5 above).
- (b) **Medicines and medical devices:** Advertising of medical and pharmaceutical products requires prior notification to the Agency for Medicinal Products and Medical Devices of Bosnia and Herzegovina.

1.7 Does the media pre-clear advertising?

Pre-clearance is not specifically regulated in BiH.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Due to the specific distribution of the advertising rules in BiH, compliance with the advertising rules is enforced in different ways:

- (a) In principle, the subject laws and regulations (especially with respect to unfair competition principles and misleading/prohibited/prohibited comparative advertising) are enforced by the competent courts in BiH. The laws on prohibited advertising (both in FBiH and in RS) stipulate special proceeding rules for such cases. And in case of unlawful advertising, consumers, the relevant organizations, or authorized entities in general can file a claim against an advertiser and seek an injunction measure. Remedies in court proceedings amongst others include:
- a court order to refrain from unlawful conduct,
 - an obligation to remedy the negative consequences of the unlawful conduct,
 - to compensate the damages, and/or,
 - to refund the unjustified enrichment.

The parties to the court proceedings may seek legal remedy against the decisions of the courts as there are both ordinary and extraordinary legal remedies available.

- (b) Sector specific laws and regulations are also enforced by administrative bodies (regulatory agencies, ministries, inspection authorities and other bodies). For example:
- (i) the communications specific laws and regulations are enforced by the Communications Regulatory Agency of BiH;
 - (ii) the food specific laws and regulations are enforced by the Food Agency of BiH;
 - (iii) the medicinal products and medical devices laws and regulations are enforced by the Agency for the Medicinal Products and Medical Devices of BiH;
 - (iv) the games of chance laws and regulations are enforced by subject government bodies in the entities and the special administrative unit of BiH.

Specifically for the business to consumer (B2C) relationship, the most important are the supervision of the inspection authorities and the possibility of filing a petition to the inspection authorities by a consumer.

Depending on a case-by-case situation, the administrative bodies may act *ex officio* or based on a complaint filed by an interested subject. Sanctions and remedies in administrative proceedings may include:

- monetary fines,
- an order to withdraw/ban the unlawful advertisement from the market, even without proof of actual loss or damage or intent or negligence from the advertiser's side,
- an order to inform issue a corrective statement to the public (regarding unlawful advertisements),
- an order to refrain from further unlawful actions.

In general, the parties to the administrative proceedings may appeal against the decisions of the first-instance administrative bodies to second-instance administrative bodies. To appeal against the final administrative decisions, parties may initiate an administrative dispute before the competent court.

- (c) In addition to the above, in certain cases, an advertiser that has breached advertising rules may become subject to criminal proceedings.

1.9 When does a competitor have a right of action? What are the potential remedies?

Depending on which law and/or regulation has allegedly been breached, competitors may either bring actions before public authorities (administrative bodies) or the competent courts:

- (a) If competitors consider any advertising to be in breach of their intellectual property rights, they can file a claim before the competent court and request the court to:
- prohibit the unlawful use of competitor's trademark;
 - award them an adequate financial redress; as well as
 - award them compensation for damages.
- (b) In case of unlawful comparative advertising, a competitor can file a claim before the competent court in order to:
- ban unlawful advertisement that indicates or directly points to their product or service; and
 - the advertiser is liable for any damages from the advertising.

1.10 When do consumers have a right of action? What are the potential remedies?

Depending on which law and/or regulation has been breached, consumers may either take actions with public authorities (administrative bodies) or the competent courts:

- (a) If consumers consider any advertising as breaching advertising laws and regulations, they are entitled to file a complaint with the administrative body, which may initiate administrative proceedings and eventually issue sanctions and/or remedies. The authority may impose a monetary fine on the advertiser and/or its advertising agency. Consumer protection associations may also take these actions in the name of the consumers.
- (b) Consumers may also take private right of action (file a claim) with the competent court in cases where an advertiser breaches laws and regulations that contain advertising rules. They may claim an adequate financial redress as well as compensation for damages.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Bosnia and Herzegovina have a primary advertising self-regulation system?

The Press Council of Bosnia and Herzegovina is the only self-regulatory authority in BiH with ties to advertising practices. The Press Council of Bosnia and Herzegovina is competent with regard to both print and online media.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes, the Press Code of BiH is the only self-regulatory code pertaining to advertising and marketing in BiH. The key principles of the Press Code of BiH are:

- maintenance of high ethical standards at any time and under any circumstances;
- respecting citizens' need for useful, timely, and relevant information;
- defending the principles of freedom of information, the right to fair comments and the right to free criticism;
- respecting the ethnic, cultural, and religious diversity of BiH;
- acting in accordance with the standards of human rights, defined by both national and international human rights protection instruments;
- gender equality and respecting uniqueness.

The Press Code of BiH stipulates for the separation of advertising and sponsored content from media content. As per the Press Code of BiH, covert advertising and presenting sponsored texts as original journalistic pieces is considered unethical.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Yes, an interested party may file an appeal against the media subject with the Press Council of BiH if the Press Code of BiH has been breached. However, the Press Council of BiH can only ask the media subject to make text corrections and denials; it cannot impose sanctions or fines. Consequently, in practice, the Press Council of BiH has very limited authority over advertising practices in BiH.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Since the Press Council of BiH cannot impose any sanctions on the media subjects, the effectiveness of the system is limited.

2.5 Are the self-regulatory system's decisions reported?

The Press Council of BiH publishes an Annual Case Outline which contains a report on the decisions adopted upon the claims submitted to the Press Council of BiH. The Annual Case Outline is published on the official website of the Press Council of BiH. However, the Press Council of BiH does not publicly disclose its decisions.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

- The self-regulatory system that pertains to advertising mostly targets media subjects rather than the advertisers for goods or services.
- The principle of distinction between media content and advertising and product placement is one that companies should be aware of.

2.7 Are there any other self-regulatory systems that govern advertising practices in Bosnia and Herzegovina?

No, the Press Council of BiH is the only self-regulatory authority that governs advertising practices in the BiH.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Bosnia and Herzegovina (eg, consumer protection laws; IP laws; unfair competition laws)?

See question 1.3 above.

3.2 Is substantiation required for advertising claims?

- (a) Generally, substantiation is not specifically required for making advertising claims. However, the main principle of the Consumer Protection Law of BiH provides that consumers have a right to receive information that is clear and accurate. Furthermore, advertising that misleads or may mislead consumers is prohibited in BiH..
- (b) For comparable advertising claims, and advertising claims made in regulated industries, substantiation is especially important. The justification for some items in the regulated industry corresponds to their market authorization, which grants them permission to be sold in BiH.
- (c) Special rules apply to medical products and food/supplements products. For instance, in line with the Medicinal Products and Medical Devices Law of BiH and its by-laws that provide that advertisement of medical products must be in accordance with the approved instructions and summary of the main characteristics of the medical product, same applies to advertisement of medical devices that also must be in accordance with the approved instructions, furthermore, it is prohibited to advertise pharmaceutical products and medical devices that are available on medical prescription only.
- (d) For food and supplements, and in accordance with the food acts, information about food/supplements must not be misleading about its: characteristics; effects or properties; must not hint at special characteristics when in fact all similar foods have such characteristics.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Principles applicable to advertising in general stipulate that advertising must be truthful, fair and not misleading. The laws on prohibited advertising of FBiH and of RS both expressly prohibit the presentation of products or services that mislead or may mislead the persons to whom it is directed.

The laws and regulations in BiH do not prohibit general statements and personal opinions, which is generally considered as 'puffery'. However, advertising by falsely claiming that certain products or services have certain characteristics with intention to mislead the customer might be recognized as misleading and therefore prohibited. Therefore, 'puffery' might not always necessitate substantiation and should always be assessed on a case-by-case basis.

3.4 What are the rules governing the use of disclosures in advertising?

Only advertisements for medicinal products and medical devices are required to include mandatory disclosure. Those advertisements must include the warning: 'Before use, carefully read the instructions. For information on indications, precautions and side effects of the drug and medical device, consult a doctor or pharmacist.'

The applicable regulations do not envisage use of disclosure in advertising for other products. The general principle of advertising requires truthfulness, clarity, and lawfulness. In BiH, the laws on prohibited advertising of FBiH and of RS both provide guidelines and rules for ensuring transparency, accuracy and fairness in advertising practices.

The definition of 'unlawful advertising' in BiH is broad, so not having appropriate disclosure may be considered unlawful, but this would have to be considered on a case-by-case basis. The general principle of disclosure in advertising aims to ensure that advertisements are transparent and do not mislead consumers.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The legal framework pertaining to advertising in BiH does not set out any rules or regulations that are specifically related to endorsements and testimonials. However, product and service advertising must not contain any statement or visible representation that would directly or indirectly mislead customers through omission, ambiguity, or exaggeration, as stated in the Law on Consumer Protection of BiH. According to this Law, general principles include truthfulness and accuracy, disclosure, and material connections, claim verification, clear identification, and protection of vulnerable audiences.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstration in advertising is not specifically regulated in BiH.

General principles of advertising are applicable to product demonstrations as well. Product demonstration advertising must not directly or indirectly mislead customers through omission, ambiguity, or exaggeration, as stated in the Law on Consumer Protection of BiH.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

The Consumer Protection Law of BiH provides that ‘comparative advertising’ is any advertising that explicitly or implicitly identifies a market competitor, or goods or services offered by the market competitor.

Generally, comparative advertising in BiH is allowed in the interest of public and healthy competition, provided that it conforms with the principle of fair competition. The Consumer Protection Law of the BiH goes into detail, and stipulates that comparative advertising is allowed if it:

- compares goods and services that meet the same needs, or are intended for the same purpose;
- compares one or more material, relevant, confirmed, and representative characteristics of goods and services;
- does not create confusion on the market between promoters and market competitors;
- does not discredit or degrade trademarks, trade names, or other recognizable marks, goods, or services of market competitors;
- does not abuse the reputation of a trademark, trade name, or other recognizable marks of a market competitor’s or the indicated origin of the competitor’s products; and
- does not represent goods or services as imitations or replicas of goods and services bearing trademarks or trade names.

Argumentum a contrario, everything that is not allowed under these rules will be unlawful comparative advertising, for which advertisers may be fined/liable for damages in general.

Other laws and regulations also contain definitions of comparative advertising (similar to the one given above) and additional provisions on that type of advertising. For example, the laws on prohibited advertising specify when comparative advertising is unlawful, as opposed to the Consumer Protection Law of BiH, which states when it is allowed; but the essence of the rules is the same.

Comparative advertising may also be considered as a misleading commercial practice, from a consumer law aspect.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether the use of a competitor’s trademark or products may be used)?

- (a) It is the right of a trademark owner to forbid the use of their trademark in an advertisement and claim redress in case of an unlawful use of their trademark. The trademark owner can grant third parties the right to use protected trademark by way of license agreement.
- (b) Comparative advertising is lawful, from the trademark perspective, if it does not discredit or degrade trademarks, trade names, or other recognizable marks, goods, or services of market competitors. Furthermore, comparative advertising must not abuse the reputation of a trademark, trade name, or other recognizable marks of a market competitors, nor it can be used to represent goods or services as imitations or replicas of goods and services bearing trademarks or trade names.

- (c) The Trademark Act of the BiH stipulates for the guarantee trademark, which is closely related to comparative advertising. The purpose of the guarantee trademark is to grant the right of use to those legal or natural persons whose goods or services meet certain quality, geographical origin, or other common characteristics. The holder of the guarantee trademark must allow any legal or natural person who meets the aforementioned criteria to use the guarantee trademark.

3.9 Are there any special rules that govern claims relating to geographic origin (for example, that the product is ‘made in France’)?

Yes, the Law on the Protection of Indications of Geographical Origin of BiH regulates the acquisition, maintenance, termination and legal protection of indications of geographical origin that applies to natural and legal persons. The competent institution for registering indications of geographical origin is the national Intellectual Property Office.

Once granted, the protection of geographical indications involves preventing unauthorized parties from using the protected indications of geographical origin for products that do not meet specified criteria or do not originate from designated geographical area.

3.10 Are there any special rules governing product packaging?

- (a) Various pieces of legislation set out the guidelines and principles of product packaging and labeling in BiH, including:
- the Consumer Protection Law of BiH, which contains provisions for accurate product labeling, safety standards, and information disclosure on packaging to ensure consumer safety and informed decision making;
 - the Law on Product Safety of BiH, which focuses on the safety requirements for various types of products, including those related to food, pharmaceuticals, cosmetics, and other consumer goods. It includes guidelines on how products should be labeled and packaged to ensure safety; and
 - Bylaws on product labeling, which outline the detailed requirements for product labeling, including what information should be included, language requirements, and standards for clarity and readability.

Information provided on product packaging must be truthful and not misleading. This relates to claims about the product’s features, benefits, or environmental impact.

- (b) Packaging of certain products, particularly food, pharmaceuticals, cosmetics, and potentially dangerous commodities, are required to comply with safety and health requirements stipulated by sector laws. Such items’ packaging must provide information on safe usage, potential risks, and proper handling.
- (c) The Food Act of BiH stipulates that the packaging of food products containing ingredients classified as genetically modified organisms must contain the label indicating that the product contains GMOs.
- (d) The Law on the Control and Restricted Use of Tobacco, Tobacco Products and other Smoking Products of FBiH stipulates strict rules regarding the shape, dimensions and design of tobacco products’ packaging. Packaging of tobacco products must contain health warnings

indicating the harmfulness of the use of tobacco products in the official languages of BiH. The labeling of individual packages must not suggest that a particular tobacco product is less harmful than others, or indicate the taste, scent, any aroma or other additives or their absence, or resemble a food or cosmetic product. The use of terms such as 'light', 'slim', 'extra', 'ultra' etc on the packaging of tobacco products is strictly prohibited.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

The legal framework does not contain a list of advertisers' activities that are considered 'dark practices'. However, there are general principles and regulations pertaining to deceptive, unethical or manipulative tactics that advertisers may use to influence consumers:

(a) The Consumer Protection Law of BiH defines 'deceptive advertising' as:

'advertising messages and actions that:

- (1) deceive or may deceive consumers and therefore affect their economic behavior, or
- (2) harm or may harm other participants in the market,

which includes using small letters, numbers, pictures and signs to deceive the consumer on important elements of the offer/placement, especially regarding the price of a product or a service'.

The law further stipulates that deceptive advertising exploits or may exploit inexperience, ignorance or divert the attention of consumers from important elements of the offer/placement, for profit making purposes. Advertising messages and actions that contain ambiguities, untruths, exaggerations or other similar elements that deceive or may deceive consumers are also included in the definition.

(b) The Law on Prohibited Advertising of FBiH defines 'misleading advertising' as advertising that, in any way, including its presentation, misleads or may mislead the persons to whom it is directed or to whom it reaches, and therefore may affect their economic behavior, ie advertising that for the reasons stated harms or may harm other market participants. The Law on Prohibited Advertising of RS contains an almost identical definition.

Both definitions (deceiving and misleading advertising) are very broad and general. Therefore, in theory, a simple potential to mislead consumers and affect their economic behavior may be enough to constitute a breach of the laws.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Even though the use of artificial intelligence has the potential to become widely used in advertising practice, there are no special rules or regulations that apply exclusively to it.

However, the (general) advertising rules found in various laws and regulations, including those covering specific sectors and practices connected to advertising, also apply to the use of artificial intelligence in advertising. The use of the artificial intelligence in advertising must also comply with the principles and standards of data protection set forth in the Law on Data Protection of BiH.

4 PRICE ADVERTISING

4.1 What are Bosnia and Herzegovina's rules regarding price advertising?

The laws on prohibited advertising regulate the price and the method of price formation as well as the conditions under which goods are sold or services provided. The Consumer Protection Law of BiH mandates that the purchase price of the product or service must be visibly displayed. The Law further defines the 'purchase price' as the final price of the product or service that includes all taxes, contributions and fees.

Any deals or discounts should be accurately described to avoid deceiving customers. To avoid misleading clients, limited offers or discount pricing should clearly mention their duration or validity period.

4.2 What are Bosnia and Herzegovina's rules regarding advertising 'free' products?

While there are no regulations in BiH that specifically regulate advertising of 'free' products, provisions of the Consumer Protection Law of BiH and the Laws on Prohibited Advertising of FBiH and RS that both regulate misleading practices and sales and special offers can be applied to 'free' products (please see question 4.3 below).

4.3 What are Bosnia and Herzegovina's rules regarding sales and special offers?

The trader/seller is required to:

- announce the promotion/discount activities in the usual manner;
- clearly mark the product with a price before and after the discount;
- in cases where a range of discounts is published, have at least 1/5 of all discounted products at the greatest discount (eg, if trader/seller publishes that its products are discounted between 10–40%, at least 1/5 of all discounted products would need to be discounted for 40%);
- clearly state the deadline usage of the product if discounting the product due to its soon expiration date.

4.4 What are Bosnia and Herzegovina's rules regarding rebates?

Rules regarding rebates are regulated in the same way as those that regulate sales and special offers (please see question 4.3 above).

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

According to local legislation, 'prize draw' promotions are generally permitted. However, specific payments to enter a draw are not permitted because this would be considered gambling. If prize draws are not linked to the purchase of a product or service, a specific registration procedure must be conducted. In FBiH, the registration procedure is operated by the Ministry of Finance of FBiH; in RS by the Ministry of Finance of RS—Special Games of Chance Department; and in BD by the Tax Authority of BD.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) According to the Medicinal Products and Medical Devices Law of BiH and its bylaws, it is prohibited to advertise pharmaceutical products and medical devices that are available on medical prescription only. However, promoting dietary supplements is generally permitted under the BiH Regulation on Food for Special Dietary Needs and basic advertising principles. Products of this kind must be clearly identified as supplements and must not be associated with the prevention, treatment, or cure of human diseases, nor should the advertisement suggest such possibilities.
- (b) Weapons, ammunition, and similar products cannot be advertised (generally).
- (c) It is expressly forbidden to advertise chance-based games in any form of media radio/television or press content for children and minors.
- (d) In both FBiH and RS, it is prohibited to advertise tobacco and other smoking products directly or indirectly. This prohibition includes online advertisements, as well as the organization of sponsor or promotional events and activities with the goal of direct or indirect promotion of tobacco and other smoking products.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are specific restrictions regarding direct marketing practices and advertising to children. Furthermore, there are specific types of products or regulated professions that must comply with specific rules, or which cannot be advertised (see question 1.4 above).

However, there are no particular types of advertising that are specifically prohibited in Bosnia and Herzegovina.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

If advertisements feature explicitly graphic content or explicit language, or if the content is considered immoral or contrary to human dignity, they may only be displayed between 11.59 pm and 6.00 am. Additionally, the Criminal Act in the FBiH and RS both address the exposure of children (persons under 14) to pornography. Any individual who sells, shows, publicly displays, or otherwise makes pornographic content available to a child may face criminal liability and sanctions under the law.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The Press Code explicitly states that advertising must be separated from media content. As per the Press Code of BiH, covert advertising and presenting sponsored texts as original journalistic pieces is considered unethical. Promotional content should be explicitly labeled as advertising, and the sponsor of the advertisement should be identified.

7 **BRANDED CONTENT**

7.1 **Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?**

There are no special rules that apply to integration of advertising content and entertainment/editorial content.

7.2 **Are there any special disclosure or other obligations when integrating advertising content with other content?**

There are no special rules that apply to integration of advertising content and entertainment/editorial content.

The local legislation stipulates the general principle that consumers have the right to receive true and accurate information about advertised products or services. The definition of 'unlawful advertising' in local regulatory framework is general and broad, so not having appropriate disclosure may be considered unlawful, but it would have to be considered on a case-by-case basis. Furthermore, the Consumer Protection Law of RS explicitly stipulates the need to disclose the advertising content as 'paid promotion' or similar, otherwise it is considered as a breach of commercial practices rules.

8 **SOCIAL MEDIA**

8.1 **Are there any special rules governing the use of social media for advertising purposes?**

BiH laws and regulations do not differentiate social media advertising from other types of advertising. Therefore, the (general) advertising rules found in various laws and regulations, including those covering specific sectors and practices (eg, unfair commercial practices) related to advertising, also apply to social media advertising.

8.2 **Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?**

The liability of the advertisers for third-party content on their social media channels is generally limited, in line with the Electronic Legal and Commercial Transactions Law of the BiH, which is partly harmonized with the EU E-commerce Directive. However, this does not necessarily exclude advertisers from injunction and/or deletion claims issued by the competent courts/authorities.

Also, if the advertiser was notified about the illicit content and did not remove it, the advertiser could become culpable (jointly with the main infringer) for the illicit post. In that case, a damage claim might be possible.

8.3 **Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?**

There is lack of publicly disclosed practices and court or self-regulatory decisions that deal with the use of social media advertisements.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Data Protection Law of BiH defines 'personal data' as any information relating to an individual through which the identity of that person can be determined. This definition is broad and includes an individual's name, picture, likeness, and voice. There must be consent for use of an individual's personal data in advertising.

The Data Protection Law of the BiH stipulates a general opt-out regime for direct marketing (including if connected with targeted/interest-based advertising). The law does not differentiate between different forms of marketing and stipulates that data subjects have the right to:

- oppose the data controller's further use or transfer of their personal data for the purpose of direct marketing, and
- be notified before their personal data is transferred for the first time to a third party for direct marketing purposes.

For breaching the above rules, the advertiser may be fined up to €25,000.

As targeted/interest-based advertising is now mostly connected with 'cookies' (ie, tracking technologies), it is worth pointing out that tracking technologies have not yet been regulated in BiH, but the general data protection principles from the Data Protection Law of the BiH also apply to them. In practice, this means that potential subjects of tracking technologies must give consent for their use and must be informed on all aspects of processing of their personal data in connection with the technologies.

9.2 Are there situations when permission is not required?

Permission to use an individual's personal data is not required solely where the data is for the purposes of statistical, educational, scientific, or artistic use.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Yes, in order to use historical places in advertising, an advertiser must be granted specific permission for that designated location. Permissions are issued by the competent local self-government units.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The use of other companies' recognizable products in advertising, such as featuring an actor wearing branded training shoes, is a legal matter that is generally subject to intellectual property laws.

According to the Trademark Law of the BiH, if the products are protected by trademarks, they must be used with permission, otherwise, using them without permission may cause confusion with respect to the brand and may infringe the trademark rights. It is essential to respect the trademark owner's exclusive rights to control the use of their brand.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Bosnia and Herzegovina which affect advertising (eg Swedish gender equality law)?

The Law on Prohibition of Discrimination of BiH designs a framework for implementation of equal rights and opportunities to all persons in BiH and defines a system of protection from discrimination.

The law defines ‘discrimination’ as any different treatment including any exclusion, limitation or preference based on real or perceived grounds towards any person or group of persons, their relatives, or persons otherwise associated with them, on the grounds of their race, skin color, language, religion, ethnic affiliation, disability, age, national or social background, connection to a national minority, political or other persuasion, property, membership in trade union or any other association, education, social status and sex, sexual orientation, gender identity, sexual characteristics, as well as any other circumstance serving the purpose of or resulting in prevention or restriction of any individual from enjoyment or realization, on equal footing, of rights and freedoms in all areas of life.

The prohibition applies to all public bodies, all natural and legal persons in public and private sector, in all spheres, and directly and indirectly affects advertising and marketing.

Furthermore, in BiH, it is prohibited to publish content that incites or promotes hate speech or inter-ethnic and inter-religious conflicts.

11.2 Are there any other cultural norms that should be considered (eg religious concerns)?

Inclusion, diversity and equity take a special place in BiH legislation due to its specific organization, history and general political climate.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Bosnia and Herzegovina?

Advertisers should be aware that advertising in BiH is regulated on both the state level; and on the level of the two entities, FBiH and RS, and Brčko District. Advertising in BiH is regulated by a wide spectrum of laws and regulations, which provide rules and principles applicable to advertising.

The fundamental principle of advertising in BiH of which advertisers should be aware is that advertising must be truthful, fair and not misleading. Therefore, advertisements should be transparent, factually correct, and fair, enabling the customers to receive accurate information. Advertisers can be held liable for misleading claims but cannot be liable for personal or general statements.

Furthermore, in order to successfully navigate the advertising landscape in BiH, advertisers should pay attention to cultural sensitivity, and adapt advertisements to regional nuances.

 BRAZIL 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Brazil?

The first regulations on advertising in Brazil were enacted in the 1960's—Law No 4.680 of June 1965 and Decree No 57.690 of February 1966—which regulated the advertising profession. Shortly after, in 1968, the military regime, which took over the government of Brazil in 1964 by means of a 'coup d'etat', enacted the Institutional Act No 5, which granted unlimited powers to the dictatorship. Under such regime, all communication vehicles were under intense censorship, including advertising activity.

When the Institutional Act No 5 was revoked in 1978, the 3rd Brazilian Advertising Congress was held, with the participation of national advertising agencies, advertisers and the mass media. The result was the unanimous approval and enactment of the Brazilian Advertising Self-Regulation Code ('Self-Regulation Code'), which, to date, regulates advertising in addition to other general federal laws enacted thereafter.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

According to the Self-Regulation Code, any activity designed to stimulate consumption of products and services and promote institutions, concepts or ideas shall be considered advertising and subject to the rules under the Self-Regulation Code. Thus, any vehicle of communication, promoting products or services, including social networks, are required to observe the requirements applicable to the advertising activity.

1.3 What is the basic regulatory framework for advertising regulation?

In addition to the Self-Regulation Code, sparse laws and regulations form the regulatory framework on advertising.

The Consumer Defense Code includes primary consumer rights as well as principles and rules to be observed when advertising in Brazil.

The National Cinema Agency is the regulatory authority with jurisdiction in relation to the Brazilian audio-visual advertising market. Its Normative Instruction 95/2011 specifically regulates broadcasting of audio-visual advertisements.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

There is no law in Brazil specifically regulating mobile phone marketing at federal level. However, Brazil is a federative republic and there are some States in Brazil that have their own legislation providing for tools for consumers to block their telephone numbers from receiving telemarketing calls or text messages. In these cases, calls cannot be made to the blocked registered numbers as a general rule, unless express authorization is given. A penalty is payable otherwise. The applicable block registration is usually made by consumers in the webpage of the Consumer Protection Office ('PROCON') of the State where the consumer is domiciled. There are 27 State PROCONs, in addition to the PROCONs of the municipalities that may reach a number higher than 5,500. A few of the applicable State laws in this regard, among others, are the following:

- (a) Rio de Janeiro State Law No 7853/2018 (regulates time period for receiving telemarketing calls, among other things);
- (b) Minas Gerais State Law No 19,095/2010 (regulates active direct marketing and creates public consumer list);
- (c) São Paulo State Law No 13,226/2008 (regulates consumers' registry to cease receiving telemarketing calls);
- (d) Santa Catarina State Law No 15,329/2010 (regulates the registry for the receipt of telemarketing calls, among other things);
- (e) Mato Grosso do Sul State Law No 7,396/2009 (creates the block registry for the receipt of telemarketing calls, among other things); and
- (f) Porto Alegre Municipal Law No 9,053/02 (regulates telephone services users' rights regarding the receipt of offers to acquire products and services through telephone calls).

The General Regulation of Consumer Rights of Telecommunications Services ('RGC') from the National Telecommunications Agency ('ANATEL') provides that telecom consumers have the right 'not to receive advertising messages on their mobile station (devices) except with their free and express prior consent'.

Finally, there is the Code of Self-Regulation for the Practice of Email Marketing ('CAPEM'), which, although not legally binding, is generally observed by companies to guarantee good market practices in the absence of an official regulation on the subject.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes, many sectors of the industry are subject to comprehensive regulation in relation to advertising of its products and services. A few applicable laws and regulations have already been mentioned in question 1.3 above.

Medicines: The Brazilian National Sanitary Surveillance Agency ('ANVISA') issued Resolution No 96/2008, which regulates advertising of legal drugs, and the Brazilian Federal Council of Medicine ('CFM') issued Resolution No 2,336/2023, establishing several new rules for medical advertising, including rules for advertising on social media and the use of images related to aesthetic procedures.

Moreover, the Self-Regulation Code specifically regulates the advertising of many products and services, eg:

- (a) **Alcohol**
 - (i) Advertising of alcohol on radio and television is only allowed between 9.30 pm and 6.00 am;
 - (ii) Advertising cannot associate the product with: Olympic and competition sports, the healthy performance of any activity, driving or any image of success or sexuality; and
 - (iii) Labeling of alcoholic beverages must contain a warning clause; eg, 'Drink with moderation' or 'Avoid excessive alcohol consumption'.
- (b) **Firearms, Weapons and Ammunition**
 - (i) The advertisement for such products must make clear that the acquisition of the product depends on registration granted by the competent authority.

- (ii) The advertisement should not include dramatic situations or news that make consumers believe that the product is their only defense.
- (iii) The advertisement should not cause fear to the public, not make the possessor of a firearm in a situation of superiority, nor display children or minors.

The Self-Regulation Code also includes specific rules on the advertising of a raft of other products and services, including:

- education, courses and teachings;
- employment and opportunities;
- real property: sale and lease;
- investments, loans and securities market;
- stores and retail sales;
- medical and hospital services;
- food, soft drinks, juices;
- pharmaceutical products;
- tobacco products;
- smoking inhibitors;
- independent workers;
- mail orders and direct mailing;
- tourism, trips, tours, hotels;
- automotive vehicles;
- testimonials, certifications, endorsements; and
- crop protection products.

1.6 Are any government pre-approvals required?

No.

1.7 Does the media pre-clear advertising?

Yes. Advertisements in Brazil should, ideally, but not as a requirement, be broadcasted or reach consumers only after a specialist lawyer has assessed and cleared the content of each advertisement. In this respect, a comprehensive framework of laws and regulations are applicable to the content of advertisements, and pre-clearing may avoid suspension of the campaign, fines, as well as damage to the advertiser's reputation in Brazil; especially since Brazilian moral values do not always follow what is acceptable in other countries.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Government bodies or authorities have two options: either to request the filing of a procedure before the Brazilian Advertising Self-Regulation Council ('CONAR') or to file a lawsuit to request an injunction to suspend the advertising and/or fines in relation to the campaigns that violate the Self-Regulation Code or Brazilian laws and regulations. The preferred option is usually to request the filing of the procedure before CONAR.

In the judicial sphere, both individual and collective actions are available. These can be brought by:

- (a) the Public Attorney's Office;
- (b) the Public Defendants;
- (c) the States (including the Federal, States and Municipal Governments);
- (d) certain entities of the public administration; and
- (e) associations and NGOs (eg, for consumer protection).

In view of the current legal framework, any judicial action would be based on the provisions of the Consumer Defense Code and the Brazilian Civil Code.

It is important to note that Public Attorney's Office, Public Defendants and Associations/NGOs are very active institutions and usually do not hesitate in filing class actions on behalf of consumers. Sometimes, the filing of class actions happens even when the regulation of the subject is not clear, in an effort to generate new regulation. The object of civil and class actions may vary enormously, from misleading advertisements, lack of duty to inform, service defect and service vice, among others. The most common requests are for compensation for material and moral damages (usually reimbursement of amounts paid or double such reimbursement, when an amount is wrongly charged).

1.9 When does a competitor have a right of action? What are the potential remedies?

As any person or legal entity associated with CONAR may submit a complaint to CONAR when advertising laws and regulations are deemed to be violated, competing companies may also choose this option to disrupt their opponents' advertising; and many complaints ruled on by CONAR were filed by competitors.

On the other hand, competitors may only file lawsuits in Brazil if they are able to substantiate their interest in the subject matter of the lawsuit. Therefore, in order to file lawsuits against competitors due to advertising campaigns, the plaintiff is required to demonstrate actual damage arising from the campaign in question, eg, based on intellectual property infringement, unfair competition and so on. Such lawsuits may also include injunction requests so that the advertiser is required to suspend or modify the campaign before a final decision is rendered. In this case, the court will analyze whether the plaintiff's claims are likely to have good grounds and whether a delay in suspending the campaign would cause additional damages to the plaintiff, in order to decide whether or not to grant the injunction request.

1.10 When do consumers have a right of action? What are the potential remedies?

Any consumer may also submit complaints to CONAR when advertising laws and regulations are deemed violated, in order to seek the modification or suspension of an advertising campaign. In fact, CONAR encourages consumers to do so in its 'frequently asked questions' page.

In order to file lawsuits against advertisers, consumers also have to substantiate their interest in the subject matter of the lawsuit. Therefore, a consumer is required to demonstrate actual damage suffered by them arising from the campaign in question, which would be possible in only a few situations. One such situation would be in the case of advertisements that fail to promote positive relationships between parents and their children, where the ad is actually watched by the child. The parent would be able to file a lawsuit seeking compensation for the damage caused by the campaign. However, such lawsuits against advertisers are not very common in Brazil.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Brazil have a primary advertising self-regulation system?

The Self-Regulation Code was established in 1978, and, in 1980, CONAR was founded as a non-governmental organization, formed primarily of advertising agencies whose mission comprehended the enforcement of the Self-Regulation Code and assurance of a fast and objective solution for disputes involving the advertising industry.

Although designed primarily as an instrument of self-discipline of the advertising activity, the Self-Regulation Code was also destined for the authorities and courts as a reference document and subsidiary legislation in the context of advertising and other laws, decrees, ordinances, rules or instructions that directly or indirectly are affected by the announcement.

In this sense, the Self-Regulation Code establishes rules for the advertising industry. Violation of its rules may lead to the advertiser being given a warning, or the staying or modification of the advertising campaign. If the advertiser does not, eg, obey the rules and stay the advertising, CONAR may divulge its decision in the media.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The Self-Regulation Code basic key principles follow the same basic principles found in the Brazilian Consumer Defense Code, such as:

- respect for human dignity;
- enhancement of life quality;
- transparency;
- good faith;
- freedom of choice;
- adequate and clear information as to the different products and services;
- the correct specification of quantity, characteristics, composition; and
- protection against abusive and misleading advertising.

These key principles are also found in the following general rules of the Self-Regulation Code:

- (a) Advertising campaigns should be developed and produced by professionals based in Brazil, unless the impossibility of this is duly justified and also that a Brazilian agency intermediates the advertising in Brazil;
- (b) Advertising must seek to contribute to 'a positive development of the relation between parents and their children, students and teachers, and of other social relationships;
- (c) No advertisement should encourage or stimulate any type of offense or racial, social, political, religious or national discrimination;
- (d) Advertisements must contain nothing that may induce to criminal or illegal activities—or that may encourage, stimulate or incite such activities; and
- (e) No advertisement may contain statements or visual or audio presentations that may offend the decency standards of the audience it intends to reach.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Any person or legal entity may submit a complaint to CONAR regarding national advertising, regardless of whether it is addressed to consumers, professionals or to business entities. Once the complaint is made, the Board of Ethics will meet and judge it, ensuring full rights of defense to the accused. If the complaint has merits, CONAR can recommend suspension of the advertising or suggest corrections.

In Brazil, self-regulation does not replace government and legislative regulation, therefore, CONAR only implements administrative penalties:

- warning,
- recommendation for an amendment or correction of advertising,
- suspension of the advertising, etc.

It is worth noting, however, that decisions of CONAR are typically reaffirmed in Brazilian courts.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Although the Self-Regulation Code is not enshrined in federal law, CONAR's decisions, based on the Self-Regulation Code, are always followed by agencies, advertisers, communication vehicles and any parties involved in advertising practice in the Brazilian territory. On the few occasions when CONAR's rulings have been challenged in a court of law, CONAR's decisions have prevailed. Thus, the Self-Regulation Code is also used as a reference document and considered subsidiary legislation by Brazilian courts.

2.5 Are the self-regulatory system's decisions reported?

Yes. CONAR sends notifications regarding its decisions to both the advertiser and the party that submitted the complaint. If CONAR is acting *ex officio*, notification will be sent only to the advertiser in the event that the advertising campaign needs to be suspended or modified. Self-Regulation Council decisions are also published in its official magazine and website, which are available to the public for research and consulting.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The Self-Regulation Code prohibits advertising which devalues positive social values such as, eg, friendship, generosity, and respect for people. For example, CONAR has suspended a campaign from an audiovisual content streaming platform due to complaints from consumers, who claimed that the advertisement could encourage people to steal their neighbors' internet to binge watch the series; in other words, encourage illegal practice.

As previously mentioned, Brazilian social values sometimes differ from what is acceptable in other countries which is one reason why local assessment by a specialist lawyer is strongly advisable prior to launching campaigns in Brazil.

2.7 Are there any other self-regulatory systems that govern advertising practices in Brazil?

- (a) The Standard Rules for the Advertising Activity ('Standard Rules'), edited by the Executive Council of Standard Rules ('CENP') (an entity created by advertising agencies, announcers and communication vehicles), mainly regulates the business relationship between the parties that created CENP. According to the Standard Rules, the relationship between

agencies, advertisers and media is, simultaneously, of a professional, business, and competitive nature, aiming at technical excellence and cost reduction between themselves by means of the Standard Rules' principles, ethics and recommended practices. Media outlets are required to publish commission rates and discounts that are due to advertising agencies. Such published discounts may only be granted to parties that qualify as advertising agencies pursuant to the definition in the Standard Rules.

- (b) Regarding email marketing practices, it is worth mentioning the Code of Self-Regulation for the Practice of Email Marketing ('CAPEM'), which, although not legally binding, is generally observed by companies to guarantee good market practices in the absence of an official regulation on the subject. As a rule, CAPEM requires the sender of an email marketing message to obtain prior permission from the recipient before initiating the activity (opt-in). However, the code allows the use of soft opt-in, which is a way to send an email marketing message without obtaining prior consent, whenever there is a prior verifiable business or social relationship between the sender and the recipient of the message. In any case, a facilitated opt-out mechanism will be mandatory, except in cases where there is a contract between the sender and the recipient, exclusively for emails with the purpose of ensuring contractual and post-contractual performance relating to that contract (eg, bank payment slips, notices and statements).

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Brazil (eg, consumer protection laws; IP laws; unfair competition laws)?

Apart from the Self-Regulation Code and the Consumer Defense Code (for which see questions 1 and 2), advertising is also subject to restrictions arising from the following federal laws:

- (a) Industrial Property Law (Law No 9,279/96): In order to avoid infringement of third parties' intellectual property and possible suspension of the advertising campaign by intellectual property owners, patent and trademark searches should be conducted in the Brazilian Patent and Trademark Office data bases in relation to all patents and trademarks included in the advertising campaign that are not registered in Brazil. Additionally, making use of false statements, fraudulent means or third parties' advertising phrases is also considered unfair competition.
- (b) Copyright Law (Law No 9,610/98): An important aspect of the Brazilian Copyright Law is that assignments, or licenses, of copyrights shall be interpreted restrictively. Therefore, all copyrighted material included in advertising campaigns, registered or not, are required to have been specifically licensed by the copyright owners with clear and complete information in relation to the authorized uses, term, conditions, etc.
- (c) Brazilian Civil Code (Law No 10,406/02): The Brazilian Civil Code determines that the privacy, private life, honor and image of persons are inviolable. Therefore, previous authorization of the individuals appearing in advertisements is necessary.
- (d) Brazilian General Data Protection Law (Law No 13,709/2018): The General Data Protection Law is the regulatory framework for personal data protection in Brazil, and regulates processing activities involving personal data, whether through digital means or otherwise, within and outside of the internet. Additional aspects regulated by this Law include:

- (i) the rights of Data Subjects,
- (ii) the legal grounds for processing personal data,
- (iii) the responsibilities of the Data Protection Officer,
- (iv) the parameters for data security,
- (v) the requirements for the international transfer of data, and
- (vi) instructions regarding the actions of the National Data Protection Authority.

3.2 Is substantiation required for advertising claims?

As a general rule, the Self-Regulation Code states that advertisers are subject to substantiation whenever so requested regarding descriptions, assertions and comparisons relating to facts and objective data.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Pursuant to the Self-Regulation Code, advertisers are required to substantiate, whenever so requested, any descriptions, assertions and comparisons relating to facts and objective data. The substantiation rule does not apply to subjective statements such as puffery.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific rules on the use of disclosures, other than general restrictions on ‘misleading advertising’. Under the Consumer Defense Code, the offer and presentation of products or services must ensure correct, clear, accurate and conspicuous information in Portuguese on their characteristics, qualities, quantity, composition, price, guarantee, expiry dates and origin, among other data, and on the risks they may pose to consumers’ health and safety.

In our understanding, the Self-Regulation Code and the Consumer Defense Code prohibit the misleading of consumers by means of including important information in disclosures that cannot be fully understood by consumers.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Testimonials and endorsements are required to be personalized, genuine and arising from the past or present experience of the witness. Therefore, the advertiser must have the means to substantiate the testimonials and endorsements. In cases where models/actors are used in the advertisement, their statements must be included in such a manner to avoid the audience understanding that such statements consist of testimonials.

With respect to the use of look-alikes in advertisements, advertisers are required to obtain authorization from the person being depicted or imitated. In addition, misleading consumers is prohibited when uniforms and clothes pertinent to a profession are used.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules concerning product demonstrations, other than general restrictions on ‘misleading advertising’. In addition to the comments on misleading advertising provided in question 3.4 above, it should be noted that ‘misleading advertising’ is any form of advertising or communication that is misleading because it is entirely or partially false, or when, in any other way, including by omission, it is capable of inducing an error in the mind of the consumer with respect to

the nature, characteristics, quality, quantity, properties, origin, price or any other data regarding the products and services. In short, a misleading advertisement is one that leads the consumer to buy a product/service that, if the consumer had been better informed, they would not have purchased. Advertising can also be misleading by omission when it fails to provide information on essential data regarding a product or service. However, 'essential data' is an open concept to be defined on a case-by-case basis.

3.7 **Is comparative advertising permitted? If so, are there any special rules that apply?**

Comparative advertising is permitted, but many restrictions apply. In general terms, the comparison must:

- (a) be capable of substantiation;
- (b) always have the purpose of the protection or clarification of consumers;
- (c) not include subjective, psychological or emotionally based data;
- (d) be made with products manufactured in the same year (unless, in the event, the comparison refers to the evolution of the products);
- (e) not include confusion of products and competitors' brands; and
- (f) avoid acts of unfair competition.

3.8 **Are there any special copyright or trade mark rules that may impact comparative advertising (eg, whether a competitor's trade mark or products may be used)?**

The Self-Regulation Code states that comparative advertising is subject to the provisions of the Industrial Property Law. Therefore, in order to include competitors' trademarks or commercial names in advertising campaigns, authorization from the owner of such trademarks and commercial names is required, which, in practical terms, impedes specifically identifying competitors in comparative advertisings. Some advertisers have taken aggressive measures and have compared their products with those of competitors by using their marks, and courts have decided in different ways, depending on the situation.

3.9 **Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?**

Geographic origin claims are regulated by the Brazilian Industrial Property Law, which differentiates indication of source from denotation of origin:

- (a) Indication of source is the geographical name of a country, city, region or locality in its territory, which has become known as a center of extraction, production or manufacture of a given product or of provision of a given service.
- (b) Denotation of origin is the geographical name of a country, city, region or locality in its territory, that designates a product or service whose qualities or characteristics are due exclusively or essentially to the geographical environment, including natural and human factors.

Protection is extended to the graphic or figurative representation of a geographical indication, as well as the geographical representation of a country, city, region or locality in its territory whose name is a geographical indication. However, once a geographical name has fallen into common use as designating a product or service, it is no longer considered a geographical indication. As long as it is

not inducing a false belief as to its origin, a geographical name that does not constitute an indication of source or denomination of origin may serve as a characteristic element of a product or service mark.

The use of a geographical indication is restricted to those producers and service providers who are established in that locality, and, for denotations of origin, it is also necessary that quality requirements are satisfied. The Brazilian Patent and Trademark Office establishes the conditions for registration of geographical indications.

The Industrial Property Law determines penalties for crimes against geographical indications. The penalty for manufacturing, importing, exporting, selling, displaying or offering for sale, or having in stock a product that bears a false geographical indication, is 1–3 months' imprisonment or a fine.

3.10 Are there any special rules governing product packaging?

The general rule for information that must be printed on product packaging is that in the Consumer Defense Code: the offer and presentation of products or services must ensure correct, clear, accurate and conspicuous information in Portuguese on their characteristics, qualities, quantity, composition, price, guarantee, expiry dates and origin, among other data, and on the risks they may pose to consumers' health and safety.

Apart from that, some other products, by their peculiarities, have laws of their own requiring or prohibiting other elements that may appear on the packaging. Some examples are detailed below:

- (a) **Cigarettes:** Cigarette packaging must contain images and messages warning about the danger of smoking, which must fill 100% of the back of the packaging. Details about such images and messages have been set out by the National Agency for Health Surveillance by Resolution.
- (b) **Alcohol:** The labels of alcoholic beverages must carry messages warning the consumer to avoid excessive consumption of alcohol.
- (c) **Guns:** The packaging of ammunition must carry a bar code to identify its manufacturer and buyer.
- (d) **Food:** The law:
 - (i) prohibits food packaging to include names, designations, geographical names, symbols, figures, designs or indications which give rise to false interpretation, error or confusion as to the origin, provenance, nature, composition or quality of the food or which give it superior nutritional qualities or characteristics;
 - (ii) requires the packaging main panel to state: whether it contains flavoring; the correspondent common use name for scientific terms; the name and/or brand of the food; the name of manufacturer/producer; the headquarters of the factory or place of production; and registration number of the food in the competent organ of the Ministry of Health.
- (e) **Medicines:** In addition to the trade name or trademark, medicinal products must include, on the packaging and promotional materials, the Brazilian Common Denomination or, where applicable, the International Non-Denomination, in at least half the size of the letters and characters of the trade name or brand.

The labels of medicines, drugs and related products should have characteristics that clearly differentiate them from each other and that inhibit errors of dispensing and administration, unwanted exchanges or wrong use.

Packaging of products intended for use by children must have characteristics that enable their immediate and precise distinction from those intended for adult use.

It is prohibited to include designations, geographical names, symbols, figures, designs or indications which give rise to false interpretation, error or confusion as to the source, origin, nature, composition or quality of the product, or which assign to the product purposes or characteristics different to those that it actually possesses.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no special rules or guidance on dark practices in Brazil. It is understood that the principles of the Brazilian General Data Protection Law, (see question 3.1 above), can be invoked to protect data subjects. Under this Law, is forbidden to process personal data if there is a flaw in consent, which can be understood as a measure against dark practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules or guidance on artificial intelligence in Brazil. However, a Bill is currently being processed which aims to regulate the use of artificial intelligence by establishing general rules for the use and implementation of artificial intelligence systems. It addresses points such as:

- (a) the importance of centering technology on the human person,
- (b) respect for human rights and democratic values,
- (c) privacy and data protection, and
- (d) justice and transparency.

4 PRICE ADVERTISING

4.1 What are Brazil’s rules regarding price advertising?

The Self-Regulation Code requires that advertisements must clearly state:

- (a) the total price of the product, avoiding unrealistic and exaggerated comparisons with other products—in the event that discounts are offered, the advertiser must be capable of providing substantiation regarding the previous applicable price;
- (b) down payments, fees, taxes, credit conditions, expenses and instalments (in case of long-term transactions);
- (c) conditions regarding the delivery, product exchange or replacement; and
- (d) warranty conditions and limitations that apply to the products.

4.2 What are Brazil’s rules regarding advertising ‘free’ products?

According to the Self-Regulation Code, the use of the word ‘free’ or a similar expression is only allowed when no costs are due to consumers in relation to such product. When any payments, taxes or delivery fees are applicable, consumers must be fully informed regarding the costs that are due. This restriction on the use of the word ‘free’ is part of the concept against misleading advertising, which is found both in the Consumer Defense Code and in the Self-Regulation Code.

It is also important to note that prior authorization with the Department of Economic Reforms may be required prior to advertising free products through drawing, competition, and gift vouchers.

4.3 What are Brazil's rules regarding sales and special offers?

There are no specific rules on special offers, although the restrictions against misleading advertising (see questions 3.4 and 3.6 above) apply.

4.4 What are Brazil's rules regarding rebates?

As mentioned in question 4.1, the advertiser must be capable of providing documentary evidence regarding the previous applicable price, so that the actual discount can be verified. Provided that rebates are not contingent on chance elements, meaning that all customers within the same category are entitled to the advertised rebates, prior registration of the advertising campaign with the Department of Economic Reforms is not necessary. In the event that rebates are distributed by means of gift certificates or any other means subject to chance elements, the advertising campaign will require previous registration with the National Savings Bank.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Yes, the use of expressions such as 'directly from the manufacturer', 'wholesale price' and 'no down payment' must not mislead the consumer and are also subject to substantiation by the advertiser.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The commercial advertising of cigarettes or any other smoking product, whether or not derived from tobacco (except for product display in points of sales), is prohibited in Brazil, and there are several restrictions in relation to product packaging.

With regards advertising of alcohol products, campaigns must be exclusively addressed to the adult public. Moreover, audiovisual advertisements of alcoholic products may only be broadcast in the Brazilian territory by means of cable TV or, if on open TV channels, only from 9.30 pm to 6.00 am local time.

Firearms, weapons, and ammunition advertising must not be directed to children or adolescents and is only permitted in specialized publications. In addition, advertisements for such products can only be aired on TV between 11.00 pm and 6.00 am local time.

Restrictions similar to the above also apply to other products and services.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There is a law in force in the City of São Paulo which prohibits advertising outdoors within the city, including in private buildings, and it regulates the size of sign boards. There are, however, designated areas allowed by São Paulo's City Mayor Office where it is still possible to advertise, such as bus stop shelters, street sign boards, bus doors, etc. The City of Rio de Janeiro has also adopted similar

legislation, but it has been challenged by some advertisers, who have obtained injunctions in State Courts to continue advertising outdoors. These lawsuits are pending. In addition, a new Bill establishing principles for outdoor advertising in the city of Rio de Janeiro is currently being processed.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Yes, the Self-Regulation Code states that advertisements shall not, by means of statements, audio or video presentations, offend the prevailing standards of decency in relation to the audience they intend to reach. Therefore, obscene or indecent advertising is restricted to media vehicles and venues with the appropriate adult audiences. In this sense, advertisers and advertising agencies are required to take the necessary precautions to avoid obscene and indecent advertising to children, adolescents and the wrong audiences in general.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Yes, the Self-Regulation Code determines that the advertising shall always be overt, meaning that either the indication of the product, service, trademark, commercial name or elements associated thereto, must be present and identifiable in the advertisement. The exception to this rule is the ‘teaser’, which may be used by advertisers without the forms of identification mentioned above.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Under the Self-Regulation Code, advertisements in the form of news, articles or similar formats that are published upon payment shall be identified as advertisements and distinguished from editorials so as to not confuse consumers.

In cases where an advertisement is produced in the format of entertainment content, such as a music video or a short film, the content must be registered with the National Cinema Agency as an advertisement and the corresponding fees duly paid, which are higher than fees for entertainment content. There are no restrictions, however, for merchandising in entertainment content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

As mentioned in the previous question, advertisements in editorial format must be identified as such, although there are no specific requirements to be observed in relation to the disclosure. We understand that disclosures such as ‘this content was produced by the request of and for the advertising of [name of the company]’s products or services’ is sufficient for this purpose, although it is recommended that an assessment on a case-by-case basis is conducted in relation to each type of content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

In Brazil, there are no specific laws or regulations addressing issues arising out of social networks services or use. The social media environment is, nevertheless, subject to the same legal and regulatory control applicable to general advertising.

However, it is worth mentioning that, in 2021, the Digital Influencer Advertising Guidelines were issued, which contain instructions on the application of the rules of the Brazilian Advertising Self-regulation Code to commercial content on social media, in particular, contents generated by 'Digital Influencers' or 'Influencers'. According to these Guidelines, in order for digital influencer advertising to be configured, the following three elements must be present:

- (a) the purpose of the advertising must be to promote a product or service;
- (b) there must be a commercial relationship between the influencer and the advertiser and/or agency, or the influencer be compensated in some way, even if not financially; and
- (c) there must be editorial control, ie, direction from the advertiser and/or agency, albeit minimal, over the content of the message to be broadcast by the influencer.

The applicability of Consumer Defense Code provisions to social networks services has, incidentally, been cited by Brazilian courts in lawsuits concerning cyber-bullying that took place in the social network environment provided by Google and Orkut. Such applicability of the Consumer Defense Code was based on the fact that Google receives indirect remuneration for Orkut services, therefore falling under the 'services provider' definition of the Consumer Defense Code. For the same reason, the Consumer Defense Code provisions on advertising also apply to campaigns in the social network environment.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The Internet Act (Law No 12,965/2014) sets forth requirements that are applicable to the Internet environment, which are also applicable to social networks.

In this regard, in order to avoid joint responsibility with the infringer (ie, the user who makes comments on the advertiser's Facebook page) the Internet Act requires the parties responsible for the web page to take down content when notified to do so by a specific court order. We understand that such court order would be notified to Facebook and not the advertiser, but, in the event that the advertiser is so notified, take down within the time frame specified would exempt the advertiser of any penalties.

Regardless, in cases of intellectual property infringement, removal of content must be performed within 24 hours, upon mere notification by the IP owner, in compliance with the current prevailing understanding of the Superior Court of Justice.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

In 2022, in order to generate engagement, a campaign was announced on TV and social media by the company 'BK Brasil', promoting Burger King sandwiches by inviting consumers to lick the TV screen while the campaign was being shown and post the image with a hashtag on social media. The campaign generated complaints from consumers, who claimed that the campaign invited them to

engage in shameful behavior, as well as that the hashtag could lead to content that fails to comply with care for children and young people. CONAR understood that suggesting that a person lick their TV screen and post the image on their social media in exchange for a prize could lead to situations of embarrassment. Therefore, CONAR proposed that the campaign be modified, and that special care be taken in relation to children's access to the campaign.

From an administrative standpoint, with the publication of the Digital Influencers Advertising Guidelines, both the influencer, the advertiser, and the agency behind the campaign can be notified due to any content published on social media. CONAR is increasingly scrutinizing cases involving posts, stories, and similar content.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

- (a) Under the Brazilian Constitution, the privacy, private life, honor and image of persons are inviolable, and the right to compensation for property or moral damages resulting from their violation is ensured.
- (b) Under the Brazilian Civil Code, unless authorized, the exhibition or use of an image of a person may be prohibited, without prejudice to any indemnification to which that person may be entitled, if it affects the honor, the good reputation or the respectability of the person, or is intended for commercial purposes.

Thus, individuals appearing in any ad must have previously authorized the use of their image, voice or likeness for that specific purpose.

Moreover:

- (c) Since Brazilian Copyright Law determines that assignments, or licenses, of copyrights shall be interpreted restrictively, actors hired to participate in advertising campaigns must be required to execute license agreements in relation to their participation, in which all details must be identified, such as term of the campaign, media vehicles and formats.
- (d) The General Data Protection Law has, since 2020, introduced the concept of 'personal data' as any information that identifies or makes an individual identifiable. Therefore, name, picture, likeness, voice, and identity are encompassed as personal data and can only be processed if they are based on a legal basis.
- (e) Concerning children, both the Brazilian Civil Code and the General Data Protection Law place greater emphasis on the need for authorization from the legal guardian.

9.2 Are there situations when permission is not required?

In Brazil, the concept of implied consent for the use of an individual's image has been confirmed by local courts in specific cases where it has been proven that the individual was aware that their image, voice or likeness was photographed or recorded for the purpose of an advertising campaign. For example, a student posed for a photograph taken by their prep course (for college admission tests) with all other students that passed the exam. The prep course used the photograph for advertising purposes and the student's parents filed a lawsuit challenging such use. The court understood that the student had provided their implied consent for the use of their image and the lawsuit was rejected.

It is important to note, with regard to implied consent, that much controversy may arise regarding the extent of the consent; for this reason, authorization in writing is deeply recommended in all cases.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

One of the exceptions in the Brazilian Copyright Law which limits author's rights, determines that 'works permanently placed in public locations may be represented, freely, by means of paintings, drawings, photographs and audiovisual procedures.' However, the Superior Court of Justice held that this exception is not applicable in the event of commercial use of copyrighted works placed in public locations. Therefore, provided that the copyrighted work is not in the public domain (70 years after the death of the author in most cases), prior authorization of the author is required.

Another exception is that, if the advertising focuses on the public location as a whole and not specifically the copyrighted material, authorization of the author is not required; however, an assessment on a case-by-case basis is necessary in this regard.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

This is not permissible without authorization; as the use of third parties' intellectual property in advertising requires the prior consent of the owner. In this sense, both the Brazilian Industrial Property Law and the Copyright Law determine that use of third parties' trademarks or copyrighted material requires a license agreement. Moreover, the Self-Regulation Code specifically states that no advertisements shall violate third party trademarks and copyrighted material.

In the event that advertisers make use of third-party intellectual property in advertising campaigns without first obtaining a license, the owner may file a lawsuit or a complaint with CONAR seeking modification of the advertisement and compensation for the loss and damage caused (a lawsuit must be filed in order to get compensation for loss and damage).

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Brazil which affect advertising (eg Swedish gender equality law)?

There are no specific concerns other than subjective aspects such as decency, local moral standards, and local socially acceptable conduct, as to which the public, authorities and CONAR have frequently had different views in this regard.

It is worth mentioning a claim that was brought to CONAR by consumers against *Móveis Alezzia*, concerning its social media and website advertising. The advertising campaign made use of images of naked or semi-naked women interacting with the products of the real estate brand. Consumers argued that there was a clear objectification of women's bodies and nudity is shown in a decontextualized way.

When it became aware of the various complaints, the company launched a ‘challenge’, under which it made a commitment to make donations to charity if there was an increase in positive reviews on its social media page.

CONAR decided that the campaign violated the articles of the Self-Regulation Code, stating that the objectification of women is disrespectful, and its encouragement showed a total lack of responsibility on the part of the advertiser, and that the advertiser had disregarded important cultural values and hurt women's dignity.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

The Self-Regulation Code determines that all advertising activity must observe the dignity of the human being, privacy, social interest, national symbols and institutions and the family. No advertisement should encourage any type of racial, social, political, religious or national discrimination.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Brazil?

Since audiovisual advertisements must be registered with the National Cinema Agency, prior to being broadcast in the Brazilian territory, and considering that the fees for registering foreign audiovisual advertisements are much higher than fees corresponding to the ones produced in Brazil, hiring local production may be advisable.

Despite the new Bill which aims to regulate the use of artificial intelligence (as to which see question 3.12 above), to date there are no special rules or guidance on artificial intelligence in Brazil. However, it is worth mentioning a recent case that was brought to CONAR against Volkswagen. The company made an advertising campaign in which Brazilian singer Maria Rita appears inside a car singing a song with a deepfake of her mother, Elis Regina, who died in 1982. Consumers took their complaints to CONAR claiming that:

- (i) the campaign did not indicate the use of artificial intelligence in the advertisement;
- (ii) Elis Regina's personality and existence were disrespected; and
- (iii) it would be possible for children and teenagers to confuse fiction and reality.

Despite the claims, CONAR decided that there was no disrespect to the figure of Elis Regina, as her heirs had authorized the use of her image, and that the use of artificial intelligence was obvious and did not require any indication.

 BULGARIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Bulgaria?

Bulgarian advertising law is not codified in a unitary legislative Act; rather advertising regulations are dispersed among several statutes each one regulating different aspects of advertisement. The main requirements that should be complied with by all advertisers, regardless of the communication channel used or the advertised product/service, are that every ad should not be misleading and to be structured in a way that does not have the potential to confuse the customers. Another important requirement for all types of advertisement is for every commercial communication, regardless of its form or communications channel, to be clearly recognizable as such and distinguishable from editorial content.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

There are several definitions for ‘advertising’ dispersed among several legislative Acts, depending on the communication channel used or the industry of the advertised product/service. However, the most relevant definition that is reproduced to a great extent in many of the statutes is the definition provided by the Bulgarian Protection of Competition Act (‘Competition Act’), which defines ‘advertising’ as ‘communication in any form connected to a trade, business, craft or profession that aims to promote the supply of goods or services, including or real estates, right and obligations.’

1.3 What is the basic regulatory framework for advertising regulation?

Advertising regulation in Bulgaria is dispersed among several legislative Acts, containing different rules depending on the communication channel used or the industry of the promoted product/service:

- (a) The main legislative Act that sets forth the general framework for good faith presentation of commercial communication and prohibits misleading advertising content is the Competition Act. This implements the EU Misleading and Comparative Advertising Directive 2006/114/EC, and its provisions are applicable to any kind of commercial communication.
- (b) Certain aspects of the TV and radio advertising are regulated by the Bulgarian Radio and Television Act.
- (c) Certain aspects of advertising online via websites, social network platforms, apps or otherwise are regulated by the Bulgarian Electronic Commerce Act, which transposes the EU e-Commerce Directive (2000/31/EC).
- (d) The Electronic Communications Act sets out the rules governing direct marketing and advertising through electronic communications.
- (e) Print media are not subject to specific statutory regulation, but they would still need to comply with the general rules of the Competition Act.
- (f) Additional limitations, which should be observed in any advertising activity targeting a Bulgarian audience, are imposed by the Bulgarian Consumer Protection Act, which prohibits unfair, misleading or aggressive commercial practices. The Consumer Protection Act transposes into national legislation the rules of the EU Unfair Commercial Practices Directive 2005/29/EC.

- (g) Specific industry related requirements are introduced with the Wine and Spirits Act, the Tobacco and Tobacco-Related Products Act, the Medicinal Products in Human Medicine Act, the Health Act, etc.
- (h) In addition, Bulgaria is a Member State of the European Union, thus the EU legislation, such as the Digital Services Act ('DSA') (Regulation (EU) 2022/2065), the General Data Protection Regulation ('GDPR') (Regulation (EU) 2016/679), and the Online Platforms Regulation (Regulation (EU) 2019/1150), is directly applicable to advertisers and operators of platforms that distribute advertising content in Bulgaria.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Yes, unsolicited commercial communication and direct marketing and advertising are specifically regulated by the Electronic Commerce Act and the Electronic Communications Act as follows:

- (a) **Unsolicited commercial communications:** The Electronic Commerce Act (transposing the e-Commerce Directive) defines 'commercial communications' as advertising or other communications presenting directly or indirectly the goods, services, or reputation of the person carrying on a trade or craft or exercising a regulated profession. The requirements to be met by commercial communications that form part of a service or constitute an information society service are explicitly set out in the Act, namely, they must:
 - (i) be easily recognizable as commercial;
 - (ii) allow clear identification of the natural or legal persons on whose behalf it is made;
 - (iii) set out, clearly and unambiguously, the terms and conditions for the use of promotional offers, such as discounts, premiums and gifts, if they include such;
 - (iv) provide easy access to clear and unambiguous terms and conditions for participation in contests and games with announced prizes, if they contain such information;
 - (v) contain the information provided for in other relevant regulations.

Pursuant to the Electronic Commerce Act, a service provider who sends unsolicited commercial communication by email without the prior consent of the recipient must ensure that the commercial message is clearly and unambiguously identified as unsolicited as soon as it reaches the recipient.

The Commission on Consumer Protection keeps an electronic register of the email addresses of legal entities who do not wish to receive unsolicited commercial communications. On this basis, the sending of unsolicited commercial communications to email addresses entered into that register is prohibited. The sending of unsolicited commercial communications to consumers without their prior consent is prohibited.

- (b) **Direct marketing and advertisement:** The Electronic Communications Act further clarifies that direct marketing and advertising calls, messages or emails, with or without human intervention, are only permitted:
 - (a) with the prior consent of the recipient, or
 - (b) if the calling party/sender has obtained the contact details of the recipient during previous business relations (in which case the recipient should have been provided with the opportunity to refuse their contact details being used for direct marketing and advertising, as well as being informed that they should be able to unsubscribe from the sending list at any time).

In either case:

- the sender of such messages must be clearly recognizable;
- the message must include an address that the recipient may use to unsubscribe;
- the message must be clearly recognizable as a commercial communication; and
- the message must not promote websites that are not clearly recognizable as marketing or promotional websites.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes, several industries should comply with specific regulations the advertisement of the products or services supplied on the market, including among others:

- alcohol;
- tobacco;
- food;
- gambling;
- pharmaceutical;
- financial services related to consumer lending; and
- services provided by attorneys in law.

1.6 Are any government pre-approvals required?

Generally, Bulgarian legislation does not provide for government pre-approvals of ads; rather, every advertiser/advertising agency should self-assess the ads for compliance with the applicable laws. However, advertising materials of medicinal products should be pre-approved by the sector-regulating authority (please see question 5.1 below).

1.7 Does the media pre-clear advertising?

There is no statutory requirement in this regard, but, as a matter of practice, in contracts for the purchase of advertising space/provision of advertising services, every form of media includes clauses that allow it to refuse publishing/broadcasting via its platforms of an ad if, during the internal assessment, is observed that the ad violates the applicable laws.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Bulgarian Commission on Protection of Competition ('Competition Commission') is the state authority that is vested with the power to oversee the advertising and marketing practices of commercial entities and enforce the Competition Act rules with regard to misleading advertisements or prohibited comparative advertisements.

The Commission on Consumer Protection supervises compliance with the requirements of the Consumer Protection Act with regard to misleading and aggressive trading practices, including cases where such practices are implemented as an ad, as well as compliance of online advertising with the requirements of the Electronic Commerce Act.

As regards TV and radio advertising, the Bulgarian Council for Electronic Media has the power and obligation to monitor compliance with the requirements set by the Radio and Television Act.

Several other authorities, including the Commission on Consumer Protection and Regional Health Inspectorates, are competent to monitor the compliance of ads with regulations of specific industries (spirits, tobacco products, medicinal products).

All the above authorities are entitled to investigate alleged infringements of the applicable laws and, in cases where a violation is established, to impose monetary sanction and order termination of the infringements. Their penalty decisions are subject to appeal before the Bulgarian courts. The Bulgarian law does not provide for criminal prosecution in case of an infringement of the advertising regulations.

1.9 When does a competitor have a right of action? What are the potential remedies?

Any competitor may file a complaint with the Competition Commission, claiming that an ad of a competitor is misleading or represents prohibited comparative advertisement. In such a case, the Competition Commission starts an investigation, and, in cases where an infringement is established, it imposes a monetary sanction in an amount of up to 10% of the net income of the respective advertiser for the financial year preceding that in which the sanction decision is issued. In certain cases, the Commission can also impose a fine on the advertising agency responsible for the creation of the ad. In addition, in cases where a violation is established, the Commission will order suspension of the distribution of the ad.

In addition to the more formal complaint-based proceedings before the Commission, any person is entitled to inform the Commission about an ad that in their view infringes the applicable legislation. However, in such cases, the Commission will decide, at its own discretion, whether or not to start administrative proceedings against the respective advertiser and whether to impose a sanction.

The Commission is entitled only to impose monetary sanctions and to order termination of the infringement and it is not authorized to forbid future business activity of the advertiser or withdraw licenses/permissions for specific business activity.

1.10 When do consumers have a right of action? What are the potential remedies?

Pursuant to the Consumer Protection Act, advertising is considered a 'commercial practice' and, if it is contrary to the requirements of good faith and professional diligence, and if it materially distorts or is likely to materially distort the economic behavior (with regard to the specific product) of the average consumer to whom it is addressed or whom it reaches, it could be proclaimed by the Commission on Consumer Protection as an unfair trading practice and be prohibited. An ad could also be proclaimed as an unfair trading practice by the decision of a court following a claim filed by an organization or customers. In such cases, individual consumers or consumer organizations have the right to claim damages that are in consequence of the application regarding the respective unfair trading practices.

When an ad is pronounced as an unfair trading practice by an order of the Commission on Consumer Protection or a court decision that has entered into force (ie, the order is not being appealed by the respective advertiser or it has been confirmed by a final court decision), every consumer affected by the application of that trade practice may terminate the agreement they have made with the merchant and claim damages. However, the consumer should demonstrate the relationship between the ad and the damages suffered, as well as justify the amount.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Bulgaria have a primary advertising self-regulation system?

The self-regulatory body in Bulgaria is the National Council for Self-regulation ('Self-regulation Council'). The Self-regulation Council is a member of the European Advertising Standards Alliance and is the most influential self-regulatory organization in the Bulgarian media sector. Thus, most advertising and media agencies are its members, together with some of the major advertisers in Bulgaria.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The Self-regulation Council has adopted the National Ethical Rules for Advertising and Commercial Communication in Bulgaria ('the Code') (available at <https://www.nss-bg.org/en/kodeks>). The rules of the Code apply to all forms of promotional communication. The purpose of the Code is to ensure that advertising is exercised as a public service in such a way as to consider the impact it has on the consumer. The Code is constructed to ensure the discontinuation of activities that are in contradiction with its main purpose, even if such activities are formally within the framework of the applicable laws.

The Code is intended to achieve the following objectives:

- to demonstrate responsibility and good practice in advertising and marketing communication in Bulgaria;
- to enhance overall public confidence in marketing communication;
- to respect privacy and consumer preferences;
- to ensure special responsibility as regards marketing communication and children/young people;
- to safeguard the freedom of expression of those engaged in marketing communication;
- to safeguard the principles of the fair competition;
- to provide practical and flexible solutions; and
- to minimize the need for detailed governmental and/or inter-governmental legislation or regulations.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Enforcement of the Code is vested with the Ethical Committee of the Self-regulation Council, which reviews complaints from all interested parties. The decisions are binding for members of the Self-regulation Council; however, until recently, compliance with those decisions depended entirely on the good will of the infringer. Now, however, the Radio and Television Act provides that all TV and radio operators and video-sharing platform providers under the jurisdiction of the Republic of Bulgaria are required to observe the decisions of the competent bodies of the Self-regulation Council or face monetary sanctions by the Council for Electronic Media.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Yes, the self-regulation system is widely used; however, as mentioned above, only TV and radio operators and video-sharing platform providers are required to observe the decisions of the Ethical Committee of the Self-regulation Council. For all other communication channels, compliance with the decisions of the Ethical Committee is voluntary.

2.5 Are the self-regulatory system's decisions reported?

Yes, all decisions of the Ethical Committee are published on the Self-regulation Council's website (nss-bg.org). In addition, they are provided to the media that broadcast/published the respective ad, the advertising agencies involved in the ad production, and to the respective professional organizations.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The Code includes a specific chapter concerning the identification of commercial communications. Namely, every commercial communication should be clearly recognizable as such, regardless of its form or the communication channel used by the advertiser. The Code further clarifies that, in cases where an advertisement is broadcast on a platform that usually broadcasts news, editorial or personal content, it should be designed in such a manner to be clearly distinguishable as an advertisement.

2.7 Are there any other self-regulatory systems that govern advertising practices in Bulgaria?

No, there are no other general self-regulatory systems. There are a couple of sector-specific self-regulatory guidelines (eg, with respect to spirit drinks), but they have very limited application.

In 2023, the Council for Electronic Media adopted the Code of Conduct Regarding Measures for the Assessment, Labelling and Restriction of Access to Programs Having Adverse Effects on or Posing a Risk of Impairing Children's Physical, Mental, Moral and/or Social Development. In particular, this code lays down measures for the assessment, labelling and restriction of access to programs/video content that may have adverse effects on or poses risk of impairing children's physical, mental, moral and/or social development. Observance of this code is obligatory for all media service providers and providers of video-sharing platforms under the jurisdiction of the Republic of Bulgaria, and any failure to comply with its requirements may result in monetary sanction in the range from BGN 15,000 to BGN 30,000 (approx €7,650 to €15,300).

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Bulgaria (eg, consumer protection laws, IP laws, unfair competition laws)?

As mentioned above, the main legislative Act that regulates misleading advertisement is the Competition Act, although the Consumer Protection Act also provides for certain requirements with regard to substantiating advertising claims. As a matter of practice, advertising claims are mainly evaluated by the Competition Commission about alleged infringement of the Competition Act's provisions that regulate misleading or comparative advertisement. The Commission on Consumer Protection also has the power to evaluate advertising claims about alleged infringement of the Consumer Protection Act's prohibition of unfair trading practices, but, as a matter of practice, such proceedings take place much more rarely than the Competition Commission investigations.

3.2 Is substantiation required for advertising claims?

Bulgarian legislation does not require an ad to contain explicit substantiation for the advertising claims. However, the Competition Act prohibits misleading advertising, and the competent authority has developed a pretty large decisional practice in this regard.

The specific violation of ‘misleading advertisement’ is defined on the basis of the ability of an advertising message to distort the economic behavior of consumers, thereby causing harm to competitors. According to Competition Commission case law, as long as an advertising claim concerns essential features of a product/service, it must be substantiated in a sufficient manner. In the absence of such substantiation, the authority accepts that such a claim has the potential to mislead consumers and to affect their market behavior to the detriment of its competitors.

Normally, claims related to physical features, which are backed by laboratory analysis, would be regarded as genuine. Claims related to subjective perceptions would also be upheld to the extent they are supported by representative customer surveys. Superlative claims like ‘the lowest price’, ‘the best price’, etc, would be considered substantiated only if the advertiser manages to evidence by virtue of a market study that on the Bulgarian market there is no product on lower or equal price as the advertised product.

The Competition Commission has also accepted that claims that are obviously puffery (eg, ‘homemade’ used in regard to a food product that is offered in large quantities in the retail network) cannot be regarded as misleading. In that specific case, the authority has ruled that because any prudent consumer is aware that food products that are offered in large quantities in the retail network cannot be produced in ‘home’ conditions or only with natural ingredients, without any food additives or preservatives that are normally used in the food industry, such claim is exaggerated and thus, it is not possible to distort the economic behavior of the consumers. However, this specific ruling of the Competition Commission was overturned by the Supreme Administrative Court.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

As long as an advertising claim does not concern essential features of a product/service and is not capable of distorting consumer behavior, it does not require substantiation. However, this is decided on a case-by-case basis and, generally, there are no safe harbors on which advertisers can rely. See also question 3.2 above.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific rules in this respect. The aim is that the disclosure should be clear enough to avoid any potential for consumers to be misled by the advertising claims used in the respective ad.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no specific rules in this respect. Generally, under the Competition Commission’s decisional practice, endorsements and testimonials are not accepted as sufficient proof that an advertising claim is correct and substantiated.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules in this respect. Product demonstration is allowed; however, it should be done in such a manner, and the product demonstrated should be with such specifics as not to cause confusion among consumers as to the specifics and qualities of the real product offered on the market.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Yes. In contrast to misleading advertising, comparative advertising is not prohibited per se, and can be implemented as a promotional technique as long as it provides fair and objective comparison between similar goods or services, and meets certain other specific criteria set out in the law. The Competition Act defines 'comparative advertising' as 'a form of commercial communication, which directly or indirectly identifies a competitor or the goods or services offered by a competitor'. To be in compliance with the law, every advertising message that uses comparative techniques must comply with the following requirements:

- (a) Positive requirements: The advertisement must:
 - compare goods/services meeting the same needs or intended for the same purpose;
 - (for goods with designation of origin) relate in each case to goods with the same designation;
 - compare in an objective manner one or more features of the relevant goods/services, which are substantial, comparable and representative for these goods/services (such as prices, durability, etc).
- (b) Negative requirements: The advertisement must not:
 - be misleading—ie capable of creating confusion in consumers in respect of essential features of the products/services subject to comparison (such as their availability on the market, type, composition, mode of production, method of use, origin, suitability for use, price and delivery terms, etc);
 - be misleading, aggressive or otherwise an unfair commercial practice;
 - create confusion among traders (eg, between the advertiser and competitors);
 - create confusion between the trademarks, trade names, other distinguishing marks or goods/services of the advertiser and those of competitors;
 - discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities or situation of the competitors;
 - take unfair advantage of the reputation of the trademark, trade name or other distinguishing marks of the competitors or of the designation of origin of competing goods; and
 - present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There are no special copyright or trademark rules that may impact comparative advertising. The Bulgarian authorities observe the European Court of Justice case law in this respect. Thus, under Bulgarian law, it is possible to use a competitor's trademark for the purposes of comparative advertising, as long as the ad is in compliance with the requirements for permitted comparative advertising as set forth by the Competition Act (please see question 3.7 above).

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The Bulgarian Law on Marks and Geographical Indications provides that geographical indications may be granted legal protection through registration with the Patent Office of Republic of Bulgaria.

Such legal protection consists in the prohibition of:

- (a) any commercial use of the geographical indication for goods that are similar to those for which it is registered, in so far as the reputation of the registered geographical indication is exploited;
- (b) improper use or imitation of the geographical indication, even where the genuine origin of the goods is specified, use of a translation thereof, or use in combination with terms such as 'sort', 'kind', 'type', 'imitation' or similar;
- (c) use of any other incorrect or deceptive indication as to the source, origin, nature or essential qualities of the goods designated on the packaging thereof in advertising material or papers concerning the goods, such indication being likely to mislead as to the genuine origin of the goods; and
- (d) any other action that may mislead consumers as to the true origin of the goods.

There are no specific rules with regard to advertising geographic origin, but, in its decisional practice, the Competition Commission has held that an ad which, without specifically pointing out, but by its entire appearance, creates the impression that a product originates from a specific country/region that is famous for the production of such products (in the specific case, the promoted product was bruschetta and the ad created the impression that it is manufactured in Italy), could be considered as misleading advertisement if the product does not, in reality, come from that country/region. The Commission's reasoning was that, when customers perceive that a product is produced in a such country/region, they would expect that product to be of better quality because of the traditions in the manufacturing process that exist in that country/region. In the Commission's view, the false impression about the origin of the product created by the ad resulted in the ad being misleading.

3.10 Are there any special rules governing product packaging?

The Competition Commission has held that information provided on product packaging or in product manuals (eg, contents, instructions for use, etc) does not qualify as an advertisement, because its aim is not to promote the product, rather to describe essential characteristics of the product and to allow customers to make an informed purchasing decision. In that regard, the advertising rules do not apply to the product packaging.

However, it should be mentioned that there are specific rules about product packaging, eg:

- (a) for food products, whose packaging should comply with the requirements of Regulation (EU) 1169/2011 on the Provision of Food Information to Consumers;
- (b) for tobacco products, whose packaging should comply with the Tobacco and Tobacco-Related Products Act; and
- (c) for alcoholic beverages, which should comply with the Wine and Spirits Act, etc.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Current Bulgarian legislation lacks a codified regulation or guidance addressing 'dark practices' in advertising. Instead, the applicable statutory Act should be determined based on the specific situation. This could be the Consumer Protection Act, which outlines the general prohibition against unfair commercial practices, as well as the prohibition against misleading or aggressive practices. The Consumer Protection Act also deems default settings with pre-activated checkboxes related to

extra payments as inadmissible, as per the EU Consumer Rights Directive. Further, ‘dark practices’ may also constitute a breach of the GDPR principles, including those which pertain to the requirements for consent to be freely given, specific, and informed, transparency requirements, and the principle of privacy by design.

The EU DSA introduces new groundbreaking legal rules regarding dark practices (or ‘dark patterns’ as defined in the DSA) and these will be relevant in Bulgaria as soon as all provisions of the DSA become applicable in February 2024. Firstly, the DSA defines ‘dark patterns’, emphasizing that the key criterion is the distortion or impairment of a user’s freedom of choice. Moreover, the DSA explicitly prohibits the use of such dark patterns. Online platform providers are obliged to refrain from designing, organizing, or operating their online interfaces in ways that deceive, manipulate, or materially distort or impair users’ ability to freely make informed decisions. These prohibitions will complement the existing regulations related to consumer protection and data protection. For instance, the DSA stipulates that the Unfair Commercial Practices Directive and the GDPR take precedence over the DSA.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Currently Bulgaria lacks a dedicated legal framework regulating artificial intelligence (‘AI’). In 2020, the Bulgarian Government (the Council of Ministers) adopted ‘Concept for Development of Artificial Intelligence in Bulgaria until 2030’ which is based on the strategic and program documents of the European Commission, so that national regulation will follow the establishment of an EU-wide framework. It is explicitly stated that the goal of the national regulation in AI will be to achieve an optimal balance between the business environment and guaranteeing citizens’ rights and society’s welfare.

On the other hand, AI is increasingly used in advertising for various purposes, including content generation and algorithmic targeting and profiling. These applications do raise significant concerns related to privacy, data protection, discrimination, and protection of IP rights. Lacking specific legal rules governing the use of AI, such concerns may only be addressed through the combination of the existing regulations, such as enforcing the rules of the GDPR (privacy and data protection), DSA (transparency and accountability), Competition Act (to deal with AI-generated content such as fake reviews or misleading advertisement) and general non-infringement rules stemming from IP laws.

4 PRICE ADVERTISING

4.1 What are Bulgaria’s rules regarding price advertising?

Price advertising is regulated by the Competition Act. The Consumer Protection Act also imposes certain requirements with regard to price announcements, but they concern matters such as the announcement of price promotions, duration of the promotion, and other specifics of the organization and implementation of discount promotions.

As a general note, price advertising is generally allowed in Bulgaria, as long as the respective ad provides, in a clear and unambiguous manner, all specifics and conditions of the advertised offer. Commercial practices such as:

- (a) advertisement of a product/service at a specific price, when there are very limited quantities of the respective product/services; or

- (b) implementation of a massive advertising campaign with a clear emphasis on a specific high discount, when it is available only for a very limited period or in respect of very few products/services,

are generally considered misleading.

4.2 What are Bulgarian's rules regarding advertising 'free' products?

Advertisement of provision of 'free' products is allowed, as long as the merchant concerned is actually providing the products for no consideration and there are no hidden fees. In addition, the quantity of the products available should be comparable to the scale of the advertising campaign and presumptive demand. Even so, the wording of an advertisement should be carefully drafted. If a product/service is offered for 'free', but the invoice/sale receipt indicates that it has its own price (even though the price is negligible), the Competition Commission could conclude that this is a case of misleading advertising.

The provision of a 'free' product should be distinguished from promotional activities where a product/service is provided for free or at a negligible price as a supplement to a main product/service purchase by the customer. Such promotions are considered to represent a form of unfair competition because the client is induced to make a purchase, not by the qualities of the principal product or service, but by the opportunity to receive something else for free. There are several exceptions of this prohibition:

- (a) **Promotional items of negligible value:** This exception is on the proviso that the advertising undertaking is clearly identified. 'Negligible value' is up to 10% of the price of the principal product and the supplement must bear the name, logo or other characteristic signs of the advertising entity.
- (b) **Accessories:** These are items or services that, according to commercial practices, are supplied and used together with the principal product/service bought by the customer. The term 'accessory' is interpreted to mean that the supplementary product/service should be functionally connected to the main product. The functional relationship must be significant in order for a product to be regarded as an accessory.
- (c) **Volume rebates:** ie offering additional goods or services to induce purchasing of larger quantities. The supplementary goods/services should be 'identical' with the principal goods/services sold.

4.3 What are Bulgarian's rules regarding sales and special offers?

The most important requirement regarding sales and special offers, compliance with which is monitored by both the Competition Commission and the Commission on Consumer Protection, is that, when a promotional discount is announced and the retailer communicates this to consumers by making a comparison between the old ('regular') and new ('discounted') prices, the 'regular' price, from which the promotional discount is calculated, should be the lowest price applied by the respective merchant during a reference period of no less than 30 days counting back from the day of announcement of the promotional discount. It does not matter whether goods or service of this type were sold at the old/regular price or were only displayed at the shop and no sales were made—the important thing is to have them registered in the inventory list in order to be able to prove that this is the lowest price applied during the reference period, thus this should be 'old/regular' price with

respect to which a discount announced. With respect to products that are liable to deteriorate or expire rapidly, or which are on the market for a period shorter than 30 days, the reference period is no less than seven days before the day of announcement of the discount. The purpose of this rule is to prevent misleading commercial practices where prices are increased shortly before the start of the campaign, so that the discounts are artificially inflated.

Another important aspect is that sales (the period of time when specific goods are offered with a discount) cannot be shorter than a full day or last more than a month. The only exception, when a longer period of application of the 'discount' price is allowed, is a 'clearance sale' held due to planned suspension of operation for maintenance or repairs, reorganization, or termination of commercial activity, etc. In such exceptional cases, the sale may last for a period of up to six months.

4.4 What are Bulgaria's rules regarding rebates?

All rules as identified above with regard to sales and special offers apply equally to rebates.

In addition to these rules, in all advertising materials the merchant should clearly communicate the main aspects of the promotional campaign, including:

- the promotional period,
- the main specifics (ie, the value of the discount (with signs like 'discount up to ...%)),
- any special conditions etc), and
- the goods to which the discount shall be applied.

All these aspects should be strictly observed by the merchant and cannot be amended without proper announcement.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

In cases where a promotion is specifically targeting Bulgarian customers, any information concerning essential specifics of the promotional campaign must be in Bulgarian. It is permissible for advertising messages like 'Sales' or 'Promotion' to be in a foreign language, but all other information, especially the essential details of the promotional offer, should be provided in Bulgarian.

It is worth mentioning that, in its decisional practice, the Competition Commission has held that when a retailer announces offers with discounted prices and employs a massive advertising campaign to communicate them to the public, the retailer should ensure that it has a large enough quantity of the promotional products to satisfy basic demand. In cases where there are not enough items in stock (although the Commission has not provide a clear indication as to what 'sufficient quantities' means, and has instead stated that this should be defined on a case-by-case basis), the merchant could be sanctioned for misleading advertising, because the retailer has created a false expectation in costumers that they can purchase specific products at favorable prices, without ensuring enough stock to fulfil the promise. In that regard, every merchant, when announcing discounted pricing offers, should be prepared to satisfy the increased customer demand up to a reasonable point.

In another decision, the Competition Commission ruled that an advertising campaign, where great emphasis was placed on a very high discount (in that case, the announced discount was in the amount of 70%), when, in reality, only a very limited number of the product were offered with such

discount, and the regular discount was, instead, in the amount of 20%–30%, could be regarded as misleading because consumers were attracted by the emphasis on the high discount, which had created a false impression about the benefits of the promotional campaign.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Pursuant to Bulgarian law, the following products and services cannot be advertised:

(a) **Alcoholic beverages:** The Health Act imposes a full ban on direct advertising of spirits (hard liquors). Direct advertising of wine and beer, as well as indirect advertising of hard liquors is allowed provided that the communication:

- is not targeted at minors (individuals under the age of 18) and is not broadcast in programs or printed media intended for minors;
- does not use minors as participants;
- does not relate the consumption of alcoholic beverages to sports and physical achievements or driving; and
- does not relate consumption to health benefits and social or sexual wellbeing, and does not present abstinence or moderation in a negative light.

In addition, the indirect advertising of spirits on TV and radio stations is allowed only after 10.00 pm.

(b) **Tobacco and tobacco-related products:** The Tobacco and Tobacco-Related Products Act prohibits the advertising of tobacco and tobacco-related products, except:

- on the territory of production facilities where tobacco or tobacco-related products are manufactured, as well as in commercial outlets where tobacco and tobacco-related products are on sale;
- when only a trademark is shown in the advertisement (ie, no images of cigarette packs or cigarettes) and:
 - participants in the advertisement do not include individuals under the age of 18, and
 - the ad is not intended for or targeted at persons under the age of 18 by means of other external features of the advertising vision, which would be identifiable primarily or only by individuals under the age of 18;
- at locations or events where access to persons aged under 18 is prohibited.

In addition, the Tobacco and Tobacco-Related Products Act explicitly prohibits any TV, radio and print media advertisement, as well as advertisement via information society services. In practice, the only channel that may be used for advertisement of tobacco and tobacco-related products is out-of-home networks.

(c) **Gambling:** The Bulgarian Gambling Act generally prohibits direct advertising of gambling games, as well as any announcements of such games targeting audiences under 18 years, and sending unsolicited electronic messages containing information about a gambling game. It is only allowed to announce:

- the names and terms of the games, including prizes, discounts, bonuses, odds and free bets, but without announcing the names of the participant(s) in gambling games who have won prizes;

- the registered trademark of the organizer, and/or the company (name) of the organizer;
- results and winnings won;
- the draws and
- purpose of the organizer (whether it is to support sports, cultural or other events).

Persons who distribute ads for gambling games need to verify that the organizer of the respective gambling game holds a valid license issued in compliance with the rules of the law.

- (d) **Medicinal Products:** Pursuant to the Medicinal Products in Human Medicine Act, medicinal products that can be dispensed only on prescription by doctors cannot be advertised to customers—they can only be advertised to healthcare professionals (such as medical doctors, dentists, etc). Online advertising of prescription medicines is prohibited, with the exception of vaccination advertising campaigns.

Medicinal products which can be dispensed without a prescription, and which do not contain narcotic substances, can be advertised to the general public subject to prior review and authorization of the advertising materials by the Bulgarian Drugs Agency.

- (e) **Non-conventional healing methods:** The Health Act prohibits any advertisement of non-conventional healing methods.

- (f) **Medical specialists and medical treatment facilities:** The Health Act generally prohibits the commercial advertising of all medical specialists and medical treatment facilities.

- (g) **Food:** The Food Act prohibits advertising via ads that feature children of:
- genetically modified foods;
 - foods statutorily restricted for consumption by children; and
 - foods containing nutrients and substances with a nutritional or physiological effect which does not meet the requirements of a healthy diet according to the statutory framework.

- (h) **Food supplements:** The Ordinance on Food Supplements generally prohibits the advertisement of food supplements which:
- claims prevention, treatment or cure of human disease or refers to such properties and
 - contains any text or suggestion that a balanced and varied diet cannot provide the necessary amounts of nutrients.

- (i) **Cosmetic products:** Advertising of cosmetic products, if it suggests any of the following, is prohibited:
- 100% protection against UV radiation, such as: 'blocks the sun's rays' or 'full protection' and
 - that the product does not need to be reapplied, such as: '24-hour protection' or 'all-day protection'.

- (j) **Chemical substances:** The Law on Protection against the Harmful Effects of Chemical Substances and Mixtures prohibits distribution of ads of hazardous chemical substances if such ads do not specify the category of the substance. Any advertisement for a chemical substance classified as hazardous which allows a consumer to conclude a contract for purchase without first having sight of the label must mention the type or types of hazards indicated on the label.

- (k) **Advocacy:** The Advocacy Act generally prohibits any kind of advertising of attorney activity and using other means to attract clients incompatible with the provisions of the Act and the rules of attorney ethics.
- (l) **Financial products or services:** These are regulated by the Financial Instruments and Markets Act. Legal entities without the relevant license must not use in their advertising activities words, in Bulgarian or in a foreign language, such as ‘investment intermediary’, ‘regulated market’, ‘market operator’ or their derivative. Advertising materials of such licensed entities must be true, clear, and not misleading. They must also be clearly marked as advertising materials.
- Analogously, the Credit Institutions Act states that legal entities without the relevant license must not use in their advertising activities words, in Bulgarian or in a foreign language, such as ‘bank’, its derivatives or other words meaning ‘carrying out banking activities’.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

As described above, the Competition Act explicitly prohibits misleading advertising. ‘Misleading advertising’, ie, advertising which ‘in any way, including by the manner of its presentation, misleads or may mislead the persons it targets or reaches and thus may influence their economic behavior, and thereby harms or may harm a competitor’, is prohibited. For more detail see question 3.2 above.

Furthermore, certain types of comparative advertising are also prohibited if found to be confusing, misleading or unfair (for more details please see question 3.7 above).

There is also a statutory ban on aggressive advertising. Pursuant to the Consumer Protection Act, an advertisement is considered to be aggressive when, in its entire factual context, and taking account of all its features and circumstances, it impairs or is likely to impair, due to harassment, coercion, physical force or undue influence, the freedom of choice or conduct of an average consumer with respect to a product or service, thereby causing a transactional decision that the consumer would not have taken otherwise.

Another prohibited advertising practice is the unfair solicitation of clients by granting or promising attractive (expensive) prizes. The Competition Act expressly prohibits the sale of goods or services if accompanied by an offer or promise that consumers will receive, as a prize, cash or an object of ‘significant value’ if they:

- resolve problems, puzzles, questions, riddles;
- collect a series of coupons, etc; or
- participate in games of fortune.

Pursuant to guidelines adopted by the Competition Commission, a prize is of a ‘significant value’ when its average market value is more than 100x the price of the respective product/service. In any case, the value of the prize should not exceed the sum of 15 minimal monthly wages. The minimum monthly wage is set by government and is currently BGN 933 (€477); thus the absolute limit on prizes currently is BGN 13,995 (€7,155).

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) The Radio and Television Act prohibits content which:
- may inspire intolerance;
 - violates the public morals, especially if it contains elements of pornography, praises or exonerates cruelty or violence, or inspires hatred on ground of race, sex, religion etc; or
 - does not preserve the purity of the Bulgarian language.
- The Act's rules apply to the broadcasting of audiovisual content over traditional electronic channels—ie, radio or television. With respect to video-sharing platforms, the Radio and Television Act requires the providers of such platforms to apply measures that restrict access of the public to such content.
- There are no specific controls or restrictions on the freedom of expression save for the fact that it is a constitutional right.
- (b) Under the Code, any use of indecency or obscenity in any commercial communications, including online ads, is indicated as unacceptable. The Code explicitly provides that no commercial messages should contain statements or audio or visual elements which offend the standards of decency currently prevailing in the country or which could be defined as vulgar or repulsive according to the moral and cultural norms generally accepted in the country.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The Electronic Commerce Act requires that the natural or legal persons, on whose behalf online commercial communication is made, be clearly identifiable.

With regard to other communication channels, there are no explicit requirements in this regard. However, as explained in more detail below, all advertising content, regardless of communication channel, should be clearly recognizable as such and distinguishable from editorial content.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

- (a) The Radio and Television Act provides that every commercial communication broadcast over TV or radio should be clearly recognizable as such and distinguishable from editorial content. The Act explicitly prohibits 'hidden commercial communication', which is defined as 'any type of TV or radio broadcasting that with words, sound, images of goods, services, trademark or of any kind of activity of a producer of goods or of a service provider aims to promote the goods, services or image of the said natural or legal entity and which due to the absence of clear indication might mislead the audience about the advertising nature of the respective TV/radio program'.

On the other hand, sponsorship is allowed, as long as the following requirements are duly complied with:

- (i) the content or the program schedule are not influenced in any way by the sponsor in such a way as to affect the independence of the editorial responsibility of the respective media;
- (ii) nothing in the program directly encourages the purchase or leasing of a product or service, in particular by mentioning that product or services in the program;
- (iii) viewers are informed, clearly and in advance, about the sponsorship of the program;
- (iv) the sponsor is clearly identified by name, logo, trademark, etc, at the beginning, end, or during the program.

The rules governing the prohibition against hidden commercial communication are also applicable to video-sharing platforms.

- (b) The Electronic Commerce Act, on the other hand, is less restrictive, and only requires that commercial communication published online is clearly defined as such and that the advertiser is clearly identified.
- (c) The Competition Act imposes a general requirement for the presentation of commercial communications to be done in good faith and prohibits misleading advertising content.
- (d) In addition, the Code requires every commercial communication to be clearly recognizable as such, regardless of its form or the communication channel used by the advertiser. The Code further clarifies that in cases where an advertisement is broadcast on a platform that usually broadcasts news and editorial content, it should be designed in such a manner as to be clearly distinguishable as an advertisement.

7.2 **Are there any special disclosure or other obligations when integrating advertising content with other content?**

There are no special disclosures that should be used. As explained above, the requirement, at all times, is that an advertisement be clearly recognizable as such, and distinguishable from editorial content. As a matter of practice, media use disclosures such as 'Ad', 'Paid Content', etc.

Additional rules are provided in the EU DSA. This applies to digital advertising and works in conjunction with existing regulations like the GDPR, which already establishes rules regarding user consent and the right to object to targeted digital marketing, among others. The DSA introduces two notable restrictions pertaining to targeted advertising on online platforms:

- (a) it prohibits the use of profiling for targeted advertising aimed at minors.
- (b) it forbids targeted advertising based on profiling that relies on special categories of personal data, such as sexual orientation or religious beliefs.

These new regulations aim to empower users by providing them with better insights into the advertisements they encounter. Users will receive clear information about why they are being targeted by each ad, who funded the ad, and whether the content is sponsored or generated organically on a platform, while larger platforms must maintain a public ad repository. Additionally, users will be made aware when influencers are promoting commercial messages.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

All general advertising and marketing regulations apply equally to advertising and marketing via social media platforms. In addition, advertising via social media should comply with the requirement of the Electronic Commerce Act that any commercial communication published online should be clearly defined as such and that the advertiser should be clearly identified.

The EU DSA significantly transforms the requirements applicable to online platforms (including social media) and the rules set out therein are directly applicable in Bulgaria. The prohibition on dark patterns (see question 3.11), as well as the restrictions referred to in question 7.2, are of relevance to the social media services providers established in the EU (including Bulgaria) as well as those established outside the EU when they offer their services within the single market (including Bulgaria).

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There is no statutory provision in this respect, but the Competition Commission case law has made it clear that an advertiser can be held responsible for advertising claims made in user generated content, unless it explicitly opposes such claims.

In one decision (Decision No 1244/2017), the Competition Commission sanctioned an online electronic gadgets retailer (the Retailer) for obtaining unfair benefit from two vlogs made by a famous Bulgarian vlogger and posted on his YouTube channel. In these vlogs, the vlogger made several insulting statements about one of the Retailer's competitors, claiming that its products were of very low quality, while simultaneously praising the Retailer and its products. In its investigation, the Commission found that the Retailer had not commissioned, nor requested in any other way, the vlogger to shoot the vlogs and make insulting statements or even discuss its competitor. It was also established that the Retailer did not have any control over the vlogger's channel and was not in a position to cancel or change the respective vlogs. However, despite the lack of intention or control, the Commission still held that the Retailer had committed an act of unfair competition because it was aware of the respective vlogs, and their negative impact on its competitor and its potential to attract new clients, but did not expressly and publicly renounce the vlogger's behavior, particularly the insulting negative claims made with respect to its competitor and its products.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

In addition to the decision discussed in question 8.2 above, in a decision in 2016 (Decision No 946/2016), the Commission imposed sanctions on an online book retailer for posts on its Facebook page that were found to be misleading. It was announced that a specific book was offered exclusively via the retailer's online shop, which was not confirmed in the proceedings. The defendant expressly argued that Facebook posts should not be regarded as advertising in its case because:

- its Facebook page was not actively used and it had only few followers;
- the page was created as a channel for direct communication with customers and was not intended to be a platform for advertising;
- the posts could not be attributed to the defendant, because the access details for the user account were available to all employees and there was no access control so that even former employees could post.

The Commission dismissed all arguments considering that:

- every Facebook page is easily accessible by all platform users and therefore it had the potential to reach an unlimited audience;
- information posted on a Facebook page is capable of influencing the market behavior of customers, regardless of the intended purpose of the user;
- lack of rules or control over posting in an official social media profile means that the respective advertiser accepts that every employee may manage the profile or post on its behalf, and the advertiser accepts to be bound by such posts.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Bulgarian Copyright and Neighboring Rights Act explicitly requires that any photograph or painting that represents an individual may be taken/created only after the author has obtained the consent of the individual concerned. In addition, the author and the individual should agree on the conditions for the subsequent use of the work of authorship.

In addition, the use of an individual's name, picture, likeness, voice and identity in advertising should be in compliance with the Bulgarian Personal Data Protection Act and the EU GDPR. Pursuant to these Acts, any data that might be classified as personal data may only be used, including for marketing purposes, with the explicit consent of the individual concerned unless another of the grounds for lawful proceeding of personal data (as set out in the GDPR) applies. (This would be the case where an individual is paid to participate in a video or radio ad and the use of their image is the subject matter of the contract. Here, the applicable legal basis for lawful processing of the personal data of the individual may be the necessity for the completion of the contract and, therefore, a separate consent by the data subject may not be required.)

Finally, when using celebrity's images etc, an advertiser should avoid 'branding' such images by positioning a trademark on them and thereby creating the impression that the person shown supports the products offered, if this not so.

9.2 Are there situations when permission is not required?

The Copyright and Neighboring Rights Act provides that consent from an individual is not required for the creation of a photograph or a painting, where:

- the image made is one of public activity, or of a public place; or
- the individual is just one element in the image, which is of a larger group, procession or landscape; or
- the individual was remunerated for posing for the image.

However, from a data protection perspective, in cases where the image or similar representation identifies or may identify an individual, and the representation will be disclosed for marketing or other purposes, the individual must consent and provide their consent in a free, informed, and express manner as per the GDPR.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

- (a) Advertising of:
- non-prescription medicinal products to the general public is subject to prior review and authorization of the advertising materials by the Bulgarian Drug Agency;
 - prescription medicines to healthcare professionals should be notified to the Drug Agency, but does not require authorization.
- (b) Any use of images of prayer facilities, temples, monasteries, or objects or persons related to religion for advertising purposes is subject to the explicit permission of the official representatives of the religion to which the objects/persons are related.
- (c) Explicit authorization from the Bulgarian Government (Council of Ministers) is required for the use of the national coat of arms of Bulgaria for any purpose.
- (d) Use of images of historic buildings, emblems and other content that can be classified as a Bulgarian cultural heritage for commercial and/or advertising purposes is allowed only with the explicit consent of the owner/manager of the respective cultural heritage site. The license should be provided by way of a written agreement, entered into between the respective site owner/manager and the person intending to use the respective images for commercial or advertising purposes.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Yes, subject to compliance with the rules concerning comparative advertising (please see question 3.7 above).

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Bulgaria which affect advertising (eg, Swedish gender equality law)?

No.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

No. However, please note that, in the past, the ad of a big commercial chain provoked an enormous public reaction due to the removal, in the ad, of the crosses from a couple of famous Santorini churches.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Bulgaria?

Pursuant to the Competition Act, where an advertisement is found to be misleading or to present non-permitted comparative advertising, both the advertiser and the advertising agency which produced the ad are liable, and may be sanctioned with a pecuniary sanction of up to 10% of the company's turnover, for infringement of the Competition Act rules.

 CANADA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Canada?

Advertising in Canada is regulated at both the federal and provincial levels, as well as through self-regulatory bodies:

- (a) **Federal laws** govern deceptive marketing practices, including a wide range of representations such as pricing, promotions, testimonials, telemarketing, and bait-and-switch tactics. Furthermore, the federal Criminal Code prohibits illegal lotteries and other conduct related to promotional contests and sweepstakes. Quebec was previously the only provincial jurisdiction in Canada to regulate promotional contests and sweepstakes in addition to federal law. However, as of October 27, 2023, these Quebec contest requirements have been repealed. Quebec also requires the use of French language in advertising, subject to limited exceptions.
- (b) **On the provincial level**, consumer protection legislation governs deceptive advertising and marketing practices. There are also sector- and product-specific legislation governing advertising for products such as alcohol, tobacco, cannabis, drugs, natural health products, food, cosmetics, and advertising directed to children. Additionally, consumer products are subject to federal and provincial labelling legislation, including bilingual requirements.
- (c) There are significant **industry self-regulation requirements** as well, administered by industry self-regulatory bodies such as Ad Standards and the Canadian Marketing Association.
- (d) Lastly, some **intellectual property laws** relating to copyright and trademarks are also relevant to advertising.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Advertising includes virtually any representation made to the public (including any subset of the public), in any media, intended to influence choice, opinion or behavior or otherwise promote, directly or indirectly, a product, service, company, or interest.

1.3 What is the basic regulatory framework for advertising regulation?

The Competition Act governs misleading representations:

- (a) Anyone who makes a materially false or misleading representation to the public to promote the supply or use of a product or a business interest engages in ‘reviewable conduct’. When the Competition Tribunal (the federal adjudicative body in Canada responsible for cases regarding competition laws under the Competition Act) or a court, on application by the Commissioner, finds that a person has engaged in reviewable conduct, it may order the person to not engage in such conduct, to publish a corrective notice, to pay an administrative monetary penalty and/or to pay restitution to affected consumers.
- (b) It is a criminal offense for anyone to knowingly or recklessly make a materially false or misleading representation to the public to promote the supply or use of a product or business interest. Any person who contravenes this provision is guilty of an offense and liable to a fine and/or imprisonment.

Private sector privacy laws regulate the collection, use, and disclosure of information about an identifiable individual. These laws apply to activities in both online behavioral advertising and day-to-day consumer marketing practices. Canada's Anti-Spam Legislation ('CASL') oversees the transmission of commercial electronic communications, such as emails, text messages, and specific social media interactions.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Yes. Commercial electronic messages such as text messages, email and certain social media messages are regulated by CASL, which (subject to limited exceptions) requires that the recipient consent to receive the message (implied or express consent), as well as requiring certain disclosures in the message (including an unsubscribe function).

False or misleading representations as to the source, sender or subject matter of electronic messages are also specifically prohibited.

Canadian Wireless Telecommunications Association guidelines mandate disclosures related to text messaging, including disclosure of costs associated with short code campaigns and other material terms.

Certain advertising (eg, food, alcohol, cosmetics, ads directed to children) must be precleared in order to be accepted by most networks to go to air.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes. The following categories of products are examples of those that have specific advertising restrictions:

- (a) **Alcohol:** Alcohol advertising is regulated provincially, with federal restrictions regarding broadcast alcohol advertising. Example prohibitions include directing such advertising to minors, depicting consumption of alcohol, and using imperative language to urge people to purchase or consume the product.
- (b) **Tobacco:** Most forms of tobacco advertising to the public are prohibited, including advertising in broadcast media.
- (c) **Cannabis:** Cannabis advertising is also generally prohibited unless the advertiser and type of messaging meet specific exceptions available by law.
- (d) **Food:** Food advertising is heavily regulated. For example, claims about the nutritional content or characteristics of food, and comparative food claims, must comply with prescribed formats and restrictions on permissible claims. At the time of writing, new federal legislation is proposed that will either prohibit or restrict the advertising of foods deemed 'unhealthy' directed to children under 13 (this is already prohibited under the advertising self-regulatory regime).
- (e) **Cosmetics:** Cosmetics advertising is regulated, prohibiting drug-like claims about the performance or nature of cosmetic products.
- (f) **Health products:** The advertising of marketed health products, including medical devices, is restricted to claims that comply with the product license or monograph, as applicable.

- (g) **Medicines:** Prescription drugs are highly regulated. Branded prescription drug advertising is limited to the brand name, price and quantity of the product, and cannot state or imply the therapeutic indication of the drug or the affected disease state it seeks to remedy. It may be permissible to communicate, through advertising or otherwise, about a disease state; however, such a campaign must remain unbranded.
- (h) **Credit/leasing rates:** Where advertising includes references to credit or leasing rates, as is prevalent in advertising for cars etc, additional disclosures are required under provincial law, which vary by jurisdiction. For example, credit advertising may require disclosure of the applicable annual percentage rate (APR), and leasing advertising may require disclosures such as the lease APR, length of the lease term, and amount of each payment other than the monthly payments.
- (i) **Advertising to children:** Quebec prohibits advertising to children who are under 13 years of age. This applies to merchants that promote goods or services as well as those involved in the advertising process. It applies across all advertising media, including online, radio, television, mobile phones, printed materials such as newspapers, magazines and flyers, signage, promotional items, and new media. When determining whether the communication will be considered to be ‘directed at’ children, the following contextual factors must be considered:
 - (i) the nature and intended purpose of the goods advertised;
 - (ii) the manner of presenting such advertisement; and
 - (iii) the time and place it is shown.

1.6 Are any government pre-approvals required?

Canadian governmental regulators have largely delegated pre-approval to industry self-regulatory bodies. See below.

1.7 Does the media pre-clear advertising?

For broadcast, networks generally rely on approved agencies, including Ad Standards, which provide pre-clearance services for advertising in the following categories: alcohol, children’s advertising, cosmetics, food and non-alcoholic beverages, and consumer drugs. Additionally, the Pharmaceutical Advertising Advisory Board pre-clears advertising directed to healthcare professionals for prescription, non-prescription, biological and natural health products.

Broadcasters will also clear advertising in these categories, as well as all other categories of advertising, or otherwise will use the clearance services of *thinktv* to do so on their behalf.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Enforcement is dependent on the type of advertising and the governing legislation.

For example, non-compliance with the civil prohibition against false or misleading advertising could result in a court order to:

- (a) no longer engage in the conduct (for up to 10 years);
- (b) publish a notice to the public;
- (c) pay retribution to consumers; and/or

- (d) pay an administrative monetary penalty up to the greater of C\$10,000,000 (C\$15,000,000 on a second order), or three times the value of the benefit derived from the deceptive conduct. If the benefit received cannot be determined, then the maximum penalty can rise to 3% of the corporation's annual worldwide gross revenues.

The penalties on a criminal conviction by indictment are a fine in the discretion of the court and/or imprisonment for up to 14 years. On a summary conviction, the maximum penalty is a fine up to C\$200,000 and/or imprisonment for up to one year.

1.9 When does a competitor have a right of action? What are the potential remedies?

Remedies are dependent on the type of advertising and the governing legislation.

The Competition Act provides for a private right of action where the conduct meets the criminal standard for false or misleading advertising. The remedy is compensation for damages suffered, with no limit on the amount of an award to competitors that allege advertising is contrary to the Act.

Additionally, competitors can access a dispute procedure offered by Ad Standards to mediate competitive advertising disputes under the Canadian Code of Advertising Standards. This confidential process is offered on a fee basis as an alternative to court proceedings. The only remedy available is the amendment or withdrawal of the advertising, however, which may not be sufficient to compensate for damage suffered for false or misleading advertising.

Lastly, competitors can seek remedy through a complaint to the applicable industry sector regulator (eg, the Competition Bureau, Health Canada, the Ontario Motor Vehicle Industry Council) in an attempt to trigger a regulatory investigation and enforcement of the applicable requirements.

1.10 When do consumers have a right of action? What are the potential remedies?

Remedies are dependent on the type of advertising and the governing legislation. Consumers can seek damages through the private right of action available under the Competition Act (see question 1.9 above) or under applicable provincial consumer protection legislation.

Ad Standards offers a consumer complaint process through which consumers can complain about advertising alleged to be non-compliant with the Canadian Code of Advertising Standards. The only remedy available is the amendment or withdrawal of the advertisement.

Consumers may also make complaints to the applicable industry sector regulators (see question 1.9 above).

2 SELF-REGULATORY FRAMEWORK

2.1 Does Canada have a primary advertising self-regulation system?

The primary self-regulatory system in Canada is Ad Standards. Ad Standards is a national, not-for-profit body that administers the Canadian Code of Advertising Standards ('Code'), including the determination of both consumer and trade complaints under the Code.

The Code is designed to help set and maintain standards of honesty, truth, accuracy, fairness and propriety in advertising. The Code sets the criteria for acceptable advertising and forms the basis upon which advertising is evaluated in response to consumer complaints and complaints between advertisers. The Code is not intended to replace the many laws and guidelines designed to regulate advertising in Canada. Nor are the Code's provisions intended to override any other aspect of Canada's preclearance and regulatory apparatus.

Complaints to Ad Standards submitted by the public about advertising that allegedly does not comply with the Code are reviewed and adjudicated by one of two Councils:

- (a) the Standards Council, which includes representatives from Western Canada, Central Canada, and Atlantic Canada; or
- (b) in Quebec, by *le Conseil des normes*.

Councils are independent bodies of senior industry and public representatives, that are supported and coordinated by, but are independent from, Ad Standards. Advertising complaints from advertisers and special interest groups, based on the Code, are administered under Ad Standards' Advertising Dispute Procedure.

If an ad is found to violate the Code, the advertiser can be instructed to remove or amend the non-compliant advertisement and may be publicly identified in a complaints report. Moreover, non-compliant ads will not be carried by newspapers, broadcasters and digital platforms that are members of Ad Standards.

The advertiser dispute process is discussed at question 2.3 below.

Ad Standards also offers advertising pre-clearance services for regulated products.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The clauses of the Code are:

- (a) Accuracy and Clarity;
- (b) Disguised Advertising Techniques;
- (c) Price Claims;
- (d) Bait and Switch;
- (e) Guarantees;
- (f) Comparative Advertising;
- (g) Testimonials;
- (h) Professional or Scientific Claims;
- (i) Imitation;
- (j) Safety;
- (k) Superstition and Fears;
- (l) Advertising to Children;
- (m) Advertising to Minors; and
- (n) Unacceptable Depictions and Portrayals.

Alleged inaccurate or misleading advertising continues to be the most active subject of complaint. This encompasses:

- false or misleading representations,
- omitting relevant information,
- lack of clarity,
- adequacy of disclosures and disclaimers,
- that claims be adequately and properly substantiated, and
- that the advertiser be clearly identified.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Advertising Dispute Procedure provides industry with an effective and responsive mechanism by which disputes between advertisers and from special interest groups can be handled in a confidential forum outside of the judicial system. (For consumer complaints, see question 2.1 above).

There are three pre-conditions for Ad Standards being able to accept a complaint from an advertiser:

- (a) Ad Standards must be satisfied by the complainant advertiser that it has not succeeded in its good faith attempt to resolve the disputed issues directly with the defendant advertiser.
- (b) Ad Standards must be of the opinion there are reasonable grounds to proceed with the complaint, ie, that one or more breaches of the Code are alleged and that the advertising in question has not been excluded under the provisions of the Code or the Advertising Dispute Procedure from adjudication by an Ad Dispute Panel.
- (c) The complaint must be accompanied by the applicable fee.

If Ad Standards accepts the complaint, either party may ask Ad Standards to convene a voluntary resolution meeting between the complainant advertiser and the defendant advertiser, which would be moderated by Ad Standards. The complainant and defendant advertiser must both agree to participate in such meeting.

If the matter is not resolved by such a meeting, either because no resolution meeting is requested or held, or a resolution meeting is held but does not result in a resolution, the defendant advertiser will have a time-limited opportunity to respond in writing to the complaint. Such response will be sent to Ad Standards and to the complainant, who, in turn, will have a time-limited opportunity to reply to the defendant advertiser's submission. The defendant advertiser may then file its reply to, or comment on, the complainant's last submission.

The complaint together with the formal written submissions made by the two parties collectively form the file on the basis of which a three-person panel will adjudicate the dispute (the 'Ad Dispute Panel'). Unlike Ad Standards' previous advertising dispute procedure, there are no live hearings before the Ad Dispute Panel for the parties to present their arguments in-person. The only materials the Ad Dispute Panel may consider in its deliberation are the written submissions from the complainant and the defendant advertiser.

If the defendant advertiser declines to participate in the Advertising Dispute Procedure, the Ad Dispute Panel will still proceed with its adjudication and the complaint will be decided by the Ad Dispute Panel on the basis of the submissions made in the complaint to Ad Standards by the complainant advertiser.

The Ad Dispute Panel is chaired by a lawyer who is experienced in advertising and marketing law. The other two members of the Ad Dispute Panel are drawn from a roster of people from the advertiser, communication/advertising agency, media and industry sectors.

The Ad Dispute Panel's decision is final and non-appealable.

Neither the complainant nor the defendant advertiser may disclose or discuss publicly the Ad Dispute Panel's decision, except within their respective organizations.

The identity of the parties involved in a dispute, and the identity of the members of the Ad Dispute Panel, will not be disclosed by Ad Standards in its case summaries, and may not be disclosed or implied by the parties.

The purpose of the Ad Standards case summaries is to inform the advertising community and the public of the outcome of complaints about advertising that allegedly contravenes the Code and to provide clarity about the kinds of advertising activity that have been found to conflict with the Code.

If the Ad Dispute Panel sustains a complaint, the defendant advertiser will be required to withdraw the advertising in question or amend the advertising in such a manner as to comply with the Ad Dispute Panel's decision and not contravene the provisions of the Code.

Failure by the defendant advertiser to fully comply with the Ad Dispute Panel's decision, whether or not it had chosen to participate in the Dispute Resolution Procedure:

- will result in Ad Standards advising the media of this fact and notifying the Competition Bureau; and
- may result in Ad Standards publishing its summary of the Ad Dispute Panel's decision of the case, including a summary of the facts and issues in dispute, an identification of both parties to the dispute; and a description of the advertising in question.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Consumers are increasingly becoming aware of, and turning to, Ad Standards to register complaints.

The confidential nature of the Advertising Dispute Procedure, as well as its potentially quick resolution, make it an appealing alternative to the courts for dispute resolution, and it is widely accepted.

The vast majority of advertisers do comply with the procedures and findings of Ad Standards.

2.5 Are the self-regulatory system's decisions reported?

As noted at question 2.1 above, the findings of consumer complaints are reported where an ad is found to have violated the Code. If the ad is still in market when the Council meets to evaluate it, the advertiser and details of the ad are disclosed. If the ad has already been amended or withdrawn, the report is anonymous. Ad complaint reports are published on Ad Standards' website.

The decisions in advertiser/special interest group Ad Disputes (see question 2.3 above) remain confidential and are not reported, unless an advertiser does not comply with Ad Standards' finding.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

As consumer complaints about accuracy and clarity continue to increase, particular attention should be paid to disclosure of material terms. A disclaimer cannot be used to contradict the primary message, but only to add supplemental information. Advertising must also not omit information that is material to the offer in such a way as to be deceptive.

In evaluating the accuracy of the ad, Ad Standards will consider both the literal meaning of the ad and the general impression it creates.

2.7 Are there any other self-regulatory systems that govern advertising practices in Canada?

There are various industry associations and self-regulatory bodies, including the Canadian Marketing Association, the Digital Advertising Alliance of Canada, the Canadian Beverage Association, that lead voluntary initiatives and self-regulatory programs in the advertising industry.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Canada (eg, consumer protection laws, IP laws, unfair competition laws)?

The Competition Act is the primary federal statute governing false or misleading advertising and deceptive marketing practices. Under the Act, one must not make a representation to the public that is false or misleading in a material respect. In evaluating an ad, the court or regulator will consider both its literal meaning and the general impression it creates. To determine the general impression of a claim, the courts will consider what understanding a credulous and inexperienced consumer would have of the claim, which includes looking at the advertisement as a whole (ie, text, images, symbols, and other content).

Copyright, trade-mark and other intellectual property laws are also governed federally.

Provincial consumer protection laws also govern false representations or deceptive marketing practices. In particular, consumer protection law in the Province of Quebec addresses marketing and advertising practices in detail, including false or misleading representations, restrictions on the prominence of a premium in an offer, inclusive price advertising, and generally prohibits advertising to children under 13. The Charter of the French Language in Quebec also mandates that advertising be in French, and creates prominence requirements for French when it appears with other languages.

3.2 Is substantiation required for advertising claims?

Yes, substantiation is required for advertising claims prior to making the representation to the public. The Competition Act prohibits representations to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an ‘adequate and proper’ test thereof. The onus is on the party making the representation to show that it is supported by adequate and proper tests. The phrase ‘adequate and proper’ is not defined in the Competition Act, and guidance must be drawn from caselaw and the context of the claim itself.

Similarly, Ad Standards’ Code requires that claims be supported by ‘competent and reliable’ evidence.

All product claims (performance, comparative, environmental or otherwise) must be truthful, accurate, fair and substantiated; and such support must exist before any statement is made publicly.

In certain provinces it is also a specific deceptive practice to advertise a performance characteristic of a product that the product does not have.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Puffery is not subject to substantiation in Canada. However, puffery has a narrow scope compared to some other jurisdictions, as advertising claims in Canada are much more likely to be interpreted in a literal way. The rules for false and misleading advertising apply to all representations made to the public, and so even advertising containing a puffery claim must not create an inaccurate or erroneous general impression. To qualify as puffery, the statement should be clearly nonsensical, or excessive to the point that it is clearly intended as fantasy or humor.

3.4 What are the rules governing the use of disclosures in advertising?

The use of disclaimers is subject to the general rules with respect to false or misleading advertising. To avoid being false or misleading, disclaimers should be clear and conspicuous and clearly attached and/or in reference to the claim being modified. In order to determine whether a disclosure/disclaimer is clear and conspicuous, the type size, crawl speed, contrast, layout, volume and tone will need to be examined. In any case, a disclosure/disclaimer should be easily legible (or audible) from a reasonable distance in a single viewing (or listen) of the ad.

The Competition Bureau takes the administrative position that disclaimers which expand upon and add information to the principal representation do not raise an issue under the Competition Act. All required disclosures must be displayed in such a way that they are likely to be read. Further a disclaimer can only qualify a representation; it cannot cure or retract a false or misleading representation.

Canada's Code of Advertising Standards states that disclaimers and asterisked or footnoted information must not contradict more prominent aspects of the message and should be located and presented in such a manner as to be clearly visible and/or audible.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The general impression created by the advertisement using an endorsement or testimonial must not be false or misleading. The Competition Act requires that either a testimonial must have been previously published; or, prior to advertising, the advertiser must obtain consent to use it from the person making the testimonial.

Additionally, in its administrative guidance, the Competition Bureau has provided examples of how to avoid a false or misleading general impression:

- (a) The person providing the testimonial must have actually used the product. Their statement must be their honest opinion.
- (b) Continued use of a product or service must occur if the testimonial implies such continued use (use of testimonial must be discontinued if their views or experience changes).
- (c) The third party's experience must be relevant to the views expressed (use of the product should be akin to typical consumer use).
- (d) To avoid the impression of impartiality, a person giving a testimonial must disclose any financial or other interest/connection with the advertiser, product or service. (See question 3.4 above for additional details regarding disclosure requirements.)
- (e) Payment must be disclosed where such payment would not be expected by consumers.
- (f) Results/testimonials selected must be representative of a fair sampling of opinions expressed.
- (g) The claims made must not be false or misleading and must be substantiated.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstrations are not specifically regulated. The laws applicable to false or misleading advertising, including the general impression created by the ad, will apply. In this vein, the demonstration must not create an inaccurate impression as to the nature, performance or other attributes of the product. Tools such as time lapse, dramatizations, and the like should be disclosed. Under most provincial and territorial consumer protection legislation, a claim that goods or services are of a particular standard, quality, grade, style, or model, if they actually are not, would be considered false and misleading.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted, provided that it is not false or misleading, does not infringe on third party intellectual property rights and does not unfairly disparage the competitor or its products/services. Using a third-party trademark in advertising may constitute trademark infringement under the Trademarks Act. The Code requires that advertisements must not unfairly discredit, disparage or attack one or more products, services, advertisements, companies or entities, or exaggerate the nature or importance of competitive differences.

There are certain sector-specific restrictions on comparative advertising (for example, comparative advertising of pharmacists is prohibited). Comparative claims in drug advertising should be supported by direct head-to-head human clinical studies. Specific requirements must be met when using comparisons in food advertising.

In the Province of Quebec, it is forbidden to falsely discredit goods or services offered by others by any means whatsoever.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Canadian law distinguishes between marks used in association with goods, and marks used in association with services. A trademark registered in association with goods may appear in comparative advertising (off packaging, and away from the point of sale) without constituting an unauthorized use. In the case of marks registered in association with services, however, 'use' includes use in advertising. Use of such marks in advertising may therefore trigger claims of unauthorized use of the mark if it appears in comparative advertising in any media.

In addition, depicting a competitor's packaging or logo may constitute copyright infringement.

In the case of any comparative advertising, it is important to avoid disparaging the competing brand, or depreciating the goodwill of the competitor's mark.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Yes. Canadian regulators have developed guidelines addressing 'made in Canada' and 'product of Canada' claims for both food and consumer products. Generally, 'product of Canada' may be claimed when all or virtually all major ingredients/components, processing, and labor used to make the product are Canadian. 'Made in Canada' can be used with a qualifying statement (eg, 'with domestic and imported ingredients') when the last substantial transformation of the product was performed in Canada. When a 'product of Canada' claim is made about food, the Canadian Food Inspection Agency will expect that all of the significant ingredients in the product are of Canadian origin and non-Canadian material is negligible. Certain foods may be required to declare their country of origin. Origin markings on certain types of goods may also be required under international trade agreements.

Canadian trademark law also recognizes that marks may be deceptively misdescriptive if the trademark is, or includes, a geographic name and the associated goods or services do not come from that location.

3.10 Are there any special rules governing product packaging?

Yes. Packaging for most consumer products is regulated under the Consumer Packaging and Labelling Act. This legislation governs requirements for declaration of standard of identity, net quantity, dealer declaration and on-pack claims. The packaging for certain products is specially regulated. For example, tobacco and cannabis have plain packaging requirements. Permissible claims and presentation of nutrition and ingredient information on packaging is specially regulated for all food products.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

‘Dark practices’, also referred to as ‘dark patterns’, are a variety of manipulative tactics that use deceptive formatting or language to trick or trap a consumer into engaging in a behavior that is different from that which they originally intended. Dark practices are not specifically regulated, although aspects of it are addressed indirectly through the prohibitions against false or misleading advertising practices under the Competition Act, privacy laws, anti-spam legislation, and provincial/territorial consumer protection laws. Warning bulletins have been made available by the Competition Bureau to consumers related to the use of dark patterns in subscription-based services and free trial offers.

In the Province of Quebec, organizations are prohibited from giving any reason as a pretext for soliciting the sale of goods or the provision of services. For example, the Consumer Protection Office in Quebec has indicated that conducting an air quality survey for the purpose of selling an air purifier or dehumidifier to a consumer is prohibited.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no laws in Canada which govern the use of artificial intelligence (‘AI’) in particular. Changes are expected relatively soon, as the Digital Charter Implementation Act 2022 has completed its second reading at the House of Commons. This aims to regulate the development and use of ‘high impact’ artificial intelligence systems by businesses in Canada.

This proposed Act does not include provisions related to copyright in content developed by generative AI. While Canadian law is not entirely clear at this time with regard to who owns the copyright in materials produced by generative AI, including advertising content, there is some support for the conclusion that content must be created by a human being in order for it to be protected by copyright. Until the law is more settled, advertisers relying on materials created by generative AI should consider that they may not have copyright protection over those materials.

4 PRICE ADVERTISING

4.1 What are Canada’s rules regarding price advertising?

The primary rules regarding price advertising related to ‘ordinary’ or ‘regular’ price claims, are discussed in question 4.3 below. An advertiser is also prohibited from charging more than the advertised price.

Where non-optional fees are not added to pricing representations, this ‘drip pricing’ is specifically prohibited federally as a false/misleading representation. All-inclusive price advertising is mandated in certain sectors, such as automotive and airline travel. At the provincial level, Quebec’s consumer

protection legislation also requires that no greater emphasis be put on the price of a part of a set, or instalment, than on the total price; and that no greater emphasis be put on a premium than on the primary offer.

4.2 What are Canada's rules regarding advertising 'free' products?

Where a 'free' claim gives a general impression regarding the ordinary selling price of a product, the ordinary selling price requirements (set out in question 4.3 below) will apply.

The general prohibition against making false or misleading representations will also apply. As such, the context offer must truly be 'free'. For example, where a bonus item is provided 'free' on the purchase of a product, the cost of the product must not be inflated to account for the bonus item.

4.3 What are Canada's rules regarding sales and special offers?

The ordinary selling price ('OSP') provisions of the Competition Act apply any time that reference is made to an 'ordinary' or 'regular' price in comparison to the sale price to represent some type of savings or bargain to the consumer. A seller cannot advertise that a product is on sale or discounted relative to an 'ordinary' or other price unless the regular price is substantiated using either a time or volume test:

- (a) **The time test** is met if the product in question is offered for sale in good faith at the ordinary price (or a higher price) for a substantial period of time prior to (or following) the representation. In its administrative guidance, the Competition Bureau has interpreted a 'substantial period of time' to mean more than 50% of a six-month period prior to (or, if specifically identified, after) the making of the representation. This period may be shorter depending on the nature of the product in question (eg, seasonal merchandise).
- (b) **The volume test** requires the supplier to have sold a substantial volume of the products at the represented ordinary price. The Competition Bureau has considered a 'substantial volume' to be more than 50% of products sold over 12 months.

If an ordinary price fails both tests, it may not raise issues under the Act if the seller can establish that the representation was not otherwise false or misleading in a material respect. An example of this are 'clearance' claims, which are not required to meet the time/volume tests provided that certain conditions are met.

4.4 What are Canada's rules regarding rebates?

Rebates are not expressly regulated, and the general prohibition against making false or misleading representations will apply. The Competition Bureau has issued administrative guidance, however, regarding consumer rebate promotions and when they will be found to be false or misleading. There are two types of rebates common in the Canadian market:

- mail-in rebates that consumers apply for via mail or online, and receive after purchase of a product, and
- instant rebates that consumers receive at the time of purchase.

Any material restrictions on the redemption of a mail-in rebate must be clearly and conspicuously disclosed so that consumers are aware of the restriction prior to purchasing the product. The following conditions are likely to be material:

- (a) having to provide information beyond proof of purchase and contact information;
- (b) a deadline to submit a claim;

- (c) an obligation to purchase another product in order to qualify for the rebate;
- (d) geographic limitations within Canada restricting eligibility for the rebate;
- (e) restrictions as to the eligibility of certain mailing addresses, such as rural addresses;
- (f) having to forgo the right to confidentiality or allowing personal information to be shared with others in order to receive the rebate;
- (g) any limits on the number of rebates that can be claimed; and
- (h) a rebate that is only valid if the purchase is made at certain eligible retailers.

Additionally, where a rebate promotion representation creates the general impression that a product is on 'sale', it is likely to be found misleading in the case of mail-in rebates. A mail-in rebate should not give the impression that the rebate is instant, or otherwise that the rebated portion of the purchase price of the product will be received at the time of purchase.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The Competition Bureau has recently focused its enforcement on false/misleading pricing claims, including 'drip pricing'. Based on this recent enforcement, where the main message of an advertisement makes a pricing claim, it is likely insufficient to disclaim additional fees elsewhere in the ad. Where discounts are offered, or pricing claims are otherwise subject to conditions, statements identifying the discount must be easily readable and in close proximity to the prices quoted.

In Quebec, retail prices must be displayed on each item offered for sale, unless optical scanning technology is used, subject to an exception that allows the price to instead be displayed on the shelf next to the item. Minimum font size and label sizes apply.

Prices quoted in media are assumed to be in Canadian currency unless otherwise clearly identified.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

As noted in question 1.5 above, advertising for tobacco, cannabis, and prescription drugs are significantly restricted by law. Under federal law, tobacco advertising must be limited to informational or brand-preference ads in publications mailed to identified adults, or publications with at least 85% adult readership, or signs in places where minors are not permitted by law. Branded prescription drug advertising is limited to the brand name, price and quantity of the product, and cannot state or imply the therapeutic indication of the drug or the affected disease state it seeks to remedy. It is prohibited to advertise a drug, natural health product or medical device that is not licensed for sale in Canada.

Advertising, in media that target minors, products which cannot be obtained by minors is also prohibited. For example, provincial alcoholic beverage legislation (or industry guidelines) restrict media placement for alcohol advertising.

Advertising to children under the age of 13 is generally prohibited in all media (subject to limited exceptions) in the province of Quebec. Advertising food to children that is high in sugar, salt or saturated fat is currently prohibited under self-regulatory guidance, and is likely to be prohibited by incoming federal regulatory changes.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

While there are no advertising practices that are prohibited, several forms of marketing are regulated. Those engaged in direct selling may be subject to licensing obligations. Multi-level marketing plans may also require licensing in certain jurisdictions, and this may in turn require approval of the structure of the program by the Competition Bureau. Telemarketing is also regulated and, among other requirements, telemarketers must scrub their lists against Canada's Do Not Call registry (and pay for this subscription). As noted in question 1.4 above, it is also contrary to anti-spam legislation to send commercial electronic messages such as email or SMS without the consent of the recipient.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

While this area is not governed in law (except in the case of pornography), the Canadian Code of Advertising Standards governs standards of decency. Specifically, advertising must not:

- (a) condone discrimination based upon race, national origin, religion, sex or age,
- (b) appear in a realistic manner to condone or encourage violence,
- (c) demean, denigrate or disparage a person or group of persons, or
- (d) undermine human dignity, or offend standards of decency prevailing among a significant segment of the population.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There is no specific regulation governing advertiser/sponsor identification. The general rules against false or misleading advertising (including the general impression test) apply. The Code, however, provides that the advertiser must clearly be identified in any advocacy advertising, that no advertisement may be presented in a way so as to conceal its commercial intent, which may apply in the case of certain native advertising, and that no advertiser may imitate another advertiser so as to mislead the consumer.

If a company pays or compensates someone in-kind to promote its products on social media or other media, those online and other posts must clearly be identified as advertising or sponsored content.

The deceptive marketing practices provisions of the Competition Act apply to anyone promoting a product, service, or any business interest. It is misleading if influencers do not disclose all material connections with the business, product or service they are promoting. A connection may be 'material' if it has the potential to affect how consumers evaluate the independence of an influencer from a brand. There may be a material connection if the influencer:

- (a) received payment in money or commissions;
- (b) received free products or services;
- (c) received discounts;
- (d) received free trips or tickets to events; or
- (e) has a personal or family relationship.

If there is a material connection the influencer should clearly and prominently disclose the connection on all platforms.

Ad Standards Canada has also published guidelines to help ensure that influencer content is not deceptive. It requires representations to disclose any material connection between the influencer and the entity behind the brand, product or service being promoted. The guidelines further require that the disclosure be clear, prominent, and in close proximity to the representation being made.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no specific regulations governing branded content in entertainment works, but the rules concerning general false or misleading advertising apply (including the general impression test). Note that certain tax incentives available for productions could be lost if the programming is deemed to be advertising, rather than entertainment.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

In accordance with the general laws governing false and misleading representations (and the general impression test), and the Code, the commercial intent of a communication should not be disguised. If incentives were offered for featuring the advertised item within the content, it may be necessary in some contexts for this to be disclosed.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no laws which specifically govern social media in Canada, and so laws of general application will apply. Moreover, apart from the terms and conditions of each particular platform, there are no rules governing the use of social media for advertising.

The Competition Bureau and Ad Standards have also set out specific guidance related to format (eg, influencers must disclose any material connection they have with the advertiser whose product or brand they are promoting). There is a risk that the advertisement will be considered false or misleading to consumers if the advertiser and influencer fail to comply with these guidelines. See questions 3.4 (regarding disclosure), 3.5 (regarding endorsements/ testimonials) and 6.1 (regarding influencers) above.

CASL applies to commercial electronic messages sent through social media platforms. While general posts will be outside of the scope of this legislation, direct messages and, potentially, other forms of direct communication will be captured. This triggers the requirements for certain consent requirements, and disclosures within the message itself.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser’s Facebook page)?

An advertiser may be held responsible for advertising claims made by users. To the extent that an advertiser either screens user generated content prior to posting, or monitors direct posts made by consumers, or solicited the content, it could be held responsible. The potential for liability may depend upon the jurisdiction, and the extent to which the advertiser may be found responsible, directly or indirectly, for the content.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

In 2015, Bell Canada agreed, by way of a consent agreement with the Competition Bureau, to pay an administrative monetary penalty of C\$1.25M. The offending conduct consisted of posted reviews by Bell employees, giving positive comments and ratings, without disclosing their affiliation with the company.

Additionally, in 2019, the FlightHub case provides confirmation that fabricating customer reviews is contrary to the Competition Act’s prohibitions against making false or misleading representations. FlightHub had published positive online consumer reviews that were presented as independent and impartial, when in fact the reviews were made by FlightHub.

In 2021, Ad Standards Canada found that posts made by influencer Madison K, and advertiser The Perfect Hoop did not properly disclose the material connection between the two. In this case, the influencer tagged the advertiser but did not mention that the content was sponsored, and the advertiser subsequently posted the same content without any disclosures.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual’s name, picture, likeness, voice and identity in advertising?

There are both common law and statutory rights to personality in Canada. The common law tort of appropriation of personality prohibits the use of an individual’s personality—including name, picture, likeness, voice and identity—without permission, although is relatively nascent in development. Additionally, some provinces have enacted specific legislation providing a cause of action for appropriation of personality. The following elements make up the statutory cause of action across all jurisdictions:

- (a) only certain traits can be appropriated (voice, name, and likeness);
- (b) the defendant must be identifiable;
- (c) appropriation must be intentional;
- (d) the defendant must gain from the appropriation; and
- (e) the plaintiff must show that damages were suffered as a result of the appropriation.

Where the individual consented to the use of personality, it will constitute a defense in all jurisdictions where there is a statutory cause of action for appropriation of persona.

Concurrently, there are also statutory and developing common law rights to privacy, including the following developing torts:

- Intrusion upon seclusion,
- Public disclosure of private facts, and
- Publicity that places a person in a false light in the public eye.

These torts are typically only actionable if the intrusion was intentional/reckless, amounted to an unlawful invasion of the plaintiff's private affairs, and/or would be viewed as highly offensive to the reasonable person.

9.2 Are there situations when permission is not required?

Most provincial legislation requires that the individual be identifiable. Additionally, some provinces extinguish persona rights on the death of the individual. In all jurisdictions, there is a defense to the appropriation (or it is not an appropriation) where it was in the public interest, or where the appropriation was fair comment on a matter of public interest. It is unlikely, however, for commercial advertising to be considered a matter of public interest.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no specific rules at law requiring preclearance of materials to be used in advertising, except for the general application of intellectual property laws. To use materials owned by a third party, one must secure the necessary rights. In some instances, owners of buildings or other landmarks may claim rights in and to the images of the buildings and require permission for commercial use of any photograph or other image.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Depicting a competitor's packaging, logo, or mascot in advertising may constitute copyright infringement and, in the case of the use of a competitor's trademark, trademark infringement or passing off.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Canada which affect advertising (eg, Swedish gender equality law)?

While no cultural considerations are prescribed by law, the Code does mandate that advertising should not offend standards of decency prevailing among a significant segment of the population. Canada has a diverse ethnocultural, linguistic and religious population, with more than 450 ethnic or cultural origins reported in the 2012 federal census, and this cultural diversity is valued by most Canadians.

As noted above, Quebec language laws require that advertising be in French. Further, advertising may be viewed differently in French Canada than in English Canada, whether due to linguistic or cultural differences.

11.2 Are there any other cultural norms that should be considered (eg religious concerns)?

See question 11.1 above.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Canada?

CASL has a broad reach across the use of electronic communications to interact with consumers. CASL is in addition to private sector privacy legislation governing the collection, use and disclosure of personal information. In particular, the application of CASL to many social media platforms has yet to be resolved or expanded upon by the regulators.

When creating advertising for Canada, be aware that Canadians may view advertising more literally than in some other jurisdictions (ie, restricted scope for puffery), and that both the literal meaning and the general impression created by the advertising are to be considered. The Supreme Court of Canada ruled in 2012 that, under Quebec’s consumer protection legislation, the general impression of an ad should be considered from the perspective of the ‘credulous and inexperienced’ consumer. It is therefore important that the meaning of the advertisement be clear, and disclosures and disclaimers used appropriately.

There are certain areas where the Canadian government is placing increasing focus on enforcement. In particular, the Competition Bureau views environmental marketing claims as an area of interest. Although the Competition Bureau has archived its guidelines for advertisers and the industry on this topic, it has published a condensed list of key considerations when making such claims, including that they should be precise and substantiated. In 2022, it opened two inquiries regarding environmental marketing claims that remain under investigation, relating to climate change, reduced emissions, and sustainable energy.

Additionally, another area of attention is the advertising of food and beverage products high in sugars, sodium or saturated fat to children under the age of 13. Ad Standards began enforcing a new code in this regard in June 2023, while Health Canada released a proposed policy prohibiting such ads. There is also similar draft legislation that is currently proceeding through the federal legislature. Generally, the goal of these regulatory measures is to prohibit or restrict advertising these ‘unhealthy’ foods to kids.

Finally, Quebec’s French language laws have recently been subject to a major overhaul. In particular, consumer contracts must be presented in French to be enforceable, and, beginning in June 2025, all unregistered trademarks need to be translated into French, including those used in commercial advertising. Additionally, a ‘generic term or a description of the product’ included as part of a trademark registered in English must also appear in French.

 CHILE 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Chile?

Advertising is not regulated by only one body of law. Provisions about the subject are scattered throughout legislation. Free speech and the right to engage in any legal economic activity are expressly protected by the Chilean Constitution. Important provisions about the subject are found in, amongst others:

- Law 19496 (Consumers' Rights Protection Act);
- Law 19039 (Industrial Property Act);
- Law 17336 (Copyright Act);
- Law 20169 (Unfair Competition Act); and
- Law 19628 (Data Protection Act),

Besides these, general rules regarding private and criminal law should also be considered.

There is also a self-regulating entity known as the Self Regulation and Advertising Ethics Counsel ('CONAR'). One of its functions is to serve as an Honor Court that resolves disputes regarding advertising ethics according to the Chilean Code of Advertising Ethics (see question 2 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

According to the Consumers' Rights Protection Act, 'advertising' is any communication made by a provider to the public to inform and motivate the purchase of a good or hire of a service.

Throughout legislation there are other definitions of advertising that are applicable for specific situations. For example, regulations issued by the Health Agency provide a different definition of advertising, which is applicable for pharmaceutical products.

On the other hand, according to the Chilean Code of Advertising Ethics, 'advertising' is any activity or communication directed to the public or a segment of the public, with the purpose of influencing its opinions or behaviors, through any means, including promotions, placement and other activities or events done with promotional, commercial or competing ends.

1.3 What is the basic regulatory framework for advertising regulation?

As noted in section 1.1. above, advertising is not regulated by only one body of law. Provisions about the subject are scattered throughout legislation. Arguably, the most important provisions regarding advertising are in Law 19496, the Consumers' Rights Protection Act. This Law has been revised and modified by DFL 3 and by Law 21398.

As said before, there are also relevant provisions in other laws, such as:

- the Industrial Property Act;
- the Copyright Act;
- the Unfair Competition Act;
- the Data Protection Act.
- Law 20,606 on Nutritional Composition of Food and Food Advertising; and
- Law 19,925, as amended and restated by Law 21363, sets forth rules regarding the marketing and advertising of alcoholic beverages.
- DFL 725 ('Sanitary Code').

Besides these, general rules regarding private and criminal law should also be considered.

The self-regulatory system is ruled by the Chilean Code of Advertising Ethics (see question 2 below).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Yes, unsolicited advertising communications are specifically regulated. Any advertising done by email must indicate its matter or subject, the sender's identity and a valid email address to which the receiver may request the cessation of all advertising sent this way. From that point onward, emailing that consumer with advertising ends will be prohibited. Express consent from the user (opt-in) to send email is required, given that the email is considered personal data, so it can only be processed if it has been expressly authorized by the owner.

When advertising is done through traditional mail, fax, telephone calls or text messages, the advertiser must indicate to the receiver an expeditious way to request the cessation of all advertising. As in the case of email advertising, if a person requests not to receive any more advertising communications, such advertising will be prohibited from that moment. In this sense, the Chilean Consumer Law states that individuals have the right to request the suspension of unwanted promotional or advertising communications sent to their emails, telephones or telephone messaging. Additionally, this can also be linked with the Privacy Law, as the sending of emails constitutes data processing (with the user's mail being the data being processing). Therefore, through the user may request to stop the sending of mails via the mechanisms set forth by the Privacy Law as well.

According to the Data Protection Act, data subjects may request the elimination of their data from databases that are used for commercial communications. On the other hand, Law 21398, which amends the Consumers' Rights Protection Law, establishes that, in the field of personal data, the powers of the Consumer Protection Agency ('SERNAC') (as to which, see question 1.8 below) to protect consumers are reaffirmed. This means that it can oversee, issue circulars, or pursue compensation in collective processes in cases that affect consumers' personal data.

Finally, it is important to note that there is a bill in Congress that proposes to limit the sending of marketing messages on holidays, Sundays, or any day from 9.00 pm to 9.00 am.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are certain industries whose advertising is specifically regulated:

- (a) **Pharmaceutical products:** Under Chilean Law, these can be divided into those that require a medical prescription before they can be obtained (prescription drugs) and those that may be sold directly to a consumer without a prescription from a healthcare professional (over-the-counter drugs). Prescription drug advertisement through mass media is prohibited. On the other hand, advertising and other activities intended to inform the consumer about a pharmaceutical product may be allowed for over-the-counter medications, but the terms under which they can be advertised are strictly regulated by the Health Authorities, especially in the product's health registry (any pharmaceutical product has to be registered before the Health Authorities prior to its marketing in the country, and the registry will state the way(s) in which the product may be advertised. As a general rule, advertising of these products must not be deceptive or detrimental to public or an individual's health.

Furthermore, advertising claims in this field must be scientifically and/or technically substantiated. Messages for these types of products should not contain expressions that constitute incomplete comparisons. Therefore, when a product is described, eg, as 'better,' 'faster,' or 'safer,' the characteristic it is being compared to must be specified, and such a comparison should be scientifically or technically verifiable. The use of advertising exaggeration in pharmaceutical advertising should not mislead regarding the true properties of the advertised product or suggest directly or indirectly an irrational or inappropriate use of it.

The promotion of pharmaceutical products intended for healthcare professionals authorized to prescribe them cannot be carried out through social media channels directed at the general public. Free drug samples and advertising or any incentive mechanism aimed at medical professionals and people related to the sale and administration of medicines is strictly regulated. One exception to the general prohibition on providing free medication by any means or under any pretext or condition, is that medication may be promoted by the provision of samples to legally authorized prescribing professionals in accordance with the terms specified in the respective records, to be provided, free of charge, directly from professional to their patient.

- (b) **Cosmetic products:** Cosmetic product advertising is governed by regulations issued by the Health Authority. Cosmetics may not be distributed, even for advertising purposes, before having obtained a sanitary registration. Moreover, advertising of these products must be truthful, not be misleading or contain claims regarding the product's effects that are false or unable to be substantiated.
- (c) **Tobacco products:** Direct or indirect advertising of tobacco products is prohibited by any means, including through .cl internet domain names. People smoking or pointing out the advantages of tobacco consumption for advertising purposes may not be broadcast through television or radio (however, there is a safe harbor for adult programming, in which actors may be shown smoking or discussing tobacco products positively).
- (d) **Alcoholic beverages:** Enticing underage consumption of alcoholic beverages through advertising is criminally sanctioned. According to television broadcasting regulations, advertising for these products is only allowed on TV during the safe harbor for adult programming (between the hours of 10.00 pm and 06.00 am), and on the radio is prohibited between 4.00 pm and 6.00 pm. However, trademarks related to alcoholic beverages, but not the products themselves, may be mentioned during television broadcasts, if the owners of said trademarks are sponsoring a cultural, sport or similar event.

The Law on Alcohol Advertising stipulates that any form of commercial or non-commercial, direct or indirect, advertising of alcoholic beverages in sports activities, such as the promotion, communication, recommendation, or propaganda of these beverages, their brands, and products is prohibited. An exception is made of mega sports events held in Chile, understood to be international sports competitions of a global, continental, or regional nature.

Also, any form of commercial or non-commercial, direct or indirect advertising of alcoholic beverages is prohibited in any product, publication, or activity intended exclusively for minors. In any case, the consumption of alcoholic beverages by minors shall not be induced,

nor shall means be employed that take advantage of their credulity. The sale of these products may not be carried out through commercial incentives, such as gifts, contests, games, and other elements attractive to children.

- (e) **Certain kinds of food:** By Law 20,606 on Nutritional Composition of Food and Food Advertising, the Health Authority has determined the foods that contain excessively high levels of certain ingredients must be labeled accordingly and may not be advertised inside elementary, middle and high schools. Moreover, promotional hooks, such as the use of toys, gifts etc may not be used in advertising foods especially intended for minors under 14 years old are also prohibited.

In addition, although this has not been settled in Court, The Health Authority have consistently interpreted that the use of certain figurative trademarks (eg, depiction of cartoon characters on cereal boxes) constitutes advertising. Consequently, advertisers should be aware that the use of figurative elements, even if properly registered under trademark law, could be questioned by the authorities if these are used in connection with packaged food which has a high content of fat, sugar, calories or sodium.

- (f) **Credit services:** With respect to credit services, there is an indicator called the Annual Equivalent Rate ('AER'), which expresses in a percentage the total annual cost of credit. This allows consumers to compare different credits. Credit service providers must state the AER in any credit advertisement advertising reference interest rates. In credit advertisements, AER information must have the same treatment as the reference interest rate regarding typography, extension, positioning, duration, diction, repetitions and volume.

1.6 Are any government pre-approvals required?

Government pre-approval of advertising campaigns is not generally required. Exceptions to this are:

- (a) **Pharmaceutical products:** Obtaining a sanitary authorization prior to commercialization of this kind of product is mandatory. That authorization specifies, among other things, the content of the informative booklets attached to the products which are directed to patients. Advertising must reproduce the exact content of those booklets. Therefore, this is an indirect way in which health authorities pre-approve the advertising of pharmaceutical products.

The Chilean Public Health Institute is the authority responsible for nationwide health control of pharmaceutical products, and establishments in the area, and for overseeing compliance with the mentioned provisions. It maintains a record of all pharmaceutical products that have been positively evaluated in terms of their efficacy, safety, and quality, which they must demonstrate and ensure during their intended period of use. No pharmaceutical product may be distributed in the country without being registered.

- (b) **Cosmetics:** Likewise, cosmetics must have a health registration granted by the Chilean Public Health Institute in order to be marketed.

1.7 Does the media pre-clear advertising?

There is no entity in charge of advertising pre-clearing. Nonetheless, there have been occasions when television networks, radio broadcasters and other media have refused to issue certain advertisements. Such refusals have been for different reasons (eg, morals, legal issues, etc).

1.8 How does the government enforce advertising laws? What are the potential remedies?

- (a) SERNAC is the government agency that monitors the enforcement of the Consumers' Rights Protection Act. This Agency serves as a mediator between consumers and providers of goods and services. On the other hand, SERNAC has the power to report infringements of the Consumer Protection Law to other authorities or courts of law with the faculty to order sanctions.
- (b) The Health Authority may order administrative inquiries aimed at ascertaining possible infringements to the Sanitary Code, including infringements to drug advertisement provisions. The infringer may be sanctioned with fines of up to 1000 UTM (a monetary unit of measurement used in Chile for fines and taxes, updated according to inflation. At the time of writing, 1 UTM is equal to approximately US\$ 71). The Health Authority also monitor the enforcement of other regulations related to the advertising of some products, such as cosmetics, tobacco products, alcohol, and foods determined to have excessively high levels of certain ingredients (see question 1.5 above).
- (c) The enforcement of Law 19925, including its provisions about alcohol advertising, is monitored by the Police and Municipal Inspectors. As stated above, enticing underage consumption of alcoholic beverages through advertising is criminally sanctioned with imprisonment and fines.
- (d) The various television broadcasting regulations are enforced by the National Council of Television. Said regulations contain the previously mentioned rules regarding alcohol advertising through television and vague rules about television broadcasting content. The respect for abstract principles such as democracy, peace, pluralism, human dignity, equality and human rights, among others, may be enforced by the Council through its power to fine television broadcasters. Transmissions, including advertisements, containing excessive violence, cruelty, pornography or the participation of minors in immoral acts may also be sanctioned with fines by the Council.
- (e) Finally, although uncommon in practice, copyright infringements may be prosecuted *ex officio* by the Public Prosecutors Office. Said infringements are criminally sanctioned with fines and even imprisonment.

1.9 When does a competitor have a right of action? What are the potential remedies?

- (a) Under the Unfair Competition Act, competitors have a right of action when another competitor performs any behavior contrary to good faith or morality that seeks to divert consumers from another market agent. Advertising that meets the above requirements may be considered an act of unfair competition. For example:
 - misleading or false advertising;
 - inaccurate or false claims that may damage a competitors' reputation;
 - comparative advertising which is based upon information that is not truthful and verifiable.

This action is, essentially, a special tort. Competitors of the infringing agent may request the following of the Court:

- (i) the ceasing of the behavior or an injunction to prohibit future behaviors;
- (ii) the declaration that certain conduct represents an act of unfair competition;

- (iii) the publication of the judicial decision against the tortfeasor or other acts aimed to remedy the unfair competition behavior; and/or
 - (iv) damages.
- (b) Trademark and copyright infringements may also allow tort actions against a competitor. In addition, such infringements may allow criminal actions against the infringing person. Trademark infringements may be sanctioned with fines from 25 to 1000 UTM. Copyright infringements may be punished with up to 1000 UTM in fines or even a prison sentence.
- (c) Actions before CONAR's Honor Court should also be considered an effective alternative to judicial actions, notwithstanding non-binding nature of its decisions.
- (d) Eventually, there could also be grounds to support a constitutional action. Specifically, and action for protection before the corresponding Court of Appeals, since it has been considered that legal entities may be subject to certain fundamental rights, as in the case of the Right to Honor. The recourse for protection proceeds as a consequence of arbitrary or illegal acts or omissions, they suffer deprivation, disturbance or threat to their constitutional rights and guarantees.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers have a right of action when any form of advertising infringes the Consumers' Rights Protection Act. This Act regulates the information that must be given to the public when advertising goods or services, spam, price advertising and special offers, among others. Any kind of false or misleading advertising is an infringement of the Act.

The Consumers' Rights Protection Act allows the consumer to request damages and a fine for the infringing provider of goods or services. Fines may reach 1,500 UTM. In the event that the advertising impacts the quality of products or services to such an extent that it affects the health or safety of the population or the environment, the offending advertiser may be subject to a fine of up to 2,250 UTM.

It must be noted that consumers may also bring an action against a market agent under the Unfair Competition Act provisions, if they are personally and directly threatened or injured by an act of unfair competition. Additionally, on a case-by-case basis, depending on the content of the advertising piece, the filing of other types of actions involving rights with their own statutes, such as a lawsuit for industrial property crimes or a constitutional action for the Right to Honor, could be evaluated.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Chile have a primary advertising self-regulation system?

Yes, Chile has a primary self-regulation system for advertising. The entity in charge of it is the Self Regulation and Advertising Ethics Counsel ('CONAR'). This entity is a private nonprofit legal body whose main objective is to regulate advertising practices according to the principles and rules of the Chilean Code of Advertising Ethics.

CONAR is composed of the most important organizations regarding advertisement and the media: the National Association of Advertisers, the Chilean Association of Advertising Agencies, the Association of Broadcasters from Chile, the National Association of Television and the Interactive Advertising Bureau.

CONAR has a didactic function, giving recommendations and publishing materials aimed at spreading the principles of the Chilean Code of Advertising Ethics. It also serves as an Honor Court that resolves disputes over advertising ethics and practices.

The Chilean Code of Advertising Ethics is based on the Consolidated ICC Code of Marketing and Advertising.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Arguably, the key principles of the Chilean Code of Advertising Ethics are: legality, honesty, morality and truthfulness. The purpose of these principles is to safeguard public interest and healthy free market competition.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

If the Honor Court establishes that an advertisement infringes the Chilean Code of Advertising Ethics, then it issues a decision recommending the modification or cessation of the infringing material. However, there is no way to enforce decisions obtained through the self-regulatory system dispute resolution mechanism.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Although it is not enforceable, the self-regulatory system has proven to be very effective. When a claim is presented before CONAR, advertisers usually agree to be subject to the Honor Court procedure. The vast majority of the decisions issued by the Honor Court are complied with.

In judicial litigation, a decision issued by CONAR's Honor Court is a valuable element to have in one's favor.

2.5 Are the self-regulatory system's decisions reported?

Yes, all decisions issued by the Honor Court of CONAR are publicly available on its website. Also, every year CONAR publishes a report detailing the jurisprudence of the Court. These publications are very important in order to satisfy the didactic function of CONAR and to facilitate the resolution of new claims being presented.

One of the possible sanctions that may be issued by CONAR's Honor Court is the publication, at the expense of the infringer, of the decision. This is another way in which these decisions are informed to the public.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

It is important that companies abide by the basic principles of the Chilean Code of Advertising Ethics: legality, honesty, morality and truthfulness. Also, it is valuable to be aware of the Honor Court's jurisprudence in order to avoid sanctions or damages to the public image of a company.

During recent years, the most litigious article of the Chilean Code of Advertising Ethics was the one that regulates false advertising, exaggeration and puffery. This is a trend that has been sustained from, at least, 2010. Therefore, this is an aspect of the Code that companies should take into special consideration.

2.7 Are there any other self-regulatory systems that govern advertising practices in Chile?

No, there are not.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Chile (eg, consumer protection laws, IP laws, unfair competition laws)?

- (a) Advertising claims are mainly regulated by the Consumers' Rights Protection Act. This Act prohibits false or deceptive advertising claims related to some important aspects of the products or services being offered and misleading advertisements in regard to the identity of the provider. Therefore, this law regulates that information must be:
 - (i) truthful and timely;
 - (ii) it must not be false or misleading and should not lead to error or confusion for the consumer;
 - (iii) it must be verifiable; and
 - (iv) it must be provided prior to the purchase, allowing the consumer to make an informed choice.

Price advertising, substantiation and the manner in which important information may be advertised (eg, language, currency, measure units, etc) are also regulated by this Law.

- (b) There are also relevant provisions on this subject in the Industrial Property Act; the Copyright Act; and the Unfair Competition Act. Besides these rules, ones regarding the advertising of certain industries (eg, pharmaceutical products, cosmetics, alcohol, foods determined to have excessively high levels of certain ingredients by the Health Agency, credit services, etc) should be considered (see question 1.5 above).
- (c) The jurisprudence of the CONAR Honor Court and the Chilean Code of Advertising Ethics are not legally binding, but should be taken into account. Although it is not enforceable, the self-regulatory system has proven to be very effective. Furthermore, the rules and jurisprudence of this system are more comprehensive than the legal provisions, and may be useful to interpret the latter.
- (d) Residually, there are cases where constitutional actions have been filed based on the infringement of fundamental rights, but this is not the usual practice.

3.2 Is substantiation required for advertising claims?

- (a) Yes, the Consumers' Rights Protection Act provides that advertising claims must be verifiable and not be misleading or deceptive. On the other hand, the Unfair Competition Act provides that comparative advertising based upon information that is not truthful and verifiable is a form of unfair competition.
- (b) The Chilean Code of Advertising Ethics also refers to this matter, and specifies the way in which scientific and technical information must be used and which claims are considered mere puffery. It provides that when advertising contains descriptions, assertions or illustrations regarding facts or any kind of objective data, these facts or data must be verifiable. The evidence supporting the claims must be available at the request of CONAR.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

This matter is regulated in the Chilean Code of Advertising Ethics. ‘Puffery’ is regarded as an advertising resource that expresses subjective views that are extreme or metaphorical in nature, and therefore should not be taken literally by a reasonable person. Therefore, it is allowed and requires no substantiation. Nonetheless, exaggerated claims that are deceptive or misleading are not acceptable.

Dramatization, in certain cases, is considered an acceptable form of puffery.

3.4 What are the rules governing the use of disclosures in advertising?

There are no special provisions for disclosures, but the general rules of the Consumers’ Rights Protection Act regarding advertising claims may apply. Basic information about the products or services being offered to the public must be clear and timely. Furthermore, this basic information must be in Spanish and in easily understandable and legible terms. On the other hand, deceptive or misleading advertising is prohibited. Thereby, disclosures must be reasonably clear and conspicuous in order to not infringe general rules about advertising claims.

The information provided on products, labels, packaging, advertising, and promotion of goods and services must be verifiable and not contain expressions that lead to consumer error or deception.

Moreover, the Chilean Code of Advertising Ethics contains special rules regarding this subject. It provides that disclosures in the form of footers and explanatory notes must not alter, contradict or modify in a substantial way the principal message. When disclosures substantially modify the principal message, it is necessary to communicate these in a clear, understandable and prominent way. The use of small-size letters in disclosures is also regulated. The principles underlying these rules are applicable to any kind of advertising.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Chilean Law does not regulate this subject. Nonetheless, testimonials, in particular, are regulated in the Chilean Code of Advertising Ethics. According to the Code, testimonials must be authentic and related to actual experiences of the person who testifies or of the person being personified. Testimonials must always be verifiable and current and must not be deceptive or misleading.

In general, testimonials that may lead to deception should not be used, especially when the testimony:

- is not real and/or does not represent the true opinion of the giver;
- is not quoted in its entirety, altering its meaning and impact;
- contains ambiguous representations or statements;
- although true, leads to incorrect conclusions; or
- does not clearly state that the giver of the testimony, although associated with a recognized institution, is speaking for themselves and not on behalf of that institution, if that is the case.

The supportive or testimonial management carried out by influencers, bloggers, or other brand or company spokespersons referring to a product, service, or experience is a valid form of advertising communication. Those engaging in this activity must do so responsibly, following the rules and principles contained in the Code of Advertising Ethics.

The use of models dressed in uniforms, costumes or clothing of a profession, occupation or trade must not mislead or deceive the public, and must always be limited by the ethical standards of the profession, trade or occupation represented.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no special rules regarding this subject, but provisions related to substantiation and comparative advertising should be considered.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is allowed, but it has to meet certain requisites in order to be considered lawful:

- (a) The Unfair Competition Act provides that comparative advertising based upon information that is not truthful and verifiable is a form of unfair competition. Furthermore, courts of law have ruled that comparative advertising must be truthful, objective and verifiable, and must not be deceptive or derogatory for the competitors. Therefore, advertising constitutes an unfair competition practice when:
 - it is not true, objective, or demonstrable;
 - its sole purpose is to harm the reputation of competitors; or
 - the analysis used as the basis for comparison is not on an equal footing for all products.
- (b) The Chilean Code of Advertising Ethics regulates the subject in a detailed way. It defines 'comparative advertising' as any advertising that claims superiority or advantages over another product, service, brand or industry, through the explicit or implicit comparison of their characteristics, attributes or benefits. Thus, comparative advertising may explicitly identify competition, suggest it indirectly, or refer to a specific industry. According to the Code:
 - comparative advertising must be based upon objective and verifiable facts;
 - puffery or any type of exaggeration must be avoided;
 - evidence supporting the claims must be available at the request of CONAR.
 - comparison must be between goods or services meeting the same needs or intended for the same purpose;
 - comparative advertising must not create confusion in the public with respect to the advertiser and the competitor; and
 - it must not be done in derogatory terms.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

No, there are no special copyright or trademark rules regarding comparative advertising. Nonetheless, this subject is regulated in the Chilean Code of Advertising Ethics. By the Code, in the context of fair comparative advertising, it is acceptable to use the trade name or other distinguishing marks of a competitor's brand for identification purposes. Comparative advertising should not be derogatory towards the advertiser, the compared product, or service, nor should it lead to confusion between the advertiser and a competitor, or between the brands, trade names, distinctive signs, or

the products or services of the advertiser and those of any competitor. In comparative advertising, it will be ethically acceptable to use the trade name or other distinctive signs of a competitor's brand for identification purposes, as established by the law, as long as such use is fair and in line with the principles enshrined in the Code. See also question 3.7 above.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The Consumers' Rights Protection Law requires that all information provided by a seller regarding a product or service must be accurate and truthful. Consequently, stating false geographic origin of products will be sanctioned by the courts in cooperation with the Consumer Protection Authority ('SERNAC'). In addition, appellations of origin officially recognized by the Chilean State have full legal protection under the Industrial Property Law.

3.10 Are there any special rules governing product packaging?

Yes, there are basic and general provisions on product packaging contained in the Consumers' Rights Protection Law, which make mandatory the use of Spanish in all product packaging. The information provided on products, labels, packaging, advertising, and promotion of goods and services must be verifiable and must not contain expressions that lead to consumer error or deception.

In addition, specific industries, such as tobacco and high calorie packaged food, have additional provisions regarding information shown on packaging. In that respect, it is relevant to note that the health authorities have consistently interpreted that the use of certain figurative trademarks (eg, depiction of cartoon characters on cereal boxes) constitutes advertising. Consequently, advertisers should be aware that the use of figurative elements, even if properly registered under trademark law, could be questioned by the authorities if these are used in connection to packaged food which has a high content of fat, sugar, calories or sodium.

In the case of alcoholic beverages, products intended for direct consumption must be sold in sealed and labeled containers, unless they are being sold in a manner authorized by the competent authority in specific establishments or venues. Under no circumstances may products be packaged for commercialization in envelopes or bags that can be easily concealed by the carrier.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

The Advertising Code of Ethics establishes that:

- Advertising and marketing communications must respect the current legal framework, and, in particular, the values, rights, and principles recognized in the Political Constitution of the Republic;
- Advertising messages should not contain statements or visual and auditory representations that offend prevailing moral or decency standards within the community or significant segments of it;
- Advertising messages should not offend cultural heritage, social interest, national institutions and symbols, or constituted authorities;
- Advertising messages should respect the dignity of individuals, avoiding arbitrary discrimination, denigration, belittlement, ridicule, or mockery of individuals or groups, especially on the grounds of race, ethnicity, religion, gender, sexual orientation, age, disability, social, cultural, or economic status;

- In advertising messages, the humorous and satirical treatment of individuals or groups is acceptable as long as the representation does not cause specific or widespread offense, or lead to hostility, contempt, abuse, or ridicule;
- Advertising must not abuse the trust of the public or exploit their lack of culture, knowledge, or experience;
- Advertising must not resort to unjustified threats for not purchasing or using a particular product or service. It must also refrain from using fear or superstitions without reasonable justification;
- Advertising messages may only invoke fear to encourage prudent behavior or discourage dangerous, reckless, or illegal actions. Advertising messages must not exploit or take advantage of misfortune or suffering without just cause.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No, there are not.

4 PRICE ADVERTISING

4.1 What are Chile's rules regarding price advertising?

Suppliers of goods or services must inform the public about the prices of the goods and services that they offer, except for prices that must be established on an individual negotiation basis. Price information ought to be clearly indicated, written in Spanish and include the total amount in Chilean pesos, including taxes.

Advertising that provides misleading price information is an infringement of the Consumers' Rights Protection Act, that allows consumers to request damages and may be sanctioned with a fine of up to 1,500 UTM (approx US \$107,000).

4.2 What are Chile's rules regarding advertising 'free' products?

There are no special rules regarding the advertising of free products. The price advertising provisions must be complied with, though.

4.3 What are Chile's rules regarding sales and special offers?

It is necessary to inform the public about the terms and conditions of any special offer that is advertised and the time or term of its duration. In the event that the provider that advertises a special offer refuses to perform the conditions offered, he or she may be forced to do so by a Court of Law, or must pay damages.

Offers, clearances, discounts, or reductions must be genuine and temporary to maintain their character as such. A 'permanent offer' loses its status as an 'offer' and is not acceptable. The terms clearance, offer, and equivalents may only be used when there is a significant reduction in the regular price of the products or services offered, and the offer is for a limited period of time.

In the launch of new products or services, an 'introductory offer or price' shall be understood as the existence of a price lower than the regular price the product or service will have in the future.

With the exception of launch offers, products or services advertised as a price offer, reduction, or discount must have been available at a higher price for a considerable period of time, without accessibility restrictions that may distort the savings or reductions that consumers will effectively obtain.

When special offers involve any kind of contest or raffle, the adviser must specify the amount or quantity of prizes and the term during which they will be claimable. The adviser also must communicate the results.

4.4 What are Chile's rules regarding rebates?

There are no special rules regarding rebates. Provisions regarding price advertising, sales and special offers shall be complied with.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

No, there are not. However, the Advertising Code of Ethics establishes that offers, clearances, discounts, or reductions must be genuine and temporary to maintain their character as such. A 'permanent offer' loses its status as an 'offer' and is not acceptable. Terms like 'clearance', 'offer', and other equivalents may only be used when there is a significant reduction from the regular price of the products or services offered, and the offer is made for a limited period of time.

In the launch of new products or services, an 'introductory offer' or 'launch price' will be understood as indicating a price lower than the regular price the product or service will have in the future.

With the exception of launch offers, products or services advertised as a price offer, reduction, or discount must have been available at a higher price for a considerable period of time, without accessibility restrictions that may distort the actual savings or reductions that consumers will receive.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Yes, the advertising of prescription drugs, tobacco, alcoholic beverages and certain kinds of food is restricted:

- (a) **Prescription drugs:** Prescription drug advertisements through mass media is prohibited.
- (b) **Tobacco:** The direct or indirect advertising of tobacco products is prohibited by any means, including through .cl internet domain names. People smoking or pointing out the advantages of tobacco consumption must not be broadcast for advertising purposes through television or radio (however, there is a safe harbor for adult programming, whereby actors and actresses may be shown smoking or discussing tobacco products positively).
- (c) **Alcohol:** Enticing underage consumption of alcoholic beverages through advertising is criminally sanctioned. According to television broadcasting regulations, advertising for these products is only allowed during the safe harbor for adult programming (between the hours of 10.00 pm and 06.00 am).

- (d) **Food:** Foods considered by the Health Agency to have excessively high levels of certain ingredients may not be advertised inside elementary, middle and high schools. Moreover, promotional hooks, such as the use of toys, gifts etc may not be used in advertising foods especially intended for minors under 14 years old are also prohibited.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Unsolicited advertising communications via email, traditional mail, fax, telephone calls or text messages are prohibited only if the receiver has expressly requested the advertiser not to contact them.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Indecent or obscene advertisements may be sanctioned according to the Criminal Code. But, in practice, the criminal provisions related to indecency or obscenity are rarely applied. On the other hand, the National Council of Television is very active in its enforcement of television broadcasting regulations. As stated above, those regulations are especially vague, and the respect of abstract principles, such as democracy, peace, pluralism, human dignity, equality and human rights, among others, may be enforced by the Council through its power to fine television broadcasters. Transmissions, including advertisements, containing excessive violence, cruelty, pornography or the participation of minors in immoral acts may also be sanctioned with fines by the Council.

Moreover, advertising messages that use gender stereotypes or other stereotypes that cause widespread offense, hostility, belittlement, abuse, or ridicule are not allowed.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The only rule expressly related to the identification of the advertiser is contained in the Consumer's Rights Protection Act, which provides that, in false or deceptive advertising cases, the complainant may request the competent court to order the respective media or the corresponding advertising agency to identify the advertiser or the person responsible for the advertisement.

Therefore, in complaints filed for false advertising, the competent court, either on its own initiative or upon request from the SERNAC or the affected party, may order the suspension of advertising broadcasts when the severity of the facts and the accompanying evidence warrants it. It may also require the advertiser, at their own expense, to undertake corrective advertising as deemed appropriate to rectify errors or falsehoods within a fixed period of ten business days.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Chilean Law does not regulate this subject. Nonetheless, it is regulated in the Chilean Code of Advertising Ethics. According to the Code, advertisements must not be confusingly integrated with news or editorial content. To that extent, advertising must clearly identify its nature in order to be distinguished from news or editorial content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no other special rules, besides the ones outlined above.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

No, there are not.

Notwithstanding this, the Advertising Code of Ethics regulates advertising in digital media, interactive platforms, social networks, and direct marketing, establishing its applicability to all participants in the digital marketing and direct marketing ecosystem and their communications, whether digital or not, regardless of their form, medium, or content. It sets ethical conduct standards that all parties must adhere to. Special care must be taken in the use of electronic techniques and means with the aim of safeguarding honor, personal and family privacy, the protection of personal data, and, in general, the full exercise of individuals' rights.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The general rules of responsibility apply to internet service providers. Therefore, the rule of thumb is that an advertiser is only responsible for those negligent or willful actions or omissions committed by itself that effectively cause harm to a person.

In order to establish the liability of the advertiser for claims made by third parties through social media, it would be necessary to prove that the person that made those claims is under the advertiser's control or guidance.

There are special rules regarding copyright infringements that exonerate internet service providers from liability. If the infringement is committed by a third party (eg, user generated content) and certain requisites are met, then this exemption from liability applies.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no important court or CONAR decisions regarding this subject.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

There are no special rules regarding this matter, but courts apply constitutional provisions in order to regulate the subject. Based on the constitutional right to privacy, courts have ruled that the use of an individual's image for advertising purposes needs their prior consent. Consent may be given in any form in order to be valid. However, we always recommend that the authorization is obtained explicitly and in writing.

An individual's name, pseudonym or depiction is not allowed to be registered as a trademark, unless there is consent from the individual or their individual's estate. Consent is not necessary when the individual has been dead for more than 50 years and the trademark would not damage the individual's honor.

9.2 Are there situations when permission is not required?

As this matter is not regulated by statutes, it is not easy to predict court decisions on the subject. The conservative answer would be that it is always necessary to obtain consent from the individual whose name, picture, likeness, voice, and identity will be used in advertising. If such person is deceased, consent from their heirs should be obtained.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no special rules in this regard. Anything that could involve intellectual property of third parties should be previously cleared.

The reproduction of architectural works through photography, video recordings and the like is allowed without the authorization of the author's rights holder or the obligation to pay any fee. The same is applied to the reproduction of the works of art that embellish public places.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Using third parties' trademarks in commercial communications in a way that is misleading to the public is considered an infringement to the Industrial Property Act, the Unfair Competition Act and the Consumers' Rights Protection Act.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Chile which affect advertising (eg, Swedish gender equality law)?

No, there are not. However, the Advertising Code of Ethics establishes that advertising messages:

- must avoid statements and representations that degrade individuals based on their appearance, behavior, characteristics, or lifestyles, or that objectify or reduce them to their sexuality.
- must not represent people or a section of the community in a manner that belittles, humiliates, offends, or in any way diminishes them.
- must not arbitrarily discriminate, denigrate, belittle, incite violence, ridicule, or mock individuals or groups, especially based on their gender or sexual orientation.
- must not portray individuals as sexual objects using their body or parts thereof without a justified relationship with the advertised product.
- may use stereotypes while always respecting the dignity of individuals.
- that use gender stereotypes or other stereotypes causing widespread offense, hostility, belittlement, abuse, or ridicule are not allowed.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Chile is a particularly conservative country. Therefore, Chilean consumers and authorities are more likely to be shocked by advertisements that may be considered normal in other places.

Advertising containing references to sexual orientation, religious sensibilities, or other similar topics are best avoided.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Chile?

Law 20,606 on Nutritional Composition of Food and Food Advertising has banned the use of certain marketing tools targeted at children, which are popular in other jurisdictions; such as the use of toys or cartoons in connection to food products. Consequently, we would recommend that advertisers seek legal counsel in connection to marketing campaigns in the food industry targeted at children, as there are common practices which are no longer permitted in our jurisdiction.

 CHINA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in People's Republic of China?

Advertising in the People's Republic of China ('PRC') is primarily regulated by the 1995 Advertising Law (as revised in 2015, 2018 and 2021) and the 1987 Regulation on the Administration of Advertisements, along with numerous regional and subject-specific regulations, such as the Measures for the Administration of Internet Advertising ('Internet Measures') (initially issued in July 2016 as an 'interim measure' and re-promulgated in 2023), directed at advertising and marketing via the Internet within the PRC.

The State Administration for Market Regulation ('SAMR') is the primary regulator of the advertising industry. Through its local bureaus, the SAMR issues advertising permits and approves advertising entities. Several other agencies also work alongside the SAMR in this area, including the Ministry of Industry and Information Technology ('MIIT'), the Cyberspace Administration of China ('CAC'), the National Radio and Television Administration ('NRTA'), the National Copyright Administration, the National Health Commission and State Administration of Traditional Chinese Medicine.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Under the Advertising Law, an 'advertisement' is 'anything that publicizes, directly or indirectly, through various media and in whatever form, commodities or services'. This is the general standard for determining whether an action should be recognized as advertising.

Advertisements online are similarly broadly covered. The Internet Measures state that 'any commercial advertisement that promotes commodities or services, directly or indirectly, via Internet media such as websites, webpages and Internet application programs in the form of text, picture, audio, video or other forms should be governed by the special rules under the Advertising Law and the Internet Measures'.

1.3 What is the basic regulatory framework for advertising regulation?

Please see question 1.1 above.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) **Emails:** According to the Measures for the Administration of Email Service on the Internet, organizations and individuals may not send emails containing advertisements without explicit approval from the recipient. Where a receiver explicitly agrees to receive emails containing advertisements, but subsequently refuses to continue to receive them, the sender must stop sending.
- (b) **Radio and television:** Advertisements are governed by the Measures on the Administration of Broadcasting Radio and Television Advertisements (see question 1.7 below). In general, such advertisements may only be broadcast within the proper time/channels and should have a properly limited duration.

- (c) **Outdoor advertisements:** According to the Regulations on the Administration of Advertisements, the installation and posting of outdoor advertisements is under the supervision of the local administrative departments for market regulation. In general, advertisements may not be installed or posted in controlled areas near government organs or cultural relics under special protection, nor in areas where the installation and posting of advertisements is prohibited by local governments.
- (d) **Social media advertisements and other Internet advertisements:** These are regulated by the Internet Measures. By these, an Internet advertisement must be clearly identifiable as an 'advertisement' to consumers. Moreover, advertisements published on the Internet, such as pop-up windows, must have a clearly indicated 'close' button to ensure that they can be closed by the user with a single click.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are numerous industry-specific advertising regulations. Some of the most important include the following:

- (a) **Medical advertisements, medical apparatus advertisements, drug advertisements:**
 - (i) Advertisements for medical institutions may only contain the following content:
 - the name and address of the medical institution;
 - ownership of the medical institution;
 - the type of medical institution;
 - clinical subjects handled by the institution;
 - the number of beds;
 - the time for admissions; and
 - contact information.
 - (ii) The following drugs may not be advertised:
 - narcotics;
 - psychotropics;
 - poisons for medical use;
 - radioactive drugs;
 - pharmaceutical precursor chemicals;
 - drug addiction treatment medicines, medical devices and treatment methods;
 - pharmaceutical preparations dispensed by medical institutions; and
 - special drugs for military use and pharmaceutical preparations dispensed by military medical institutions.

Further, advertisements for prescription drugs may only be published in professional medical or pharmaceutical publications designated by both the public health administrative authority and the drug administration under the State Council. This, of course, means that such advertisements cannot be published by any mass media or in any other public form.
 - (iii) Any advertisement for medical treatment, pharmaceuticals or medical devices may not contain the following items:
 - any assertion or guarantee of efficacy or safety;
 - any statement on the rate of cure or other measure of effectiveness;

- comparison with the efficacy or safety of other pharmaceuticals or medical devices or with other medical institutions;
- endorsements or testimonials; or
- other items as prohibited by law and administrative regulations.

Advertisement content for pharmaceutical products must be consistent with those indicated on the instructions approved by the drug administration under the State Council, and contra-indications and adverse reactions must be marked conspicuously. Any advertisement for prescription medicines must conspicuously state 'the advertisement is intended for medical and pharmaceutical professionals only', and any advertisement for non-prescription drugs must conspicuously state 'please follow the instructions, or purchase and use the medicine according to a pharmacist's advice.

Any advertisement for medical devices intended for personal use must conspicuously state 'please read the product specifications carefully, or purchase and use the product according to the advice of medical personnel'. If any registered certificate of a medical device product contains any contra-indication and precaution, the advertisement for the product must conspicuously state 'for the contra-indication and precaution, please refer to the specifications'.

(b) **Healthcare food advertisements:** By way of background, in the PRC, 'healthcare food' means food claiming to have medicinal or other health functions. In this respect, the Advertising Law and the Interim Administrative Measures for the Censorship of Advertisements for Drugs, Medical Devices, Dietary Supplements and Foods for Special Medical Purpose specify that healthcare food advertisements must not:

- use, directly or in a disguised form, the names or images of state organs, officers of state organs, military units or personnel, or use military equipment or facilities for advertising or to add authority to publicity;
- use the names or images of scientific research institutes, academic institutions, industry associations or experts, scholars, physicians, apothecaries, clinical nutritionists, patients, etc for recommendation or in demonstrations;
- use the words 'safety', 'safe', 'non-toxic' and 'no side effects' or 'low toxicity and side effects', or state, expressly or by implication, that 'natural' ingredients ensure the safety of the product, or similar content;
- include enticements such as 'hot product', 'shopping rush', 'on trial', 'necessity for a family', 'free treatment', 'free product', comprehensive evaluation content such as 'appraisal', 'ranking', 'recommendation', 'designation', 'selection', 'award', or guarantee content such as 'refund for invalidity', 'insured by an insurance company' in order to instigate consumers to arbitrarily or excessively use the drug, dietary supplement or food for special medical purposes;
- contain expressions or implications suggesting that the product can treat all diseases, adapt to all symptoms, apply to all groups of people or that it is necessary to normal life and disease treatment;
- contain content that could cause public concern, fear or misunderstanding about consumers' health if they do not use the advertised product, etc;

- contain the name, address, contact information, diagnosis, medical treatment types or diagnosis and treatment methods of a medical institution, or the medical services of a medical institution, such as free clinic services, medical consultation phone numbers, or special clinical services.

The notice ‘this product is not a substitute for pharmaceuticals’ must also be included on any healthcare food advertisement conspicuously.

(c) **Alcohol advertisements:** According to the Advertising Law, advertisements involving alcohol may not contain any of the following items:

- encouragement or instigation to drink, or promotion of excessive drinking;
- appearance of the act of drinking;
- indication of conducting activities such as driving a car, or steering a boat or airplane; and
- express or implied statements that drinking has the effects of eliminating stress, anxiety or enhancing strength.

(d) **Agricultural and veterinary chemicals advertisements:** According to the Advertising Law, advertisements for agricultural chemicals, veterinary medicines, feed and feed additives may not include any of the following items:

- any assertion or guarantee for efficacy and safety;
- use of the names or images of medical research institutes, academic institutions, technology promotion institutions, industry associations or professionals and users for recommendation or as proof of efficacy;
- any statement on the effectiveness rate;
- words, oral assertion or images that violate the safe use procedures; or
- other content as prohibited by laws and administrative regulations.

(e) **Tobacco products (including e-cigarette) advertisements:** It is prohibited:

- to post tobacco advertisements in mass media, on the internet or in public places, including on public transportation and outdoor spaces;
- to distribute any form of tobacco advertisements to minors;
- to use advertisements for other products or services or non-commercial advertisements to publicize the names, trademarks, packages, decorations or other similar contents of tobacco products;
- for the names, trademarks, packages, decorations or other similar contents of tobacco products to be contained in the notices published by the producers or sellers of such tobacco products regarding their relocation, change of name or staff recruitment, etc.

(f) **Real estate advertisements:** Real estate advertisements must provide authentic housing source information and indicate the building or room dimensions, and may not contain any of the following items:

- promise of appreciation or investment return;
- indication of the project location referencing the time required to travel between the project and a specific reference location;
- violation of the relevant national provisions on price administration; or
- misleading publicity on any traffic, commercial, cultural and education facilities, and other municipal amenities that are planned or under construction.

- (g) **Infant dairy product advertisements:** It is prohibited to publish, in mass media or in public places, advertisements for infant dairy products, consumable liquids and other consumable products claiming full or partial substitution of breast milk.
- (h) **Education and training service advertisements:** An advertisement for education or training shall not contain any of the following:
 - any promise relating to progression, passing examinations, or obtaining a degree or qualification certificate, or any express or implied guaranteed promise relating to education or training results;
 - express or implied statements that the relevant examination agency or its personnel or any examination test designer will be involved in the education or training; or
 - use of the names or images of research institutes, academic institutions, educational institutions, industry associations, professionals or beneficiaries for recommendation or as proof.
- (i) **Financial solicitation advertisements:** An advertisement for a product or service with anticipated investment returns shall provide a reasonable prompt or warning of any possible risk and the assumption of the responsibility for any involved risk, and shall not contain any of the following items:
 - any guarantee of any future results, proceeds or other relevant situations, or express or implied promise to break even, or of zero risk or assured proceeds, unless otherwise provided by the State; or
 - use of the names or images of academic institutions, industry associations, professionals or beneficiaries for recommendation or as proof.
- (j) **Crop seeds, forest seeds, grass seeds, breeding animals, aquatic fingerlings, planting, and breeding advertisements:** Advertisements for crop seeds, forest seeds, grass seeds, breeding animals, aquatic fingerlings, planting, and breeding shall provide authentic, clear, and explicit expressions in terms of the variety name, production performance, increment or output, quality, resistance, special use value, economic value, scope, and conditions within which the product is suitable for planting or breeding, and shall not contain any of the following items:
 - any assertion that cannot be scientifically proven;
 - any assertion or guarantee of efficacy;
 - analysis, forecasts or guarantees of economic benefits; or
 - use of the names or images of research institutes, academic institutions, technology promotion institutions, industry associations, professionals or users as recommendation or proof.

1.6 Are any government pre-approvals required?

No specific advertisement-related license is required for advertisers (meaning the supplier/seller of the advertised product/service). Since 2005, advertising agents in China have not been required to obtain a permit to engage in commercial advertising activities. A business license with a scope covering advertising will suffice, although there are certain requirements for an entity seeking such a business scope.

However, according to the Advertising Law, advertisements for medical treatment, pharmaceuticals, medical devices, agricultural pesticides, veterinary medicines and healthcare food, and other advertisements required to be reviewed by laws and administrative regulations must be reviewed by competent authorities before they are published. Such advertisements may not be published without first being reviewed.

1.7 Does the media pre-clear advertising?

Yes. Under the Advertising Law, advertisement publishers (eg, mass media) must review any advertisements they intend to publish to ensure compliance with the law. Publishers can be subject to administrative sanctions and penalties if the content of an advertisement they publish violates the law.

In addition, for broadcast media, the NRTA has, since 2004, advocated a program of self-censorship and self-inspection, which has now been formalized in the Measures on the Administration of Radio and Television Advertisement Broadcasts. These measures explicitly require broadcasting entities to establish a formal management and censorship system for their advertising operations.

Certain types of advertisements (eg, for medicine, medical apparatus, pesticides and veterinary medicines) must also receive clearance by the competent administrative authorities before publication or broadcast.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Under the Advertising Law, the SAMR has authority for the supervision and administration of advertisements nationwide, with its local branches at the county level directly responsible for matters within their county. Generally speaking, the market regulation authorities are authorized to exercise a number of powers when performing their duties in this respect, including:

- conducting on-site inspections;
- questioning legal representatives and other responsible persons of entities relevant to an investigation;
- reviewing relevant contracts;
- seizing or detaining advertising articles, operational tools, equipment and other property directly relating to the advertisements; or
- ordering the suspension of the publication of the advertisements.

The market regulation authorities and their staff have confidentiality obligations when carrying out their duties, especially in respect of trade secrets.

Typically, administrative sanctions include:

- ceasing the publication of the advertisement,
- ordering the violator to advertise a correction or make a public apology reaching the same audience, and
- levying fines.

The market regulation authorities will not grant direct remedies to a consumer whose rights or interests have been infringed, as its powers are limited to the punishment and administration of the advertisers, advertising agencies and publishers. Such advertisers, advertising agencies and publishers, may have options for remedies under the Administrative Reconsideration Law or administrative litigations under the PRC Administrative Litigation Law.

There are also a number of industry-specific authorities that work alongside the SAMR to enforce advertising related laws. Generally speaking, the SAMR's enforcements are based on the Advertising Law, while other authorities pursue enforcement actions within their specific scope of authority. For instance, for a splash screen advertisement of drugs, the SAMR would focus on general and drug-specific content restrictions, while the MIIT would focus on whether the splash screen can be closed with one click, as required under the Notice on Carrying out Information and Communication Service Perception Improvement Actions, and any other issues specific to online advertising.

1.9 When does a competitor have a right of action? What are the potential remedies?

According to the Advertising Law, no advertisement may include any content that denigrates the commodities or services of other producers or operators. In addition, the Anti-Unfair Competition Law also stipulates that a business operator may not fabricate or disseminate any false information or misleading information to damage the reputation of its competitor or the competitor's commodities. If a competitor finds any suspected illegal advertisements, then they can challenge the advertisement in the following ways:

- **administratively:** report to the SAMR, the NRTA or their local bureaus; and
- **judicially:** file a civil lawsuit.

Note that the two approaches are not mutually exclusive. Compared with the judicial option, administrative remedy is more cost efficient and expeditious.

For administrative action, the Advertising Law and the Anti-Unfair Competition Law set out various penalties for illegal advertising, ranging from fines for minor transgressions to criminal liabilities for severe violations. The SAMR takes its enforcement obligations seriously, and regularly issues fines. Specifically, according to the Anti-Unfair Competition Law, where an advertisement causes injury to the goodwill of a competitor or the reputation of a competitor's commodities, the advertiser will be ordered to cease the illegal act and pay a fine of between CNY 100,000 and CNY 3 million.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers whose legitimate rights and interests are infringed due to false or deceptive advertisements have the right to request the competent administrative departments to punish the advertising agency and/or the advertising publisher, and ask for compensation from the advertiser or business operator. If the advertising agency and advertising publisher fail to provide the real name, address and effective contact information of the advertiser, the advertising agents or publishers shall be liable for damages.

Consumers may directly lodge a lawsuit before the courts.

2 SELF-REGULATORY FRAMEWORK

2.1 Does the PRC have a primary advertising self-regulation system?

Industry self-regulation in China is comparatively weak. That said, there are various self-regulatory associations at the national level (eg, the China Advertising Association ('CAA')) and at the municipal level (eg, the Shanghai Advertising Association). These associations can issue individual codes of practice, most of which are similar.

The CAA is one of the largest of the self-regulatory agencies. It issued a code of practice in 2008. Participants in the advertising industry (including advertisers, advertising agencies and advertising publishers) can join the association as members. Other self-regulatory organizations include the Association of Accredited Advertising Agencies of China ('China 4A'), all members of which are expected to follow the regulations stipulated in the China 4A Standard Operation Manual.

2.2 Is there a self-regulatory advertising code? What are the key principles?

As mentioned above, the CAA issued a code of practice, the China Advertising Industry Self-Regulation Code, in 2008.

Key principles under this Code include honesty, trustworthiness and self-regulation. This is meant to cover advertisers, advertising agents, advertisement publishers and other entities or individuals who participate in advertising activities.

For advertising content, the code of practice stipulates that advertisements should comply with relevant regulations in the Advertising Law and other laws and regulations. Advertisements should also conform to the needs of 'socialist spiritual civilization' and foster 'social public order' and establish good 'social practice'.

As to advertising activities, the Code emphasizes that competition should be fair, and contracts should be performed honestly. Improper deal-making, such as bribes or defamation, are prohibited, as is improper marketing and the impairment of the legal advertising activities of others.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

According to the CAA code of practice, entities and individuals may file complaints with the CAA or its local associations regarding any advertising content or activities that they suspect of violating the law or any self-regulation codes.

In terms of enforcement, the Code empowers the CAA to take a series of escalating measures, including:

- a recommendation to comply;
- reprimands;
- cancellation of any honorary titles;
- cancellation of membership;
- downgrading or cancellation of any advertising enterprise qualification degree recognized by the association; and
- reporting of the non-compliance to the authorities.

There is also an appeal process, by which a party subject to an enforcement action may file an appeal with the CAA executive committee.

2.4 Is the self-regulation system effective? Is it widely used and followed?

In the PRC, the big advertising associations usually have a government background or connection. However, as a reform, the authorities have more recently been trying to somewhat disconnect the governmental agencies from the industrial associations. For example, the CAA used to be directly supervised by the SAMR, but, as of 2018, have had more independence; similarly, China 4A was previously directly supervised by the Ministry of Commerce, but was disconnected in 2019. In this

sense, self-regulation in the advertising industry is supplemental to government administration, but it is voluntary. There have been reports of some advertisements being pulled from publication following self-regulatory action, but government-driven administrative enforcement is still the main avenue for regulation in China.

2.5 Are the self-regulatory system's decisions reported?

The CAA publishes notices, news, updates, etc on its website (<http://www.china-caa.org/#>), but enforcement decisions are not reported there. Some mention of enforcement of decisions is made in CAA newsletters, as part of a general report on the CAA's work during the month/year, but such newsletters are not published at regular intervals.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

As mentioned above, self-regulation in the advertising industry is supplementary to government administration. Therefore, the key areas of focus for the CAA's code of practice are basically the same as those of the Advertising Law.

2.7 Are there any other self-regulatory systems that govern advertising practices in PRC?

Yes, there are other advertising associations in the PRC, such as the China Association of National Advertisers ('CANA'), which was established in 2005. CANA is approved by the State Counsel, registered with the Ministry of Civil Affairs, and overseen by the State-owned Assets Supervision and Administration Commission. In 2006, CANA joined the World Federation of Advertisers, becoming the only PRC representative. CANA has its own self-regulation requirements. Unlike the CAA, which is open to all types of participants in the advertising ecosystem, CANA focuses solely on advertisers.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in the PRC (eg, consumer protection laws, IP laws, unfair competition laws)?

China's Advertising Law, Internet Measures, Unfair-Competition Law, and the Law of the People's Republic of China on the Protection of Consumer Rights and Interests ('Consumer Protection Law') are the basic laws governing advertising claims in China.

For example, the Consumer Protection Law stipulates that:

- (a) Consumers whose legitimate rights and interests are infringed when commodities or services are supplied by business operators, by means of false advertisement or otherwise, have the right to claim compensation from the business operator.
- (b) Consumers also have the right to request the competent administrative departments to punish advertising agents and publishers who publish false advertisements.
- (c) Further, if the advertising agent or publisher fails to provide a real name, address and effective contact information for the relevant business operator, it shall be responsible for any compensation owing to the consumer.
- (d) In addition, advertising agents and publishers who design, produce and publish false advertisements related to life or health, and thereby cause damage to consumers, will bear joint liability with the supplier of the advertised commodities or services.

- (e) Social organizations or other organizations and individuals can also be liable: if they recommend commodities or services in false advertisements or other false propaganda related to life and health and thereby cause damages, they will bear joint liability with the supplier of the underlying commodities or services.

3.2 Is substantiation required for advertising claims?

According to the Advertising Law and the Internet Measures, in designing, producing and publishing advertisements, whether through the efforts of the advertiser or through entrustment to other parties, the advertiser must possess or provide the following authentic, legal and valid certifications:

- (a) business licenses and other documents certifying production and management qualifications;
- (b) certificates as to any advertising content related to quality, issued by relevant quality inspection organizations; and
- (c) other documents certifying the truthfulness of the advertisement contents.

In addition, the Advertising Law requires that all sources of data, statistics, survey results, excerpts or quotes used in an advertisement be clearly identified.

In addition to these general requirements relating to the accuracy of statistics and general descriptions of the products and services featured in advertisements, there are also industry-specific requirements. For example, in the medical industry, the Interim Administrative Measures for the Censorship of Advertisements for Drugs, Medical Devices, Dietary Supplements and Foods for Special Medical Purposes promulgated in 2019 sets specific requirements for the accuracy and other criteria of advertisements for those items. Eg, it provides that ‘the contents of a drug advertisement shall be subject to the instructions approved by the medical products administration under the State Council. If a drug advertisement involves the name, indications, main functions, pharmacological action, or other content of the drug concerned, it shall not go beyond the scope of the instructions’.

3.3 Are there certain types of advertising messages that do not require substantiation (eg, puffery)?

Chinese advertising laws do not distinguish between ‘puffery’ and advertising claims that require support. In general, only statements or representations that can be supported by accurate facts are legitimate. The Advertising Law simply states that advertising content published in the PRC must be truthful, lawful and not misleading to consumers.

3.4 What are the rules governing the use of disclosures in advertising?

The Advertising Law set out the general rules on this, stating that the content of advertisements must be true, lawful, and the content advertised should be expressed in a healthy form of representation and consistent with the ‘socialist spiritual civilization’ and ‘good traditional culture of the Chinese nation’, and not contain false information, or deceive or mislead consumers.

The law does not require all material information to be disclosed, if non-disclosure will not deceive or mislead consumers. In other words, non-disclosure is permitted if ordinary consumers will not be deceived or misled.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

- (a) In certain industries, endorsements or testimonials by specified third parties are prohibited. For instance, medical institutions and medical practitioners cannot offer endorsements in medical advertisements.
- (b) The Advertising Law also provides that endorsers who make endorsements or testimonials for products or services in advertisements may only do so based on factual information, and not make endorsements or testimonials for products or services that have never been used or accepted by the endorser himself. Moreover, minors under the age of ten may not be used as advertisement endorsers.
- (c) Due to the booming of live streaming marketing and difficulty of identifying endorsements in that context, two 'Guidance' documents have been issued by the SAMR (with other authorities such as the CAC, Ministry of Culture and Tourism, National Film Bureau, etc) and by its Shanghai branch, both in 2022. Most importantly, this Guidance ties to clarify ambiguities around endorsement, such as whether a recommendation given in a celebrity's own name in the course of a show constitutes an endorsement. The Guidance also encourage advertisers and advertising agencies do better background checks on endorsers, primarily focusing on prior controversial comments and legal issues.
- (d) Advertisements related to quality standards are also strictly regulated. If an advertiser intends to advertise that a product meets specific quality standards, it must provide a certificate issued by a standardization department at or above the provincial or municipality level, or by an accredited quality inspection body.

3.6 What are the rules governing the use of product demonstrations in advertising?

There is no specific rule governing the use of product demonstrations in advertising. However, any product demonstrations must comply with the general principle that no advertisement may contain any false information or deceive or mislead consumers, and such demonstrations must be accurate, clear and explicit.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Generally, comparison is allowed, but the comparison must be objectively accurate, capable of being scientifically proven, and may not identify the competitor by name. The Advertising Law states that no advertisement may include any content that denigrates commodities or services offered by other suppliers.

On a related note, the Anti-Unfair Competition Law provides that a business operator may not fabricate and/or disseminate false or misleading information, jeopardize a competitor's goodwill or the reputation of competitor's product. Therefore, a comparison may violate the Anti-Unfair Competition Law if it meets the description above, and this is a reason for caution when making comparative claims.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There are no special copyright or trademark rules that impact comparative advertising. A general rule is that comparative advertisements should not identify a competitor's name, trademark or products. If a comparative advertisement has copyright or trademark issues, the general rules of copyright and trademark would apply.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

There are no special rules governing claims relating to geographic origin. According to the Advertising Law, it is not mandatory to claim geographic origin in advertisements, but if there are statements relating to geographic origin of the products, such statements must be accurate, clear and explicit.

3.10 Are there any special rules governing product packaging?

There are no special rules governing product packaging, but there are rules for labels. Under the Product Quality Law, marks on products and packages shall be authentic. Additionally, certain products, such as cosmetics, drugs, and medical apparatus, have their own rules about labels and packaging. Moreover, if product packaging contains any advertising content, it will be deemed an advertisement and must comply with the general rules of the Advertising Law.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

‘Dark practices’ are not addressed as such under relevant laws, but misleading or deceptive practices are regulated in several ways. In general, advertising content published in the PRC must be truthful, lawful and not misleading to consumers. False or misleading content will be deemed to be a false advertisement and the advertiser will have civil liability if it causes damage to the legitimate rights and interests of consumers.

Further, the Internet Measures stipulate the following requirements generally relevant to ‘dark practices’:

- (a) Online ads for medical products, pharmaceuticals, medical equipment, pesticides, veterinary products, health care, or food for special medical purposes (‘FSMP’) cannot be edited, spliced or modified after review and approval by the relevant authorities.
- (b) The address, contact information or shopping link for medical, pharmaceutical, medical equipment, health care, or FSMP products cannot appear on the same page or at the same time as health or wellness knowledge.
- (c) If a product or service is promoted in the form of sharing knowledge, experiences, or reviews, with purchase methods like shopping links, the advertising publisher shall clearly mark it as an ‘advertisement’.
- (d) Pop-up online ads shall include a close button and must be closable in one click.
- (e) It is prohibited to deceive or mislead users into clicking or browsing an ad through false system or software updates, error or cleanup prompts or other notifications, false symbols, false reward promises, and so forth.

Further, manipulative, misleading and deceptive practices driven by data analysis and/or personalization are also regulated under the PRC’s Personal Information Protection Law (effective as November of 2021), ie, that if business marketing or push-based information delivery is conducted toward an individual by means of automated decision-making, an option not targeting the personal characteristics of the individual, or an easy way to refuse to receive such marketing must be provided to the individual. In addition, the Administrative Provisions on Recommendation Algorithms in Internet-based Information Services (effective as March of 2022) require that recommendation algorithm-based service providers must provide users with an option where the recommendation

algorithm-based services will not target their personal characteristics or with a convenient option to close such services. Recommendation algorithm-based service providers must also provide users with the function of selecting or deleting user tags with respect to their personal characteristics to be used for recommendation algorithm-based services.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

The Administrative Measures for Livestreaming Marketing (for Trial Implementation) issued in April of 2021 provides that ‘Livestreaming marketing platforms shall strengthen the administration of the availability and use of new technologies, new applications and new functions. For livestreaming marketing made by use of virtual images displayed by artificial intelligence, digital vision, virtual reality, speech synthesis and other technologies, livestreaming marketing platforms shall conduct safety assessments according to the relevant provisions and mark them in a conspicuous manner’.

In the personal information protection area, there are rules related to automated decision-making under the Personal Information Protection Law, in effect since November 2021, which is also relevant to advertising: If business marketing or push-based information delivery is conducted toward an individual by means of automated decision-making, an option to not be targeted based on personal characteristics, or an easy way to refuse to receive such targeted content must be provided to the individual.

In addition, recommendation algorithms are also regulated. Under the Administrative Provisions on Recommendation Algorithms in Internet-based Information Services issued in 2021, recommendation algorithm-based service providers with public opinion attributes or social mobilization capabilities must file the relevant algorithm with competent authority.

4 PRICE ADVERTISING

4.1 What are the PRC’s rules regarding price advertising?

There are no specific rules pertaining to price advertising. However, according to the Advertising Law, if the advertiser indicates a price of goods or services in an advertisement, that indication should be definite, clear and accurate, without the possibility of misleading consumers.

4.2 What are the PRC’s rules regarding advertising ‘free’ products?

As a general rule, the advertising of ‘free’ products should not constitute false advertising. Therefore, the nature of ‘free’ should be accurate and true. Further, the Advertising Law stipulates that if an advertisement contains any statements about additional ‘free’ products or services, then the type, specification, quantity, time limit and form of such ‘free’ products or services must be expressly indicated. The Provisions on Marking Prices Clearly and Prohibiting Price Fraud issued by the SAMR in 2022 also provide that the name and quantity of the ‘free’ products should be specified. If the price or value of the ‘free’ product is to be marked, such price or value should be the price of the product being sold at the same business place.

Also, the Measures for the Administration on Sales Promotion Acts of Retailers issued in 2006 provide that, when undertaking sales promotion activities, the retailer may not reduce the quality or after-sales service level of the promotional commodities (including awards and complimentary gifts for sales-attached awards), and may not use, as an award or complimentary gift, any article that does not meet quality requirements.

4.3 What are the PRC's rules regarding sales and special offers?

There are several directly relevant rules in this regard:

- (a) the Measures for the Administration of Sales Promotion Acts of Retailers issued in 2006,
- (b) the Interim Provisions on Regulating Sales Promotions issued in 2020, and
- (c) the Provisions on Marking Prices Clearly and Prohibiting Price Fraud issued in 2022.

Generally, a business operator must indicate sales information in a true, accurate, clear and conspicuous manner, and must not deceive or mislead consumers through false or misleading commercial promotions with false information or fictional transactions or evaluations. In addition, an online trading platform operator must not force, by technical means, any business operator operating on the platform to mark any price in a false or misleading manner.

4.4 What are the PRC's rules regarding rebates?

Rebates, in the sense of coupon or cash, are permissible. As noted above, for all pricing, special offer or sales-related rules, the sales policy must be clear, and not fraudulent or misleading. This principle also applies to rebates. In addition, please note that the highest prize for a lottery-attached sale may not exceed CNY 50,000; it would otherwise constitute a violation of the Anti-unfair Competition Law, with possible fines ranging from CNY 50,000 to CNY 500,000. Hence, operators must understand whether their rebate may be considered a lottery-attached sale.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

In addition to the above, it is also stipulated in the Measures for the Administration on Sales Promotion Acts of Retailers that:

- (a) retailers must clearly indicate which items are not on sale, and may not declare a whole-store promotion;
- (b) when clearly indicating any excluded commodities or promotion rules with restrictive conditions or additional conditions, the related words, characters and pictures must be clear and definite;
- (c) a retailer, when undertaking sales promotion activities, must clearly mark the prices on the price tags; and
- (d) retailers may not sell any goods by increasing the marked price, nor charge any fee that is not indicated in the advertisements.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media (eg, guns, medicines etc)?

- (a) As to **tobacco, drugs, medical devices, dietary supplements and foods for special medical purpose and infant dairy products**, please see question 1.5 above.
- (b) **Illegal activities:** Any advertisements for illegal activities, such as gambling for a profit, or pornography, are prohibited, and there are several measures explicitly prohibiting such advertisements.

- (c) **Advertisements aimed at minors:** As stipulated in the Advertising Law, no advertisements for medical treatment, pharmaceuticals, healthcare food, medical devices, cosmetics, alcoholic drinks, cosmetology or online games that are harmful to minors' physical and psychological health may be published in mass media targeted at minors. Further, advertisements for products or services targeted at the minors under the age of 14 must not contain any content likely to:
- induce such minors to ask their parents to buy the products or services advertised; or
 - cause such minors to imitate unsafe acts.
- (d) **Other forbidden activities:** Using or using in disguised form:
- (i) the National Flag, the National Anthem or the National Emblem, or the Army Flag, the Army Anthem or the Army Emblem of the PRC; or
 - (ii) the names or images of state organs or their functionaries; or
 - (iii) the words 'state-level', 'the highest-grade', 'the best' or other similar words, are all are not allowed in an advertising content.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) **Mobile phone/email advertising:** Under current legislation, advertisements sent by electronic means (such as mobile phone and email advertisement) are prohibited where recipient permission has not been received or where the recipient has specifically refused. Where a recipient explicitly agrees to receive emails or SMS containing advertisements, but then later refuses to receive them, the sender must stop sending unless otherwise agreed by both parties.
- In addition, advertisers must provide contact information to receivers to enable them to stop receiving emails containing advertisements at any time. The sender must guarantee that the contact information is valid at least for 30 days.
- (b) **Advertising disguised as news or health information:** As a separate matter, advertisements taking the form of news reports, published for medical treatment, pharmaceuticals, medical devices and healthcare food or otherwise disguised by the introduction or use of knowledge on health or health maintenance are prohibited under the Advertising Law. However, in practice, advertorials and similar advertising formats are relatively common in the PRC.
- (c) **Advertising to minors:** There are special rules regarding advertising to minors. For instance, the Advertising Law provides that advertising activities are strictly prohibited within nursery schools or primary and middle schools, and that teaching materials, teaching support materials, stationery, teaching tools, school uniforms and school buses cannot indicate any advertisements either, except for public service advertisements.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Advertising Law stipulate that the contents of advertisements must be good for the physical and mental health of the people and may not contain any information suggesting obscenity, pornography, gambling, superstition, terror or violence. Some of these terms may seem vague, but they are used consistently in various content regulation laws in several industries, including publishing and video

gaming, and thus their meanings have become clear over time. For any violation of these rules, the local market regulation department has the right to order the advertisers to cease publication, and impose a fine of up to CNY 1,000,000. In case of serious violation, the business license of the advertisers, advertising agents and/or publishers may be revoked.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There are no special rules requiring that advertisements identify who the advertiser/sponsor is. However, pursuant to the Advertising Law, if an advertisement is sent via electronic messaging (for instance, via email or text messages), then it must explicitly demonstrate the authentic identity and contact information of the sender, together with an option to opt out of future advertisements.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules governing the integration of advertising content and entertainment content. Nevertheless, under the Advertising Law, the mass media may not publish advertisements in the form of news reports. Moreover, advertisements released through the mass media must be marked as advertisements to distinguish them from non-advertisement information and to avoid misleading consumers. Where advertisements in the form of news reports are published, the local market regulation department may order the publisher of the advertisement to make corrections and impose a penalty of not more than CNY 100,000.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special rules governing disclosure or other obligations when integrating advertising content with other content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

- (a) Social media used for advertising purposes is also governed under the Internet Measures, according to which an advertisement published via social media must be clearly identified as an 'advertisement' so that consumers can identify it is such.
- (b) No entity or individual may induce users to click on the contents of an advertisement through deceptive means.
- (c) In addition, advertisements must not disturb the normal use of the network by users and must be clearly marked with a 'Close' sign in the form of pop-up or other form to ensure the 'Click to Close' right of users.

- (d) No entity or individual may distribute advertisements through electronic means to others without consent, or attach advertisements or links to advertisements in an email or internet instant message sent by an internet user without consent.
- (e) Social media usage is also considered a form of telecoms-based internet or mobile network service, and is thus subject to the Telecoms Regulations and the Administrative Measures for Internet-based Information Services. Under these regulations, advertisers may not publish any of the following content:
 - content that is inconsistent with the basic principles set forth in the Constitution;
 - content that jeopardizes national security, divulges state secrets, subverts the government or undermines national unity;
 - content that is detrimental to the dignity and interests of the State;
 - content that indicates ethnic hatred or racial discrimination, or that damages inter-racial unity;
 - content that damages the State's policies on religion, or that advocates for cults or feudal superstitions;
 - content that spreads rumors, disrupts the social order or undermines social stability;
 - content pertaining to obscenities, pornography, gambling, violence, or murder, or that is terrifying, or that generally incites criminal activities; or
 - content that insults or slanders other people, or that infringes upon their lawful rights and interests.
- (f) The most recent development in this area is greater clarity around whether a social media post about a product or service is an advertisement. The Internet Measures now provide that 'if a product or service is promoted in forms such as the provision of knowledge, sharing of experiences, or product reviews, and a shopping link is included, the advertising publisher shall clearly mark it as an 'advertisement'. This means that such post is an advertisement subject to all the requirements of the Advertising Law.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Not explicitly, but advertisers/brands still have responsibilities in this respect. Under the CAC's 2022 Administrative Provisions on Internet Follow-up Comment Services, if an advertiser is the operator of a public account, then they have the responsibility to review and promptly discover illegal and harmful content in their posts and any follow-up comments posted there. They may exercise their authority over the account through whatever tools made available by the platform according to the agreement with the platform. Usually, this means reporting, hiding or deleting illegal and harmful comments, or closing the comment section.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There is a lack of explicit self-regulatory decisions in this regard. As to court or administrative decisions, yes, enforcement against advertisements in respect of the use of social media and user generated content is common, even if not always directly targeting advertisers (see, eg, the two examples below). But advertisers should still be aware of the potential risks:

- (a) In 2022 the Consumer Association of Henan Province sued a top live stream personality for selling a ‘fake’ food product, with revenue of at least RMB 20 million. In such cases, an individual consumer is usually unlikely to initiate a lawsuit due to high costs and low rewards. However, the Consumer Association, as a ‘quasi-official’ social group for the purpose of protecting consumer interests, was able to initiate public interest litigation on behalf of consumers. This is not the first case raised by a consumer association, but it is notable due to the prominence of the defendant, one of China’s top live streamers.
- (b) An example of a law enforcement case is one from 2022 regarding advertisement through follow-up comments. This was an administrative enforcement rather than litigation, but worth noting. A baby product manufacturer engaged a marketing company to promote its product through follow-up comments on a popular social media platform. The marketing company fabricated comments, such as ‘this is great and cheap, let’s buy it in the promotion’, ‘very amusing, my baby stopped crying’, and ‘my best friend bought it’, etc, and engaged multiple users to publish such follow-up comments on their own account. The marketing company was fined for conducting a sham campaign by the local administration for market and regulation, and all illegal gains were confiscated.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual’s name, picture, likeness, voice and identity in advertising?

PRC law does not have the concept of a ‘right of publicity’, but PRC civil law does address this issue more generally, by providing rights in name and portrait, as well as privacy and personal information:

- (a) According to the Advertising Law, the name or image of a person can only be used in an advertisement with that person’s prior written approval. Using the name or image of persons without capacity for civil conduct or with limited capacity for civil conduct (ie, children) can only be done with written approval of the person’s guardians.
- (b) The Civil Code of the People’s Republic of China stipulates that any infringement of a person’s civil rights and interests (including civil rights in name and portrait, privacy, and other personal information, including voice) will incur liability.

9.2 Are there situations when permission is not required?

There is no exemption from permission.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There is no specific rule governing the types of materials that must be cleared before they may be used in advertising, but the general rules are addressed in questions 8.1 above and 11.2 below. In practice, advertisements containing images of national leaders or officials, sensitive historic/political/religious topics and the like can be prohibited by the competent administrative authorities.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

There is no specific rule prohibiting the use of other companies' recognizable products in advertising. Nevertheless, the Advertising Law prohibits content that denigrates the commodities or services of other producers or operators. In addition, the Anti-Unfair Competition Law provides that market participants may not disseminate falsehoods in order to damage or defame other people/entities or their products. Thus, the use of other companies' recognizable products in an advertisement must not serve to denigrate that product.

Further, the SAMR requires more generally that advertisements should respect other parties' rights. In case of advertisements that contain another's name, image, statement, registered trademark or other legitimate right, such use in advertisements should be approved in written form by the rights owner before publication.

One other concern is that the use of other companies' recognizable products must not mislead consumers as to the origins of the products in the advertising. For instance, if the advertiser's product or business area is similar to the other company's products, the use of the other company's product could easily cause confusion as to the product's origin, or consumers might believe the two products have similar origins. In this respect, as mentioned, misleading consumers is specifically prohibited.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the PRC which affect advertising (eg, Swedish gender equality law)?

- (a) Under the current Advertising Law, an advertisement must not contain any content that jeopardizes social stability, public order or social morals; or that contains ethnic, racial, religious or sexually discriminatory content, etc. The interpretation of the former category (social stability, public order or social morals) is somewhat broad and ad hoc, so care must be taken with any controversial content.
- (b) In addition, foreign languages may not be used alone in any advertisements. Where both a foreign language and the Chinese language are used in advertisements, as relevant to the specific trade or product, the standardized Chinese characters must be used for the Chinese language part.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

- (a) As discussed above, under the current Advertising Law an advertisement may not contain obscene, superstitious, terrorizing, violent or evil content. Advertisements also may not use the national flag, national emblems or national anthem of the PRC or the names of any government organs or government functionaries or officials.
- (b) The Regulations on Control of Advertisement also require advertisements must not contain content that impairs the national dignity of the State.
- (c) In addition, there are rules against heresy, pornography, gambling, violence or superstition and other content that harms social morality or traditions in radio and television advertisements, as per the Measures on the Administration of Broadcasting Radio and Television Advertisements.

12 MISCELLANEOUS**12.1 Is there any other general advice or cautions you would give to advertisers operating in the PRC?**

Following nearly five years of discussion, revision and solicitation of public opinion, the E-Commerce Law of the People's Republic of China ('E-Commerce Law') was approved by the Standing Committee of the National People's Congress on 31 August 2018 and became effective on 1 January 2019. It is the first e-commerce specific law in the PRC. It includes strict requirements and liabilities impacting e-commerce platforms including their responsibilities on advertising. It provides that commodities or services ranked under competitive bidding (eg, paid search listings) are to be distinctively marked with the word 'advertisement'. The measures also make reference to the Advertising Law in respect of obligations when sending advertisements to consumers: namely, advertisements sent through electronic means should expressly indicate the true identity and contact information of the e-commerce operator, while recipients should be provided with the option to opt out of future advertisements.

The E-Commerce Law further provides that platform operators should not engage in false or misleading commercial promotion by fabrication and dissemination of transactions and consumer reviews, which would constitute unfair competition behavior under the Anti-Unfair Competition Law (eg, false or misleading commercial promotions related to product function, quality, sales, consumer reviews, and honors received).

Potential liability under the E-Commerce Law with respect to online advertisements includes fines of up to CNY 2,000,000 and business license revocation.

 COLOMBIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Colombia?

Various laws regulate advertising in Colombia:

- (a) Law 1480 of 2011 ('Consumer Protection Statute') introduced guidelines regarding the accuracy and truthfulness of advertising, which are mandatory. Misleading advertising is expressly forbidden. In such cases, the advertiser will be liable for the damages caused. The media may be jointly liable if fraud or gross negligence is proved.
- (b) Unique Circular No 10 of the Superintendence of Industry and Commerce ('SIC') regulates all matters pertaining to the SIC, including consumer protection.
- (c) Certain behaviors involving advertising may be deemed as unfair competition under Law 260 of 1996 ('Unfair Competition Law') (eg, misleading comparative advertising and certain types of conduct related to ambush marketing). The Organic Statute of the Financial System and the Basic Legal Circular regulate the advertisement of financial products, services and institutions.
- (d) Self-Regulatory Code on Advertising, amended on 16 October 2013,
- (e) Finally, there are specific rules concerning health related products issued by the Ministry of Health and/or the Health Authority (eg, tobacco, medicines, infant formula, alcoholic beverages, etc).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

According to the Consumer Protection Statute, 'advertising' is every type of content and means to inform consumers about the nature, origin, manufacturing process, parts, uses, volume, weight or measure, price, instructions, quality, quantity, or any other relevant characteristic of a good or service offered in the Colombian market. Advertising consists of every content and means aimed at influencing the buying decision process.

1.3 What is the basic regulatory framework for advertising regulation?

The framework under which all advertising lays upon is constituted by the principles included in the Consumer Protection Statute. According to these principles, all relevant information must be disclosed and must be clear, truthful, adequate, timely, verifiable, understandable, accurate and suitable for the products or services that are offered.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

All advertising is guided by the general rules. Consequently, if not expressly prohibited, advertising methods are permitted so long as they fulfil the minimum requirements of the general rules.

Visual outdoor advertising, however, is subject to several rules about size and location in order to avoid visual pollution.

Spam mail is prohibited under the Personal Data Protection Statute. All advertisements delivered directly to a consumer, using the consumer's personal data, must have been previously authorized and must follow the requirements of the Personal Data Protection Statute.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) **Alcoholic Beverages:** The advertising and marketing of alcohol has been regulated in Colombia for the last 30 years, aiming to protect minors and prevent the consumption of alcoholic beverages by means of warnings and restrictions within the advertisements, and limitations on how and when alcohol can be advertised.
- (b) **Gambling:** All gambling activities must be previously approved by the competent authority, which depend on the scope of the gambling activity—either national or regional. Once authorized, the gambling activity has to state such authorization on each of its tickets and adverts.
- (c) **Contraceptives** (condoms, the morning after pill, etc): Contraceptives that are not considered medication do not have special advertisement rules. Notwithstanding, contraceptives that are medications, either ‘over-the-counter’ or prescribed, must follow the advertising rules for that kind of medication.
- (d) **‘Over-the-Counter’/Non-Prescription Medication:** It is permissible to promote ‘over-the-counter’ medication; nonetheless, the advertisement has to be approved by the Health Authority before it reaches the public.
- (e) **Prescription Medication:** Prescription medication can only be advertised or promoted in technical or scientific publications, addressed exclusively to health professionals.
- (f) **Financial Services** (banks, other): For the advertisement of a financial product or service, the Organic Statute of the Financial System applies.
- (g) **Lotteries** (state run and otherwise): All lotteries must be previously approved by the competent authority, which depends on the scope of the lottery—either national or regional. The adverts have to be approved by the entity in charge of authorizing the gambling activity.
- (h) **Herbal and Dietary Supplements; Protein Shakes:** Advertisement concerning dietary supplements must meet the requirements set forth by the health authority.
- (i) **Infant formula:** All advertisement, information, outreach and educational materials concerning infant feeding, aimed at any public, should meet the requirements set forth by the health authority.
- (j) **Political speech** (by individuals, organizations, businesses, and governmental entities): There are two types of political propaganda, each with specific regulation:
 - (i) political disclosure, which tends to disseminate and promote the principles, programs and achievements of parties and movements: this type of advertising cannot seek support for any election and can be done at any time, and
 - (ii) electoral propaganda, which promotes candidates to be elected, seeking public support.
- (k) **Tobacco and toy guns:** The advertising of tobacco and its derivatives, and toy guns, is prohibited.

1.6 Are any government pre-approvals required?

There are some goods and services whose advertisement must be pre-approved:

- (a) **Gambling and Lotteries:** All advertisement has to be approved by the entity in charge of authorizing the gambling activity.

- (b) **Health:** The Health Authority ('INVIMA'), issues the health registrations required for the commercialization of certain specific goods and requires pre-approval for the following products:
 - (i) Over-the-counter medicines;
 - (ii) Over-the-counter homeopathic medicines;
 - (iii) Dietary supplements;
 - (iv) Certain medical devices advertised only through specialized channels; and
 - (v) Infant formula.

1.7 Does the media pre-clear advertising?

The media is not obliged to do so, but most of them have a pre-clear area devoted to the review of advertising in specific cases: Medicines, alcoholic beverages, political advertising, advertising addressed to children, contests that must be authorized by the competent authority, etc.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The appropriate authority can act *ex-officio* to review any advertising material.

The SIC is entitled to enforce the Consumer Protection Statute. Hence, it is empowered to initiate investigations and sanction the infringers.

The corrective measures available are:

- (a) corrective advertising;
- (b) fines of up to 2,000 x the minimum monthly wage in force at the time of the imposition of the sanction (approximately US \$667,000);
- (c) Temporary closure of the party's business establishment for up to 180 days (website or any internet access to the platform);
- (d) In cases of recidivism, and depending on the wrongdoing, closure of the establishment (website or any internet access to the platform) or final order of removal of a website portal on the internet or media used;
- (e) temporary or permanent prohibition to produce, distribute or offer to the public certain products;
- (f) destruction of a particular product that is detrimental to the health and safety of consumers; and
- (g) successive fines of up to 1,000 x the minimum legal monthly wage (approximately US \$333,000) for failure to comply with the SIC's orders.

The Health and Food Institute and the Superintendence of Finance are also entitled to pursue advertising infringements and can order monetary and non-monetary sanctions.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors may bring action against other advertisers on the grounds of infringement of the Unfair Competition Law (eg, comparative advertising, misleading advertising, etc), under which they can request compensation for damages and lost profits; and the advertiser can be sanctioned with monetary and non-monetary obligations.

Competitors may also file complaints against other advertisers for infringement of the Consumer Protection Statute before the SIC as administrative authority. The investigated competitor may be subject to sanctions as described in question 1.8 above.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers may bring an action against advertisers on the grounds of their infringement of the Consumer Protection Statute before the SIC:

- (a) as a jurisdictional authority: Consumers can request compensation for damages and lost profits; moreover, the authority may impose monetary and non-monetary sanctions;
- (b) as an administrative authority; the investigated advertiser may be subject to sanctions as described in question 1.8 above.

Consumer associations (among others) also may bring actions against advertisers on the grounds of infringement of the Unfair Competition Law (eg, comparative advertising, misleading advertising, etc) under which they can request compensation for damages and lost profits; and the advertiser can be sanctioned with monetary and non-monetary obligations.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Colombia have a primary advertising self-regulation system?

The self-regulation system is comprised of different professional associations, which are gathered in the National Commission for Self-Regulation Advertisement ('CONARP'). This entity is in charge of developing and issuing the ethics code for advertisement activities.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The main principles of the Code are the following:

- (a) Good faith;
- (b) Truthfulness;
- (c) Decency; and
- (d) Social Responsibility.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Self-Regulatory Code introduced a proceeding that may be initiated upon request of an interested person or *ex officio*. The competent authority within the advertising trade must investigate whether or not an advertiser has abided by the terms of the Code. The investigated party may be subject to sanctions, such as the amendment or suspension of the advertising piece, public or private reprimands, etc.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The Code is used only as a reference when remedies are filed before the respective authorities. It is a very useful guideline for judges and experts within unfair competition and consumer protection proceedings. It is mostly an ethical standard.

2.5 Are the self-regulatory system's decisions reported?

The self-regulatory system only issues decisions on ethical matters, which are more likely to be recommendations. The decisions have no legal effect.

Decisions can be published at the discretion of CONARP.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

These are the same as the general rules, that is, all relevant information must be disclosed and must be clear, truthful, adequate, timely, verifiable, understandable, accurate and suitable for the products or services that are offered.

2.7 Are there any other self-regulatory systems that govern advertising practices in Colombia?

There are no other self-regulatory systems which govern advertising in Colombia.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Colombia (eg, consumer protection laws, IP laws, unfair competition laws)?

The basic laws which govern advertising claims are:

- (a) the Consumer Protection Statute;
- (b) Unique Circular No 10 of the SIC;
- (c) the Unfair Competition Statute;
- (d) Organic Statute of the Financial System and the Basic Legal Circular;
- (e) specific rules concerning health related products issued by the Ministry of Health and/or the Health Authority;
- (f) the Personal Data Protection Statute; and
- (g) the Self-Regulatory Code on Advertising.

3.2 Is substantiation required for advertising claims?

An advertiser should have proof for the claims it makes in advertising before publishing, as objective assertions require substantiation.

The SIC usually requires third-party scientific studies to substantiate claims.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

'Puffery' is understood as subjective assertions, or unbelievable statements, that no consumer would take to be true, such as the claim that a product contains 'the spark of life' (Coca-Cola).

Any claim that refers to an actual characteristic of the good or service would be an objective assertion and would therefore require substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

The information provided must be clear, truthful, adequate, timely, verifiable, understandable, accurate and appropriate with regard to the goods or services being offered.

If the disclosure refers to a promotion, it must include a clear statement referring to the time, duration and place of validity and conditions of the same (conditions of time, mode and place).

These disclosures must be made in a readable size and location within the advertisement.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The advertiser must have each testifier's release and authorization to use their name in association with the brand. The testifier can be jointly and severally liable for their claims or opinions if advertising rules are breached.

It has to be clear whether the testimony is an endorsement, an independent opinion, a belief or an experience.

Advertisers must keep information and documentation on advertising for at least three years from the date of its last publication, so that it can be made available to the SIC if required.

The Colombian Consumers Protection Authority has issued the *Good Practices Guide for Advertisement through Influencers*. According to this Guide, an influencer is a person who, through social networks and/or interactive digital platforms, by sharing their daily life, interests and experiences with an online community, has achieved/built credibility, trust and a recognizable image that allows them to influence, affect or motivate consumers' behavior. This is the case, regardless of whether or not the influencer identifies themselves as such, since what is relevant is the role they fulfil.

An influencer is called upon to answer as an advertiser or as the media, depending on their relationship with the manufacturer or how the advertisement is communicated.

3.6 What are the rules governing the use of product demonstrations in advertising?

The depiction or demonstration must be clear. The consumer must be informed of the conditions in which the demonstration has been carried out, with regard to time, quantity and use, among other things.

If part of the demonstration requires a comparison, or is made by means of a comparison, the kind of product it has been compared to must be duly established.

If the comparison is against a competitor, the goods have to belong to the same category, which means that:

- (a) the goods or services must satisfy the same necessities;
- (b) the comparison must refer to objective or verifiable characteristics;
- (c) the comparison must therefore be made between one or more relevant, verifiable and representative features thereof; and
- (d) the advertising must indicate the characteristics of the compared products and services, without being misleading.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted as long as:

- (a) it refers to analogous goods or services (eg yogurt and yogurt, not yogurt and milk);
- (b) it refers to objective rather than subjective features or properties of the compared goods/services; and
- (c) the comparison's results are real, truthful and verifiable.

Otherwise, the comparative advertising could be deemed as misleading and an act of unfair competition.

In addition, comparative advertising may explicitly refer to a competitor or may suggest its identity by any means that could be associated to said competitor. However, it cannot be used to denigrate competitors or to mislead consumers.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Trademarks may be used in comparative advertising as a means to explicitly identify the competitor subject to comparison.

However, with regard to copyright, the situation is not that clear. Whether it is possible to use the copyrighted work will depend on the specific situation or manner, and must be studied on a case-by-case basis.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

There are special rules concerning the determination of origin of goods or services. Nonetheless, as regards advertisement, claims relating to geographic origin must follow the general rules, that is, the information must be clear, truthful, verifiable, understandable, accurate and suitable for the products or services that are offered.

3.10 Are there any special rules governing product packaging?

Yes. There are specific rules, issued by the Ministry of Health and/or the Health Authority, concerning packaging and labels of products that may have effects on human health (eg tobacco, medicines, infant formula, alcoholic beverages, etc).

Moreover, there are also special rules concerning the packaging content of toys or goods intended for infants.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

In Colombia, general rules apply to 'dark patterns'. Hence, manufacturers and suppliers must provide consumers with clear, truthful, sufficient, timely, verifiable, understandable, accurate and suitable information on the products they offer.

No regulation describes what could constitute a 'dark pattern' under Colombian law, so this is another issue that must be analyzed within the unique context of the relevant piece of advertising.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no specific rules or guidance related to artificial intelligence as it relates to advertising. Hence, the general rules apply.

4 PRICE ADVERTISING

4.1 What are Colombia's rules regarding price advertising?

If the price is advertised, it must be disclosed in Colombian pesos and must include taxes and additional charges.

It must also be supported in terms of quantity and validity.

The prices must comply with the rules of comparative advertising.

4.2 What are Colombia's rules regarding advertising 'free' products?

The basic rule for 'free' product advertising is that it has to be real; the good must be 100% free. In the event of a promotion in which a free item is attached to the purchased good, the total cost must be exactly the same as the usual cost and should not be increased in any way.

4.3 What are Colombia's rules regarding sales and special offers?

The advertisement must include the conditions of time, mode and place and fully state the conditions to be fulfilled to make the offer applicable. It must also make reference to the quantity of the goods available under the special offer.

The rules that applies to 'free' or 'reduced-price' offers are:

- (a) When the promotion consists of offering free extra-content or extra-product, the indication of the price per unit of measure must only be made with respect to the base product, not including the extra-content or extra-product.
- (b) When the promotion consists of offering an extra product of the same product at a special price, the indication of the price per unit of measure will be based on the advertised price divided by the sum of the total content of the products offered.
- (c) When the promotion consists of offering extra content of the same product at a special price, the indication of the price per unit of measure will be based on the advertised price divided by the sum of the total content offered.

4.4 What are Colombia's rules regarding rebates?

Rebates are regulated by the Consumer Protection Statute; however, there is no direct reference to advertising.

The rebate must comply with the basic rules of advertising: it must be accurate, truthful and not misleading.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

No.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

All advertising is guided by the general rules. Consequently, if not expressly prohibited, advertising methods are permitted as long as they fulfil the minimum requirements of the general rules. Exceptions include:

- (a) **Visual outdoor advertising:** is subject to several rules about size and location in order to avoid visual pollution.
- (b) **Tobacco and toy guns:** The advertising of tobacco and its derivatives, and of toy guns is prohibited.
- (c) **Advertising to minors (under 18 years old):** Decree 975 of 2014 regulates the way advertisements must be presented to minors. All information and advertising aimed at children and adolescents should be respectful of their levels of mental development, intellectual maturity and understanding. Consequently, advertisements directed at minors must avoid using images, text, visual or auditory expressions or representations that do not correspond to the reality of the product in relation to its performance or features.
- (d) **Alcoholic beverages:** The media, in the exercise of autonomy and other rights, must refrain from broadcasting alcohol advertising on television between 7.00 am and 9.30 pm. The advertising of alcoholic beverages on television can only be transmitted at the times and with the intensity established below:
 - (i) Promotional advertising for a cultural or sporting event that is directed exclusively to promote or sponsor that event that uses graphic designs or audible or visual characterization of a company, brand, product or service, without mentioning its attributes and is permitted within the month before the cultural or sporting event between 9.30 pm and 5.00 am the following day, and during the transmission of the sporting or cultural event that it promotes or sponsors.
 - (ii) For an implied or indirect advertisement, which uses the product, brand or graphics and audio or visual characterization of a company or product to promote the use or consumption of goods or services without mentioning their attributes, advertising is permitted between 10pm and 5am the next day.
 - (iii) Direct advertising (in which the product, company, brand or service is identified by a graphic design or audible or visual characterization, with the express purpose of encouraging or inducing consumption or maintaining their presence) that involves the action of ingesting an alcoholic drink, is forbidden from being broadcast at any time by television services.
 - (iv) Promotional and implied advertising shall not exceed 60 seconds for every 30 minutes of programming.
 - (v) Each operator that broadcasts advertisements for alcoholic beverages shall transmit, without cost, an explicit prevention campaign on the risks and effects of consumption of alcohol, for half the time spent weekly on advertising alcoholic products.
 - (vi) Programs whose content is aimed specifically at minors shall not include any advertising regarding alcoholic beverages.

- (e) **Medicines and Health products:** The ethical code establishes that the goods which by their nature are directed to professionals, technicians or scientists, can only be advertised in specialized media. Advertising cannot be addressed to children and youth.
All advertisement is forbidden for health products sold by formula or prescription.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

As a general provision regarding personal data protection, all advertising that requires the use of personal data, such as cell phone numbers, addresses or any other personal information, requires the previous authorization of the consumer to receive such information.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Self-Regulatory Code on Advertising contains decency as one of its general ruling principles. Advertising must respect the dignity of people, institutions, authorities and patriotic symbols. It must not offend, denigrate or harm equal rights, and must not discriminate in terms of race, gender, age, religion, sexual preferences, origin, social, cultural or economic conditions.

The code also includes a provision which states that all advertising that is intended exclusively for adults cannot be shown in any media, space or time in which children or adolescents can easily receive it.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

As a mandatory rule for all advertising, the person, company or entity who is offering the goods or services must be clearly indicated for consumers.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

No, there are not. In such cases, the general rules apply. According to a recently issued document drafted by the SIC, editorial content is treated as an equivalent of advertising. Hence, all consumer protection rules apply.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

No, there are not. In such cases, the general rules apply.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules pertaining to the use of social media for advertising. The general rules of advertising apply to social media as well.

Notwithstanding, the Self-Regulatory Code on Advertising contains a special chapter on social media advertising, which indicates that social media advertising must respect public interest groups and should have acceptable standards of commercial behavior. It must not interfere with what the consumer normally does in the interactive media.

This chapter also addresses:

- (a) identification of the commercial origin of studies and recommendations,
- (b) respect for public groups and search sites,
- (c) messages to children and youth,
- (d) respect to the sensibility of a global audience,
- (e) provisions on on-line commercial messages based on the browsing habits on Internet and the use of cookies.

In addition, such advertisements should comply with the provisions relating the Habeas Data Law.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The advertiser is responsible for all the content which is uploaded on its page. Liability will be based on whether it is possible for the advertiser to control the content and whether it takes the necessary measures to avoid such content being exposed on its page.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no decisions within the context of a judicial proceeding publicly discussed in the press. However, the SIC has issued a legal opinion concerning marketing through social media, in which it is clarified the scope of liability of social networks when they are operated by the users as a selling platform. The main arguments of the legal opinion concerning social networks are highlighted as follows:

- (a) An advertiser is liable for any claim, since the regulation refers to the manufacturer and/or provider which advertises the goods or services. However, the platform on which the advertisement is promoted would be liable in cases where it is possible to demonstrate bad faith or guilt from the social network (in this case) concerning the deceiving advertisement.
- (b) The SIC considered that social networks do not have a commercial interest, but a social one. Hence, it is not possible for a social network to determine or affect a consumer in his/her decision-making process.
- (c) If social networks act as advertisers, then the Consumer Protection Statute would be applicable to them, not only as a platform in which the advertisement is promoted, but as a manufacturer and/or provider.
- (d) When a user commercializes goods or services, only the user would be liable for what it is advertised, as social networks cannot be held accountable for the use made of the accounts.

This is not a decision per se, and curiously enough it does not bind the SIC. Nonetheless, it is the latest opinion issued related to social media marketing.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The use of images or references to people by imitation, personification or dubbing in a commercial message requires the individual's previous written consent.

9.2 Are there situations when permission is not required?

Exceptions to the above rule are:

- (a) images obtained from large groups in which the people who appear are not identifiable;
- (b) the announcement of books, pictures or works in which the image or reference of the author is made; and
- (c) when the use of the image relates to the purpose of news, culture or didactic material, or when it relates to facts or events of public interest.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

According to one of the Laws which refer to copyright (Law 23 of 1982), it is permitted to reproduce, by painting, drawing, photography or cinematography, works that are permanently located in public highways, streets or squares, and to distribute such reproductions or works and communicate them to the public.

The only exception refers to works of architecture, when different to outward views.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

There is no specific rule which forbids the use of recognizable goods. The basic rule indicates that the use of third parties' trademarks requires previous consent. However, the 'appearance' of the trademark or product may not be considered as trademark use. Therefore, the possibility of using the recognizable product would have to be studied on a case-by-case basis.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Colombia which affect advertising (eg, Swedish gender equality law)?

There are no particular advertising rules regarding our culture. Any issue which could arise involving the same would be treated according to the basic governing laws of advertising.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertising should be made in such a way that it contributes to the improvement of the society, the economy and the environment, without losing its main objective.

Advertising must provide positive messages; it must not discriminate or encourage violence, illegal acts or anti-social behaviors.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Colombia?

Within the scope of advertising in Colombia, a general piece of advice would be to refer to its content and particular topics in which Colombian public results to be very sensitive. All humor regarding drug trafficking or consumption, religious positions and mockery as well as explicit nudity, are not well received.



COSTA RICA



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Costa Rica?

There is no general advertising Law in Costa Rica. However, several laws contain different regulations addressing advertising. The most important of these is the Consumer Protection Law. Other regulations addressing advertising are contained in several other Laws, such as the Civil Code, the General Health Law, the Law to protect the Image of Women, the Criminal Code, and several product regulations.

Other laws, although aimed at other purposes, apply to advertising as well, such as the Laws protecting Intellectual Property Rights.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The legal definition of advertising is very broad. Legally, it is defined as ‘any type of message that is disseminated in any way, in the exercise of any commercial, industrial, artisan, or professional activity with the purpose of promoting the sale of any good, the transfer of any right and obligation, or the rendering of services, as well as the dissemination of ideas’.

1.3 What is the basic regulatory framework for advertising regulation?

The most important law regulating advertising is the Consumer Protection Law, which regulates issues like the prohibition of misleading and abusive advertising, as well as promotions, comparative advertising, and others.

In addition, different laws regulate other issues related to advertising, like the use of personal image, data protection, intellectual property, unfair competition, the portrayal of women, etc.

There are some regulated products that have advertising regulations that are specifically applicable to them, and other laws regulate the use and operation of certain media, particularly broadcasting.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Advertising laws and regulations apply to all media and to all forms of advertising. As an exception:

- (a) Emails and text messaging have specific regulations that can be summarized as follows:
 - (i) It is forbidden to send email messages with the purposes of making direct sales, promotional marketing and/or advertising. This same general prohibition applies also to faxes and to automated telephone calls.
 - (ii) As exceptions to this rule, commercial email communications are allowed:
 - when the client has previously expressed their willingness to receive such communications;
 - when, in the context of a previous sale or commercial relationship, that same supplier uses the information provided by the client to promote the sale of similar products or services.
 - (iii) Any marketing communication made through email must clearly identify the sender. It must also be done simply enough to easily identify the purpose of the message.

- (iv) All messages must include a valid email address to which the recipient of the message may send a request to suspend any further message, at no cost to the recipient.
- (v) The following forms of conduct are expressly mentioned in the regulations as forms of unfair and/or fraudulent activities:
 - unsolicited advertising ('adware');
 - unsolicited communications;
 - unauthorized operation, access and monitoring a terminal;
 - spreading viruses; and
 - unsolicited massive emails (SPAM).
- (b) In addition, the following rules apply to advertising made by electronic means (websites, social media, etc):
 - (i) Advertising must always be identified as such, including the identity of advertiser.
 - (ii) Advertisers must always identify their (true) identity, location, and contact information.
 - (iii) Information used for the domain name registration must be accurate.
 - (iv) References to self-regulatory bodies must include a link to verify membership and conditions.
 - (v) Information must be disclosed in 'easy and clear language'.
 - (vi) There are certain mandatory disclosures for all e-sales.
 - (vii) Special rules apply for children's advertising, including filters for inappropriate content.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

The following products have specific advertising regulations:

- alcoholic beverages;
- prescription drugs;
- food;
- dietary supplements;
- milk and dairy products;
- baby formula;
- natural products with medical properties; and
- financial products and services.

1.6 Are any government pre-approvals required?

Government pre-approval is required for the following advertising:

- alcoholic beverages;
- prescription drugs;
- baby formula; and
- any advertising that uses the image of women in a sexually suggestive way.

1.7 Does the media pre-clear advertising?

No, the media does not pre-clear advertising in Costa Rica.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Depending on the applicable subject matter, different governmental offices are in charge of enforcing advertising laws, mainly the Consumer Protection Office, the Ministry of Health, although there are others.

Potential remedies applicable to any infringing advertising are:

- suspension of the advertising;
- corrective advertising;
- fines;
- annulment of sales and other contracts; and
- monetary damages.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor has a right of action in two possible scenarios:

- (a) If an advertisement violates applicable regulations protecting consumers and/or other rules of public order: in which case the remedies available do not contemplate monetary damages.
- (b) If an advertisement amounts to unfair competition and/or a violation of any right of a competitor (such as intellectual property): in which case, in addition to any other applicable remedies, the competitor may seek compensation for the damages caused.

1.10 When do consumers have a right of action? What are the potential remedies?

Any person has legal standing to file a complaint against any advertising violating the laws.

Also, if a consumer can show damages or specific harm, they may seek compensation in Courts of Law.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Costa Rica have a primary advertising self-regulation system?

Yes. There is a self-regulation system established and controlled by the *Cámara de la Comunicación Comercial* ('CAMCO').

CAMCO has issued a self-regulation code, and also has a panel of neutrals in charge of its enforcement. The system is completely voluntary. However, the self-regulatory system is not operational, and it exists on paper only.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes. There is a self-regulatory advertising code. The main principles covered by the code are:

- Truthfulness;
- Legality;
- Decency;
- Good Faith;
- Social responsibility;
- Respect for the environment; and
- Health and safety.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

CAMCO has a panel of neutrals in charge of carrying out the procedure. The process is mostly in writing, but the parties may request a hearing if they wish.

After hearing both parties and analyzing the evidence, the panel may declare the advertisement in violation of the code, and impose certain penalties.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The system is not effective and is not used nor relied upon by advertisers.

2.5 Are the self-regulatory system's decisions reported?

Decisions are not reported, but in grave cases or in issues involving general interests, the panel may order the publication of specific decisions.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The code covers the basic principles applicable to all advertising.

2.7 Are there any other self-regulatory systems that govern advertising practices in Costa Rica?

No, there are no other self-regulatory systems. Some industries have self-regulatory codes, but they are not enforced by any specific body.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Costa Rica (eg, consumer protection laws; IP laws; unfair competition laws)?

Advertising claims are governed by the Law to Promote Competition and the Effective Defense of Consumers ('Consumer Protection Law'), and its regulations.

Also, product-specific regulations deal with advertising claims related to their respective products. For example, advertisements of medicines must not only comply with the general principle of truthful advertising, but also with specific requirements for any health-related claims.

3.2 Is substantiation required for advertising claims?

Yes, substantiation is required for all advertising claims.

The burden is on the advertiser to prove the truthfulness of all that is said in the advertising.

Also, substantiation is required for both express and implied claims. 'Implied' claims are deduced from the 'global impression' caused by an advertisement.

Advertising claims are deemed to be legally incorporated into all sales agreements, and, in case of confusion, all doubts and/or contradictions will be interpreted in favor of consumers.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The regulations do not mention this issue expressly. However, the legal standard is whether an advertisement is likely to generate confusion, so consumer perception is always evaluated. Hence, although not always discussed expressly, the concept of ‘puffery’ has been applied in some cases by referring to whether consumers are being misled or not.

3.4 What are the rules governing the use of disclosures in advertising?

All disclosures must be clear, easy to read and to understand. The general message of the advertisement may not contradict any information made in a disclosure.

Disclosures and warnings are mandatory when the use of the product may generate health or safety risks.

Certain products with specific regulations require mandatory health warnings and disclosures. Examples of this are alcoholic beverages, medicines, energy drinks, milk and milk substitutes, etc.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

All testimonials and endorsements must be genuine, verifiable, and based on prior experience or knowledge.

The testimonial or endorsement may be used as long as the advertiser has reasons to believe in good faith that the views of the endorser have not changed.

Testimonials in advertising must also follow these rules:

- (a) They require prior consent to be used, unless it is a quote from a previously published source;
- (b) They must refer specifically to the advertised product;
- (c) If there is a partial reproduction, it may not alter the sense and context in which the testimonial was rendered;
- (d) They may not be misleading, even if literally true;
- (e) If the endorser has any commercial interest in the advertised product, this link must be disclosed;
- (f) No testimonials are permitted in the name of large unidentifiable groups;
- (g) Parodies, representations, and fictional testimonies must be clearly signaled;
- (h) Testimonials by themselves are not sufficient evidence to support advertising claims made on the product;
- (i) It should be clarified whether the testimonial is made on a personal condition or as representative of an organization;
- (j) If the testimonial is rendered on behalf of an organization, that organization must authorize it previously;
- (k) Characterizations of professionals must be clearly disclosed and will be subject to the ethical rules of that profession; and
- (l) All testimonials must be supported by a signed and dated document. This document must be kept for as long as the advertisement may be divulged.

In electronic communications and social media, advertising must be clearly and expressly identified as such.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstrations do not have specific rules. The general rules about truthfulness, good faith, etc should apply.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted, provided that it complies with the following:

- the information compared must be relevant;
- all information must be objectively verifiable;
- the comparison must be made between products of the same kind; and
- the comparison must be made with reference to products known to the public, or with significant participation in the market.

Comparisons are inadmissible when they are limited to a general proclamation of the advertiser's own product's superiority. Information necessary to determine the real value of the products cannot be omitted.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Comparative advertising is a recognized 'fair use' of a competitor's trademark. However, the trademark may not be altered, and the compared product may not be disparaged. This would become a form of unfair competition.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

No, there are no special rules governing geographic origin claims. They are, however, covered by the umbrella obligations related to truthfulness (ie, a product cannot be claimed to be of certain origin unless the advertiser is able to demonstrate that claim).

3.10 Are there any special rules governing product packaging?

Yes. There is some mandatory information that must be included in packaging in general, as well as specific regulations for certain products (food, pharmaceuticals, alcohol, cosmetics, chemical products, etc).

3.11 Are there any special rules or guidance on the use of 'dark practices'?

There are no special rules or provisions on this.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules or provisions on this.

4 PRICE ADVERTISING

4.1 What are Costa Rica's rules regarding price advertising?

The main rule is that all advertised prices must be final, including all charges, taxes, and any other amount that must be paid.

4.2 What are Costa Rica's rules regarding advertising 'free' products?

If the offer is for a free gift, it must be completely free of any purchase or any obligation. If the gift is conditional upon purchasing a product, this must be clearly stated in the advertising, and not via disclaimer.

4.3 What are Costa Rica's rules regarding sales and special offers?

- Any advertising mentioning a special offer must state the advantage that is being offered to consumers.
- All conditions must be disclosed prior to the purchase; otherwise they will not be enforceable.
- All special offers must be for a limited time, which must be disclosed, and the advertiser must ensure the availability of the offer during that time.
- If the offer is made 'while quantities last' (or similar expressions), the advertiser must disclose the number of products available.

4.4 What are Costa Rica's rules regarding rebates?

In addition to the rules set out in the answer to question 4.3 above, the advertiser must disclose the price prior to the rebate, alongside the rebate price, so consumers may easily evaluate the amount of the savings.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

No, there are no other key restrictions.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The following are prohibited or restricted:

- (a) Tobacco products may not be advertised at all.
- (b) Alcoholic beverages may not be advertised in TV or radio programs directed to minors, or on billboards close to schools, sports venues, medical facilities, etc.
- (c) Baby bottles may not be advertised (to avoid discouraging breast feeding).

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Other than the practices mentioned in question 1.4 above, there are no advertising practices that are completely prohibited, although certain forms of advertising are regulated, and others are forbidden for specific products.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Yes. There is a law issued to avoid disparagement based on gender, which also covers indecency and obscenity.

This law allows a governmental office to suspend and destroy any advertising material considered obscene that has not previously been cleared by them.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Yes. The identity of the advertiser must always be disclosed, with the exception of so-called 'expectation campaigns'.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules on this issue (except for the ethical rules of journalism, where applicable).

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special rules on this issue (except for the ethical rules of journalism, where applicable).

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special regulations for the use of social media. However, there are rules applicable to electronic advertising in general, which includes social media (see question 1.4(b) above).

Also, there is a 'safe harbor' regulation to avoid liability for IP violations made through electronic means (including social media). This safe harbor is specific to IP issues only.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There are no specific rules addressing this situation. However, through the application of the general rules, it may be construed that the administrator of the page has an obligation to exercise due care and avoid legal violations made in any media controlled by it.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no relevant decisions directly dealing with this issue.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The general rule is that prior consent is needed in order to use a person's portrait, name, likeness, etc.

The key parameter to determine whether consent is required is whether the individual can be recognized or not.

9.2 Are there situations when permission is not required?

There are some exceptions to the general principle requiring consent, but none of them apply to advertising. They apply to editorial content, publications of general interest, etc.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no rules requiring clearance of certain materials (except for some regulated products).

Advertisements that will be broadcast on TV or radio need to be registered and a nominal fee paid, but the content is not cleared.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Recognizable third-party products may be used, as long as the rules for 'fair use' of trademarks are respected. This means that the third-party product must be incidental to the ad, and that the advertiser may not take unfair advantage of the other trademark's fame.

Also, reference to third-party products is admissible to show compatibility with a product, or to show possible uses of a product.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Costa Rica which affect advertising (eg, Swedish gender equality law)?

Legally all information conveyed to consumers must be in the Spanish language. Other languages may be used concurrently, but in case of contradiction the Spanish version prevails.

Also, all measurements must follow the metric system.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

It is always good to adapt advertisements to local idiosyncrasies, but without any major diversion from what is applicable for most Latin American countries.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Costa Rica?

There are special rules and guidelines issued by the Consumer Protection Agency related to influencer advertising.

 CROATIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Croatia?

Advertising in Croatia is regulated in several Acts. The principal acts that deal with advertising are:

- the Prohibited Advertising Act;
- the Media Act; and
- the Electronic Media Act.

Other relevant Acts include:

- the Consumers' Protection Act;
- the Trade Act; and
- the General Product Safety Act.

For specific types of advertising, or, more precisely, for the advertising of specific goods and services, the following acts may apply amongst others:

- the Act on Food;
- the Act on the Reduction of Tobacco Products Use; and
- the Drugs and Medical Products Act.

Although they do not apply to advertising specifically and directly, the following Acts are often cited in advertising cases:

- the Trademark Act; and
- the Copyright and Related Rights Act.

In addition to that, the advertising industry has implemented a series of self-regulatory rules, which also apply; namely the Code of Conduct of the Association for Marketing ('the Code') and the Code of Conduct of the Croatian Association of Communications Agencies ('HURA') (as to which see question 2.1, 2.2 and 2.7 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Croatian law does not define what specific types of communications are considered to be 'advertising'. Instead, the Prohibited Advertising Act defines 'advertising' as 'any expression, in any form, which is made by someone in the performance of their business, or profession, which is directed towards promotion, with the aim of improving the sale of goods or services, and includes real estate rights and obligations.'

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework for advertising in Croatia consists of legislation and self-regulation. See question 1.1 above.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Certain types of communications are regulated in Croatia, such as electronic communications. Unsolicited electronic communications are regulated by the Electronic Communications Act. The use of automated calling and communication systems without human intervention, facsimile machines or

electronic mail, including short text messages ('SMS') and multimedia messages (MMS), for the purposes of direct marketing and sale, are allowed only if service subscribers or users have given their prior consent.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are several regulations that may apply in this sense, such as the Act on Food, the Act on the Reduction of Tobacco Products Use and the Drugs and Medical Products Act, which all contain provisions relevant to specific industries. Like in many other countries, such restrictions refer to tobacco products, prescription pharmaceuticals and alcoholic drinks, except for beer and selected wines.

Certain advertising restrictions are a direct consequence of the restricted trade of certain goods, such as weapons or pornographic material. The advertisement of certain services is restricted as well, such as the advertisement of lawyers and law firms.

Most of the restrictions apply to the advertisement of certain goods or services regardless of the media.

1.6 Are any government pre-approvals required?

There are no government pre-approvals prescribed within the Croatian legal system.

1.7 Does the media pre-clear advertising?

In Croatia, there is no prescribed formal pre-clearance procedure for advertising. Advertisers/agencies do not have to get any formal approval for a particular advertisement from the media channel or any other body before it is shown. However, media owners can make a selection of the material that will be published, since they are within their rights to refuse to publish certain material. However, this happens exceptionally and rarely, and we are not aware of any such cases in recent years.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Government enforces provisions that relate to advertising by imposing fines for activities that are prohibited. For example, fines may be imposed when brands advertise products that are not permitted to be advertised, or when companies/agencies use prohibited advertising practices, such as misleading advertising. The fines usually amount to a few thousand euro, although they can even amount to tens of thousands of euro. The advertising material has to be removed and no longer published. This is usually done voluntarily by the agency itself or the advertiser.

In the case of advertising products or activities which are not permitted to be advertised by law, a misdemeanor procedure is initiated against the entity or person that violated the relevant provision, and the procedure is usually conducted by the misdemeanor courts through a first and, potentially, second instance procure, if an appeal is filed.

For unlawful advertising activities (where the advertising practice is at issue, rather than the fact of advertising itself), the advertiser is considered responsible, and the advertiser is the party against whom the procedure is brought. If, however, the courts decide that unlawful advertising activities have been used, then the client-advertiser will normally seek to recover any fines from its advertising agency.

1.9 When does a competitor have a right of action? What are the potential remedies?

While the procedure for the violation of a relevant provision is initiated by the Government through a misdemeanor procure, a competitor would usually have to start a separate court action in order to enforce its rights. The rights of competitors usually consist of intellectual property rights, either trademark rights or copyright, although a competitor may also base its claim on unfair competition.

The procedure started by a competitor is usually conducted in the commercial court. In most cases, this is a litigation procedure with a plaintiff and a defendant.

If a competitor does not have a right of action, but thinks there is a problem with another brand's advertising, it is not able to start a litigation procedure, but may instead simply notify the authorities of the misconduct. The authorities would then start a misdemeanor procedure *ex officio*. In other words, a competitor can notify the authorities of prohibited advertising practices (in which case the Government will investigate and enforce the laws through the misdemeanor courts).

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers have specific rights of action as set out in the Croatian Consumers' Protection Act. This provides for the protection of the collective rights of consumers, although this type of action is intended primarily for more general application and is not necessarily used in connection with advertising. If a group of consumers wishes to bring an action relating to advertising, the Consumers' Protection Act allows them to do so if the advertising violates other specific advertising regulations, such as the Electronic Media Act.

Actions can be brought when consumers consider their rights have been breached. Most claims usually seek monetary refunds or compensation by way of damages. Actions tend to be brought by a group of consumers or their associations. That said, to our knowledge, very few such actions have been brought in Croatia during the past few years. Among those actions that were brought, we are not aware that any related to advertising material.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Croatia have a primary advertising self-regulation system?

The major self-regulatory bodies in Croatia are those acting within the Croatian Chamber of Economy. This is divided into sectors and associations, including the Association for Marketing. The Association for Marketing was established by the Croatian Chamber for Economy in 2001. The main purpose of the Association is to articulate the interests of the chamber's members involved in marketing in general and advertising in particular. The Association for Marketing has its own code of conduct ('the Code').

There are also other professional associations, such as the HURA, which has its own codes of conduct and guidelines applying to members. The code of conduct of the HURA almost entirely corresponds to the Code. Likewise, all the members of the HURA are also members of the Association for Marketing.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The self-regulatory process works primarily through the implementation of the Code. The Code represents the minimum standard of ethics with which parties should comply in advertising and other forms of trade communications. The Code is, by its form and content, comparable to the Code of

Standard Advertising Practice which was accepted by the International Chamber of Commerce in 1973. The Code and national laws are harmonized, which means that the Code elaborates on certain provisions of the law and should never be contrary to it.

The key principles of the Code focus on honest advertising which does not mislead. Other key principles focus on comparative advertising, which although generally permitted, must abide by particular rules which protect competitors and their rights. The Code promotes advertising which respects and reflects the ethics and cultural rules of Croatia, which are generally accepted throughout all parts of the country and the whole population.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

If a dispute arises where a challenge is made by a brand or advertising agency against an advertiser or its agency, and a solution cannot be reached otherwise, conflicts relating to the Code can be brought before the Court of Honor. The procedure before the Court of Honor is comparable to a litigation procedure. No monetary fines can be imposed, but warnings can be made.

If a party is unsatisfied with the ruling of the Court of Honor, it can request the convocation of the so-called 'Group of Agencies for Trade Communications', which also acts within the Croatian Chamber of Economy. The Group of Agencies for Trade Communications has the power to decide if a particular member should be expelled from the group. In practical terms, however, there are no real consequences to expulsion, as both advertiser and agency could continue to operate even if they had been expelled.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system is effective and used. However, there are not many disputes per year, according to the information we have received. In fact, in most years, there are no disputes at all.

2.5 Are the self-regulatory system's decisions reported?

The self-regulation system's decisions are not reported or published.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

In Croatia, the general principles of modern advertising legislation apply. As an example, misleading advertising is prohibited, while comparative advertising is allowed, but only under certain circumstances. There are several rules in this regard which, generally, focus on respecting the rights of competitors. Morality and decency should be respected, as in most other European countries, and this applies to all industries, especially those that are not regulated specifically, such as advertising of tobacco and alcohol. Also, as Croatia is part of the European Union as of 1 July 2013, EU standards may serve as guidelines too.

2.7 Are there any other self-regulatory systems that govern advertising practices in Croatia?

Besides the bodies acting within the Croatian Chamber of Economy and the Association for Marketing, there is another professional association, which is the HURA. This is an association of advertising agencies, which has its own code of conduct and guidelines. However, this code of conduct and guidelines apply only to the members of the association, and membership of the association is not mandatory. Most of the Croatian advertising agencies, however, are member of HURA.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Croatia (eg, consumer protection laws, IP laws, unfair competition laws)?

See question 1.1 above.

3.2 Is substantiation required for advertising claims?

Substantiation is not prescribed as a requirement for advertising claims in Croatia.

If a claim is challenged for having a misleading claim, it has to be determined whether the claim misleading/false or true. This is finally determined by the judge based on the evidence that the parties present during the procedure.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There are no such types of advertising messages.

3.4 What are the rules governing the use of disclosures in advertising?

The Croatian legal system does not contain rules that specifically govern the use of disclosures in advertising.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The Croatian legal system does not contain rules that specifically govern the use of endorsements and testimonials in advertising.

3.6 What are the rules governing the use of product demonstrations in advertising?

The Croatian legal system does not contain rules that specifically govern the use of product demonstrations in advertising.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Under the Prohibited Advertising Act, comparative advertising is permitted provided that:

- it is not misleading;
- it compares products/services that meet the same needs or are intended for the same purpose;
- it objectively compares features of the product/service which are material, relevant, comparable and verifiable (including price);
- it does not identify traders with other advertisers /competitors, or with other services, trademarks, protected names or other distinguishing features of advertisers/competitors;
- it does not discredit or devalue the products/services of competitors, their trademarks, protected names or other distinguishing features, activities or relationships;
- it compares products with designation of origin, to products of the same origin;
- the comparison is not directed towards unfair exploitation of the reputation of a trademark, protected name, designation or origin or other distinguishing feature of a competitor product/service; and
- it does not refer to advertised products/services as imitations of products/ services bearing a protected trademark or name.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Trademark regulations may apply to these types of cases, although it depends on the specific circumstances of the case. In the case where someone's trademark is shown or depicted while comparing products for advertising purposes, the rights holder may be able to claim trademark infringement. A lot, however, depends on the specific circumstances and how that trademark is shown. However, there are no general rules to answer whether another trademark or name can be used in advertising.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The Croatian legal system does not contain rules that specifically regulate advertising using claims relating to geographic origin. In general, the untruthful use of claims referring to geographic origin would be considered misleading, and thus unlawful.

3.10 Are there any special rules governing product packaging?

Product packaging is not specifically regulated in Croatia. Certain segments are regulated, such as labeling and the information that has to be contained on the product packaging. However, the packaging per se is not regulated.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Currently there are no rules or guidance on the use of 'dark practices' that would apply.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Currently there are no rules or guidance on artificial intelligence in advertising that would apply.

4 PRICE ADVERTISING

4.1 What are Croatia's rules regarding price advertising?

The basic Act regulating price advertising in Croatia is the Consumers' Protection Act, which determines the retail selling price as the final price in Croatian currency for a unit of the product, or a given quantity of the product, including VAT. The retail selling price and the unit price must be unambiguous, easily identifiable and clearly legible. A trader who provides a service must have a price list highlighted in the premises easily accessible to the consumer. With the price of services, the trader is required to specify the type and scope of services.

Also, regarding price display, the Regulations on the highlighting of the retail selling price and the price for a unit of measure of products and services issued by the Minister of Economy may also apply.

4.2 What are Croatia's rules regarding advertising 'free' products?

The Croatian legal system does not contain rules that specifically regulate the advertising of 'free' products.

4.3 What are Croatia's rules regarding sales and special offers?

According to applicable local provisions, 'special sales' are sales of certain products on offer for a period longer than 30 days. Products on sale must be unambiguously, visibly and legibly marked with the word 'SALE' and the duration of the offer.

'Clearance sales' include selling for purposes of:

- business termination;
- business termination in the current business premises;
- the termination of sale of a particular product; or
- performing complex construction within or on premises.

'Seasonal sales' are sales after the expiry of the season and cannot take place more than three times a year.

Sales of defective products must have unambiguous, visible and legible labeling on the product stating that they are defective.

4.4 What are Croatia's rules regarding rebates?

The Croatian legal system does not contain rules that would specifically regulate rebates.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Unfair commercial practices include misleading and aggressive commercial practices, and are prohibited.

In general, a trader is misleading if it communicates false information and is, therefore, untruthful in any way. This will include the overall presentation of an advertisement, and whether it deceives or is likely to deceive the average consumer in relation to price or the manner in which the price is calculated (even if the information is factually correct).

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

According to the Media Act advertising is not permitted for weapons and ammunition, or pyrotechnic products, none of which can be advertised, without exception. Drugs and medical procedures that are available only on prescription cannot be advertised either; although those which are available without prescription may be advertised. Alcohol and alcoholic beverages can be advertised, unless a special law provides otherwise.

The above applies to all types of media and all forms of advertising.

The Act on the Reduction of Tobacco Products Use prohibits any advertising activity that may encourage the consumption of tobacco and tobacco products. Based on the formulation of the relevant rules, this includes direct and indirect advertising.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The Electronic Communications Act regulates unsolicited electronic communications. This bans the use of automated calling and communication systems without human intervention, facsimile machines or electronic mail, including SMS and MMS, for the purposes of direct marketing and sale, unless subscribers or users have given their prior consent.

The following practices are also prohibited:

- misrepresenting or concealing the identity of the sender on whose behalf the communication is made;
- sending electronic mail or text messages without a valid electronic address or a number to which the recipient may send a free request for the termination of any further communication; and
- sending an electronic mail or text message that encourages a recipient to visit a website.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

According to the Croatian Media Act, it is forbidden to publicly display and advertise publications with a cover showing pornographic content. This includes all public places, and refers especially to newspapers and magazines when displayed for sale. The prohibition does not apply to the sale of pornographic publications in special stores. Newspapers and magazines with pornographic content must have a visible warning indicating that they contain pornography, as well as a warning that its distribution is prohibited to minors.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Advertising and sponsorship in Croatia are regulated by the Media Act and the Electronic Media Act. According to the Media Act, an 'advertisement' is 'paid-for information whose disclosure is ordered by a natural or legal person with the intention to thereby enhance the legal trade of goods, services, rights or obligations'. Sponsorship, therefore, falls under the definition of 'advertising' in Croatia. Advertisements should be clearly marked as such, separated from other program content, and should not give the impression that they are content. The identification of the advertiser is not compulsory.

On the other hand, sponsored program content should be clearly labeled with the sponsor's name, mark or other symbol. In other words, when it comes to sponsorship of program content, identification of the sponsor is compulsory at the beginning, during or at the end of the program.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Integration of advertising content and entertainment (or editorial) content is regulated by the Croatian Electronic Media Act and the Croatian Radio and Television Act.

According to the Electronic Media Act, which applies to non-national and satellite channels, the duration of short television advertisements and short teleshopping advertisements, in general, must not exceed 12 minutes within each hour. There are exceptions for television channels exclusively devoted to advertising, teleshopping and self-promotion.

Advertising and teleshopping in audiovisual programming should be inserted between programs. Broadcasting of films (excluding series, serials and documentary programs), cinematographic works and news can be interrupted only once in each designated period of 30 minutes. Advertising cannot be inserted during the transmission of religious services. Programs for children lasting for less than 30 minutes should not be interrupted by advertisements. These rules do not apply to radio advertising.

There are special advertising rules that apply to the Croatian national radio and television, provided by the Croatian Radio and Television Act. The duration of advertisements in radio programming channels should not be longer than nine minutes per hour of the program. In general television programs, the advertisement duration also should not be longer than nine minutes per hour of the program, whilst in the peak period from 6.00 pm to 10.00 pm the duration of advertisements should not be longer than four minutes per hour of program. Films may be interrupted by advertising messages only once during the broadcasting of the film. This applies to Croatian national channels only.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

According to the Croatian Media Act, an advertisement should be clearly marked as such, should be clearly separated from other program content and should not give the viewer, listener or reader the impression that it is programming content. Free-of-charge advertising (when the media space is provided free) must be specially marked as such. ‘Disguised advertising’—any journalistic form (eg, written text, photo, painting, drawing) that is paid for by any means and is not clearly labeled as advertising—is not permitted.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules in Croatia governing the use of social media for advertising. Generally, the provisions of Croatian laws that regulate advertising also apply to advertising on social media.

The Electronic Media Act, which is in compliance with relevant EU regulations, is the Act covering this field. This Act regulates the rights, obligations and responsibilities of legal and natural persons providing audio/audiovisual media services and electronic publications by electronic communications networks. According to this Act, ‘advertising’ is ‘any form of an advertisement broadcasted in return for payment or similar remuneration or broadcasting for the purpose of self-promotion in connection with trade, business and crafts or in order to promote the purchase of goods or services, including real estate, rights and obligations in return for payments’.

The Croatian Prohibited Advertising Act should also be mentioned. This Act prohibits ‘misleading advertising’, defining it as ‘any advertising which misleads or is likely to mislead the persons to whom it is addressed in order to influence their economic behavior’. Under the Croatian Media Act, disguised and misleading advertisements are not permitted.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Pursuant to the relevant Croatian laws and regulations in force, an advertiser is not responsible for advertising claims made in user generated content, such as statements made by a consumer on the advertiser's Facebook page. In the context of advertising on social media, Croatian legislation does not contain any provision that would impose responsibility on the advertiser for statements made by a consumer.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no key court or self-regulatory decisions in Croatia that advertisers should be aware of regarding the use of social media and user generated content. We are not aware of any court decision in relation to advertising in social media.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Privacy rights in Croatia are regulated, in general, by the Obligations Act and the Criminal Code.

The Obligations Act defines 'personal rights' as 'the right to live, physical and mental health, reputation, honor, dignity, name, privacy, personal and family life and freedom'. The violation of personal rights is a non-pecuniary loss and everyone who suffers this loss has the right to require the court or other competent authority to order the termination of infringing acts and elimination of their consequences, which may, for example, include the destruction of materials. In the case of violation of personal rights, the court shall decide on the amount of monetary compensation which the injured person may be awarded.

Unauthorized use of personal data is considered a crime in Croatia and is regulated by the Croatian Criminal Code. For unauthorized use of personal data, the Criminal Code provides a maximum penalty of imprisonment up to one year and/or a monetary fine. The Croatian Criminal Code determines, regarding privacy, that advertising should not feature personal data without the relevant individual's consent. This applies to both Croatian and foreign citizens.

9.2 Are there situations when permission is not required?

In relation to privacy rights, there is one situation in which it could be considered that permission of the individual is not mandatory. As previously stated, the Criminal Code provides that, in advertising messages, individuals should not be recorded/filmed without their consent. However, the Code provides one exception in that respect. The exception is the recording of a group of people in the background to the main characters in the scene, and only applies if the context of the advertisement is not offensive or compromising. In the case of justified complaints from the recorded individuals, the advertiser must withdraw the advertisement.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

The Croatian legal system does not provide for any specific rules that govern the types of materials that must be cleared before they are used in advertising.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

There is no general rule or provision that governs this type of situation. There is therefore no general prohibition on this type of activity. It may be that, based on the description provided, the rights owner may claim trademark infringement, or the infringement of other rights. However, even in that case, this type of situation does not necessarily represent an infringement, as it may easily be categorized a fair use, which is evaluated on a case-by-case approach.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Croatia which affect advertising (eg, Swedish gender equality law)?

Advertisements published locally should use the local language, which is Croatian, and local script, which is Latin. Although this is recommended, it is not something that is particular to the culture of our country, as the use of local language and script applies elsewhere as well.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

There are no cultural norms that would specifically apply to our country. Norms of ethics common to all civilized countries should apply, which means that advertising should respect civil and moral rules, religious beliefs and human dignity. At the same time, any kind of indecency and violence should be avoided.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Croatia?

It is advisable to seek local legal advice before starting to operate.

 CYPRUS 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Cyprus?

The 2021 Consumer Protection Law ('CP Law'), outlines the rights of consumers in Cyprus and provides a framework for addressing unlawful commercial practices, misleading advertisements, and comparative advertising. This legislation serves to align national regulations in Cyprus with corresponding European Union laws, which constitute the primary foundation for advertising regulations. In Cyprus, advertising is regulated by both legislation and self-regulatory codes, as well as industry specific legislation and the Advertising Code, published by the Cyprus Advertising Regulation Organization ('CARO'), a member of European Advertising Standards Alliance.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

'Commercial practice' means any act, omission, manner of conduct or representation, commercial communication, including advertising and marketing, of a trader, directly connected with the promotion, sale or supply of a product to consumers. The CP Law defines an advertisement as 'the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including the transfer of immovable property, rights and obligations'. The Radio and Television Broadcasting Stations Law of 1998 ('RTBS Law') distinguishes between television advertisement, radio advertisements and political advertisements. The CARO Code defines advertising as including, but not limited to, 'any form of advertising and communications for all sorts of products and services'. Advertising is considered by CARO in its wider context, and includes advertisements carried by the media, as well as other activities for presenting and promoting products and services, and all forms of marketing and social communications irrespective of the medium used, produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behavior.

1.3 What is the basic regulatory framework for advertising regulation?

The two main regulatory bodies are the Consumer Protection Service ('CPS') and the Cyprus Radio Television Authority ('CRTA') which regulates private broadcasting and media organizations in Cyprus and oversees adherence to its Broadcasting Code regarding the characteristics of advertisements. There is also CARO, an industry-founded, non-profit organization, whose Advertising Code is voluntary and has no statutory enforcement. However, a significant number of advertisers in Cyprus are members of CARO and must, therefore, abide by its Code. Moreover, the majority of Cyprus's media and advertising agencies have already signed up with CARO and are committed to abide by its Code.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) **Prohibited commercial practices:** Under the CP Law, unfair commercial practices are prohibited. A commercial practice is considered unfair if it is misleading and/or offensive (both terms as defined in the Act). Annex I of the CP Law contains a list of commercial practices that are considered unfair in all circumstances (based on the EU Unfair Commercial Practices Directive).

- (b) **Aggressive commercial practices:** According to the CP Law, a commercial practice is deemed aggressive if it uses harassment, coercion or abuse of influence that significantly impedes or is likely to impede the consumer's freedom of choice or behavior regarding the product.
- (c) **Political advertisements:** The RTBS Law provides the required conditions for broadcasting political advertisements during election periods.
- (d) **Alcohol:** the RTBS Law provides the required conditions for advertising and telemarketing of alcoholic drinks;
- (e) **Children's toys:** the RTBS Law contains a list of hours/periods during which advertisements of children's toys are prohibited.

The above list is non-exhaustive.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are industry specific Laws and Regulations which are briefly summarized as follows:

- (a) **Insurance practices:** the Insurance and Reinsurance Business and Other Related Issues Law of 2016 prohibits the advertising of insurance and reinsurance business, or the exercise of any professional activity from such business, before the granting of the required license;
- (b) **Smoking:** the Health Protection (Control of Smoking) Law of 2017 prohibits, subject to exceptions, the advertising and/or sponsorship of tobacco products in every form of message: written, oral, printed, radio broadcasting, cinematographic or of information society services;
- (c) **Medicines:** the Medicinal Products for Human Use (Control of Quality, Supply and Prices) Law of 2001 prohibits, inter alia, advertisements of medicinal products which have not been granted a marketing authorization. It also restricts certain claims in medicinal product advertising, including those related to food supplements; and
- (d) **Food:** Advertising claims related to the nutritional elements of food products must comply with the relevant EU laws, such as:
 - (i) Regulation on nutrition and health claims made on foods (1924/2006),
 - (ii) Regulation 1169/2011, which establishes general principles for food information to consumers, particularly regarding labeling, and
 - (iii) the EC Food Supplement Directive (2002/46/EC) (as implemented in Cyprus).

Again, the above list is non-exhaustive.

1.6 Are any government pre-approvals required?

There are no government pre-approvals required for individual advertisements, but there are requirements that certain specific types of advertising must contain pre-approved warnings or disclaimers in order to be permissible. These include political advertisements, financial services advertising and product placement advertising.

1.7 Does the media pre-clear advertising?

While there is no mandatory pre-approval process for advertisements, CARO provides a copy advice service, which is a confidential advisory service offered before the publication or broadcast of an advertisement. This service aims to assess advertising material to identify potential violations of CARO's Advertising Code and its annexes. It is important to note that any advice provided in this context is not binding on the party seeking the advice or on CARO in the event of a future complaint about the advertisement. CARO's copy advice is distinct from pre-clearance, as it is non-binding and confidential. The term 'non-binding' signifies that the entity requesting advice, whether an advertiser, agency, or media organization, has the freedom to disregard the advice. In the case of a subsequent complaint, CARO's Complaints Committee is not obligated by the Secretariat's previous advice, but it does take into consideration whether the advice was followed or not. In practice, copy advice is often considered, leading to adjustments in the advertisement.

There seems to be a tendency among the industry to use CARO's copy advice and the use of this service has been increased recently.

1.8 How does the government enforce advertising laws? What are the potential remedies?

- (a) The CRTA, which was established by the RTBS Law, is an independent body whose decisions are directly enforceable without the need for approval of any other body or the state. It is the body responsible for monitoring, inter alia, adherence to its Broadcasting Code regarding the length, content and placement of advertisements. The CRTA can, amongst other things, impose administrative sanctions against an offending broadcasting service provider for breaches of the RTBS Law and of the Broadcasting Code. Also, the CRTA can initiate court proceedings for injunctive relief seeking an order directing the offending broadcasting service provider to do or refrain from a specified act or behavior.
- (b) Apart from broadcasting, the primary authority tasked with overseeing unfair commercial practices, including but not limited to misleading advertising, is the CPS, a department within the Ministry of Energy, Commerce, and Industry. The CPS is responsible for ensuring adherence to the CP Law, probing into business practices when prompted by a complaint or at its own discretion, and initiating legal actions against businesses. In cases where the CPS identifies violations of the applicable laws, it has the authority to take the following measures:
 - (i) order traders and third parties (such as domain owners, internet service providers, and in general anyone hosting or reproducing the infringing content in any medium) to remove content, restrict access to it, or place a written notice to consumers before accessing the content;
 - (ii) apply for injunctive relief against infringing traders; and/or
 - (iii) impose administrative fines up to 5% of the annual turnover of the advertiser during the preceding year or up to €500,000.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor can file a complaint to CRTA for breach of the RTBS Law regarding a broadcast. It can also file a complaint to CARO, though CARO's powers are restricted to issuing recommendations based on the relevant Cyprus advertising legislation and on its own Advertising Code. However, following a recent memorandum of understanding signed by these two bodies, in cases of non-compliance with CARO's recommendations/decision, CARO may brief the CRTA accordingly,

indicating any advertising points that, in its opinion, violate the CRTA Broadcasting Code and/or the RTBS Law. Following such a briefing, the CRTA may instigate its own proceedings. Also, the CRTA may request CARO's opinion in relation to complaints it receives and then CARO may inform the CRTA about the steps it has taken to resolve the issue and/or the outcome of the investigation it has carried out in relation to the complaint in question.

A competitor is also free to use the courts should it feel its legal rights have been breached by an advertisement. The courts offer various remedies depending on the legislation on which the claim is based and the facts of each case, including award for damages and injunctive relief.

1.10 When do consumers have a right of action? What are the potential remedies?

The CP Law introduced a private cause of action for any consumer whose economic interests have been negatively affected through any breach of the legislation. As a result, a consumer has the option to take action against any trader who has engaged in deceptive or misleading advertising practices.

The court is able to provide the following remedies to consumers:

- declare that the contract is illegal, thereby the consumer is no longer legally bound by it;
- order a price reduction of any good/service which is the subject matter of the contract;
- award the consumer damages which the court considers reasonable; and/or
- any other remedy the court considers reasonable under the circumstances.

Additionally, a trader may be ordered, amongst other things, to:

- immediately terminate and/or refrain from repeating the infringing acts;
- take remedial action, at the discretion of the court with a view at remedying the unlawful behavior; or
- publish all or part of the court judgment or publish a remedial statement with a view to rectifying the continuing effects of the breach.

A consumer can also file a complaint with CARO, however, being a self-regulatory body, it does not offer compensatory remedies to the complaining consumer. Recommendations to amend or withdraw the advertisement are the usual sanctions imposed by CARO.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Cyprus have a primary advertising self-regulation system?

Cyprus has an established advertising self-regulation system in place. The main body responsible for the self-regulation of advertising across all media is CARO. CARO is a voluntary, non-profit organization and a member of the European Advertising Standards Alliance. Its aim is to promote ethical standards in advertising through industry self-regulation in Cyprus according to Cyprus legislation and its own Advertising Code and guidance notes. CARO's Advertising Code follows the code of the International Chamber of Commerce.

2.2 Is there a self-regulatory advertising code? What are the key principles?

CARO has introduced its own Advertising Code which is founded on the corresponding code of the International Chamber of Commerce. The Advertising Code's main principles are that advertisements should:

- (a) be legal, decent, honest and truthful;
- (b) be prepared with a sense of responsibility to consumers and society;
- (c) respect the principle of fair competition; and
- (d) deal fairly with consumers.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

CARO's committee is convened whenever a complaint is filed relating to any advertisement that the applicant considers to be offensive, misleading or contrary to CARO's Advertising Code. Within three business days, CARO invites both parties to submit their views either orally or in writing, and, within two working days following this, CARO's committee issues a decision which is placed on its website.

If CARO's committee concludes that an advertisement is not compliant with the provisions of the Code, it may request:

- the withdrawal of advertising or
- that the advertisement be modified in order to comply with its Advertising Code.

CARO is then entitled to review the amended version of the advertisement before it is published to determine whether their decision has been complied with. If there is non-compliance with the decision, or if it is determined that delaying tactics are used by the advertiser, CARO will:

- inform the media where the advertisement is displayed, requesting its immediate withdrawal, and
- proceed to make a special reference on its website.

The majority of media have already signed up with CARO and are committed to enforcing CARO's decisions and protecting their audiences from non-ethical advertising.

CARO may also proceed to inform other state agencies such as the CPS or the CRTA requesting that the decision is published designating the non-compliant entity.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Generally, the system is quite effective, taking into account the speed with which complaints are processed and dealt with. Moreover, the majority of Cyprus media and advertising agencies have already signed up with CARO and are committed not only to supporting CARO economically but also to ensuring that its decisions are complied with, in order to protect the public from non-ethical advertising. As a result of the above, CARO is quite able to enforce its decisions through mainstream media as opposed to social media and the internet.

2.5 Are the self-regulatory system's decisions reported?

The decisions are publicly reported and can be accessed through CARO's website. The decisions do not disclose the details of the complainant, but do disclose the details of the advertiser in breach of the Code.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

- (a) It is advisable that companies observe CARO's Advertising Code and the key principles identified above and take particular notice of the guidance notes published regarding children, alcohol and food in general.

- (b) Moreover, companies should engage with the CARO procedures and obligations, providing detailed responses to any requests.
- (c) Additionally, CARO offers the service of reviewing advertisements before they are published in order to determine whether the advertisement breaches its Advertising Code. This service is offered to members for free, or is available to non-members on the payment of a fee.

2.7 Are there any other self-regulatory systems that govern advertising practices in Cyprus?

CARO is the primary advertising self-regulation system in Cyprus. The Cyprus Brewers Association used to run a self-regulatory system for beer advertising but this has now been brought under CARO's authority.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Cyprus (eg, consumer protection laws, IP laws, unfair competition laws)?

- (a) The CP Law governs unfair commercial practices, particularly misleading and comparative advertising. It explicitly prohibits practices contrary to professional diligence that distort or are likely to substantially distort the average consumer's purchasing behavior, including those that are misleading or aggressive. The law outlines specific misleading practices, such as falsely claiming adherence to a code of conduct or the unauthorized use of quality marks.
Moreover, the CP Law defines misleading actions and omissions as unfair commercial practices. A misleading action involves deceptive information presentation likely to influence the average consumer's transactional decision, even if factually correct. In the case of a misleading omission, a trader fails to provide essential information for an informed decision, leading the average consumer to make a different transactional choice. The trader's intentional hiding or unclear presentation of material information is considered misleading, potentially impacting the consumer's decision-making process. The law aims to ensure transparency, protect consumers from deceptive practices, and promote fair business conduct in the commercial landscape. Advertising campaigns that are broadcast via the media (radio and television) must satisfy the requirements of the RTBS Law and the requirements of secondary legislation (Broadcasting Code) deriving from this law.
- (b) In terms of the intellectual property laws when it comes to advertising claims, of importance are the Trade Marks Law (Cap 268) and the Trade Description Law of 1987 to 1992.
- (c) Finally, claims for unfair competition can also be initiated under the tort of passing-off which is regulated by the Civil Wrongs Law (Cap 148).

3.2 Is substantiation required for advertising claims?

The advertiser should be in a position to substantiate, as a matter of fact, any claim in an advertisement when this is requested by a body or authority reviewing the advertisement. Under the CARO Advertising Code, it is a requirement for advertisers to be able to substantiate any claims made in their advertisements, and, for this purpose, they must have in their possession such documentary evidence as to prove that a claim is true and correct. A similar requirement also exists under the Broadcasting Code for which the CRTA has competence. The same is true in case of an examination of a complaint by the CPS which is the competent authority for the implementation of the CP Law,

which, *inter alia*, regulates unfair commercial practices. This law lists some commercial practices that are considered as unfair, but, in addition, in the general context of consumer protection, it gives the CPS the authority to deal with misleading advertising as a commercial practice.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The general principle both in the Broadcasting Code and in the CARO Advertising Code, is that the claims in the advertisement must be substantiated and advertisements in general must not contain hyperbolic or exaggerating allegations. However, under the CP Law, making exaggerated statements or statements which are not meant to be taken literally is described as a common and legitimate advertising practice and, therefore, not unfair.

3.4 What are the rules governing the use of disclosures in advertising?

There are no general rules governing the use of disclosures, and it is difficult to provide an exhaustive list of disclosure requirements. The disclosures required will ultimately depend on the product being advertised. Therefore, only indicative examples are provided, namely:

- (a) Loan advertisements have specific disclosure requirements, and when it comes to housing loans there are even more specific requirements.
- (b) Alcohol and gambling are other products for which specific disclosure requirements apply.
- (c) The Broadcasting Code of the CRTA also includes some disclosure requirements. For example, in an advertisement for a weight loss method, it is a requirement to disclose that its effectiveness is subject to diet and/or exercise where applicable.

Finally, it is worth mentioning that the information being disclosed must be presented in a specific way, depending on the type of advertisement. The legibility of text and the duration for which the disclosed information must be available are some of the issues under concern.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

- (a) CARO's Advertising Code explicitly regulates the use of testimonials in advertisements. Testimonials are allowed, provided that they are genuine and are based on the actual personal experience of the person making the statement.
- (b) Further, testimonials or confirmations that, as a matter of fact, have become obsolete, are inaccurate or misleading must not be used in the advertisement.
- (c) Also, under the CP Law, it is considered as unfair commercial practice for a trader to claim that a product has been authorized, approved or endorsed by a public or private body, when this is not the case.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no separate provisions regulating product demonstrations. Such demonstrations will be regulated by general advertising provisions. In this respect, it is advisable that exaggerations are avoided and that representations in respect of the product are true and accurate. If such demonstrations are presented in lengthy television advertisements, the Broadcasting Code provisions on lengthy advertisements may apply, which provide, *inter alia*, for specific times within the day during which such advertisements can be broadcast.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

In Cyprus, the practice of comparative advertising is legally sanctioned under the CP Law, which allows for the identification of competitors. Adhering to this law, statements made in advertisements must steer clear of misleading or defamatory content about a competitor's products or services. Furthermore, advertisements must avoid generating confusion between the advertiser's and a competitor's products, trademarks, trade names, or other distinctive marks. A crucial condition is that the compared products or services must cater to the same needs or purposes. To ensure fairness, comparative advertisements must objectively evaluate material, relevant, verifiable, and representative characteristics of the products or services involved, with price being a permissible factor for comparison. In the case of products with a designation of origin, the advertisement should specifically pertain to products sharing the same designation. Compliance with these regulations is essential for conducting lawful comparative advertising in Cyprus.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Comparative advertising shall, as far as the comparison is concerned, be permitted when it does not:

- (a) discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- (b) take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- (c) present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name; or
- (d) create confusion among traders, between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The CP Law includes a general provision that a commercial practice is considered misleading if it contains inaccurate information and, as such, is untrue, or when, in any manner, including the overall presentation of the practice, it deceives or may deceive the average consumer with regards to one or more characteristics mentioned in the Law. Among those characteristics is the geographic origin of the product.

More specific provisions relating to claims for geographic origin are those which are covered by the schemes for the 'Protected Designation of Origin', in accordance with EU Regulation 1151/2012, the provisions of which apply in Cyprus. In order for a product to use the protected designation of origin scheme, it must comply with certain specifications relating to such designation.

3.10 Are there any special rules governing product packaging?

The rules governing product packaging are those set contained in EU Directive 94/62 which has been transposed into domestic law by the Packaging and Packaging Waste Law of 2002. In general, this law sets general rules for packaging, such as:

- the concentration of heavy metals in the packaging;
- the need to recover certain amounts of packaging from the market for recycling purposes; and
- the labeling on the packaging.

More detailed provisions can be found in other pieces of legislation, which regulate more specific issues, such as food packaging.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

As per the impending EU Digital Services Act (‘DSA’), anticipated to be effective in 2024, online platform providers are prohibited from orchestrating their digital interfaces in a manner that deceives or manipulates users. This encompasses actions that significantly distort or hinder users’ capacity to make autonomous and well-informed decisions. Beyond the DSA, various EU regulations address dark patterns in advertising. The EU General Data Protection Regulation (‘GDPR’), for instance, mandates the lawful, fair, and accurate collection of data. Additionally, the CP Law bars unfair commercial practices, including the dissemination of false or misleading claims regarding a product or service.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

The European Commission introduced a legal framework for artificial intelligence (‘AI’) in April 2021. The recently approved EU AI framework aims to offer a definition of AI systems that is not tied to specific technologies. It embraces a risk-based approach, outlining specific requirements and responsibilities for the development, market entry, and deployment of AI systems in the EU.

Companies utilizing AI must adhere to regulations outlined in the GDPR and other legislation designed to safeguard individuals when their personal data is processed. Given that AI systems often require access to large amounts of data, including personal information, the GDPR establishes standards and requirements for companies employing AI to ensure the protection of individuals’ privacy rights.

No further information has been provided for AI-related claims.

4 PRICE ADVERTISING

4.1 What are Cyprus’s rules regarding price advertising?

The CP Law, on the display of the sale price, states that any advertisement which mentions the selling price of products must also indicate the unit price. The CPS has published guidelines on price advertising to assist retailers with this.

The CPS can investigate complaints on price advertising on the basis that the advertisement was misleading. Its case reports constantly contain details of complaints regarding pricing.

According to the CP Law in the context of an invitation to purchase, the following information is considered indispensable, unless it is inherently evident within the specific circumstances. In terms of pricing details:

- the price of the product, inclusive of taxes;
- (in instances where, due to the product’s nature, determining the price in advance is not reasonable) the methodology for calculating the price;

- if applicable, all supplementary charges, such as shipping, delivery, postage, or any additional fees that cannot be reasonably computed in advance, along with a disclosure of the potential requirement for such additional charges.

4.2 What are Cyprus's rules regarding advertising 'free' products?

- (a) An example of an unfair practice according to the CP Law (where it is included in its list of prohibited commercial practices), is the description of a product as 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
- (b) The CARO Code permits the use of the term 'free' only in certain circumstances; eg, where the offer involves no additional payment or obligation, or where the only consumer obligation is to pay handling and delivery charges which should not exceed the cost estimated to be incurred by the marketer etc.

4.3 What are Cyprus's rules regarding sales and special offers?

- (a) The CP Law explains that a merchant selling or displaying products for sale in a commercial establishment at a discounted price must ensure that the product indicates either:
 - (i) the current selling price, or
 - (ii) the fraction or percentage reduction from the immediately preceding price, with clear and easily recognizable details specific to the product.

The previous selling price or unit price of the same product by the same merchant, immediately prior to the current sale, must also be displayed on the product.

In any price reduction announcement, the merchant must indicate the previous price applied for a specific period before the price reduction. For the purposes of this provision, the 'previous price' is considered to be the lowest selling price and/or unit price at which the same product was sold within a 30-day period before the price reduction. There is an exclusion for goods that may deteriorate, expire shortly, or circulate in the market within a period less than 30 days.

In cases where the price reduction increases progressively, the price without the reduction before the first application of the price reduction is considered the previous price.

- (b) Additionally, the Electronic Commerce Law of 2004 states that:
 - offers such as sales, special prizes and gifts must be clearly identifiable;
 - access to the terms under which one can benefit from the offers must be easy; and
 - the terms must be presented clearly and precisely.

4.4 What are Cyprus's rules regarding rebates?

There are references regarding rebates in the CP Law; eg, it explicitly states the responsibilities of the merchant in relation to rebates. In addition, certain industries whose advertising practices are specifically regulated, provide for rebates to consumers. For example, the EU Flight Compensation Regulation (261/2004) provides for a right to reimbursement of tickets issued by air carriers.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no key restrictions. Any retailer would be advised to consider the guidelines published by the CPS to avoid any issues arising.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The CPS prohibits unfair commercial practices, including misleading and aggressive advertising. It defines ‘unfair practices’ as those contrary to professional diligence, likely to distort consumer behavior, or those that are deceptive. Specifically, it identifies misleading actions and omissions as unfair practices. Misleading actions involve information which, even if factually correct, causes consumer deception leading to the consumer making different decisions. Misleading omissions occur when a trader fails to provide material information for an informed decision, causing the average consumer to decide differently. The law outlines prohibited practices, such as false claims and unauthorized use of quality marks, ensuring consumer protection.

The CRTA’s Broadcasting Code and Regulations specifically prohibit the advertising of the following products amongst others:

- any form of tobacco products;
- prescription drugs and medical treatments;
- betting predictions;
- betting and betting agencies with the exception of the national lottery and bets with OPAP—the Greek Organization of Football Prognostics;
- firearms, weapons and shooting organizations;
- pornography;
- the granting of loans other than from banks and other financial institutions;
- wedding agencies;
- businesses in relation to death or funeral agencies;
- services of fortune tellers and similar services;
- non-licensed private employment seeking agencies; and
- hypnotism, hypnotherapy and spiritual services.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) Annex I of the CP Law contains a list of prohibited commercial practices, such as describing a product as ‘free’, ‘without charge’ or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
- (b) CARO’s Advertising Code contains similar provisions, which detail prohibited advertising practices and, in particular, provide that any reference to the word ‘guarantee’ in advertisements is prohibited where consumers are not afforded rights beyond those already provided by the law. Advertisements may contain the word ‘guarantee’ as long as the services, terms, and the process for obtaining the benefit of the guarantee are clearly visible in the content of the advertisement and are readily available in writing to the buyer at the point of purchase.
- (c) The CRTA Broadcasting Code also contains a list of prohibited advertising practices, such as subliminal and surreptitious advertising. Additionally, advertisements should not attempt to exploit sentiments of fears and superstitions.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

There are no specific laws for advertising relating to indecency or obscenity. CARO's Advertising Code contains a specific section on decency, which states that 'Advertisements should not contain statements or visual/audio representations that offend the morals and the prevailing perceptions of decency'. Similarly, the CRTA's Broadcasting Code contains provisions regarding decency and propriety and specifically prohibit the advertisement of any pornographic content.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

CARO's Advertising Code specifically states that the advertiser's identity must be clearly visible and, where possible, advertisements must include the advertiser's contact information so that consumers can readily contact the advertiser. However, this section does not apply to advertisements whose sole purpose is to attract interest in future teaser communications.

It is recommended that the general rules and regulations regarding misleading advertising in Cyprus should be observed and influencers should disclose whether there is a material relationship with a brand or advertising agency.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The CRTA's Broadcasting Code and Regulations provide special rules for the integration of advertising content and entertainment. Specifically, it is provided that the duration of television advertisements must not exceed 12 minutes each hour.

Moreover, for certain categories of products and services other rules apply in their integration with other content:

- (a) Advertising of alcohol is prohibited during broadcasting breaks either before, during or after children's programs or programs with religious content;
- (b) Additionally, advertising in relation to games of chance is prohibited either before or after children's programs or programs addressed to individuals under the age of 18;
- (c) Similarly, advertisements of a movie which has been rated as over 15 or 18 cannot be advertised in children's programs.

Additionally, it is also stipulated that intermissions of programs for the purpose of advertising must not exceed 3.5 minutes. In relation to advertisements which exceed the display time of 1 minute, it is vital to ensure that there is no risk of confusion between the content of the advert and that of the program, and therefore announcements of advertisement must be displayed both before and after the advertisement.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

CRTA's Broadcasting Code and Regulations provides for detailed and specific rules relating to the identity of the sponsor of an audiovisual broadcast. Specifically, sponsorship of programs is permitted, and it is specified that broadcast sponsored programs must identify the name of the sponsor and/or the sponsor's trademark both at the beginning and at the end of the specific program. The relevant regulations also provide for the duration of the announcement of the sponsor and also state which types of programs are not allowed to be sponsored.

Further, programs containing product placement must be adequately designated both before and after the end of the broadcasting and then display in the end credits of the broadcasting the details of the companies who have paid for product placement in the respective programming. Additionally, sponsorship of religious programs, political news broadcasts and news broadcasts in general is strictly prohibited.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Advertising via social media is currently treated in the same way as other kinds of advertising. Therefore, there are no specific legal controls that address advertising and marketing via social media. In Cyprus, the dominant advertising legislation is the CP Law.

It is worth mentioning that the CPS is the competent authority responsible for the enforcement of the law on misleading and comparative advertising as well as the law on unfair commercial practices. The role of the CPS is to monitor the market in order to ensure that clear and adequate information is provided to consumers, to protect consumer's economic interests and to improve consumers' education, information and awareness of their rights.

Consumers who are misled through social media marketing campaigns or find a particular online advertisement offensive have the right to file a complaint to the CPS or, alternatively, to CARO where the complainant considers that CARO's Advertising Code has been breached.

The EU's DSA will impose special obligations on major online platforms (with numbers of 45 million or more) which, inter alia, will include enhanced transparency, auditing requirements, advertising, data sharing with the relevant authorities, and appointing a specific compliance officer.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There is nothing in Cyprus's laws and regulations which imposes liability on an advertiser for advertising claims or statements created by users on its social media pages or any other service the advertiser may use which allows for consumer input. However, if a complaint is made to any authority or to the courts regarding user generated content, it is likely that the approach described in question 8.3 below will be followed regarding the degree of control over the medium used for the advertisement and the actions taken by the advertiser to remedy the situation once it became aware of the infringing content. Moreover, in cases where the advertiser has incorporated the content in its overall marketing strategy, the question of whether the advertiser solicited the comments prior to them being used will also be examined.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

The laws surrounding social media, advertising on social media and user generated content have not been actively tested by the Cypriot courts. However, the law of defamation as set out in the Civil Wrongs Act may prove to be useful.

In a first-instance judgment, *Christos Clerides a.o v Arktinos Publishings Ltd*, dated 31/01/2017, the Court endorsed the approach of the English courts and of the European Court of Human Rights in the case *Delfi AS v Estonia* (2015) regarding user generated content posted on websites. Essentially the court, in assessing the responsibility of the host, will examine:

- the degree of control over the user generated content,
- the actions taken once it became aware that infringing user generated content had been made,
- the ability of the host to remove the infringing content, and
- the nature of the content complained of.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

CARO's Advertising Code prohibits the use of an individual's name or picture in advertisements unless their permission has been sought and obtained in advance. However, this issue has to be assessed within the general context of the EU GDPR, the provisions of which are applicable in Cyprus. In this context, the consent of the individual must be obtained in relation to any specified use and such consent must be clear and unequivocal. In addition, it must be valid at the time of the broadcasting of the advertisement (ie, not have been withheld) and the content of the advertisement must be within the boundaries of the consent.

9.2 Are there situations when permission is not required?

Under the Broadcasting Code, where this is justified in terms of public interest, scenes which make use of an individual's image etc can be broadcast without their permission. However, in the context of advertising, such permission must always be obtained.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

The Antiquities Law (Cap 31) prohibits the commercial exploitation or other use of pictures, cinematographic or other visual material, however produced, which depicts antiquities, archaeological places or ancient monuments without the written permission of the Director of Antiquities. It follows that the written permission of the Director should be obtained for the use of such type of material in an advertisement.

Further, even though clearance in advance is not required, the Broadcasting Code states that for advertisements related to educational services or medicinal products, the CRTA has the right to ask the opinion of the responsible Ministries (ie, the Ministry of Education and Ministry of Health respectively) on the content of the advertisement. However, the Broadcasting Code makes it clear that the CRTA is not obliged to do so in advance of its broadcasting.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Use of other companies' recognizable products is allowed, but in such cases the intellectual property rights of the other company, especially trademark rights as safeguarded by the Trade Marks Law, must be respected.

As already pointed out in questions 3.7 and 3.8 above, use of another company's product can be made in comparative advertisement, provided that the advertisement is in accordance with the requirements of the applicable legislation.

Further, under the Trade Marks Law, it is prohibited to use the trademark of another party without consent. However, the Law allows the use of someone's trademark to indicate the purpose of goods or services, eg, as spare parts or accessories of another branded product. Such use of a third party's trademark must be made with honesty and be necessary in order to indicate the intended use of someone's own product.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Cyprus which affect advertising (eg, Swedish gender equality law)?

- (a) The Cypriot Penal Code (Cap 154) prohibits any advertisement offering a reward for the return of stolen property which may imply that no question will be asked as to how the stolen property came into the possession of such person or that there will be no consequences whatsoever for that person.
- (b) Any statement made by anybody which can be taken as an insult to any religion is prohibited. Consequently, such statements must be avoided, whether in an advertisement or otherwise.
- (c) The Penal Code has been recently amended so as to make it an offence to advertise means which can artificially terminate a pregnancy.
- (d) The National Betting Authority has issued guidance on the advertisement of betting activity. According to the Authority, all advertisements must contain messages for responsible gaming and such messages must be reviewed and approved by the Authority.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

- (a) Gender equality is of particular concern to Cypriot society and any advertising campaign that discriminates against women for the promotion of goods or services will not be appreciated by a Cypriot audience.

- (b) The Church has a strong presence and influence on a large portion of Cypriot society and has a role to play in terms of the educational affairs of Cyprus. Further, as discussed at question 11.1 above, insult to any religion is a criminal offence.
- (c) Finally, Cypriot society approaches with great respect issues of the LGBT community, and, the Cypriot Parliament, with a significant majority, approved the Civil Partnership Law which allows same-sex couples to enter into a legal agreement known as civil partnership which confers similar rights as those conferred in a marriage.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Cyprus?

It is advisable for advertisers to obtain domestic legal advice, as Cyprus lacks a uniform legal framework regarding advertising. Advertisers should also endeavor to abide by CARO's Advertising Code, the CRTA's Broadcasting Code and consumer laws. While there is currently no specific legislation relating to social media, consumer protection laws are applicable, and therefore advertisers should refrain from engaging in any kind of advertising practices contrary to Cyprus legislation.

 CZECH REPUBLIC 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the Czech Republic?

In the Czech Republic, the regulation of advertising is quite fragmented. Regulation is scattered into a larger number of legal acts, both private and public, that are largely influenced by European legislation.

The case law of Czech and European courts and decision-making and opinions of responsible administrative authorities, such as the Council for Radio and Television Broadcasting of the Czech Republic ('CRTB') and the Office for Personal Data Protection ('OPDP'), is essential when interpreting general legal regulations and assessing the legality of advertisements. In addition, the ethical standards and decision-making of self-regulatory bodies have an important role in the advertising business.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

According to the Advertising Regulation Act, 'advertising' means an 'announcement, demonstration or other presentation, disseminated, particularly through communication media, with the aim of promoting business activity, in particular, the promotion of the consumption or sale of goods, the construction, lease or sale of real estate, the sale or use of rights or obligations, the promotion of the provision of services, or the promotion of a trademark'.

1.3 What is the basic regulatory framework for advertising regulation?

Most of the regulation is included in:

- the Advertising Regulation Act (No 40/1995),
- the Consumer Protection Act (No 634/1992) and
- the Civil Code (No 89/2012).

Further applicable legal regulations can be divided into categories according to:

- the recipient of the advertisement (consumer or business entity),
- the method of advertising (such as press, radio, television, internet, posters etc) and
- the goods or services that are advertised (such as pharmaceuticals, banking and financial services, gambling etc).

As an EU member state, the Czech Republic must also comply with European regulation. Most of the relevant EU regulations are implemented in the Czech domestic laws referred to above.

Finally, rules and decision-making of self-regulatory bodies also have an important role in advertising regulation in the Czech Republic.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Czech law specifically regulates many types of advertising practices:

- (a) The Information Society Act (No 480/2004) stipulates specific rules for commercial communications disseminated by electronic means (ie, text message advertising or emails).
- (b) The Electronic Communications Act (No 127/2005) regulates telemarketing.

- (c) The Advertising Regulation Act stipulates rules for:
 - comparative advertising;
 - unsolicited advertising in paper form;
 - advertising disseminated in publicly accessible places outside the business's establishment;
 - political advertising practices (there is a ban on such advertising during certain parts of the election process).
- (d) The Audiovisual Media Services on Demand Act (No 132/2010) and the Radio and Television Broadcasting Operation Act (No 231/2001) contain special provisions on product placement and sponsorship.
- (e) Annexes to the Consumer Protection Act include detailed and quite an extensive list of advertising practices that are considered unfair, including bait advertising, fake user reviews etc.

1.5 **Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?**

Specific rules for certain industries are stipulated, in particular, in the Advertising Regulation Act, for, inter alia:

- tobacco products;
- electronic cigarettes;
- alcohol;
- food and infant formulae;
- medicines for human use;
- human tissues and cells;
- medical devices (including in vitro medical devices);
- advertising of products targeting health;
- veterinary medicines;
- medicated feed and intermediate products;
- plant protection products and adjuvants;
- temporary use of accommodation and other recreational services;
- gambling;
- firearms and ammunition;
- funeral activities.

Furthermore, there is also a special regulation of advertising of financial products and services in place, but it is not consolidated into one statute, rather, specific provisions are contained in the Banking Act (No 21/1992), the Consumer Credit Act (No 257/2016), the Collective Investments Act and the Supplementary Pension Insurance Act.

Advertising in some of the above industries—such as tobacco products, medicines or alcohol—is also further regulated by other laws, which, in particular, set up further rules for the advertising of those products in certain types of advertising (eg, the Radio and Television Broadcasting Operation Act and the Audiovisual Media Services on Demand Act).

These specific rules are further detailed or accompanied by self-regulation, in particular the Code of Advertising Practice issued by the Czech Advertising Standards Council (a member of the EASA).

1.6 Are any government pre-approvals required?

There is no legislation in place regarding clearance or pre-approval of ads before their release. Therefore, no government pre-approval is necessary.

Pursuant to the Advertising Regulation Act, supervisory authorities have certain powers in relation to advertisements (see question 1.8 below); however, the Act does not authorize the introduction of a system of prior checking of advertising proposals before dissemination.

As the Czech Republic is a member state of the European Union, it is also bound by EU Regulation 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

1.7 Does the media pre-clear advertising?

There is no explicit legal requirement to pre-clear advertising, but, in practice, media companies very often use their own advertising principles, code of ethics, or terms and conditions which also determine certain mechanisms of control or pre-clearance.

In the case of radio, television and audiovisual on-demand services, there are direct legal requirements for operators (although their responsibility for the content of advertising is limited here) as to which commercial messages they may not include in their broadcasts.

1.8 How does the government enforce advertising laws? What are the potential remedies?

(a) There are multiple supervisory authorities whose competence is determined by the advertised product or type of media or specific industry. The only authorities with competence unrelated to advertised content or media type are trade licensing offices. Authorities with limited competence include:

- the Council for Radio and Television Broadcasting (radio and television);
- the State Institute for Drug Control (medicines);
- the Central Institute for Supervising and Testing in Agriculture (fertilizers and other agriculture-related products);
- the Agriculture and Food Inspection Authority (food and tobacco);
- customs offices (gambling); and
- the OPDP (protection of personal data and dissemination of electronic commercial marketing materials).

Pursuant to the Advertising Regulation Act, supervisory authorities may:

- order deletion or termination of an advertisement if it violates the applicable law and set an appropriate deadline for doing so;
- prohibit inadmissible comparative advertising or advertising that constitutes an unfair commercial practice;
- suspend the commencement of the dissemination of unauthorized comparative advertising or advertising which constitutes an unfair commercial practice.

Neither the occurrence of actual loss or other damage caused by such advertising, nor the fault of the advertiser is required.

In addition, if the further dissemination of the advertisement could endanger the life or health of persons, the supervisory authority may:

- publish their decision in an appropriate manner; and
- (where an advertisement has been found, by a final decision, to be an unauthorized comparative advertisement or an unfair commercial practice, and has been ordered to be removed or terminated) order the advertiser or the processor of the advertisement to publish, within a specified period of time, a corrective statement, in the same medium of communication through which such advertisement was disseminated. The costs of publishing the corrective statement shall be borne by the person to whom the order applies).

The most common sanction for violation of any of the laws discussed in this Section 1 (except for the Civil Code) is a penalty. Under the Advertising Regulation Act, natural persons may incur a fine up to CZK 2 million and businesses up to CZK 5 million.

- (b) In addition, municipalities may also further regulate the placement and distribution of advertising (in particular public places, periods and means of advertising that are prohibited, and events that are not covered by such further regulation).
- (c) Last but not least, infringement of competition rules (whoever causes damage to other competitors or consumers or provides himself or another with an unjustified advantage on a large scale) may qualify for a criminal offence investigated by the law enforcement authorities.

1.9 When does a competitor have a right of action? What are the potential remedies?

The Civil Code stipulates that whoever, in the course of economic dealings, comes into conflict with the good morals of competition by conduct capable of causing harm to other competitors or customers, commits unfair competition. If an advertisement constitutes an unfair commercial practice, the person whose rights were jeopardized or violated by unfair competition or by unlawful restriction of competition may, by way of a civil action or injunction relief, request the violator to:

- refrain from competing unfairly;
- remove a defective state;
- provide adequate satisfaction;
- provide compensation for damage; or
- provide restitution of unjust enrichment.

Competitors may also contact relevant supervisory authorities regarding any potential infringement of public law (including the Advertising Regulation Act).

1.10 When do consumers have a right of action? What are the potential remedies?

- (a) From the view of private law, consumers have the same right of action and remedies available to them as competitors (see question 1.9 above).
- (b) From the public law perspective, consumers may contact the Czech Trade Inspection Authority with matters relating to infringement of the Consumer Protection Act.

- (c) The Czech Trade Inspection Authority also serves as an alternative dispute resolution body for consumers, and, as such, is usually used by consumers as a chance to resolve any dispute free-of-charge before filing an eventual lawsuit.
- (d) Moreover, members of the public may also contact other relevant supervisory authorities regarding any potential infringement of public law related to advertising (including the Advertising Regulation Act).

2 SELF-REGULATORY FRAMEWORK

2.1 Does the Czech Republic have a primary advertising self-regulation system?

Yes, the primary advertising self-regulatory body in the Czech Republic is the Czech Advertising Standards Council ('CASC'), which is a member of the European Advertising Standards Alliance. The CASC brings together clients, agencies and the media with the aim of ensuring that advertising is honest, legal, decent and truthful, in particular, by enforcing its Code of Advertising Practice ('Code'). The CASC also offers an assessment of a forthcoming advertising campaign before it is launched.

The CASC is also empowered to initiate the process of investigating complaints (the complaints procedure) and is also qualified to provide an expert opinion, on the basis of which competent public authorities may impose sanctions. The public may also submit complaints to the CASC, which will then inspect and evaluate the complaints and issue a recommendation.

Self-regulation regarding advertising is usually also part of the ethical regulations and codes of various sector associations.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The CASC publishes the Code of Advertising Practice, which contains moral and ethical rules for advertising. The Code does not replace legal regulation of advertising but builds on it by adding ethical principles.

The Code is divided into two parts, setting out both the general requirements for advertising as well as special rules for selected industries (eg, tobacco, alcohol, food etc) and types of advertising (mail order sales, SMS etc) and for advertising related to minors.

Key principles include decency, honesty and truthfulness of advertising and, within the scope of the Code, respect of the internationally-recognized principles of advertising practice developed by the International Chamber of Commerce.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Code shall be enforced and construed exclusively by the Arbitration Board, whose members include representatives of the CASC member organizations, members of the Czech Parliament, advertisers, advertising agencies and legal experts. Complaints about an advertisement may be lodged by any legal entity or individual (except for Arbitration Board members) or any state authority. Prior to issuing an decision, the Arbitration Board will discuss the subject matter of a complaint with the respective advertiser, advertising agency or communication medium involved. The Arbitration Board will consider the complaint and, if necessary, issue an arbitration decision which shall establish whether or not the advertisement in question is in violation of the Code. If it is, the Arbitration Board will recommend that the advertisement be withdrawn or amended.

The Arbitration Board may also assess an advertisement and issue an arbitration decision upon the CASC's initiative. Unless the Code specifies to the contrary, the Arbitration Board may take into consideration the codes of ethics adopted by other organizations, provided that the members of these organizations are also members of the CASC.

In view of the fact that the main purpose of the CASC is to protect consumers against advertisements that are in contradiction with the ethical principles generally accepted in the Czech Republic, the CASC will deal with a complaint filed by a competitor of an alleged perpetrator only if the latter acts to the detriment of consumers.

In the event of a suspected coincidental violation of both the law and the Code, the CASC may refuse to process the complaint, and refer the complainant to the court of justice or another authority.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Although the provisions of the Code are not generally legally binding, they are binding upon the members of the CASC (currently 18 members, including nationally-known TV channels, media organizations and other major players) and are widely respected by all other key stakeholders.

According to the Code, CASC members:

- (a) explicitly acknowledge the Code, and undertake not to produce or accept any advertising that contravenes the Code, and to withdraw advertising that is subsequently found to contravene the Code by an advertising ethics self-regulatory body, and
- (b) strive to ensure that all other entities operating in the field of advertising in the Czech Republic respect the objectives and individual provisions of this Code.

As a result of the above, the self-regulation is effective, as the major players have voluntarily pledged to comply with the self-regulation rules.

2.5 Are the self-regulatory system's decisions reported?

All the decisions are publicly available on the CASC website.

In the event of non-compliance with its recommendatory decisions, the CASC may refer the complaint to the relevant state authorities for further action. These authorities then have the statutory power to impose sanctions.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Companies should take into account that the activities of the CASC are focused on commercial advertising and deal with the assessment of complaints about advertising in the press, on posters, mail order services, in audiovisual productions, cinemas, radio and television broadcasting and on the Internet. On the other hand, the CASC does not deal with electoral advertising, or advertising of political parties in all its forms. The CASC also does not deal with complaints where legal concerns outweigh ethical concerns.

As can be seen from an overview of cases handled by the Arbitration Board in recent years, complaints most often concern consumer protection, alcohol, women in advertising, sexism, and comparative, misleading and deceptive advertising. Most often, these are advertisements that have appeared on television, on the Internet or on billboards.

2.7 Are there any other self-regulatory systems that govern advertising practices in the Czech Republic?

Aside from the CASC, the Association for Internet Progress ('AIP') should be mentioned, operating in the field of Internet content. The AIP is quite a new self-regulating body. It has issued a Code of Ethics for Taking Over and Use of Foreign Content on the Internet along with two supplementing documents, namely:

- the Rules for Native Advertising; and
- the Influencer Code.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in the Czech Republic (eg, consumer protection laws, IP laws, unfair competition laws)?

- (a) The basis of regulation on advertising is included in the Advertising Regulation Act, which provides general rules on advertising, distribution of advertising, industry specific advertising, advertising as unfair commercial practice, as well as setting out supervisory authorities and sanctions. The Advertising Regulation Act also implements EU regulations on various issues of advertising law.

In compliance with the Advertising Regulation Act, advertising must:

- (i) comply with applicable law (advertising of goods and services, the sale, provision or distribution of which is contrary to the law, is prohibited);
 - (ii) be fair (ie, it must not constitute an unfair commercial practice);
 - (iii) not be contrary to good morals or attack political beliefs;
 - (iv) not promote behavior detrimental to health or endangering the safety of persons or property, or behavior detrimental to environmental protection interests.
- (b) The Consumer Protection Act provides a definition of an unfair commercial practice (from the public law perspective) as well as quite an extensive list of such practices.
- (c) Rules on unfair competition (from the civil law perspective) are stipulated by the Civil Code, including, inter alia, provisions on comparative advertising, misleading advertising and unsolicited advertising.
- (d) In addition to these regulations, it is necessary to consider the data protection legal regulations, in particular the GDPR and the Personal Data Processing Act (No 110/2019).
- (e) In relation to intellectual property, the Copyright Act and the Trademark Act generally apply.

3.2 Is substantiation required for advertising claims?

There are no rules specifically concerning substantiation of advertising claims. Nevertheless, it is governed by the general requirements of proper economic competition, especially those concerning misleading advertising.

The supervisory authority is entitled to require the advertiser to submit evidence of the truthfulness of the factual statements (claims) made in the ad—such requirement must be proportionate to the circumstances of the case or the legitimate interests of the advertiser or another person. In case of failure to submit such proof, or if such proof is deemed insufficient, the factual claims are deemed to be incorrect.

In addition, the Advertising Regulation Act empowers the relevant supervisory authority to take further actions (see question 1.8 above).

3.3 **Are there certain types of advertising messages that do not require substantiation (ie, puffery)?**

Use of claims that cannot be objectively measured (ie, puffery) is generally permitted. However, the general rules for advertising must be met (see question 3.1 above) and, at the same time, it must be clear that the relevant claims or statements are puffery. This assessment must be done from the point of view of recipients who might be affected by the advertising (in particular, their age and ability to recognize puffery should be taken into account).

3.4 **What are the rules governing the use of disclosures in advertising?**

In principle, the general rules for advertising apply to disclosures, since there are no specific rules in place. Certain specific disclosure instruments are provided for advertising in the press, on radio and on TV.

In case of social media advertising, the basic requirement is that advertisements have to be labeled clearly and visibly. There are several ways in which they can be labeled; however, any and all information provided to consumers should be in the Czech language as, eg, ‘#ad’ may not be clear for average consumer. It is thus recommended to use the Czech ‘#reklama’ (‘ad’), ‘sponzorováno’ (‘sponsored’), ‘placená spolupráce’ (‘paid partnership’), or ‘spolupráce’ (‘collaboration’). It is also important that the label must be placed visibly and long enough for the viewer or follower to notice and read it.

From a soft-law perspective, it is worth noting the AIP’s Influencer Code, which sets out ground rules for disclosures by influencers.

3.5 **What are the rules governing the use of endorsements and testimonials in advertising?**

- (a) A commercial practice is deemed to be misleading if it, inter alia, contains information (even if factually correct) that misleads or is likely to mislead the consumer in any way as to the existence and nature of the product or service, or the main features of the product or service, such as the expected results of its use or as to the results and tests or controls carried out, and that leads or is likely to lead the consumer to a make a purchasing decision which the consumer would not otherwise have made.

Where a seller provides access to a review of a product or service made by another consumer, the seller has to provide information on whether and how they ensure that the published consumer review comes from a consumer who has actually used or purchased the product or service (failure to provide this information is a misleading omission constituting a misleading commercial practice).

It is always a misleading commercial practice for a seller to:

- (i) state that reviews of a product or service are from a consumer who has actually used or purchased the product without taking reasonable steps to verify that they are from such a consumer, or
- (ii) publish false consumer reviews or endorsements, or
- (iii) engage another person to provide such consumer reviews or endorsements, or
- (iv) misrepresent consumer reviews or endorsements on social media in order to promote a product or service.

- (b) In addition, taking the above into consideration, using endorsements and/or testimonials may also qualify as unfair competition.
- (c) Self-regulation wise, the Code of Advertising Practice also sets out rules on personal recommendations in advertising (widely used by social media influencers), which stipulates that:
 - ads must not include false personal recommendations or statements in favor of the advertised product—any personal recommendations or favorable statements must be based on the genuine personal experience of the person making the recommendation;
 - personal recommendations must not include statements or opinions that are incompatible with the Code of Advertising Practice, and must not be used in a manner that may be potentially misleading to the consumer; and
 - personal recommendations must not include any statements regarding the positive effects of the advertised products, unless there is sufficient reliable evidence of such.

3.6 What are the rules governing the use of product demonstrations in advertising?

- (a) General rules shall apply (see question 3.1 above) as well certain provisions included in sector-specific regulation (regarding food, tobacco, etc).
- (b) Moreover, the list of unfair practices stipulated in the Consumer Protection Act also includes certain practices related to product demonstrations—for example, a practice is always deceptive if the seller:
 - (a) offers a product or service for purchase at a certain price and then refuses to show it to the consumer, or refuses to accept an order or to deliver the product or service within a reasonable time, or presents a defective product, with the intention of promoting another product or service instead; or
 - (b) represents that they, their product or the service they provide have been approved, endorsed or authorized when this is not the case, or such representation is not in accordance with the terms of the approval, endorsement or authorization.
- (c) Organized events for a limited number of consumers, the purpose of which is to advertise or offer products or services (usually containing product demonstrations), has strict rules—this is mainly for the purpose of protection of elderly people who had often been abused by this type of advertising events.
- (d) There is also special regulation of teleshopping on radio, TV and audiovisual on-demand media services.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is defined as advertising that directly (eg, the advertisement mentions or shows the trade name of another competitor, a trademark of its products or services, a depiction of packaging, etc) or indirectly identifies another competitor or its products or services. It is permitted only if it meets the following conditions:

- it is not misleading;
- it compares products or services that satisfy the same need or are intended for the same purpose;

- it objectively compares one or several relevant, important, verifiable and typical properties of goods or services, including price;
- when advertising products with a designation of origin it compares these only to products with the same designation;
- it does not disparage a competitor, its position, its activities, its results or its identification, or unfairly benefit therefrom; and
- it does not present the advertiser's products or services as an imitation or copy of trademarked products or services of a competitor, or of the competitor's name.

If these conditions are not met, comparative advertising may be considered a misleading practice, unfair competition and, in the worst case scenario, a criminal offence.

There are also special requirements regarding the comparative advertising of medicinal products for human use, health services medical devices or in vitro diagnostic medical devices, as well as special rules for enforcement of compliance with the rules of comparative advertising.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Advertising practice will be deemed to be misleading if it:

- (a) leads or is likely to lead the consumer to make a purchasing decision which they would not otherwise have made; or
- (b) leads to confusion with another product or service, or with the trademark, trade name or other distinctive signs of another seller.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

As mentioned in question 3.7 above, comparative advertising is permitted, inter alia, if, when advertising products with a designation of origin it compares them to products with the same designation ('champagne clause'). However, this condition can only apply to the comparison of goods, not services, since only the result of an activity, rather than the activity itself, can relate to specific characteristics linked to its origin.

Moreover, a commercial practice will be deemed to be misleading if, inter alia, it contains information (even if factually correct) that misleads or is likely to mislead the consumer in any way as to the existence and nature of the product or service, or the main features of the product or service, such as geographical or commercial origin, and that leads or is likely to lead the consumer to a purchasing decision which they would not otherwise have made.

In radio, TV and audiovisual on-demand media, commercial communications are prohibited if they suggest that the country of origin is the Czech Republic without complying with the conditions set out in the Food Act, where applicable.

3.10 Are there any special rules governing product packaging?

The general rules apply (see question 3.1 above), alongside the following specific rules for certain industries:

- (a) The advertising of medicinal products for human use for which efficacy has not been assessed within the marketing authorization procedure may contain only the information provided on the packaging or in the package leaflet in accordance with specific legislation.

- (b) There are a great many rules concerning food packaging and related regulation, both EU and national. Nutrition and health claims in food advertising may be made only upon conditions stipulated in the EU Nutrition and Health Claims Regulation (1924/2006).
- (c) There are also specific rules for packaging of tobacco products, making the possibility of advertising on product packaging very limited.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

The Czech legal system does not specifically define the term ‘dark practices’, but dark practices fall within the scope of provisions on unfair competition pursuant to the Consumer Protection Act. Furthermore, these practices may in some cases violate competition law, data protection law, and in extreme cases may even result in criminal liability.

Moreover, as the Czech Republic is part of the European Union, EU law is also relevant. ‘Dark practices’ (or the European equivalent, ‘dark patterns’) are defined in the EU Digital Services Act (‘DSA’) that is to become applicable in the Czech Republic from 17 February 2024. Indirectly, dark patterns are further regulated in other EU regulations such as the GDPR (eg, their use in obtaining consent to process personal data), Digital Markets Act, the Unfair Commercial Practices Directive, etc.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules or guidance on artificial intelligence used in advertising yet. However, we expect a shift, at least at the European level, where the proposed AI Act is currently being discussed.

4 PRICE ADVERTISING

4.1 What are the Czech Republic’s rules regarding price advertising?

Apart from the general rules (see question 3.1 above), the seller must inform the consumer of the price of the products sold or services provided. In the case of an offer to purchase, the price (including taxes, charges and other similar monetary benefits) or the manner of its calculation and any additional payments for transport or delivery are material information to be provided to the consumer. Failure to provide these is deemed an unfair practice (misleading omission).

A commercial practice is:

- (a) deemed to be misleading if it, inter alia, contains information (even if factually correct) that misleads or is likely to mislead the consumer in any way as to the price or the method of calculating the price or the existence of a specific price advantage, and that leads or is likely to lead the consumer to a purchasing decision which they would not otherwise have made;
- (b) always misleading if it is bait advertising or if the seller offers a product or service for purchase at a certain price and then refuses to show it to the consumer, or refuses to accept an order or to deliver the product or service within a reasonable time, or presents a defective product with the intention of promoting another product or service instead.

The Code includes a separate section on the value of the goods and price comparisons, stipulating, eg, that the price information contained in the advertisement, or the fact that the information is incomplete or missing, must not give the impression that:

- the price is lower than it actually is,
- the determination of the price depends on circumstances on which it does not actually depend,

- the price includes the supply of products, performance, work or services for which separate payment is actually made,
- the price has been or will be increased, decreased or unchanged when it is not, or
- the relationship between the price and the utility of the product or service offered and the price and utility of a comparable product or service is XXX, and it is not.

4.2 What are the Czech Republic's rules regarding advertising 'free' products?

Products must not be advertised as 'free of charge' when their acquisition requires additional costs other than the real costs of shipping, handling, or mailing, if any of those are applicable. If there are other costs required, there should be a disclaimer providing this information. For example, it is possible for seller to offer a free coffee package when you purchase a coffee maker of the same brand.

At the same time, it is very likely that in the near future a ban will be introduced on the advertising of tobacco products/alcohol in connection with the purchase of tobacco products/alcoholic beverages—specifically, it will not be possible to offer or imply free or other benefits, in particular in the form of an offer of any goods, services, quantity discounts or other incentives.

4.3 What are the Czech Republic's rules regarding sales and special offers?

Information on the discount of goods (not services) must be provided to consumers by the seller, in particular, information regarding the lowest price at which the seller has offered and sold the discounted product:

- in the 30 days prior to the sale;
- from the moment when the seller first started selling the product to the moment when the seller offered the consumer with the reduced price (if the seller offers the product for less than 30 days); or
- in the 30 days prior to the first price reduction, if the seller increases the discount gradually.

This information does not need to be provided in the following cases:

- general marketing claims comparing the seller's offer with those of other sellers, provided that they do not give the impression of a price discount (eg best price, lowest price, best deal);
- price fluctuations and price reductions;
- long-term arrangements allowing consumers to benefit systematically from reduced prices under loyalty schemes and specific individual prices;
- the promotion of price advantages (eg, bundled offers such as 2 for 1, buy 2 get 1 free, 20% discount on 3 purchases);
- discounting a product due to a defect;
- fast-moving consumer goods.

4.4 What are the Czech Republic's rules regarding rebates?

Rebates are generally allowed in the Czech Republic. General rules related to price advertising apply (see question 4.1 above).

The special information duty described in question 4.3 above does not apply to rebates; the only exception is if the price is presented as a customized price, but in reality it is a general discount because it is offered generally. This would be a situation where the seller offers discount vouchers,

promo codes etc to all or a large number of consumers. For example, a discount announced as ‘20% off everything this weekend using code XYZ’, where the code would be made available to the general public, or ‘25% off this weekend for loyalty members only’, where the majority of customers would be involved.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There is no legal limit to the duration of a discount. However, it should be borne in mind that there is a possible risk of a breach of the prohibition on misleading consumers if a product is offered and sold at a price presented as a discount for too long a period. In the context of the concept of ‘discount’, it is necessary to consider a shorter, time-limited period during which the seller offers the product at a reduced/discounted price, given its general understanding. If the discount is offered for a longer period of time (eg, several months), it would not, in fact, be a discount and could constitute a prohibited unfair commercial practice.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Aside from the general rules of advertising (see question 3.1), propagation of hazardous games operated without permission is strictly forbidden.

Certain specific products may be advertised only to certain groups of people or in certain media—in particular, tobacco and e-cigarettes, guns, prescribed medicines or funeral services.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) It is prohibited to disseminate advertisements in paper form to people who have previously stated that they are not interested in such offers.
- (b) It is also strictly prohibited to send out anonymous messages during any elections. Anonymous messages can be described as messages or any kind of presentation shared via any kind of media if the sender is not made known. With this sort of advertisement, it is necessary to know who orders and sends out the ad.
- (c) Telemarketing is prohibited unless the owner of the phone number has indicated in the public directory that they are willing to be contacted for marketing purposes (or the telemarketer has the consent of the phone number owner, or the owner is the telemarketer’s customer).
- (d) Similarly, anyone who intends to use or uses electronic communications networks to store data or to access data stored on the terminal equipment of subscribers or users (including cookies) must obtain prior demonstrable consent from those subscribers or users to the scope and purpose of the processing (including, in particular, advertising and analytical cookies), otherwise it is prohibited. Exception is made for cookies necessary for the functioning of the website itself or other services explicitly requested by the user.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Among other things, advertising must comply with the applicable law and must not be contrary to good morals. Indecency or obscenity would fail precisely because of their conflict with good morals, or, possibly, conflict directly with the law.

The above is emphasized by the Code stipulating that advertisements must not include any statements or visual presentations that would, in a gross manner, violate the norms of decency and moral principles generally accepted by the potential audience. In particular, respect must be given to the potential impact on all and any type of audience when presenting images of the human body. Violations of the Code will be assessed with respect to:

- the context of the advertisement in question,
- the relation of the advertisement to the advertised product,
- the selected target market segment, and
- the communication media employed.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

At the request of the supervisory authorities for the purposes of administrative proceedings, each of the parties concerned (client, advertiser and person disseminating the advertising) is obliged to provide data on the other parties within the time limit set by the supervisory authority; those failing to provide this information may be fined up to €20,500.

Special sponsorship rules apply to advertising via radio, TV and audiovisual services on demand, including the obligation to clearly mark each wholly or partially sponsored program, at the beginning and during or at the end, with the name or title, visual symbol (logo) or other mark of the sponsor.

Electronic commercial communications must contain information about the identity of the person on whose behalf the communication is made.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Integration of advertising content and entertainment or editorial content is a relatively common technique. Although there is no specific law concerning this type of advertising, the general rules of advertising and fair commercial practices apply.

There are also certain soft-law rules in place, in particular:

- one section of the CASCs Code is dedicated to the identification of advertising that resembles editorial content; and
- AIP's Code of Ethics for Taking Over and Use of Foreign Content on the Internet—in particular its supplement called 'Rules for Native Advertising'—which includes basic rules for in-feed units (with PR articles being the most common case of native advertising in the Czech online media).

Product placement in advertising is, in general, legal, provided that it complies with the rules stipulated in relevant related laws. On the radio, TV and audiovisual services on demand, product placement is not permitted in news and political-publicist programs, consumer publicity programs, religious programs and children's programs. However, note that where there is no payment made, but only the provision of goods or services free of charge, in particular, production props or prizes for competitors, with a view to their inclusion in a program, this is not deemed to be product placement.

Programs containing product placement must also comply with the following requirements:

- clear identification as product placement at the beginning and the end and—if interrupted by advertising—also after the interruption (so that viewers cannot in any way be misled as to the nature of the programs);
- their content and inclusion in the catalogue of programs must not be affected in such a way as to prejudice the editorial responsibility and independence of the service provider;
- they must not directly encourage the purchase or rental of goods or services, in particular by making specific reference to those goods or services for the purpose of promoting them; and
- they must not unduly emphasize the product placed.

Programs may not contain product placement of tobacco products, e-cigarettes or their refills (nor product placement by a person whose principal activity is the manufacture or sale of such products), or medicinal or therapeutic procedures which are available in the Czech Republic only on prescription.

Failure to comply with any of the above conditions is deemed an unfair commercial practice.

It is also worth to mention the dispute between the CRTB and Czech Television, which began in 2015 with the CRTB's decision to impose a fine on Czech Television. The case involved the presenter of a sports event being shown coming out of a McDonald's stall with his food, walking past a wall displaying the McDonald's logo and coming back to the presenters' desk, then offering a French fry to his colleague, who had to interrupt their presentation and respond to him. The result of this was that the product placement became the central theme of the introduction to the program and the focus of the commentary, even though it was not related to the theme of the program (coverage of the World Hockey Championships). Despite this, all indications were that this was not a premeditated advertisement.

After a few rounds of judicial 'ping pong', the courts finally upheld the CRTB's decision in June 2022, confirming that the above form of product placement is illegal.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Basic rules following from the Code and the AIP's Code of Ethics for Taking Over and Use of Foreign Content on the Internet are as follows:

- Those in charge of the preparation of such an article/advertisement are obliged to secure that it will be clear on first sight that it is advertising and not editorial content, in particular, by labeling it as 'commercial supplement,' 'sponsored', etc.
- Editorial staff may only participate in the creation of their own content or (where content is determined by an external sponsor who supports the medium financially) content where the actual production is editorial (sponsored content).

AIP also sets out recommendations on labeling such content; eg:

- 'The visit took place thanks to the assistance of company X';
- 'Products for testing were donated by company X';
- 'Commercial annex'; or
- 'This article is sponsored by company X'.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

General requirements for advertising apply, since there are no specific laws stipulating rules for advertising in social media. Along with the regulation of advertising as such, tax regulations also apply (these were, in fact, the first to regulate influencer marketing).

In the case of social media advertising, the basic requirement is that advertisements have to be labeled visibly and clearly as advertising.

The 'Influencer Code' (supportive document to the Code of Ethics for Taking Over and Use of Foreign Content on the Internet issued by the AIP) stipulates soft-law rules for co-operation with influencers. The basic rule reflects the above-mentioned principle, namely that, if there is a commercial relationship between the influencer and the contracting party (ie, the influencer is paid or receives other reward), the influencer must, in the content they create, include textual or audible information on the relationship with the company concerned.

Furthermore, should the influencer be entitled to receive money or other consideration for the promotion of products and services, they should follow several additional rules, including:

- proper labeling of the cooperation,
- adapting the published content to the target group or truthfulness of the experience with the products and services (must not lie or withhold information about its experience).

Influencers must also:

- (a) take into consideration certain sensitive groups (if intended audience is one quarter or more of persons under 18 years of age, or advertising products or services listed in the Advertising Regulation Act),
- (b) comply with rules of the relevant platform used as well as with general legal regulation and
- (c) respect any request of self-regulatory bodies to rectify any violation.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

If the advertiser falls within the definition of 'provider of information society services', there are special rules on liability for the content of transmitted information (eg, user posts), content of automatically temporarily intermediated information (caching) and the storage of the content of information provided by the user of its service.

Within the above, the service provider will be liable for:

- (a) the content of transmitted information only if:
 - (i) the transmission is initiated by it,
 - (ii) it selects the user of the information transmitted, or
 - (iii) it selects or modifies the content of the information transmitted;

- (b) the storage of the content of information provided by the user of its service only if:
 - (i) having regard to the object of its activity and the circumstances and nature of the case, it could have known that the content of the information stored, or the conduct of the user, was unlawful, or
 - (ii) if it has had demonstrable knowledge of the unlawful nature of the content of the stored information, or of the unlawful conduct of the user, and has not promptly taken all steps that may be required of it to remove or render inaccessible such information.

It is therefore necessary for service providers to create a working system for resolving reports on illegal content (in its broadest sense) of content posted on the provider's site, and to react on the reports.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

In May 2023, a court judgment was published concerning Facebook advertising posts, by which the company in question tried to promote its food supplements, among other things, by adding the hashtag '#coronatips' and attributing health effects to them—and for this it the supervisory authority imposed a fine amounting to c €1,800.

The court upheld the supervisory authority's findings and found, among other things, that:

- the hashtag '#coronatip' could be read as 'tip against the coronavirus' and the company thus gave the consumer the impression that all the foodstuffs referred to were related to a disease caused by the SARS-Cov-2 virus, not to health (a desirable condition) but to an undesirable condition;
- the posts also lacked the context that would help to frame the message as general immune support (quite the contrary, the company stated that the tips on the foodstuffs supported the body in 'resisting adverse influences such as the current coronavirus Covid 19')
- with regard to the above, the consumer was being tipped off to food supplements which, if eaten, may have an impact on disease or illness or may help to prevent disease, which was a prohibited health claim.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

It is generally recognized and stipulated by law that capturing and/or sharing of an image of an individual can be done only with their permission (simply posing for pictures does not constitute consent to sharing them). The reasoning is very simple—according to the Czech Constitution, the image of an individual is strictly connected to the person and cannot be used without proper permission. This also applies to audio and video recordings as well as any other forms of recording.

Permission does not have to be in written form; however, it is strongly recommended, when using a recording or image of someone of any kind, to have a permission in a suitable (written) form as proof that the person consented to being recorded and publicized. Note that such permission can be

withdrawn at any point, even when the permission is granted for a definite period; however, if the permission is withdrawn without any particular reason, the person who granted the permission is responsible for any damages caused by the inability to use the material covered by the consent.

The above is further backed by the relevant principles of personal data regulation (in particular stipulated by the GDPR).

9.2 Are there situations when permission is not required?

Permission is not required if the image, audio or video recording:

- is made or used to exercise or protect other rights or legally protected interests of others;
- is made or used by means of a statute for official purposes, or where someone performs a public act in matters of public interest;
- was reasonably made or used for scientific or artistic purposes and for print, radio, television or similar coverage.

However, the lawful reasons for interference with the privacy of another or for the use of their image, or audio or video recordings listed above may not be used unreasonably where this conflicts with the legitimate interests of the individual.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no specific rules in place. Nevertheless, municipalities may regulate the placement and distribution of advertising materials; eg, they may determine certain public places where advertising is prohibited, certain time periods during which advertising is prohibited, prohibited means of advertising dissemination, or events that are not covered by the advertising ban.

Also, if there is an historical building or exposition where prohibited symbols of historical regimes are pictured because they are part of the exhibition or history of the building, these symbols cannot be pictured in the advertisement, as this would be contrary to the CASC's Code of Advertising Practice, and the Czech Penal Code.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

There are no specific rules for use of third-party products in advertising. General rules for advertising (see question 3.1 above), unfair competition and IP/IT will apply.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the Czech Republic which affect advertising (eg Swedish gender equality law)?

There is no special legislation in the Czech Republic that regulates the rules for advertising with regard to Czech culture.

11.2 Are there any other cultural norms that should be considered (eg religious concerns)?

The CASC's Code summarizes and provides additional ethical principles applicable to advertising. Aside from the rules on decency and moral principles generally accepted by the potential audience (see question 5.3 above), the following rules shall apply:

- (a) advertisements must not contain anything that might, in a gross and apparent manner, offend consumers' national, racial or religious feelings;
- (b) advertisements must not depict any living persons or refer to them unless such persons have expressed a prior consent to such depiction;
- (c) advertisers must avoid offending the religious or any other feelings of persons related in any way to deceased persons depicted or referred to in advertisements;
- (d) advertising must not depict or imply consumption of alcoholic beverages:
 - (i) in the vicinity of religious sites and cemeteries, or
 - (ii) by members of religious groups that prohibit their members from drinking alcohol.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the Czech Republic?

Although there is a special Advertising Regulation Act in force in the Czech Republic, the regulation of advertising is also included in other (not only legal) regulations and rules, which must be considered and which often apply to the issue of marketing and advertising, although this is not apparent at first glance. We therefore recommend seeking the help of an expert in the field, even in cases that seem simple or straightforward, but often are not from the legal point of view.

 DENMARK 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Denmark?

Advertising is regulated by the following:

- (a) the Danish Marketing Practices Act (Law No 866 of 2022);
- (b) the guidelines and practices of the Danish Consumer Ombudsman (see www.consumerombudsman.dk);
- (c) the Danish Consumer Protection Act (Law No 1457 of 2013);
- (d) the Act on Radio and Television Transmissions (Law No 1350 of 2020);
- (e) the Act on Advertising Tobacco (Law No 586 of 2021);
- (f) the Executive Order on advertising for medicines (Executive Order No 849 of 2021); and
- (g) the Executive Order on commercials, sponsoring etc of programs in radio, television and on-demand audiovisual media services (Executive Order No 1155 of 2020).

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

All communications used for marketing purposes will be considered to be ‘advertising’. This applies regardless of the form of media used, whether it appears on television or on radio, in magazines, films, on the internet, or in any other place where businesses may want to promote their products. It also applies regardless of the nature of the product/service promoted and whether the commercial communication is targeted to consumers or businesses.

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework is provided by the Danish Marketing Practices Act and guidance papers from the Danish Consumer Ombudsman, in addition to the Executive Order on commercials, sponsoring etc of programs in radio, television and on-demand audiovisual media services.

The Danish Consumer Ombudsman is an independent public authority that supervises compliance with Danish marketing law and is responsible for regularly issuing guidance concerning specific/general marketing issues. This is done in close collaboration with industry and consumer organizations.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The Danish Consumer Ombudsman is responsible for issuing guidelines and guidance papers that give an interpretation of the rules applicable in various economic sectors and within different areas of marketing, eg, the Danish Consumer Ombudsman’s guidelines for price information in marketing, guidelines for social media marketing, guidelines for ‘spam’ (unsolicited commercial communications to targeted recipients) and guidelines for hidden advertisement. Many of the guidelines and the guidance papers give a good and specific interpretation of many of the sections of the Danish Marketing Practices Act, which is the single most important piece of legislation in relation to how professionals shall act in relation to advertising addressed to consumers.

Furthermore, the Danish Marketing Practices Act specifically regulates the following (a non-exhaustive list):

- unsolicited communication with consumers;
- marketing directed at children and young people; and
- commercial practices which are always considered misleading or aggressive.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) **TV and Radio:** The Danish Radio and Television Board is an independent regulatory authority in charge of supervising the Danish broadcasting legislation. The Act on Radio and Television Transmissions contains special provisions for advertising and sponsorship on radio and television.
- (b) **Food:** According to the Danish Act on Foodstuffs (Act No 1033 of 2023), food may not be sold with trade names, images, claims, advertising, or anything that does not match the food content or that is misleading to the public/consumer.
- (c) **Medicines:** The Danish Medicines Act (Act No 339 of 2023) contains special provisions regarding the marketing of medicine.
- (d) **Tobacco:** The Danish Act on Advertising of Tobacco generally prohibits marketing in relation to all sorts of advertising for tobacco, although some exceptions apply in relation to professionals.
- (e) **Gambling:** The Danish Act on Gambling (Law No 1303 of 2020) lays down very specific requirements in relation to the marketing of games connected to gambling, eg any marketing directed against children and young people is illegal.
- (f) **Alcohol:** The Executive Order on commercials, sponsoring etc of programs in radio, television and on-demand audiovisual media services lays down specific requirements in relation to the advertising of alcohol.

1.6 Are any government pre-approvals required?

There is no requirement under the Danish Marketing Practices Act for advertisers to obtain a license, or to have a marketing campaign pre-approved.

Special rules apply to the advertising of medicine under the Danish Medicines Act. A medicinal product may only be marketed or dispensed in Denmark when a marketing authorization has been granted either by the Danish Medicines Agency (pursuant to the Danish Medicines Act) or by the European Commission (pursuant to the provisions of Community law laying down Community procedures for authorization and ‘pharmaco-vigilance’ of medicinal products for human and veterinary use).

Foreign companies running sweepstakes in Denmark, where the outcome is partially or fully dependent on chance, must register with the Danish Tax Administration so that they may pay the appropriate tax.

1.7 Does the media pre-clear advertising?

Advertisements run on the state-owned partially-commercial TV station, TV2, are screened by TV2's own legal department.

According to the Danish Marketing Practices Act, traders can obtain an advance indication from the Danish Consumer Ombudsman regarding the legality of contemplated marketing arrangements.

The Danish Consumer Ombudsman will give a statement regarding their view of the lawfulness of contemplated marketing arrangements unless an opinion would be subject to unusual doubt, or other special circumstances exist (such as a request for an opinion on an entire business concept). An advance indication does not amount to an actual opinion of the lawfulness of the arrangement concerned. The Danish Consumer Ombudsman can decide that:

- (a) a submitted marketing arrangement does not conflict with the Danish Marketing Practices Act and/or other relevant legislation;
- (b) a submitted marketing arrangement is clearly in conflict with the law; or
- (c) the legality of the marketing arrangement is questionable.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Violations of some of the provisions of the Danish Marketing Practices are punishable by fines, although a more severe penalty may be imposed for the same act under other legislation. For example, violations for misleading information, as well as for covert advertising, and marketing targeted to children and young people, are punishable by fines.

Injunctions may be imposed if this is considered necessary to ensure compliance with a prohibition. Agreements which conflict with a prohibition are invalid, and restitution of the state of affairs existing before the unlawful action can be granted, including the destruction or recall of products and the issue of information or correction of statements.

The Danish Consumer Ombudsman may also issue an injunction if an action is clearly in conflict with the Danish Marketing Practices Act and cannot be negotiated. The Danish Consumer Ombudsman can also, in some cases (eg, where a normal court case would take too long and the purpose for filing the case would be at risk) impose an interim injunction. They can also, in some cases, issue an administrative fine. Furthermore, the Danish Consumer Ombudsman can impose liability to pay damages and remuneration under the general rules of Danish law.

Non-observance of a prohibition or injunction imposed by the court or an injunction imposed by the Danish Consumer Ombudsman is liable to a fine or imprisonment.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors, both those who are residents and those who are non-residents in Denmark, have access to lodge complaints with the Danish Consumer Ombudsman if they come across misleading marketing activities emanating from Denmark, or receive unsolicited commercial communication. Lodging a complaint with the Danish Consumer Ombudsman does not require legal interest in a case or standing according to the Danish Civil Code.

The Danish Consumer Ombudsman is, however, not obliged to, nor able to, look into all complaints which have been lodged with them for evaluation. When deciding which consumer protection issues to look into, the Danish Consumer Ombudsman seeks out issues which can be solved to benefit the collective interests of consumers.

The complainant is not required to lodge a complaint with the Danish Consumer Ombudsman before they are able to initiate legal proceedings in the Danish Courts. However, in order to bring a civil action before the Danish Courts, legal standing is required. This means that the plaintiff has to prove that the action taken (or the non-performance) by a company has affected or may reasonably affect the plaintiff's legal interest. Consumer organizations and trader organizations have standing to sue on behalf of their members.

At the normal Danish courts, competitors can demand that the counterparty is ordered to:

- (a) take certain actions or abstain from taking certain actions;
- (b) pay damages and/or remuneration under the general rules of Danish law; or even
- (c) pay a fine to the state.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers have a similar right of action to that of competitors. See question 1.9 above/

At the normal Danish courts, consumers can demand the court to order the counterparty to:

- (a) pay damages and/or remuneration under the general rules of Danish law; as well as
- (b) issue an injunction.

The Consumer Ombudsman may initiate a class-action on behalf of certain consumer groups.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Denmark have a primary advertising self-regulation system?

There is no single primary advertising self-regulation system in Denmark. However,

- (a) **Medicine:** In relation to medicine, the supervisory activities of the Danish Medicines Agency in the advertising area are supplemented by self-regulatory bodies in the industry, which monitor the lawfulness of the companies' advertising activities in parallel with the Danish Medicines Agency. There are five self-regulatory bodies:
 - the Ethical Board for the Pharmaceutical Industry;
 - the Marketing Board of VINordic;
 - the Danish Board of Pharmacies;
 - the Danish Medical Association Ethical Council; and
 - the Ethical Board of the Danish Association of Suppliers to the Health Industry.
- (b) **TV and radio:** The Radio and Television Board is the independent regulatory authority in charge of supervising the implementation of the Danish broadcasting legislation. It has the following tasks:
 - (i) to issue licenses to private national and local broadcasters;
 - (ii) to monitor whether private and public broadcasters are fulfilling their legal obligations; and
 - (iii) to administer grants for non-commercial local radio and television.
- (c) **Alcohol:** The Danish Board of Advertising of Alcohol is an independent authority which decides whether advertisers and businesses comply with its guidelines. Furthermore, the Board's task is to hear and determine complaints relating to the marketing of alcoholic beverages in Denmark. Both consumers and businesses can make complaints about the advertising campaigns of other businesses.

2.2 Is there a self-regulatory advertising code? What are the key principles?

There is no self-regulatory advertising code as such.

The Danish Board on Advertisement of Alcohol has its own guidelines, but the Board also makes its decisions with regard to the Danish Marketing Practices Act.

The Danish Consumer Ombudsman and/or the Danish courts can, in their interpretation of Danish law, or in the evaluation of a specific problem, look into the standards that exist within the different trades.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

As there is no primary advertising self-regulation system and no self-regulatory advertising code in general, there is neither any enforcement nor dispute resolution mechanism that deals with advertising. However:

- (a) **TV and radio:** The Radio and Television Board has the power to decide on, eg, the identification, location and extent of advertising, and on matters of sponsorship and product placement.
- (b) **Medicine:** In relation to medicine and the decisions of the self-regulatory bodies, a decision made by one of the self-regulatory bodies cannot, as such, be referred to the Danish Medicines Agency. However, a dissatisfied party is not prevented from bringing a case before the Danish Medicines Agency, even though it has already been before one of the self-regulatory bodies. In this case, the decision given by the self-regulatory body will be taken into consideration when the Danish Medicines Agency assesses the case.
- (c) **Alcohol:** The legal remedy of the Danish Board on Advertisement of Alcohol is to pronounce criticism in relation to marketing/advertising which the Board finds has violated the Board's guidelines and/or the Danish Marketing Practices Act. In particular, in the case of serious and repeated cases/violations, the criticism will be published in a press release. All decisions are published on the Board's website. The Board expects that its decisions will result in immediate action by the trader/advertiser. If, however, the trader does not follow the instructions/criticism of the Board, the Board will request the Danish Consumer Ombudsman to take legal action.

Decisions by any executive authority can always be appealed to the Danish courts unless the parties have agreed not to do so.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Decisions issued by self-regulatory bodies are normally respected by opposing parties and followed by the Danish courts, since the self-regulatory systems/boards are highly specialized.

2.5 Are the self-regulatory system's decisions reported?

The decisions of the Radio and Television Board, those of the Danish Board on Advertising of Alcohol and some of the decisions of the other self-regulatory bodies can be found on their respective websites. The decisions of the Danish Medicines Agency are not available on its website, but people with knowledge of a specific case can apply for right of access to the documents.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

In recent years, the primary hot-button issues for the Danish Consumer Ombudsman have been claims of greenwashing, influencer marketing especially hidden marketing, and spam marketing:

- (a) In its decision 22/08056 of 28 August 2023 the Consumer Ombudsman found that a company marketing water in cartons instead of plastic bottles had been misleading in its marketing by its use of statements such as 'We give you the option to say no to plastic', 'Recycling plastic bottles won't save the planet' and 'Recycling plastic is not the solution'. On the Danish market, most plastic water bottles are at least partially made of recycled plastic, and it was thus misleading to compare the water cartons with water bottles of virgin plastic. Furthermore, the company could not sufficiently document its claims of 100% recyclability, since most Danish municipalities did not have access to the required technologies to fully recycle the cartons made of cardboard, aluminium, and plastics. Similar decisions were reached in cases 22/04124 and 23/03893 where marketing claims were found to be likely to give consumers the impression that products were more environmentally sustainable than the traders could document, thus making the claims misleading.

In the European Union there is also a heightened focus on the use of environmentalism in marketing. In March 2023 the European Commission proposed a Directive on so-called green claims and their substantiation.

- (b) There are no rules specifically regarding influencer marketing per se. Influencers should, however, be particularly observant of two rules:
- (i) the restrictions against hidden marketing; and
 - (ii) the rule that marketing toward children must take special account of the fact that children are likely to be more influenced by marketing.

To aid influencers the Consumer Ombudsman has released a guide for influencers on marketing on social media.

- (c) A trader must be aware of the rules regarding digital marketing, as even the fines on performing spam are quite severe, and thus distribution of even a small number of spam emails may be heavily fined. Similarly, traders ought to be particularly careful about not partaking in deceptive and aggressive marketing as such practices are, as of 1 July 2023, punishable by up to four months in prison.

2.7 Are there any other self-regulatory systems that govern advertising practices in Denmark?

Not applicable.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Denmark (eg, consumer protection laws; IP laws; unfair competition laws)?

The Marketing Practices Act is the single most important piece of legislation to be observed by Danish businesses and traders when planning the content of their marketing activities.

Furthermore,

- the guidelines and practice of the Danish Consumer Ombudsman;
- the Danish Consumer Protection Act;
- the Act on Radio and Television Transmissions;

- the Danish Act on Advertising of Tobacco;
- the Executive Order on advertising for medicines; and
- the Executive Order on commercials, sponsoring etc of programs in radio, television and on-demand audiovisual media services

should be considered as basic and important laws in relation to advertising.

3.2 Is substantiation required for advertising claims?

Under the Danish Marketing Practices Act, marketing may not be misleading or include false information. Similarly, marketing may not be presented in a manner that is likely to mislead the consumer even if all the presented information is technically correct. This rule must be understood in combination with the rule that a trader must be able to document the accuracy of statements regarding factual claims. The trader must not necessarily have the documentation for their statements at the time of making the statements, but they must be able to present the necessary documentation within a reasonable time frame if asked to do so by the Consumer Ombudsman or by a court.

Statements of fact that are understood as such by the average consumer must be distinguished from mere 'empty' claims, puffery claims, and claims of opinion. These do not require documentation to the extent that they are not understood by the average consumer to actually represent the factual qualities of a product or service.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Factual statements must be distinguished from mere 'claims'. A 'claim' in this sense is a statement that is so subjective and greatly exaggerated that the recipient/consumer knows that the statement should not be taken at face value or attached with any importance, or that it is so vague and unverifiable that it makes no sense to require any documentation. Claims, such as 'indestructible pants', 'everlasting carpets' or 'the best buns in town' do not need to be substantiated by documentation. In contrast, 'double wear-resistant paintwork' is a factual statement that must be capable of being substantiated by documentation.

A statement may also be so general in its presentation, or so clearly a result of a personal opinion, that it is obvious to the ordinary consumer that it is not a claim ('puffery'). In such a situation, the statement will be legal even if it cannot be substantiated.

3.4 What are the rules governing the use of disclosures in advertising?

Under the Danish Marketing Practices Act, traders may not use misleading or undue indications or omit material information if this may significantly distort the consumers' or other traders' economic behavior at the time of making a purchase decision.

Any disclosures must be correct, clearly formulated, and relevant. Misunderstandings or misinterpretations should not arise from the use of disclosures, and the advertisement/disclosure should not contain any unnecessary information. Where restrictions and exceptions may apply, they should appear prominently.

In line with the prohibition against hidden marketing, the commercial intent of advertising must also be clear to the consumer.

The above requirements of adequate disclosure and prohibition on misleading marketing apply to any and all information that may influence the economic behavior of actors on the market, ie, consumers and competitors. All relevant information must be easily accessible to the consumer. This includes relevant information regarding the applicable terms of any purchase. The duty to ensure the disclosure/availability of such information means, as a point of departure, that it must be made clear to the consumer at the same time and in the same medium as is used for the marketing activity. More specific requirements as to how such information must be disclosed may apply, depending on the nature of the product, the promotion and the medium used for advertising.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The subject is covered by the Danish Marketing Practices Act. Traders must exercise good marketing practices in relation to consumers, other traders, and public interests. They must not use misleading or undue indications or omit material information if this may reasonably be thought to significantly distort consumers' or other traders' economic behavior in the market. It is, therefore, permissible to use third-party testimonials/opinions that recommend a particular product. However, the testimonial/opinion of a third party can only be used if it is verifiable, accurate, relevant, non-misleading, satisfactory and not outdated.

Furthermore, special requirements may apply in relation to the marketing of alcohol, medicine and foodstuffs. This, however, has to be evaluated in each specific case and in relation to the regulation of these products.

According to the Executive Order on commercials, sponsoring etc of programs in radio, television and on-demand audiovisual media services, children under the age of 14 may not endorse products or services of any kind.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no special rules for advertising, depicting or demonstrating product performance. According to the Danish Marketing Practices Act, traders must exercise good marketing practices with regard to consumers, other traders, and public interests. Moreover, traders must not use misleading or undue indications or omit material information if this may significantly distort consumers' or other traders' economic behavior in the market.

Marketing must not be designed to unfairly exploit consumers' concerns for the environment or any lack of knowledge on their part about the environment or ethical matters.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

According to the Danish Marketing Practices Act, 'comparative advertising' means 'any advertising which explicitly or by implication directly or indirectly identifies a competitor or a product or service offered by a competitor'.

Comparative advertising is permitted under certain circumstances; eg, if the advertising material:

- is not misleading;
- concerns products meeting the same needs or intended for the same purpose;
- objectively compares one or more specific, relevant, verifiable and representative features of these products, which may include price;

- does not create confusion in the market between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks or products and those of a competitor;
- does not discredit or denigrate the trademarks, trade names, other distinguishing marks, products, activities or circumstances of a competitor;
- (for products with designation of origin) relates in each case to products with the same designation;
- does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing mark of a competitor or of the designation of origin of competing products; and
- does not represent products as imitations or replicas of products bearing a protected trademark or trade name.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The clear point of departure is the Danish Act on Marketing Practices. This simply and succinctly states that a trader may not use commercial characteristics including trademarks that they do not have the rights to and that a trader similarly may not use their own commercial characteristics to cause confusion with the characteristics or marks of other traders or undertakings. Apart from the Act on Marketing Practices, the Danish Trade Mark Act and the Danish Copyright Act will also apply to situations concerning the use of a trademark and copyright-protected material respectively.

For the use of copyright-protected works, the consent of the right holder in marketing is also required. This was unequivocally confirmed by the Danish Supreme Court in 2019 in a case regarding the use of copyright-protected kitchenware in advertisements for foodstuffs. The kitchenware was used to present the foodstuffs. Such a use requires the consent of the creator of the kitchenware.

Thus, traders must be very careful if they choose to show/use the characteristics of trademarks/copyright material in advertising without the permission of the copyright holder or the trademark owner. Loyal use of a competitor's trademark or company name in accordance with the Act on Marketing Practices is a notable exception, but an exception, nonetheless. As a general rule, however, the consent of the trademark/copyright owner must be obtained before any use in commercial advertising.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

In principle, products may be freely labeled with information as to geographic origin. However, under rules both relating to B2C and to B2B in the Danish Marketing Practices Act, a trader's commercial practice must not contain false information or in any other way be likely to deceive the average consumer or other traders. It should be mentioned that the principle of this provision is contained in other laws, and, in spite of a difference in wording, the content is the same in those provisions.

In addition, for some product groups rules may exist that require the company responsible for the marketing of the product to provide information regarding the geographical origin of a product, or the obligation not to use a particular geographical indication. If a product is protected under EU Regulation 510/2006 as a designation of origin or a geographical indication (agricultural products or

foodstuff), it will enjoy similar protection under the Danish Marketing Practices Act. Furthermore, under EU Regulation 1169/2011 on the provision of food information to consumers, the following products must contain mandatory information of country of origin on the packaging:

- beef, fresh meat from pigs, sheep, goats or poultry;
- most fruit and vegetables;
- extra virgin and virgin olive oils;
- fresh fish and honey;
- wine; and
- eggs.

3.10 Are there any special rules governing product packaging?

See question 3.9 above.

Furthermore, there is more restrictive legislation when it comes to medicine and tobacco:

- (a) **Medicine:** the Executive Order for labeling, etc of drugs (Executive Order No 869 of 2011) contains the following provisions:
 - (i) The label and package leaflet of a medicinal product must not contain elements of advertising character.
 - (ii) Labeling and package leaflets must not be misleading and must not be suitable to provoke confusion with other medicinal products or strengths.
 - (iii) The packaging of a medicinal product must not cause confusion with foodstuffs or cosmetics.
- (b) **Tobacco:** The Danish Act on Tobacco Products (Law No 1489 of 2021) states: ‘Anyone who markets a tobacco product in this country must ensure that each package and any outer packaging does not contain any feature that:
 - (i) promotes a tobacco product or calls for its use by giving an erroneous impression of the characteristics, effects, risks or emissions of the product,
 - (ii) gives the impression that a particular tobacco product is less harmful than others or is intended to reduce the effect of certain harmful ingredients in the smoke,
 - (iii) gives the impression that a particular tobacco product has vitalizing, energetic, healing, rejuvenating, natural, ecological or other positive purposes or other positive health or lifestyle effects,
 - (iv) refers to flavors, fragrances, flavors or other additives or states that the product contains no such,
 - (v) makes the product look like a food or a cosmetic product or
 - (vi) gives the impression that a particular tobacco product has improved biodegradability or other environmental benefits’.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

After The Danish Western High Court’s decision of 29 April 2022, it has been confirmed once and for all that employing dark practices or dark patterns in marketing material is not allowed, as it is contrary to the Danish Marketing Practices Act. In this case, a web shop did not adequately inform its users that, when purchasing a product, they also signed up for a membership allowing the web shop to take monthly payments from them as a membership fee. Though the membership and monthly

fees were described on the website, the court found that these were not made sufficiently clear for the average consumer to become aware of them, and the owners of the website were thus found to be guilty of deceptive and misleading marketing and fined DKK 250,000 (c US \$37,000), and DKK 3,200,000 (c US \$470,000) were seized.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are currently no rules specifically regulating the use of artificial intelligence ('AI') in marketing material. Thus, the fundamental, general principles of Danish marketing law apply. In general, this means that marketing made by or relating to AI must be clear and not misleading and must be made and presented in accordance with best marketing practices. A trader may have to consider slightly different things when considering marketing material made by AI and marketing material about products or services that integrate or consist of AI.

For products and services that consist of or integrate AI technology, the usual considerations will likely be the most important (ie, the marketing material must not be misleading etc), but, should a trader consider employing marketing material that is made by AI, questions of IP arise that have not yet been answered in Danish law; such as who owns the copyright to works that are created by AI? If case law develops or regulation is passed that means that the copyright for material created by an AI system is granted to the creator of the AI, then the trader employing the AI in the development of marketing material may not be allowed to use the marketing material without the consent of the creator of the AI.

4 PRICE ADVERTISING

4.1 What are Denmark's rules regarding price advertising?

- (a) Under the Danish Marketing Practices Act, traders must exercise good marketing practices in relation to consumers, other traders, and public interests. Marketing in respect of consumers' economic interests should not be designed to significantly distort their economic behavior. Traders may not use misleading or undue indications or omit material information if this is designed to significantly distort consumers' or other traders' economic behavior in the market. If a trader offers products/services at a particular price and has reasonable grounds to believe that it will not be in a position to satisfy the demand that is reasonable in relation to the offer, the trader must include a clear proviso to this effect in such marketing.
- (b) The price information provided to consumers must include the applicable VAT.
- (c) The Consumer Ombudsman has issued extensive rules about the use of particular price indications such as 'before/now', 'outlet sales' etc. A comparison between a normal price and a reduced price may not be misleading. A price may only be marketed at a reduced price for a short period of time. The trader must be able to provide documentation to support the fact that the product has been sold or offered on sale at the stated normal price for a longer period of time.

See, further, the Danish Consumer Ombudsman's guidance paper (in English) regarding price information, which can be found on its website, www.consumerombudsman.dk

4.2 What are Denmark's rules regarding advertising 'free' products?

There are no special rules for describing something as 'free', but the subject is covered by the Danish Marketing Practices Act.

The use of phrases that promise consumers that a product or service is 'free' is only allowed in cases where the consumer is not required to pay any amount of money at all except for the cost necessary to order the product or have the product shipped to them. It is also misleading to use the expression 'free' if the consumer is required to incur an expense in the form of a subscription fee. It should also be clearly stated in the offer if the services or benefits are included free of charge but only for a limited period of time.

The Danish Consumer Ombudsman, in its guidance paper on spam, states that a trader may not market a product as being free, if this requires the buyer to give its consent to receiving marketing material from the trader; ie, the Consumer Ombudsman equates the giving of such consent and monetary payment. See, further, the guidance paper from the Danish Consumer Ombudsman regarding price information which can be found on their website, www.consumerombudsman.dk

An as of yet unanswered question is whether a service can be considered 'free' (and the trader may then market their service as such), if the buyer pays not with money but with their personal information as defined in the EU General Data Protection regulation ('GDPR'). With amendments to the Danish Sale of Goods Act (Law No 1853 of 2021) it has, since 1 January 2022, been considered an actual sale of goods if the trader makes available a digital service or digital content in exchange not for money but for personal data of the buyer. Arguably, personal data may thus be seen as a mode of payment, meaning that it may be prohibited to market digital services and digital content as being free of charge, if the consumer 'pays' with their personal data.

4.3 What are Denmark's rules regarding sales and special offers?

There are no specific rules on sales and special offers. The offers thus must adhere to the general principles of good marketing practice in the Marketing Practices Act.

4.4 What are Denmark's rules regarding rebates?

- (a) The subject is covered by the Danish Marketing Practices Act. Traders must exercise good marketing practices in relation to consumers, other traders and public interests, and must not use misleading or undue indications or omit material information if it may significantly distort consumers' or other traders' economic behavior in the market.
- (b) The trader is allowed to compare a reduced price of a product with the normal price of a product (eg, by using the expression 'was/now'), provided that the general rules regarding periods of reference have been complied with. However, the use of the expression 'was/now' in connection with a price reduction may become misleading if the price reduction only covers a decrease in value, and is not an actual offer.
- (c) The expression 'sale' may only be used for products that have been for sale in a shop at the normal price. The shop may not supplement its inventory for a 'sale'.
- (d) Before/after prices may only be used if the product has been offered for sale in the shop at the 'before' price for a certain amount of time.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Use of promotional expressions such as ‘factory sale’, ‘factory price’, ‘wholesale price’, ‘stock sale’ and ‘factory outlets’ may only be used provided that the consumer is not going to pay more than the wholesale price to retailers.

The trader must be able to substantiate its profit calculations by documentation, and these may not include an extraordinarily large producer’s profit.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) Cigarettes and other products containing tobacco may not be advertised.
- (b) Prescription-only drugs may not be advertised to the general public, but may be advertised to the relevant trade.
- (c) Alcohol may not be advertised in marketing aimed at children under the age of 18 years.
- (d) According to the Act on Radio and Television Transmissions, specific requirements apply in relation to religious movements, political parties, political movements and elected members or candidates for political assemblies and advertisements for political messages leading up to an election.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

A traders’ ability to distribute marketing material is limited under the Danish Marketing Practices Act. For example, as a rule, there is a ban on unsolicited distribution of marketing material by means of email, SMS text messages, MMS messages and fax both towards consumers and businesses. Delivery of unsolicited marketing to inboxes on social media is also prohibited.

However, it is legally possible to distribute marketing material by letters, addressed marketing material or other direct marketing methods to targeted recipients, unless a recipient has declined such communications by request. Unaddressed, door-to-door distributed marketing material as well as marketing material on the internet is not covered by the provision.

It is not legal to contact consumers directly by means of telecommunication unless the business is offering either insurance coverage, safety equipment or book/newspaper subscriptions.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

According to the Danish Marketing Practices Act, traders must exercise good marketing practices in relation to consumers, other traders and public interests.

Under the Executive Order on commercials, sponsoring etc of programs in radio, television and on-demand-audiovisual media services, advertisements must not violate respect for human dignity or include/promote any discrimination based on sex, racial or ethnic origin, nationality, religion or other belief, disability, age or sexual orientation.

Finally, the Danish Consumer Ombudsman has published its guidelines regarding gender-related advertising. These can be found on its website (see question 4.2 above). In general, gender-related advertising is legal and the use of nude people in advertising is legal. The advertisement may not show people—men or women—in indecent postures or in situations that may be considered gender discrimination.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

- (a) Advertising should be clearly recognizable, irrespective of the form or medium used. If not, it is considered an example of covert advertising, and thus a violation of the Danish Marketing Practices Act, which makes it an offence to employ covert marketing methods.
- (b) Depending on the circumstances, covert advertising activities may also violate the prohibition on misleading and improper statements and methods.
- (c) In general, all advertisement activities must clearly have a sender.
- (d) The Danish Radio and Television Broadcasting Act indicates that advertising should be easy to distinguish from regular programs. Sponsored programs must be clearly identifiable by appropriate credits appearing at the beginning/end of the program, showing the sponsor's name or trademark (logo).
- (e) According to the Executive Order on commercials, sponsoring etc of programs in radio, television and on-demand audiovisual media services, specific requirements apply in relation to the sponsoring of programs.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Editorial content and advertisements in magazines, newspapers and television programs must be separated clearly so that the two cannot be confused. For example, the publisher of a newspaper or magazine may be held liable for the content and layout of an advertisement in the newspaper/magazine, if the advertisement is not clearly marked as an advertisement and thus distinguishable from the editorial content. Similarly, it is the responsibility of the newspaper to ensure that an advertisement is distinguishable and does not form part of, or get mixed up with, editorial content.

Advertising concealed as editorial content may be considered covert advertisement, which is illegal according to the Marketing Practices Act.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Any individual viewing an advertisement, or who is in any way exposed to commercial communications, must not be left in doubt as to the nature of the communication. This applies regardless of the form of the media, whether it appears on television or on radio, in magazines, films, on the internet, or in any other place where businesses may want to promote their products. It also applies regardless of the nature of the product/service promoted and whether the commercial communication is targeted to consumers or businesses.

The identity of the company responsible for the advertisement must be disclosed in connection with the advertisement. Furthermore, product-specific rules may also apply, such as the rules regarding the advertising of pharmaceuticals, where information about possible serious side effects must be displayed in connection with the advertisement.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special laws for using social media for advertising, but, in general, the rules set out in the Danish Marketing Practices Act apply. However, the Danish Consumer Ombudsman has issued guidelines about marketing via social media and on the internet.

Because social media is perceived as a platform for all consumers, traders must pay particular attention to the fact that it must at all times be possible to identify marketing. If a private profile is used for marketing purposes, it should be clearly stated.

Furthermore, it means that the ban on direct email marketing also applies to social media. This states that a trader must not approach anyone by means of electronic mail, an automated calling system or facsimile machine with a view to the sale of products, real property, other property, labor, or services unless the party concerned has requested the trader to do so.

More stringent restrictions are applied to marketing targeted at children and young people. This means that traders should pay special attention to children and young people's natural credulity and inexperience and lack of critical thinking when producing marketing material.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

If a trader rewards a user, or creates a particular incentive for the user to share or spread commercial messages, the Danish Consumer Ombudsmen will consider such messages to be sent from the trader, and the user's friends must therefore be able to opt out of receiving such messages. The advertiser may also be held liable for such content. It is not necessary that there is an actual agreement between the user and the advertiser for the advertiser to become liable. The issue is the extent to which the advertiser has had a commercial intent to have the 'advertisement' spread.

Statements on the private profiles of a company's employees may also be considered advertisements and should thus also be marked as such, to the extent that the employee acts as an employee. Content uploaded by an employee purely for private reasons will not be considered advertising for which the company may be held liable. If the spreading or sharing thus depends solely on the user's own decisions, the Danish Consumer Ombudsmen will not consider the message to fall within the rules on unsolicited communications.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

In Case no 13/11062, a trader marketing travel for young people using his Facebook page was reported to the police by the Danish Consumer Ombudsman. The text and pictures used on both the trader's website and Facebook page included alcohol (people drinking and advertising for pub-crawls) and thus the marketing was a breach of the Danish Marketing Practices Act because people under 18 had unlimited access to the Facebook page (there was no age-filter).

Furthermore, several administrative cases exist on advertisements performed by influencers as part of an agreement with a company to publish comments and endorsements of a product.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

If advertisers disclose data about an individual and take pictures of that individual, they must comply with the regulations set out under Danish law. In most cases, advertisers are subject to the Act on Processing of Personal Data and the EU General Data Protection Regulation (GDPR) rules. A picture of an individual is considered to be personal data if the individual in the picture can be recognized by the public. It may be personal data even if the individual's name is not apparent.

Use of an individual's name and picture in an advertisement without the consent of that individual may be an infringement of:

- that individual's right to their own picture (eg a picture where the individual is depicted),
- their name, and
- a possible copyright.

This applies even when the image itself is neutral (ie, where the individual is not necessarily the main focus) and whether or not the individual is a well-known person in the public eye.

Failure to obtain consent to use a picture of an individual in commercial activities is an infringement of the individual's rights, and the individual concerned may request the advertiser to remove the image from the advertisement and to pay monetary compensation. The rule only applies to living persons, but may also apply to recently deceased people, especially to the extent that the use of the image may lead to confusion in the market.

9.2 Are there situations when permission is not required?

Consent is always required in relation to the use of an individual's photo, voice and or in any commercial activities, unless the individual is not identifiable.

This subject/area will, in most cases, be regulated and/or evaluated in relation to general principles of law and marketing law.

In some cases, depending on the circumstances and whether the depiction is faithful and relevant, use without consent can be permitted (eg, use of a picture in an encyclopedia). This is, however, always dependent on the circumstances, and the main rule is that consent is always required.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

The Danish National Bank has issued specific guidelines in relation to the replication of money. Furthermore, any material which has the benefit of copyright protection or trademark protection can, as a general rule, only be used with the prior consent of the rights holder.

Pictures of well-known distinctive buildings, or protected artwork, or items protected by copyright, such as applied art, must always be cleared before use in advertisement. This is because publication of such items would be considered replication, and thus covered by copyright protection. In this connection, it should be borne in mind that the Danish copyright protection for applied art is particularly strong.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Without the permission of the copyright or trademark owner, traders must be very careful if making use of a particular product's 'characteristics' (such as well-known trademarks/copyright-protected works). In a recent case, a supermarket chain was found liable for copyright infringement by having used and published pictures of foodstuffs for sale using protected tableware, even though the tableware was not the main object of the pictures taken but was predominantly used to present the foodstuffs to the public.

Comparative advertising is permitted if the comparison is relevant and fair and does not create an undue relationship in the mind of the recipient between the products being compared. This follows from the Danish Marketing Practices Act.

Depending on the circumstances, it can be illegal under Danish law to use 'characteristics' and trademarks in advertising. As a general rule, the prior consent of the rights holder should always be obtained. In a well-known case which was presented to the Danish Supreme Court, a company had incorporated a prize offer in the form of a dinner at the famous Danish restaurant, NOMA, in their advertisement. There was no agreement between the company and NOMA regarding the advertisement or the prize. The court found that the prize had been chosen due to the high brand value of NOMA, thus creating more attention for the small brand company in question. As the 'NOMA' brand is a registered trademark, and also enjoys enhanced recognition, such use constituted a violation of the trademark laws and marketing practices.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Denmark which affect advertising (eg, Swedish gender equality law)?

The Danish Gender Equality Law also applies in relation to commercials. Furthermore, according to the Executive Order on commercials, sponsoring etc of programs in radio, television and on-demand audiovisual media services, advertisements must not violate the respect for human dignity or include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or other belief, disability, age, or sexual orientation. However, the rules are fairly relaxed compared to most

countries of the world, particularly Sweden. In general, the use of nude people in advertisements is not considered illegal, even if the nudity has no relation to the actual product which is the subject of the advertisement.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Not necessarily. As in most countries, Denmark has protected the right to freedom of religion and other constitutional rights.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Denmark?

Advertisers should be aware of the guidelines from the Danish Consumer Ombudsman which can be found at: www.consumerombudsman.dk.

 DOMINICAN REPUBLIC 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Dominican Republic?

The Dominican Republic does not have a specific advertising code or legislation. Dominican advertising regulation, however, is addressed across several laws, including:

- (a) the Consumer Protection Law (involving all the economic rights of the consumer including the right to be 'well informed'),
- (b) the Antitrust Law (with the first legal referral for comparative advertising),
- (c) the Copyright Law and the Industrial Property Law (with the regulation since year 2000 of unfair competition and the use of third party's trademarks), and
- (d) special regulations for specific industries, such as health, telecommunications, banking, defamation, and raffles.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

In an auto-regulation code of beer producers, 'advertisement' is defined as 'any written, radial or audiovisual communication aimed at consumers with the aim of motivating the selection of a product or service by consumers'.

There is no specific regulation for social media interaction; basically, all offers and sales through the internet are specifically regulated by the Consumer Protection Law. There are no legal obstacles on the approval of internet transactions and advertising activities because, as in many countries, the Dominican Republic has an electronic commerce law that allows for the treatment of digital communication as binding and admissible in litigation proceedings.

1.3 What is the basic regulatory framework for advertising regulation?

In the Dominican Republic the main regulatory work is as follows:

- (a) Consumer Protection Law;
- (b) Antitrust Law;
- (c) Health Law;
- (d) Law related to Breastfeeding;
- (e) Telecommunications Law;
- (f) Presidential rule on the Commission for Public Spectacles; and
- (g) Presidential rule on governmental advertising public procurement.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) The advertising on public billboards in Santo Domingo is regulated by resolution of the City Mayor. The billboards need to comply with several requirements, including safety, and the billboards need the approval of the Mayor. Billboards have been a growing business in Santo Domingo and other cities in the past twenty years.

(b) There are no special regulations for online advertising or text message advertising, but there is legislation regarding 'spam'. Such regulations state that 'spam' messages are not permitted unless:

- they come from a previous provider of such message to the consumer or
- they come from a person/company that has had previous commercial relations with the recipient or
- there is a formal and previous acceptance of the recipient.

An opt-out option and instructions need to be included in every 'spam' advertising message.

Also, if the message is an advertisement, it has to be identified as an advertisement.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

(a) The pharmaceutical and health industries are heavily regulated. All promotional materials need to be approved by the Health Agency—not only the materials to be exposed to the public but also the ones designated for health professionals. Text and illustrations to be presented to professionals need to be in accordance with the official data of the medicine held by the Health Agency. Also, direct marketing efforts to health professionals and financial support provided to conferences and congress is regulated by the Health Agency.

(b) In the telecommunications arena, the INDOTEL, as Telecommunications Agency, has enacted resolutions to set out fair advertising practices.

1.6 Are any government pre-approvals required?

Pre-approvals are required for pharmaceuticals and cosmetics. The approval needs to be submitted 30 days in advance of the start date of the campaign, although, in practice, authorization for such requests for approval is taking up to 4 months.

The decision to have pre-approvals came about because of abuse by some manufacturers regarding newspaper and TV ads for prescribed medicines. However, the authorities have not come to a complete consensus on these requirements and they still could change.

1.7 Does the media pre-clear advertising?

No. In Dominican Republic, there is no regulator for advertising across media which could give a pre-clearance that could prevent misleading, harmful or offensive advertisements.

Having said that, technically the only regulation that exists (but is not enforced) is regarding the authority of a 'Commission for Public Spectacles' for pre-clearance of:

- (a) all types of advertising, scripts for ads, books, recorded music and songs; and
- (b) specifically, the advertising of films, such as posters, pictures, and advertisements in newspapers and billboards.

This Commission was used in the 1970s to prohibit certain political or anti-religious films. The Commission still exists but does not enforce the pre-authorization of advertising.

1.8 How does the government enforce advertising laws? What are the potential remedies?

In accordance with each area, the government agencies that can enforce advertising regulations are:

- (a) Antitrust Commission ('PROCOMPETENCIA');
- (b) Consumer Protection Agency ('PROCONSUMIDOR');
- (c) Health Ministry ('MISPAS');
- (d) Telecommunications agency ('INDOTEL');
- (e) General Agency for Pharmaceuticals, Food and Sanitary Products ('DIGEMAPS');
- (f) Banking Government Agency; and
- (g) Commission for Public Spectacles.

These agencies can require an advertiser issuing false advertising to:

- withdraw the ad or campaign,
- make a rectification, and
- replace the products and/or services that were acquired by consumers as consequence of the false advertising.

The Consumer Protection Agency and the Telecommunications Agency also have the authority to impose administrative fines (calculated with reference to the minimum wage).

Only the Antitrust Commission has authority to declare the advertisement to be unfair competition.

1.9 When does a competitor have a right of action? What are the potential remedies?

The remedies depend on the forum:

- (a) Judicial courts: Civil courts do not impose fines, but are entitled to order payment of damages.
- (b) Antitrust Commission (PROCOMPETENCIA): Claims for unfair competition can be initiated by a non-competitor. The claimant does not need to be a direct competitor of the defendant. PROCOMPETENCIA has the authority to declare the advertisement to be unfair competition and to order the unfair competition to cease.
- (c) Telecommunications agency (INDOTEL): This agency is also entitled to receive claims from competitors. INDOTEL has the authority to order the unfair competition to cease and impose administrative fines.

INDOTEL has the experience to handle unfair competition claims in false advertising cases among telecommunications companies and it can place the campaign or ads temporarily on hold until the case is decided.

1.10 When do consumers have a right of action? What are the potential remedies?

The Consumer Protection Agency, PROCONSUMIDOR, has the authority to act ex officio or in response to a claim from a consumer. Consumers are entitled to initiate a claim when there is a violation of the law. Once a claim has been made, there is always a preliminary procedure of 'conciliation' of the parties.

The liability for a Consumer Law violation can be imposed upon the manufacturer, importer, distributor, retail store and anyone else that intervenes in the production and commercialization of the product or service.

The Consumer Protection Agency can issue:

- warnings;
- prohibition of the product sale;
- destruction of the ads and promotional campaign banners or materials; and/or
- seizure of advertising materials.

If there is a false claim with the intention to cause harm, the injured party is entitled to claim damages.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Dominican Republic have a primary advertising self-regulation system?

In the Dominican Republic there are auto-regulation codes, but there is no institution or council that renders decision on particular practices or advertising.

Beer producers in the Dominican Republic have a self-regulatory agreement.

The major advertising agencies formed LIDAP (now known as the Association of Commercial Communication Companies ('ADECC')), which, in the beginning, they saw as a real self-regulation policy maker, but these efforts have vanished.

The Consumer Protection Law of 2005 encourages bodies to form an advertising self-regulation system.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The former LIDAP created a self-regulatory advertising code. This refers to the principles of:

- legality, decency and truth in advertising;
- encouraging agencies and advertisers not to infringe the rights of competitors;
- the prohibition of subliminal advertising;
- the prohibition of discrimination of all kinds,
- that advertising cannot lead to illegal activities, and
- respect for institutions, family and intimacy of persons.

The code contains several topics:

- Advertising should not exploit lack of knowledge or experience;
- Topics of fear, superstition and violence should be avoided; and
- All facts must be accurate. Advertisements should not contain information or visual presentation which, by implication or ambiguity, omission or exaggeration, may lead directly or indirectly to deception of consumers regarding the product announced, the advertiser or its competitors.

The code also gives guidelines for the correct use of the word 'free' and how to show the correct price of objects and services advertised. Testimonials are also discussed, with rules to avoid confusion of the public and consumers.

In cases of violation of the self-regulation code by one of its members, the organization can take measures such as recommending the correction or removal of the ad, a private or public reprimand, and other disciplinary measures.

Advertising agencies in the Dominican Republic are in discussions to create a real self-regulation mechanism via a complete CONAR (National Council for Advertising Self-Regulation).

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Beer Producers' Code has a dispute resolution mechanism, which starts with a complaint letter addressed to the Beer Producers Association. Every member of the association is consulted. If there is no consensus, a dispute resolution committee will decide.

The possible remedies are:

- warning advice to the beer producer and the agency;
- rectification or changes in the advertisement; or
- withdrawal of the advertisement.

However, this dispute resolution mechanism has not been enforced.

2.4 Is the self-regulation system effective? Is it widely used and followed?

No—The self-regulation system is not effective and has not been implemented.

2.5 Are the self-regulatory system's decisions reported?

No decisions have been made by this system. However, the self-regulation code does not mention that decisions would be public.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The former LIDAP code establishes two 'critical' topics:

- (a) **Minors:** The code recognizes the sensibility of children and encourages advertisers to avoid exploitation of the capacity of children's imagination. Advertisements should not stimulate unreasonable expectations about the qualities or performance of a product.

Minors should not act in ads showing situations that may involve danger in real life. Ads targeted to minors must not be active performances in an atmosphere of war and personal violence.

Advertisements should not directly encourage minors to ask their parents or other adults to buy products or services targeted at adults.

- (b) **Tobacco and Alcohol:** messages should not encourage excessive consumption of those products and should not promote health benefits being received from their consumption.

2.7 Are there any other self-regulatory systems that govern advertising practices in Dominican Republic?

Beer producers have a self-regulatory agreement not to use beer logos and trademarks on clothes, toys, games or other materials oriented to children.

They have as main principles:

- responsible consumption;
- protection of minors;

- ethics in advertising; and
- strict compliance with the law.

The content of the code is focused on these principles, and it has a dispute resolution system (see question 2.3 above).

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Dominican Republic (eg, consumer protection laws, IP laws, unfair competition laws)?

- (a) **Consumer Protection Law:** One of the basic concepts is the clarity of information submitted to the consumer. Specifically for advertisements, this law states that advertising activities should be compatible with fair competition and must not mislead the consumer.
- (b) **Copyright Law:** An advertising campaign and its content may have copyright protection. Copyright law gives the author economic rights for its exploitation. Work of employees must be specially assigned to the employer, as the regular rule (that the employer keeps the ownership of the work) does not apply in the Dominican Republic. Violations of copyright can be prosecuted as criminal actions.
- (c) **Industrial Property Law (Trademark Law):** The same legislation that includes patents and designs, also includes the Trademark Law: and all together this legislation is called the Industrial Property Law. It has rules on the protection of trademarks and the way others can use third parties' trademarks. It is also important to mention that it contains the basic rules regarding unfair competition, mostly based on the violation of intellectual property rights.
- (d) **Antitrust Law:** This legislation also includes rules regarding unfair competition, specifically addressing comparative advertising, and creates the agency of PROCOMPETENCIA that acts as an administrative body to resolve cases on unfair competition in advertising.

3.2 Is substantiation required for advertising claims?

Regulations in the Dominican Republic imply that the information must be accurate. This requirement is found in the Consumer Protection Law, Industrial Property Law and in the Antitrust Law. The Antitrust Law indicates that comparative advertising is forbidden if it is not based on 'objectively demonstrable' facts or if it contains inaccurate or false information.

The beer producers' auto-regulation code refers to three cases where substantiation is required in claims:

- (a) In comparative advertising, claims must be true and of value to consumers;
- (b) Beer producers may not claim in an unfounded manner that the beers of competitors contain objectionable ingredients or additives (an exception is made in the event that the Public Health Minister or the World Health Organization have reported that such ingredients, other than alcohol, are detrimental to health).
- (c) Advertisements must not make statements about health aspects that are not scientifically verifiable.

In the LIDAP self-regulation code (that has not been enforced), it says that, in every ad, all descriptions, argumentation with facts or objective data must be verifiable. Advertisers and agencies must help in presenting the evidence.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The Antitrust Law refers to comparative advertising. In stating that this advertising should be objective, it mentions that unfair competition rules do not apply when the information or expressions used are such that, by their nature, they are received by a reasonable consumer as reflecting a subjective opinion, and thus not subject to the requirement of proof.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific rules for disclosures, only the general principles contained in the law: namely that information must be accurate and cannot be misleading.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are rules about testimonials in the self-regulation code, namely that:

- (a) testimonials must be current and verifiable;
- (b) advertising should only include personalized and genuine testimonials related to past or present experiences of the persons involved;
- (c) the use of actors dressed in the uniform of a profession or type of work must not mislead the consumer and the ad will always be limited by the ethics of that profession or occupation mentioned; and
- (d) the use of actors is always dependent on the authorization of the imitated person and should not mislead the consumer.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules for product demonstrations, only the general principles contained in the law: Information must be accurate and cannot cause any misleading.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising in the Dominican Republic has been always a topic of discussion.

The Consumer Protection and Antitrust laws refer to comparative advertising. The main principle is objectiveness.

The Antitrust law indicates that comparative advertising must be forbidden if it is not based on 'objectively demonstrable' facts or if it contains inaccurate or false information.

In the same way, the Consumer Protection Law includes the concept of 'arbitrary', in reference to the need for the offer to the consumer to have reasonable objective bases. The message should not be arbitrary, meaning that the advertising message must be proven.

The Antitrust law also includes the principle that all information and messages that by their nature are perceived by reasonable consumer as subjective and only reflect an opinion are not subject to verification.

Besides the above-mentioned rules, the self-regulation code includes others, such as:

- (a) comparison should only be made between products manufactured in the same period. It is not acceptable to compare different models from different times, unless it is to demonstrate the evolution of the product;

- (b) comparison cannot denigrate or defame products or another company's brand image, or contain statements or insinuations against the good name of third parties, or, generally, against the principles and rules of loyalty in commercial competition; and
- (c) if the comparison is with products of different specification, this must be clearly indicated in the advertisement.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The main point of the discussion mentioned above in question 3.7 above is because the Trademark Law prohibits the use of a competitor's trademark in advertising. The Trademark Law gives to the owner the exclusive use in commerce of the trademark and expressly states that this use includes advertising.

It is not clear whether the rules which refer to exhaustion of rights limit the exclusive use of a trademark, because the language in that article does not expressly accept the use of the trademark and, at the end, states that all use of trademarks under that article must be in good faith, not subject to create risk of confusion and, moreover, must not create unfair competition. The lack of clarity in this article serves to generate a discussion about the use of third parties' trademarks.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

There is a 'Made in the Dominican Republic' seal, regulated by the Ministry of Industry and Commerce, whose use is authorized to those industries that meet the requirements established for the purpose. It is a graphic representation by means of a logo, under which the products of local manufacture and free zones of the Dominican Republic are identified and recognized.

3.10 Are there any special rules governing product packaging?

Other than labeling requirements, the Dominican Republic does not have special regulations for packaging, eg, for food or beverages, although there are some initiatives in the Dominican Congress.

The Spanish language is mandatory in labeling on all products in the Dominican Republic.

Alcohol and Tobacco products only need a mention that the product harms human health. In fact, the Dominican Republic is one of the few countries that have brought a formal claim to the World Trade Organization against legislation on 'plain packaging' for tobacco products.

Pharmaceuticals, disposable medical devices, personal hygiene products and cosmetics have heavy mandatory labeling regulations.

Dominican regulations establish minimum content for food labels, namely:

- food name,
- ingredient list,
- net content and weight,
- name and address of manufacturer,
- number on the sanitary and industrial registry,
- country of origin,
- lot identification,
- marking of date, and
- maintenance instructions/instructions for use.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

In the Dominican Republic there are no special rules for dark practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules or guidance on AI in advertising.

4 PRICE ADVERTISING

4.1 What are the Dominican Republic’s rules regarding price advertising?

The Consumer Protection Law prohibits the use in advertising campaigns of images, texts, dialogs, sounds or descriptions that directly or indirectly cause or might cause a consumer to be misled in any way as to the price or conditions of the sale of the product or services advertised.

Other rules in the Law include:

- prices must be in Dominican pesos;
- prices should be marked in a clear and not confusing manner. Prices cannot be indicated in a malicious way to induce a sale; and
- prices cannot be changed depending on the form of payment used by consumer.

The self-regulation code includes two additional rules:

- if a product can be purchased individually or in a package, such form of purchase must be clearly indicated in the advertised price for each case; and
- all items that are included in the price must be clearly disclosed; this is also the case with separate accessories, especially in campaigns for children’s products and services.

4.2 What are Dominican Republic’s rules regarding advertising ‘free’ products?

The Consumer Protection Law does not have provisions on the use of the word ‘free’.

The self-regulation code indicates that the word ‘free’ or any other expression with the same meaning should only be admitted in advertising when there really is no cost involved for the consumer. All incidental costs, such as freight, taxes, etc, must be clearly noted.

4.3 What are Dominican Republic’s rules regarding sales and special offers?

Sales events, promotions and special offers must have precise terms, including the duration of the offer and volume of articles offered. The revocation or sooner termination of an offer is only valid if it has been announced via the same channels or media as the offer itself. The conditions of the special offer must be honored until such announcement.

It is prohibited to make offers to the public for a product or services not previously required by the consumer whereby an automatic charge is generated or whereby consumer silence could be interpreted as an acceptance of the charge.

Also, if a gift is delivered to the consumer at the moment a product is purchased, the consumer is not obligated to return the gift if that sale is void in the future.

4.4 What are Dominican Republic's rules regarding rebates?

Rebate campaigns must comply with the Consumer Protection Law. Advertisers must provide very detailed information on the mechanism of the rebate, including when and how the consumer receives it.

The Consumer Protection Agency is entitled to verify the veracity and exact compliance of these kinds of offers, and it has the authority to adopt all necessary remedies to obtain positive results for the consumer with respect to a specific rebate.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The Consumer Protection Law prohibits the offer of any kind of benefits that could induce error in the consumer as to the price level or quality of the goods or services offered, in particular when it could be difficult to evaluate that specific offer against other alternatives.

A consumer cannot receive a free gift that in any circumstances will generate an obligation to buy or pay for a subscription.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

(a) As in many countries, there is restrictive legislation in the Dominican Republic on advertising breastfeeding substitutes. Dominican Law prohibits the advertising and promotion of:

- breast milk substitutes, including infant formula;
- other milk products, foods and beverages, including bottle-fed complementary foods that might be marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast milk;
- feeding bottles teats, udders and pacifiers.

The Dominican Law has stronger prohibitions than the International Code of Marketing of Breast-milk Substitutes of the World Health Organization.

(b) Pharmaceuticals by prescription cannot be advertised to the public, only promoted to medical doctors.

Also in the health sector, it is prohibited to grant, offer or promise premiums, cash benefits and benefits in kind to persons qualified to prescribe pharmaceuticals. This prohibition is extended up to the second degree of kinship.

(c) Narcotics are specially banned from advertising. This prohibition includes all messages intended to encourage the use of those substances.

(d) The reproduction of money bills and coins is prohibited. Such printing has not been allowed by the Dominican Central Bank, even in cases in which it has been obviously very different in size and color of the Dominican currency (peso).

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There is legislation regarding 'spam', which prohibits the sending of commercial messages without the authorization of the recipient.

Also the Banking Government Agency has enacted regulations to restrict telephone calls for telemarketing credit cards, financial and banking services.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Commission for Public Spectacles' main duty is to monitor the decency of all content in radio and TV. However, when, in September 2018, an operator of a public video screen briefly displayed a pornographic movie instead of advertising to passing traffic, the company was fined by the City Council rather than by the Commission (the City Council is the institution that leases the public space for advertising).

At least one TV commercial has been banned for indecency. The ad was for Clorets chewing gum and it was entitled 'War of kisses'. In this ad, one group of men and another of women were preparing to initiate combat, and the 'attack' was kissing the opponent. The claim in this case was initiated by the Consumer Protection Agency.

In August 2014, a Miley Cyrus concert was suspended on the basis of immoral behavior and bad influence on Dominican society. Since then, several other controversial and modern artists have performed in the Dominican Republic.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The self-regulation code indicates that all advertising must clearly identify the advertiser, either by the product or by the name of manufacturer or distributor.

When developing an advertisement, the advertiser or the agency must be clearly identified to the media. This is very important information because of the liabilities that arise from the ad campaign. The media should not accept ads where parties involved are not identified.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

In Dominican Republic there is no specific regulation for brand-produced content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There is no special disclosure or other obligation for the integration of advertising with other content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

In the Dominican Republic, there are no special rules for online or social media advertising. General rules apply, such as intellectual property (counterfeit stores have been detected in the Dominican Republic using social media), pharmaceuticals advertising laws, and unfair competition laws (when using trademarks and copyright content of others). The Consumer Protection Agency has acted in some cases and a police department specializing in computer crimes has acted as well.

For promotions, the Consumer Protection Agency has rules and guidelines addressing promotions in general that, of course, apply to internet and social media.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

As there are no specific rules for online advertising, the general rules apply. If there is a call to action by the advertiser (ie, in the rules of the promotion, messages to users, etc) that invites or encourages the violation of rights of third parties, then the advertiser will be liable for the user generated content. Other than that, the advertiser will not be responsible.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

A well-known Dominican Republic advertising agency created a campaign for the cigar industry that was very similar to a Mexican campaign for ChapStick that was developed in 2005 (graphics and concept—both related to 'kisses').

Both campaigns received national and international awards in the years that they were presented. The Mexican company did not commence, or even threaten, litigation against the Dominican company. However, Dominican blogs started to comment about it on the internet, and two people created a group on Facebook to criticize the Dominican campaign and encouraged others to do so. Direct comments were posted by two people and followed by a group of Facebook users.

The Dominican advertising agency started judicial investigation into the two people who formed this group on the grounds of defamation. The group was deleted and parties settled.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

In the Dominican Republic all 'personality rights' have been recognized by the Constitution of 2010. There are rules in other legislation too; all of which also apply to advertising:

- (a) **Image and copyright:** the Copyright Law creates the right of image, in which individuals are entitled to prevent the use of their photograph (real image) in commerce without their authorization.

In one case related to advertising, the courts recognized that the image right is very personal, and an organization, without previous and express authorization, does not have the right to claim injustice on behalf of each of its members. In this case, a picture of the Dominican volleyball team was used without authorization in advertising for telephone cards. The volleyball federation acted as plaintiff in that case.

Celebrities have been protected by court decisions regarding their right of publicity. Also, courts have also had the opportunity to consider what can constitute an 'image', in order to determine its violation. Courts have considered that an image does not need to be the exact picture of a person and that the 'image' of a person can result from other elements (words, sounds, etc).

- (b) **Unfair competition:** Dominican trademark law considers unfair competition and prohibits the use in advertising of:
- unfair advantage of the prestige or reputation of a person; or
 - acts capable of harming or diluting the prestige or reputation of a person, even if confusion is not caused.

9.2 Are there situations when permission is not required?

It is important to mention that the Copyright Law permits the publication of a photograph if it relates to scientific, educational or cultural purposes in general, or to facts or events of public interest or that have occurred in public.

However, such use is very restricted by Dominican courts. In one case, a Dominican show business celebrity was at a product launch event in a bar of Santo Domingo. The event was filmed, and the video was later edited and used as an infomercial. The courts recognized the right of image of the claimant.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There is no pre-clearance of advertising in general; only for pharmaceuticals and cosmetics.

Among the requirements for advertisements for pharmaceuticals and cosmetics are:

- (a) Media where the advertising is going to be shown: Electronic and hard copies of the project, such as texts, drawings, announcements, flyers, signs and all elements to be used should be specified.
- (b) If the advertising is going to be on radio, TV, movies or other visual media: The Health Authorities should review all specific materials, such as videos, tapes or electronic media with all the sequences and scenes.

In the Colonial Zona of Santo Domingo and for any monuments, filming and taking photographs for an advertising production need previous authorizations from Minister of Culture and City Council.

Additionally, buildings that are architectural works protected by copyright must have the copyright owner's consent to film the area.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

In addition to any intellectual property concerns that may apply, the self-regulation code states that advertisers cannot use third party 'concepts', especially when there are well-known elements associated with the other advertiser.

Similar rules concern the avoidance of plagiarism and confusion with previous copyright works.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Dominican Republic which affect advertising (eg, Swedish gender equality law)?

Other than the general equality rights provision included in the Dominican Republic Constitution, and the international treaties against the discrimination of women, the Dominicans do not have this kind of rules.

There is a bill passing through Congress for a 'General Law on equality and non-discrimination', that defines the assumptions that constitute 'discrimination' and classifies them. It then envisages a number of implementation-guarantee mechanisms, putting into the hands of citizens a series of mechanisms to protect and ensure respect for the rights of all.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

We could say that there are no religious concerns for advertising practices in the Dominican Republic, but it is prudent to avoid using Catholic or religious images in advertising.

However, the Commission of Public Spectacles has the power to prohibit any publicity contrary to morals and good religious customs.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Dominican Republic?

The Consumer Protection Agency, PROCONSUMIDOR, has become a very important agency in the Dominican Republic.

PROCOMPETENCIA, the Dominican antitrust agency, has, by law, the obligation to oversee unfair competition on advertising. PROCOMPETENCIA has decided several cases that involve claims of unfair advertising.

DUTCH CARIBBEAN

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the Dutch Caribbean?

There is no general law on advertising in the Dutch Caribbean. Rules on advertising can be found in several laws, eg: the Civil Code (misleading advertising); and legislation on intellectual property (copyright and trademarks); packaged pharmaceutical products; food labelling; tobacco; e-commerce; games of chance; broadcasting; and public order. See question 3.1 below.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

According to the Civil Code ‘advertising’ is a public announcement regarding goods and services offered in the conduct of a business or profession. The E-commerce law of the respective territories uses the term ‘commercial communication’, which includes all forms of offering and advertising goods and services through electronic means coming from or targeted at Aruba, Curaçao, Sint Maarten and the Caribbean Netherlands (Bonaire, Sint Eustatius and Saba) aimed at the conclusion of agreements.

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework for advertising regulation is mainly civil and administrative legislation. Some areas (eg, advertisements visible from a public street, and samples of pharmaceutical products) are further regulated in policy guidelines.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Type of advertising practice that are specifically regulated are:

- (a) Packaging and labelling of food products;
- (b) Advertising of strong alcoholic beverages (over 21% alcohol) via media,
- (c) Advertising of tobacco products (explicit regulations in Aruba and the Caribbean Netherlands);
- (d) Advertisements on public streets;
- (e) Commercial communication via electronic means;
- (f) Advertising of packaged pharmaceutical products;
- (g) Chance-based promotions; and
- (h) Distance selling.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

The following industries have their advertising practices specifically regulated:

- (a) pharmaceutical products;
- (b) strong alcoholic beverages;
- (c) tobacco products (explicit regulations in Aruba and the Caribbean Netherlands);
- (d) food and drink; and
- (e) games of chance.

1.6 Are any government pre-approvals required?

Government pre-approvals are required if, eg, a chance-based promotion is not aimed at stimulating sales or increasing turnover, or if payment of a monetary sum is required to take part in a chance-based promotion that is not aimed at stimulating sales or increasing turnover.

Pre-approvals are also required for advertisements that are visible from a public street and for certain packaged pharmaceutical products.

1.7 Does the media pre-clear advertising?

Pre-clearance is not required, but the media may refuse to broadcast advertisements that do not comply with legal requirements or with generally accepted international advertising standards.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The law of public order (advertisements visible from a public street), telecommunication (broadcasting), packaged pharmaceutical products, commodities, food and drink, tobacco products, e-commerce and games of chance are enforced by the competent government authorities of the respective territories.

Remedies include a penalty and removal of the advertisement at the cost of the advertiser.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor can bring legal action in a case of misleading advertising or a violation of advertising rules in other legislation, on the basis that it constitutes a wrongful act, usually unfair competition.

Legal remedies include a prohibition on continuing the advertisement, a penalty, rectification, and damages.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers can bring legal action in a case of misleading advertising or a violation of advertising rules in other legislation, on the basis that it constitutes a wrongful act.

Legal remedies include a prohibition on continuing the advertisement, a penalty, rectification, damages.

In the case of distance selling, consumers can, in principle, dissolve the purchase agreement.

Consumers may also alert the competent government authorities and consumers' rights organizations of violations.

2 SELF-REGULATORY FRAMEWORK

2.1 Does the Dutch Caribbean have a primary advertising self-regulation system?

No.

2.2 Is there a self-regulatory advertising code? What are the key principles?

N/A

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

N/A

2.4 Is the self-regulation system effective? Is it widely used and followed?

N/A

2.5 Are the self-regulatory system's decisions reported?

N/A

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

It is advised to adhere to generally accepted international standards.

2.7 Are there any other self-regulatory systems that govern advertising practices in the Dutch Caribbean?

N/A

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in the Dutch Caribbean (eg, consumer protection laws, IP laws, unfair competition laws)?

The following are the basic laws governing advertising claims in the Dutch Caribbean:

- Civil Code;
- Decree on Labeling Food Products;
- Decree on Packaged Pharmaceutical Products;
- Decree on Promotion of Pharmaceutical Products on Television;
- Decree on Advertising Strong Alcoholic Beverages on Television;
- Media Decree (Caribbean Netherlands);
- Commodities Ordinance;
- Copyright Ordinance;
- Trademark Ordinance;
- Public Order Ordinance;
- General Police Ordinance;
- E-Commerce Ordinance
- Ordinance Restricting Tobacco Products; and
- Personal Data Ordinance.

3.2 Is substantiation required for advertising claims?

Yes, substantiation is required—particularly to prevent advertising claims from being misleading, dishonest, untruthful and unverifiable.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

This is not provided for by law.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific rules regarding disclosures. The general rule governing advertisements applies; namely, that they must be honest, truthful and verifiable and may not be misleading.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no specific rules for endorsements and testimonials. The general rule governing advertisements applies; namely that they must be honest, truthful and verifiable and may not be misleading.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules on product demonstrations in advertising. The general rule governing advertisements applies; namely that they must be honest, truthful and verifiable and may not be misleading. Further, it is recommended to observe generally accepted international standards.

However, certain industries have specific rules that are also relevant: eg,

- alcohol and tobacco advertisements may not target minors; and
- special rules apply for the distribution of samples of packaged pharmaceutical products.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

There are no specific rules on comparative advertising. However, according to case law, the permissibility of comparative advertising must be interpreted in accordance with the Dutch Civil Code provisions on comparative advertising (Dutch Civil Code article 6:194a).

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Unauthorized use of copyright or trademarks could constitute infringement and exposure to damages, among other things.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

No special rules apply, but the advertisement must not be misleading and must be honest, truthful and verifiable.

3.10 Are there any special rules governing product packaging?

- (a) Packaging of food products must include:
 - (i) the product designation (eg, common product denomination, product description or clear description of the use of the product);
 - (ii) the use of statements (eg, list of ingredients, place of origin) or representations; and
 - (iii) expiration date of food products.

- (b) Packaging of packaged pharmaceutical products must include:
 - (i) the name of the product;
 - (ii) the name and place of establishment of the manufacturer or importer;
 - (iii) the quantitative composition of active ingredients in usual language and in clearly legible letters and numbers;
 - (iv) instructions for use and storage; and
 - (v) the date by which the product must be used.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no specific rules or guidance on ‘dark practices’. The general rule governing advertisements applies; namely that they must be honest, truthful and verifiable and may not be misleading. It is recommended to observe generally accepted international standards and good commercial practice.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no specific rules or guidance on artificial intelligence. The general rule governing advertisements applies; namely that they must be honest, truthful and verifiable and may not be misleading. It is recommended to observe generally accepted international standards and good commercial practice.

4 PRICE ADVERTISING

4.1 What are the Dutch Caribbean’s rules regarding price advertising?

- The price of advertised products and services, or the manner in which this is calculated, must be stated clearly, including costs and commissions.
- The price of products and services advertised to consumers must include taxes.
- If specific conditions apply, they must be mentioned in clear language.
- In the case of distance selling, the costs of delivery and the costs for use of technology for distance communication (if higher than the basic fee) must be mentioned.

4.2 What are the Dutch Caribbean’s rules regarding advertising ‘free’ products?

Free products may be advertised. However:

- Samples of pharmaceutical products for which a doctor’s prescription is required may only be offered to healthcare providers.
- Alcoholic beverages and tobacco products may not be offered to minors.

4.3 What are the Dutch Caribbean’s rules regarding sales and special offers?

The general rule of advertisements applies: advertisements for sales and special offers must be honest, truthful and verifiable and may not be misleading. The applicable conditions must be stated in clear language.

4.4 What are the Dutch Caribbean's rules regarding rebates?

The general rule of advertisements applies: advertisements regarding rebates must be honest, truthful and verifiable and may not be misleading. The applicable conditions must be stated in clear language.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

It is advised to observe general internationally accepted standards and good commercial practice.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- Strong alcoholic beverages may not be advertised to minors. Advertisements for such products on television and radio may, in principle, only be broadcast between the hours of 10.00 pm and 1.00 am.
- Pharmaceutical products may be advertised only under certain conditions.
- The legislation of Aruba and the Caribbean Netherlands regarding tobacco products explicitly prohibits the advertising of tobacco products to minors.
- Products and services that are in conflict with the law or moral standards may not be advertised.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- Advertising on public streets is prohibited unless this has been pre-approved.
- Marketing to email addresses and to mobile telephones is not allowed if the consumer has indicated that such is not desired.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

There is no specific regulation on indecency or obscenity in advertisements. However, action can be taken if the advertisement is in conflict with general principles of law (eg, it constitutes a criminal offence or is in conflict with public order or morals).

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The identity of the advertiser/sponsor must be revealed for transparency reasons and to avoid misleading advertising. Advertisements can be misleading in relation to the identity, capacities, competence or authority of the advertiser and/or the person who manufactures or offers the products or provides the services, or under whose leadership or supervision or with whose cooperation the products are manufactured or offered or the services are provided.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules governing the integration of advertising content and entertainment (or editorial) content. The general rule of advertisements applies; namely that they must be honest, truthful and verifiable and may not be misleading. It is further recommended to observe general accepted international standards.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no specific rules for disclosure or other obligations when integrating advertising content with other content. The general rule governing advertisements applies; namely that they must be honest, truthful and verifiable and may not be misleading. The generally accepted international standards apply.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no specific laws for advertising on social media. However, it is advised to observe, in particular, the rules relating to distance selling in the Civil Code and the E-Commerce Ordinance, eg:

- (a) clear identification of the advertiser and the seller and the products and services advertised;
- (b) description of the main characteristics of the product;
- (c) provision of a clear and simple way for the consumer to object to receiving such advertisements; and
- (d) identification of the region to which the advertisement pertains.

In addition, rules for authorized use of intellectual property must be observed, as well as the protection of the personal data of individuals. The general rule governing advertisements applies; namely that they must be honest, truthful and verifiable and may not be misleading.

Generally accepted international standards must also be considered.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Advertisers are responsible for communications regarding products and services offered in the conduct of a business or profession, this is also the case if this is done through electronic means, eg, the advertiser's website and Facebook page. Advertisers must ensure that advertisements of their products and services are honest, truthful and verifiable, and not misleading.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

N/A

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The advertiser must obtain prior authorization from the individual concerned for use of that individual's name, picture, likeness, voice and identity in advertising.

9.2 Are there situations when permission is not required?

Although there may be situations where, according to Dutch case law (which is generally followed in the Dutch Caribbean) permission would not be required to use the picture and identity of individuals, it is nonetheless recommended to seek the individual's prior authorization to use their name, picture, likeness, voice and identity in advertising. The perception in the Dutch Caribbean regarding the use of such qualities of individuals, mainly public figures, in advertisements without their prior consent could differ. However, there have been no court cases on the subject as yet.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Trademarks and works protected by copyright must be cleared prior to use in advertisements. There are no specific rules relating to the use of historic places in advertisements. Buildings that are permanently visible on a public street can be reproduced if the size of the reproduction or the procedure by which it is produced shows a clear difference with the original work and reproduction is limited to the exterior of the building.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The use of other companies' recognizable products in advertising is not possible without prior authorization, as this can lead to infringement of copyright or trademark rights. Although limited use of copyrighted works may be possible under certain conditions, advertisers are nonetheless encouraged to seek prior consent, particularly considering the commercial purpose of advertisements.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the Dutch Caribbean which affect advertising (eg, Swedish gender equality law)?

There are no specific rules that affect advertising. It is advisable to observe local moral standards and acceptable social conduct.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Caution should be exercised in advertisements to avoid them offending ethnic, gender, cultural, disability or religious groups in the community.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the Dutch Caribbean?

The legislation of, and practices in, the territories of the Dutch Caribbean (Aruba, Curaçao, Sint Maarten and the Caribbean Netherlands (Bonaire, Sint Eustatius and Saba)) is basically the same across the board, but deviates on specifics. Advice should be sought for the specific territory of the Dutch Caribbean in which the advertisement is to be placed. Advertisements may be in Dutch and English (and, additionally, Papiamentu where Aruba, Curaçao and Bonaire are concerned), as these languages are official languages, whereas Spanish is widely spoken in Aruba, Curaçao and Bonaire.

 ECUADOR 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Ecuador?

There are three principal areas of law and regulation pertaining to advertising in Ecuador:

- (a) The main regulator is the Organic Law of Communication (June 2013—reformed in 2022) and its Regulatory Statute (September 2023);
- (b) The Organic Law of Consumer Protection (July 2000—reformed in 2022) and its Regulatory Statute (March 2001) also serve to regulate advertising.
- (c) Finally, there are sector-specific laws that concern advertising for particular goods or services, such as tobacco, alcohol, processed food, health products, among others.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The Organic Law of Consumer Protection defines advertising as ‘any commercial communication or ad directed by an announcer to consumers, using any suitable means, to inform and motivate them to purchase a good or hire a service’.

1.3 What is the basic regulatory framework for advertising regulation?

There are two main regulatory bodies that provide the legal framework for advertising. First, the Organic Law of Communication, in Section V, regulates general aspects of advertising, while Section VI addresses the topic of domestic production. Additionally, its Regulatory Statute further explains the norms established by the Law and delineates the scope of certain advertising concepts.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

In Ecuadorian legislation there are a few types of advertising practices specifically regulated, particularly data messages advertising and comparative advertising:

- (a) **Data message advertising** is regulated by the Law of Electronic Commerce, Signatures and Data Messages, which establishes that, when sending data messages, either individually or through mailing lists, the issuer must provide means for the recipient to confirm the subscription and the recipient must be able to request to unsubscribe at any time. The issuer must comply with a request to unsubscribe immediately.
- (b) For **comparative advertising**:
 - (i) Decision 486 of the Andean Community establishes that a trademark does not confer the right to prevent third parties from using the brand for advertising—including comparative advertising, offering for sale or indicating the existence or availability of products or services—as long as the use of the trademark is made in good faith.
 - (ii) However, the Regulatory Statute for the Regulation and Control of Advertising and Promotion of Processed Food Products prohibits comparative advertising for processed food products.

- (iii) In addition, the Organic Law of Regulation and Control of the Market Power states that the comparison of activities, services or products—including comparative advertising—is considered unfair when the comparison refers to extremes that are not similar, relevant and verifiable.
- (iv) Comparative advertising regarding processed food products is forbidden.

See also question 3.7 below.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are several industries that are subject to specific laws which govern their advertising, and/or there are specific provisions that apply to these industries in the laws that address general advertising. The following are some of the main ones:

- (a) **Alcohol:** The Organic Law of Communication prohibits advertising of alcoholic beverages; advertising is only allowed inside the place where the product is being marketed, where access is exclusively for people over the legal drinking age. However, the recently enacted Regulatory Statute mentions that beverages that do not exceed 5% alcoholic content may be advertised.
- (b) **Tobacco:** According to the Organic Law of Communication, all forms of tobacco advertising are prohibited, advertising is only allowed inside places where the product is marketed. The Organic Law for the Regulation and Control of Tobacco establishes that the external packaging and labeling of tobacco products sold within the national territory must include legends and pictograms or warning images showing the harmful effects of consumption of tobacco products.
- (c) **Food:** According to the Regulatory Statute for the Regulation and Control of Advertising and Promotion of Processed Food Products:
 - (i) The advertising of processed food products must be in Spanish and cannot induce or promote harmful habits, nor should it distort or contravene the provisions of education regarding nutrition, hygiene and health established by the Public Health Ministry.
 - (ii) The appearance of minors in advertising material is prohibited as well as the use of images that idealize the products.
 - (iii) In terms of processed products with high levels of fat, sugar and salt, the health authority shall apply restrictions so that the advertisement does not negatively influence the consumer, particularly children (eg, such products may not be sold or advertised in schools).
 - (iv) Comparative advertising regarding processed food products is forbidden, although comparisons regarding nutrient properties and content, as well as health properties, are allowed on the labeling of the products.
 - (v) The advertising must be based specifically on the characteristics or specifications of the food approved by the Sanitary and Control Agency.
 - (vi) Advertising of processed food with mandatory sanitary registration must be adjusted to its nature, composition, origin and quantity of the food packaging in such a way as to avoid any misunderstanding of its qualities or benefits.

- (vii) Advertising of processed foods should include preventive messages, as well as messages promoting a balanced diet and good hygiene habits.
- (viii) It is essential that the advertising of processed foods include indications of correct handling of the product, and promote the practice of sports and the consumption of natural foods.
- (ix) The advertising of energy drinks or other similar products will use the warning described below and will specify that this product has a direct impact on the health of the people by the consumption of them: 'Product not recommended for diabetics, minors, pregnant women, people sensitive to caffeine, and elderly people with cardiovascular and gastrointestinal diseases.
- (x) Advertising of processed foods is prohibited from:
 - claiming that the product, on its own, fulfills nutritional requirements;
 - attributing to industrialized foods a superior or different nutritional value to the one they really have;
 - making comparisons disadvantaging the properties of natural foods;
 - indicating or suggesting that the consumption of a processed food determines physical, intellectual or sexual characteristics of the individuals;
 - exaggerating characteristics or properties of processed foods;
 - associating, directly or indirectly, the consumption of processed foods with alcoholic beverages;
 - attributing health properties that cannot be verified or attribute properties that heal, treat or cure diseases; or
 - suggesting that the product has ingredients or properties that it lacks;
- (xi) There are also several restrictions regarding labeling such as the use of minors, celebrities, comparisons, quality certifications, etc.

1.6 Are any government pre-approvals required?

No government pre-approvals are generally required for advertisements, except for:

- (a) food and health products which must have an authorization granted by the Ministry of Health;
- (b) promotional contests, sweepstakes, raffles, etc, which need pre-approval from the Ministry of Internal Affairs when based on chance (otherwise a 'simple notification' will suffice). The following must be provided when applying for pre-approval:
 - (i) petition brief;
 - (ii) certified copy of the document of legal existence of the company and the appointment of its legal representative;
 - (iii) terms and conditions for the promotion including its term, territory, mechanics and details of the draw;
 - (iv) certified copy of the invoice for the prize(s) to be awarded, or declaration and attached documents proving existence of the prize and its market value;
 - (v) bank warrant or mortgage for the total value of the prize(s) to be awarded;
 - (vi) copy of the ticket or document handled by the consumer as evidence of the sweepstake; and
 - (vii) payment of official fee.

1.7 Does the media pre-clear advertising?

In the Ecuadorian system, the media does not pre-clear advertising; there is no institution, either public or private, in charge of this activity.

Nonetheless, the media, along with the announcer and the producer of an advertisement piece, are also liable for the broadcasting of advertisements that are contrary to the Communications Law and its Regulatory Statute. Therefore, even if the media is not required to pre-clear advertising, clearance procedures may be in place to prevent future liabilities.

1.8 How does the government enforce advertising laws? What are the potential remedies?

There are some government institutions that indirectly regulate and control advertising and communication issues. One of them is the Board of Regulation and Development of Information and Communication, which is an academic legal body that is responsible for regulating and implementing regulations and mechanisms to promote and protect communication and information rights. It has the following functions:

- (a) to establish mechanisms to exercise users' rights;
- (b) to develop universal access to communication;
- (c) to regulate rating content and slots;
- (d) to conduct studies on the behavior of the community regarding media content; and
- (e) other functions established by law.

This entity has an Advisory Council that acts as a consultant in processes about information and communication.

Finally, the Contravention Judge may impose sanctions regarding advertising that has affected consumer rights by not complying with the general principles: namely, that the advertising be adequate, truthful, clear, complete, and well-timed.

1.9 When does a competitor have a right of action? What are the potential remedies?

- (a) According to the Organic Law of Regulation and Control of Market Power, any competitor whose rights have been violated can initiate a procedure before the Superintendency of Economic Competition. Once the complaint is filed, the authority validates it and informs the presumed infringer, who then has to submit explanations within fifteen days. After this time, if the body of substantiation believes that the offense might exist, an investigation process is initiated for the term of sixty days, and if it is considered necessary, a hearing can be scheduled. Once the research is completed, the substantiation body notifies the defendant in order for it to respond within fifteen days. If there is no answer, the procedure continues *in absentia*. Finally, the resolution body of the Superintendency of Economic Competition gives a reasoned decision within ninety days. This resolution can be challenged by administrative review.

Potential remedies include corrective advertisement, fines, or the temporary close of business of the infringer in addition to fines.

- (b) Also, a competitor can file a complaint under the Organic Law of Consumer Protection, and bring the issue before a Contraventions Judge, but only when consumer rights may be at stake. The procedure is similar to that of a civil suit.

Potential remedies include fines and removing the broadcasting of the infringing content, among other kinds of corrective action to remedy the damages caused.

- (c) In any case, if compensation for damages is to be sought, it must be done independently through a civil lawsuit.

1.10 When do consumers have a right of action? What are the potential remedies?

According to the Organic Law of Consumer Protection, any consumer whose rights have been violated can file a complaint before the Public Defender or go directly to the Contraventions Judge, who is the competent authority to resolve disputes relating to this law (the exhaustion of the first stage is not mandatory, and the Public Defender does not issue a resolution but only an opinion that may be considered by the judge).

In the event that the consumer decides to go to the Public Defender, a procedure is followed in accordance with the regulations established by the Organic Law for Public Defense. This procedure concludes with the issuance of a report that will serve as evidence in the procedure before the Contravention Judge.

Regarding the judicial procedure, once the lawsuit is filed, the defendant is served, and the Judge sets a date and time to hold a hearing. During the hearing, parties submit their evidence after which a judgment is rendered straightaway or within three days.

Remedies are the same as set out in question 1.9 above, including the need for a civil lawsuit if compensation for damages is sought.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Ecuador have a primary advertising self-regulation system?

Today, Ecuador does not have a primary advertising self-regulation system.

All regulations are State mandated through the laws previously referred to, and the systems currently in place are also State controlled.

2.2 Is there a self-regulatory advertising code? What are the key principles?

There was an Ecuadorian Code of Ethics and Self-Regulation of Advertising ‘(the Code)’, issued in 1982 by the Ecuadorian Associations of Advertising Agencies and Radio and Television Broadcasters, Magazines, among others, which was accepted as a legal means of self-regulation and control.

This Code was designed primarily as an instrument of self-discipline for the advertising industry. For instance, there were rules about the respectability and honesty of advertising and how ads should be presented to children. It also contains regulations regarding comparative advertisement, ethical practices between the agencies, and non-appropriation or misuse of others’ campaigns, especially those designed to create expectations (ie, ‘coming soon’), etc.

Nowadays, the code has fallen into disuse, and the Associations of Advertising Agencies such as the Ecuadorian Association of Advertising Agencies only have internal codes of ethics but not of self-regulation.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Code does not have a mechanism of dispute resolution per se. Under the previous Law of Consumer Protection (1990), the Special Committee of Advertising, an entity that could apply the rules contained in the Code, was in charge of dispute resolution in advertising. However, under the current Organic Law of Consumer Protection, no general self-regulatory systems are in place, and all disputes are to be brought to and handled by the official institutions, namely the Contraventions Judges, the Superintendency of Economic Competition, and the Superintendence of Communications, through the legal procedures mandated by the laws and regulatory statutes in these areas (see questions 1.8, 1.9 and 1.10 above).

2.4 Is the self-regulation system effective? Is it widely used and followed?

As mentioned, at present the self-regulatory system based on the Code is practically obsolete, so currently it is not an effective system.

2.5 Are the self-regulatory system's decisions reported?

The decisions adopted by the Special Committee of Advertising were not made public and were reported only to the parties themselves.

Currently, the decisions adopted by the Advertising Agencies Association are also privately reported only to the parties.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Under the Code, the principles that companies should be aware of are:

- respectability,
- honesty,
- genuine presentation of products and
- following parameters that do not lead to violence, superstition, or fear.

Additionally, there are some areas that advertisers should consider such as:

- the use of promotional expressions,
- environmental protection,
- privacy protection and
- how advertising should be directed to children.

Finally, the last part of the Code focuses on:

- the responsibility of the advertiser, advertising agency, and the media.

Although the Code is no longer enforceable, the principles contained therein are considered common practices of the trade, and can be presented as evidence in an official proceeding.

2.7 Are there any other self-regulatory systems that govern advertising practices in Ecuador?

No.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Ecuador (eg, consumer protection laws, IP laws, unfair competition laws)?

The basic laws governing advertising claims are the Organic Law of Communication and its Regulatory Statute, the Organic Law of Consumer Protection, and the Organic Law of Regulation and Control of Market Power.

Other rules may be found in particular pieces of legislation. Among the most relevant are:

- (a) the Intellectual Property law and its Regulatory Statute,
- (b) the Andean Decisions on Industrial Property, Copyright and Breeders Rights (Decisions 486, 351, and 345, respectively),
- (c) the Health Code, and
- (d) the Regulatory Statute for the Promotion and Advertising of Processed Food Products.

3.2 Is substantiation required for advertising claims?

Under the Organic Law of Consumer Protection, consumers have the right to receive adequate, accurate, clear, timely, complete, and true information about the goods and services offered in the market. Thus, providers must have all the technical, practical, and scientific data that support their advertising material and claims. This implies that consumers are protected against improper and misleading advertising.

Also, the Organic Law of Regulation and Control of Market Power indicates that disseminating incorrect or misleading information constitutes a deceitful act. Therefore, the advertiser must possess evidence to validate all claims, as this is information that can be required by the authorities in order to substantiate advertising claims.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The former Regulatory Statute to the Communications Law of 2014 used to provide that advertising that uses creative resources to emphasize or promote the characteristics of a product is not considered misleading as long as it does not induce the consumer to misinterpret the composition, quantity, certification, prize, origin, benefits, consequences, contraindications and uses of the good or service. This was interpreted as a way to justify the use of puffery and other similar claims, so long as their use does not actually cause confusion among consumers and could be construed as a creative way to enhance the appeal of a good within the legal boundaries.

However, since the Regulatory Statute to the Communications Law has been repealed, and the recently enacted General Regulation to the Organic Communication Law of 2023 does not regulate this matter, there is currently no parameter to determine the possibility of considering puffery or other types of advertising messages as an exception to substantiate their claims, and therefore, according to the Organic Consumer Defense Law, advertising claims (ie puffery) could be considered misleading: ‘Any form of information or communication of a commercial nature, whose content is totally or partially contrary to the actual conditions or acquisition of the goods and services offered or that uses texts, dialogues, sounds, images or descriptions that directly or indirectly, and even by omission of essential data of the product, induces deception, error or confusion to the consumer.’

3.4 What are the rules governing the use of disclosures in advertising?

There are no particular rules governing the use of disclosures in advertising in Ecuadorian legislation, and thus all use of disclosures must follow the same general rules of communication and advertising, such as veracity, truthfulness, and the adequate use of advertising in a way that is not misleading or misrepresents the product or services, etc.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are a few rules that relate to endorsements or testimonials in advertising in Ecuador. For instance:

- (a) The Regulatory Statute for the Regulation and Control of Advertising and Promotion of Processed Products mandates that advertising of alcoholic drinks cannot be associated with sporting success. Therefore, recognized athletes cannot participate in the advertising of alcoholic beverages in order to promote teams, sporting facilities or sports equipment.
- (b) Private trading companies of infant formulas cannot sponsor public events.
- (c) Similarly, the tobacco industry cannot sponsor sporting events; this includes manufacturers, importers or distributors of cigarettes or snuff products.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules governing the use of demonstrations in advertising. Therefore, advertisers must follow the general parameters pertaining to truthful advertising. Consequently, all information given to consumers must be supported with technical, practical and scientific data.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

The Ecuadorian system allows comparative advertising; however, there is no particular law that deals with comparative advertising specifically. Rather, a group of laws may inform advertisers about best practices:

- (a) According to Decision 486 of the Cartagena Agreement, the owner of a trademark does not have the right to prevent third parties from using the trademark in comparative advertising.
- (b) The Organic Law of Regulation and Control of Market Power establishes that the comparison of activities, services or products—including comparative advertising—is considered unfair when it refers to extremes that are not similar, relevant and verifiable.
- (c) Under the Regulatory Statute for the Regulation and Control of Advertising and Promotion of Processed Food, comparative advertising is prohibited for these types of products.
- (d) Offensive comparisons are prohibited, as they may be deemed an act of unfair competition.
- (e) The Regulatory Statute for the Promotion and Advertising of Medicines expressly prohibits the comparison of medicines of all kinds (including natural or homeopathic medicines).

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

According to Decision 486 of the Cartagena Agreement, the owner of a trademark does not have the right to prevent third parties from using the trademark or the name of brand, even in comparative advertising. Any advertiser may advertise the existence or availability of lawfully trademarked goods or services. Nonetheless, the use of the trademark must be in good faith and with the sole purpose of informing the public, and it must not mislead or confuse consumers about the commercial origin of the goods or services.

Likewise, the use of a third party's trademark, even in advertising, cannot cause commercial or economic damage to its owner, or the dilution of the distinctiveness or value of the trademark.

Also, competition laws prevent the use of the name or brands of a competitor in a degrading way, as this can be an act of unfair competition.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Although there is no specific norm that regulates claims relating to geographical origin, such a claim will be subject to the general requirements of advertising (mandated by the Consumer Protection Law and the Communication Law), that the information provided must be true and that does not generate deception in the consumer.

However, when it concerns intellectual property, according to the regulations, there is a prohibition on the use and registration of a denomination of origin protected in its country of origin and recognized in Ecuador.

3.10 Are there any special rules governing product packaging?

- (a) The basis for the regulation on product packaging is found in the Regulatory Statute for the Regulation and Control of Advertising and Promotion of Processed Food Products and in the Sanitary Regulation of Food Labeling Processed for Human Consumption (November 2013). Since 2014 it has been mandatory that the packages of processed food include 'traffic light' labels, framed, and placed on a white or gray background and proportional in size to the front panel of the product package. The label shows in color the amounts of sugar, fat, and salt in processed foods using this system as a traffic light signal, where red indicates high content, yellow indicates medium content; and, green indicates low content.
- (b) The Organic Law for the Regulation and Control of Tobacco establishes that the external packaging and labeling of tobacco products sold within the national territory must include legends and pictograms or warning images showing the harmful effects of their consumption, subject to the following provisions:
 - (i) the warnings shall be elaborated and approved by the National Health Authority;
 - (ii) they shall be printed in a rotating and rotating manner every year directly on the packages;
 - (iii) they shall be of high preventive impact, clear, visible, legible, and shall not be obstructed by any means;
 - (iv) they shall include pictograms and messages related to the harmful effects of tobacco, shall occupy sixty percent (60%) of the main faces, and shall be located at the bottom of each face;
 - (v) the health information shall be printed directly on the package, occupying 70% of one of the lateral faces;
 - (vi) the information on tobacco components and emissions shall be qualitative only; and
 - (vii) the packaging of cigarettes is prohibited in presentations of less than ten units. In the case of other tobacco products, the packaging shall not contain less than ten grams.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There is no rule, as such, regulating the use of ‘dark practices’; however, as mentioned in question 3.3, according to the Organic Law of Consumer Protection, dark practices could be considered misleading advertising because they may deceive consumers.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no rules about artificial intelligence in relation to advertising.

4 PRICE ADVERTISING

4.1 What are Ecuador’s rules regarding price advertising?

The Organic Law of Consumer Protection establishes that all information related to the price of goods and services must account for taxes so that consumers are aware of the final total price of a good or service. Also, if the nature of the product permits it, its unit price expressed in measures of weight must be also included. In this way, suppliers must give the public information about the final price of goods or services they are offering, with the exception of products that have characteristics that are conventionally regulated (such as custom-made, personalized or made-to-order goods). The final price has to be indicated in a clearly visible manner that allows consumers to exercise their right to choose before making a purchase.

Pharmacies, drug stores, and similar companies must exhibit, in addition to the final price of the medicine, a list of official prices of generic medicines that are approved by the competent authority.

4.2 What are Ecuador’s rules regarding advertising ‘free’ products?

Regarding ‘free’ products, the Organic Law of Consumer Protection states that delivery to the consumer of any good or service without the consumer requiring it is considered to be a free sample of the goods or services supplied.

Nonetheless, no further provisions exist regarding the advertisement of free products, and thus, any advertising in this sense must comply with the general rules and must not mislead the consumer regarding the final price of a product.

If a contribution is requested, the product is no longer free, and therefore, the word ‘free’ cannot be used. In this sense, it is necessary to specify in the advertisement and in the T&Cs that the person who will receive the gift must bear some expense and the amount must be specified.

4.3 What are Ecuador’s rules regarding sales and special offers?

Any promotion or special offer must indicate its duration, the previous price of the good or service and its new price, or the benefit offered. If the promotion involves a competition or sweepstakes, the advertiser must inform the public about the amount or number of prizes and the time and place at which they can be claimed. The advertiser is obliged to disseminate the results of the contest or sweepstakes.

Moreover, public tenders contained in circulars, catalogs, and advertisements impose an obligation to fulfill on the person who makes them, unless the offer includes a disclaimer specifying the time period during which the offer is valid or it explains that the conditions of the original offer can be modified by a subsequent one.

Any offer, promotion, rebate, or discount enforceable with respect to the cash payment method shall also be enforceable by a consumer who makes payments using credit cards, unless the contrary is made known expressly, in a timely and appropriate manner, in the respective advertising or information.

Special offers by way of sweepstakes, raffles or promotional contests require notification or pre-approval from the Ministry of Internal Affairs, depending on the case (see question 1.6 above).

4.4 What are Ecuador's rules regarding rebates?

Ecuadorian legislation makes no distinction between rebates and special offers. Therefore, the rules stated in question 4.3 apply to rebates as well.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

No.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

There are a few products for which advertising is specifically prohibited. For instance:

- the Organic Law of Health bans the advertising of prescribed medication;
- according to the Regulatory Statute for the Regulation and Control of Advertising and Promotion of Processed Food Products, advertising of instant formulas for infants under six months old is prohibited; and
- the Regulatory Statute of the Organic Law of Communication prohibits all forms of advertising of drugs and psychotropic substances.

Likewise, advertisements for alcohol and tobacco products are banned from certain media, and may only be advertised at points of purchase, mainly for information purposes to the customer. The Organic Law of Communication's Regulatory Statute mentions that only beverages that do not exceed 5% alcoholic content may be advertised. Any type of advertising of betting system or sports predictions is also prohibited.

Additionally, and for obvious reasons, misleading advertising is prohibited, as well as any type of advertising of child pornography, narcotic and psychotropic substances, as well as products whose regular or recurrent use affects people's health.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Ecuadorian legislation does not prohibit specific types of advertising practices. Although, according to the Organic Law of Consumer Protection, using subliminal messages is considered abusive advertising and is thus absolutely restricted.

On the other hand, according to the Personal Data Protection Law, the consent of the owner of the personal data is required to use a person's personal data. In this respect, personal data may be processed and communicated when there is a manifestation of the holder's will to do so. The consent will be valid when the manifestation of the will is free, specific, informed, and unequivocal, so that there are no doubts about the scope of the authorization granted by the holder. This consent may be revoked at any time without justification being necessary.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Organic Law of Communication prohibits the communication through social media of any message that constitutes direct incitement or express incentive to the unlawful use of violence, the commission of any illegal act, human trafficking, exploitation, sexual abuse, violence against animals, advocacy of war and national, racial, or religious hatred and any other kind of hatred.

Likewise, any advertising in defense of war and national, racial, or religious hatred that constitutes incitement to violence or any other similar illegal action against any person or group of persons is prohibited.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There are no special rules regarding the identification of the advertiser. Therefore, the general parameters that are established for all types of advertising must be followed. This way, information received by consumers has to be adequate, accurate, clear, timely and complete. This may include information regarding the commercial provenance of the advertisement piece, to guarantee that the consumer is not confused regarding the origin of the goods.

Nonetheless, as long as no confusion occurs, it may be possible to withhold the identification of the announcer.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The advertising content must be identified as such in TV, radio or print media. Also, TV and radio media must indicate the beginning and ending of the advertising breaks between their programming with a clear message for the viewers/listeners.

The only exception to the requirement to identify advertising content occurs in radio when transmitting live or taped sporting or other events, where integration is expressly allowed by law.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

As mentioned above, all advertising must be identified as such within the media:

- (a) in audiovisual media, the identification is made by placing a letter 'P' in the corner of the screen (for 'Publicidad': advertising in Spanish);
- (b) in radio, the identification is made by clearly broadcasting a message at the beginning and end of the advertising break; and
- (c) in print media, a letter 'P' must also be placed in the corner of the advertising piece.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no specific rules governing the use of social networks for advertising purposes. However, when using personal data considered as confidential certain general rules must be followed, according to the Data Protection Act and its Regulatory Statute.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

As mentioned above, there are no specific rules regarding social media.

Nonetheless, from the general rules in our legislation, the advertiser would be responsible for claims made by third parties only if it were to use those claims in the production of advertisement pieces; otherwise, Ecuadorian law is unable to extend its reach to user generated content in social media.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

To the best of our knowledge there are no such decisions.

Before the Communication Law and its Regulatory Statute, the primary governing law was the one on consumer protection, with several scattered rules among a handful of codes, laws, and regulations, with no mention of social media; thus, we have not been able to find any decisions or pending cases related to social media.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Image and voice rights are protected by the Constitution, which recognizes their protection but delegates the regulation to the laws.

The Intellectual Property Law mandates that the author of a picture of a person must have authorization from that person, and after their death the authorization of their heirs, to exercise rights over said picture. The authorization must be in writing and set out the extent of the authorization granted over the image.

No particular rules exist regarding the use of the voice, likeness, or name of a person, but general rules regarding misleading advertising are to be applied, so that the voice, image or likeness of a person may not be used if such use may cause the public to mistake a partnership with or sponsorship of a product or service by that person.

On the other hand, the Data Protection Act protects biometric data (voice and image) and therefore authorization is required to disseminate this information. The data protection law defines 'biometric data' as 'unique personal data, relating to the physical or physiological characteristics, or behaviors of a natural person that allows or confirms the unique identification of that person, such as facial images or dactyloscopy data, among others'. Therefore, a person's voice and image would fall into this category.

9.2 Are there situations when permission is not required?

According to the Intellectual Property Law, the use of images without permission is exclusively allowed in the following cases:

- (a) when photographs or recordings have been taken in the course of public events and serve cultural or information purposes or,
- (b) when photographs or recordings are used in connection with news or events of public interest.

However, for commercial use of an image, the authorization of the person depicted must always be procured.

Moreover, as mentioned before, the Data Protection Law always requires the authorization of the owner.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no specific rules regarding special clearance concerns in Ecuadorian legislation.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

According to the Ecuadorian system, the use of other companies' products in advertising is permitted as long as it is done in good faith, meaning it has to be honest, not unfair, not demeaning and it cannot involve misappropriation of the trademark. Also, advertising material cannot violate any intellectual property right concerning the product.

Finally, advertising pieces may not be misleading for the consumer and must comply with all principles and mandates in the legislation.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Ecuador which affect advertising (eg, Swedish gender equality law)?

No particular rules exist; but, in general, advertising cannot include discriminatory, violent, sexual, sexist or racist content. Also, scenes that threaten the moral, psychological or physical integrity of children and adolescents cannot be used.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Other than the general ones mentioned above (discriminatory, violent, sexual, sexist or racist content; or, scenes that threaten the moral, psychological or physical integrity of children and adolescents), no other particular cultural norms should specifically be considered.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Ecuador?

According to the Organic Law of Communication there are certain requirements that all advertising must follow:

- (a) Advertising must be produced in Ecuadorian territory by Ecuadorian or foreign natural persons residing in Ecuador, or produced abroad by Ecuadorian persons residing abroad or foreign legal entities whose ownership of the majority of the share package corresponds to Ecuadorian persons and whose payroll for its realization and production is constituted by at least 80% of persons of Ecuadorian nationality. This percentage of payroll will include the hiring of professional services.
- (b) The importation of advertising pieces produced outside the country by foreign companies is prohibited, with the exception of foreign legal entities with a majority shareholding owned by Ecuadorian nationals (see (a) above).

Moreover, according to the General Regulations to the Organic Law of Communication, advertising shall be understood to be national advertising if it has been produced in a country with which the Republic of Ecuador has integration treaties and agreements.

 EGYPT 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Egypt?

Egypt's advertising is subject to several regulations, including:

- Article 5 of the Civil Code (Law No 131 of 1948), which prohibits actions that harm others, actions that yield disproportionate benefits to harm caused, and unlawful actions;
- Decree No 220 of 1976, which censors various acts and topics within artistic works, including advertisements;
- Law No 66 of 1956 for regulating Advertising;
- Executive Regulation for Law No 66 of 1956 for regulating Advertising;
- Consumer Protection Law No 181 of 2018; and
- Law No 3 of 2005 on the Protection of Competition and the Prohibition of Monopolistic Practices.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Advertising in Egypt covers various mediums, including television, radio, print, billboards, social media, text message advertising, and sweepstakes and contests.

1.3 What is the basic regulatory framework for advertising regulation?

Advertising on non-sensitive topics generally faces no restrictions, but it must meet certain criteria, including registration in Egypt, obtaining necessary licenses, and compliance with Decree 220 of 1976 and Article 5 of the Civil Code. Special permits are required for drug, cosmetics, and food and beverage product advertising. Trademark ownership proof is essential for media approval. Television in Egypt adheres to an Informal Code of Ethics.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Television and radio advertising are regulated by Ministerial Decree 220 of 1976. Billboard advertising is governed by Law No 66 of 1956 and its Executive Regulation.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes, for instance, medication advertising is subject to specific rules. Advertisements should not target minors, in line with Article 5 of the Egyptian Civil Code.

1.6 Are any government pre-approvals required?

Products must have all required licenses, permits, and approvals to be advertised in Egypt. For example, real estate advertising necessitates building licenses and approvals.

1.7 Does the media pre-clear advertising?

Yes, media in Egypt generally requires proof of trademark ownership before approving advertisements.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Enforcement varies by case. Some advertisements may be banned for non-compliance, and authorities may penalize advertisers for violations.

1.9 When does a competitor have a right of action? What are the potential remedies?

Comparative advertising is not allowed. Competitors can take legal action under the Consumer Protection Law and the Protection of Competition and the Prohibition of Monopolistic Practices Law.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers can take legal action if an advertisement is misleading or creates false impressions.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Egypt have a primary advertising self-regulation system?

No, Egypt lacks a primary advertising self-regulation system.

2.2 Is there a self-regulatory advertising code? What are the key principles?

N/A

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

N/A

2.4 Is the self-regulation system effective? Is it widely used and followed?

N/A

2.5 Are the self-regulatory system's decisions reported?

N/A

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

N/A

2.7 Are there any other self-regulatory systems that govern advertising practices in Egypt?

No specific self-regulatory system governs advertising in Egypt, other than Ministerial Decree No 220 of 1976.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Egypt (eg, consumer protection laws, IP laws, unfair competition laws)?

See question 1.1 above. and

3.2 Is substantiation required for advertising claims?

Yes, substantiation is required for all claims in Egypt.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

N/A

3.4 What are the rules governing the use of disclosures in advertising?

N/A

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

N/A

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules governing product demonstrations, but compliance with Decree 220 of 1976 is required.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

No, comparative advertising is prohibited in Egypt.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

No, comparative advertising is completely prohibited in Egypt.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Claims related to geographic origin are allowed as long as they are not misleading.

3.10 Are there any special rules governing product packaging?

N/A

3.11 Are there any special rules or guidance on the use of 'dark practices'?

N/A

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

N/A

4 PRICE ADVERTISING

4.1 What are Egypt's rules regarding price advertising?

There are no specific rules regarding price advertising, but prices mentioned in advertisements should not mislead consumers.

4.2 What are Egypt's rules regarding advertising 'free' products?

Competitions or sweepstakes must be notified to the Consumer Protection Agency at least three days before advertising, under the Consumer Protection Law.

4.3 What are Egypt's rules regarding sales and special offers?

There are no specific rules regarding sales and special offers, but they should not mislead consumers.

4.4 What are Egypt's rules regarding rebates?

N/A

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

N/A

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised or may not be advertised in certain media (eg, guns, medicines, etc)?

Certain products like tobacco and alcoholic beverages have restrictions. Tobacco and cigarettes may only display trademarks with a list of components and prices while bearing a health warning. Alcohol advertising is completely banned on national TV, radio, and most print media.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Profanity or obscenity in advertising is strictly prohibited and subject to censorship. Political speech in advertising is allowed but should be approached carefully given the polarized political situation. There are no specific provisions banning religious imagery or statements, but they are subject to strict requirements.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) **Law 10/1961:** This law prohibits inciting, soliciting, or maintaining premises for debauchery or prostitution. It imposes punishments for various related offenses and permits medical examination and detention for those found to be carrying infectious venereal diseases.
- (b) **Cybercrime Law 2018:** This law includes provisions that restrict online content deemed to undermine public morals or family values. It also criminalizes the use of the internet to commit any other criminal offense.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor is?

No, it's not required to identify the advertiser/sponsor in advertising.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

N/A

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

N/A

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Egypt lacks specific laws or regulations for advertising via social media. However, general legal principles apply, including tort liability for harm caused to others.

8.2 Is an advertiser responsible for advertising claims made in user-generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There are no specific regulations governing this matter at present.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user-generated content?

N/A

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice, and identity in advertising?

Using an individual's name, picture, trademark, etc, without their approval is prohibited.

9.2 Are there situations when permission is not required?

No, permission is always required for using any individual's personal information in advertising.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

A physical and legal presence of the company in Egypt is required to directly promote or advertise or host contests through Egyptian platforms. Draws or contests must be conducted through the company's legal entity in Egypt with Ministry of Social Solidarity approval.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Yes, it's permissible but uncommon, as advertisers typically focus on their own products/services.

11 CULTURAL CONCERNS

11.1 Are there any rules particular to the culture of Egypt affecting advertising (eg, Swedish gender equality law)?

N/A

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

The use of religious imagery or statements in ads is sensitive in Egypt and subject to strict requirements. While there are no specific provisions banning such content, it should not breach cultural sensitivities.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Egypt?

We recommend legal review by a local professional before publishing any advertisement to avoid penalties, claims, bans, etc. Advertisers should also stay updated on evolving regulations in Egypt's dynamic advertising landscape.



EL SALVADOR



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in El Salvador?

El Salvador has an Advertising Self-Regulation Code which regulates advertising and how to advertise.

There is a Special Commission that oversees the handling of all advertising practices and procedures when complaints are filed by advertisement agencies, advertisers, associations and non-governmental organizations, consumers, and the government.

El Salvador also has the Consumer Protection Agency, which oversees conducting inspections and has the power to sanction individuals or companies in the event of infringement of any regulation. This is not only in charge of advertising issues, but also carries out inspections regarding the use, commercialization, and sale of products for human consumption. Also, the Consumer Protection Law establishes the Ombudsman to ensure compliance with the mandatory standards of safety, information, labeling, quality, weights and measures of the goods and services that are commercialized in the market.

Also, there are other entities that regulate advertisement such as the National Directorate of Medicines, which oversees advertisements of pharmaceuticals.

There is special regulation for minors. The Law of Growing Together as well as the Constitution, which regulates rights for children, prohibits the distribution or facilitation of access to public shows, publications, videos, recordings, television programs, radio or other means of communication or media which contains inadequate or harmful messages for the development and training of underage people. Moreover, the Advertising Self-Regulation Code has, in the past, regulated the use of minors for advertisements and stated that they were not permitted to be used in the advertisement of drugs, alcohol or sexual matters. The Constitution of El Salvador regulates that the government is the body that must ensure the defense, mental and physical health, and interests of minors.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Advertising in El Salvador refers to the various strategies and techniques used to promote products, services or brands with the aim of persuading, informing or reminding a target audience about certain messages. Advertising in El Salvador covers different media and platforms, including television, radio, written press, billboards, online advertising, and social networks.

According to the Advertising Self-Regulation Code, ‘advertising’ is communication intended to disseminate or inform the public about a product or service through different media, with the aim of motivating people to take action.

1.3 What is the basic regulatory framework for advertising regulation?

- Constitution of El Salvador;
- Juvenile Criminal Law;
- Special Regulatory Law on the Obligation of Natural and Legal Persons of Private Law to Comply with the Principle of Publicity;
- Law of Growing Together;

- Pharmaceutical Law;
- Drug Advertisement Guidelines;
- Ethical Aspects for Pharmaceutical Advertisement in El Salvador;
- Consumer Protection Law;
- Labor Code;
- Law for the Promotion, Protection and Support of Breastfeeding;
- Law on Equality, Equity, and Eradication of Discrimination Against Women;
- Special Law for a Life Free of Violence for Women;
- Advertising Self-Regulation Code;
- Law Regulating the Production and Marketing of Alcohol and Alcoholic Beverages;
- Law on the Comprehensive Protection of Children and Adolescents;
- Digital Asset Issuance Law;
- Telecommunications Law; and
- E-Commerce Law.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) **Email Marketing:** There are no special rules, just the general rules regarding advertisements. The advertiser must:
- establish the starting and finish date of promotions;
 - state the promotion to be held;
 - state the promotion's requirements;
 - maintain an opt-out requirement in case the owner of the email account does not wish to receive the advertisements;
 - not promote any sexual material or pornography;
 - ensure the use or language is in accordance with the applicable legislation;
 - in the case of advertisements featuring children, must comply with all regulations; and
 - comply with all requirements for the advertisement and promotion of alcohol and tobacco.

Liability for non-compliance could result in fines, the requirement to remove the email address from the trader's list and parties can even initiate proceedings in the courts for serious infractions.

Also, there is the E-Commerce Law that contains some rules regarding communications and emails. The liability for violating these rules includes complaints filed in the courts which have civil and criminal liabilities, depending on the violations. Also, complaints can be filed before the Consumer Ombudsman.

- (b) **Telemarketing:** No specific rules are applicable. However, if there is no specific user consent, advertisements must expressly indicate that they constitute an unsolicited advertising or promotional electronic commercial communication. They must include in the message a simple, free and viable option to request exclusion from the lists of recipients of the same at any time, and state that the data of the recipients have been obtained without infringing the rights of protection of personal data. In cases of violation of these rules, the

judicial authority may order the interruption of the provision of the service or access to content in the exercise of precautionary measures or in execution of resolutions, which will depend on the violations and the measures requested.

- (c) **Text Messaging:** No specific rules are applicable, just the general rules of advertisement and promotions. However, text messages must be limited if they are excessive, as this could constitute harassment, which would be the subject of a complaint to the corresponding authorities.
- (d) **Targeted/Interest-Based Advertising:** The Telecommunications Law and well as the Consumer Protection Law regulates this type of advertisement. The Telecommunications Law now establishes a schedule from Monday through Friday for limited use for calls for advertising of products or services that companies are selling by telephone.
- (e) **Advertising to children:** Advertisements in regard to children are specifically regulated (see question 1.1 above).

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes, the pharmaceutical industry is specifically regulated by the National Directorate of Medicines; similarly, advertisement and publicity in regard to alcohol, cigars, and sweepstakes or lotteries is also regulated.

1.6 Are any government pre-approvals required?

Yes

1.7 Does the media pre-clear advertising?

No, however, the Advertising Self-Regulation Code establish some regulations in regard to certain types of publicity, but this is a regulation that consumers and publicists must know.

Marketing or publicity materials not have to be preapproved.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Through the Consumer Protection Law, the government regulates matters pertaining to illegal, misleading or false advertising. The Law establishes that violation is punishable by economic fines.

The responsibility for illicit advertising will fall on the provider or advertiser who ordered its dissemination, not on the agency or advertising agent that hires the advertisement, nor on the medium that disseminates it.

1.9 When does a competitor have a right of action? What are the potential remedies?

Anyone can file a complaint before the Consumer Protection Agency, the Commission of the Self-Regulation of Advertising, the courts or any other entity, depending on the content or issue related to advertisement practices:

- (a) **Consumer Protection Agency:** Anyone can file a complaint before the Consumer Protection Agency regarding the publicity or advertisement of goods and services. The complaint will be assessed within a period of five days, depending on the documents and proof provided.
The Consumer Protection Agency can impose fines on the advertiser:

- (i) In the case of dissemination of advertising considered illegal, a fine of up to 50 monthly urban minimum wages in the industry (currently the minimum wage is US\$365.00 per month).
- (ii) And when the advertising:
 - fails to comply with the information obligation dictated by the competent authority on the risks of pharmaceutical products that are toxic, harmful or harmful to human or animal health; or
 - fails to inform consumers, prior to the sale and by appropriate means, about the risks that come from a foreseeable use of the goods and services, taking into account their nature and the people for whom they are intended;
 a fine of up to 200 monthly urban minimum wages in the industry.
- (b) **Advertising Self-Regulation Code:** In case of violation of the Rules of this Code, the Permanent Ethics Commission and/or the National Advertising Council may impose the following sanctions:
 - (i) They may indicate to the advertiser and/or the responsible advertising agency that the advertisement should be suspended immediately; and request the advertising media to abide by the ruling or resolution, and proceed to immediately suspend the advertisement.
 - (ii) They may demand that the signatory entities of the Ethics Code adopt disciplinary measures that the respective statutes allow them to use in support of the decision of the Permanent Ethics Commission or the National Advertising Council.
 - (iii) They may publicly or privately reprimand the sanctioned person. (Advertising agencies, advertisers and advertising media are obliged to participate in self-regulation by complying with the proposals by the Permanent Ethics Commission and/or the National Advertising Council.)
 - (iv) Advertisers, advertising agencies and advertising media may not continue to broadcast an advertisement whose suspension has been notified by the Permanent Ethics Commission or the National Advertising Council.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers have the same right of action and potential remedies as competitors. See question 1.9 above.

2 SELF-REGULATORY FRAMEWORK

2.1 Does El Salvador have a primary advertising self-regulation system?

In El Salvador there is a self-regulatory Code of Advertising Ethics, created by the National Advertising Council, which is a private entity made up of representatives of the National Association of Advertisers, the Association of Advertising Media and the Salvadoran Advertising Association. The National Advertising Council seeks to promote the development of the advertising industry under the criteria of legality, morality, honesty, and good customs. Any advertising published in any media in El Salvador must be respectful of this self-regulation Code.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes, the Advertising Self-Regulation Code.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Permanent Ethics Commission may take into account any complaints and/or reports of violations of the Advertising Self-Regulation Code and its regulations that come from:

- (a) advertising agencies;
- (b) advertisers;
- (c) associations and/or guilds;
- (d) National Advertising Council;
- (e) consumers; and
- (f) the Government.

Once a complaint has been put in writing and admitted by the Commission, the parties are notified to attempt conciliation (in cases where this is permitted) or to appear at a hearing to explain the allegations and present the evidence. The Permanent Ethics Commission then issues its sentence.

2.4 Is the self-regulation system effective? Is it widely used and followed?

El Salvador's National Advertising Bureau was dissolved after COVID. However, the Advertising Self-Regulation Code that regulates advertising and the way it is advertised is still in force. There is a special commission that oversees the management of all advertising practices and procedures when there are complaints filed by advertising agencies, advertisers, associations and NGOs, consumers and the government. If the special commission issues a sentence, this may be appealed; but once the sentence is handed down, there is no additional appeal.

2.5 Are the self-regulatory system's decisions reported?

If there is any violation of the Code, the Permanent Ethics Commission will issue a written ruling, which it notifies to the advertisers, advertising agencies and the media.

Advertising companies may not continue to broadcast an advertisement which has been suspended and its suspension notified by the Ethics Commission or the National Advertising Council.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

No.

2.7 Are there any other self-regulatory systems that govern advertising practices in El Salvador?

No.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising e in the El Salvador (eg, consumer protection laws; IP laws; unfair competition laws)?

See question 1.3 above.

3.2 Is substantiation required for advertising claims?

All advertising must be based on the characteristics of the products or services.

Advertisers who disseminate, in their advertising, by any means, an illustration, description or advertising statement about any specific characteristic of the advertised product, have the obligation to have prior information that supports their veracity.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

All advertising must be based on the characteristics of the products or services. Exaggeration is not accepted.

3.4 What are the rules governing the use of disclosures in advertising?

Advertisements must not contain information, visual presentation, music, sound or visual effects that, by implication, omission, exaggeration or ambiguity, could directly or indirectly mislead the consumer regarding the advertised product, the advertiser or its competitors. Every advertisement must therefore contain information that is clear, complete and adequate. Thus, the advertisement must not induce confusion in the consumer regarding:

- the features and/or benefits of the product;
- its price, terms, purchase conditions and credit conditions;
- the conditions and limitations of the warranty offered;
- industrial and intellectual property; or
- recognitions or approvals of any kind.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Testimonial advertisements must not contain any statement or visual presentation that could be misleading; nor must they be used in a way that could produce a similar effect.

The use of actors or models dressed in uniforms or clothing characteristic of a profession, trade or occupation should not mislead the consumer. In this sense, if the person in the advertisement is a legally accredited professional or technician, this must be made clear in the advertisement, with reference to their license or registration, otherwise it must be made clear that the person is an actor or model.

The use of 'doubles' or identifiable photographs will depend on the authorization of the person imitated, and must not induce confusion.

3.6 What are the rules governing the use of product demonstrations in advertising?

In El Salvador, there are no specific rules for demonstration of products, except for alcohol, drugs, pharmaceuticals, cigars and cigarettes.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is not permitted.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Comparative advertising is not allowed.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Such rules do not exist. However, the product must truly be made and/or produced in the country indicated, since misleading advertising is not allowed.

3.10 Are there any special rules governing product packaging?

Yes, there are Central American Technical Regulations that regulate the labeling requirements that some products must meet, such as: foods and beverages, alcoholic beverages, medications, among others.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

There are no special laws or guidance related to dark practices in advertising.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no specific rules in connection with artificial intelligence.

4 PRICE ADVERTISING

4.1 What are El Salvador's rules regarding price advertising?

An advertiser who communicates an offer or price reduction must be able to comply with it. Its actual capacity and willingness to comply must be verifiable. Likewise, the advertiser must specify the limitations of any offer. Once the inventory subject to the offer or price reduction is exhausted, the promotion cannot continue to be advertised.

4.2 What are El Salvador's rules regarding advertising 'free' products?

The use of the word 'free' will imply an additional benefit to the consumer, after carrying out a commercial transaction, without adding any cost.

Promotional expressions such as 'free of charge', and others of the same tenor, should not confuse the consumer about the price and conditions of the offer. These must be clear and verifiable. It is essential that the scope of these expressions be sufficiently clarified.

Likewise, the advertisement must include any restrictions that may limit the enjoyment of the promotion, clearly and in detail. In no case may the restrictions modify the economic essence of the promotion.

Advertising of promotions must have the approval of the Ministry of the Interior.

4.3 What are El Salvador's rules regarding sales and special offers?

Promotional expressions such as 'reduction', 'liquidation', 'without cost', 'promotional price' 'no down payment', 'no premium', 'no pay' 'quota until...' and others of the same tenor, should not confuse the consumer about the price and conditions of the offer. These will be clear and verifiable. The rules applying to the advertising of 'free' products also apply to sales and special offers. See question 4.2 above.

4.4 What are El Salvador's rules regarding rebates?

There are no specific regulations in regard to rebates.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

No.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The following may not be advertised:

- guns;
- prescription medication; and
- cannabis and CBD-related problems.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

No.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Advertising Code of Ethics states that advertising must use language based on the universal principles of morality, decorum, correct grammatical use and good taste. The use of popular expressions or words in foreign language will be permitted in the context of exaggeration, fantasy or humor, as long as the rules established in this Code are not violated.

The Special Law against Computer Crime and Related Crime regulates extortion of sexual content of children and adolescents as well as the use of children and adolescents in internet pornography.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Any advertisement, report, article, note, text, legend or any another form that is disseminated through payment, must be clearly identified as a paid advertising field, so that it is distinguished from news material and does not confuse the consumer. No advertisement should use techniques that prevent the consumer from realizing that advertising is being disseminated.

7 **BRANDED CONTENT**

7.1 **Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?**

Advertising that makes use of images, photos, quotes and references of living people, firms or institutions will not be permitted unless authorizations have been previously obtained. There is an exception when it comes to the advertising of books, films, radio and television programs and similar activities, in which the people portrayed are the authors or participants.

7.2 **Are there any special disclosure or other obligations when integrating advertising content with other content?**

There are special obligations when integrating content in regard to alcohol, drugs, pharmaceutical, children, women, cigars and/or cigarettes, as mentioned, but no other specific regulations or disclosure is needed.

8 **SOCIAL MEDIA**

8.1 **Are there any special rules governing the use of social media for advertising purposes?**

Such special rules do not exist. General regulations apply to all advertising.

8.2 **Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?**

The responsibility for illegal or misleading advertising will fall on the provider or advertiser who ordered its dissemination, not on the agency or advertising agent that hires the advertisement, nor on the medium that disseminates it.

8.3 **Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?**

There are no unique rules; the social media platform's general rules apply in this jurisdiction and the platforms are allowed to take down an account if they consider that it is infringing the rights of third parties, using unauthorized content or that social networks or platforms are being used to promote pornography or other crimes. There are no prohibitions on the use of social media platforms in El Salvador.

According to El Salvador law, the only regulatory body is the Advertisement Self-Regulation Code, which is mostly explanatory on the use of testimonials and what content they must include.

However, the advertiser is not liable for content posted by an influencer since the advertiser must sign a contract with the influencer and, in such document, establish the rules and actions that the influencer must carry out, as well as the limitations the influencer has and its liabilities for not complying with what is established in the contract.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Advertising that makes use of images, photos, quotes and references of living people, firms or institutions will not be permitted unless authorizations have been previously obtained.

9.2 Are there situations when permission is not required?

Permission is not required only in two cases:

- (a) for photographs of large groups or crowds, in which individuals can be recognized, but without being involved in a defamatory, offensive or humiliating context; and
- (b) for the advertising of books, films, radio and television programs, and similar activities, in which the people portrayed are the authors or participants.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

It is necessary to obtain municipal or government ministry permits to use historical places in advertising; however, there are no special laws regulating this area.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Advertisements should not take advantage of the prestige of the commercial name and/or symbols of another firm or product or of the prestige acquired by another advertising campaign.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of El Salvador which affect advertising (eg, Swedish gender equality law)?

- The portrayal of women in advertisements in general is an area of sensitivity. Whilst the respectful use of sensuality in advertisements is permitted, the use of a woman's image will not be permitted, if it is taking advantage of her physical appearance with the sole objective of linking her sexuality with products or services not related to it. Advertising will not rely on pornographic elements.
- Advertisements aimed at minors or in which they participate must be respectful of their physical, mental or moral integrity. It is important always to give special attention to the characteristics of the intended audience, respecting the naivety, credulity, inexperience and sense of loyalty of minors. Advertisements must positively influence the behavior of minors and must not encourage unreasonable expectations regarding the qualities or use of the product. Special care must be taken to ensure that advertising does not show images of minors in situations of violence or sexual nature.

In all cases, the prior consent of their legal representatives will be necessary for minors to participate in any advertising piece.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertising messages must not arbitrarily discriminate, denigrate, belittle, ridicule or mock people or groups, especially on the basis of race, ethnicity, religion or their gender, age, disability or sexual orientation.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in El Salvador?

No.

 FINLAND 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Finland?

Advertising and marketing are primarily regulated by statute.

The core statutory framework consists of consumer protection laws, including the Consumer Protection Act (Act 38/1978), which regulates marketing to consumers. Business-to-business marketing is governed by unfair business practices legislation, such as the Unfair Business Practices Act (Act 1061/1978).

Data protection legislation, both domestic and EU level regulation, is becoming increasingly important, especially in relation to direct marketing, marketing to minors, and marketing through electronic channels. Sector specific laws regarding the advertising of certain goods or services (such as tobacco, alcohol, gambling, and pharmaceutical products) and media specific laws (such as radio and television legislation) complement the general framework.

In addition to the statutory framework, intellectual property laws such as the Copyright Act (Act 404/1961) and the Trademarks Act (Act 544/2019) must also be considered in advertising containing copyrightable works and trademarks.

In addition to the statutory framework, advertising is regulated by self-regulatory codes (see question 2).

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

‘Advertising’ has not been defined in Finnish legislation, but the EU Comparative Advertising Directive defines it as ‘the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations’.

In practice, advertising is understood to be a subcategory of marketing.

‘Marketing’ is generally interpreted to cover any attempt to influence a consumer or other recipient in a commercial manner.

1.3 What is the basic regulatory framework for advertising regulation?

The general principles regarding marketing to consumers are regulated in the Consumer Protection Act. The Unfair Business Practices Act sets out the legal framework for Business-to-Business marketing.

Certain laws complement the general framework. The Data Protection Act (Act 1050/2018) regulates, inter alia, the handling of personal data in direct marketing in general. The Act on Electronic Communication Services (Act 917/2014) (‘AECS’) regulates direct marketing through electronic channels as well as marketing on television and radio.

In addition, the AECS regulates the saving of data on the use of a service on the user’s terminal device and the use of such data. The service provider may only save cookies or other data concerning the use if the user has given consent and the service provider gives the user comprehensible and complete information on the purposes of saving or using such data.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

According to the AECS, electronic direct marketing (ie, marketing messages sent by means of automated calling systems, fax, email, or text, voice, sound, or image messages) may only be directed at persons who have given their prior consent (opted-in). However, electronic direct marketing may be sent to existing customers without their prior consent where the service provider or seller has obtained the contact information in the context of the sale of a product or service, and the same contact information is used for marketing the service provider or seller's own products of the same product group or other similar products or services. In such cases, the service provider or seller must offer the customer the chance, at no charge, to opt-out of their contact information being used for direct marketing purposes, both at the time of collecting the contact information and in connection with every such marketing message. The possibility to opt-out must be notified clearly to consumers.

Electronic direct marketing to companies is allowed unless a company has prohibited such marketing (opted-out).

The AECS contains also provisions regarding marketing on television and radio. There are specific requirements for the content, placement, and duration of commercials as well as sponsorship and product placement.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Certain industries have sector-specific statutory regulation:

- (a) **Alcohol:** The advertising of strong alcoholic beverages (ie, with an alcohol content of more than 22% by volume) is prohibited. Strict restrictions apply to the direct and indirect advertising of mild alcoholic beverages.
- (b) **Tobacco:** The advertising of tobacco products is prohibited.
- (c) **Pharmaceuticals:** The advertising of pharmaceutical products is highly regulated. For example, advertising must encourage appropriate use of pharmaceutical products and the marketing of pharmaceutical products must not induce people to use the products unnecessarily, give a misleading or exaggerated picture of the composition, origin, or medicinal importance of a product, or be improper in any other similar manner. Those products which may be marketed as 'pharmaceutical products' have been specifically defined in the Medicines Act (Act 395/1987). The marketing of pharmaceutical products in Finland always requires registration of the product or marketing authorization, which is granted by the Finnish Medicines Agency.
- (d) **Medical devices:** The advertising of medical devices is also regulated. For example, marketing of medical devices may not be inappropriate or give an exaggerated or false impression of the device or its effectiveness or use.
- (e) **Gambling:** The advertising of gambling services is prohibited in Finland from all entities other than those authorized under the Lotteries Act (Act 1047/2001).
- (f) **Consumer debts:** The advertising of consumer debts is regulated in the Consumer Protection Act. It is expressly against good practice in consumer debt collection to diminish the seriousness of debt-taking, to remind consumers of unused credit and to market debts to consumers who are known to gamble or have a bad credit score. In addition, it is prohibited

to advertise credit on terms which may result in the cost of the credit exceeding the amount of the principal (in the case of a one-off credit) or the amount of the credit drawn by the consumer (in the case of an ongoing credit).

1.6 Are any government pre-approvals required?

There is no general requirement to pre-clear advertising. However, a company may request an advance statement from a self-regulatory body, the Board of Business Practice, or from the Council of Ethics in Advertising on whether a planned marketing campaign or other marketing activities are considered to be in line with good business practices. Also, sector-specific pre-clearing frameworks exist. In the pharmaceutical industry, eg, a company may voluntarily request the supervisory body acting under Pharma Industry Finland ('PIF') to inspect an advertisement in advance in accordance with the provisions of the PIF Code. The supervisory body may then approve or reject the advertisement. In addition, pre-clearing is required for television and radio advertisements of pharmaceutical products.

1.7 Does the media pre-clear advertising?

No, the media does not generally pre-clear advertising, as there is no formal pre-clearance system in place.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Consumer Ombudsman monitors compliance with the Consumer Protection Act. In the case of unlawful marketing activities, the Ombudsman will first try to convince the trader in question to cease such marketing voluntarily by way of negotiation between the trader and the Ombudsman. In certain cases, if the matter is considered of minor importance and case law supports the Ombudsman's interpretation, the Ombudsman may issue a prohibition reinforced with a threat of a fine. If the trader opposes the prohibition within a given timeframe, the Consumer Ombudsman may bring the case before the Market Court. Moreover, if the above criteria for a prohibition ordered by the Consumer Ombudsman are not met, the Consumer Ombudsman may apply for a prohibition from the Market Court. According to the Act on Certain Powers of Consumer Protection Authorities (Act 566/2020), the maximum amount of an administrative penalty fee for the violation of marketing provisions under the Consumer Protection Act is up to 4% of the turnover of the year preceding the end of the violation in question.

The potential remedies under the Consumer Protection Act and the Unfair Business Practices Act are described in more detail in questions 1.9 and 1.10 below.

Marketing offences have also been criminalized in the Criminal Code (Act 39/1889). A person, who, in the professional marketing of goods, services, real estate, or the bonds and securities of a private limited-liability company or other commodities, gives false or misleading information which is significant from the point of view of the target group, may be sentenced to a fine or imprisonment for up to a year.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may have a right of action in situations which constitute unfair business practices. This may be where a business has conducted marketing activities which are not clearly identifiable as having a commercial purpose, or where the party on whose behalf the marketing is conducted does not clearly appear in the marketing.

There may also be a right of action if a business has used false or misleading expressions concerning its own business or the business of another, or expressions that are otherwise presented in an unsuitable manner, if likely to affect the sales or business of the other party. Additionally, a competitor may have a right of action if inappropriate comparative marketing—such as false comparisons, marketing that belittles a competitor or causes confusion with a competitor’s products—is used.

The potential remedies include an injunction to prohibit the business from carrying on or repeating the infringing conduct. When ordering an injunction, the court can oblige the business to rectify its conduct within a set time limit if it is considered necessary due to the evident harm caused by such conduct. This obligation may be reinforced with a threat of a fine. An injunction may also be imposed as an interim measure. The court can even decide at the request of the applicant that information regarding the injunction be published in one or several newspapers or journals at the defendant’s cost. Potential remedies further include a right to damages. The most severe violations of the marketing provisions are criminalized as unfair competition offences under the Criminal Code and may result in fines or imprisonment of up to one year.

1.10 When do consumers have a right of action? What are the potential remedies?

In practice, it is the Consumer Ombudsman who supervises and takes action when a business has violated the marketing provisions of the Consumer Protection Act, such as:

- (a) the prohibition of inappropriate or unfair marketing;
- (b) the obligation to clearly show the commercial purpose of the marketing and on whose behalf it is implemented;
- (c) the prohibition to convey false or misleading information in marketing;
- (d) delivering goods or services to consumers without an express order and by requiring payment, return, safekeeping or other measures in respect of them; and
- (e) unclear price markings may also result in a right of action for a consumer.

An injunction may be imposed to prohibit a business from carrying on or repeating marketing activities which violate the provisions of the Consumer Protection Act, if this is deemed necessary for consumer protection. The injunction may be reinforced by a threat of a fine if considered necessary on a case-by-case basis. In special circumstances, the injunction may be directed at an employee of the business for violating the marketing provisions or at another person acting on behalf of said business. The injunction may in certain cases also be imposed as an interim measure.

When imposing the injunction, the court may order the business to rectify the marketing operation within a specified time limit, if it is considered necessary due to the evident harm caused to consumers. Again, this obligation may be reinforced by a threat of a fine.

If several consumers have claims against the same defendant, based on the same or similar circumstances, a group action under the Group Action Act (Act 444/2007) can be brought by the Consumer Ombudsman representing the group. In addition, the Consumer Disputes Board offers an alternative to legal proceedings in a court of law. The Board resolves disputes between consumers and businesses with decisions of recommendatory nature that cannot be enforced through coercive measures.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Finland have a primary advertising self-regulation system?

The main self-regulation system followed in Finland is the International Code of Advertising Practice ('ICC Code') published by the International Chamber of Commerce. The ICC Code is not a legally binding instrument as such, but its principles complement the statutory framework. Self-regulatory bodies may issue statements on whether marketing activities comply with the ICC Code.

Under the Finland Chamber of Commerce, the Council of Ethics in Advertising issues statements to consumers and companies on ethical aspects of specific advertisements or advertising practices.

2.2 Is there a self-regulatory advertising code? What are the key principles?

- (a) As mentioned above, the most important general self-regulatory advertising code is the ICC Code, which is based on the principles of decency, honesty, social responsibility, and truthfulness. Certain self-regulatory bodies have issued their own sector-specific codes as explained below.
- (b) The Council of Ethics in Advertising applies the ICC Code in its praxis, but it has also issued its own principles on good marketing practice. The key principles concern the use of a woman/man as an eye-catcher or sexual object and the use of sexual insinuations or promises in advertising, as well as claims and implications that the role of one gender is lower than the other, as explained in more detail under question 11.2.
- (c) The PIF has issued its own Code of Ethics which contains rules on the targeting of pharmaceutical marketing and information at consumers and healthcare professionals. The key principles are that prescription-only medicines may only be targeted at professionals and only self-care medicines available without prescription may be marketed to consumers. A pharmaceutical company can inform consumers about diseases and their prevention, diagnosis, and treatment, and it must guide the consumer towards additional information on health promotion and the treatment of the disease. Sailab-MedTech Finland, which is an industry association for producers and suppliers of health care and laboratory equipment and supplies, has also its own Code of Ethics with extensive guidance geared at, inter alia, enabling the development of medical technology and enhancing security and impactfulness. In addition, some profession-specific associations, such as the Finnish Medical Association, have specific marketing guidance.
- (d) The Council of Mass Media in Finland follows the Guidelines of Journalism issued by the Union of Journalists. The Guidelines contain provisions on the professional status of journalists, obtaining and publishing information, rights of interviewers and interviewees, correcting mistakes and issuing opinions, as well as publicity and privacy.
- (e) The Ethical Committee for Premium Rate Services has also issued its own set of norms for providing premium electronic services. Its marketing principles concern, inter alia, content of advertising, protecting minors, and price announcement.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Board of Business Practice, acting under the Finland Chamber of Commerce, handles marketing-related disputes between companies. A company may request a statement from the Board on whether certain activities carried out by another business violate good business practice or are

otherwise inappropriate, or whether marketing activities carried out by another company violate the ICC Code. The matters are decided based on written documents, and no hearings are organized. The proceedings generally last about three months, and they may, in many cases, prove to be more cost-effective for the parties than dispute resolution through other means. If the Board of Business Practice decides that good business practice has not been followed in marketing, the violating party must rectify its conduct. If a decision of the Board of Business Practice is not complied with, the statement may be published upon request.

The Board does not handle disputes regarding agreements, intellectual property rights, or violations of competition law.

2.4 Is the self-regulation system effective? Is it widely used and followed?

While the statements of the self-regulatory bodies are not legally enforceable, they are widely adhered to. Thus, the self-regulation system may be considered effective, even though the jurisdiction for dispute resolution is held by the Market Court (the court with competence to handle disputes relating to matters involving unfair business practices). The parties to a dispute may choose to bring their matter before a self-regulatory body, such as the Board of Business Practice, if, eg, they wish to avoid legal proceedings. The statement of the Board of Business Practice may also be requested in connection with a court case.

2.5 Are the self-regulatory system's decisions reported?

The Board of Business Practice publishes summaries of its decisions online in an anonymized form, so that the parties may not be recognized. The proceedings of the Board of Business Practice are confidential, which is also one of the key benefits of the system. The purpose of publishing the summaries is to clarify the principles of good business practice which are formed in the praxis of the Board of Business Practice and the Market Court.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Companies should generally adhere to the principles of the Consumer Protection Act, the Unfair Business Practices Act, and other relevant legislation when carrying out their marketing activities. The purpose of the Consumer Protection Act is to protect consumers from, inter alia, inappropriate marketing, unfair marketing practices, and unreasonable agreement terms. The Unfair Business Practices Act aims to prohibit marketing practices which may be harmful for other companies by, eg, regulating comparative marketing. The Act also generally prohibits inappropriate business practices. Particular attention should also be paid to ethics, non-discrimination, gender equality, and the protection of minors.

2.7 Are there any other self-regulatory systems that govern advertising practices in Finland?

Other self-regulatory bodies include the Board of Business Practice, the Council for Mass Media, the Ethical Committee for Premium Rate Services, the Supervisory Commission of Medicinal Products (operating under PIF), Sailab-MedTech Finland, and the Finnish Medical Association which supervises the advertising of medical services. Furthermore, the Finnish Bar Association supervises the advertising of legal services.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Finland (eg, consumer protection laws, IP laws, unfair competition laws)?

The Consumer Protection Act sets out the basic framework regarding advertising claims in consumer marketing. The key principles of the Act are the prohibition of inappropriate marketing and the prohibition on using any practice that is considered unfair to consumers. 'Inappropriate marketing' is defined as marketing which is in clear conflict with the generally accepted norms of society. Unfair marketing practices include giving false or misleading information in marketing and omitting disclosure of substantially relevant information.

The Consumer Protection Act also contains provisions on comparative marketing, which applies to both consumer and business-to-business marketing. Business-to-business marketing is otherwise regulated in the Unfair Business Practices Act. As to comparative advertising, see question 3.7 below.

IP laws, such as the Copyright Act and the Trademarks Act must also be taken into consideration in marketing.

3.2 Is substantiation required for advertising claims?

The burden of proof, with regard to the validity of information provided in marketing, is on the advertiser. For example, under the Consumer Protection Act, it is prohibited to give false or misleading information in marketing, if it is likely to result in a consumer making a purchase which they otherwise would not have made. 'Misleading information' means information which does not correspond to measurable or verifiable facts. Research must be impartial, generally accepted, and usually made by neutral experts in the relevant field, especially if the advertiser has specifically referred to research results. Similar regulations are applied to business-to-business marketing. For example, the Finnish Consumer Ombudsman has actively supervised the substantiation of environmentally-oriented claims, which can be used only when important and relevant environmental benefit or impact has been demonstrated and substantiated with documentary and non-contradictory research results.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

It is generally acceptable for advertisers to present slightly exaggerated positive statements about their own products that would be generally regarded as commercial promotion (see question 3.2 above). However, caution should be exercised, especially when using superlatives, as advertisers usually have a strict burden of proof for the truthfulness of such claims. Puffery is not, as a rule, considered as giving false information, as consumers are usually able to detect it as subjective exaggeration. Caution should also be exercised when puffery is directed to minors (ie, persons under the age of 18), as marketing aimed at minors is subject to stricter scrutiny due to their natural credulity and lack of experience and critical sense.

3.4 What are the rules governing the use of disclosures in advertising?

As a rule, marketing must clearly disclose its commercial purpose and on whose behalf the marketing is conducted, even if the advertising was conducted by a third party.

In terms of disclosures to be given to consumers, before a consumer makes a purchase, the following information must be disclosed to them:

- the main characteristics of the goods;
- the name and address of the seller;
- the total price of the goods including taxes, or information on how the price is formed;
- additional delivery costs, if necessary, or information that such costs may be incurred;
- any exceptional practices concerning payment, delivery, fulfillment of the contract or customer complaints; and
- how it is possible to cancel the contract.

In home or distance selling, the scope of information to be provided to the consumer is wider, and includes information on:

- the right to cancel the purchase,
- the minimum duration of the consumer's obligations under the contract, and
- the available means of dispute resolution.

The marketing of certain products, such as financial services and instruments, as well as consumer credit, is also subject to more stringent requirements.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The general prohibition on false and misleading statements in advertising also applies to the use of endorsements and testimonials. Furthermore, pursuant to the ICC Code, marketing communications should not, without prior permission, depict or refer to any person's property in a way likely to convey the impression of a personal endorsement of the product or organization involved.

Under the ICC Code, testimonials must be genuine, verifiable and relevant. Testimonials which have become obsolete or misleading through passage of time should no longer be used.

Under the Consumer Protection Act, if a company makes consumer reviews available to consumers, the company must state whether it has ensured that the published reviews originate from consumers who have actually used or purchased the commodity in question, and information on how the company has ensured this. Note that, according to the Finnish Consumer Ombudsman, companies may not commission others to submit consumer reviews or endorsements or manipulate the ones that have been published on social media. Companies must always justify the reasons for rejecting, editing, or deleting a review.

3.6 What are the rules governing the use of product demonstrations in advertising?

The general principles of the Consumer Protection Act apply to the use of product demonstrations. Thus, information conveyed about the product through product demonstrations may not be false or misleading. The special requirements regarding comparative marketing described in question 3.7 below, including the prohibition on causing confusion between the trademarks or products of the company and a competitor must also be complied with. Special attention should also be paid to the use of superlatives.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Under the Unfair Business Practices Act, ‘comparative marketing’ is defined as ‘marketing where a competitor, a product, or a service marketed by a competitor can be recognized’. Comparative marketing is permitted, as long as certain requirements, laid out mainly in the Consumer Protection Act and in the Unfair Business Practices Act, are fulfilled. For example, in order to be permitted, comparative marketing:

- may not be false or misleading;
- must pertain to essential and verifiable characteristics of the products;
- must not create a risk of confusion between the trademarks, goods, or other identifiers of a trader and those of a competitor; and
- may not unlawfully exploit the goodwill of a competitor.

3.8 Are there any special copyright or trade mark rules that may impact comparative advertising (eg, whether a competitor’s trade mark or products may be used)?

The general rules applicable to intellectual property apply also to comparative advertising. In addition, the Unfair Business Practices Act sets out guidelines for the use of trademarks. For example, under the Unfair Business Practices Act, comparative advertising may not:

- give rise to a danger of confusing the advertiser and the competitor;
- represent a product or service as a copy or reproduction of another product or service protected by a trademark; or
- belittle or dishonor the competitor’s trademark, trade name, product or service, operations or circumstances.

Also, for example, comparative advertising that takes unfair advantage of the reputation of the competitor’s trademark, trade name, or of the original appellation of the product or service marketed by the competitor is prohibited. The Trademarks Act specifically provides that a trademark proprietor has the right to prohibit the use of a trademark in comparative advertising when the conduct would be contrary to the Unfair Business Practices Act.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

General rules concerning the prohibition on conveying false or misleading information in marketing apply also to the use of claims relating to geographic origin. There are also some sector-and/or product-specific requirements, such as those relating to claims concerning certain alcohol products originating from Finland (eg, use of the terms ‘Vodka of Finland’, ‘Finnish fruit liqueur’, and ‘Finnish berry liqueur’). Such claims should be precise and exact to avoid any misleading impressions (such as the impression that the product would be ‘domestic’ if it was only, eg, designed in Finland).

3.10 Are there any special rules governing product packaging?

The Consumer Protection Act provides that a product must include suitable packaging (otherwise the product can be considered defective). There are also general provisions setting out the information that should be provided on the product packaging. In addition, there are specific rules governing product packaging in certain fields, such as in the pharmaceutical, food, and tobacco sectors, to name a few.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no explicit provisions on ‘dark practices’ under Finnish law. However, the Finnish Consumer Ombudsman has published examples of certain ‘dark patterns’, referring to various methods used to design the structure of websites, software, mobile applications, other user interfaces or service paths to deceive or otherwise cause a consumer to do something that they were not originally intending to do. For example, disguised advertisements (ie, ads that are designed to look like something else than an ad) can be unlawful dark patterns. An example of such a disguised ad could be a button that looks like a standard application button, but is, in fact, an ad link which takes the consumer unwillingly to the advertiser’s website. Other examples of dark patterns include:

- unfavorable default choices and settings;
- mousetraps (consumer may easily make a choice, but cannot cancel it without difficulties);
- price splitting and hidden costs;
- emphasizing urgency or limited availability;
- products appearing in the shopping cart;
- ruining (attempts to affect the consumer’s behavior with repeated prompts or service interruptions);
- hiding essential information;
- directing to a specific choice;
- replacing a function with another function (where a function unexpectedly results in something completely different from what usually follows and what the consumer can expect);
- exploitation of emotional reactions; and
- using information and language that is difficult to understand.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There is no specific legislation or guidance on artificial intelligence regarding advertising and thus the general rules apply.

4 PRICE ADVERTISING

4.1 What are Finland’s rules regarding price advertising?

According to the Price Indication Decree (Act 553/2013), if consumer goods are marketed at a certain price, the sales and unit prices must be indicated in a clear, conspicuous, and easily understandable and detectable manner.

The Consumer Ombudsman has outlined that indicating price information in small print or in a color which is not distinguishable from the background may be considered as inappropriate marketing, if the consumer is not able to read the text in full.

Additionally, the price information must be complete and accurate, and include the sales and unit prices of the products (including all taxes and fees collected from the consumer).

Advertisers should ensure that the advertisement does not convey misleading information about the pricing.

4.2 What are Finland's rules regarding advertising 'free' products?

The Consumer Ombudsman has outlined that the products may not be described as 'free' if acquiring them incurs any costs or requires a purchase to be made. Such advertising could be considered as misleading marketing, which is prohibited under the Consumer Protection Act. When a consumer receives a benefit in connection with a purchase, such benefit should be characterized as 'without additional cost' or by using another more precise phrase, rather than being advertised as 'free'.

4.3 What are Finland's rules regarding sales and special offers?

According to the Consumer Protection Act, if a product is marketed at a reduced price, the lowest price at which it had been on sale over the previous 30 days must be indicated as well. If, in a continuous marketing campaign lasting no more than 60 days, the price reduction increases gradually, the lowest price at which the products have been marketed during the 30 days preceding the first price reduction can be stated as the lowest price. Further, in distance sales, the consumer must be informed, where applicable, where the price has been determined individually, based on automatic decision-making.

In addition, the Consumer Ombudsman has issued guidelines and instructions on sales and special offers. With regard to sales, for example, consumers must be given the reduced selling price of the goods or services in question. Moreover, if the products have been sold at a reduced price for a long period of time, the reduced price actually becomes the normal price. Therefore, sales cannot continue for very long. As an example, the Market Court has, in its practice, outlined that a sale may last up to two months, but that marketing of seasonal products after their main sales season may be longer. If the products have, in fact, never been sold at the 'normal price', they cannot be advertised as being 'on sale'.

A 'special offer' is shorter in duration, usually one month at most. Unlike sales, special offers may be used in newly-opened stores and at special sales events. When advertising special offers, the duration of the special offer or the number of products that can be purchased must be indicated.

4.4 What are Finland's rules regarding rebates?

Generally, rebates are permitted, as long as the general principles of the Consumer Protection Act are complied with, including the requirement that marketing must be identifiable as such and price information must be clear and conspicuous. Additionally, the Consumer Ombudsman has outlined that a rebate must not dominate marketing. If precise information about a rebate is given, consumers must also be informed how they may obtain and utilize such rebate.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Not applicable.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The advertising of pharmaceuticals is restricted (see question 1.5 above, with reference to, inter alia, encouraging appropriate use of pharmaceutical products).

The advertising of tobacco, tobacco substitutes, smoking devices, tobacco imitating devices, electronic cigarettes, nicotine liquids, nicotine pouches and strong alcoholic beverages is completely prohibited. Strict restrictions also apply to the advertising of mild alcoholic beverages. For example, the advertising may not be directed at minors, and the advertisements may not contain claims of certain possible positive effects of drinking. Mild alcoholic beverages may not be advertised on television or radio between 7.00 am and 10.00 pm, or in cinemas in connection with presenting a film that has an age limit of less than 18 years.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Telemarketing by electronic messages is subject to certain restrictions (see question 1.4 above). As a rule, such marketing requires the prior consent of the consumer. Other types of direct marketing, including marketing by phone, is allowed unless the consumer has opted out of such marketing. Both companies and individuals must be able to opt out of any direct marketing. Also, in accordance with the general principles of the Consumer Protection Act, marketing must always be recognizable as such, and it must be clear on whose behalf the marketing is being conducted.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

According to the Consumer Protection Act, marketing may not be ‘inappropriate’. Marketing is considered inappropriate if it clearly conflicts with the generally accepted values of society and, in particular, if it:

- (a) violates human dignity or religious or political belief;
- (b) is discriminatory based on, inter alia, gender, age, ethnic origin or state of health; or
- (c) conveys an approach which promotes or glamorizes endangering health, safety or the environment without a justified reason.

Where marketing is directed at minors, it is considered especially inappropriate if the lack of experience and natural credulity of minors is exploited in such marketing, and if the marketing is likely to have an adverse effect on the balanced development of a minor or is intended to disregard the parents’ ability to educate their child.

The interpretation of this principle has been clarified in case law, statements of the Consumer Protection Ombudsman, and decisions of the relevant self-regulatory bodies.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Yes. It must be clear on whose behalf marketing is conducted. This follows from the general principles of the Consumer Protection Act and the AECS. According to the AECS, the name or logo of the sponsor must be clearly presented either at the beginning or at the end of sponsored audiovisual programs or radio programs. This fulfills the requirement of transparency, which is a central principle of the Act.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The primary rule, in accordance with the general principles explained above, is that marketing must always be recognizable as such.

Furthermore, pursuant to the AECS, product placement (ie, the insertion of a product, service or trademark within an audiovisual program in return for consideration) is, as a rule, prohibited. The prohibition does not apply to cinematographic works, films, or series made for audiovisual content services, sports programs, or light entertainment programs. Providing props and product prizes for use in audiovisual programs free of charge is also considered product placement if the items are of significant value. Such placement is, however, generally permitted in programs other than children's programs.

When product placement is carried out, it must be ensured that it does not:

- affect the content of the programs or their scheduling;
- encourage the purchase of products or services;
- make promotional or other special references to the products; or
- give undue prominence to the products.

Sponsoring is also subject to certain restrictions. The AECS provides that a sponsor may not influence the content of sponsored programs or their placement in the program schedule in a way that may affect the liability or autonomy of the content provider or radio broadcaster.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

When programs contain product placement, viewers must be informed of its existence clearly either by a logo or text at the beginning and at the end of the program and again after each commercial break. However, this requirement does not apply if the content provider has not produced or commissioned the program, and obtaining information about product placement requires unreasonable effort.

The same requirement applies to the sponsoring of audiovisual programs: the sponsor's name or logo must be presented clearly at the beginning or at the end of the sponsored program.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

The general principles applicable to all marketing also apply to advertising in social media. In addition, there are several guidelines and best practice papers on the subject:

- (a) the Finnish Consumer Ombudsman has issued guidelines on influencer marketing in social media containing rather specific instructions for companies and influencers on how commercial co-operation should be communicated to consumers on different social media platforms.
- (b) IAB Finland, the Finnish association for digital marketing and advertising, has issued guidance on influencer advertising.
- (c) the Nordic Consumer Ombudsmen have issued a position paper on social media marketing. The position paper contains the Nordic Consumer Ombudsmen's interpretation as to how the general principles of marketing law should be taken into account in the social media context.
- (d) the International Consumer Protection and Enforcement Network has issued best practice principles for marketing practices directed towards children online.

In line with the general principles applicable to marketing, one of the most important requirements is that marketing messages should be clearly identifiable as such. Advertisers should ensure that consumers are able to recognize advertisements, and on whose behalf they are made. If individuals receive payment for mentioning certain products in social media, they should be careful not to create the impression that their communication does not have a commercial purpose. Pages created for companies or products in social media must contain certain information required by law, such as contact details.

The restrictions concerning electronic direct marketing must also be adhered to. In particular, this means that marketing messages may only be sent to persons who have given their prior consent (opted-in).

Where social media marketing is directed at children, more stringent requirements apply. For example, children should not be persuaded to purchase or demand that their parents purchase products. The advertising of certain products may not be directed at children at all, such as alcohol. There are also certain requirements for banner advertising. It must be ensured that banners contain correct information, the total price (including all fees and taxes) and the terms of purchase must be clearly stated.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There is no significant case law about user generated content. Generally, advertisers are responsible for ensuring that their marketing material contains accurate information. Any false information must be corrected by sufficiently effective means. In online marketing, this obligation is interpreted especially strictly, because it is possible to update, modify, and remove data quickly and at any time.

If the advertiser has not complied with this duty of care, it may, under certain circumstances, be liable towards its customers for any damage resulting from such negligence. However, if the advertiser is able to show that the damage was caused by reasons not attributable to the advertiser, or that its marketing has not been inappropriate, the advertiser is not usually liable for damages.

Furthermore, according to the Consumer Ombudsman, a company is responsible for influencer marketing, regardless of whether commercial co-operation is being carried out with a professional influencer or a non-professional one. The influencer must clearly disclose if a product or service has been a gift (ie, it has been provided by the company without prior agreement with the influencer). Furthermore, the recommendations of the Finnish Council of Ethics in Advertising outline that an influencer's additional posts after posting the original commercial and agreed post(s) can be considered to be marketing, even if the company and the influencer have not agreed on another post.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There is no significant case law from the courts or self-regulatory bodies yet, but the position paper of the Nordic Consumer Ombudsmen (referred to in question 8.1 above) and other guidelines issued by the Finnish Consumer Ombudsman contain useful information on the requirements related to social media marketing.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The use of an individual's name, picture or characteristics has not been specifically regulated in Finland. However, the images or voices of persons appearing regularly in news or current affairs programs may not be used in commercial communications, pursuant to the general principles of the AECS.

It has been generally considered in legal praxis that using a person's name or picture requires the person's consent. This obligation may be derived from the Finnish Constitution (Act 731/1999), which guarantees a right of privacy for everyone, as well as from the data protection legislation. Finnish courts, as well as self-regulatory bodies, such as the Council of Ethics in Advertising and the Board of Business Practice, have interpreted the consent requirement in their decisions.

Furthermore, the ICC Code contains a specific requirement concerning the portrayal or imitation of persons in marketing. It provides that marketing communications should not portray or refer to any persons, whether in a private or public capacity, unless prior permission has been obtained.

9.2 Are there situations when permission is not required?

As explained above, there are no provisions regarding the use of an individual's name, picture, or characteristics, except for the images or voices of persons appearing regularly in news or current affairs programs. However, the Finnish Supreme Court has considered that where the picture of a person is part of a marketed product, such as a picture of a famous person in a published article, the article may be used in the marketing of that publication without specific permission. In such a case, the picture is only considered as a description of the content.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

While, in practice, other laws (such as intellectual property laws) may limit the use of pre-existing materials, there is no advertising-specific regulation concerning the types of materials that must be cleared before they may be used in advertising, such as those displaying historic places and buildings. In the case of private premises, the respect for private life regulated in the Constitution must, naturally, be observed.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

As a general rule, if the other company's products are not the focal point of the advertisement, there is usually no obstacle for such use. However, the provisions regarding inappropriate business practices, as well as intellectual property legislation, must be observed. For example, according to the ICC Code, the exploitation of another company's goodwill and the unjustifiable use of a brand's name or trademarks are prohibited. In the case of comparative marketing, the principles of fair competition must be taken into account. According to the ICC Code, marketing communications should not denigrate or bring into public contempt or ridicule another firm's product. The rules regarding comparative marketing have been described in more detail in question 3.7 above.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Finland which affect advertising (eg, Swedish gender equality law)?

Discriminatory marketing is prohibited under the Consumer Protection Act. Advertising may not prejudice human dignity or be discriminating based upon gender, age, ethnic origin, nationality, language, state of health, handicap, sexual orientation, or other similar characteristic.

The Council of Ethics in Advertising has considered gender equality in many cases. It has outlined that an advertisement is inappropriate if a woman or a man is used as an eye-catcher or sexual object, or gender is used in a degrading, disparaging or derogatory manner. An advertisement may also be inappropriate if it contains sexual insinuations or promises which do not relate to the advertised product in any way. In addition, an advertisement is inappropriate if it claims or clearly implies that the role of one gender is of lower value than the other socially, economically or culturally. In general, advertisements should not promote stereotypical gender roles. These principles have been codified in the Council's principles on good marketing practice.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Marketing is considered inappropriate under the Consumer Protection Act if it conflicts with the generally-accepted norms of society and if it offends religious belief. The latter has been considered by the Council of Ethics in Advertising in many decisions. The Council has, in most cases, found advertisements with religious references acceptable despite the fact that individual persons may be offended by the depiction of religion in such advertisements. Thus, it may be concluded that the threshold for prohibiting advertisements for religious reasons seems to be relatively high.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Finland?

In Finland the supervisory authorities are particularly concerned about advertising to minors and advertising conducted through electronic channels. Consequently, it is advisable to have any such advertising carefully examined before the launch of the campaign.

 FRANCE 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in France?

Advertising is regulated both by law and through self-regulation.

General rules apply to all advertising, irrespective of the product concerned. For example:

- the Consumer Code covers deceptive and misleading advertising, as well as comparative advertising;
- the Intellectual Property Code deals with the protection of trademarks and copyrights;
- Article 9 of the Civil Code protects individuals' image and privacy; and
- the 1994 'loi Toubon' imposes the use of the French language in all advertising.

The French advertising self-regulation agency ('ARPP') represents advertisers, agencies and the media. It details expected ethical standards and secures proper implementation of these standards through advice and pre-clearance, including providing mandatory advice before the broadcast of all TV commercials. ARPP works with an independent 'jury' which handles complaints against advertisements which violate ARPP rules. Its decisions are published on its website (this is seen as a sanction in itself).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

TV advertisements are defined as messages broadcast on TV, for remuneration or other compensation, aimed either at promoting products or services, or at ensuring the commercial promotion of a public or private company.

Aside from this, there is no official definition, except that which has been developed by case law in connection with comparative advertising, ie a communication which is made public and in the interest of an advertiser.

1.3 What is the basic regulatory framework for advertising regulation?

There is both a legal and a self-regulatory system.

Generally, unfair competition and misleading advertising are prohibited, comparative advertising is regulated, and specific regulations apply to certain products (eg, alcohol, tobacco and books), categories of persons (eg, children in advertising, respect of the image of individuals) and also to certain media (eg, TV, internet).

The ARPP has so far issued approximately 31 Recommendations which are either general, thematic, aimed at certain media or economic sectors, or miscellaneous recommendations.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Digital media advertising is principally regulated by the Digital Economy Law of 21 June 2004. Advertisements, in whatever form (including pop-ups, advertisement banners etc) must be identified as such and therefore they must be clearly distinguished from any non-commercial information. The name of the person or corporation for which the advertisement is made must be clearly stated.

Email advertising requires the prior consent of the addressee except under certain circumstances. In all instances, the person on behalf of whom the email advertising message is sent should not be disguised and the subject matter of the email must not conceal any relationship with the product or service offered. The name and address where the addressee may send a request for the discontinuation of the advertising email without any cost (aside from costs in relation to the discontinuation request) should be clearly stated.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) **Alcoholic beverages:** Direct or indirect advertising of alcoholic beverages (ie, any propaganda or advertising in favor of a corporate body, service, activity, product or item, the effect of which, whatever the goal, is to remind the consumer of an alcoholic beverage) is strictly regulated in France.
- (b) **Cars:** The content of advertising pertaining to new or used cars (in particular information on the gas consumption and carbon dioxide emission of new cars) is regulated. Additionally, direct or indirect advertising in which the car appears off-road is prohibited.
New information requirements for automotive advertising are in force since March 1, 2022:
 - A carbon dioxide (CO₂) label must be inserted in all advertising (except radio advertising) for passenger cars.
 - In addition, the Road Code now implements a requirement for the alternative display of three different messages:
 - ‘For short trips, prefer walking or cycling #LowerPollutionMovement’;
 - ‘Think about carpooling #LowerPollutionMovement’; and
 - ‘On a daily basis, take public transport #LowerPollutionMovement’.
- (c) **Companies in the energy sector:** Advertising by companies in the energy sector and advertising dealing with energy and energy consumption must include the following message: ‘energy is our future, save it’.
- (d) **Firearms, weapons, and ammunition:** The only information that may be included in such advertising is:
 - the name of the manufacturer or distributor;
 - the technical characteristics of the firearms;
 - the price; and
 - any sales conditions,
 and such advertisements can only appear in specific media.
- (e) **Food:** Advertising of food products must not create confusion for the purchaser or consumer as to the characteristics of the food products. This includes the nature, identity, qualities, content, quantities, durability, origin and manufacturing/sourcing process of the goods. Health messages must be added to advertising for manufactured food products and drinks on television, cinema, radio, in newspapers and posters and marketing flyers distributed in supermarkets, and also over the Internet. The messages are:
 - ‘For your health, eat at least five fruits and vegetables per day’,
 - ‘For your health, practice sport regularly’,
 - ‘For your health, do not eat food that is too rich, too sugary, too salty’,
 - ‘For your health avoid eating outside mealtimes’.
 See question 3.4 below.

- (f) **Gambling and state lotteries:** Any advertising must include a safeguarding message against excessive or pathological gambling, as well as a reference to a system which provides information and assistance. Advertising for gambling and lotteries is prohibited in audiovisual programs, in the press and on internet sites aimed at under-aged persons, so that minors are especially protected.
By the Influencer Marketing Law of 1 June 2023, influencers are no longer able to promote subscriptions to sports forecasts, and the promotion of money games will be limited to platforms that technically restrict access to minors.
- (g) **Medical services:** Any direct or indirect advertising and, in particular, any arrangement/layout or sign providing a commercial look at medical premises is prohibited.
- (h) **Tobacco products (cigarettes, e-cigarettes, cigars, snuff, pipe tobacco):** Any propaganda or advertising, direct or indirect, in favor of tobacco, tobacco products or ingredients is prohibited. See, further, question 5.1(b) below.

1.6 Are any government pre-approvals required?

Not applicable.

1.7 Does the media pre-clear advertising?

The media does not pre-clear advertising per se, but is keen to have the relevant regulations complied with.

For instance, TV advertising requires pre-clearance to be carried out by the ARPP. French TV channels therefore ensure that the ARPP has given its approval to the advertisement in question before broadcast.

Each advertisement to be broadcast on TV has to bear its own identification number ('PubID'), which contains information such as: the name of the advertiser, the name of the product, the name of the advertising agency, the ARPP pre-clearance, and the music.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Consumers and Competition Agency ('DGCCRF') has broad investigative powers in relation to all matters pertaining to the protection of consumers, including advertising practices.

DGCCRF agents are entitled to enter the professional premises of the advertiser, advertising agency and communication agency during business hours by prior appointment in order to request an immediate review of documents; take copies of the same; and to ask questions.

Depending on the violation, a claim can be brought before civil and/or criminal courts.

- (a) Violations of the Loi Evin (which in particular places limitations on advertisements for alcoholic beverages) are sanctioned by fines of up to €75,000 and up to 50% of the advertising budget allocated to the promotion. In cases of repeated violation, the sanction is prohibition of the distribution of the alcoholic beverage in question for 1 to 5 years.
Courts may also order the removal or confiscation of the prohibited advertisement. Corporate entities which have committed a violation may be ordered to pay a fine of up to €375,000 and up to 50% of the advertising budget.

(b) Violations of the rules governing unfair commercial practices (which implemented EU Directive 2005/29) are subject to criminal sanctions as well as civil remedies:

(i) Criminal sanctions:

- Individuals: fine of up to €300,000 and/or up to two years imprisonment; 50% of the advertising expenses may be levied;
- Legal entities: fine of up to €1,500,000 (which can be set to an amount equivalent to up to 10% of the average turnover based on the last three fiscal years, or 50% of the advertising expenses to create the litigious ad). This amount can be increased by the judge to reach 80% of the expenses incurred to commit the litigious commercial practice (when it relates to an environmental claim, such as 'Made in France').

There are also additional sanctions, such as publication of the decision (eg, in a newspaper or on the website of the losing party, as determined by the judge).

(ii) Civil remedies: Damages can be awarded to a claimant who brings a claim in the criminal court. In addition, for actions based on tort, judges can allocate damages based on an assessment of the prejudice suffered in each case.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor suffering prejudice (ie, having an interest in bringing a legal action) is entitled to bring a claim before the civil and/or criminal courts. Such competitors are entitled to receive monetary damages to compensate them for the prejudice suffered (eg, unfair competition).

Tort law applies in the event the action is brought on the ground on unfair competition/parasitism. The general rule is set out in the French Civil Code: 'Every act of a man which causes injury to another obligates the one by whose fault it occurred to give redress'. Moreover, 'Everyone is responsible for the injury he has caused not only by his act, but also by his neglect or imprudence'.

Three elements are necessary for liability to arise:

- fault;
- damage; and
- a causal link between the two.

The burden of proof of all these elements falls on the claimant. If these three criteria are fulfilled, the claimant is entitled to claim compensation for the prejudice suffered.

1.10 When do consumers have a right of action? What are the potential remedies?

A consumer suffering prejudice (ie, having an interest in bringing a legal action) is entitled to bring a claim before civil and/or criminal courts.

This consumer will be entitled to receive monetary damages which aim to compensate the prejudice suffered (eg unfair advertising).

2 SELF-REGULATORY FRAMEWORK

2.1 Does France have a primary advertising self-regulation system?

Yes. The ARPP has the following powers:

- (a) 'Good behavior' codes/rules: The ARPP and those in the advertising sector (agencies, advertisers, advertising media, and professional bodies) collaborate to draft self-regulatory rules ('Recommendations'). These Recommendations are a serious commitment from the industry, but they do not replace French general law which remains applicable and must be complied with by advertising professionals.
- (b) Enforcement of the Recommendations: The ARPP ensures that the Recommendations are complied with by following three main steps:
 - (i) Advice for each type of advertising media, before finalization of the advertisement (ARPP members are entitled to ask for advice on their projects);
 - (ii) Opinion (only concerning TV advertising prior to broadcast). Each TV advertisement must be submitted to the ARPP, which then issues one of three opinions: 'favorable', 'to be modified', or 'do not broadcast';
 - (iii) After the broadcast of the advertisement, the ARPP is entitled to require, in cases of lack of compliance with the self-regulatory rules, and depending on the gravity of the breach, that the advertising campaign is modified or withdrawn.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The ARPP has issued approximately 31 Recommendations as follows:

- (a) Recommendations addressing general issues (such as the obligations to identify advertisements as commercial messages, the rules applicable where specific wording is used in advertisements, or the rules applicable where footnotes are included in advertisements);
- (b) Thematic Recommendations (eg, Recommendations in relation to claims/arguments related to health, ecological arguments, children, use of an individual's image, religion, and product safety);
- (c) Recommendations relating to specific types of media (notably internet and telephone);
- (d) Recommendations relating to certain economic sectors:
 - (i) Food, health and beauty: Recommendations in connection with advertising for alcohol; health and beauty; food aimed at children under the age of three;
 - (ii) Vehicles: Recommendations in connection with advertising for motor vehicles and two-wheeled vehicles;
 - (iii) Real estate: Recommendations in connection with advertising for real estate, construction and residential properties;
 - (iv) Services: Recommendations in connection with advertising for services such as the offers of employment dedicated to home working, or the offer of drinking-water systems; and
 - (v) Miscellaneous: Recommendations in connection with advertising for books; promotional offers; and toys.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The ARPP acts in cooperation with an independent Jury ('JDP'), which is in charge of dealing with complaints against advertisements which do not comply with the Recommendations. These complaints can be brought either by competing advertisers, public associations, governmental authorities, or private individuals.

In order to be brought before the JDP, a claim must meet the following criteria:

- (a) a claim must be brought against an advertisement (ie, the ad must have been broadcast or be accessible no more than two months prior to receipt of the complaint);
- (b) the advertisement in question must be identifiable and have been broadcast in France; and
- (c) the claim must be based on a violation of the self-regulatory rules.

The JDP also has jurisdiction to rule on digital marketing advertising (email, website, digital applications, etc) distributed abroad by or on behalf of an advertiser headquartered in France. To this end, it handles complaints referred to it by a counterpart body within the framework of the cross-border complaints handling system set up by the European Advertising Standards Alliance.

The advantage to complaint-handling under the self-regulation system is that the decision is issued rapidly (within three months) as opposed to a decision handed down by French courts. The disadvantage is that the JDP is not permitted to sanction the violation of French advertising law, nor is it empowered to issue civil penalties or to force the discontinuation of non-compliant advertisements. However, its decisions are published on its website (which is a sanction in itself from the advertiser's point of view).

An appeal can be brought against the JDP's decision within 15 days of the date the decision is received by the parties. The appeal is brought before the Reviewer of Advertising Ethics, who is an individual appointed by the ARPP for a three-year term (but not a member of the JDP).

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulatory system appears to be effective as it is well used and followed by people engaged in the field of advertising.

In 2023, the ARPP handled 51,774 files. Among these files, the ARPP has handled 24,690 pieces of advice (across all media). Since its creation in 2008, the JDP has handled 13,390 claims, with 860 decisions published on its website.

2.5 Are the self-regulatory system's decisions reported?

The JDP's decisions are published, and the methods of publication vary depending on the seriousness of the violations.

- The first level of publication consists of an online publication of the decision on the JDP's website once the decision is handed down by the JDP.
- At a second level, a press release is issued by the JDP with a reference to the trademark of the advertiser and the identification of the advertising agency.
- In the case of serious breaches, the JDP may publish its decision in a relevant newspaper.

Three years after the decision has been rendered, the JDP's decision is rendered anonymous.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

On 7 May 2014, the First degree Tribunal of Paris held that the publication of a decision by the JDP was defamatory to the advertiser in question.

A students' insurance organization, SMEREP, broadcast 5 advertisements presenting students explaining why they chose SMEREP, as follows: 'Clara, 18, the blond girl', 'Thomas, 19, the lazy guy', 'Greg, 19, the heartthrob', 'June, 18, the angry girl', 'Jeanne, 22, the Parisian girl'.

The plaintiffs before the ARPP claimed that these advertisements presented disparaging stereotypes of young people. The JDP concluded that the campaign violated the ARPP Recommendation on the Image of the human person. Its decision was published on the JDP's website.

SMEREP sued the ARPP (of which the JDP is part) before the First degree Tribunal of Paris which, ordered the ARPP to pay €10,000 in damages to compensate SMEREP for moral prejudice, as well as €4,000 for procedural costs.

2.7 Are there any other self-regulatory systems that govern advertising practices in France?

Not applicable.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in France (eg, consumer protection laws; IP laws; unfair competition laws)?

(a) Consumer protection laws

- (i) Use of the French language: The use of French language is mandatory in any written, spoken or audiovisual advertising. Any wording associated with registered trademarks must be accompanied by a translation into French. This does not mean, however, that both should be of the same size, graphics or color.
- (ii) Prohibition of misleading commercial practices: Misleading advertisements are subject to sanctions. The sanction forms part of the broader infringement called 'misleading commercial practices', which may result from a positive action or from an omission, eg, not providing information which is essential for the recipient of the advertisement.

(b) Intellectual property laws

- (i) The use of a copyrighted work or registered trademark in advertising is subject to the authorization of the author/owner.
- (ii) The use of French monuments in advertisements has to be carefully considered under French copyright law. Even if a monument is in the public domain, the moral rights still remain in force, as they are perpetual.

(c) Unfair competition law

Unfair competition is based on tort and requires that the suffering party proves:

- fault (eg, disloyal behavior consisting of the intention to promote the perpetrator's own commercial activity through a 'free ride');
- prejudice (eg, damage to somebody's reputation or image, misappropriation of customers, destabilization) and
- a causal link between them.

While unfair competition implies a competing relationship between the parties at stake, the notion of ‘parasitism’ has been applied by the French courts to reprimand disloyal behaviors towards non-competitors. This means that even if the parties at stake do not operate in the same field of activity, the use of one element of the other business’ activity could lead to a sentence based on parasitism (ie, free ride).

3.2 Is substantiation required for advertising claims?

Substantiation is required. The rules on misleading commercial practices apply to all advertising claims that cannot be substantiated by the advertiser.

In addition, the ARPP has issued Recommendations which oblige advertisers to substantiate claims.

For instance, a ‘Sustainable Development’ Recommendation, updated in April 2020, points out that the advertiser must be able to substantiate sustainable development claims with objective, reliable, truthful and verifiable information at the time of advertising.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The use of exaggeration in the advertising message is tolerated in France provided that, through the visual elements of the advertisement, to the critical mind of the average consumer, it is blatant that the exaggeration cannot mislead anyone.

Caricaturized advertising messages are tolerated for the same reasons.

3.4 What are the rules governing the use of disclosures in advertising?

Any disclaimer or other qualification or clarification must be expressed clearly and legibly and must not mislead consumers in any case.

There are specific rules which impose, in certain instances, the use of disclaimers in advertisements. For instance:

- Since 1 February, 2007, health messages have been added to advertising for manufactured food and drinks products on television, cinema, radio, newspapers, and on posters and marketing flyers distributed in supermarkets (see question 1.5(e) above). If the advertisers decide not to use these health messages, they must pay 1.5% of the cost of the promotional campaign to the national nutritional policy. In relation to TV advertisements, the health message must be included in a fixed or moving window streamer or on a screen at the end of the advertisement. The health message is supplemented at the end of the advertisement by a reference to the website www.mangerbouger.fr.
- Since 1 October 2017, the wording ‘retouched photograph’ must be presented with commercial photographs of models whose body appearance has been refined or enhanced. This requirement aims at fighting anorexia and bulimia.
- Since 1 March 2022, ads for motor vehicles must also contain a specific message and a carbon dioxide (CO₂) label (see question 1.5(b) above).

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsements are possible in advertising only if the company, business, or trademark owner accepts the association with the advertisement.

The use of testimonials is also carefully monitored so as to avoid any violation of the law prohibiting misleading commercial practices.

The ARPP has issued a Recommendation dedicated to health claims that specifically addresses the use of testimonials in such advertising. A testimonial about a component of a product can be made by a member of the medical, para-medical or scientific sector, provided that such a testimonial:

- is based on objective, scientific and verifiable proofs; and
- is not based solely on the personal opinion of the professional concerned.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules dedicated to product demonstrations. Therefore, the general principles prohibiting misleading advertising or forced sales/aggressive commercial practices apply.

Specific additional rules apply on all sales carried out outside stores. No payment can be made by the buyer (consumer) to benefit the seller (professional) within 7 days from the date on which the sale was concluded. In addition, the buyer benefits from a right of withdrawal for 14 days without any justification needing to be provided to the seller, with the buyer then required to send back the product purchased within 14 days following the day on which the seller was informed of the withdrawal.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted in France provided that the following rules are complied with:

- (a) the comparison must concern goods or services which cover the same need, or which have the same purpose;
- (b) the comparison must be objective, and exclude any reference to subjective criteria such as taste, smell, or visual appearance;
- (c) the comparative advertisement must objectively compare one or more essential, accurate, verifiable and main-defining characteristics of the goods or the services (eg, the price);
- (d) the comparative advertisement must not mislead or attempt to mislead the public;
- (e) the comparative advertisement must not, without valid cause, take advantage of any goodwill in the trademark or name of the competitor;
- (f) the comparative advertisement must not disparage the trademark, trade name or other distinctive brand of the competitor; and
- (g) the comparative advertisement must not lead to confusion between the advertiser and the competitor.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Trademark/copyright law does have an impact on comparative advertising. The use of a trademark or a copyrighted item of a competitor is permitted in connection with comparative advertising, provided that there is no confusion between the advertiser and the trademarks or commercial name/trade name of the competitor.

The ECJ held, in a decision dated 12 June 2008, that, where there is no risk of confusion, a trademark owner cannot avail itself of its rights in its trademark to prohibit the use, in a comparative advertisement, of a sign identical or similar to its trademark, irrespective of whether the other conditions of legality of the comparative advertisement are met or not.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

- (a) The ‘CE’ marking was introduced pursuant to European technical harmonization legislation. It is mandatory for all products covered by one or more European directives which expressly provide for it, and it guarantees free movement throughout the EU for these products. To be entitled to affix ‘CE’ marking to their products, manufacturers must conduct, or have conducted, controls and tests ensuring that the products comply with essential requirements, particularly those concerning health and safety, as set forth in the relevant directives.

‘CE’ marking is not certification, and it does not attest to the product’s geographical origin.

Being both mandatory and regulatory, it represents a manufacturer’s visible confirmation that its product complies with European legislation.

Whether a product, manufactured in France or imported, is subject to a ‘CE’ marking obligation can be verified in the technical harmonization Directives or by referring to national measures transposing them. These Directives specify the scope of application for the relevant products and, where applicable, the excluded products. There are currently around twenty technical harmonization Directives providing for the affixing of ‘CE’ marking, relating to a vast range of products. Only the products mentioned in these Directives are obliged to have ‘CE’ marking.

- (b) The ‘made in France’ label is compulsory:
- for food products, when the lack of this information can lead the consumer into confusion (eg, a product called ‘Provençal spices’ with a French flag featured on the packaging but which does not come from France will have to show its geographical origin); or
 - for pre-packed meat (with information pertaining to the breeding place and the point of slaughter).

Otherwise, the ‘made in France’ label is not compulsory.

But when the ‘made in France’ label is featured on the packaging of the product, the general rule for a commercial claim to be truthful and honest applies; otherwise it will be deemed an unfair commercial practice under the Consumer Code.

3.10 Are there any special rules governing product packaging?

The Consumer Code sets out specific information to be provided to consumers for their information before purchasing the product; some of this information has to be presented on the label of the product. The use of the French language (or a French translation, if the information is presented in a foreign language) is compulsory for the proper information of the French consumer.

The information is:

- (a) the essential characteristics of the product, in particular its composition (list of ingredients), bottle volume etc;
- (b) the use-by date; and
- (c) the specific information allowing proper use of the product (ie, instructions for use), including any safety information.

The following information must also be presented on the packaging of a pre-packed product:

- (d) the net weight of the product expressed in kilograms or grams (there are rules as to the size of this information, depending on the weight of the product);
- (e) identification of the company which packed the product. When this company is not located within the EU, the identification of the importer (located in France or within the EU) must also be presented on the packaging as follows:
 - (i) if the importer is located in France, the importer's corporate name, postal address and identification, by means of a geographic code, of the town in which it is based should be given;
 - (ii) if the importer is located in another EU country, it may be identified by means of a note allowing the relevant authorities of the State concerned to identify this company (a code could be accepted); and this note must be presented in compliance with the rules applicable in the State concerned.

These notes must be inserted on the packaging or, at least, be presented on a labeling to be stuck on the packaging.

There is also specific information (including pictograms) to be featured on the packaging of certain products, for instance, dangerous chemical products.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Dark practices/patterns are practices that can trick or manipulate consumers into buying products or services or giving up their privacy. Common dark pattern tactics include:

- (a) **Misleading consumers and disguising ads:** The general rules sanctioning unfair commercial practices/misleading advertising apply.
In a Public Release published on 8 November 8 2023, the DGCCRF warned consumers against the use of settings and/or claims aimed at inciting them to take a rapid decision (deemed 'black patterns'), whereas a purchase should be carefully considered. It stated: 'Countdown to the end of a promotion, countdown of the number of items remaining in the inventories, number of users visiting the same page ... These messages, which are rarely verifiable, are primarily designed to rush you to validate your purchase, without necessarily taking the time to compare with other offers or check the qualities of the product'.
- (b) **Making it difficult to cancel subscriptions or charges:** A Decree dated 31 May 2023, has implemented new provisions into the Consumer Code. Under these new provisions, whenever a professional offers a consumer the possibility of subscribing to a contract electronically, including via an app, they must also provide a free function enabling them to complete the contract cancellation process online. The Decree sets out the technical details for making online termination as simple as possible for consumers, in particular by providing an identifiable, easy-to-access, direct and permanent function on websites and mobile apps.
- (c) **Burying key terms and junk fees:** The general rules sanctioning unfair commercial practices/misleading advertisements apply.
- (d) **Tricking consumers into sharing data:** The EU General Data Protection Regulation (GDPR) and e-Privacy Directive, as implemented by French law, apply; in particular, the general rule pertaining to full and informed consent to be given by the data subject before collecting and processing their personal data, for instance for direct canvassing purposes (by email, SMS—the opt-in rule).

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

In France, there is, for now, no specific set of rules regarding the use of AI as it relates to advertising. So, ads generated by AI must be compliant with the general rules governing advertising, in addition to the ARPP's recommendations.

Considering the constant evolution of technologies these past few years, the use of AI has increased in many fields, including in marketing, advertising and, more broadly, in the field of communication. Indeed, AI is broadly used to create advertisements or to target consumers more precisely/efficiently.

The use of AI in many fields raises various issues (eg, personal data issues) and is, as a result, a very hot topic in France and thus subject to a lot of discussions and debate, in particular regarding ethical considerations, from the government and various professional bodies and practitioners.

Hence, in January 2018, the ARPP's Ethical Jury issued a Report pertaining to 'AI and advertising', which includes Recommendations on how using AI in ads. For instance, the use of AI should be clearly mentioned to the public (eg, in advertising, in the implementation of chatbots etc), and individuals must not have their choices limited by algorithmic decisions, whether in terms of advertising or product offerings, if they do not agree to such use.

Finally, for several years now, AI has been used by the ARPP to monitor the compliance of digital content/ads with its Recommendations. For instance, in 2020, the ARPP launched monitoring, using its own algorithm, and has been using various technologies developed by platforms specializing in marketing that are capable of identifying potential breaches of digital ads, in particular to identify the compliance of influencers' publications with the ARPP's Recommendations.

More recently, in 2023, the ARPP entered into a partnership with the French National Audiovisual Institute to use its technology, which allows ARPP members to rapidly assess compliance of an ad before it is aired on TV.

4 PRICE ADVERTISING

4.1 What are France's rules regarding price advertising?

As a general rule, any service provider or seller of products to consumers must, through marking, labeling, posters or any other relevant means, inform the consumer of the price, the potential contractual limitation of liability, and the specific conditions of sales, in ways set out in specific provisions issued by the Ministry of the Economy.

The price must be expressed in euro (tax included).

Any product or service ordered during a period corresponding to an advertisement must be sold at the advertised price.

4.2 What are France's rules regarding advertising 'free' products?

The offer of free products is not prohibited per se under French law.

The offer (and therefore the corresponding advertisement) of certain types of products (eg, alcoholic drinks or drugs) for free is, however, prohibited.

Sales with premiums are also legal per se under French law, unless a premium sale is deemed an unfair commercial practice under the EU Unfair Commercial Practices Directive.

4.3 What are France's rules regarding sales and special offers?

The Commercial Code states that 'general sales' involve the selling of goods accompanied or preceded by advertising and are presented as being intended, through price reductions, to achieve rapid disposal of goods held in stock.

The length of time for which such sales may run is determined by order of the Minister of the Economy for a period ranging from three to six weeks. The most recent Decree of 27 May 2019 sets the duration of each sales period at four weeks, and also sets out the dates and times when such sales may commence, namely:

- 8am on the second Wednesday in January (or the first Wednesday in January if the second Wednesday is after 12 January); and
- 8am on the last Wednesday in June (or the penultimate Wednesday if the last Wednesday is after 28 June).

The sales periods for online sales are the same as those that apply to national sales for traditional stores, irrespective of where the company is located.

4.4 What are France's rules regarding rebates?

The EU Omnibus Directive 2019/2161, modernizing European consumer protection rules, was transposed into national law in December 2021. This inserted an article into the French Consumer Code governing price reduction announcements, which has been in force since 28 May 2022. Any announcement of a price reduction must now indicate the 'previous price' of the item, defined as 'the lowest price charged by the professional to all consumers during the last 30 days prior to the application of the price reduction'. Failure to indicate the previous price constitutes the offence of misleading commercial practice.

On 29 December 2021, the European Commission issued Guidelines to help practitioners and businesses to understand how to implement this new legal framework.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

In France, a sale at a price below cost price is prohibited under the Commercial Code).

The cost price is equivalent to the price the seller bought at, reduced by all price reductions that may have been offered (by the provider of the product) to this seller and increased by the delivery costs, the VAT and any other tax which could apply to such a sale.

Violations are subject to criminal sanctions. An action before the civil courts (for monetary damages) is also possible.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Given the scope of this publication, this list cannot be exhaustive, but includes:

- (a) **Firearms, weapons, and ammunition:** The content of advertising for firearms is regulated. Only the name of the manufacturer or distributor, the item's technical specifications, price and any sales conditions may be advertised, and only in specific media.

(b) **Tobacco products (cigarettes, E-cigarettes, cigars, snuff, pipe tobacco):**

- (i) Any propaganda or advertising, direct or indirect, in favor of tobacco, tobacco products or ingredients is prohibited. There is an exception for tobacco retailers. There is also an exception for the television broadcasting of motor sports events filmed in a country where advertising of tobacco products is permitted.
- (ii) Under the Public Health Code:
 - a health message must be featured on all tobacco product packets;
 - packets containing cigarettes, tobacco and cigarette papers must be neutral and standardized; and
 - direct or indirect advertising in favor of e-cigarettes (vaping products) is prohibited; as are sponsorship operations, the purpose/effect of which is to advertise (directly or indirectly) vaping products. The Influencer Marketing Law states that this ban also applies to influencers, who are strictly prohibited from promoting online, directly or indirectly, e-cigarettes or vaping products.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Spamming is subject to specific regulations that vary depending on the means used to send the communications.

The two applicable systems are those of:

- opt-out, whereby it will be possible to send commercial communications unless the data subject has expressly stated that they do not want to receive such communications; and
- opt-in, whereby it will only be possible to send commercial communications to data subjects who have expressed their prior consent.

This may be implemented through tick-boxes. It is strongly advisable not to pre-tick the opt-in box.

Opt-out requirements apply in the case of communications sent by postal mail.

Opt-in requirements apply to all commercial electronic communications (eg fax, email and SMS).

Moreover, under the GDPR, consent is one lawful basis for data processing (eg, for marketing purposes). Consent must meet several criteria under the GDPR: it must be freely given, specific, informed, and unambiguous.

However, there are alternative bases for data processing, eg, for marketing purposes. In particular, the data processor may be able to rely on 'legitimate interests' to justify some of its business-to-business or business-to-consumer marketing. In this case, the data processor will have to show, in particular, that the way it uses people's data is proportionate and has a minimal privacy impact.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

There are general principles which are aimed at preserving the dignity of the human being (Section 16 of the Civil Code).

In addition, all advertising and marketing communications should be decent, respect human dignity and be compliant with ARPP's Recommendations on 'the Image of the human person' and 'Race, Religion, Ethnicity'.

According to these Recommendations:

- (a) advertising should not shock or offend by way of representations or situations, explicit or implicit, that can be perceived as degrading or humiliating;
- (b) advertising should not devalue a person because of gender, age, sexual orientation, disability, or social group, in particular by minimizing their role or responsibilities;
- (c) the use of stereotypes (sexual, racial, religious, social, etc) must be handled with an increased sense of social responsibility, and especially with respect for the dignity of the person concerned; and
- (d) advertising must not condone, incite or trivialize violence, whether moral, physical, explicit or implicit.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

- (a) The Digital Economy Law, which addresses some specificities of activities carried out through the internet (liability of the service providers, the conclusion of online agreements, etc), provides general rules that are the same as those applied in the ‘real world’, such as the requirement to have adverts, whatever form they take (pop-ups, advert banners, etc), identified as such, and therefore clearly distinguished from non-commercial information.
- (b) The Consumer Code also requires transparency. When an advertiser pays for content in the media to promote its product or service without clearly stating this in the content or through images or sounds clearly identifiable by the consumer, it can be deemed liable for the misleading advert or act of unfair competition.
- (c) Moreover, under the ARRP Recommendation ‘Digital advertising and marketing communication’, marketing communications and advertising should be clearly distinguishable as such, whatever form they take. Identification can be achieved by any means whereby the consumer can clearly and immediately understand that the message is an advertisement, thus:
 - if the commercial nature of the message is obvious, either because it uses a common advertising format or because of the content, no further identification elements are required;
 - if the commercial nature of the message is not obvious, then a clear notice identifying the commercial nature of the message should be added.

When the message is surrounded by news or editorial content, it should be presented in such a way that it is instantly recognizable as an advertisement. The notice must be readable or audible, and intelligible.

When the form of the advertisement does not allow an immediate identification of its commercial nature, it must be identified as specified in the Annex of the Recommendation.

7 **BRANDED CONTENT**

7.1 **Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?**

According to ARPP's Recommendation 'Digital advertising and marketing communication', marketing communications and advertising should be clearly distinguishable as such, whatever form they take, and rules on the identification of the advertisement must be complied with (see question 7.2 below).

7.2 **Are there any special disclosure or other obligations when integrating advertising content with other content?**

In order to ensure clear information reaches consumers, marketing communications and advertising should be clearly distinguishable as such, whatever form they take. This identification can be achieved by any means whereby the consumer can clearly and immediately understand that the message is an advertisement.

The identity of any advertiser in relation to broadcasting advertising or marketing communications must also be obvious.

In relation to digital media, the identification of the advertisement/marketing communication must comply with the provisions of the Digital Advertising and Marketing Recommendation.

Regarding integration into print media, in the case of a paid-for editorial advertisement or any other advertisement that has the appearance of an editorial advertisement, the advertiser, the advertising agency and the press media must display the words 'PUBLICITÉ', 'COMMUNIQUÉ' or a synonym, in a clear and readable way, at the top of the advertisement.

8 **SOCIAL MEDIA**

8.1 **Are there any special rules governing the use of social media for advertising purposes?**

(a) The Influencer Marketing Law of 1 June 2023 provides that the content published by influencers aiming at promoting a brand/an advertiser, must feature the words 'Advertising' or 'Commercial collaboration'. This indication must be clear, legible and identifiable on the image or video, in all formats, throughout the promotion. The sanctions in the event of the violation of this obligation are: two years' imprisonment and a fine of up to €300,000.

(b) ARPP's Recommendation on Digital advertising applies to all ads communicated electronically, other than those broadcast as part of radio and television services. This covers social media. It also includes advertising communications in all formats, including on advertisers' own websites (and social networks).

The ARPP also details the main principles which apply where advertisements are broadcast through social media, in particular:

(i) Identification as advertising and of the advertiser: In light of the specificities of social networks, it is recommended to add an explicit notice if the commercial nature of the advertisement is not obvious.

Further, advertisements appearing in spaces which are dedicated to chats or interactions (eg, comments on a status, message on a wall) between users must be identified as advertising by means of a clear indication.

The use, for advertising purposes, of social network functions meant for users (groups, events, fan pages) must be clearly identified.

The advertiser must be easily identifiable. This identification must be clearly perceptible and easily accessible to the public. Identification can be made by the advertiser's brand(s), or any other distinctive sign unambiguously related to the advertiser.

In no event must an advertisement create confusion with a user's message.

- (ii) Protection of children and teenagers: It is recommended that providers offering services that require prior identification request that users provide their age or date of birth in order to protect children and teenagers against harmful advertisements.
- (ii) Fair, truthful and honest advertising: The advertisement must not mislead the consumer regarding the service/product offered and the identification of the advertiser.

When the format does not enable the advertiser to provide information requested by law (eg, a tweet), this information must be directly accessible via a link.

In addition, this information must be legible or audible and intelligible, without impairing any compulsory provisions which would be applicable.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

As a general rule, the editor of content broadcast over the internet is deemed liable in the event a claim is brought against the content owners (copyright/trademark infringement, etc).

However, when the advertiser requests content from a consumer, or monitors this, the advertiser could be held liable in the event of a violation.

Further, in a decision dated 8 July 2019, the JDP found that a post of an influencer, hired by an ad agency on behalf of an advertiser (for an alcoholic beverage brand), was not compliant not only because there was no disclosure of the advertising nature of the post (in violation of the Recommendation 'Digital advertising and marketing communication'), but also because the health message was missing (in violation of the Recommendation 'Alcohol').

This was because, even though the post had been made by an influencer, the advertiser had been asked by the JDP to share its arguments; the advertiser stated that it had asked the ad agency to ensure that the post at stake was compliant and reiterated its commitment to promote and implement professional ethics, in particular those laid down by the ARPP. While acknowledging the advertiser's commitment to increased vigilance, the JDP handed down a decision according to which the post was not compliant.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

The decisions of the French courts and the self-regulatory JDP consider that the internet is a medium to which the general rules governing advertising apply (see question 8.2 above for an example of the JDP's decision on this issue).

There is, however, a decision by French courts which concerned an advertisement broadcast over the internet which led to the modification of the law.

Advertising of alcohol is strictly restricted in France. The ‘Loi Evin’ (1991), which has been implemented in the Public Health Code, limits the media and content which are permitted in connection with advertisements for alcohol. In February 2008, Heineken was sanctioned by the Court of Appeal for broadcasting an advertisement over the internet—the internet was not, at that time, listed as an authorized media for advertising alcoholic beverages. As a result, in 2009, a new law was introduced which added ‘online communication services’ as an authorized medium, for advertising alcohol, though under a specific condition: advertisements for alcohol carried out online should not be intrusive—such as pop-ups—or interstitial, and should remain, in any case, prohibited on websites which are, by their character, presentation or purpose, mainly targeted at young people.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual’s name, picture, likeness, voice and identity in advertising?

Section 9 of the Civil Code provides that everybody is entitled to protect their private life/privacy. This general principle has been used by French courts to reinforce the individual’s rights to protect their name, picture, likeness, voice, and identity. As a result, any use of a person’s name, picture, likeness, voice, and identity in advertising must be authorized by the individual concerned. This, for example, prohibits the use of ‘lookalikes’ in advertisements.

The use of children in advertising is also strictly regulated and, in all cases, requires authorization from the children’s parent/guardian.

Criminal law also applies to penalize the recording or the transmission of someone’s image/likeness, without their consent, where such individual is located in a private area.

Data protection law may also apply where data allowing an individual to be identified has been collected and used for advertising/marketing purposes without the consent of the data subject.

9.2 Are there situations when permission is not required?

French judges are required to reconcile and ensure the protection of two general principles under French law: the right of privacy/over one’s image and the right of freedom of expression. Such conflicts are assessed, on a case-by-case basis, by French courts, on the basis of the concrete circumstances of the dispute at stake. The judges assess if the article/publication/photos in question are part of a debate of general interest and whether, in view of the public’s right to be informed of such events/topics, the right of freedom of expression, or the right to privacy, or the right over one’s image should prevail. The judges implement criteria laid down by the European Court of Human Rights (in *Axel Springer AG v Germany* (7 February 2012) and *von Hannover v Germany* (24 June 2004)). As a result, there are court decisions based on Section 9 of the Civil Code which hold that publicly broadcast information in the context of events/news is not a violation of someone’s private life.

However, judges do carefully analyze the way information is processed and presented to the public to ensure that the information does not exceed what is deemed ‘related’ to current affairs/news (for instance, a press article completely dedicated to the life of a young princess aged 13, with no link to her official duties as a princess, has been deemed to violate her private life).

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Where a building or a monument is used in an advertisement, consent must be obtained from the owners of the building (to a certain extent) and the architects:

- The owner of a building does not have an exclusive right in relation to use of its image, but could prohibit the use of its image by a third party if such use causes them abnormal trouble. Such trouble cannot, in principle, result from the mere use of the image.
- The architect of a building protected by French copyright has patrimonial rights (ie, the right to authorize the reproduction and the representation of their work) and moral rights (ie, the right to oppose any use which is, in their opinion, detrimental to the image of the building; and the right to respect of their name, which means that the author should be credited).

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The use of a branded product or a visible third-party trademark has to be authorized by the trademark owner, except where co-branding agreements have been entered into by the advertiser and the trademark owner. Otherwise, the trademark owner could begin a legal action based on parasitism/un-accepted endorsement to promote a competitor or any third party's products.

The sole exception to this general principle could occur where comparative advertising is made (see question 3.7 above).

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of France which affect advertising (eg, Swedish gender equality law)?

Not applicable.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Not applicable.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in France?

French courts do not have to apply the criteria used for copyright to unfair competition. A combination of distinguishing features can be sufficient to make a case, where such combination shows either that a concept was stolen without compensation, or that such combination causes third parties to confuse the competing parties.

As a result, even if a claim could be rejected on the ground of copyright infringement, the risk of being sentenced for unfair competition/parasitism should not be disregarded. Such a risk increases substantially when the claimant is able to provide evidence that they were approached prior to the advertisement campaign.

It is, therefore, highly recommended that advertisers or their advertising agencies adopt a prudent approach when dealing with authors in connection with the preparation of an advertising campaign.

 GERMANY 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Germany?

Advertising in Germany is governed by statutory law, administrative regulations and industry self-regulation, all as interpreted and developed by case law in a large number of court decisions. In principle, all print, billboard, radio; broadcast, TV, movie, and online advertising and promotions targeting parties in Germany (whether originating from a source located abroad or in Germany) are subject to German law. Statutory law in the advertising and marketing sector includes the laws relating to:

- fair trade;
- consumer protection;
- general terms and conditions;
- distance (electronic) contracting;
- data protection;
- privacy;
- industrial and intellectual property;
- the antitrust laws;
- regulations governing audio-visual media services; and
- youth protection,

as well as regulations concerning particular products and services (such as food, tobacco and alcohol).

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

‘Advertising’ includes any statement or claim made for the purpose of promoting the sale, distribution, lease, or other use of an advertised product or service, by influencing the consumer’s use or purchase behavior of the promoted product or service. The advertisement must enable the consumer to recognize, directly or indirectly, that the advertiser is promoting a product or service. This means that the addressee must be in a position to identify the promoted product or service.

1.3 What is the basic regulatory framework for advertising regulation?

The primary source of advertising regulation is the Law Against Unfair Trade Practices. This statute implements the EU Unfair Commercial Practices Directive (2005/29/EC), the Privacy and Electronic Communications Directive (2002/58/EC) and the Technical Standards and Regulations Directive (98/34/EC, now replaced by Directive 2015/1535/EU).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The Law Against Unfair Trade Practices regulates certain forms of advertising and promotion by means of electronic messages (based on the EU E-Commerce Directive(2000/31/EC)). It is illegal to unreasonably direct advertising to someone who does not wish to receive advertising. Marketing/advertising by telephone (‘cold calls’) directly to consumers is illegal, unless the

consumer has given express consent. If the marketing/advertising is directed to any party other than a consumer who has not expressly consented, it is illegal unless consent can be implied. Advertising through automatic calling machines, telefax or electronic mail is illegal if the receiving party has not expressly consented to such advertising. Very narrow exceptions apply.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Health-related advertising (ie, advertising relating to medicinal products (drugs), medical devices and other products where the advertising concerns the diagnosis, cure, relief or abatement of a medical condition of human beings or animals, as well as advertising relating to plastic surgery without medical indication) is regulated by the Health Advertising Law:

- (a) In terms of basic rules, health advertising is considered misleading and is prohibited if:
 - the advertised product has not been approved for marketing;
 - it claims, in particular, an efficacy or effect which does not exist;
 - it advertises a guaranteed success or the absence of detrimental effects in case of long term use;
 - it conceals the intent of advertising;
 - it contains untrue or misleading statements regarding the composition or property of a medicinal product, medical device or other product or treatment; or
 - it contains incorrect information on the identity, education, ability or records of the manufacturer, inventor or related persons.
- (b) The law prescribes legible doctor and patient information.
- (c) Advertising to the public (as opposed to members or institutions of the medical or veterinarian professions, or parties permitted to trade with relevant products) is restricted and must bear special warnings. Any such advertising may not be directed to children below the age of 14 and may not be connected with promotional contests or sweepstakes promoting excessive use of medicinal products or medical devices.
- (d) The law regulates the extent to which members or institutions of the medical or veterinarian professions, or parties permitted to trade relevant products may be offered, or may accept, a benefit, gift or other promotional item.
- (e) Prescription drugs may not be advertised except to doctors, dentists, veterinarians, pharmacists and persons permitted to trade in such products.

1.6 Are any government pre-approvals required?

German law does not require government pre-approvals of advertising (except regarding certain classification requirements in the sector of youth protection concerning certain movies, video games and online media services).

On a voluntary, self-regulatory basis, the Central Association of the German Advertising Industry (www.zaw.de) offers certain pre-clearance and advisory services to its members. A membership list is available at <https://zaw.de/der-zaw/mitglieder/>.

1.7 Does the media pre-clear advertising?

The media normally pre-clear advertising (by in-house or external means) for their own protection against cease and desist claims. There is no legal or self-regulatory obligation to do so, and any such pre-clearance would only extend to obviously illegal content. The media pre-clearance does not normally cover clearance of third-party rights, which remains the primary responsibility of the advertiser.

1.8 How does the government enforce advertising laws? What are the potential remedies?

In Germany, advertising regulations are not normally enforced by government bodies, but rather by competitors, consumer protection agencies, or industry trade associations who request enforcement of applicable German law (see question 1.9 below). These organizations include the Center of Protection against Unfair Competition in Bad Homburg, or Integritas (the self-regulatory body for pharmaceutical advertising) in Bonn. In order to qualify, the organization must meet certain statutory conditions (including a clear identification of the business purpose to prosecute fair trade and media law violations). Often, the organization represents a certain industry or professional sector and conducts targeted searches for fair trade violations.

If the cease and desist demand is successful, the prosecuting association is entitled to certain cost reimbursements.

In certain health and safety-related sectors (such as food, drugs, youth protection, product labeling etc), and in the sector of public utilities and communication, relevant public institutions (agencies and regulatory bodies) monitor the market and enforce fair competition and fair trade rules, as well as regulations pertaining to their specific competencies. Potential remedies in this sector are administrative orders, enforcement of such orders, and fines.

1.9 When does a competitor have a right of action? What are the potential remedies?

It is normal practice in Germany for a competitor or qualifying consumer or industry association claiming a violation of German fair trade laws to send a formal cease and desist request to the violating party, as a first step. The defendant party may either refuse to comply with the request or accept the request by issuing a formal cease and desist undertaking, including a penalty clause stating that any future violations will be subject to a penalty payment. If a cease-and-desist request is refused, the complaining party may ask a court to issue a cease-and-desist order by preliminary injunction (even without notice). A decision on such a motion is normally available in a matter of hours or days. The defendant party may contest the injunction order by filing an 'objection'. Any resulting court judgment is subject to appeal to the appellate court.

In practice, claimants would not normally pursue claims for damages in unfair advertising cases because the required proof and quantification of damages is generally difficult to establish in court.

Also, in theory, it is possible to ask that profits gained through an illegal trade practice should be surrendered to the government. In practice, however, this sanction has little relevance in unfair trade disputes.

There are not normally criminal sanctions, except in cases of intentional, fraudulent misleading of the public. For example, under the German Law Against Unfair Trade Practices, it is forbidden to mislead the public by providing untruthful information.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers do not have a right of action regarding cease-and-desist claims. However, they may indirectly prosecute violations of fair trade laws aiming at the protection of consumers by asking a qualifying fair trade protection association to take appropriate action against the advertiser (see questions 1.8 and 1.9 above). Either based on their own findings or upon notification received from a consumer, qualifying German fair trade or consumer protection organizations prosecute violations in their own name, in and out of court.

Recently, the German Law against Unfair Trade Practices has introduced a damages claim for consumers, by which they can claim damages suffered as a result of certain unfair trade practices, such as misleading advertising.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Germany have a primary advertising self-regulation system?

Advertising self-regulation is becoming increasingly customary in Germany. The German Advertising Council (www.werberat.de/keyfacts) and certain industry organizations operating on a membership basis (such as the self-regulatory institutions created by members of the pharmaceutical industry) have gained significant authority. The German Advertising Council is a founding member of the European Advertising Standards Alliance ('EASA'), and closely co-operates in this sector with the International Chamber of Commerce ('ICC').

These bodies create 'best practice' rules which influence the interpretation of statutory and regulatory law by the courts.

In the case of the German Advertising Council, the aim is to provide an effective means of recourse against objectionable print or screen advertising for the public and for market competitors. The German Advertising Council provides a mechanism for dispute resolution between the public (including competitors, consumers, associations and agencies) and the advertiser. It is highly regarded for its fast and practical complaints procedure.

Decisions of the Council are binding only upon its members on a contractual basis, pursuant to its terms of membership.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The German Advertising Council has adopted several self-regulatory advertising codes which are available in English at <https://www.werberat.de/en>, such as the Code of Conduct on Commercial Communication for Alcoholic Beverages and the Rules on Advertising and its Appraisal.

The Rules on Advertising and its Appraisal cover general principles and, in particular, sensitive issues (such as tobacco and alcohol advertising, and advertising directed to minors). In terms of key points of these Rules, the following should be noted: Advertising must uphold prevailing notions of decency and morals, and observe the principles of fair competition and social responsibility. In particular:

- (a) Consumer trust must not be abused and inexperience or lack of knowledge must not be exploited;
- (b) Children and youths must not be subjected to physical or psychological harm;

- (c) Discrimination in whatever form—on grounds of race, ethnic origin, religion, gender, age, disability or sexual preference, or by reducing an individual to a mere sexual object should be neither fostered nor silently tolerated;
- (d) Violent, aggressive or antisocial behavior should be neither fostered nor silently tolerated;
- (e) Fear should not be instilled nor unhappiness or suffering be facilitated; and
- (f) Behavior that threatens consumers' safety and security should be neither fostered nor silently tolerated.

When evaluating advertising, the German Advertising Standards Council takes into account:

- the notion of a reasonably well-informed and rational consumer who is among the audience addressed by the advertisement in question;
- the tone and variety of issues covered in media editorial content as an expression of social reality;
- the nature of the medium used to disseminate the advertisement; and
- the situation in which the consumer is confronted with the advertisement.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

There is no direct enforcement mechanism available: the German Advertising Standards Council is neither a public agency nor a court, and advertisers are not bound by its decisions save by membership or contract. However, if an advertiser fails to modify or discontinue an advertisement that has been objected to by the German Advertising Standards Council, the Council would issue a reprimand and make the case public.

Upon receipt of a complaint, the Council will ask the advertiser to comment. If the comment is not satisfactory and if the advertisement continues, the Council will make a formal decision. If the decision confirms that the complaint was justified, the advertiser will be formally asked to refrain from continuing the advertisement.

In cases of a suspected violation of German fair trade laws, the German Advertising Standards Council will forward the complaint to specialized fair trade prosecution organizations such as the Center for the Prosecution of Unfair Advertising, the Association for the Prosecution of Unfair Health Advertising, the Protection Association of the Alcohol Industry, the Federal Agency for the Protection of Children and Young People in the Media, the Commission for Youth Media Protection or, in exceptional cases, the Criminal Prosecutor.

If the complaint concerns editorial content, the German Advertising Standards Council would forward the complaint to the relevant self-regulatory bodies, such as the German Press Council, the Voluntary Self-Regulators of Multimedia Service Providers, the Voluntary Self-Regulators of the Film Industry, or the Voluntary Self-Regulators of Television.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The various self-regulation systems available in Germany are generally effective and well accepted by members of the industry associations providing self-regulation rules, as well as by advertisers in general in respect of the self-regulation tools made available by the German Advertising Council. Since the cost of self-regulatory proceedings is normally considerably lower than the cost of litigation in court, the reason for using self-regulatory instruments is not only a greater degree of confidentiality but also a matter of saving costs.

The German Advertising Standards Council has an acceptance rate of 94% for its decisions, which has remained at a consistently high level over the past years.

2.5 Are the self-regulatory system's decisions reported?

Yes, the effectiveness of self-regulation largely depends on the public reporting of violations.

If the German Advertising Standards Council confirms that a complaint is justified, and the advertiser fails to comply with a cease-and-desist request, the Council will publish its decision in the press (www.werberat.de/pressemitteilungen).

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Depending on the by-laws and self-regulation rules of a given industry association, the rulings delivered in a self-regulation procedure can be final and binding upon members. In the case of the procedures applied by the German Advertising Council, the outcome in procedures before the Council is open to recourse in the regular court system. One should be aware that the likelihood of becoming exposed to a cease-and-desist request of a competitor is considerably greater than the risk of being detected by an agency or other institution of public administration.

2.7 Are there any other self-regulatory systems that govern advertising practices in Germany?

The important self-regulatory efforts are as described above.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Germany (eg, consumer protection laws, IP laws, unfair competition laws)?

The basic laws governing advertising and marketing claims in Germany are:

- the Act Against Unfair Trade Practices;
- EU Regulation 1924/2006 on nutrition and health claims made on foods;
- the Law Relating to the Enforcement of EU Consumer Protection;
- the Price Declaration Regulation;
- the Law Relating to Cease-and-Desist Claims regarding Consumer Law and Other Violations;
- the Regulation Regarding Information Obligations of Service Providers;
- the Telemedia Act;

together with underlying EU Directives.

In addition, advertising is also governed by:

- the German Trademark Act; and
- EU Trademark Regulation (2017/1001),

as well as by relevant implementation and harmonization rules.

Finally, in terms of competition rules,

- the Law Against Competition Restraints,
- and related EU law is relevant.

3.2 Is substantiation required for advertising claims?

In advertisements that contain a specific claim relating to the characteristics of the advertised product or service, the advertiser may be required to substantiate such a claim. Substantiation requirements are contained in a number of laws and case law relating to specific products and services, particularly health and environmental (green) advertising. Even if there is no specific substantiation requirement, if a competitor, or competent fair trade association, challenges the accuracy of a given claim, the advertiser must prove the accuracy of its claim by substantiation of the alleged facts. This also applies for any test results to which the advertiser refers.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Puffery and otherwise clearly fanciful advertising messages that are clearly obvious and understood by the average consumer as 'pie in the sky' can be acceptable without substantiation, providing there is no misleading element or effect. Specific claims or factual statements relating to the properties and characteristics of an advertised product or service would not be permissible without substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

Specific disclosures may be required to qualify a given claim or statement regarding the properties of the advertised product or service. There are no specific rules as to the content and format of a disclosure (apart from generally applicable rules ensuring legible content in terms of font size and legible print). Disclosures must be appropriate and sufficient to correct any false impression raised, or likely to be raised, by a claim or statement in the absence of the disclosure.

In addition, disclosures which are material for the consumer in its factual context as a basis for a commercial decision are necessary. According to the German Law against Unfair Trading Practices, this would include all information which may not be withheld from consumers on the basis of EU Regulations, or under legal provisions implementing EU Directives, for the purposes of commercial communication, including advertising and marketing.

Furthermore, in relation to consumers, where goods or services are offered with reference to their characteristics and price, the German Law against Unfair Trade Practices states that the following information shall be deemed to be material if not already apparent from the context:

- all main characteristics of the goods or services;
- the identity and the geographical address of the entrepreneur and, where applicable, the identity and geographical address of the entrepreneur on whose behalf it is acting;
- the final price, or in cases where the nature of the goods or services means that such price cannot be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot be calculated in advance, the fact that such additional charges may be payable;
- arrangements for payment, delivery and performance, as well as complaint handling policies so far as they depart from the requirements of professional diligence;
- the existence of a right of withdrawal or cancellation; and
- in the case of goods or services offered via an online marketplace, information as to whether the provider of the goods or services is an entrepreneur according to the provider's own declaration to the operator of the online marketplace.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsements and testimonials must be truthful and not misleading. For instance, testimonials may be misleading if they are not qualified by information describing the relevance of the endorsement.

In German health advertising law, it is not permitted to include in advertisements to consumers any endorsements and testimonials of persons practicing in the health sector or as an academic, if such endorsement or testimonial is likely to increase the use of the advertised drug.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstrations must communicate a fair representation of the product's features and properties. Demonstrations must not mislead by, for instance, demonstrating applications and uses which are not possible based on the product's normal properties and abilities. Product demonstrations in advertising are subject to the same rules as any other form of advertising.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

EU Directive 97/55 regulating comparative advertising has been adopted into German fair trade legislation. Comparative advertising is permitted subject to certain restrictions. Comparative advertising is permissible if it:

- concerns products or services serving the same purpose; and
- relates objectively to one or more features of a product or service which are:
 - essential;
 - relevant;
 - verifiable; and
 - typical for the product or service.

Comparative advertising is illegal if it diminishes, in an unfair manner, the reputation of a competitor or unfairly disparages or degrades the products or services of a competitor or its personal or business affairs. As applies to any other advertising, comparative advertising must be true and accurate.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The use of a competitor's trademark for the purpose of comparative advertising is permissible, as long as the advertising complies with the restrictions of comparative advertising (see question 3.7 above).

The use of a copyrighted work of a competitor is only permissible in accordance with the stipulations of the German Copyright Act. There are no exceptions for comparative advertising. In addition, when depicting a competitor's product for the purpose of (permitted) comparative advertising, the mere fact that the comparative advertising is permissible does not automatically allow the use of a copyrighted work which is contained in the depicted product.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Claims relating to geographic origin are addressed explicitly in the German Trademark Act, the EU Trademark Regulation and the German Act Against Unfair Trade Practices. It is forbidden to use geographical indications as a claim for goods or services which do not originate from that

geographical location (city, region, territory or country). Furthermore, in cases where the geographical indication stands for special properties or a special quality of a product, the geographical indication may only be used if the goods or services have these properties or this quality, notwithstanding the correctness of the geographical indication of origin.

In addition, EU Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs provides for the protection of certain registered designations of origin and geographical indications in relation to specific agricultural products and foodstuffs.

In respect of the claim ‘made in Germany’, apart from the fact that the claim must not be misleading as to the product’s origin, it must also be true in respect of the essential steps during the manufacturing process. For instance, if the product is designed and all its parts are manufactured in a different country and just assembled in Germany, the claim ‘made in Germany’ would be misleading and must be replaced, eg, by ‘assembled in Germany’.

3.10 Are there any special rules governing product packaging?

There is a general duty to affix the full name and postal address (not PO Box) of the manufacturer of the product, or its importer, on the outside of the packaging. Certain exceptions apply.

Packaging which misleads the consumer as to the size, content or quality of the product is prohibited.

There are also many rules regulating certain mandatory disclosures and indications, including the language to be used, which must be affixed to the packaging, depending on the type of the product.

3.11 Are there any special rules or guidance on the use of ‘dark patterns’?

Dark patterns are certain designs of user interfaces on websites. They are patterns of content or graphics that are subtly designed to entice users to perform certain actions.

Dark patterns could constitute a prohibited aggressive commercial act under the German Law Against Unfair Trade Practices. An ‘aggressive commercial act’ exists if it is capable of significantly impairing the consumer’s or other market participant’s freedom of choice by harassing, coercing or unduly influencing them. Pop-up windows, for example, which cannot be clicked away or can only be clicked away with great difficulty, are classified as harassment. It should be noted, that this only covers very drastic forms of dark patterns. Frequently, these are not covered because the materiality threshold is not exceeded. This is the case, eg, when certain buttons are visually highlighted. Although this subtly impairs freedom of choice, it still does not meet the requirements to be an aggressive commercial act.

Furthermore, dark patterns are prohibited if they contain an untrue statement about the time limit of an offer. However, it should be noted that this can be quickly circumvented. The reason is that it is explicitly based on the truthfulness of the content. This does not prohibit the display of a countdown, which implicitly builds up time pressure but does not explicitly claim that the offer will no longer be available after the countdown has expired.

The EU’s new Digital Service Act (‘DSA’) aims to combat dark patterns more consistently. It prohibits online platforms from using dark patterns. Users must not be deceived, manipulated or prevented from making free decisions through website design. However, it remains to be seen in practice which concrete practices will be classified as prohibited manipulation under the DSA.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

If artificial intelligence ('AI') is used in advertising, the question arises whether there is an obligation to disclose the use of AI, with the consequence that a failure to disclose could constitute 'misleading advertising' under the German Law Against Unfair Trade Practices. According to the German Law Against Unfair Trade Practices, it is illegal to withhold material information and thereby mislead consumers or other market participants. The use of AI in advertising may constitute material information in individual cases. For example, in the case of personalized advertising, it may be of interest to the addressees whether and to what extent they are addressed by an AI or by a human being. Significant legal changes for the treatment of AI by the EU are expected in the coming years.

Otherwise, the same rules apply to AI-generated advertising as to human-generated advertising.

4 PRICE ADVERTISING

4.1 What are Germany's rules regarding price advertising?

Advertising involving the price of a product or service must comply with the Price Declaration Regulation, namely:

- (a) Prices advertised to consumers must include Value Added Tax ('VAT') and any other price components. Special rules apply in distance selling, eg, the obligation to indicate additional freight, delivery or shipping costs. Price change conditions are subject to restrictions;
- (b) Products shown in shops, displayed in shop windows or in catalogues must clearly state the price, either on or near the product;
- (c) Prices of products sold by weight, volume or size must be stated with their unit price and their price by a stated standard weight, volume or size;
- (d) Special rules apply to utilities, petrol, parking, restaurants, lodging establishments, bank loans and other financial services; and
- (e) Although it is permitted to show a normal price and a lower special discounted price, such advertising is not permitted if the 'normal' price has never been demanded or has been demanded for an incommensurate short period only. In addition, the lowest price of the past 30 days must be disclosed if a price reduction is advertised vis-à-vis a consumer.

4.2 What are Germany's rules regarding advertising 'free' products?

A 'free product' or 'free gift' is a temporary offer of a product or service, free of charge and independent of any obligation to purchase. A 'premium' is a temporary offer of a free or significantly discounted gift to be received when different goods or services are purchased. In Germany, free gifts and premiums are legal, subject to restrictions applicable in health advertising (always within the limits of general fair-trade principles as outlined above). Advertisers of free gifts must comply with bribery, subsidy and anti-trust regulations.

4.3 What are Germany's rules regarding sales and special offers?

'Special Sales', 'Off Season Sales', 'Below Cost Sales', 'Clearances' or special promotional periods during which goods or services are offered on special terms for a limited period of time are permitted, provided that any offered price reduction is a true price reduction that applies for a

considerable period of time (no short-term price swinging). Announcements must not be misleading regarding the original or reduced price. Offers must comply with the Price Declaration Regulation. Conditions for special offers must be clear and unambiguous as to their scope (eg, clear indication of any exceptions) and, if limited in time, state the period during which it is applicable.

4.4 What are Germany's rules regarding rebates?

A 'discount' is a price reduction offer, an additional quantity of an identical product or service purchased, or a cash value offered by means of a coupon or voucher which can be applied against the purchase price of an identical product or service. Discounts are permissible, but subject to fair trade limitations relating to advertising that is misleading, or exerts undue influence.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

- (a) **Promotions and sweepstakes:** Except in health advertising, there are no specific restrictions on promotional contests or sweepstakes. However, entrants must not be required to pay a stake or incur similar costs, and prizes may not be excessively enticing.
- (b) **Nuisance and harassment:** The unsolicited promotional delivery of unordered goods or of electronically transmitted advertising may be illegal, unless it occurs within a standing business relationship and the addressee expects such promotional communication. Except where the goods are of insignificant value, even if the addressee is informed that it has no obligation to pay for the goods received, such unsolicited distribution of goods can be considered an unfair business practice.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Restrictions apply to advertising of pharmaceutical products, health-related services and medical devices, tobacco products, alcohol and sex services. Certain restrictions apply to advertising in particular media and vis-à-vis children.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

See question 1.4 above. In addition, all advertising in cases where it is apparent that the solicited market participant does not want such advertising is prohibited. Thus, eg, a sign at the recipient's mailbox indicating that advertising is not wanted ('no advertisements') or an explicit opt-out of any advertising must be respected.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

According to the Law against Unfair Trade Practices, all commercial (advertising) acts which are unconscionably pestering are considered illegal and thus prohibited. These could include indecent or obscene acts of advertising if the act itself is indecent or obscene. It has to be pointed out, however, that this stipulation does not aim at the content but only at the manner of the advertising act.

Causing a public disturbance by engaging in gross indecency is a criminal offence under the German Criminal Code. Less severe acts of obscenity can be sanctioned as an administrative offence under the German Act on Regulatory Offences. Advertising also needs to follow those rules.

Telemedia service providers have to comply with the German Network Enforcement Act, a more recent Act serving to improve enforcement of the law in social networks. The Act imposes certain reporting and intervention duties for telemedia service providers in cases of hate speech and other illegal acts of its users, and related complaints by others.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The full name and address of the advertiser must be disclosed in all advertising and offers which promote the properties and price of a product or service in a manner which enables the average consumer to make a purchase decision. The mere indication of an internet address is not sufficient.

On publicly available online advertising, an advertiser has to provide specific identifying information that is easily recognizable, directly accessible and consistently available. These criteria are met when it can be found under a clear headline such as 'contact' or 'imprint' on the homepage or not more than two clicks away from the homepage. The imprint must include:

- Full (company) name, postal address (not PO Box), and contact email address of advertiser, and, if the advertiser is a legal entity, the form of organization and the full name of the legal representative (CEO, Managing Director);
- Location of the commercial register in which the advertiser is registered, including its registration number; and
- VAT Identification number, if applicable.

Additional requirements apply in certain circumstances.

In the case of email advertisements, the name of the sender must be apparent in the header of the email. For further information with regard to email advertising see question 1.4 above.

Advertising in social networks (eg, posts by influencers) needs to be marked as such, if the person posting the messages receives compensation for this activity. German courts take a rather strict approach to such marking; '#ad' or '#sponsored' would not be sufficient. Recent case law requires the full term in German language, such as #werbung (advertisement), and there are also restrictions on the positioning of such disclosure.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

As a rule, advertising content must be separate from editorial content. Advertising must be clearly recognizable as advertising; eg, there must be a mark stating that the content is an advertisement.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Advertising in an editorial context must be marked ‘Advertising’: see question 7.1 above. See also question 6.1 above.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There is no distinction made between advertising through standard channels and marketing published through social media or other channels. Social media advertisements must comply with:

- German Law against Unfair Trade Practices;
- distance selling rules;
- consumer protection rules;
- labeling requirements; and
- clearance of third-party rights (eg, trademarks, company names, designs, etc) and data protection rules.

There are no important specific legal bodies regulating social media advertising (nor offline advertising for that matter). Since social media advertising is considered as a channel for advertising just like any other channel, the rules of the German Advertising Council also apply to advertising in social media.

Although the law does not focus on social media (but encompasses it), companies’ microsites on social media platforms have to meet all the requirements set out for regular company websites (see question 6.1 above).

Advertisements for which supporters, followers, or ‘likes’ are bought on social media in order to artificially inflate a product’s relevance or popularity can be considered unfair advertising. The same applies to fake accounts or fake comments, as this might mislead the public. ‘Guerilla-marketing’ or so-called ‘viral marketing’ (eg, where an advertiser posts a supposedly independent clip on YouTube endorsing its own product) may also be considered unfair advertising if the advertising character and/or the advertiser are hidden from the consumer.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser’s Facebook page)?

The liability of internet service providers offering promotions is regulated by the Telemedia Act, implementing the European E-Commerce Directive. Service providers are not liable for the information transmitted if the provider has not initiated the transmission, selected the receiver of the transmission, or selected or modified the content contained in the transmission.

There is service provider liability in all other cases. The scope of liability is quite broad, including responsibility to take steps to avoid and prevent illegal acts.

Service providers are not generally obliged to monitor their websites, but must act if made aware of a breach on their website. See also question 5.3 with respect to providers of social networks.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Recent decisions at the appellate court level impose strict disclosure requirements in social media networks for posts which have a promotional character. The character of promotional communication must be clear and obvious to the consumer at all times. This applies, in particular, to so-called ‘influencer marketing’.

In a decision handed down in 2017 (C-132/17), the European Court of Justice decided that a YouTube video channel is not an audiovisual media service, so that the advertiser was not entitled to rely on certain exemptions from marking requirements in advertising. However, due to an amendment of the EU Audiovisual Media Services Directive (2010/13) at the end of 2018, it now also covers video-on-demand and video-sharing platforms such as YouTube, Netflix or Facebook. This means that YouTube videos are subject to the same information and labeling obligations as television broadcasters.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual’s name, picture, likeness, voice and identity in advertising?

In principle, everyone in Germany is protected by the so-called ‘right in one’s own image’ in accordance with the provisions of the Art Copyright Law. In short, the Art Copyright Law says that pictures of an image of an individual may not be published or distributed except with that person’s consent.

The only exception applies to pictures that depict an event of a historic nature, past or present. This includes pictures of ‘persons who are part of contemporary or past history.’ In this context, the courts make a distinction between ‘absolute’ and ‘relative’ persons of current or past history. ‘Absolute’ persons of current or past history are those whose participation within public life subjects them generally to public information interest (such as actors, politicians, top sports stars and also well-known persons in business and commerce). With respect to these absolute persons of current or past history, the courts assume a permanent public interest. For this reason, the publication or distribution of their likeness is not subject to their consent, provided that the distribution or publication serves a particular public information interest. If that is the case, the distribution or publication may also serve a commercial interest, but there must always be a substantive, topical or editorial concept and context (see the *Beckenbauer/Football Calendar* case). If there is no such editorial concept, and if the individual depicted becomes degraded to a mere object of commercial interest, then the individual’s consent is required.

‘Relative’ persons of current or past history are subject to a public information interest with respect to a specific event only. Free distribution and publication is limited to coverage of that particular event.

The legal evaluation depends on the nature of use of a picture and the role an individual image plays in that context.

The regular statutory privacy protection of a person's image is limited to 10 years from the individual's death. In addition, there is a posthumous privacy claim against gross defamation and degradation. That claim exists so long as there is a justified interest (ie, as long as there is active memory of the deceased, not if personal memory has faded.) Mere commercial use as such is not a gross defamation or degradation in the sense of this posthumous right.

Remedies include cease and desist claims and claims for damages.

9.2 Are there situations when permission is not required?

Yes—see question 9.1 above.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Clearance is required for all protected works and images, as well as trademarks, names, and other proprietary property.

In terms of copyright works, the German Copyright Act contains a number of rules that describe the circumstances in which a work can be used freely, including incidental works and works located permanently in public roads and ways or public open spaces. In the case of buildings, this authorization only extends to the façade as seen from a publicly accessible viewpoint. Different rules apply for works of art which are only installed for a certain amount of time.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Advertising must be recognizable as such. It is illegal to conceal the advertising nature of any commercial practice.

Special requirements apply to product placement and online advertising. Product placement is prohibited in broadcasting programs for children and certain other types of programs.

While the advertiser may rely on the principle of exhaustion of trademark (and/or other IP) rights, if the other company's recognizable product used in advertising has been purchased in existing sales channels, exemptions to this rule exist. For example, where the use of the product carrying the third-party mark takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the third-party brand, the use of the third-party product can still be an infringement. The crucial point is whether use of the mark in the context of one's own product exploits the reputation of the well-known mark or dilutes its characteristics in the market.

Similar rules apply with respect to third-party copyrights, design rights and/or patents.

For comparative advertising see question 3.8 above.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Germany which affect advertising (eg, Swedish gender equality law)?

With the exception of rather strong protection for the personal image, the advertising environment in Germany appears to be standard and comparable to the rules in other highly commercial countries.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

There are no particular cultural norms above and beyond the ordinary statutory fair trade rules.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Germany?

Promotions, such as sweepstakes and contests, often involve the collection, processing, or use of personal data, which is strictly regulated by data protection laws such as the EU GDPR, one important aspect of which is the information and disclosure requirement.

Wherever consent is required, the consent must be informed; ie, the data subject needs to be informed about:

- the purpose of the use (eg advertising);
- the advertiser's name;
- the range of specific products or services to be advertised; and
- the means of advertising (eg, email, mail, telephone).

The consent must cover all the above aspects and be given explicitly (opt-in only, no opt-out or pre-checked consent boxes) in order to be valid.

For certain forms of advertising (eg, advertising via telephone, fax and email), express consent is necessary.

Where the data subject has informed the advertiser that they no longer wish to receive advertisements, this must be respected, as otherwise the advertising is illegal and can trigger heavy fines and civil lawsuits.

 GHANA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the Republic of Ghana?

Advertising in Ghana is regulated by various laws which are sector specific, as the Advertising Council Bill remains pending before Parliament. Thus, the different regulatory bodies or agencies regulate advertising as it pertains to their sectors and areas to which their scope/authority extends.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

What is considered as ‘advertising’ in Ghana will be determined by the law or regulation which is applicable in that sector. Taking the Food and Drugs Authority (‘FDA’) Regulations into consideration, ‘advertising’ is seen as the publicity of goods, description of products in any form of notices in circulars, catalogues, newspapers, or magazines. It also includes publicity/description of products on labels, wrappers, price lists, documents made orally or by sound recording or by projected light, radio, and television advertising, mentions by radio presenters, social media, written content, billboards, and mobile vans.

On the other hand, the definition in the Securities and Exchange Commission (‘SEC’) Regulations is not as extensive as that provided by the FDA. According to the SEC, ‘advertising’ consists of every form of advertising including publications, notices, exhibition of film discs or photos, and generally any public notices such as the publication of research findings.

1.3 What is the basic regulatory framework for advertising regulation?

The primary laws that regulate advertising in Ghana include the following:

- The Public Health Act 2012 (Act 851);
- The FDA Guidelines for the Advertisement of Foods;
- The FDA Guidelines for the Advertisement of Drugs, Cosmetics, Household Chemicals and Medical Devices;
- The Data Protection Act 2012 (Act 843);
- The Ghana Standards Authority Act 1973 (NRCD 173);
- The Electronic Transactions Act 2008 (Act 772);
- The Gaming Act 2006 (Act 721);
- The Gaming Commission (‘GC’)’s Guidelines on Advertising (‘GC Guidelines’);
- The Electronic Communications Act 2008 (Act 775) as amended and the Electronic Communications Regulations 2011 (LI 1991);
- The SEC Regulations 2003 (LI 1728);
- The Advertising Association of Ghana (AAG)’s Code of Professional Conduct and Ethics (‘AAG Code’) which regulates its members in the industry (see question 2.2 below).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Advertisements of foods, and drugs are specifically regulated by the FDA and the advertisement of gaming, games, and promotions are regulated by the GC.

The National Communications Authority (‘NCA’) regulates communication and advertising through telecommunications networks which will include text messages.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

The FDA regulates advertising in relation to foods, drugs, cosmetics, household chemicals and medical devices. The GC regulates advertising in relation to gaming, contests, and promotions. Both the FDA and GC require advertisements to comply with their respective Guidelines on Advertising.

The SEC regulates advertising to the public in relation to offering services of dealers/investment advisers to the public as well as offering securities for sale to or from the public.

The FDA also requires an advertisement that is approved to contain the FDA approval statement—'This Advert is FDA approved'—which serves as notification to the general public that the advertisement has been approved by the FDA.

1.6 Are any government pre-approvals required?

The relevant agencies require pre-approvals in certain sectors before advertisements run in Ghana. For instance, the GC pre-approves advertisements in relation to gaming and promotions. In addition, the FDA requires that all advertisements in relation to foods, drugs, cosmetics, household chemicals and medical devices, whether in print, outdoor or in the media must be pre-approved.

1.7 Does the media pre-clear advertising?

Advertisements are pre-approved by the regulatory agency before they can be aired by the media where this is a requirement under their respective Guidelines or governing laws.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The remedies for breach of advertising laws are provided for in the various laws establishing the relevant agencies that regulate advertising in each sector. For instance:

- (a) The FDA is empowered to issue warnings, fines, or revoke product approvals where parties are found to have violated its advertising guidelines or to advertise without prior approval of the FDA.
- (b) Similarly, the GC is empowered to impose fines, revoke, or suspend licenses. In addition, a fine of not more than 500 penalty units (GHS 6,000) or a prison term of two years or both may be imposed upon a person who promotes or provides facilities for unlawful gaming where the person is summarily convicted of same.
- (c) Likewise, the NCA is empowered to impose pecuniary penalties provided by the Electronic Communications Regulations 2011 for specific breaches where such occurs. It may also suspend or revoke licences of operators where necessary.
- (d) The Data Protection Commission ('DPC') has the power to direct defaulters or persons who breach the provisions of the law to comply or compensate by paying damages to individuals who have suffered damages due to the breach. The law also provides for the imposition of a fine of 250 penalty units (GHS 3,000), a prison term of two years or both when a person is convicted of a breach. Furthermore, a fine of 500 penalty units (GHS 6,000) or a prison term of ten years or both will apply where a breach occurs and where the Data Protection Act 2012 does not provide a penalty for such breach. Also a fine of 2,500 penalty units (GHS 30,000) or a prison term of five years or both can be imposed for the sale of personal data.

- (e) With respect to the SEC, where persons contravene the SEC Regulations 2003, they are liable to penalties such as interventions, revocation, suspension, or restriction of licences by the SEC, or payment of a fine of GHS 1 million.
- (f) The AAG, in addressing breach of its Code/standards by its members, issues warnings or advisories to the parties affected by such breach. The AAG also makes recommendations in respect of corrective measures or amendments for the breaching parties to make to the advertising content to make it compliant. Also, it may suspend or expel members who continue to violate the AAG Code from the Association. Its powers and remedies are only limited to its members.

1.9 When does a competitor have a right of action? What are the potential remedies?

Our advertising laws do not specifically provide for the rights of the competitor in respect to advertising. However, advertisers are generally not allowed to use the names of competitors in advertising in Ghana. Parties may, however, channel any complaints they have against the advertising content of a competitor to the various regulators, who may apply the applicable remedies where a breach is found to have occurred.

1.10 When do consumers have a right of action? What are the potential remedies?

As indicated above, the Advertising Council Bill is still pending before Parliament and awaits approval. Thus, there is presently no specific provision relating to consumers' right of action in respect to advertising. Therefore, consumers who have issues regarding advertising have to raise such issues with the relevant authorities by way of complaint, depending on the sector. Thus, such complaints would ordinarily be addressed to the FDA, the SEC, GC, NCA (or the AAG where the issue relates to a member of the AAG); the sanction or remedy applicable to the party will be based on the provisions of the relevant law, Guidelines or Regulations.

Nonetheless, the 1992 Constitution of Ghana gives a person whose fundamental right has been breached the right to approach the High Court for remedies; and any aggrieved consumers are at liberty to explore this route where their fundamental rights are breached by advertising practices or content in Ghana.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Ghana have a primary advertising self-regulation system?

The AAG is the industry self-regulator primarily responsible for advertising practices. As membership of the AAG is voluntary, the scope of its powers and sanctions is limited to members of the Association. The Association aims at ensuring ethical and professional advertising practices by practitioners in Ghana. It has a Code of Professional Conduct and Ethics ('AAG Code') which covers different aspects of advertising such as accuracy and fairness of advertising content. The AAG as the industry self-regulator allows for members, advertisers, agencies and other stakeholders to voluntarily adhere to the standards and ethical guidelines in relation to advertising in Ghana.

The AAG, in addressing breach of its Code/standards by its members issues warnings, or advisories to the parties affected by such breach. The AAG also makes recommendations in respect of corrective measures or amendments that it requires the breaching parties to make to the advertising content to make the parties compliant. It may also suspend or expel members who continue to violate the AAG Code from the Association. The AAG's powers and remedies are only applicable to its members.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The AAG Code regulates the AAG's members in the industry.

The key principles include that advertising should:

- not offend public decency,
- not be obscene or promote immorality.
- conform to the laws of Ghana and
- not exploit the lack of experience, negative or superstitious beliefs of consumers.
- not include false representations or content that is deceptive and should not be misleading.

In addition, it has provisions that regulate advertising directed at children. Such advertising should not:

- exploit their innocence or induce them to pressure their parents to buy a product
- exaggerate a product,
- depict children doing unsafe practices or in dangerous positions, or
- make children feel less likeable or inferior to other children using such products.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The AAG does not have an enforcement or a dispute resolution mechanism. It has an Advertising Standards Committee which focuses on maintaining advertising standards by members. It also has a Disciplinary Committee before which members who flout the provisions of the AAG Code are brought. Members are bound by the decisions of the Disciplinary Committee.

Decisions are enforced by the Disciplinary Committee issuing advisories/giving directives to the erring parties, who risk being suspended or expelled from the AAG if they fail to comply. The Committee's decisions may also include recommendations in respect of corrective measures or amendments required to make the advertising content compliant.

Where there are disputes between two members, these may be referred to the Executive Council, which is empowered to set up a Special Committee to resolve the dispute. Upon hearing presentations from both sides, a decision is reached which is first communicated to the Executive Council for approval, before it is communicated to the affected members by the Committee.

Decisions of Committees of the AAG may be appealed to the Executive Council within 21 days of the decision being communicated to the parties, after which the right to appeal is lost.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The AAG Code is widely followed and observed by its members and decisions of the Disciplinary Committee are usually adhered to by members of the Association.

2.5 Are the self-regulatory system's decisions reported?

Decisions of the AAG Committees are currently not reported or made known to the general public but are usually communicated to the members.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Companies should note that advertisements must not be obscene, false, misleading, should not offend public decency, promote immorality, and should not exploit children or the emotions/superstitious beliefs of consumers to induce a sale.

2.7 Are there any other self-regulatory systems that govern advertising practices in Ghana?

We are not aware of any other self-regulatory system that governs advertising practices in Ghana.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims Ghana (eg, consumer protection laws; IP laws; unfair competition laws)?

The basic laws governing advertising claims in Ghana, besides those indicated in question 1.3 above, include:

- (a) The Protection Against Unfair Competition Act 2000 (Act 589), which forbids any act in the course of commercial activities causing or likely to cause confusion about the activities or products/services of another entity, the presentation of which could amount to unfair competition.
In this context, ‘confusion’ may be regarding trademarks or the presentation of products or services; and acts ‘amounting to or constituting unfair competition’ means acts which are likely to mislead the public about activities, goods or services of an enterprise which may arise out of advertising products, services, or packaging.
The Act provides for remedies such as injunctive reliefs, damages, and such orders to prevent unlawful acts that may be granted by the court.
- (b) Likewise, the Trade Marks Act 2004 (Act 664) regulates any form of unauthorised use of trade marks in Ghana. Though the Act does not specifically provide for advertising, it prohibits applying false trade descriptions to goods or causing infringement of a trademark. It stipulates that any offenders will be liable to a fine not exceeding 500 penalty units (GHS 6,000) or a prison term of two years.
- (c) The Copyright Act 2005 (Act 690) prohibits the use of another person’s copyright without their consent except where such use is within the permitted scope under the Act. A fine of a minimum of 500 and a maximum of 1,000 penalty units (GHS 6,000–12,000) or a prison term of three years or both is to be applied to offenders who are found liable upon summary conviction. Furthermore, where infringement continues, the Act provides for an additional fine of a minimum of 25 and maximum of 150 penalty units (GHS 300–1,800) for each day in which the offence continues.

3.2 Is substantiation required for advertising claims?

- (a) The FDA requires substantiation in support of advertising claims in respect of foods to be in line with the CODEX Guidelines on Claims. With respect to advertisements regarding drugs, claims in such advertisements are required by the FDA to be justifiable in the light of scientific evidence.
- (b) For advertising relating to games and promotions, the GC requires all claims in advertisements to be substantiated, despite it not providing or outlining requirements on how it expects such substantiation to be done.

- (c) The AAG Code provides that claims of descriptions in advertisement must be capable of substantiation and subject to empirical proof. The AAG requires that proof of substantiation should be available to the Council, and that any evidence in support of same be produced on request by the AAG Council. In addition, evidence of substantiation is required in respect of superlative and comparative or comparative claims which are made in advertisement.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

We are not currently aware of any advertising messages which are exempt from substantiation, as advertising should not be false or misleading.

3.4 What are the rules governing the use of disclosures in advertising?

In relation to disclosures, full disclosure in all advertising is required by the FDA, which describes 'full disclosure' to mean adequate information for the prescriber concerning indications and appropriate use of products. This includes precautions, warnings adverse reactions, contraindications, dosage regimens and dosage forms.

Hence, full disclosure of all significant information about any products, such as any adverse effect, directions on usage and precautions that can enable consumers make informed decisions regarding the purchase and use of a product is required in advertising in Ghana. Advertising is required to provide information that is clear, visible, and relevant and such information should be located in close proximity to the relevant claims in such advertising.

Disclosures in relation to the SEC are provided for in the SEC Regulations 2003, which stipulate that the highest standard of accuracy is expected in advertainments, and this should be stated in clear and precise language that can be understood easily by everyone. The SEC further requires that sufficient relevant information is provided in advertisements to aid conveying adequate description of the services being offered or the investment being advertised to the recipient. Furthermore, where statements of opinion are made in advertisements, they are required to be attributable to an identified person. There is also an obligation to take steps to confirm that the persons who made such statements still hold such opinions as of the time the publication is published.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

With respect to testimonials and endorsements, the FDA in its Guidelines for the Advertisement of Drugs stipulates that advertisements must not contain materials that refer to suggestions made by health professionals, scientists or well-known persons or establishments that have reputations which can encourage or influence consumption of such products to the disadvantage of the health and safety of the public.

The FDA prohibits influencers (including social media influencers) from taking part in advertising of alcoholic beverages in Ghana in order to prevent their followers from being overly influenced to consume alcoholic beverages.

Likewise, where testimonials and endorsements are used in advertisements, they are required by the AAG to be genuine and use models that are alive and suitable for the products and ideas that are endorsed.

The GC Guidelines stipulate that, where endorsements are used by persons in advertisements, they must not directly suggest that their participation in a game of chance contributed in any way to their success or depict it as an avenue to earn regular income.

In essence while endorsements and testimonial in advertisements are permitted in Ghana, they are required to comply with the requirements indicated above.

3.6 What are the rules governing the use of product demonstrations in advertising?

The GC and FDA in their Guidelines appear not to make any rules on product demonstration. The FDA Guidelines stipulates that where drugs are being promoted, the promotion should not include free distribution of drugs to the general public, but only to healthcare professionals and in accordance with the provisions of the Public Health Act 2012. The Guidelines further require that records be kept on distribution of free samples to allow for traceability.

The AAG Code requires advertising practitioners to be ready to give a demonstration or sample of the product being advertised on demand by the Standards Committee.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

- (a) The SEC Regulations 2003 provide that, where comparison is made between alternative investments, it must be fair, reasonable, compatible and accurate. It should not omit features which are or may be germane to an appreciation of any contrast between the investments.
- (b) FDA Guidelines appear to be silent on specific rules in relation to comparative advertising. However, the FDA's general requirements on advertising not being misleading or deceptive apply here. In addition, the FDA stipulates that advertising of foods should not criticize any competitive or alternative products directly or impliedly, and should not portray their products in a manner that presents them as being better than products of their competitors by negatively undermining such products.
- (c) Per the AAG's Code, advertisements are prohibited from unfairly disparaging, attacking, or discrediting other organizations, ideas, products, or services. They are also prohibited from exaggerating the significance or nature of competitive differences. Furthermore, advertisements cannot copy the slogans or images of another advertising professional in a way that would deceive the public.

3.8 Are there any special copyright or trade mark rules that may impact comparative advertising (eg, whether a competitor's trade mark or products may be used)?

Ghana's trademark laws do not permit the unauthorised use of another person's trademark. Thus, advertisers are not allowed to make use of a competitor's name, product or the trademark or competitor's packaging in their advertisements in Ghana. Furthermore, consent of the owner of a trademark or copyright is required before same can be used by another person; as indicated in question 3.1 above, penalties apply for such unauthorised use.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The Geographical Indications Act 2003 (Act 659) regulates the registration use and protection do Geographical Indications in Ghana.

In terms of advertising, the FDA, GC, and AAG appear to be silent on rules governing claims relating to geographic origin. The FDA, however, requires labels and packaging for products sold or imported into Ghana, including foods and drugs, to have the details of the manufacturer and distributor of products in Ghana, which also includes their country of origin or where the product is manufactured.

3.10 Are there any special rules governing product packaging?

The FDA has requirements for labeling of products. For drugs, these include the requirements that labeling be informative and accurate, provide details of the product, its generic, active ingredients, batch number, manufacture and expiry dates, conditions for storage or handling, indications, frequency, conditions or use where applicable.

Furthermore, labels must contain the name, postal and premises address of the manufacturer and distributor of the product in Ghana, as well as the country of origin of such product. The FDA requires labels to be printed in clear and legible fonts which should not fade when exposed to sunlight. Packaging or labels should not be closely similar to a previously registered product and must bear cautionary statements in cases where they should not be used by children or should be kept out of their reach or when meant only for external or veterinary use. Where the original label is in a foreign or local language, information about the product must be in English or translated into English.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Dark practices in advertising are currently not provided for specially in our laws in Ghana. Therefore, the general provisions on advertising which require advertising not to be misleading, manipulative or take advantage of the ignorance of consumers to prompt them to make a purchase would regulate or apply to dark practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

In Ghana, our advertising laws do not currently have special rules regarding the use of artificial intelligence (‘AI’) in relation to advertising or developing advertising content. Therefore, the applicable rules on data protection/privacy provided for under the Data Protection Act 2012 would apply to AI as they relate to advertising and related content. The provisions of the Copyright Act 2005 in relation to use of other people’s copyright in AI-generated content would also apply.

4 PRICE ADVERTISING

4.1 What are Ghana’s rules regarding price advertising?

Advertisements in Ghana may ordinarily contain prices of the products in them. However, the FDA Guidelines for Advertisement of Drugs stipulates that advertisements for drugs should not contain any price competition or similar schemes.

The AAG Code encourages practitioners and advertising agencies to indicate the price of each product or service in their advertisements. Thus, price advertising is allowed.

4.2 What are Ghana’s rules regarding advertising ‘free’ products?

The FDA Guidelines for Advertisement of Drugs provide that drugs advertisements must not contain offers of gifts or offers to refund money to consumers who are dissatisfied. Also, it stipulates that, where drugs are being promoted, a promotion should not include free distribution of drugs to the

general public other than to healthcare professionals and in accordance with the provisions of the Public Health Act 2012. It further requires that records be kept on distribution of free samples to allow for traceability.

The AAG Code in relation to sales promotion provides that the promoter should prevent causing unnecessary disappointment and that promotions should not be offensive to their target audience. In addition, the promoter should take reasonable steps to ensure that the promotion, including any product sample, is safe and does not result in any harm to consumers or their property. The Code also provides that consumers should not be encouraged to make a series of purchases as a requirement for applying for promotional items where there is a limited number of those items.

The AAG Code also requires promoters to desist from trying to recover the cost of their free offer by reducing the quality of products or inflating price of products purchased as a requirement to obtain the free item. Also, promoters must not charge a cost for administering a free offer.

4.3 What are Ghana's rules regarding sales and special offers?

The FDA Guidelines for Advertisement of Drugs provides that drugs advertisements must not contain offers of gifts or offers to refund money to consumers who are dissatisfied.

With respect to the GC, there are no special laws that regulate special offers. All promotions/special offers being extended to the public should ordinarily be approved by the GC where they contain an element of chance.

As to the requirements of the AAG Code, see question 4.2 above.

4.4 What are Ghana's rules regarding rebates?

There are currently no rules specifically regulating advertising regarding rebates in Ghana. However, the FDA Guidelines for Advertisement of Drugs provides that drugs advertisements must not contain offers of gifts or offers to refund money to consumers who are dissatisfied.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There appears to be no other key restrictions of which advertisers should be aware regarding retail advertising practices at the moment. Advertisers must ensure all advertisements are pre-approved by the appropriate regulatory body before they are made available to the public at all times.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Some forms of advertisements are prohibited from being advertised in Ghana:

- (a) **Tobacco:** The FDA prohibits all forms of advertisement of tobacco and related products in Ghana.
- (b) **Drugs:** The FDA also stipulates that advertisements for drugs should not contain any price competition or similar schemes or contain offers of gifts or refund of money to dissatisfied consumers. Also, other provisions about advertising of drugs as indicated in question 4 apply.
- (c) **Food:** The FDA Guidelines require that foods are prohibited from being advertised as a preventive or cure for a disease, disorder, or abnormal physical state.

- (d) **Condoms/contraceptives:** The AAG Code provides that an advertisement for condoms shall not be aired during children's programmes. It stipulates that advertisements for condoms must not encourage indecency in the use of the product. Thus, emphasis of the message shall be focused on health and family planning applications. In addition, it requires that advertisement for condoms shall not dramatize or in any other manner depict or insinuate the sexual act by word, graphic, sound or action.
Moreover, the National Media Commission prohibits advertising of contraceptives to children and a child by law is someone under the age of 18 years.
- (e) **Guns:** There are no specific regulations on advertising for guns. However, the use and display of firearms is regulated by the Arms and Ammunitions Act 1972 (NRDC 9). which prohibits the display of any arms or ammunitions in public without express permission/licence from the Inspector General of police. Anyone who breaches the provisions of this Act will be liable upon conviction to a fine of GHS 500 or a term of imprisonment of five years or both.
- (f) **Alcohol:** The FDA and the GC prohibit advertising of alcoholic beverages in media or materials directed at children or airing them during programmes directed at children.
Likewise, the AAG prohibits featuring alcoholic drinks in a promotion that is directed at persons under the age of 18.

The FDA and GC Guidelines and the AAG Code all require advertisements not to offend public order or morality, though not specifically directed at profanity or swear words.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) **Competing advertisements:** The AAG prohibits placing two or more advertisements for competing or similar products or services adjacent to each other in print, outdoors, or in the electronic media.
- (b) **Use of minors:** The AAG also prohibits the use of children as models for all forms of advertisement of alcoholic beverages.
- (c) **Use of influencers and celebrities:** The FDA prohibits influencers (including social media influencers) from taking part in advertising of alcoholic beverages in Ghana in order to prevent their followers from being overly influenced to consume alcoholic beverages. Likewise, celebrities are also prohibited from being featured in advertisements relating to gaming by the GC.
- (d) **Electronic commercial communications:** The Data Protection Act 2012 mandates that anybody wishing to process a subject's data must first obtain that subject's consent. Prior written authorization from the data subject is required before any of their data can be accessed, utilized, or supplied for direct marketing purposes.
Additionally, anyone wishing to send unwanted communications for direct marketing by phone, text message, or email must first get the subscriber's authorization, according to the Electronic Communications Regulations. In the event that it is transmitted without the subscriber's prior authorization, the communication must provide the sender's name and free contact information. When sending an unsolicited email, the sender must make sure that their identity is not hidden and that they have a working email address where the recipient can contact them to ask them to stop sending unsolicited communications.

When a customer receives an electronic commercial communication, the sender is required to provide them with the ability to cancel their subscription and to disclose the source of the consumer's personal information. Furthermore, in the event that a consumer does not reply to an unsolicited message, no contract can be considered signed, and the person is qualified to get reimbursement for the expenses incurred in cancelling the unsolicited communication. Anyone found guilty of sending uninvited electronic messages without permission, or of continuing to do so after the recipient has cancelled a subscription, is liable to pay a fine of up to 5,000 penalty units (GHS 60,000), a maximum jail sentence of ten years, or both.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The AAG Code prohibits the depiction of violence against people in advertisements. It also prohibits denigrating any person or group of persons, firm, organization, industry, or commercial activities, profession or product in advertisements which seek to bring such persons or entities into public contempt or ridicule.

The AAG Code also stipulates that advertisements for alcoholic beverages must not be suggestive of sexual indulgence or permissiveness or portray nudity.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The AAG Code has provisions in relation to the identity of the sponsor, and requires media organizations to ensure that they only accept and air/publicize advertisements that reveal the true identity of the sponsor. It makes an exception, however, for teaser advertisements. Also, it requires advertisements not to display sign-offs like 'committee of friends', 'concerned citizens' or such other open terms that do not have verifiable names and addresses.

The FDA and GC Guidelines are silent on sponsor identification; however, as advertisements are pre-approved by both entities, any issues they have regarding advertising and sponsor identification would ordinarily be raised before the advertisements are approved and publicised.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

We are not aware of any special rules governing the integration of advertising content and entertainment. Where such content belongs to a third party, the rules on copyright/trademarks and consent of the owner will apply. Thus, the owner's consent should ordinarily be sought where same is required before use.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

We are not aware of any special obligations in relation to special disclosure when integrating advertising content with other content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

While the use of social media platforms is permissible in Ghana, there are no special rules regulating the use of social media for advertising. These advertisements must comply with the rules relating to privacy, data protection, and advertising under the applicable laws and regulations.

All forms of advertising including online and on social media are regulated by the FDA Guidelines and are therefore required to comply with the general rules outlined above and must be pre-approved.

Similarly, the provisions of the Data Protection Act 2012 on data protection and electronic communication apply to advertising online or via social media.

The FDA prohibits influencers (including social media influencers) from taking part in advertising of alcoholic beverages in Ghana in order to prevent their followers from being overly influenced to consume alcoholic beverages.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

We are not aware of any special regulation for advertising claims made in user generated content. However, advertisers are obligated to ensure that the advertisement and claims made therein are not false, misleading, or deceptive. All advertising content, even on social media, must comply with applicable rules and guidelines on advertising.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

We are not aware of any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content at this time.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The use of an individual's name/identity will be governed by our trademark laws while the use of picture, likeness, and voice in advertising will be regulated by the provisions of the Copyright Act 2005. The unauthorised use of another person's copyright is not permitted under the Copyright Act 2005.

Though the Copyright Act 2005 does not explicitly provide for the use of an individual's pictures or likeness, this could be covered by photography, which is listed under artistic works. Likewise, the use of an individual's voice should ordinarily fall under sound recording where the voice was fixed in a medium with musical or spoken words.

9.2 Are there situations when permission is not required?

Permission for the use of copyright may not be required where the copyright has come into public domain or where such use is within the permitted scope of use under the Copyright Act 2005.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

The FDA and the GC are silent on seeking clearance before using certain materials in advertising. Use of historic places or cultural symbols (Adinkra symbols) in any form inclusive of advertising would require clearance from the Ghana Tourism Authority and/or the Ghana Folklore Board. Furthermore, the different municipal assemblies in Ghana must also grant permission to film advertisements within certain public spaces in Ghana.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

No, it is not permissible to use other companies' recognizable products in advertising as indicated above, except where both companies are collaborating, or express consent has been provided to do same.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the Ghanaians which affect advertising (eg Swedish gender equality law)?

Advertisements should not be obscene, indecent or promote immorality, not promote public disorder or illegal activities, and not offend religious beliefs and practices of the various religious sects in Ghana. Also, citizens have more recently raised concerns about advertising that promotes the activities of the LGBTQ community in Ghana; however, there have not been any laws passed to that effect.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Just those noted at question 11.1 above.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Ghana?

Advertisers should ensure they comply with the existing laws, guidelines, and regulations on advertising in Ghana while obtaining all licences and approvals prior to publicizing their advertisements to avoid being open to liabilities for breach.



GREECE



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Greece?

Advertising in Greece is regulated by both public law and industry self-regulation.

The main statutes on advertising law are the following:

- Consumer Protection Law (Law No 2251/1994) (which has transposed EU Directives on Consumer Protection into Greek law);
- Unfair Competition Law (Law No 146/1914), protecting competitors from illegal advertising;
- Audiovisual Media Law (Law No 4779/2021) (which has transposed the EU Audiovisual Media Services Directive into Greek Law);
- Laws on protection of personal data and e-privacy: namely, the EU General Data Protection Regulation ('GDPR') and Law No 4624/2019 implementing certain provisions of the GDPR and the e-Privacy Law (Law No 3471/2006) (which has transposed the EU e-Privacy Directive into Greek Law);
- IP Laws that impact upon comparative advertising: namely, the Copyright Law (Law No 2121/1993) and the Trademarks Law (Law No 4679/2020).

These primary statutes are supplemented by a great number of special provisions which regulate advertising of specific products and services (tobacco, alcohol, credit products, gambling etc).

Advertising self regulation has gained much importance in recent years. The main self-regulation organization in Greece is the Advertising Self-Regulation Council ('SEE') (see question 2.1 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

A definition of 'advertising' is provided in the Consumer Protection Law, by which advertising means 'the making of a communication in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations'.

1.3 What is the basic regulatory framework for advertising regulation?

In Greece, there is both a legal and a self-regulatory system. The latter is based on the Hellenic Code of Advertising and Communication Practice ('HCACP'), the structure and content of which is almost identical to the ICC Consolidated Code of Advertising and Communication Practice. The HCACP covers both non-broadcast and broadcast advertising, including online advertising and social media and it is enforced by the SEE. See question 2.2 below.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) The Audiovisual Media Law sets out specific rules with regard to certain advertising practices such as telemarketing, sponsorship and product placement when offered in audiovisual media.

- (b) Direct marketing communications (through text messages, emails etc) are heavily regulated in Greece:
- (i) According to the e-Privacy Law, email/text message communications may only be allowed in respect of consumers who have given their express prior consent (opt-in system). All communications should provide an easy way to 'unsubscribe' from further emails/messages. As an exception to the above strict 'opt-in' rule, in cases where email addresses have been legally obtained in the context of a purchase of products or services to customers, the customers' emails may be used for direct marketing of similar products or services, under certain conditions. Most importantly, in order for this 'soft opt-in' rule to apply, the customers need to be clearly informed (as per the GDPR) when their email is first collected about the trader's intention to use it for marketing purposes and also the customers need to be clearly provided with a free and easy way to object ('opt-out') to receiving such marketing emails. The opt-out possibility needs to be provided both at the moment when the email address is first collected as well as within every marketing communication that will be sent.
 - (ii) In relation to direct marketing through phone calls (telemarketing), there are also specific rules:
 - For calls without human intervention (automated calls) it is necessary to have the express prior consent of the called persons ('opt-in' system).
 - For calls with human intervention, the 'opt-out' system applies, and advertisers should make sure that the called persons have not objected to receive such phone-calls. Consumers/phone subscribers may opt-out either by declaring to their phone provider that they wish to opt-out from all advertising /marketing calls in general, from any promoter (each Greek telecommunications provider holds an 'opt-out registry' for this purpose which they advertisers shall take into account) or by declaring directly to the calling advertiser that they do not wish to receive further promotional phone calls from them.
- In cases where direct marketing communications use harassment or involve persistent and undesirable communications with customers, they qualify as aggressive commercial practices and fall within the provisions of the Consumer Protection Law.
- (c) The advertising tool of promotional contests, which is excessively used in Greece, is subject to specific rules aiming to prevent misleading practices.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) **Alcohol:** Advertising of alcoholic beverages in audiovisual media and radio (including teleshopping) must not:
- be aimed specifically at minors;
 - depict minors consuming alcohol;
 - link the consumption of alcohol to enhanced physical performance or to driving;
 - create the impression that alcohol consumption contributes towards social or sexual success.

- imply that alcoholic beverages have therapeutic properties or that they act as stimulants, tranquilizers or sedatives,
- encourage immoderate consumption of alcoholic beverages or show abstinence from their consumption or their moderate consumption in a negative manner, or
- highlight the high alcohol content as a positive attribute of beverages.

In the field of self-regulation, the Hellenic Association of Drinks Distributors ('ENEAP') has voluntarily adopted similar commitments which apply across all media and can be found in the HCACP. The basic commitments are that alcohol advertisements should only be placed in media for which at least 70% of the audience is reasonably expected to be 18 years or older and that all alcohol advertisements should include the tag line 'enjoy responsibly'.

- (b) **Tobacco:** All forms of tobacco advertising (including e-cigarette advertising) are prohibited, except from advertisements inside tobacco stores.
- (c) **Medicines:** It is illegal to advertise medicines which are available on medical prescription only. Advertisements of over-the-counter medicines is, in principle, permitted, but certain restrictions apply—eg they must disseminate particular minimum information, along with the warning message: 'The Ministry of Health and the National Organization for Medicines advise you to read carefully the instructions and consult your doctor or pharmacist'.
- (d) **Food/Food supplements:** EU Regulation 1924/2006 on nutrition and health claims made on foods is applicable in Greece and introduces specific restrictions on the advertising, presentation and labelling of food and beverages (eg, that the advertisements concerned should not induce excessive consumption of food, that nutrition and health claims must be based on and substantiated by generally-accepted scientific evidence, etc). Furthermore, certain restrictions are also imposed on advertising nutritional supplements and food products intended for use in energy-restricted diets for weight reduction.
- (e) **Gambling:** Under Law No 4002/2011, the advertising of gambling services in Greece is permitted only to entities licensed by the Hellenic Gaming Commission ('HGC'). This Law and the Guidelines of HGC set out the general principle of responsible advertising along with a number of specific restrictions safeguarding a high level of consumer protection (eg, these advertisements should include a warning message on gambling harm, etc).
- (f) **Plant protection products (pesticides):** EU Regulation 1107/2009 concerning the placing of plant protection products on the market imposes certain rules and restrictions on the advertising of authorized pesticides. For example, all such advertisements should include the warning notice 'Use plant protection products safely. Always read the label and product information before use'.
- (g) **Cosmetics:** Advertising claims on cosmetic products must comply both with EU Regulation 655/2013 and with Annex VII of the HCACP which incorporates the 'Guiding Principles on Responsible Advertising and Marketing Communication' issued by Cosmetics Europe.

Professional Codes of Conduct, such as those of attorneys, doctors etc, also impose restrictions on advertising of the services of respected professionals.

1.6 Are any government pre-approvals required?

Pre-clearance of advertisements by the government or sector-specific government agencies is not obligatory in Greece, with some exceptions:

- (a) Advertising of over-the-counter medicines must be submitted to the Hellenic Organization for Medicines for monitoring before publication or broadcast.

- (b) Television advertisements for plant protection products (pesticides) must also be submitted to the competent Directorate of the Ministry of Agricultural Development and Food prior to broadcast.
- (c) Every commercial communication for gambling services must be submitted for prior approval to the Hellenic Gaming Commission.

In addition, advertising of specific products or services (eg, over the counter medicines, credit or financial products, investments etc) must contain pre-approved warning messages and/or particular information. For example, any advertisement of a credit agreement that indicates an interest rate must include information such as the total amount of credit, the annual percentage rate of charge etc.

1.7 Does the media pre-clear advertising?

The Greek media do not have a mechanism of pre-clearing advertisements. Advertisers/advertising agencies, before publication/broadcast of any advertisement may voluntarily seek the advice of the SEE, but this is not common practice in the Greek advertising market. The SEE only has an advisory function, and its pre-clearing opinions are not binding on the applicants, nor on the SEE itself. As a result, the SEE committee may later examine and even uphold a complaint filed by a third party (competitor/consumer) against the advertisement.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The main government agencies which enforce advertising laws in Greece are as follows:

- (a) The Ministry of Economy and Development, through the General Secretariat for Consumers, is the state authority which imposes administrative sanctions on those who infringe the Consumer Protection Law. If the State authority intervenes, either *ex officio* or following a complaint, it may make a recommendation or impose a monetary fine ranging from €5,000 to €1,500,000. Sanctions may get stricter for repeat infringers.
- (b) The Greek National Council for Radio and Television ('NCRTV') is an independent administrative authority which monitors compliance with the specific regulations of advertising in audiovisual media, and is empowered to impose sanctions for infringement, such as making a recommendation or imposing monetary fines (for infringements by a TV channel, the fine ranges from €14,673 to €1,467,351; for radio stations, the fine ranges from €2,935 to €29,350; and for video sharing platforms the fine ranges from €1,000 to €500,000).
- (c) The Hellenic Organization for Medicines is the state authority which has jurisdiction over advertising of medicines/medical devices/nutritional supplements. It may penalize any illegal advertisement of medicines with a monetary fine up to €22,000.
- (d) The Ministry of Agricultural Development and Food, through the Hellenic Food Authority, may impose a fine ranging from €500–€30,000 for any violation of the legislation regarding advertising of food products.
- (e) The Hellenic Capital Market Commission intervenes if the marketing communications of investment firms disseminate misleading information to clients/potential clients. It has the authority to impose a fine up to €5 million.
- (f) The Hellenic Gaming Commission has the authority to impose fines ranging from €5,000–€200,000 for infringements of the legislation regarding the commercial communication of gambling services.

- (g) The Municipal and Regional Health Services, the Municipal Police, and the Coast Guard can impose fines ranging from €500–€10,000 for any infringement of the legislation regarding advertising of tobacco products.

In all these cases, the entity on which a sanction is imposed may file a petition to the body which has issued the decision or to the administrative courts asking for the annulment of the imposed sanction.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors may challenge advertising by commencing court proceedings on the basis of the Unfair Competition Law, which prohibits any unfair act among competitors (including unfair advertising) and prohibits misleading statements in the course of competition.

With regard to the remedies available, the courts may:

- issue a cease-and-desist order; or
- award indemnity in case that monetary or moral damage have been caused (For the payment of indemnity, the plaintiff must prove that the infringement occurred by intention or negligence of the infringer; or
- order the publication of the court decision and the publication of a corrective advertisement or corrective declaration.

The main disadvantage of court proceedings is that they may last for a long period of time and usually entail significant costs. In cases of imminent danger, though, the plaintiff may apply for an injunction asking for preliminary measures.

As an alternative to the judicial route, competitors may file a complaint to the SEE (see question 2.3 below).

1.10 When do consumers have a right of action? What are the potential remedies?

In the case of unfair commercial practices, Greek consumer protection law permits any consumer and/or consumer association to request the Court to:

- issue a cease-and-desist order;
- award damages suffered by reason of that practice; and
- order the publication of the court decision.

In addition, consumers may demand, where relevant, a price reduction or the termination of the contract which was concluded as a result of the unfair commercial practice.

Consumer associations that have been registered in the consumer associations' registry for more than a year are entitled to file a class action for the protection of collective interests of consumers.

With regard to class actions, the remedies include:

- a provisional or definitive measure to cease or prohibit an illegal market practice; and
- a request that the consumers concerned are provided with compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid.

Consumers and/or consumer associations may also file a complaint to the SEE challenging an advertisement for violating HCACP (see question 2.3 below). The filing of a complaint to the SEE does not exclude the possibility of also taking legal action before court.

Finally, in cases of illegal commercial practices, consumers may address a complaint to the Hellenic Consumers' Ombudsman, which is an independent authority of extrajudicial dispute resolution in the area of consumer disputes.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Greece have a primary advertising self-regulation system?

The national system of advertising self regulation is mainly handled by the SEE. The SEE is an independent non-profit association which was created in 2003 by the Hellenic Association of Advertising and Communication Agencies and the Hellenic Advertisers Association, which means that the major advertising agencies and advertisers are part of the self-regulatory system. The SEE is a member of the European Advertising Standards Alliance ('EASA').

SEE may be activated either after an ex officio monitoring or after submission of a written complaint. Both consumers and competitors are entitled to file complaints claiming that a marketing communication (printed or broadcast) breaches the Hellenic Code of Advertising and Communication Practice ('HCACP') (see question 2.2. below).

Charges are imposed on competitors (not consumers) for the examination of their complaints (filed before the SEE committee of first instance) and appeals (filed before the SEE committee of second instance).

SEE closely collaborates with the government agencies that enforce advertising laws (eg, the General Secretariat for Consumers and the Greek National Council for Radio and Television etc).

2.2 Is there a self-regulatory advertising code? What are the key principles?

The HCACP, in its current (2023) version, consists of the following parts:

- (a) The general principles of advertising practice, which apply to all marketing communications:
 - (i) The core principle of the Code is that marketing communication should be legal, decent, honest, truthful and socially responsible.

Other key principles are that:

 - (ii) marketing communications should be clearly distinguishable as such;
 - (iii) advertising claims relating to verifiable facts should be substantiated; and
 - (iv) marketing communications should not make unjustifiable use of the name, initials, logo and/or trademarks of another company.
- (b) Four detailed chapters, which mainly refer to certain advertising methods. More specifically, the Code covers:
 - sales promotion (Chapter A),
 - sponsorship (Chapter B),
 - direct marketing and digital marketing communications (Chapter C),
 - environmental claims in marketing communication (Chapter D).
- (c) Nine Annexes, six of which serve to regulate advertising of specific products (food, beer, other alcoholic drinks, tobacco, food supplements and cosmetics) and the other three relate to advertising directed to minors, green advertising and influencer marketing.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The SEE has introduced specific rules relating to the enforcement of the decisions issued by its committees. The decisions of SEE committee of first instance are immediately binding for the parties and enforceable, although there is a right to an appeal before the committee of second instance.

If a complaint is upheld, SEE committees may address a recommendation for the cessation or modification of the advertisement. If the infringer fails or unjustifiably delays to comply with the recommendation, the SEE can enforce the adjudication by requesting in writing that all media sources immediately interrupt the broadcasting or publication of the advertisement in question. If the infringer remains uncooperative, SEE may issue an 'ad-alert', warning the whole advertising market of the infringer's activities.

Adjudications of SEE are reported to the competent government agencies (eg, General Secretariat for Consumers etc); therefore, in cases where both the HCACP and the advertising statutes are violated, the statutory authorities may intervene to enforce the law.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The Greek advertising self regulation system is widely used nowadays, since the advertising agencies and advertisers have understood that the self-regulatory, out-of-court route may offer the swift resolution of the dispute by persons having knowledge of advertising business at a relatively low cost.

The main disadvantages of the system are that:

- the complainant may not seek damages; and
- the decisions of SEE are not legally binding, although they are usually respected by the involved parties.

2.5 Are the self-regulatory system's decisions reported?

The self regulatory system's decisions are rendered in writing and are reported to the SEE website (www.see.gr), but only in the Greek language. In addition, the SEE actively promotes industry and consumer awareness of the HCACP by making it available to the public in printed copies and through its website.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The issues currently creating concern to the SEE committees are:

- the poor substantiation of claims used in foodstuff and food supplement advertising; and
- the fact that a lot of superiority claims (mainly used in advertising of mobile and internet service providers) are found to be misleading.

The SEE has recently focused on modern advertising practices such as influencer marketing and online behavioral (targeted) advertising.

2.7 Are there any other self-regulatory systems that govern advertising practices in Greece?

The Hellenic Bank Association (HBA) is active in the self regulation of the banking sector. Among other self-regulation codes, HBA has issued the Code of practice on the advertising of financial products and services offered by banks. However, the Code does not provide any consequences for non-compliance and it lacks enforcement mechanisms.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Greece (eg, consumer protection laws, IP laws, unfair competition laws)?

The statutes that mainly regulate advertising claims in Greece are the following:

- Consumer Protection Law, which prohibits unfair business-to-consumer commercial practices (such as misleading and aggressive advertising) and is the main legislative tool for the control of advertising claims.
- Unfair Competition Law, which introduces a general clause which prohibits all unfair commercial acts, including unfair advertising, along with a specific provision, according to which any advertisement which misleadingly gives the impression of an especially favorable offer, is prohibited. This provision mainly aims to protect competitors from misleading advertising claims.

Apart from the above general provisions, a great number of special provisions serve to regulate advertising claims in specific media (audiovisual media/radio etc) or introduce restrictions to advertising claims of specific products and services (alcohol, foodstuff, gambling etc).

Finally, in case of advertising claims of a comparative nature, IP laws must be taken into account, particularly the Copyright and Trademarks Laws.

3.2 Is substantiation required for advertising claims?

Substantiation is always required for objective advertising claims. According to the Best Practice Recommendation on Claims Substantiation ('the Recommendation') issued by the SEE, the burden is on the advertiser to prove the truth/accuracy of the advertising claim. Therefore, before publishing/broadcasting an advertisement, the advertiser must have proof supporting evidence available in order to substantiate the objective (verifiable) advertising claims. According to the HCACP, such substantiation should be available without delay and upon request of the SEE Committee, which will examine any complaint challenging the advertisement.

The type of proof required depends on the type of the advertising claim and the characteristics of the advertised product. The Recommendation indicatively stipulates the following means of proof:

- statistical surveys;
- market shares;
- sales data;
- certificates/accreditations issued from competent public authorities; and
- scientific studies and testimonials.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Under Greek consumer law, the common advertising practice of making statements which obviously exaggerate (puffery) cannot be considered as a misleading commercial practice. Nevertheless, Greek law does not define the criteria under which puffery is distinguished from advertising claims that require substantiation.

Some guidance on this issue can be found in the Recommendation, according to which, advertising claims which can be verified and which the average consumer is likely to regard as objective require substantiation. On the contrary, puffery is a claim that the average consumer cannot treat seriously. An example of this difference is provided in the Recommendation: the claim that a glass cleaning liquid ‘is the most economic in its category’ is verifiable and requires substantiation, while the claim that ‘it makes glass invisible’ is obvious puffery.

3.4 What are the rules governing the use of disclosures in advertising?

Specific industries are obliged by law to include warning messages and other disclosures to their marketing communications (eg, advertisements of over-the-counter medicines, food supplements, credit products etc).

Disclosures voluntarily used by advertisers (such as disclaimers, footnotes etc) are permitted to the extent that they do not mislead the average consumer. They are used to clarify the advertising claim and must not contradict or alter the general impression created by the main body of the advertisement.

Disclosures and any other superimposed text should be legible. A best practice guide has been issued by the SEE in relation to the size and timing of the superimposed text in audiovisual marketing communications.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Under Greek law, the use of endorsements and testimonials in advertising is, in principle, permitted, with the exception of advertisements of over-the-counter medicines. In addition, there are certain restrictions in relation to endorsements of food supplements.

According to HCACP guidelines, marketing communication should not contain or refer to any testimonial or endorsement unless it is genuine, verifiable and authorized by the person making the endorsement. Any claim that a trader or a product has been approved, endorsed or authorized by a public authority or private body, when actually they have not been approved, is forbidden, as this is considered misleading advertising practice (under the Consumer Protection Law). Testimonials or endorsements which have become obsolete or misleading through the passage of time should not be used.

Finally, according to the Recommendation, testimonials themselves are not considered substantiation, and impartial evidence is required.

3.6 What are the rules governing the use of product demonstrations in advertising?

No special statutory rules apply to demonstrations of product performance. In the framework of the general principle of truthfulness, any such demonstration must present the actual qualities of the advertised product without exaggerating its performance. In light of this, it is advisable that the demonstration is performed with samples of the product already available to consumers (or prototypes that perform no differently than the actual product) and no mock-ups, modifications or alterations should be employed.

With regard to demonstrations of cosmetics’ performance, specific guidance is provided by the ‘Guiding principles on responsible advertising and marketing communication’ issued by Cosmetics Europe.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Under the Consumer Protection Law, comparative advertising is permitted, provided that:

- it is not misleading
- it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- it compares goods or services meeting the same needs or intended for the same purpose; and
- (for products with designation of origin) it relates in each case to products with the same designation.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

According to the Consumer Protection Law, identifying a competitor by its name or by its trademark in the course of comparative advertising is permitted, provided that any such advertisement:

- does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
- does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- does not create confusion between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor; and
- does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Advertising that includes misleading information regarding the geographic origin of a product is specifically prohibited both by the Consumer Protection Law and by the Unfair Competition Law.

In addition, provisions on the protection of geographical indications and designations of origin for agricultural products and foodstuffs are provided in EU Regulation 1151/2012, which is directly implemented in Greece, as well as in Greek Ministerial Decision No 261611/2007. There are also EU and national provisions related to the geographical indications of alcoholic beverages.

3.10 Are there any special rules governing product packaging?

Specific provisions regarding packaging of various categories of products are included in the Rules for the Handling and Marketing of Products and Services (codified in Ministerial Decision No 91354/2017). In addition, special rules and restrictions for certain categories of products are in force in other legislative texts, such as the Code of Food and Beverages (prepackaged foodstuffs) and Law 4419/2016 (packaging and presentation of tobacco and related products etc).

The use of the term 'ecologic' or 'eco' in the packaging and advertising of products is permitted only if such products are granted the EU Ecolabel (according to EU Regulation 66/2010).

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Depending on the circumstances, ‘dark practices’ may be considered to constitute misleading or aggressive commercial practices, which are prohibited by the Consumer Protection Law.

It is also possible that dark practices may violate data protection rules (the GDPR), eg, the privacy ‘by-design’ and ‘by-default’ principles or the rules on legally obtaining the users’ informed consent for the processing of their personal data. Note, also, the European Data Protection Board’s Guidelines 03/2022 on Deceptive design patterns in social media platform interfaces: how to recognize and avoid them (Version 2.0, adopted, 14/02/23).

Moreover, it is noted that the EU Digital Services Act (Regulation 2022/2065) (‘DSA’), which applies from 17 February 2024, includes an article applicable to practices not covered by EU Consumer Protection or Data Protection legislation, in which dark patterns are expressly banned from online platforms, stating: ‘providers of online platforms shall not design, organize or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions’. It also stipulates that the European Commission may issue guidelines regarding how the prohibition shall apply on specific practices, highlighting, in particular:

- giving more prominence to certain choices when asking the user to make a decision, or
- repeatedly requesting users to make a choice even though that choice has already been made, especially by presenting pop-ups that interfere with the user experience, or
- making the process for cancelling a service more difficult than subscribing to it.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Artificial intelligence (‘AI’) is not yet specifically regulated. In any case, all general rules regarding fair and lawful marketing communications apply equally to advertisements created by AI or otherwise related to AI.

It is noted that, given that AI still remains a legal ‘grey area’, advertisers should be cautious in order to ensure that AI-generated content is compliant with all consumer protection, data protection and copyright laws.

4 PRICE ADVERTISING

4.1 What are Greece’s rules regarding price advertising?

According to the Rules for the Handling and Marketing of Products and Services (codified in Ministerial Decision No 91354/2017), communications which include the price of goods are required to indicate both the selling price and the unit price. All price indications must be inclusive of VAT and other taxes (total price) and must be displayed in an unambiguous, easily identifiable and clearly legible way. If additional charges apply (eg, for postage, packaging or delivery of goods), the trader is obliged to inform consumers of these before they commit to buy (this rule is of particular significance in the field of distance sales).

4.2 What are Greece's rules regarding advertising 'free' products?

The claim that something is offered for free/without charge (or similar expressions), is permissible only if the consumer does not have to pay anything other than the unavoidable cost of responding to the commercial practice and of collecting or paying for delivery of the item under the Consumer Protection Law. Advertising a product as offered for free if another one is purchased ('buy one, get one free') is accepted only if the consumer will pay nothing for the one item and no more than the regular price for the other.

4.3 What are Greece's rules regarding sales and special offers?

- (a) Firstly, all communications regarding offers should be simple, clear, truthful and be made in Greek, and optionally in any other additional language, and must not mislead consumers in any way.
- (b) According to Law No 4177/2013, all price reduction communications must include the 'previous price' of the product along with the new, discounted price. The 'previous price' is the lowest price that was applied during the 30 days before the price reduction. If the price was reduced progressively during the 30 days prior to the price reduction, the 'previous price' is the price that was applied before the first of the successive price reductions.
- (c) The Code of Conduct for Communications of Price Reductions, ratified by virtue of Ministerial Decision No 35935/2023, contains detailed guidelines and examples of best and worst practices for the communication of reduced-price offers, in order for such communications to not constitute unfair (misleading or aggressive) commercial practices which are prohibited under the Consumer Protection Law.
- (d) Moreover, the Consumer Protection Law provides that any comparative advertising referring to a special offer must indicate, in a clear and unequivocal way, the date on which the offer ends or, where appropriate, that the special offer is subject to availability of the goods and services. Where the special offer has not yet begun, the advertisement must indicate the date on which the special price or other specific conditions shall start to apply.

4.4 What are Greece's rules regarding rebates?

No special rules apply to this advertising practice. In view of the general principle of truthful and non-deceptive advertising, rebate promotions must clearly disclose all the information that is likely to affect a consumer's purchasing decisions, such as the before-rebate cost of the product, the amount of the rebate and any additional terms and conditions (including purchase requirements, additional charges or fees etc), so that the consumer is informed of the actual out-of-pocket cost.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Inter alia, the following retail marketing practices are prohibited in all circumstances:

- inviting consumers to purchase a product at a fixed (usually attractive) price without making them aware that there is limited stock/availability (bait advertising); and/or
- inviting consumers to purchase a product at a fixed price, but then refusing to show that product to them, or showing a defective sample of the product with the deliberate intention of promoting a different product (bait and switch advertising).

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) It is illegal to advertise products and services that are themselves illegal (eg, narcotics) or acts that are forbidden by the law (acts of terrorism, racist acts).
- (b) The following should not be advertised on audiovisual media and radio:
 - any form of tobacco and relevant products (including e-cigarettes);
 - prescription drugs and medical treatments;
 - services of sexual nature between 06.00 am and 01.00 am;
 - alcohol aimed at minors;
 - toys between 07.00 am and 10.00 pm;
 - war toys;
 - online games/bets conducted by non-licensed entities;
 - advertisements linked to religion; and
 - firearms and weapons, with the exception of hunting guns.
- (c) The following should not be advertised on the internet, or in print or outdoor media:
 - any form of tobacco and relevant products (including e-cigarettes);
 - prescription drugs; and
 - online games/bets conducted by non-licensed entities.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) According to the general rule provided in the Consumer Protection Law, unfair (eg, misleading, aggressive etc) advertising practices are prohibited. This principle is supplemented by a blacklist of specific commercial practices that are considered misleading or aggressive under all circumstances, some of which are based on particular advertising practices.
- (b) Under Greek legal theory, subliminal messages, shock tactics, dangerous sounds or visual effects qualify as unfair commercial practices. In addition, subliminal advertising in audiovisual media and radio is expressly forbidden (in the Audiovisual Media Law and the NCRTV Code of TV/radio advertising).
- (c) Finally, the following practices of broadcast advertising are also banned:
 - advertising which encourages behavior prejudicial to health or safety;
 - advertising which encourages behavior grossly prejudicial to the protection of the environment;
 - advertising which plays on consumers' superstitions or fear.
 - telemarketing that incites minors to buy or rent the advertised products and services;
 - advertising which encourages children to buy products by phone order or mail;
 - advertising that encourages minors to convince their parents or other persons to buy products or services or that exploits the trust of minors towards their parents, teachers or other persons; and
 - advertising that may be harmful, mentally or physically, to minors.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The general rule is that advertisements must not offend public morals. The Greek Supreme Administrative Court has ruled (Decision 1319/2004) that a nude outdoor advertisement was unfair because it offended the standards of decency prevailing in Greece.

The issue of decency in advertisements offered by audiovisual media and radio is mainly regulated by the Audiovisual Media Law and the NCRTV Code of TV/radio advertising. Broadcast advertisements must respect human dignity and must not discriminate based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The HCACP states that the identity of the advertiser should be transparent and, where appropriate, marketing communications should include contact information to enable the consumer to get in touch with the advertiser without difficulty.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Under the Greek Consumer Protection Law, which covers all media, the use of editorial content in the media to promote a product, where a trader has paid for the promotion without making that clear in the content or by clearly identifiable images or sounds, is forbidden (ie, disguised advertising). Moreover, hidden commercial communication is prohibited in audiovisual and audio media (TV and radio), according to the Audiovisual Media Law.

According to the HCACP, all marketing communications should be clearly distinguishable as such, whatever the form and medium used. When an advertisement appears in a medium containing news or editorial matter (native advertising), it should be so presented that it is readily recognizable as an advertisement and the identity of the advertiser should be apparent. Also, marketing communications must not mislead the consumers as to their promotional purpose and should not be 'disguised' eg, as market research, consumer surveys, user generated content, private social media posts, independent reviews etc.

Regarding commercial sponsorships and product placements, the Audiovisual Media Law sets out a number of restrictions for audiovisual media:

- (a) The basic principle is that the autonomy of the media service provider must be respected. Sponsored/product placed programs must not directly encourage the purchase or rental of goods or services.
- (b) Sponsorship/product placement of cigarettes (or other tobacco products including e-cigarettes) and medicines that are available only on medical prescription is prohibited. Nevertheless, sponsorship of programs by undertakings whose activities include the manufacture or sale of medicines is permitted but it may promote only the name or the image of the undertaking (not specific medicinal products).

- (c) Certain types of programming may not be sponsored/product placed (eg news). Product placement is permitted in cinematographic works, films and series made for audiovisual media services, sports programs and light entertainment programs, with the exception of programs directed to children.

In the field of industry self regulation, the HCACP includes an entire chapter on best practices in Sponsorships (Chapter B).

7.2 **Are there any special disclosure or other obligations when integrating advertising content with other content?**

Both the Law and self-regulatory rules provide that all marketing communications, in any form and in any medium, should be clearly identifiable as such. Disclosure may be by a variety of means, depending on the type of advertising communication, as long as it is easily and clearly understandable to consumers that the content is an advertisement.

Also, under current legislation on audiovisual media, viewers must be clearly informed of any sponsorship agreement or the existence of product placement.

Sponsored programs must be clearly identified as such by display of the name, logo and/or any other symbol of the sponsor at the beginning, during and/or the end of the programs. However, note that the appearance of a sponsorship logo during children's programs, documentaries and religious programs is prohibited.

Programs containing product placement must be appropriately identified at the start and the end of the program, and when a program resumes after an advertising break, in order to avoid any confusion on the part of the viewer. Under the NCRTV Guidelines, in cases of product placement, TV channels must show, for a period of ten seconds, the specific disclosure 'the program which follows contains product placement' and a special logo. A similar disclosure must be shown at the end of the program.

8 **SOCIAL MEDIA**

8.1 **Are there any special rules governing the use of social media for advertising purposes?**

- (a) With regard to online commercial communications, the rule that advertisements should be clearly identifiable as such is stipulated in Presidential Decree No 131/2003, which implemented the European e-Commerce Directive (2000/31) into Greek Law. In addition, the identity of the advertised entity should also be clear in all marketing communications.
- (b) Furthermore, marketing communications via social media are governed by all laws applicable to advertising in general; ie, the provisions of the Consumer Protection Law and the general principles of legal, decent, honest, truthful and socially responsible advertising, as well as legislation on personal data, intellectual and industrial property, unfair competition and any other rules applicable to advertising communications.
- (c) Self-regulatory rules are also directly applicable to advertising in social media. In particular, the HCACP stipulates that all advertising communications, whatever form they take and whatever the medium used, should be clearly identifiable as such and the identity of the promoter should also be clear to consumers. In addition, in December 2017, the SEE

published the Digital Marketing Communications Best Practice Guide (based on EASA's Digital Marketing Communications Best Practice Recommendation). This Best Practice Guide makes clear that marketing communications via social media:

- fall into the scope of self-regulation,
- should respect the principles and general provisions of the HCACP, and
- are subject to the control of SEE.

However, other forms of communication, such as editorial content, independent review websites, and user generated content which has not been distributed or approved by the advertiser, are not, in principle, considered to be marketing communications and, in that case, they would fall outside the remit of self-regulation.

Under the Digital Marketing Communications Best Practice Guide, the distinction in social media between marketing communications and editorial content should be clear. It should be obvious to the consumer that a message constitutes a marketing communication, and such communication must not falsely claim or give the misleading impression that the advertiser is a consumer. The identification of an advertisement as such can result from different elements, such as the lay-out or the content of the webpage, the use of identifiers etc. The rules relating to lawful collection of users' personal data are also applicable in digital marketing communications.

More recently, in November 2023, the SEE also published an annex to the HCACP on Influencer Marketing (based on EASA's Best Practice Recommendation on Influencer Marketing). The Annex clarifies the cases when, depending on the circumstances, specific online content consists of 'influencer marketing' and sets rules on how to clearly indicate that such content consists of advertising material, by using particular 'hashtags' at the beginning of it.

- (d) Moreover, it is noted that the DSA, which shall be directly enforceable in Greece, also includes provisions for advertising on online platforms. Indicatively, according to the DSA, online platforms shall:

- clearly and unambiguously label all advertisements as such;
- let the users know who the advertised entity is; and
- inform the users about why they are presented with a specific advertisement.

Also, the DSA prohibits targeted advertising based on profiling of minors and also based on profiling that uses special categories of personal data, such as racial or ethnic origin, political opinions, religion, sexual orientation etc.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

User generated content (eg, comments, posts, photos, videos, podcasts etc created by independent users) which has not been commissioned, distributed or later approved or adopted by the advertiser is not, in principle, considered to be marketing communication.

However, under specific conditions, the advertiser may be liable for claims made in user generated content. As provided in the Digital Marketing Best Practice Guide issued by the SEE, if the advertiser has commissioned, adopted, approved, recognized, accepted, distributed or actively promoted the content, the advertiser could be responsible for it. Examples of adopting/approving/accepting the content are 'liking', 'retweeting', 'sharing', or re-using it in other media by the advertiser. Also, if an

advertiser agrees with a user to create content in exchange for any kind of compensation (monetary or other), such content would have to be clearly labelled as marketing communication, and the advertiser would be liable for it.

Of course, it is illegal for the advertiser to post (or to commission another person to post) favorable reviews or endorsements for its products/services pretending to be a consumer (misleading marketing practice).

Moreover, under the Consumer Protection Law it is an unlawful, misleading, commercial practice for advertisers to state that product reviews have been submitted by consumers who really purchased or used that product, when no reasonable and proportionate steps have been taken to ensure that these reviews indeed originate from such consumers. The Law further provides that when the advertiser provides access to consumer reviews, it is of material importance to provide information on whether and how it has ensured that such reviews indeed originate from consumers who have actually used or purchased the product. If no such information is provided, the advertiser may be held liable for an unlawful, misleading, commercial practice.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no key court or self-regulatory decisions at this moment, to our knowledge, that specifically concern only issues of advertising via social media. It is worth noting, however, that, since 2016, each decision of the SEE ends with the note that the SEE's rulings are valid and applicable to all media where each disputed advertisement is present, regardless of whether they are explicitly mentioned in the decision, including digital media and social media channels.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Under Greek legal theory and jurisprudence, the right of an individual to control any commercial use of their name, image, voice and other aspects of identity (right of publicity) is considered to be an integral part of the general right of personality; therefore, the right of publicity is protected under the Civil Code, which also serves to protect the right of personality.

The right of publicity involves two aspects: a positive one, permitting the person to commercially exploit (eg, license) aspects of their identity, and a negative one, entitling the person to forbid any unauthorized commercial use of their name/image/voice/likeness etc.

Advertisers must be aware that the content of the right of publicity is very broad in Greece; eg, a Greek Court has held that the rights of a famous Greek composer were violated because his well-known lyrics were adapted and used in an advertisement for a car without his authorization.

It is noted that the right of publicity is recognized for everyone (not only famous people). In light of this, the Greek courts have repeatedly held that the use of images of residents of rural Greece (farmers etc) in advertising without their permission constitutes an infringement of their right of publicity.

9.2 Are there situations when permission is not required?

Express permission is always required for the use of an individual's picture etc, in advertising, even when it is a famous person who is depicted.

According to Greek legal theory and jurisprudence, such permission must be specific (ie, a general permission given by a famous person for the publication of their images in the media is not enough). In addition, if permission is given for the use of an image in a specific advertisement, it is not valid for any future use in other advertisements.

Finally, it is noted that obtaining permission from the person depicted in the photograph only prevents a claim for violation of the right of publicity. For any advertising use of a photo, it is necessary in addition to obtain copyright permission from the person who took the photograph (or whoever owns the relevant copyright in the photo).

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Under Greek Law, the State has a special right regarding photos, slides and depictions etc of Greek antiquities, that is similar to copyright. As a result, any use of, eg, a photo of a Greek antiquity for advertising purposes is subject to prior license by the Greek Ministry of Culture and payment of the relevant fees.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

This advertising practice is lawful only when the affected company, in its capacity as the legitimate right holder of trademarks, logos etc, has given its permission (under the Consumer Protection Law).

According to the similar provision of the HCACP, marketing communication should not make unjustifiable use of the name, initials, logo and/or trademarks of another firm, company or institution. Marketing communication should not in any way take undue advantage of another firms, individual's or institution's goodwill in its name, brands or other intellectual property, or take advantage of the goodwill earned by other marketing campaigns without prior consent.

Additionally, if the affected company has registered the logo, the design or the image as a trademark, the unauthorized use of such marks in the advertisement would probably also be a trademark infringement.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Greece which affect advertising (eg, Swedish gender equality law)?

According to a very little-known law, the national flag must not be used for advertising and commercial purposes. Nevertheless, no advertisement has been banned nor have any criminal charges been pressed against any person for infringing this provision. In fact, the use of the flag is commonplace in advertisements associated with the participation of the Greek national team in significant football competitions, such as the FIFA World Cup/FIFA Euro Cup etc.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

- Advertisers should consider that advertising content which involves discrimination against women is not appreciated by Greek society (eg, advertisements which provide, in a direct or indirect way, stereotypical ideas for the role of woman in society, by either focusing on the traditional role of woman as a mother and housewife or by displaying women as objects of man's desire).
- Religion is another 'sensitive' issue for a significant part of the Greek audience. The Greek Orthodox Church has a strong presence that might affect the appropriateness of certain advertising messages; therefore, religious advertising is not common, and is expressly prohibited in TV and Radio (under the NCRTV Code of TV/radio advertising).

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Greece?

It is advisable for advertisers/advertising agencies coming from abroad to seek local legal advice, due to the fact that Greece lacks a systematic legal framework for advertising.



GUATEMALA



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Guatemala?

Advertising in Guatemala is not regulated in a single legal body and there is no specific law or regulation that can be applied to this topic. On the contrary, provisions on advertising are included in a series of legislative instruments (Decrees or Laws) which address specific areas of law, and take advertising as an additional or circumstantial element of the matters covered under such instruments. Likewise, there are lower-level regulations, of an administrative type, whose purpose is to develop the procedures and the implementation of the Decrees (Governmental Agreements and Ministerial Agreements).

There are also marketing and advertisement guild agreements that seek harmonization and regulation of groups, users and people or companies dedicated to advertising.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

According to the provisions established in the Consumers' and Users' Protection Act (Decree 6-2003), all 'communication that the supplier addresses to the public by any means, to inform and motivate him/her to acquire or hire goods and services' is considered to be advertising.

1.3 What is the basic regulatory framework for advertising regulation?

Due to the absence of a specific law in the matter, the legal regulation on advertising in Guatemala is directly or indirectly included in several laws, regulations and agreements. The main ones are:

- Health and Safety Code (Decree 90-97);
- Law for the Dignification and Integral Promotion of Women (Decree 7-99);
- Radio Communications Law (Law-Decree 433);
- Law of Expression of Thought (Decree 9);
- Electoral and Political Parties Law (Decree 1-85);
- Commercial Code (Decree 2-70);
- Law on Sporting Events (Decree 136-96);
- Industrial Property Law (Decree 57-2000);
- Consumers' and Users' Protection Act (Decree 6-2003);
- Alcoholic Beverages, Wines, Beers and Fermented Beverages Consumption and Advertisement Regulation (Government Agreement 127-2002); and
- By-laws of Health Regulations for the Authorization and Surveillance of Advertising of Products derived from Tobacco (Government Agreement 338-2013).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Text message advertising or social media advertising is not specifically regulated. General provisions on advertisements apply to this means of advertising. There are, however, certain specific regulations to be observed, eg:

- (a) comparative advertising is prohibited under the Commercial Code;
- (b) advertisement through billboards and advertisements in public spaces and radio and television advertisements are regulated by specific norms under the Advertising Law in Urban Roads, Extra-urban Roads and similar (Decree 34-2003); and the Radio Communication Law.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes, there are regulations in relation to products that are subject to certain level of state control, such as those made or derived from tobacco, alcoholic beverages and pharmaceutical products.

1.6 Are any government pre-approvals required?

Yes—the Ministry of Public Health and Social Welfare must approve all advertising that is connected with products made or derived from tobacco, alcoholic beverages and pharmaceutical products. Likewise, it must do so for the promotional campaigns of alimentary products that reach the consumer through advertising campaigns.

The advertising of games of chance is permitted, as long as the respective contests, raffles and drawing of lots have the authorization of the corresponding authority; in this case, the Departmental Governance or the Ministry of Interior.

1.7 Does the media pre-clear advertising?

When advertising any of the following products, media agencies are required to verify that the advertisement has government authorization:

- (a) contraceptives;
- (b) over-the-counter medication; and
- (c) prescription medication,

Other than the products mentioned above, there is no mandatory legal regulation in this regard. However, the advertising sector applies a Code of Ethics issued by the National Advertising Council (as to which see answer 2.1 below) under which there may be some supervision prior to an advertising campaign or announcements being launched to the mass media.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Ministry of Public Health and Social Welfare has dependencies in charge of monitoring the advertising of restricted products, which have the authority to demand that the advertiser complies with the law. If this is not done, the Ministry can impose a fine and even proceed to withdraw the commercial or publicity in question. A similar situation applies to the municipalities in the case of advertising on public roads within their jurisdiction.

1.9 When does a competitor have a right of action? What are the potential remedies?

The three main cases where a competitor has a right of action are:

- (a) When the advertising constitutes unfair competition under the Commercial Code and the Industrial Property Law, the affected party may bring a claim via civil action to request the suspension of the act and the payment of damages and/or compensation for losses suffered from the activities of the competitor.

- (b) Where advertising amounts to a criminal offense under the Criminal Code, such as the violation of Industrial Property rights or crimes against honor, the affected competitor may file a complaint before the public's prosecutor office, to proceed with a criminal proceeding that results in the imposition of a prison sentence and/or a fine.
- (c) Another case refers to regulated sectors (eg, products made or derived from tobacco, alcoholic beverages and pharmaceutical products), in which there is a possibility that any competitor may denounce the non-compliance with the rules of a specific advertisement, following the procedure established in the Health Code. Remedies for non-compliance include withdrawal of the advertisement and sanctions against the person responsible.

1.10 When do consumers have a right of action? What are the potential remedies?

A consumer (or 'user') has a right of action in respect of misleading advertising under the provisions of the Consumers' and Users' Protection Act. The infraction can be reported to the Department of Attention and Assistance to the Consumer ('DIACO'). 'Misleading advertising' is defined by the Consumers' and Users' Protection Act as advertising that 'induces the consumer or user to error by means of trickery or deceit to defraud him in his assets to his own detriment or of a third party'. This is a special case of infringement, which can be subject to a fine of US \$16,000–30,000.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Guatemala have a primary advertising self-regulation system?

In Guatemala, there is no binding system of self-regulation. Regardless of this, the following associations or guilds have formed the National Advertising Council ('NAC'):

- (a) the Advertisers Association of Guatemala;
- (b) the Guatemalan Association of Advertising Agencies;
- (c) the Guatemala Media Chamber; and
- (d) the Independent Media.

The NAC has created a Code of Ethics, aiming at better interaction amongst its members and establishing certain guidelines that its members are called upon to observe; in particular, the adoption of standards of business acts and quality standards that can be adjusted to the reality of the Guatemalan market.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes, there is a Code of Ethics issued by the NAC, which is a guide for the development of the activities of its members within the field of advertising, internally as well as relating to behavior before the public and users. The principles that are relevant to this Code are: truthfulness, loyalty, morality, decency, honesty, legality and trustworthiness.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

No—the Code of Ethics issued by the NAC, does not include a dispute resolution system.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The NAC, in various publications, has stated that the voluntary system has proved to be effective and is generally accepted by its members. It is qualified as 'voluntary' because it does not have a mandatory and binding nature, not having been issued by the Congress of the Republic or another authority empowered by law to do so.

2.5 Are the self-regulatory system's decisions reported?

The system does not provide for the publication of decisions. Decisions and/or agreements are discussed among the members of the Guild, and, seeking for harmonization in the field of advertising, agreements have been reached in which the advertising trade associations have been involved, such as those that make up the NAC.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Since the Code of Ethics sets the guidelines and the endorsed practices from the perspective of advertising, this tends to set principles for all those involved in with the NAC. This Code is mainly divided into general principles, special conduct guidelines addressed to the treatment of social groups (children, youth and sick persons), and guidelines relating to product sectors (food, alcohol and cigarettes and tobacco, loans, insurances and investments, teaching courses, etc). This is because these are the most important points to be considered by companies at the time of launching advertising campaigns and the areas which most require professional consultation.

2.7 Are there any other self-regulatory systems that govern advertising practices in Guatemala?

No, there is no other system of self-regulation regarding advertising practices; though there are, certainly, companies (particularly multinationals) which have developed their own internal advertising codes.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Guatemala (eg, consumer protection laws, IP laws, unfair competition laws)

- (a) The description of products in advertising is regulated in a general way in the Consumers' and Users' Protection Law, by means of two standards:
 - (i) The expression 'guaranteed' or 'warranty' or any equivalent phrase, caption or word, can only be stated in advertising when there is indication as to what it means, who is the person obliged and the conditions attached. This applies to any statement that is made regarding the qualities of the product or service.
 - (ii) To avoid 'misleading advertising', which is defined as that which induces the consumer or user to error by means of trickery or deceit, to defraud him in his own assets to the detriment of himself or a third party'.
- (b) The Commercial Code states that is an act of unfair competition to deceive or mislead the public in general, or a specific person, through the use of false guidelines about the origin or quality of the product or services, or the false reference of credits, awards or distinctness obtained by the same.

- (c) The Industrial Property Law states that ‘the use, promotion, publication of false or inaccurate indications or facts, that may mislead as to the origin of the products or services, their nature, manufacturing method, use, quantity or other characteristics’, is an act of unfair competition. A provision in the Industrial Property Law clearly states that, in case of contradiction between the Commercial Code and/or other laws containing provisions related to unfair competition and the Industrial Property Law, the Industrial Property Law shall prevail.
- (d) The Health Code prohibits advertising that attributes therapeutic properties to food or that misleads or deceives the public as to the nature, ingredients, qualities, properties or origin thereof.

3.2 Is substantiation required for advertising claims?

The Guatemalan legal system does not expressly state that evidence must be provided as to the properties of the products or the claims within the advertisements. However, any consumer can request that the truthfulness of these properties is verified, in which event substantiation of the claims must be made available.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The Guatemalan law does not expressly consider the case of whether there are any types of advertising messages that do not require substantiation. The question of whether advertisements that ‘presumably’ no reasonable person would assume to be literally true and are not intended to be an express warranty or guarantee for the consumer are lawful will be a matter of discussion before a competent authority, if challenged. The authority will decide based on the message being challenged, in the context of the product or service.

3.4 What are the rules governing the use of disclosures in advertising?

The regulations on misleading advertising, contained in the Consumers’ and Users’ Protection Act (as to which see question 3.1 above), state that the information contained in the packages or advertising of products must be truthful, accurate, clear and visible, written in Spanish or in symbols that are internationally known, with the purpose to inform the consumer or users about the warnings or how to use the product.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no guidelines governing the use of testimonials and endorsements. Therefore, the general regulations on misleading advertising would apply.

Testimonials or endorsements should be truthful.

As to the inclusion of individuals in advertising, the Health Code bans the use of public figures (endorsement by individuals) in advertising for tobacco and alcoholic beverages.

3.6 What are the rules governing the use of product demonstrations in advertising?

The Health Code prohibits any activity that comprises the free distribution, for consumption, of tobacco and alcoholic beverages. Comparative advertisement is banned.

There are no specific provisions as regards other product sectors, and so the general regulations on misleading advertising will apply.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

No—comparative advertising is forbidden and is described as an act of unfair competition, according to the Commercial Code of Guatemala.

3.8 Are there any special copyright or rules that may impact comparative advertising (eg, whether a competitor's or products may be used)?

As indicated above, comparative advertising is expressly forbidden, as it is considered an act of unfair competition under the Commercial Code.

In addition, there are provisions related to unfair competition contained in the Industrial Property Law that relate to comparative advertising. This Law gives the following as examples of unfair competition:

- 'Any act or omission capable of causing ... weakening of the distinctive character of a sign, regarding the products, services, company or establishment of others;
- the use, promotion or disclosure of false or inaccurate indications or facts capable of denigrating or discrediting the products, goods, services, company or establishment of others or that may mislead with respect to the origin, the nature, the mode of manufacture, the aptitude for its use, use or consumption, the quantity or other characteristics of the own or foreign products or services;
- the improper use or omission of truthful information, when they are liable to mislead as to the origin, nature, manner of manufacture, suitability for use, use or consumption, quantity or other characteristics of the own or foreign products or services.'

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Yes—the Industrial Property Law provides for the protection of geographical indications and denominations of origin. The Law prohibits the registration as a trademark of a sign that could cause confusion with regards to the true geographical origin of a product. It also requires that all products sold in Guatemala clearly indicate in Spanish the place of production or manufacture. The use of geographical indications in a way that will mislead the public as to the origin and or characteristics of the product constitutes an infringement of the law.

3.10 Are there any special rules governing product packaging?

In Guatemala the main regulations, in addition to the Consumers' and Users' Protection Act, in relation to this matter are the following:

- (a) Foods:
- General labeling of pre-packaged foods (Central American Technical Regulation (RTCA) 67.01.07:10);
 - Nutritional labeling of pre-packaged food products for human consumption for the population from 3 years of age (RTCA 67.01.60:10);
 - Labeling of fermented alcoholic beverages (RTCA 67.01.05:11);
 - Labeling of distilled alcoholic beverages (RTCA 67.01.06:11).

- (b) Medicines, Cosmetics and Hygienics:
 - Labeling of pharmaceutical products (RTCA 11.01.02.04);
 - Labeling of Cosmetics (RTCA 71.01.36.06);
 - Labeling Hygienic Products (RTCA 71.01.38.06);
 - Labeling of natural pharmaceutical products for human use (RTCA 11.04.41.06).
- (c) Others:
 - Labeling of Pesticides (RTCA 65.03.57.10);
 - Labeling of Textiles: (RTCA 59.01.08.12);
 - Labeling of Footwear (RTCA 59.01.08.12).

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

As mentioned in question 1.1 above, there is no specific regulation in Guatemala regarding advertising. However, regarding ‘dark practices’ in advertising (understanding these practices as being those that attempt to deceive the consumer with a series of manipulative tactics that mislead users through the use of language, design, etc designed to nudge the consumer in the direction of a purchase), the Consumers’ and Users’ Protection Act establishes that misleading publicity is prohibited ‘that induces the consumer or user to error by means of trickery or deceit, to defraud him in his own assets to the detriment of himself or a third party.’

In this regard, the First Chamber of the Court of Administrative Litigation has ruled on misleading advertising in case number 261-2005, indicating that the following is considered misleading advertising: ‘In this case, the determining factor is misleading advertising... It is, then, the use of advertising ... with the deliberate purpose of misleading the consumer or user by trickery or deception, on the one hand, and, on the other hand, with the intention of defrauding them of their assets to their own or a third party’s detriment. There are therefore two ingredients, one, to use a ruse, that is to say, an artifice or means used skillfully and cunningly for the achievement of some intent, or deception, that is to say, induction to take for certain what is not, using words or apparent or feigned works, and the other, to have the purpose of defrauding him in his own assets to his own or a third party’s detriment.’

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Currently, there are no regulations in the Guatemalan legal system that regulate artificial intelligence in relation to advertising.

4 PRICE ADVERTISING

4.1 What are the Guatemala’s rules regarding price advertising?

Price advertising is regulated by the Consumers’ and Users’ Protection Act, which establishes the basic right of consumers and users to know the characteristics of products and services, including their price. The price advertised must be maintained, so that the charging of higher prices is prohibited, unless the changes have been made in good time and publicly known. Merchants must make their prices available to the public, which must include all applicable taxes, and must be marked in local currency.

4.2 What are the Guatemala's rules regarding advertising 'free' products?

The Health Code bans any activity that includes the free distribution, for consumption, of tobacco and alcoholic beverages. There are no specific provisions as regards other product sectors, and so the general regulations on misleading advertising will apply. Therefore advertising 'free' products is not prohibited as long as none of the activities addressed to advertise the products that are delivered free to the consumer, induces a deception or error in the consumer when the products are sought in the domestic market.

4.3 What are the Guatemala's rules regarding sales and special offers?

The Civil Code of Guatemala states that a person who offers to the public objects at a certain price is obliged to honor such offer. On the other hand, the Consumers' and Users' Protection Act defines an 'offer' (special price) as 'the commercial practice of offering the public, on a temporary basis, lower prices than the usual ones'. In both cases, the supplier is obliged to supply the consumer with what is offered through the advertising used to reach the general public.

The Consumers' and Users' Protection Act (see question 4.1 above), establishes that, in advertising 'on sale' or 'discounts', the term or unit numbers to be promoted, as well as the business conditions offered, should be stated. If the term is not stated, it will be understood that the offer will have a term of no less than a month from the date of the last announcement.

4.4 What are the Guatemala's rules regarding rebates?

The Consumers' and Users' Protection Act also regulates the return of products. In case of any breach of the product specifications, the supplier must repair it or refund the price paid to the consumer or user on demand.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Product bundling has been interpreted by DIACO as 'offers', which may result in restricting the practice unless it complies with the 'offer' regulations.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) As regards prohibited practices, the basic principles of respect for privacy and morality should be taken into consideration; insults to people should be avoided, especially if these involve incitement to hatred or violence, as well as discrimination based on gender, religion, political tendency or ethnic group. Provisions in this regard are included in the Political Constitution of the Republic and in the Criminal Code of Guatemala.
- (b) On the other hand, although the law does not expressly state it, it is understood that it is prohibited to advertise products that are not legally tradable, such as drugs or certain types of weapons.

- (c) There is an express prohibition on the advertisement of pharmaceutical products whose sale requires a medical prescription, under the Code of Health.
- (d) Likewise, in the Code of Health, there is a prohibition on the advertising of tobacco products and alcoholic beverages on television and radio within the time period that is considered as children's programming, as well as a prohibition on placing advertising on the perimeter of educational or sports centers.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) The Radiocommunication Law prohibits:
 - the dissemination of propaganda contrary to the security of the State, or to public order;
 - denigrating or offensive treatment to civic and patriotic symbols;
 - offence to religious beliefs;
 - encouragement of racial discrimination;
 - vulgar comedy or offensive sounds;
 - anything contrary to moral or decorum;
 - anything harmful to children or youth; and
 - exaltation of crime.
- (b) The Health Code establishes that the advertising of:
 - promotions,
 - pharmaceutical products that are sold without a prescription,
 - tobacco products and
 - alcoholic beverages
 must be authorized prior to broadcasting.
- (c) The Advertising Act on Urban Roads, Extra-Urban Roads and Similar prohibits the placing of advertising that can obviously affect the physical or mental health of people, as well as advertising containing written or drawn expressions that damage, injure or denigrate other rights or interests, directly or indirectly, as well as cause any injury to the principles of unfair competition.
- (d) The Law for the Protection of the Cultural Heritage of the Nation (Decree 26-97), prohibits and sanctions the illicit positioning of any type of commercial advertising in archaeological areas or historical monuments. Likewise, it is prohibited to place advertising on property which has been declared to be cultural heritage of the Nation.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

There are several general regulations on the subject of indecency or obscenity, but specifically the Radiocommunication Law states that it is not permitted to broadcast material that is indecent or contrary to morality. The penalty is a fine equivalent to approximately US\$130.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There is no regulation expressly requiring identification of the specific entity responsible for an advertisement. Generally, an advertising or media agency will submit the materials and will appear as the responsible entity for the content or campaign. When applying for authorization to advertise regulated products, the applicant's data is placed in the approval request file.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The sole specific regulation governing the integration of advertising content and entertainment/editorial content refers to the advertising of tobacco products and alcoholic beverages. The Health Code prohibits advertising to show the consumption of these products, as well as the use of cartoons or depiction of public figures using or consuming them.

For everything else, the general regulations in relation to intellectual property, moral standards and good manners apply, as well as the rule that an advertisement's content must not imply the commission of a crime.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There is no express regulation regarding integrating advertising content with other content, although it is always advisable to consider the limitations that the regulated products (tobacco and alcoholic beverages) have, and to find a way to avoid integrating it with advertising addressed to groups that can consider it as an attack against moral principles.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There is no specific law generally regulating advertising for social media. However, principles and norms that apply to traditional advertising should be observed when it comes to social media advertising and marketing. The Consumers' and Users' Protection Act (and its bylaw) refers to certain characteristics and data to be considered when communicating information to consumers (such as truthfulness, clarity etc). This Act also expressly prohibits deceptive advertising.

Another law that contains provisions applicable to advertising and marketing via social media is the Commercial Code, which expressly prohibits comparative advertisement and refers to other conduct that is considered unfair competition in advertising and marketing.

For certain regulated products, such as tobacco, alcoholic beverages and pharmaceutical products, advertising and marketing is regulated under the Health Code and its bylaws.

Even though there is not yet a specific law regulating personal data protection in social media, the Courts have issued decisions that should be followed, particularly those setting out considerations as to data privacy and rights of intimacy and informed consent.

Finally, it is important to bear in mind that the intellectual property laws are to be observed when advertising and marketing via social media.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Guatemalan legislation does specifically consider responsibility for advertising claims made in user generated content, although there have been cases in which, when users make claims by these means (eg, on a Facebook page or similar ones), the Directorate for Consumer Care and Assistance has paid special attention to whether the advertiser could face possible claims from users for misleading advertising in respect of its products or services and situations for which consumers or users feel deceived.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

In Guatemala, except in very specific cases, the common law has no binding effect, which is why there are no specific cases that could be the subject of discussion.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Law of the National Registry of the People (Decree 90-2005) assesses as 'public information' the name and surname, identification number, birth (and death) dates, gender, profession or job, nationality and civil state of individuals. All other information relating to individuals will be considered as 'not public' and therefore of a private nature.

However, the fact that this data is considered public does not mean that it can be shared or used for an economic purpose. Although there is no specific regulation that controls the use of personal data in advertising, the general criteria are that they cannot be used without the direct authorization of the owner. For example, in the announcement of winners of promotions, sweepstakes, skill contests and similar activities, it is customary that the people concerned sign an authorization for the use of their image.

9.2 Are there situations when permission is not required?

There is no specific regulation that foresees that situation, although (as explained in question 9.1 above), when there has been no consent or authorization from the owner of the data, the owner could legally act against those who have used the data without their consent.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

The Law for the Protection of the Cultural Heritage of the Nation establishes that if a project of any kind is planned to be carried out on Government land, in public buildings or historical places (whether urban or rural) or in archaeological, paleontological or historical zone or sites, prior approval from the General Directorate of Cultural and Natural Heritage must be obtained. A license, for which a fee may apply, shall be requested.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Under the Industrial Property Law, the use of another company's recognizable products in advertising could be considered unfair competition, risk of association and/or trademark infringement.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Guatemala which affect advertising (eg, Swedish gender equality law)?

There is no specific provision on the use of cultural elements in advertising. However, the Political Constitution of the Republic and the Law for the Protection of the Cultural Heritage of the Nation generally establish a prohibition on acts that weaken the national culture, especially the traditional culture of the indigenous communities, by preventing, or acting in any way against, the ways of life, folkways, traditions, indigenous costumes, languages, dialects, or celebration of their periodic feasts and native rituals.

Likewise, regulations in relation to moral and ethical principles prevent the carrying out of acts that denigrate the national symbols or values of the population. In particular, the Industrial Property Law prevents the registration of trademarks that are contrary to the moral or public order, or that include elements that insult or ridicule people, religions or national symbols.

It is important to take into consideration the discrimination crime, contained in the Criminal Code of Guatemala. Advertising campaigns, or publicity in general, that may generate discomfort in groups and sectors that are considered discriminated against, could lead to actions against the advertiser. An example of this is the case of Maria Chula in 2017, in which a virtual store with this name, which was dedicated to the manufacture, sale and export of clothing and articles using the typical fabric of Guatemala, was the subject of a complaint by the Presidential Commission against Discrimination and Racism against Indigenous People in Guatemala ('CODISRA'). CODISRA considered that the combination of the products advertised and the name of the store was pejorative and discriminatory against the indigenous women's sector in Guatemala. The owner of the virtual store had to give a public apology and explanation about the meaning of the name to dismiss the case.

11.2 Are there any other cultural norms that should be considered (eg religious concerns)?

It must be taken into account that Guatemala is a conservative country, with a majority Catholic population, so high parameters are used to qualify the morality, modesty, decency, ethics or good customs of the content of an advertisement. There are no objective parameters and this will be subject to the criteria of the authority and officials concerned.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the Guatemala?

Advertising projects should bear in mind that Guatemala is a conservative country and its citizens are religious (Catholic/Christian).



HONDURAS



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Honduras?

There is no general advertising law in Honduras. However, several laws contain different regulations addressing advertising. The most important of these laws is the Consumer Protection Law and its regulations. Other regulations addressing advertising are contained in several other laws, such as the Commercial Code, Criminal Code, the Transit Law, and several product regulations.

Other laws, although aimed at other purposes, apply to advertising as well, such as the laws protecting copyright and intellectual property rights.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The Consumer Protection Law defines advertising as ‘all types of communications that the provider aims at the public, by itself or through third parties, by any mean to inform or motivate the public to acquire or contract goods or services’.

1.3 What is the basic regulatory framework for advertising regulation?

The most important law that regulates advertising is the Consumer Protection Law and its regulations, which address issues such as the prohibition on misleading and abusive advertising, as well as regulating promotions, comparative advertising, etc.

Likewise, it is important to mention the Commercial Code, since it regulates aspects such as unfair competition.

In addition, different laws regulate other issues related to advertising, such as intellectual property rights and copyright.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The advertising laws and regulations apply to all media and to all forms of advertising.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

The following products have specific advertising regulations:

- Alcoholic beverages;
- Tobacco products;
- Prescription drugs;
- Food;
- Dietary supplements;
- Milk and dairy products;
- Baby formulas;
- Natural products with medical properties; and
- Financial products and services.

1.6 Are any government pre-approvals required?

Advertising for the following products require government pre-approvals:

- Alcoholic beverages;
- Tobacco products; and
- Other licit drugs.
- Financial products and services

1.7 Does the media pre-clear advertising?

No, the media does not pre-clear advertising in Honduras.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Consumer Protection Directorate is in charge of enforcing the advertising laws. Potential remedies to any infringing advertising are:

- suspension of the advertising;
- precautionary measures determined by the Consumer Protection Directorate;
- a fine, depending on the infraction.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor has a right of action in two possible scenarios:

- (a) when an advertisement violates applicable regulations protecting consumers and/or other rules of public order, in which case the remedies available do not contemplate monetary damages; and
- (b) if an advertisement amounts to unfair competition and/or a violation of any right of the competitor (such as intellectual property), in which case, in addition to any other applicable remedies, the competitor may seek compensation for the damages caused.

1.10 When do consumers have a right of action? What are the potential remedies?

Any person has legal standing to file a complaint against any advertising violating the laws.

Also, if the consumer can show that they have suffered damages or specific harm, they may seek compensation in the Courts of Law.

2 SELF-REGULATORY FRAMEWORK

2.1 Does the Honduras have a primary advertising self-regulation system?

No, Honduras does not have a primary advertising self-regulation system.

2.2 Is there a self-regulatory advertising code? What are the key principles?

No, in Honduras there is no self-regulatory advertising code.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Yes, the Consumer Protection Law establishes that disputes that arise among consumers and users with relation to their rights and obligations that emerge from the Customer Protection Law can be resolved through arbitration.

The arbitral award is binding between parties and is not appealable.

2.4 Is the self-regulation system effective? Is it widely used and followed?

N/A

2.5 Are the self-regulatory system's decisions reported?

N/A

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Yes, misleading advertising and comparative advertising is forbidden in Honduras. Comparative advertising is only allowed when the advertising party obtains the approval of the company that owns the brand to use it in the comparative advertising.

2.7 Are there any other self-regulatory systems that govern advertising practices in Honduras?

No, there are no other self-regulatory systems that govern advertising practices in Honduras.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Honduras (eg, consumer protection laws, IP laws, unfair competition laws)?

Advertising claims are governed by:

- the Consumer Protection Law and its regulations,
- the Copyright and Related Rights Law;
- the Intellectual Property Law; and
- the Commercial Code.

3.2 Is substantiation required for advertising claims?

Yes, substantiation is required for all advertising claims.

The burden of proof is on the advertiser to prove the truthfulness of all that is said in the advertising.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The regulations do not expressly mention this issue. However, the legal standard is whether an advertisement is likely to generate confusion, so consumer perception is always evaluated. It is important to note that misleading advertising is regulated in Honduras.

3.4 What are the rules governing the use of disclosures in advertising?

The Consumer Protection Law states that all information provided to consumers must be in Spanish, timely, clear, true, adequate and sufficient regarding the essential characteristics of the goods and services offered and the condition for its commercialization.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsements and testimonials have to be true and made by real professionals. Avoid using testimonials that may be the subject of a complaint.

3.6 What are the rules governing the use of product demonstrations in advertising?

The data must be real; the image should not exaggerate the product or the service.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is not permitted unless expressly approved by the competitor. If not, this may constitute unfair competition and a litigation matter.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There are no special copyright or trademark rules that may impact comparative advertising; only that it requires approval from the competitor concerned.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

According to the Intellectual Property Law, geographic origin must not be used in relation to a product or a service if false or misleading with regard to the origin of the product or service, or when its use could be confusing or create expectations in relation to the origin, provenance, characteristics or qualities of the product or service.

3.10 Are there any special rules governing product packaging?

Yes. There is some mandatory information that must be included in packaging generally; as well as specific regulations for certain products (such as food, pharmaceuticals, alcohol, cosmetics, chemical products, etc).

3.11 Are there any special rules or guidance on the use of 'dark practices'?

No, there are no special rules or guidance on the use of 'dark practices'; but unethical and/or manipulative advertising is against the basic rights of the consumer according to the Consumer Protection Law and its regulations.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No, there are no special rules or guidance on artificial intelligence.

4 PRICE ADVERTISING

4.1 What are the Honduras rules regarding price advertising?

The main rule is that all advertised prices must be final, including all charges, taxes, and any other amount that must be paid and cannot be changed.

4.2 What are the Honduras rules regarding advertising 'free' products?

If the offer is for a 'free' gift, it must be completely free of any purchase or any obligation. If the gift is conditional upon purchasing a product, this must be clearly stated in the advertising, and not via disclaimer.

4.3 What are the Honduran rules regarding sales and special offers?

Special offers must specifically establish their commencement and end date; also, any conditions, limitations or restrictions. The withdrawal of a special offer is only valid when advertised through the media in which it was originally advertised. Furthermore, the previous price and conditions and the new price and conditions must be stated in the withdrawal.

4.4 What are the Honduran rules regarding rebates?

Same as above.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

No, there are no other key restrictions.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Tobacco products may not be advertised at all.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are no advertising practices that are completely prohibited, although certain forms of advertising are regulated, and others are forbidden for specific products. This will depend on the product to be advertised (some of them may need authorization from the government).

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Yes, indecency and/or obscenity are prohibited.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Yes, the advertiser and/or sponsor must be identified.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules on this issue (except for the ethical rules of journalism when applicable).

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special rules on this issue (except for the ethical rules of journalism when applicable).

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

No, it is a very unregulated area.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There are no specific rules addressing this situation. However, through the application of the general rules, it may be construed that the administrator of the page has an obligation to exercise due care and avoid legal violations made in any media controlled by it.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no relevant decisions directly dealing with this issue.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The general rule is that prior consent is needed in order to use a person's portrait, name, likeness, etc.

The key parameter in determining whether consent is required is whether the individual can be recognized or not.

9.2 Are there situations when permission is not required?

Yes, permission is not required when the data used is simply the person's complete name and identity number.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

No, there are no specific rules governing the types of materials that must be cleared before they may be used in advertising.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

It is not permissible to use other companies' recognizable products in advertising unless that company authorizes the use of its product for advertising purposes. This authorization has to be in writing.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Honduras which affect advertising (eg, Swedish gender equality law)?

Legally, all information conveyed to consumers must be in Spanish language. Other languages may be used concurrently, but, in case of contradiction, the Spanish version prevails.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

It is always good to adapt advertisements to local idiosyncrasies, but there is no major diversion from what applies in most Latin American countries.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Honduras?

No, nothing additional.

 HONG KONG 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Hong Kong?

The Basic Law of the Hong Kong Special Administrative Region of the Peoples Republic of China is a national law of China which serves as, and operates as, the organic constitutional function controlling the Hong Kong Special Administrative Region. Since its implementation in 1990, the Basic Law provides that the common law, rules of equity, ordinances, subordinate legislation and customary law of Hong Kong up to 1997 shall be maintained. In 2019, serious riotous behavior on public streets and communications threatened the liberties under the Basic Law, which prompted the Chinese Government to enact a National Security Law, the basic provisions of which criminalize any act of secession, subversion, terrorism or collusion with foreign forces. The factual consequence of this upon the ground in Hong Kong is that the basic freedoms under the Basic Law are inevitably qualified to the limited extent provided in the National Security Law. The National Security Law is not retroactive in respect of any period before its enactment (30 June 2020) and it expressly provides for the continued implementation of the ‘One Country Two Systems’ policy, which maintains the prosperity of Hong Kong and further reserves the freedoms of speech, the press and publication, association, assembly and demonstration under the Basic Law and the International Covenants on Civil and Political Rights as applied to Hong Kong, with the legal presumption of innocence and protection from ‘double jeopardy’ being expressly covered.

Hong Kong values and protects freedom of expression effectively by permissive openness, subject only to certain specified parameters which are found in restrictions placed by the Communications Authority upon advertisements carried on the radio and television broadcasting media by the carrier licensees (the ‘Broadcast Codes’) and also in certain purpose-specific legislated content generally seen and accepted as far public benefit such as:

- (a) the Obscene Publications Ordinance,
- (b) the Medical Registration Ordinance,
- (c) the Control of Obscene and Indecent Articles Ordinance,
- (d) the Smoking (Public Health) Ordinance,
- (e) the Undesirable Medical Advertisements Ordinance,
- (f) the Public Health and Municipal Services Ordinance,
- (g) the Trade Descriptions Ordinance, and
- (h) the Dutiable Commodities Ordinance.

The advertising industry in Hong Kong operates under a self-governing code of practice (‘4As Code’) which all members of the Association of Accredited Advertising Agencies (‘the 4As’) are required to adopt and implement.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

- (a) In the **Radio Code of Practice on Advertising Standards (‘Radio Code’)** published by the Communications Authority, ‘advertisement’ is defined to mean ‘any material included in a licensed service which is designed to advance the sale of any particular product or service or promote the interests of any organization, commercial concern or individual in any way’.

There are certain exceptions, such as:

- (i) promotion of the station and program services of the licensee, or
- (ii) free charity-related advertisements approved by the Communications Authority, or
- (iii) free references to title of an event sponsored by a person other than the licensee,
- (iv) provided that the licensee receives no consideration and the references do not obtrude on program interest or entertainment.

- (b) **The Generic Code of Practice on Television Advertising Standards ('Television Code')** defines 'advertisement' or 'advertising material' to mean 'any material included in a television program service which is designed to advance the sale of any particular product or service or to promote the interest of any organization, commercial concern or individual in any way, including sound effects and/or visual presentation'.

However, this Code provides for exceptions, such as:

- (i) identification of the licensee station, the channel or program service,
- (ii) public interest announcements,
- (iii) sponsor identifications permitted under the Program Sponsorship of the Code, and
- (iv) charitable free advertised material approved by the Communications Authority.

Both of these broadcasting codes of practice prohibit messages in respect of certain products and services such as:

- firearms and associated equipment;
- fortune tellers (subject to certain exceptions);
- unlicensed employment services, registries or bureaus;
- organizations, companies and/or persons seeking to advertise for the purposes of giving gambling tips;
- betting (except for lotteries, football and horse race betting which are authorized by or under the Betting Duty Ordinance and in respect of permit should under the control of the authorities for the purpose of a trade promotion competition;
- adult entertainment and services;
- night clubs, dance halls, massage palace;
- escort services and dating agencies targeting young persons under the age of 18;
- provision of credit and specified financial products;
- therapeutic goods and services;
- alcohol;
- tobacco and smoking products.

- (c) Under **the Public Health and Municipal Services Ordinance** no person may 'advertise for sale any drug injuriously affected in its quality, constitution or potency by the addition of any substance to, or abstraction of any constituent from, a drug'. Moreover, no person may 'advertise under the designation of milk any liquid in the making of which any separated milk, or any dried or condensed milk has been used'.

- (d) 'Advertisement' is defined in **the Undesirable Medical Advertisements Ordinance** as 'including any notice, poster, circular, label, wrapper or document, and any announcement made orally or by any means of producing or transmitting light or sound'.

- (e) **The Control of Obscene and Indecent Articles Ordinance** provides that if any indecent matter is publicly displayed, the person making the display or causing or permitting the display commits an offence with substantial penalties, but always excluding any matter

included in a television program service provided by a licensee under the Broadcasting Ordinance or included in the display of an article in a bona fide art gallery or museum and visible only from within that gallery or museum.

- (f) Under **the Securities and Futures Ordinance**, the Securities and Futures Commission is charged with authorization of certain advertisement schemes, and issues guidelines requiring advertisements to contain warning statements or notes relative to the involvement of risk and prohibiting indications of future performance by reference to past performance.
- (g) **The Code of Advertising Practice for members of the Travel Industry Council of Hong Kong** defines ‘advertisement’ as ‘either paid or unpaid for communication, whether in cash or in kind, addressed to the public or a section of the public, the purpose of which is to influence the opinions or behavior of those to whom it is addressed with a view to advancing the sale of a particular product or service of any member, and which includes information accessed via electronic means by the public or a section of it (including internet users)’.
- (h) **The 4As Code** requires advertisements:
 - (i) to be truthful and not liable to misinterpretation,
 - (ii) not to contain statements or visual presentations offensive to accept its standards of public decency and good taste,
 - (iii) to be compliant with the laws of Hong Kong, and
 - (iv) to clearly identify themselves as advertisements and with detailed specific restrictions upon product and/or service descriptions and claims.
- (i) **The Trade Descriptions Ordinance** prohibits false trade descriptions generally provided in the course of trade by suppliers of goods or services as included in advertisements. ‘Advertisement’ is defined to include ‘a catalogue, a circular and a price list’ and a ‘trade description’ is defined as meaning ‘an indication, direct or indirect and by whatever means given, with respect to goods or services indicating any of the matters specifically set out in the definition’.

1.3 What is the basic regulatory framework for advertising regulation?

Given the prevailing protection of freedom of expression in Hong Kong there is no basic regulatory framework for advertising regulation. For discussion of inhibiting laws and codes see question 1.2 above.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Under the Television Code and the Generic Code of Practice on Television Program Standards (‘Television Program Standard Code’) issued by the Communications Authority pursuant to the Broadcasting Ordinance, all licensees carrying television program services must ensure compliance with both of these Codes or face sanctions by the Communications Authority.

Under the Broadcasting Ordinance, a licensee holder of a television program services license is responsible at all times for ensuring that its licensed service does not include a subliminal message. ‘Subliminal message’ means ‘the transmission of material the duration of which is so brief that it does not enable a person to obtain a conscious picture of the material’.

Under the Unsolicited Electronic Messages Ordinance ('UEMO'), which is Hong Kong's anti-spam law, professional spamming activities such as the use of unscrupulous practices to reach out to more recipients and fraudulent activities in relation to sending commercial electronic messages are controlled. This ordinance sets out the rules for sending commercial electronic messages, such as the requirement to:

- provide full sender information; and, particularly,
 - include and honor an unsubscribe facility and requests,
- as well as providing for the do-not-call registers which must all be kept for at least three years after receipt.

It should be noted that the UEMO regulates the sending of 'commercial electronic messages' with a 'Hong Kong link'. In general, a commercial electronic message has a 'Hong Kong link' if the message:

- originates in Hong Kong;
- is sent to Hong Kong; or
- is sent to a Hong Kong telephone or fax number.

However, in a careful legislative avoidance of controls upon direct marketing to consumers, the following messages are exempt from the application of the UEMO:

- person-to-person telemarketing calls;
- sound broadcasting; and
- a partial commercial electronic message exemption exists if an electronic message is sent in response to a request by the recipient and the primary purpose is related to a commercial transaction with which the recipient is currently involved.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Advertising practices are specifically regulated under the separate ordinances of:

- (a) the Dangerous Drugs Ordinance,
- (b) the Pharmacy and Poisons Ordinance,
- (c) the Smoking (Public Health) Ordinance,
- (d) the Undesirable Medical Advertisements Ordinance, and
- (e) the Public Health and Municipal Services Ordinance.

1.6 Are any government pre-approvals required?

There is no mechanism for pre-approval or pre-censorship by government departments or in the case of radio broadcasting by the Communications Authority. All restrictions in the relevant applicable laws must be followed.

1.7 Does the media pre-clear advertising?

Media advertising agencies are obliged to ensure that advertising conforms to the 4As Code which effectively operates as an industry self-regulating mechanism.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Infringement of ordinance-prohibited restrictions will attract prosecution, usually with financial penalties and imprisonment.

In terms of advertisements carried by licensed television or radio broadcasters, there are the two Television Codes and the Radio Code, all of which require adherence by the licensed broadcast carriers. Sanctions are available, including withdrawal of the license concerned, although this has not actually happened with any broadcast carrier due to the difficulty of obtaining a license and the clear intention of all licensees to keep their licenses in good order.

1.9 When does a competitor have a right of action? What are the potential remedies?

The basic right of action for competitors in respect of a television or radio broadcast is in regard to the restriction in the two Television Codes, whereby an advertisement must not contain any claim intended to disparage competitors, competing products or other industries, professions or institutions. The available right of action is information and complaint to the Communications Authority about the carriage of such offensive material on the television or radio broadcast concerned.

In respect of any civil wrong such as defamation, the injured party can commence civil proceedings for damages or injunction.

1.10 When do consumers have a right of action? What are the potential remedies?

The rights of consumers are distinguishable from the rights of competitors. The rights of consumers are addressed in question 2.3 below.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Hong Kong have a primary advertising self-regulation system?

Hong Kong does not have any legislated overall primary advertising self-regulation system.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The 4As Code, requiring mandatory observance by all advertising agency members, sets out the following key principles:

- (a) The 4As Code's purpose is to ensure that each member of the 4As will carry on its profession and business in such a manner as to protect the public interest and uphold the dignity and interests of the profession, the 4As and its members generally, and to force competition between advertising agencies into the area of upgrading the quality and extending the scope of their various services. (Membership of the 4As requires each individual member or partnership to acknowledge acceptance of the 4As Code either under the company seal or under personal signature.)
- (b) Members are required to have a clear understanding with advertisers about the service fees and government duties and taxes to be charged, setting out clear accounts to be rendered, specifically identifying the amount and nature of the service fee charged and any government duties, levies and taxes levied.
- (c) The 4As Code prohibits direct or indirect rebate to advertisers. This includes a prohibition on a member paying for third party placement in the service of an advertiser, paying or making any allowance, fee or remuneration or granting any benefit or consideration to any person connected directly or indirectly with an advertiser or charging for work done or

materials supplied at less than the gross cost of them to the member. Full disclosure of any third party paying commission or remuneration at a higher rate than normal in the trade full disclosure to the client concerned must be made.

- (d) The 4As Code requires each member to carry on its profession and business in such a manner as to protect the public interest and to uphold the dignity and interests of the profession, the 4As itself and its members generally. Members are prohibited from holding or obtaining business by offering an extension of credit as an inducement.
- (e) The 4As Code requires its members involved in Direct Mail and Direct Marketing to be familiar with and to follow the rules and Codes of Practice of the Hong Kong Direct Marketing Association.
- (f) The 4As Code sets provision to govern the nature and amount and rates of charges made by members for their services.
- (g) The 4As Code provides that the basic principle to govern all advertising is that advertising shall be legal, decent, honest and truthful and in case of any contravention or failure to comply with the Code the member concerned will be penalized in accordance with the rules of the 4As.
- (h) The 4As Code requires that no advertisement may contain any descriptions, claims or illustrations which mislead about the product or services advertised and with particular reference to a series of matters specifically identified in the 4As Code. All descriptions, claims and comparisons should be capable of substantiation.
- (i) The 4As Code expressly allows product comparison whereby one product is compared to a group of products, but otherwise members are not permitted to indulge in disparaging advertising, which is defined as advertising which seeks to compare a product or service to similar or other products or services in a way which is misleading, derogatory, false in implication or in fact. Advertising which implies that a competitive product is not fit for its purpose is not allowable.
- (j) Advertisements containing a specific claim for the nutritional value of food or dietary supplements must be substantiated by sound scientific evidence. All cigarette advertisements must bear the appropriate health warning and tar designation of the cigarette being advertised. There are further provisions restricting:
 - alcohol advertising,
 - financial advertising,
 - real property advertising,
 - prize claims,
 - advertisements to children,
 - 'free' gifts, and
 - switch and bait advertising.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Any third party, including a consumer, finding that a member of the 4As has transgressed any provision of the 4As Code is entitled to make representation to the 4As itself or also to the Consumer Council of Hong Kong. The Consumer Council reference can cause negative publicity, but the Council is not empowered to sanction the transgression.

2.4 Is the self-regulation system effective? Is it widely used and followed?

On the whole, self-regulation applied through enforcement of the 4As Code is effective.

2.5 Are the self-regulatory system's decisions reported?

There is no provision for decisions of the 4As under the 4As Code to be reported.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Please see under the respective separate provisions above.

2.7 Are there any other self-regulatory systems that govern advertising practices in Hong Kong?

Apart from the 4As Code there is no other self-regulatory system governing advertising practices in Hong Kong except for the self regulatory rules and regulations of professional bodies such as the medical profession, the legal profession, accountants and architects.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Hong Kong (eg, consumer protection laws, IP laws, unfair competition laws)?

The following are the basic laws governing advertising claims in Hong Kong:

- (a) the Trade Descriptions Ordinance imposes discipline on false or extravagant or misleading quality claims;
- (b) the Competition Ordinance provides for controls on practices which prevent, restrict or distort competition; and
- (c) the Broadcast Codes provide for controls on television and radio licensees in matters of disparagement, and on broadcast content with particular reference to tobacco, alcohol and children.

3.2 Is substantiation required for advertising claims?

Yes, substantiation of claims is required under the 4As Code, the Trade Descriptions Ordinance and the Broadcast Codes.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Controls under the Trade Descriptions Ordinance expressly exclude the legitimate use of puffery which avoids misrepresentation.

3.4 What are the rules governing the use of disclosures in advertising?

The Broadcast Codes and the 4As Code require honesty in full disclosure in advertisements carried.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

- (a) Under the 4As Code, testimonials used in advertisements shall be the testimony of competent, impartial persons containing no misstatement of facts or misleading implications and should reflect the current opinion of the authors. The 4As Code expressly prohibits the use of fictitious testimonials, and those which the advertiser knows to be incorrect.

Therefore, advertising agency members of the 4As should ask the advertiser to supply a copy of the supporting evidence for any testimonial claim and where an identifiable picture of a person is used in conjunction with a quotation commending an advertised produce, the person shown should be the person whose works are quoted.

- (b) The Broadcast Codes:
 - (i) provide for integrity of all advertisements,
 - (ii) prohibit indirect publicity of the unacceptable products or services set out in the Codes and
 - (iii) require adherence by licensees with all provisions relating to tobacco advertisements under the Smoking (Public Health) Ordinance and alcoholic liquor as defined in the Dutiable Commodities Ordinance which are extensive.
- (c) The Television Code provides for specific identification of sponsored television programs and sponsors are required to be clearly distinguishable from advertisements and should not contain extravagant claims or direct advice to buy the products or services of the sponsor.

3.6 What are the rules governing the use of product demonstrations in advertising?

The Television Code expressly prohibits a group of products or services which are unacceptable for advertising and this Code sets out in detail provisions regulating specific categories of television advertisement for which licensees must ensure compliance.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

The Broadcast Codes prohibit inclusion in advertising matter of claims that have the effect of disparagement of competitors, of competing products or of services or other industries, professions or institutions.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

- (a) The 4As Code permits comparative advertising, provided that it is made clear exactly what is being compared with what, and that the differences shown are true and can be proved.
 The comparative subject matter should not be presented in such a way as to suggest a better bargain than is truly the case, and all comparisons should be substantiated and supportable by research and/or other statistical evidence.
 Members of the 4As are not permitted to indulge in 'disparaging advertising' which is defined as advertising which seeks to compare a product or service to similar or other products or services in a way which is misleading, derogatory, false in implication or in fact, and advertising which implies that a competitive product is not fit for purpose is not allowable.
- (b) The rules impacting comparative advertising are found in the Broadcast Codes and the 4As Code which address the issues specifically.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

- (a) The 4As Code expressly states that ‘no advertisement shall contain any descriptions, claims or illustrations which directly or by implication mislead about the product or service being advertised’ and sets out particular matters to be observed, including the place or date of manufacture, production, processing or re-conditioning.
- (b) The Trade Descriptions Ordinance states that a false trade description is liable to prosecution and certainly extends to falsity in stating geographical origin.
- (c) The Television Code prohibits advertisements which contain any descriptions, claims or illustrations which expressly or by implication depart from the truth or mislead about the products or services advertised.
- (d) The Public Health and Municipal Services Ordinance expressly provides for offences of false labeling and advertisement of food or drugs. It prohibits a description of a food or drug which is false or is calculated to mislead as to the nature, substance or quality of any food or drug.
- (e) The Hong Kong Trade Marks Ordinance prohibits false attribution of a trade-marked good or service to a geographical origin.

3.10 Are there any special rules governing product packaging?

- (a) Under the Public Health and Municipal Services Ordinance, false labeling, whether falsely describing food or calculated to mislead as to the nature, substance or quality of the food, is an offence.
- (b) The Smoking (Public Health) Ordinance prohibits sale or offer for sale or possession for purposes of sale any cigarettes unless the packet thereof and, if the packet is within a retail container, the container also, bears a health warning and sets out the tar and nicotine yields in the prescribed form and manner.

With effect from 21 October 2017, the Chinese or English version of the health warning and indication of tar and nicotine yields is required to be of a size that covers at least 85% of the area of the surface on which that version of the health warning appears.
- (c) Under the Pharmacy and Poisons Ordinance, no person who is authorized to sell any poison may do so unless the container of the poison is labelled in accordance with regulations and displays the name of the poison, the particulars of the ingredients of any preparation containing a poison and including the word ‘Poison’ and the name of the seller of the poison and the address of the premises in which it is sold. All medicines are required to be labelled with the name and address of the party by whom it is supplied or dispensed.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no special laws or guidance in Hong Kong relating to ‘dark patterns’ or ‘dark practices’ in advertising, with the exception that ‘dark patterns’ can be represented through bait and switch mechanisms. These are defined under the Trade Descriptions Ordinance as where a trader makes an invitation to a consumer to purchase a product or a service at a specified price (the ‘bait’) with the intention of promoting a different product or service and then refuses to show or demonstrate that product to consumers, refuses to take orders for it or deliver it within a reasonable time, or shows or demonstrates a ‘defective’ example (all comprising the ‘switch’).

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

The Hong Kong administration, in common with national administrations worldwide, is keenly watching the development of artificial intelligence with particular reference to the deep-learning models principally led by the wildly popular CHAT GPT (generative pre-trained transformer or generative programmed transformation). However, legislative measures applicable to it have not yet been put forward.

4 PRICE ADVERTISING

4.1 What are Hong Kong's rules regarding price advertising?

- (a) Under the Radio Code, a licensee must ensure that any description, demonstration or claim of a specific nature with regard to advertisement of real property has been adequately substantiated by the advertiser. In particular,
 - (i) the lowest selling price of a real property should be stated as such and should not give an impression that it is the average price; and
 - (ii) a price being given only to local purchasers should be stated as such and the impression should not be given that it is also being offered to overseas purchasers if there is a significant difference in the prices; and
 - (iii) advertisements must not offer any furniture, home appliances or any other goods as 'free gifts' unless such items are supplied at no cost or no extra cost to the recipient. The licensee needs to obtain a statement to this effect from the advertiser.
- (b) The Television Code require that a licensee must ascertain whether any descriptions, demonstrations and claims of a specific nature with regard to real property advertisements have been adequately substantiated by the advertisers. In particular:
 - (i) no claims may expressly or by implication misrepresent the location, size and value of the real property and the available transport facility;
 - (ii) the lowest selling price of a real property should be stated as such and should not give an impression that it is the average price;
 - (iii) a price being offered to local purchasers only should be stated as such and should not give an impression that it is also being offered to overseas purchasers if there is a significant difference in the prices; and
 - (iv) advertisements must not offer any furniture, home appliances or any other goods as 'free gifts' unless such items are supplied at no cost or no extra cost to the recipient. The licensee needs to obtain a statement to this effect from the advertiser.
- (c) The 4As Code requires that advertisements shall not contain exaggerated, fictitious price comparisons, non-existent discounts or savings, or employ list prices known to be false or not current. All prices quoted should be accurate and incapable of misleading by distortion or undue emphasis.

Except where the law prohibits the use of the word 'free' in advertising, goods or services offered without cost or obligation to the recipient may be unqualifiedly described as 'FREE'. The term 'free' can also be used conditionally where the offer requires the recipient to purchase some other items—provided that all terms and conditions are accurately and conspicuously disclosed in immediate conjunction with the use of the term 'FREE' and further provided that the article or service required to be purchased is not increased in price

or decreased in quality or quantity. However, if the so-called ‘free’ item is not an accessory, extra or duplicate, but an essential component part of an article normally sold as a complete unit, then the item shall not be described as ‘FREE’ in the advertisement.

- (d) The Trade Descriptions Ordinance defines ‘trade description’ to mean ‘an indication, direct or indirect, and by whatever means and in whatever form’, and defines ‘false trade description’ as ‘a trade description which, is false to a material degree or which, though not false, is misleading’. Thus, apart from trivial errors or discrepancies, the falsity must be to ‘a material degree’ which will vary with the facts and, given that price is one of the most important pieces of information in relation to a product or service which can influence the purchasing decision of the consumer., traders should note that any typographical or inadvertent errors in pricing may not necessarily be trivial and whether such errors constitute an offence of applying a false trade description to the goods or services concerned would depend on whether the falsity involved is to a material degree.

It is not uncommon for traders to make price comparisons as a commercial practice. If traders choose to make price comparisons, they should be able to show clearly what prices are being compared and to show that any claims so made are accurate and in particular are set out.

There are further provisions in relation to prices terms such as ‘sale’, ‘original price’ or ‘reduced price’ which should all be used with caution to avoid misleading consumers. Traders should avoid making ‘lowest price’ claims if they are not backed up by evidence. If an offer is limited to a price matching promise, the trader should make this clear. General notices of ‘half price sale for all items’ should be avoided if in fact the sale is not applicable to certain products in the shop.

4.2 What are Hong Kong’s rules regarding advertising ‘free’ products?

Please see question 4.1 above.

4.3 What are Hong Kong’s rules regarding sales and special offers?

Please see question 4.1 above.

4.4 What are Hong Kong’s rules regarding rebates?

Please see question 2.2(c) above on rebates prohibition under the 4As Code.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The basic key restrictions are as set out above.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) Under the Control of Obscene and Indecent Articles Ordinance:
- (i) Any person who publishes or possesses for purposes of publication, or imports for purposes of publication, any obscene article commits an offence and is liable to a fine of HK\$1,000,000 and to imprisonment for 3 years.

- (ii) Any person who publishes any indecent article to a person who is a juvenile commits an offence and is liable to a fine of HK\$400,000 and to imprisonment for 12 months on first conviction and increasing fines and conviction for second and subsequent offences.
- (b) Under the Smoking (Public Health) Ordinance no person may:
 - (i) sell, offer for sale or possess for purposes of sale any cigar, pipe tobacco or cigarette tobacco unless it is in a retail container that bears a health warning in the prescribed form and manner;
 - (ii) sell, offer for sale or possess for the purposes of sale any cigarettes unless they are in a packet of at least 20 sticks and the packet thereof and, if the packet is within a retail container, the container also, bears a health warning in the prescribed manner and form and details of the tar and nicotine yields;
 - (iii) print, publish or cause to be published a tobacco advertisement in a printed publication in any local newspaper or any printed document printed, published or distributed in Hong Kong except a tobacco advertisement in a printed publication that is published for the tobacco trade or as the 'in-house magazine' of any company engaged in that trade;
 - (iv) display or cause to be displayed or publish or distribute for the purpose of display or cause to be published or distributed for the purposes of display any tobacco advertisement in writing or other permanent or semi-permanent form (There are very minor exceptions to this restriction);
 - (v) broadcast a tobacco advertisement by transmission of sound by means of radio waves or by the transmission of visual images or sound by wireless or in any other way intended for general reception by members of the public;
 - (vi) exhibit a tobacco advertisement by film; or
 - (vii) place or cause to be placed tobacco advertisements on the internet.
- (c) Under the Undesirable Medical Advertisements Ordinance no person may:
 - (i) publish or cause to be published any advertisement likely to lead to the use of any medicine, surgical appliance or treatment for any disease or condition specified in the Schedule 1 to the Ordinance; or
 - (ii) publish or cause to be published an advertisement for an orally consumed product which makes for the product any of the claims specified in Schedule 4 to the Ordinance.
- (d) The Public Health and Municipal Services Ordinance:
 - (i) prohibits advertisement for sale of any drug injuriously affected in its quality, constitutional potency; and
 - (ii) no person shall advertise under the designation of 'milk' any liquid in the making of which any separated milk, or any dried or condensed milk has been used.

Any person who publishes or is party to the publication of an advertisement which falsely describes any food or drug or is likely to mislead as to the nature, substance or quality of any food or drug shall be guilty of an offence.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Under the Unsolicited Electronic Messages Ordinance (UEMO) and the Unsolicited Electronic Messages Regulation a code of practice has been issued by the Communications Authority, and the effect of these three apply to regulate the sending of ‘commercial electronic messages’ with a ‘Hong Kong link’.

A ‘commercial electronic message’ is defined as ‘an electronic message the purpose, or one of the purposes, of which is, inter alia, to offer or supply goods, services, facilities, land, a business opportunity or to advertise or promote a supplier of goods, services, facilities, land, business opportunity etc in the course of or in the furtherance of any business’.

Whether the message is of a promotional nature has to be determined on a case-by-case basis, taking into account matters including the purpose and content of the message concerned.

In general, a commercial electronic message has a ‘Hong Kong link’ if the message:

- originates in Hong Kong;
- is sent to Hong Kong; or
- is sent to a Hong Kong telephone or fax number.

BUT, specifically, the following messages are exempted from application of the entire UEMO:

- person-to-person telemarketing call; and
- sound broadcasting or television program services.

Moreover, in order to exempt a substantial body of established telemarketing practice, the following are exempted from application of Part 2 of the UEMO (which sets out rules about sending of commercial electronic messages only):

- (a) electronic messages sent and is passed to in response to the recipient’s request;
- (b) electronic messages, the purpose of which is to:
 - (i) facilitate, compete or confirm a commercial transaction previously agreed;
 - (ii) provide warranty information, product recall information or safety or security information with respect to a commercial product previously purchased or used by the recipient;
 - (iii) deliver goods or services, including product updates and upgrades, that the recipient is entitled to receive under the terms of the transaction previously agreed;
 - (iv) provide notification or updates in relation to a subscription, membership, account, loan etc; and
 - (v) provide information directly related to an employment relationship or a related benefit plan in which the recipient is currently involved, participating or enrolled.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Please see question 1.2(e) above.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The Television Code imposes the core principle that program integrity must be preserved and not distorted for commercial purposes.

All sponsored programs must be clearly identified, and sponsor identification must be distinguishable from advertisements and should not contain superlative claims, price information and direct exhortations to the viewing public to purchase or rent the sponsor's products or services and viewers should not be subject to hidden editorial influence.

The Television Code requires a distinction to be drawn between advertising and front or end sponsor credits in order to ensure that credits are not used as a means to extend allowable advertising time? Credits may include the sponsor's name and/or his house/trade/brand/product/service name and/or trademark/logo and may show the sponsor's product or service and contact details. Front sponsor credits must precede and not be integrated within any part of the program. End sponsor credits may be integrated with but must not precede the rolling end credits of a program.

Apart from front or end sponsor credits, the licensee may incorporate a sponsor's name, his house/trade/brand/product/service name, trademark/logo, advertising slogan and attribute of the sponsor into the title of a program/program segments/program feature.

Other detailed requirements apply.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The Broadcast Codes make specific and detailed requirements governing the integration of advertising/sponsorship content and the strictly-segregated entertainment content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Specific disclosure and positioning of integrated advertising content with other content must be observed under requirements in the broadcast codes.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules governing the use of social media for advertising purposes. All provisions of the 4As Code and individual specific ordinance enacted provisions apply.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Under the current clear exemption of the internet from definition as a broadcast medium there is no responsibility on advertisers on social media or in relation to user generated content.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

No.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Personal Data (Privacy) Ordinance ('PDPO') governs the collection of personal data by a data user in relation to any human being defined as the 'data subject'.

Six data collection principles apply in respect of 'personal data' which is defined as 'any data which enables identification of a living human being' and this would accordingly extend to the name, picture, likeness, voice and identity in advertisement of a living human being.

- (a) The data collection principle is set out in the schedule to the PDPO and relates to purpose and manner of collection of personal data being a lawful purpose directly related to a functional activity of the data user who is to use the data and that the collection of the data is necessary for or directly related to that purpose.
- (b) The data user must take care to ensure that the personal data collected is accurate having regard to the purpose for which it is collected and will not be retained for longer than meets that express purpose.
- (c) Principle 3 governs the use of the personal data for a new purpose without the prescribed consent of the data subject which means any purpose other than the purpose for which the data was to be used at the time of original collection.
- (d) Principle 4 governs the requirements for security of the personal data being retained by the data user: if the data user engages a data processor to process the data whether within or outside Hong Kong the data user must oblige the data processor to adopt contractual or other means to prevent infringement of the data protection principles under the PDPO.
- (e) The data user must take all practical steps to ensure that a person can ascertain the policies and practices of the data user in relation to personal user.
- (f) A data subject is entitled under Principle 6 to ascertain whether the data user holds personal data and to request access to it within a reasonable time and at a fee (if any) that is not excessive and be given reasons if a request is refused.

9.2 Are there situations when permission is not required?

The PDPO does not provide for or require the consent of the data subject at the time of collection of the personal data by the data user but each of the principles set out above applies to the use of the personal data after collection and any change in the express stated use of the personal data at the time of collection must have a prior consent of the data subject.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

The Copyright Ordinance vests copyright in the author of an original artistic work (alternatively in the owner of an authored work) provided that it is within the copyright period extending from the date of creation of the original work and for the period of 50 years from the death of the creator of the original work.

A photograph is an original work and protected by copyright. However, a photograph of a famous building does not give copyright entitlement to any aspect of ownership of the building.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The rights of the original author may be infringed in copyright through the use of a recognizable original work in an advertisement.

Use by an advertiser of the registered trademark or the recognizable registered right of another company is likely to be an infringement of the registered rights of the other company under the Trade Marks Ordinance.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Hong Kong which affect advertising (eg, Swedish gender equality law)?

Equality law in Hong Kong

There are four major anti-discrimination laws in Hong Kong which are:

- (a) the Sex Discrimination Ordinance,
- (b) the Disability Discrimination Ordinance,
- (c) the Family Status Discrimination Ordinance and
- (d) the Race Discrimination Ordinance.

These ordinances were enacted between 1996 and 2009 and they are administered by the Equal Opportunities Commission which has issued guidelines under each of the four ordinances with the intention of overall reinforcement of the philosophy of equal opportunity and the elimination of discrimination for the disadvantaged.

The Equal Opportunities Commission ('EOC') is established as a watchdog for social conscience and consists of a chair person and 15 members appointed by the Chief Executive of Hong Kong. Below the EOC is the Legal and Complaints Committee, which provides advice on applications to the EOC under the specific ordinance concerned for legal assistance to take action in the district court for monetary compensation.

Under the Basic Law for Hong Kong 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

The Hong Kong Bill of Rights provides for the right under the anti-discrimination ordinances to include damages, apologies and orders for employment.

Discrimination can be direct or indirect, and indirect discrimination can be justified only on the basis that the requirement or condition affecting the complainant has a legitimate aim, and that the means used to fulfil the aim are proportionate. This means a balancing exercise is required between the needs of the defendant and the discriminatory effect.

The Sex Discrimination Ordinance identifies that an offence occurs where a reasonable person would anticipate that the person affected would be offended, humiliated or intimidated. Examples of prohibited conduct under the Disability Discrimination Ordinance are vilification such as incitement of hatred, serious contempt and severe ridicule against disabled or racial groups by public activity.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Consistent with the freedom of expression so very much a part of Hong Kong society as indicated in question 1.1 above, there is total freedom of religious worship, and even the Fa Lun Gong religious movement is openly practiced in Hong Kong, although completely banned in China.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the Hong Kong?

Freedom of expression is treasured in the highest value for the Hong Kong community under the law, the only restrictions upon this being stated in question 1.1 above, there is no general advice or caution other than that set out above.

 HUNGARY 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Hungary?

Advertising is regulated in Hungary by way of statutory rules and self-regulation. The statutory rules (mainly Acts of Parliament, but also decrees of the Government and of ministers) that govern advertisements cover advertising law, consumer protection law, competition law, data protection law and intellectual property law. There are also special rules for certain sectors, such as pharmaceuticals and food.

The main self-regulatory bodies are the Hungarian Advertising Association ('MRSZ') and the Self-Regulatory Advertising Board ('ÖRT'). The ÖRT is the Hungarian member of the European Advertising Standards Alliance ('EASA').

1.2 What types of communications are considered to be 'advertising'? How is this determined?

'Advertising' means any form of communication which has the aim or has the effect of promoting the sale of goods and services. It is not the type of communication, but the content and/or purpose of that communication that determines whether it qualifies as advertising.

1.3 What is the basic regulatory framework for advertising regulation?

The main Acts are:

- Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities ('Advertising Act');
- Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices ('UCP Act'); and
- Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices ('Competition Act').

Additional rules are included in:

- Act CLXXXV of 2010 on Media Services and on the Mass Media ('Media Act'); and
- Act CVIII of 2001 on Certain Aspects of Information Society Services and Electronic Commercial Services ('E-Commerce Act').

The Hungarian Code of Advertising Ethics ('Code') is also worth noting. Also, there are a number of EU Regulations regarding the advertisement of certain product types/industries (eg, food, cosmetics) which are directly applicable in Hungary, as a Member State of the EU.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Both the E-Commerce Act and the Code contain special provisions on advertising in the digital space, including:

- identification of digital advertising;
- terms of the digital offer;
- advertising with influencers;
- individually targeted unsolicited digital advertising; and
- online interest-based advertising.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Advertising practices are subject to specific regulations in several industries, the most significant being:

- (a) **Gambling:** The Advertising Act allows the advertisement of gambling. However, there are several restrictions. Advertisements must not invite children or juveniles to participate in gambling. According to the Code, an advertisement must not suggest that gambling is a solution to personal or professional problems or imply that gambling may solve financial problems.
- (b) **Alcohol:** Alcoholic products may be advertised. However, several restrictions apply:
 - The advertising of alcohol must not be addressed to children or juveniles;
 - Advertisements must not urge excessive alcohol consumption, must not connect alcohol consumption with better physical or sexual performance, driving, therapeutic effects or suggest that alcohol can solve personal conflicts.
 - Alcohol advertisements must not appear on the outer cover page of the advertising medium or on the home page of a website.
 - Alcohol advertisements must not be shown in theatres or cinemas before 8.00 pm, or, in the case of television programs, such advertisements must not be broadcast just before, during, or just after programs targeted at children or juveniles.
- (c) **Pharmaceuticals:** The legal regulation differentiates between marketing aimed at the general public (advertisements) and marketing aimed at healthcare professionals (detailing). Advertisements must always be based on summaries of product characteristics and the patient information leaflet of the specific pharmaceutical, as approved by the regulatory authority. Advertisements for pharmaceuticals must include mandatory warnings with the exact wording prescribed by the law. Prescription-only pharmaceuticals must not be advertised.
- (d) **Financial services:** Hungarian legislation contains several rules on the advertisement of financial products or services. Detailed rules may be found in particular in Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises ('Bank Act'), and in Act CLXII of 2009 on Consumer Loans ('Act on Consumer Loans').
- (e) **Food:** Consumers may not be misled:
 - with regards to the characteristics of the foodstuff (eg, its nature, identity or properties);
 - by attributing to the foodstuff effects or properties which it does not possess; or
 - by stating or suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics.

Nutrition and health claims made regarding of food are strictly regulated on an EU level.
- (f) **Tobacco:** Advertising tobacco products is completely forbidden, even indirectly. The prohibition does not apply to professional advertisements addressed exclusively to distributors of tobacco products.
- (g) **Cosmetics:** On an EU level, common criteria have been established for the justification of claims used in relation to cosmetic products in order to assess whether or not the use of a claim is justified.

1.6 Are any government pre-approvals required?

Government pre-approvals are not required.

1.7 Does the media pre-clear advertising?

The media does not pre-clear advertising.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The main bodies are:

- the local consumer protection authorities acting as consumer protection authorities with general competence,
- The Hungarian National Bank has jurisdiction in relation to the specific rules regarding financial services advertising; and
- the Hungarian Competition Authority ('HCA'). The HCA has jurisdiction if the commercial practice is capable of affecting competition. As a general rule, this is the case if the commercial practice is carried out via:
 - a media service provider providing national media services,
 - a periodical distributed nationwide,
 - a daily newspaper distributed in at least three counties,
 - direct marketing targeted at consumers in at least three counties, or
 - sales promotions in at least three counties.

The maximum fine that the consumer protection authorities and the Hungarian National Bank may impose is 5% of the annual net turnover of the company up to a maximum of HUF 2 billion (approx US\$ 5.7 million/€5.2 million).

The maximum fine that the HCA may impose is 13% of the annual net turnover of the company group.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may bring an action against an advertiser in the civil courts claiming unfair competition based on the Competition Act or trademark infringement.

As a general rule, in the statement of claim, the plaintiff (ie, the competitor whose interests were violated) may demand:

- the establishment of the infringement;
- the termination of the infringement and the prohibition of further infringement by the party infringing the law;
- that the party infringing the law make amends—through an announcement or in any other appropriate manner—and, if necessary, that sufficient publicity be given to such amends by or at the expense of the party infringing the law; and
- damages in accordance with the rules of civil law.

Furthermore, if a competitor believes that an advertiser has published an unlawful comparative advertisement or if there is a misleading B-2-B commercial practice, it may also file a complaint with the HCA. In practice, before filing a complaint with the HCA, the parties will try to settle the issue before the ÖRT. The ÖRT may prohibit the unlawful advertisement and oblige the party infringing the

Code to amend the same and to obtain the ÖRT's prior approval before publishing it. The ÖRT's decision is binding on its members only, and it is not enforceable, but advertisers generally follow its decisions.

Should the HCA initiate a procedure based on a complaint, this procedure is *ex officio*, which means that the competitor who filed the complaint will not be a party to such procedure and will not have the right to stop the procedure even if in the meantime the parties have settled the case amongst themselves.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers may complain about an alleged infringement by requesting the initiation of the procedure of an authority (the HCA, the consumer protection authorities or the Hungarian National Bank). Consumers do not need to worry about which is the competent authority, as an authority without competence will forward the request to the relevant authority.

The sanctions available to the HCA and the consumer protection authorities are detailed under question 1.8 above. These are typically not remedies for consumers but rather sanctions (such as a fine) against the advertiser. However, in the HCA's practice it has become quite common that companies who would like to avoid or reduce the amount of the fine that may be imposed on them due to an infringement undertake to compensate consumers. In such cases, the HCA's decision includes this obligation undertaken by the company.

In addition, consumers are entitled to initiate litigation proceedings to claim damages suffered. Therefore, if a consumer suffers actual damage or loss due to the unlawful advertisement, these damages may be claimed before the court.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Hungary have a primary advertising self-regulation system?

Hungary does not have a primary advertising self-regulatory system. The significance of the self-regulatory framework is growing, but it only supplements and elaborates on the statutory regulations relating to advertising law.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The Code is approved and used by a number of self-regulatory bodies, including the MRSZ and the ÖRT. The Code was published by the MRSZ in 1981 and is based on the Code of the International Chamber of Commerce. The latest update of the Code took place in June 2023 and the new Code has been in force since 1 September 2023.

The signatories to the Code are Hungarian producer and advertising organizations from a number of sectors (food, soft drinks, alcohol, pharmaceuticals, FMCG, automotive industry, financial products, etc).

The updated version of the Code includes detailed rules also with respect to advertising in the digital space.

The key principles of the Code are very similar to the key principles appearing in the statutory rules. Such key principles include the following:

- all advertisements must be legal, decent, honest and truthful;
- an advertisement must be prepared with a due sense of professional care and on the basis of social responsibility;
- an advertisement must meet legal requirements in all aspects; it cannot encourage a breach of law;
- an advertisement is fair if it meets the legal and ethical norms of fair competition and good business practice;
- an advertisement must be true; it must not mislead the consumer with its statement or visual elements, or its overall effect;
- the moral-ethical standards generally accepted by society and approved by the general public must be kept in mind; and
- no advertisement may harm the reputation of the advertising profession or undermine public confidence in advertising.

The Code includes special rules that apply to specific industry sectors (eg, food, alcohol) and certain types of advertising (eg, advertisements on the internet and on mobile devices, advertisements targeted at children and juveniles).

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Complaints in respect of advertising may be filed with both the MRSZ and the ÖRT by consumers and competitors. Sanctions applied by the bodies include the request for the removal and amendment of the unethical advertising. However, sanctions imposed by the bodies bind the parties concerned in the complaint procedure only if they are members of the respective body. Non-compliance with decisions of the bodies may result in the termination of their membership, but, otherwise, compliance is not enforceable. Nevertheless, as set out above, market players tend to comply with the decisions of such self-regulatory bodies.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Yes, the self-regulation system appears to be effective in Hungary. A number of advertisers tend to use this as the first forum to settle their disputes rather than to turn to the authorities or the courts.

In addition, the ÖRT provides copy advice (as to whether or not an advertisement complies with the advertising ethical rules) in written form upon the request of advertisers, agencies or the media. This service is also frequently used by advertisers.

2.5 Are the self-regulatory system's decisions reported?

Decisions passed in individual cases and copy advice (see question 2.4) of the self-regulatory system are not published.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Please see question 2.2.

2.7 Are there any other self-regulatory systems that govern advertising practices in Hungary?

In certain sectors, there are additional and special statutory rules in relation to advertising, which may be supplemented by codes of ethics approved by the self-regulatory body active in that sector. As an example, for pharmaceuticals, the Code of Ethics for Pharmaceutical Communication has been approved by the competent self-regulatory bodies.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Hungary (eg, consumer protection laws, IP laws, unfair competition laws)?

Statutory rules relating to advertising are included in the UCP Act, the Advertising Act and the Competition Act. These Acts implement EU directives that relate to advertising.

There are rules and requirements specific to products or media. The most important rules among these are Act XCVIII of 2006 on the General Provisions Relating to the Reliable and Economically Feasible Supply of Medicinal Products and Medical Aids and on the Distribution of Medicinal Products ('Medical Product Act') and the Media Act.

Advertisers must also take into consideration the statutory intellectual property rules in order to avoid unlawful use or infringement of third parties' intellectual property rights. Such rules are set out in Act LXXVI of 1999 on Copyrights ('Copyright Act') and in Act XI of 1997 on Trademarks ('Trademark Act').

In addition to the above, there are rules specific for certain product types/industries set forth at EU level which are directly applicable in Hungary (eg food, cosmetics).

Beyond the legal rules, the significance of self-regulation is also growing; and, as far as the ethical rules are concerned, the Code, which is a non-legally binding code created by MRSZ, should be taken into consideration. The ethical rules basically mirror the statutory rules relating to advertising.

3.2 Is substantiation required for advertising claims?

Yes, substantiation is required. Substantiation must be secured by the advertiser prior to the publication of the ad. At the request of the competent authority, the advertiser must provide proof to verify the authenticity of any commercial communication. In the event of the advertiser's failure to comply, the fact in question shall be considered as untrue.

The overarching principle of substantiation is that the stronger and more sweeping a factual statement, the stricter rules apply to substantiation (eg, in the case of superlative statements, such statements must be substantiated against all competitors and competing products available on the relevant market).

The substantiation must be prepared and be available at the time when the advertisement is published.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The basic principle of the UCP Act is that all claims in the advertisements must be true, cannot contain false or untrue information, must not mislead consumers, and the advertiser must be able to substantiate the factual claims.

However, according to the UCP Act, the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally (hyperbole) will not be treated as a commercial practice likely to materially distort economic behavior. Therefore, obviously subjective attributes (eg, 'The best movies on our channel!'), or creative slogans (eg, 'Red Bull gives you wings') do not need substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

According to statutory rules, advertising must be clearly identifiable. There are no specific statutory rules it this should be done, however, case law and guidance issued by the HCA may be of help.

By way of example, the HCA has issued guidelines with respect to influencer advertising including the recommended forms of disclosure of the relationship between the influencer and the advertiser (ie, the producer or distributor of the product/service) depending on the type of media used (eg, text, images, audio content or video content).

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Testimonials are evaluated as being part of the advertisement and as claims of the advertiser, which means that factual statements made in these testimonials must be genuine, true and verifiable.

3.6 What are the rules governing the use of product demonstrations in advertising?

No specific statutory restrictions apply to product demonstrations in advertising. The basic principle of the UCP Act applies, according to which the advertising must not mislead consumers. Consumers must not be misled in respect of the main characteristics of the advertised product (such as its fitness for purpose, the results to be expected from its use, its benefits, or its price).

In addition, the HCA has set guidelines upon which the advertiser can rely when making product demonstrations. One of the most important guidelines which must be taken into consideration is that the factual statements of the advertising must be absolutely in line with test and survey results, and also with the circumstances under which the test or the survey was carried out.

Practically, this means that, where advertisements contain a product demonstration, then such demonstration must be displayed under the same circumstances as those under which the test was carried out and under which the average consumer would use the advertised product.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted by the Competition Act, subject to certain positive and negative conditions in line with the relevant EU Directive.

According to the positive conditions, comparative advertisements:

- are allowed to compare only goods which are the same in terms of purpose and function;
- must objectively compare one or more features of the goods in question which are definitive and typical, and which can be confirmed;

- must objectively exhibit the prices, when applicable; and
- (where they pertain exclusively to products with designation of origin) must compare only with products with the designation of the same origin.

The negative conditions of comparative advertising are detailed under question 3.8.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether competitor's trademark or products may be used)?

According to the Competition Act, comparative advertisements shall not:

- injure the reputation of another company or the name, merchandise, brand name or other marking of such a company;
- lead to any confusion between the advertiser and another company or the name, merchandise, brand name and other marking of such a company;
- result in any unfair advantage derived from the reputation of another company or the name, merchandise, brand name and other marking of such a company; or
- violate the provision of the Competition Act regarding the prohibition on imitating the merchandise of another company or the characteristics of such merchandise.

If the comparative advertisement contains a competitor's trademark, and the comparative advertisement is not in compliance with the above requirements, the trademark holder may bring trademark infringement proceedings if the advertisement violates the functions of the trademark. Claims on the basis of unfair market practice are almost identical to those of trademark infringement.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Both the UCP Act and the Competition Act consider it to be an unfair commercial practice/misleading of business partners if untruthful information is provided regarding the geographic origin of a product.

Special rules may exist in relation to certain product types. For example, as regards food, the provisions of EU Regulation No 1169/2011 related to the indication of the country of origin have to be applied directly, as Hungary is the member of the European Union. According to the Regulation, indication of the country of origin must not be misleading. Also, the indication of the country of origin is mandatory where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food.

Also, it is worth noting that geographical signs and designations of origin used to indicate the geographical origin of products on the market may be granted protection as geographical indications according to specific regulations. If such protection exists, the proprietors shall enjoy the exclusive right to use the geographical indication.

3.10 Are there any special rules governing product packaging?

According to Act CLV of 1997 on consumer protection, as a general rule, products must be packaged in such a way that the packaging protects the product, facilitates delivery and does not adversely affect the quality or quantity of the product. In addition to this, a number of legal norms, mainly at EU level, include rules relating to packaging and labeling of specific product groups (such as food, cosmetics, pharmaceuticals, biocide products, etc).

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

In December 2022, the European Commission issued guidance on the interpretation and application of the Unfair Commercial Practices Directive 2005/29/EC (‘UCP Directive’). This guidance includes a chapter on data-driven practices and dark patterns which provides explanations regarding and examples of dark patterns.

According to the guidance, although the term ‘dark patterns’ does not have a legal definition in the UCP Directive, it is used to refer to a type of malicious nudging, generally incorporated into digital design interfaces. Dark patterns could be data-driven and personalized, or implemented on a more general basis, tapping into heuristics and behavioral biases, such as default effects or scarcity biases.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules or guidance on artificial intelligence as it relates to advertising yet.

4 PRICE ADVERTISING

4.1 What are Hungary’s rules regarding price advertising?

Beyond general rules relating to advertising (eg, the advertising must be fair, must not be aggressive and must not be misleading) there are some special considerations developed by HCA case law that apply to the communication of price.

Price must be considered as a basic feature of a product/service which is significant from the point of view of consumers and their decision-making. Price communication must include the full price of the product or the service (including tax and additional costs, if any).

Furthermore, the communication of discounts/rebates (including gratis products (eg, one product for free if another product is purchased)) to consumers by wholesalers (eg, by labeling products with ‘gratis’ or ‘20% off’) may be problematic. Wholesalers are not in a position to ensure that such discounts/rebates are in fact granted to consumers in retail stores. Therefore, such communications may be regarded as misleading by the HCA.

4.2 What are Hungary’s rules regarding advertising ‘free’ products?

Advertisement of ‘free’ products is, as a general rule, allowed under Hungarian law and, if the product is, in fact, free, the communication should be acceptable. According to HCA case law, ‘free’ means that no costs other than that of transportation should be paid for the product.

As an exception, certain restrictions apply to the provision of ‘free’ products in pharmacies.

4.3 What are Hungary’s rules regarding sales and special offers?

- (a) New legislation entered into force as of 28 May 2023 with respect to the indication of price discounts, which is based on the so-called ‘Omnibus Directive’ of the European Union 2019/2161.

According to these rules, any announcement of a price reduction must indicate the prior price applied by the trader for a determined period of time prior to the application of the price reduction. The prior price means the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction. When the

price is progressively reduced, the prior price is the lowest price before the first of the price reductions. These rules do not apply to products which are liable to deteriorate or expire rapidly.

In addition, where the product has been on the market for less than 30 days prior to the reduction, the prior price means the lowest price applied by the trader during a period of time not shorter than 15 days prior to the application of the price reduction.

- (b) Furthermore, based on the applicable general rules, there is significant HCA case law in respect of sales and special offers. Case law confirms that such offers must, in fact, be 'special' and cannot mislead consumers in terms of the availability, conditions, magnitude or any other feature of the sales offer.
- (c) In addition, the Code includes special rules in relation to information to be provided to consumers on sales promotions.

4.4 What are Hungary's rules regarding rebates?

In respect of rebates, please see our response provided to question 4.3.

Furthermore, the general statutory rules apply. In addition, HCA case law confirms that, in the case of rebates, there must be a genuine reduction of the price in comparison to the price of the product prior to the period of such a rebate. Consequently, the rebate cannot be regarded as genuine, if prior to the rebate the product/service had the same price or, although there was a higher price prior to the application of the rebate, it was applied only exceptionally or for a temporary period of time.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Not applicable.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) As a general principle, according to the Advertising Act, advertising is prohibited for all goods, the production and marketing of which is against the law (such as drugs and other psychotropic materials).
- (b) In addition, there are specific products and services the advertising of which is specifically prohibited, such as sexual services, dangerous dogs, animal fights, human organs or human tissues, abortion and institutions carrying out abortion services.
- (c) The Advertising Act allows the advertisement of gambling. However, it is prohibited to invite children or juveniles to participate in gambling.
- (d) Alcoholic beverages may be advertised. However, advertising of alcohol must not be targeted at children or juveniles, and they must not participate in such advertising.
- (e) Advertisement of tobacco products is completely forbidden, even indirectly. The prohibition does not apply to professional advertisements addressed exclusively to distributors of tobacco products.
- (f) The advertisement of prescription-only pharmaceuticals for consumers is prohibited, while that of over-the-counter pharmaceuticals is regulated by specific legal regulations.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The overarching principles of the advertising legislation are that advertisement practices should be fair, should comply with the requirements of professional diligence and should not distort the economic behavior of consumers.

The Advertising Act specifically prohibits subliminal advertising, which is defined as advertising that, when published, due to time constraints or any other reason, influences the consumer in a psychological sense with stimuli from images, sounds, or other effects of intensity below the threshold required for conscious perception.

As a general rule, direct marketing requires the prior express consent of consumers (which cannot be obtained by electronic means).

The UCP Act also contains a black list of market practices which should be considered as unfair by their very nature, such as making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media or equivalent means of communication, except in circumstances and to the extent justified to enforce a contractual obligation.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) Pursuant to the Advertising Act, no advertisement may be disseminated if it displays sexuality in a grossly indecent manner, meaning, in particular, the open display of sexual intercourse or genitals. The above restrictions do not apply to advertisements on sex products or to advertisements displayed in sex shops.
- (b) According to the Advertising Act, all advertisements targeted at children and young people that have the capacity to impair their physical, intellectual, or moral development are prohibited. The prohibition applies in particular to gratuitously violent and sexual content, especially if it features children or young persons in such situations.
- (c) In addition, pursuant to the Advertising Act, advertisements must not encourage violence or such conduct that is likely to jeopardize personal or public safety, or the natural or man-made environment. Advertisements must not display gratuitous violence and must not be frightening.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

No, as a general rule the advertiser has no such obligation. However, according to the Advertising Act, an advertisement may be published only if the advertiser has provided its name and address to the advertising service provider.

All outdoor advertising media must explicitly indicate the name and address of the publisher of the advertising.

In the case of sponsorship, the Code prescribes that the sponsor's name, brand name, trademark or logo must be published in a way that the audience should be aware of the sponsorship.

Further detailed rules may be found in the Media Act.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

- (a) Under the UCP Act, advertising content must be clearly identifiable, since it is considered to be an unfair commercial practice to use editorial content in printed or electronic media to promote the sale or use of a product where a business entity has paid for its promotion without making it clear (through images or sounds) that the content is advertising.
- (b) According to the Code, an advertisement should be clearly identifiable, irrespective of its location, medium or manner of transmission. In media containing news and editorial materials, the promotional nature of an advertisement should be indicated in a manner that is easily and clearly identifiable. The advertiser or its brand should also be identifiable. Advertisements should not be misleading and, therefore, may not create the impression of a study, analysis or market research.
- (c) The Media Act contains detailed rules regarding sponsoring of programs. In the case of a sponsored media service or program the sponsor should be identified (eg, by reference to the name or trademark of the sponsor). This may take place simultaneously with the program, prior to or after the end of the program, so that it is not harmful to the nature and content of the sponsored program.
- (d) Product placement is prohibited as a general rule except for:
 - (i) in cinematographic works intended for showing in movie theaters; cinematographic works, films and series made for media services; sports programs and entertainment programs; and
 - (ii) in programs other than the ones mentioned in (i), provided that the manufacturer or distributor of the product in question, or the supplier or agent of the service, does not provide the producer of the given program with any financial reward either directly or indirectly with the exception of making available a product or service free of charge for the purpose of placement.
- (e) As for influencer generated content, it should be indicated in the post whether it is paid, sponsored content, in a clear, noticeable, easily understandable and emphasized way.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Yes, as detailed above, the advertising character of an integrated advertisement must be indicated in a manner that is easily and clearly identifiable, and the advertiser or its brand must also be identifiable. This is applicable to editorial content, sponsored content and product placement. Viewers must be clearly informed of the existence of product placement. Programs containing product placement must be appropriately identified—using optical or acoustical means—at the start and the end of the program, and when a program resumes after an advertisement break.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

- (a) There are no special statutory rules governing the use of social media for advertising purposes. Therefore, the general rule on the prohibition of unfair commercial practices, including aggressive and misleading advertising, applies, together with the rules on electronic commerce and information society services and the relevant terms and conditions of the social media service providers.
- (b) The Code, however, does contain special rules for advertising in the digital space, some of which could be relevant when using social media for advertising purposes:
 - Advertisements may be posted on a given platform only if the platform clearly states that advertising may be posted there.
 - Digital advertising should only take up a reasonable amount of the bandwidth available to the user, in particular in the case of advertising transmitted to mobile phones and other digital devices.
 - Digital advertising should not restrict the navigation options of users. In any case, users should be able to close, minimize or navigate away from the advertisement or the page containing it in one single movement without further advertising being displayed.
 - When advertising a product or service by digital means, where the advertising is combined with an opportunity to sell and/or use the service, the advertiser must pay particular attention to providing accurate and credible information, taking into account the specific characteristics of the device used (eg, screen size, legibility of texts in the case of mobile phones). In particular, the use of internet or mobile technologies that mislead or otherwise harm consumers must be avoided.
 - When advertising on digital devices, in particular mobile devices/phones, particular attention should be paid to ensure that advertising that is specifically targeted at adults, age-appropriate or harmful to the personal development of children and minors is not delivered to children and minors.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

According to the E-Commerce Act, service providers are liable for any unlawful information they have made available, with certain exceptions relating to intermediary service providers as set out in the E-Commerce Act.

According to the HCA, if an opinion of a consumer is placed in an advertisement, it will be regarded as information provided by the advertiser itself.

On the basis of the above, it could be argued that user generated content is not placed by the advertiser but the user and, therefore, the advertiser will not be liable for such content from a legal perspective. We are not aware of any decision which would unequivocally determine liability for in such a case.

It may be worthwhile to mention here the new rules of the UCP Act in connection with user reviews. These rules explicitly state that the following must be considered as unfair commercial practice:

- Stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers.
- Submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products.

The guidance emphasizes that it is important that the traders that give access to consumer reviews take reasonable and proportionate steps to ensure that they reflect the experience of real consumers with the relevant product. The notion of reviews should be interpreted broadly, including practices related to ratings.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

None.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

According to the Hungarian Civil Code, the consent of the person affected is required for producing or using their likeness or recorded voice. The notion of 'use' is interpreted widely. Every type of use of a likeness or voice shall be deemed as 'use' if such voice or likeness becomes accessible to third persons. The scope of the consent is also to be interpreted, taking into consideration the circumstances in which it was given. For example, as a general rule, if someone consents to a recording made by a television or radio company, then the consent to the broadcast of the same could be assumed as well.

The scope of the consent could be determined on the basis of the relationship between the parties or the aim of the recording. On the basis of the above, where an individual's name, picture, likeness, voice or identity is used in an advertisement, it is necessary to inform the person that the recording is made for advertising purposes and to request the person's consent for such use. The person must also be told the channels on which such advertising will be published.

As an individual's name, picture, likeness, voice and identity also qualify as 'personal data', the provisions of the EU General Data Protection Regulation ('GDPR') (Regulation (EU) 2016/679) must be complied with.

9.2 Are there situations when permission is not required?

The consent of the relevant person is not required for recording their likeness or voice or for the use of such recording if it was made as part of a crowd or captured during a public performance. In order to apply the above exemption, it is necessary that the recording is made at a place or event where it can be expected that a recording would be made (eg, a sports event) or, if it was made at a place or event where it is not usually expected (eg, on the street), the person may not be displayed prominently or in a recognizable manner.

It should also be noted that even a recording of a crowd can only be used for a purpose that is linked with the event (eg, information regarding the event). Therefore, this exemption does not mean that such recordings could be automatically used for advertising purposes.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

According to the relevant legislation, the Hungarian flag and the coat of arms may not be used for advertising purposes. The use of such symbols is restricted to specific purposes (such as international fairs, or expressing national identity).

Places and buildings which have to be considered national monuments (eg the Hungarian Parliament, Buda Castle, National Museum etc) cannot be used for advertising activities without prior approval from the competent authority(ies). In case of positive decision, a license agreement must be concluded on the terms and conditions of the use of the given national monument.

In the case of buildings which are not considered national monuments or cultural heritage, provisions on copyright must be taken into consideration, since architectural works are regarded as intellectual property and protected by copyright based on the individual, original nature of the work arising from the author's intellectual activity. Thus, the use of any architectural work requires the author's approval and a license agreement on the terms and conditions of use during the advertising activity.

Copyright is protected during the author's lifetime and for seventy years after their death. The seventy-year term of protection shall be calculated from the first day of the year following the author's death, or, in the case of a work of joint authorship, from the first day of the year following the death of the last surviving author.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The consent of the rights holder is necessary to use its recognizable products in advertising.

In the case of comparative advertising (advertising that directly or indirectly identifies a competitor, or its goods manufactured, sold or introduced by such other business entity for the same or similar purpose as those featured in the advertising), as a general rule, the indication of the other product/service which is subject to the comparison is permissible. However, comparative advertising is prohibited if:

- this may result in any unfair advantage derived from the reputation of the competitor or the name, merchandise, brand name and other marking of such competitor;
- this may harm the reputation of the competitor or the name, merchandise, brand name and other marking of such competitor;
- it presents goods as imitations or replicas of goods bearing a protected trademark or trade name; or
- it creates confusion among market participants between the business entity and a competitor, or between the business entity's trade name, goods, trademarks or other distinguishing marks and those of a competitor.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Hungary which affect advertising (eg, Swedish gender equality law)?

According to the Code, the text of advertisements should not impair the rules or the clarity of the Hungarian language.

All radio, television and outdoor advertising and advertising placed in a printed press product must be in Hungarian, and even the slogan must be displayed in Hungarian.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertisements should not harm the generally accepted moral and ethical standards of society and should comply with general requirements (eg, they should not be discriminatory in any way, and should not encourage aggressive, violent or unlawful behavior).

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Hungary?

The Hungarian authorities apply a stricter approach to advertisements compared to other competent authorities in the European Union. This often results in serious modifications of advertising materials which were approved in other (EU) jurisdictions. Therefore, advertisers should be aware that it may be difficult to publish foreign advertisements in Hungary without first making some adaptations.

 INDIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in India?

Advertising in India is regulated by some general laws which regulate advertising as a whole and some special statutes for regulating advertisements of certain products.

The Consumer Protection Act 2019 has, for the first time, defined ‘misleading advertisement’. The Act lays down general provisions for the prevention of misleading advertisements and provides for the establishment of a Central Consumer Protection Authority (‘CCPA’), which was established in July 2020 to promote, protect and enforce the rights of consumers as a class. The CCPA is empowered, inter alia, to:

- conduct investigations into violation of consumer rights and institute complaints/prosecution;
- order discontinuation of unfair trade practices and misleading advertisements; and
- impose penalties on manufacturers/endorsers/publishers of misleading advertisements.

The CCPA has issued Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022 (‘CCPA Guidelines’) which apply to all advertisements, regardless of form, format or medium, and to all manufacturers, service providers or traders whose good, product or service is the subject of an advertisement, and to advertising agencies or endorsers whose services are used to advertise such goods, product or service. The guidelines clarify the scope of the provisions under Consumer Protection Act 2019 and set out in detail as to what is permitted and what is prohibited.

The Indian advertising market as a whole is also regulated and controlled by a self-regulatory organization called the Advertising Standards Council of India (‘ASCI’).

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The Consumer Protection Act 2019 defines ‘advertisement’ as any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents.

The Code of the Advertising Standards Council of India (‘ASCI’) (see question 2.2 below) defines advertising ‘as a paid-for communication, addressed to the public or a section of it, the purpose of which is to promote, directly or indirectly, the sale or use of goods and services to whom it is addressed’. Any communication which in the normal course may or may not be recognized as an advertisement by the general public, but is paid for, or owned or authorized by the advertiser or their advertising agency, would be included in this definition.

1.3 What is the basic regulatory framework for advertising regulation?

The Consumer Protection Act 2019 is the main statute which governs advertising in India. The CCPA is main regulatory body, which has issued the Guidelines to curb misleading advertisements and protect consumers from unsubstantiated claims, exaggerated promises, misinformation and false claims. Advertising is also regulated in India by various statutory bodies or government departments under different laws, as well as enforcement through the courts. Further, there is also a self-regulating mechanism (see question 2.1 below).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Advertising through unsolicited calls and messages is regulated by the Telecom Regulatory Authority of India (“TRAI”). TRAI has issued the Telecom Commercial Communication Customer Preference Regulations 2018 to curb a growing menace and effectively regulate unsolicited commercial calls and messages. It has issued a notification prohibiting unsolicited commercial communications through SMS. TRAI has stipulated that, before sending bulk communication, businesses have to complete, inter alia:

- registration as principal entity with telecom service providers (“TSPs”),
- registration of header,
- registration of content template, and
- registration of customer’s consent.

Explicit consent of the customer must be acquired through a registered consent template. Further, communications based on explicit consent must include a suffix providing for the procedure through which customers can revoke consent. Additionally, customers can register their preferences with the TSPs as to who can send commercial communication to them. Preference choices includes the categories of commercial communication, mode of communication, time band and types of day, etc.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

In India, there are specific provisions or regulations for the advertising of certain industries such as pharmaceuticals, tobacco product, alcohol, food, automotive vehicles, etc:

- (a) **Pharmaceuticals:** Prescription-only drugs are those medicines that are listed in Schedules H and X of the Drug and Cosmetics Rules 1945. All drugs not included in this list are considered to be non-prescription drugs. The Drugs and Cosmetics Act 1940 prohibits advertisements for any drug or cosmetic from using reports of tests or analysis of the Central Drugs Laboratory or by a government analyst. This Act also requires the advertising of certain medicines to be made in a prescribed manner.
- (b) **Infant milk formula:** The advertising of infant milk formula is forbidden.
- (c) **Tobacco products:** Under the Tobacco Prohibition Act, all direct and indirect advertising of tobacco products in all media is prohibited. Moreover, every publisher of online curated contents showing tobacco products or their use is required to display:
 - anti-tobacco health spots, of at least 30 seconds duration, at the beginning and middle of the program;
 - anti-tobacco health warning as a prominent static message at the bottom of the screen during the period of display of the tobacco products or their use in the program; and
 - an audio-visual disclaimer on the ill-effects of tobacco use, of at least 20 seconds duration, at the beginning and in the middle of the program.

There should not be any display of the brands of cigarettes or other tobacco products or any form of tobacco product placement. The display of tobacco products or their use in promotional materials is also prohibited.

- (d) **Alcohol:** The Cable Television Network Rules 1994, the Advertising Codes of Doordarshan and All India Radio (national broadcasters in India), and the Norms for Journalist Conduct issued by the Press Council of India all prohibit any advertisement directly or indirectly promoting the production, sale, or consumption of cigarettes, tobacco products, wine, liquor, or other intoxicants.
- However, some states allow advertising through billboards, signboards, and such media, though subject to many restrictions.
- The ASCI Code prohibits the use of minors for advertising alcohol products.
- (e) **Food:** No advertisement relating to the standard, quality, quantity or grade-composition, and no representation concerning the need for, or the usefulness of, any food can be made which is misleading or deceiving. Moreover, every food business operator and marketer, while advertising and publishing or disseminating marketing communication meant for promotion or sale of any article of food including labeling claims shall ensure that:
- claims are truthful and not misleading;
 - not encourage or condone excess consumption;
 - not state, suggest or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients required by the body;
 - where applicable, clearly label that the benefit claimed is related to or dependent on the method of preparation;
 - specify the number of servings of the food per day for reduction of disease risk claims; and
 - where it is claimed that a food has certain nutritional or health attribute, this must be scientifically substantiated by validated methods or by quantifying the ingredient or substance that is the basis for the claim.
- (f) **Automotives:** The Self-Regulation Guidelines on Advertisements for Automotive vehicles state that advertisements should not, specifically:
- portray violation of the Traffic Rules;
 - show speed maneuverability in a manner which encourages unsafe or reckless driving, which could harm the driver, passengers and/or general public; or
 - show stunts or actions, which require professional driving skills, in normal traffic conditions which in any case should carry a readable cautionary message drawing viewer attention to the depiction of stunts.
- (g) **Virtual Digital Assets ('VDAs'):** ASCI Guidelines for Advertising of Virtual Digital Assets and Linked Services regulate advertisements on crypto currency and NFTs. Among other requirements, all ads featuring VDAs must carry the disclaimer, 'Crypto products and NFTs are unregulated and can be highly risky. There may be no regulatory recourse for any loss from such transactions', and the words 'currency', 'securities', 'custodian' and 'depositories' may not be used in advertisements of VDA products or services.

1.6 Are any government pre-approvals required?

No legislation or regulations dealing with advertising and marketing require pre-approval or notification of an advertisement to any governmental authority, nor does any mechanism exist for taking such pre-approval on a voluntary basis.

However, advertisers must obtain permission from the local municipal corporation if they want to publicize their products through billboards or through posters.

Further, the Cable Television Network Rule 1994 states that a product that uses a brand name or logo, which is also used for cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants, may only be advertised on a cable service subject to some conditions. Advertisements found by the Ministry of Information and Broadcasting to be genuine brand extensions shall be previewed and certified by the Central Board of Film Certification as suitable for unrestricted public exhibition prior to their telecast or transmission or retransmission.

1.7 Does the media pre-clear advertising?

In India, no formal mechanism exists for media pre-clear advertising.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The CCPA is main regulatory body, which enforces the rights of consumers as a class. It is empowered to order discontinuation of unfair trade practices and misleading advertisements and impose penalties on manufacturers/endorsers/publishers of misleading advertisements. The enforcement of advertising laws is also done through the self-regulatory mechanism of ASCI (see question 2), as well as through the courts.

Additionally, different advertising laws are also enforced through various governmental regulatory bodies, statutory bodies, governmental departments, etc. For example:

- (a) the Press Council of India regulates advertising in print media. It adjudicates complaints against or by the press regarding violation of ethics or the freedom of the press. The Press Council of India has issued the Norms for Journalist Conduct, a reference guide for the press. These norms include advertising norms similar to provisions in the ASCI Code and prohibit, inter alia:
 - advertisements that are vulgar;
 - advertisements promoting cigarettes, tobacco products, wine, liquor, and other intoxicants;
 - advertisements hurting religious or communal sentiments; or
 - any advertisement prohibited by any other law.
- (b) Bureaucracy at the local level, such as the District Magistrate and the Commissioner of Police, are responsible for enforcement of the Advertising Code as contained in the Cable Television Network Rules 1994 within their jurisdiction. The Director General of All India Radio and Doordarshan is responsible for the enforcement of the Code of Commercial Advertising on Doordarshan and All India Radio.
- (c) The police and the State Food or Drug Administration may take actions for violation of any provision of the Tobacco Prohibition Act.

The potential remedies against prohibited advertising range from discontinuance of the advertisement to criminal prosecution of the offenders.

1.9 When does a competitor have a right of action? What are the potential remedies?

In general, a competitor has a right of action before the courts in the case of:

- (a) comparative advertising, which disseminates untruthful or disparaging material through various media. In such actions by competitors, common law remedies which the court in India can provide include injunctive relief or monetary damages to manufacturers and sellers.

- (b) unauthorized use of its trademark in an advertisement. If successful, the competitor will get damages, in addition to injunctive relief.

Further, ASCI can also be approached with a complaint, since the ASCI Code also provides for regulation of advertisements which mislead consumers and are unfair to competitors. In the case of comparative advertising, ASCI may order changes in the advertisement or ban the advertisement altogether.

1.10 When do consumers have a right of action? What are the potential remedies?

- (a) Consumers have a right of action before the CCPA under the Consumer Protection Act 2019, for 'unfair trade practices', which are defined as 'practices which, for the purpose of promoting sale, use or supply of any goods or for the provision of any service adopts any unfair methods or unfair or deceptive practices, including false representations whether orally, by writing or by visual representation including by means of electronic record, about:
 - (i) the standard, quality, quantity, grade, composition, style or model (re-built, second hand, renovated, reconditioned or old goods as new goods) of the goods or services;
 - (ii) representing that the goods or services or their associated seller or supplier have sponsorship, approval, performance, characteristics, accessories, uses or benefits that they do not have;
 - (iii) making false or misleading representation about the need for or usefulness of any goods or services;
 - (iv) giving warranty or guarantee of the performance, efficacy or length of life of any product or of any goods that is not based on an adequate or proper test, or making a false, or materially misleading representation to the public in the form of a promise to replace, maintain, or repair any article or any part thereof or to repeat or continue a service until it has achieved a specific result;
 - (v) materially misleads the public concerning the price at which the product or like products or goods or service are ordinarily sold;
 - (vi) gives false or misleading facts disparaging the goods, services or trade of another person.'
- (b) Further, consumers can also approach ASCI with their complaints against the advertisement. ASCI may, after investigation and inquiry into the matter, order the modification or stopping of the advertisement.
- (c) Furthermore, consumers also have rights to approach various governmental authorities, such as the Press Council of India, Director General of All India Radio and Doordarshan, TRAI, etc, with their grievance, which may take appropriate action in this regard.

2 SELF-REGULATORY FRAMEWORK

2.1 Does India have a primary advertising self-regulation system?

Yes, India has a self-regulatory organization for advertising content—the Advertising Standards Council of India ('ASCI') founded in 1985. The three main constituents of the advertising industry—the advertisers, the advertising agencies and the media—came together to form this independent non-governmental organization. ASCI consists of the Board of Governors (22), Independent Review

Process Panel (3), the Consumer Complaints Council ('CCC') (41—23 from the industry and 18 persons from civil society, such as well-known doctors, lawyers, journalists, academics, consumer activists, etc). The aim of ASCI is to maintain and enhance the public's confidence in advertising. ASCI's role has been acclaimed by various agencies including the Government.

There is no other non-governmental body in India which regulates advertising content that is released in India.

2.2 Is there a self-regulatory advertising code? What are the key principles?

ASCI has adopted a Code for Self-Regulation in Advertising. It is a commitment to honest advertising and to fair competition in the marketplace. It stands for the protection of the legitimate interests of consumers and all those concerned with advertising—advertisers, media, advertising agencies and others who help in the creation or placement of advertisements.

ASCI has one overarching goal—to maintain and enhance the public's confidence in advertising. ASCI seeks to ensure that advertisements conform to its Code for Self-Regulation and follows these four basic principles:

- (a) **Truthful, legal and honest:** ie, ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements;
- (b) **Decent and not objectify women:** ie, ensure that advertisements are not offensive to generally accepted standards of public decency;
- (c) **Safe for consumers—especially children:** ie, safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large; and
- (d) **Fair to competitors:** ie, ensure that advertisements observe fairness in competition so that the consumer's needs to be informed on choices in the marketplace and the canons of generally accepted competitive behavior in business are both served.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

If an advertisement which is released in India seems objectionable, anyone can write to ASCI with their complaint. ASCI may also self-refer advertisements for investigation that may be in violation of the ASCI Code. While the name of a consumer-complainant is not revealed to the advertiser, ASCI does not accept anonymous complaints. In case of intra-industry complaints or complaints from an interested party, the advertiser will be made aware of the complainant's identity.

A complaint to the CCC should include:

- (a) regarding a print advertisement:
 - full particulars of the print advertisement,
 - the name and date of publication, and
 - a clipping or copy of the print advertisement.
- (b) In the case of a TV commercial, the CCC requires:
 - the channel on which it was aired,
 - date and time of the airing of the commercial, and
 - reasonable description of an audiovisual, specific claim or visual depiction which is considered to be false, misleading or objectionable and the reasons for the same.

ASCI first checks whether the complaint is in respect of an advertisement that has already been processed. If so, the complainant is provided details of the earlier recommendation. If not, ASCI informs the advertiser, asking them to respond within a specified time frame. ASCI also has an expert panel that may scrutinize technical data before it is sent for deliberations to the CCC.

The CCC deliberates and issues its recommendations to the complainant and the advertiser. It usually takes 4–6 weeks for the CCC to decide on a complaint from the date a ‘complete’ complaint is received. If the advertiser is found to be in violation of the Code, the advertisement will need to be modified or withdrawn within a stipulated time. The CCC’s decision on complaints against any advertisement is final.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system of ASCI is very effective and widely used and followed. According to ASCI’s Annual Report for 2022–2023, 8,951 complaints were received (a 17% increase over the previous year). 7,928 ads were processed by ASCI (of which 75% were digital, 21% print, 3% TV and 1% other). In terms of industry to which the ads referred, 15% of the complaints belonged to the gaming industry, 13.8% to classical education, followed by the 13% each from healthcare, personal care, and crypto. Out of the 7,928 ads processed, 97% required modifications.

2.5 Are the self-regulatory system’s decisions reported?

Yes, all of ASCI’s recommendations are a matter of public record and can be accessed on its website.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The current focus areas of which companies should be aware include:

- religious, cultural and moral concerns with regard to advertising. Advertisements should not offend the sensitivity of the public.
- comparative advertising should not lead to disparagement of the product or brand of competitors and should not result in dilution of the trademark of competitors.
- advertisements should not provide misleading information and should not make unsubstantiated claims.

2.7 Are there any other self-regulatory systems that govern advertising practices in India?

The News Broadcasters & Digital Association (‘NBDA’) represents the private television news and current affairs broadcasters in India. According to the NBDA Code, any broadcast (which includes an advertisement) should be in compliance with NBDA’s code of conduct. The code has a procedure for complaints against a broadcaster who is in breach, *inter alia*, of the following:

- depicting violence or intimidation against women and children;
- sex and nudity;
- endangering national security; and
- advocating or encouraging superstition and occultism.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in India (eg, consumer protection laws, IP laws, unfair competition laws)?

There are several laws in India that relate to advertising. The important ones include:

- (a) Consumer Protection Act 2019 (see question 1.1 above);
- (b) Laws relating to intellectual property such the Indian Trademarks Act 1999 and the Copyright Act 1957 and relevant provision of the ASCI Code;
- (c) Emblems and Names (Prevention of improper use) Act 1950: This prohibits the use of any trademark or design, any name or emblem specified in the Schedule of the Act or any colorable imitation thereof for the purpose of any trade, business, calling or profession without the previous permission of the Central Government;
- (d) Indecent Representation of Women (Prohibition) Act 1986: This Act is aimed at prohibiting indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner;
- (e) Young Persons (Harmful Publications) Act 1956: This Act imposes a penalty for advertising or making known that any harmful publication can be procured from or through any person;
- (f) Indian Penal Code 1806: The IPC prohibits obscene, defamatory publication, publication of a lottery and/or statements creating or promoting disharmony/enmity in society;
- (g) Tobacco Prohibition Act 2003: The Act prohibits any advertisement of cigarettes or tobacco products in any of the medium.
- (h) Cable Television Networks (Regulations) Act 1995: This prohibits advertising which is not in conformity with the prescribed advertisement code.
- (i) The Transplantation of Human Organs Act 1994: The Act prohibits any advertising inviting individuals to provide, donate or supply, any human organ for payment.
- (j) The Drugs and Magical Remedies (Objectionable Advertisements) Act 1954: The Act prohibits advertisement of magical remedies of diseases and disorders.

3.2 Is substantiation required for advertising claims?

Under the CCPA Guidelines, all descriptions, claims and comparisons in an advertisement which relate to matters of objectively ascertainable facts must be capable of substantiation, and such substantiation must be produced if required by the Central Authority.

Similarly, the ASCI Code states that: 'All descriptions, claims and comparisons which relate to matters of objectively ascertainable fact should be capable of substantiation. Advertisers and advertising agencies are required to produce such substantiation as and when called upon to do so by the ASCI.'

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

All descriptions, claims and comparisons in an advertisement which relate to matters of objectively ascertainable facts require substantiation.

Under both the CCPA Guidelines and the ASCI Code, obvious untruths or exaggerations as are intended to amuse or catch the eye of consumers are permissible, subject to the condition that they are clearly seen as humorous or hyperbolic and not likely to be understood as making literal or misleading claims for the advertised product.

Therefore, it is the judgment of a reasonable person which is the determining factor whether a claim is puffery or a misleading claim. In case of such an advertisement, there is no need of substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

Under the CCPA Guidelines, where there exists a connection between the endorser and the trader, manufacturer or advertiser of the endorsed product that might materially affect the value or credibility of the endorsement and the connection is not reasonably expected by the audience, such connection must be fully disclosed in making the endorsement.

Further, under the ASCI Code, disclosure is required if there is anything of value given to mention or talk about the advertiser's product or service. For example, if the advertiser or its agents gives an influencer free or discounted products or services or other perks, and then the influencer mentions one of its products or services, a disclosure is needed even if the influencer was not specifically asked to talk about that product or service. Disclosures are required even if the evaluations are unbiased or fully originated by the influencer, so long as there is a material connection between the advertiser and influencer. If there is no material connection and the influencer is telling people about a product or service they bought and happen to like, that is not considered to be an advertisement and no disclosure is required for such posts.

While the influencer is responsible for making disclosures required under the Guidelines, the advertiser, must, where needed, call upon the influencer to delete or edit an advertisement or the disclosure label to adhere to the ASCI Code and Guidelines.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Under the CCPA Guidelines, any endorsement in an advertisement must:

- reflect the genuine, reasonably current opinion of the individual, group or organization making such representation,
- be based on adequate information about, or experience with, the identified goods, product or service, and
- must not otherwise be deceptive.

3.6 What are the rules governing the use of product demonstrations in advertising?

There is no restriction on product demonstration in advertising, provided that such demonstration is not vulgar, or offensive to generally accepted standards of public decency.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

In India, comparative advertising is permitted to an extent, but this should not amount to disparagement and should be capable of substantiation.

The ASCI Code permits advertisements containing comparisons, including those where a competitor is named, in the interests of vigorous competition and public enlightenment, provided that:

- (a) it is clear what aspects of the advertiser's product are being compared with what aspects of the competitor's product;
- (b) the subject matter of the comparison is not chosen in such a way as to confer an artificial advantage upon the advertiser, or so as to suggest that a better bargain is offered than is truly the case;

- (c) the comparisons are factual, accurate and capable of substantiation;
- (d) there is no likelihood of the consumer being misled as a result of the comparison, whether about the product advertised or that with which it is compared;
- (e) the advertisement does not unfairly denigrate, attack or discredit other products, advertisers or advertisements directly or by implication;
- (f) the advertisement does not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trademark or symbol of another firm or its product or the goodwill acquired by its advertising campaign; and
- (g) the advertisement is not similar to any other advertiser's earlier-run advertisements in general layout, copy, slogans, visual presentations, music or sound effects, so as to suggest plagiarism.

Further, the Indian judiciary has also evolved the following principles for the protection of competitor interests with regard to comparative advertising:

- a trader is entitled to declare its goods to be best in the world, even though the declaration is untrue;
- a trader can also say that its goods are better than its competitors', even though such statement is untrue;
- for the purpose of saying that its goods are the best in the world or its goods are better than its competitors' a trader can even compare the advantages of its goods over the goods of others;
- however, a trader cannot, while saying its goods are better than its competitors, say that its competitors' goods are bad. If a trader does so, it defames its competitors and their goods, which is not permissible;
- if there is no defamation to a competitor's goods or to the manufacturer of such goods, no action lies, but, if there is such defamation, an action lies. If an action lies for recovery of damages for defamation, then the court is also competent to grant an order of injunction restraining the repetition of such defamation.

Furthermore, in *Havells India Ltd & Another v Amritanshu Khaitan & Others* (CS(OS) 107/2015), the Delhi High Court observed that though, in comparative advertising, a certain amount of disparagement is implicit, it will be legal and permissible only so long as it does not mislead. Further, the Court held that comparative advertising is permitted when the following conditions are met:

- goods or services meeting the same needs or intended for the same purpose;
- one or more material, relevant, verifiable and representative features (which may include price); and
- products with the same designation of origin (where applicable).

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The Indian Trademark Act 1999 contains provision which relates to comparative advertising. A registered trademark may be used by any person (including in comparative advertising) with the purposes of identifying goods or services as those of the proprietor, provided that the use is in accordance with the honest practices in industrial or commercial matters, and is not such as to take

unfair advantage of or be detrimental to the distinctive character or repute of the trademark. However, a registered trademark is infringed by any advertising of that trademark if such advertising:

- takes unfair advantage and is contrary to honest practices in industrial or commercial matters; or
- is detrimental to its distinctive character; or
- is against the reputation of the trademark.'

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

There are general provisions in the Indian Customs law, Trademark law and Geographical Indications law which deal with origin of articles:

- (a) The Central Government is empowered to issue Notifications imposing conditions on the importation of goods specified in the Notification. The purposes of imposing such conditions are listed in the Act, and include:
 - the prevention of deceptive practices;
 - the implementation of any treaty, agreement or convention with any country;
 - the protection of patents, trademarks and copyrights;
 - the prevention of smuggling etc.
- (b) The Central Government is also given the power to issue notifications regarding rules for determining whether any article has originated from any foreign country with which India has entered into a trade agreement imposing a lower customs duty rate.
- (c) The Trademark Act 1999 empowers the Central Government to issue notifications requiring certain goods to indicate the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured.
- (d) The Geographical Indications of Goods (Registration and Protection) Act 1999 prohibits falsifying and falsely applying geographical indications. The Act imposes a penalty for:
 - applying false geographical indications,
 - selling goods to which false geographical indication is applied, and
 - falsely representing a geographical indication as registered.

Therefore, false indications, of origin or source, in advertising is prohibited. Further, use of geographical indications for advertising is not allowed if such use is likely to mislead the public as to the true origin of the products.

3.10 Are there any special rules governing product packaging?

The Legal Metrology Act 2009 together with the Legal Metrology (Packaged Commodities) Rules 2011 regulates the packaging and labeling of commodities. It mandates that packaged goods must display essential declarations such as:

- name and address of the manufacturer/packer/importer;
- common or generic names of the product;
- net quantity, month and year of manufacturing/packing/import;
- maximum retail price (inclusive of all taxes);
- dimensions (if relevant); and
- contact details for consumer grievances.

Further, The Food Safety and Standards Act 2006, together with the Food Safety and Standards Rules 2011, governs the packaging and labeling of food products. Additionally, the Food Safety and Standards (Labeling and Display) Regulations 2020 lists rules governing labeling of prepackaged foods and display of essential information on premises where food is manufactured, processed, stored and served.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Applicable from 1 September 2023, ASCI’s Guidelines for Online Deceptive Design Patterns in Advertising address the following:

- (a) **Drip Pricing:** Ie, where elements of the prices are not revealed upfront, and the total price is only revealed at the very end of the buying process or post-confirmation of purchase. Quoted prices in advertisements and e-commerce sites must include non-optional taxes, duties, fees and charges that apply to all or most buyers so as to prevent drip pricing. Incomplete price representations upfront would be considered misleading.
- (b) **Bait and Switch:** Ie, when an ad or an element in the ad directly or indirectly implies one outcome based on the consumer’s action, but instead serves an alternative outcome, the same would be considered misleading.
- (c) **False Urgency:** Creating a false sense of urgency is considered misleading. For instance, to implying a limited availability of goods or services when that’s not true is a type of dark pattern and is not permitted.
- (d) **Disguised Ads:** Disguising the commercial nature of content and presenting an advertisement as editorial content would be considered misleading.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

India does not yet have any rules of guidance on use of artificial intelligence or AI-related claims. However, in 2023, ASCI published a paper titled ‘Generative AI and Advertising’ which advises that ‘Advertisers and marketing agencies must ensure that AI-generated advertisements comply with applicable laws and regulations. Regardless of whether the content is created by AI tools, the advertiser, brand, publisher, or endorser may be held liable for any legal violations in the advertisement.’

4 PRICE ADVERTISING

4.1 What are India’s rules regarding price advertising?

The Consumer Protection Act 2019 contains specific provisions with regard to price advertising. Something will be an unfair trade practice if it materially misleads the public concerning the price at which a product or like products or goods or services have been, or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made’. Further, please also see the answer to question 4.3 below.

4.2 What are India's rules regarding advertising 'free' products?

- (a) The CCPA Guidelines, state that advertising must:
- not describe any goods, products, or service to be 'free', 'without charge' or use such other terms if the consumer has to pay anything other than the unavoidable cost of responding to such advertisement and collecting or paying for the delivery of such item;
 - make clear the extent of commitment that a consumer must make to take advantage of a free offer;
 - not describe any goods, products, or service to be free, if:
 - the consumer has to pay for packing, packaging, handling, or administration of such free goods, products, or services;
 - the cost of response, including the price of goods, products, or services which the consumer has to purchase to take advantage of such offer, has been increased, except where such increase results from factors unrelated to the cost of promotion; or
 - the quality or quantity of the goods, products, or services that a consumer shall purchase to take advantage of the offer has been reduced
 - not describe an element of a package as free if such element is included in the package price
 - not use the term 'free trial' to describe a 'satisfaction or your money back' offer or an offer for which a non-refundable purchase is required.
- (b) The ASCI Code provides that 'Advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge. No advertisement shall be permitted to contain any claim so exaggerated as to lead to grave or widespread disappointment in the minds of consumers'. For example:
- Products must not be described as 'free' where there is any direct cost to the consumer other than the actual cost of any delivery, freight, or postage. Where such costs are payable by the consumer, a clear statement that this is the case shall be made in the advertisement.
 - Where a claim is made that if one product is purchased another product will be provided 'free', the advertiser is required to show, as and when called upon by the Advertising Standards Council of India, that the price paid by the consumer for the product which is offered for purchase with the advertised incentive is no more than the prevalent price of the product without the advertised incentive.
- (c) Furthermore, the Consumer Protection Act 2019 states that 'the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole' constitutes unfair trade practice.

4.3 What are India's rules regarding sales and special offers?

- (a) Under the CCPA Guidelines, 'bait advertisement' is an advertisement in which goods, products or services is offered for sale at a low price to attract consumers. The Guidelines state that:

- Such advertisements shall not seek to entice consumers to purchase without any reasonable prospect of selling the advertised goods, products, or services at the price offered;
- The advertiser must ensure that there is an adequate supply of the advertised goods, products, or services to meet the foreseeable demand generated by such advertisement;
- Such advertisements shall state the reasonable grounds that the advertiser has for believing that he might not be able to supply the advertised goods, products, or services within a reasonable period and in reasonable quantities, for example,
 - if the estimated demand exceeds the supply, such advertisement shall make clear that the stock of the goods or services is limited;
 - if the purpose of the advertisement is to assess potential demand, it shall be clearly stated in such advertisement;
 - the advertisement shall not mislead consumers by omitting restrictions, including geographic restrictions and age-limit on the availability of the goods, products or services
- Such advertisements shall not mislead consumers about the market conditions with respect to the advertised goods, products, or services or the lack of their availability in order to induce consumers to purchase in conditions less favorable than normal market conditions.

(b) Further, The Consumer Protection Act 2019 states that something will be an unfair trade practice if it ‘permits the publication of any advertisement, whether in any newspaper or otherwise, for the sale or supply, at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.’ For these purposes, ‘bargain price’ means:

- a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
- a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price, having regard to the prices at which the product advertised or like products are ordinarily sold.

4.4 What are India’s rules regarding rebates?

There are no particular rules regarding rebates in India. Further, there is no restriction on advertising rebates on a product. However, the ASCI Code and the Consumer Protection Act 2019 are applicable, in the sense that advertising a rebate offer in the advertisement should not materially mislead as to the price of product or it should not be a false offer of bargain price; ie, it should not be bait advertising.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

In retail advertising practices, it should be kept in mind that the cost of a product or offer price to sell as quoted in the advertisement should not be misleading so as to attract an allegation of unfair trade practice.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The ASCI Code restricts advertising for the promotion of products which are hazardous, harmful or unacceptable to society at large.

Also certain provisions of various other Indian statutes deal with rules which prohibit advertising certain products or services. The following products and services are banned from being advertised:

- (a) **Tobacco:** The Tobacco Prohibition Act 2003 prohibits all direct and indirect advertising of tobacco products in all media.
- (b) **Human Organs:** The Transplantation of Human Organs Act 2011 prohibits any advertising inviting persons to supply, or offering to supply, any human organ for payment.
- (c) **Magical Remedies:** The Drugs and Magical Remedies (Objectionable Advertisements) Act 1954 prohibits the advertisement of magical remedies of diseases and disorders.
- (d) **Services for Pre-Natal Determination of Sex:** The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 prohibits advertisements relating to pre-natal determination of sex.
- (e) **Prize Chits and Money Circulation Schemes:** The Prize Chits and Money Circulation Schemes (Banning) Act 1978 prohibits advertisements relating to prize chit and money circulation schemes.
- (f) **Physicians:** Under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002, physicians are not allowed to advertise their services in any form or manner of advertising through any mode, as soliciting of patients directly or indirectly, by a physician, by a group of physicians, or by institutions or organizations is unethical.
- (g) **Legal Services:** The Bar Council of India Rules strictly enforce the advertising ban and publicity rules governing law firms' websites.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The practice of advertising through SMS spam and unsolicited telemarketing has been prohibited by the TRAI through notification of the Telecom Commercial Communication Customer Preference Regulations 2018, under which registered telemarketers may use only approved headers and message templates on distributed ledger technologies ('DLT') platform. As from February 2023, access providers have been directed to:

- bar all telemarketers who are not registered on DLT platform;
- ensure that promotional messages are not transmitted by unregistered telemarketers; and
- take action against all erring telemarketers as per relevant legal laws.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The ASCI Code states that an advertisement should 'contain nothing indecent, vulgar, especially in the depiction of women, or nothing repulsive which is likely, in the light of generally prevailing standards of decency and propriety, to cause grave or widespread offence'.

Other laws governing the issue include:

- (a) The Indian Penal Code: This defines the exhibition or sale or distribution of obscene material to any other persons, especially to minors, as offences and prescribes punishments for breach.
- (b) The Information Technology Act: This provides that there should be no obscene publications on the Internet.
- (c) The Indecent Representation of Women (Prohibition) Act 1986: This Act punishes indecent representation of women, which means ‘depiction in any manner of the figure of a woman, her form or body or any part thereof, in such a way as to have the effect of being indecent, or derogatory to or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals’.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Under the CCPA Guidelines, ‘Where there exists a connection between the endorser and the trader, manufacturer or advertiser of the endorsed product that might materially affect the value or credibility of the endorsement and the connection is not reasonably expected by the audience, such connection shall be fully disclosed in making the endorsement.’

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The advertising content must not be disguised as editorial or entertainment content. There has to be clear disclosure of advertising nature of content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

The advertising content must not be disguised as any other type of content. In case material connection exists, the content must be identified as advertising content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Advertising on social media is also covered under the purview of Consumer Protection Act 2019 and the CCPA Guidelines, the ASCI Code, the Indian Penal Code, the Information Technology Act 2008 and other applicable laws.

All advertising published by social media influencers or their representatives must carry a disclosure label that clearly identifies it as an advertisement when a material connection exists between the advertiser and the influencer; note that such material connection need not necessarily be limited to monetary compensation.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

In general, advertisers incorporating user generated content into their advertising on social media should ensure that the content being posted is responsible, and not misleading, harmful or offensive. They should further ensure that the content is accurate, and have evidence to prove this when required to do so.

In case of social media influencers, the influencer and advertiser share responsibility for disclosure of material connection and also for the content of advertisement. Where the advertiser has a material connection with the influencer, the advertiser will have responsibility to ensure that the posted influencer advertisement is in line with the ASCI Code and its guidelines.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no key court or self-regulatory decisions reported as of now. The only important consideration is, if any material connection exists, the same should be disclosed.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

A person has proprietary rights over their name, picture, likeness, voice, and identity and other personal attributes, and no one is entitled to use the name and likeness of a person without the consent of that person. Further, celebrities have the right to publicity in, and the right to control the use of their name, likeness, voice, and identity and other personal attributes. In this connection, the ASCI Code provides that 'Advertisements shall not, without permission from the person, firm or institution under reference, contain any reference to such person, firm or institution which confers an unjustified advantage on the product advertised or tends to bring the person, firm or institution into ridicule or disrepute. If and when required to do so by the Advertising Standards Council of India, the advertiser and the advertising agency shall produce explicit permission from the person, firm or institution to which reference is made in the advertisement'.

Further, under common law, a person has proprietary rights over their personal attributes and can take action to prevent misappropriation of their personal attributes by any other person.

Advertisers should seek permission from any individual that appears in an advertisement to use their name, picture, likeness, voice, and identity and to grant the rights to use these.

Recently in September 2023, Delhi High Court granted an *ex parte* injunction against 16 entities from using the Bollywood superstar, Anil Kapoor's name, likeness, voice image by using AI, face morphing or GIFs for monetary gain or commercial purposes. In November 2022, the Delhi High Court granted a similar injunction in favor of another Bollywood superstar, Amitabh Bachchan, restraining entities from using variations of his name and his copyright dialogues.

9.2 Are there situations when permission is not required?

The relevant laws, such as the Trademarks Act 1999, the Copyright Act 1957, and the Information Technology Act 2000, do not provide any exception to where personal attributes of a person can be used without having requisite permission from that person. Whilst the Copyright Act 1957 provides a fair dealing clause for various situations where copyright-protected subject matter can be used by a third person without infringing copyright in that subject matter, this does not provide for use of copyrighted subject matter in an advertisement.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

No advertisement should be in violation of the Emblems and Names (Prevention of Improper Use) Act 1950, which prohibits the improper use of official emblems, names or pictorial representation of certain famous persons for commercial use. Accordingly, the names or images of Mahatma Gandhi, Jawaharlal Nehru, Indira Gandhi, Shivaji Maharaj or the Prime Minister of India, and the words 'Gandhi,' 'Nehru' or 'Shivaji' may not be used in advertisements.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Using other companies' recognizable products in advertising is permissible under Indian law to a certain extent. However, no direct reference to a company's name is permissible without express permission of the company concerned. False or misleading advertisements, disparaging the goods, services or trade of a company, are not allowable in India. Even statements which disparage indirectly in a subtle way are not permitted. The courts have been taking serious note of such misleading advertisements. There have been a number of cases where cease and desist orders have been passed by the courts in the case of such practices. For example, the recent controversy and the subsequent filing of a suit by the manufacturers of squash drink 'Rooh Afza' against certain objectionable dialogues regarding their product in a Bollywood movie.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of India which affect advertising (eg, Swedish gender equality law)?

- Unlike other countries, in India caste is a very sensitive subject. Therefore, any derogatory remark in any form of public communication with regard to a particular caste, creed or sect is likely to create problems for the sponsor of the advertisement, advertising agency and media, etc.
- Under the Cable Television Network Rules 1994, no advertisement is permitted to be shown though cable services which exploits social evils like dowry or child marriage.
- The Indecent Representation of Women (Prohibition) Act 1986 prohibits indecent representations of women.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Under the Cable Television Networks Rules 1994, the Advertising Codes of Doordarshan & All India Radio and the Norms for Journalist Conduct issued by the Press Council of India, advertisements based on religion or to hurt religious sentiments are not allowed. Further, such advertisement may be punishable under the Indian Penal Code 1860. Furthermore, the ASCI Code states ‘No advertisement shall be permitted which derides any individual or groups on the basis of race, caste, color, religion, gender, body shape, age, sexual orientation, gender identity, physical or mental conditions, or nationality.’

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in India?

For advertisements likely to feature celebrities, there is a need to evaluate the proposed advertisement in view of Indian law and regulations before signing the celebrity to endorse a product. The reason for such prior evaluation is that celebrity advertisements cost a substantial amount to the company and, in such a situation, if for some reason the advertisement featuring the celebrity runs into problems in view of Indian law and regulation, huge amounts of resources of the company go down the drain.

Under Consumer Protection Act 2019, endorsers will not be liable to penalty if they have exercised due diligence to verify the veracity of the claims made in the advertisements endorsed by them.

As per ASCI’s guidelines, celebrities should do due diligence to ensure that all descriptions, claims and comparisons made in the advertisements they appear in, or endorse, are capable of being objectively ascertained and capable of substantiation and should not mislead or appear deceptive. Also, the guidelines specify that celebrities should not participate in any advertisement of a product or treatment or remedy that is prohibited for advertising or which requires health warnings.

Also, as per the guidelines for celebrities, influencers, virtual influencers on social media platforms issued by the Government, in addition to the mandate that endorsers must carry out due diligence, it is also recommended that products and services must have been actually used or experienced by the endorsers.

 IRELAND 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Ireland?

Advertising is regulated in Ireland by a mixture of legislation, case law and self-regulatory codes. Much of the legislation is influenced by the requirement to implement European Union directives. There are a variety of consumer protection laws (such as the Consumer Protection Act 2007 and the distance selling regulations), as well as industry specific legislation and the Advertising Standards Authority of Ireland ('ASAI') Code of Standards for Advertising and Marketing Communications in Ireland ('ASAI Code') which will be discussed in further detail below. Certain industries also have their own regulatory codes relating to advertising in that specific industry.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

There is no fixed definition of 'advertising' in Irish law. The Consumer Protection Act 2007 interprets an advertisement as 'any form of advertising or marketing'. The ASAI Code defines advertising as including, but not limited to 'a form of marketing communication carried by the media, usually in return for payment or other valuable consideration'. Further detail is then provided in the Code on what is considered a marketing communication.

1.3 What is the basic regulatory framework for advertising regulation?

The two main regulatory bodies are the ASAI and the Broadcasting Authority of Ireland ('BAI') which publishes its own Code of Practice on broadcast advertising on Irish terrestrial TV and radio stations. The ASAI Code is voluntary and has limited statutory basis, but the vast majority of advertisers and media in Ireland are members of the ASAI and must, therefore, abide by its Code. The Consumer Protection Act 2007 established the Consumer Protection Agency, which has since been replaced under the Competition and Consumer Protection Act 2014 by the Competition and Consumer Protection Commission ('CCPC'), but most complaints regarding advertising go through the ASAI.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Types of advertising practices that are specifically regulated include:

- (a) Prohibited commercial practices: The Consumer Protection Act 2007 contains a list of prohibited commercial practices (based on the EU Unfair Commercial Practices Directive).
- (b) Sales promotions: Sales promotions and other advertising practices involving prize competitions often fall within the definition of a 'lottery' and are therefore regulated by the Gaming and Lotteries Acts as amended by the Gaming and Lotteries (Amendment) Act 2019.
- (c) Phone lines: Advertising practices involving the use of premium rate phone lines or SMS numbers are regulated by the Communications Regulator ('ComReg') which has its own Code of Practice on the use of such numbers.
- (d) Social Media: The ASAI Code was updated in 2016 and includes social media within its own remit.
- (e) Broadcast Advertising: The BAI Code contains prohibitions on certain types of advertising in broadcasts (such as subliminal advertising or undisclosed product placement).

- (f) Text Messaging or other direct marketing: Data protection laws can apply, and the Irish Direct Marketing Association also has a code of practice on direct marketing.
- (g) Advertising to Children: The BAI has a code of practice on advertising to children.

The above list is non-exhaustive.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are industry-specific regulations (aside from the ASAI Code, which also includes industry-specific rules) which are briefly summarized as follows:

- (a) Alcohol: governed by the Public Health (Alcohol) Act 2018 and by various Codes of Practice agreed between the alcoholic drinks industry bodies, various health interest bodies and the Irish Government. Compliance is monitored by CopyClear (a body established in 2003 to monitor alcoholic drinks advertisements). The Public Health (Alcohol) Act 2018 covers advertising of alcohol and alcohol-related products, as well as sponsorship by alcohol brands;
- (b) Financial services: regulated by the Central Bank of Ireland's Consumer Protection Code 2012;
- (c) Medicinal products: regulated by the Medicinal Products (Control of Advertising) Regulations 2007 and also by the Irish Pharmaceutical Healthcare Association codes of practice;
- (d) Tobacco: there is a blanket ban on tobacco advertising;
- (e) Gambling: governed by the Gaming and Lotteries Acts as amended by the Gaming and Lotteries (Amendment) Act 2019; and
- (f) Food: there are certain regulations in place regarding disclosures on advertising of different types of food products, particularly foods which are high in fat, sugar and salt.

Again, the above list is non-exhaustive.

1.6 Are any government pre-approvals required?

There are no government pre-approvals required for individual advertisements, but there are requirements that certain specific types of advertising must contain pre-approved warnings or disclaimers in order to be permissible. These include advertising for:

- (a) financial services;
- (b) food; and
- (c) alcoholic drinks.

Advertisements for alcoholic drinks must, for example, contain a link to a specified alcohol awareness website. Although it is not a specific Government body, CopyClear pre-approves all alcoholic drinks advertisements regardless of the media. Media outlets will not accept an alcoholic drinks advertisement without the CopyClear reference number.

In financial services, advertisements for mortgages must contain certain specified information on interest rates, as well as warnings that the consumer's property may be at risk if they do not make the required repayments.

1.7 Does the media pre-clear advertising?

- (a) The national broadcaster RTE pre-clears all advertisements broadcast on its TV and radio stations through its internal copy clearance committee. The other main Irish TV station, TV3, also pre-clears advertisements through its own internal copy clearance system.
- (b) All alcoholic drinks advertisements must be pre-cleared with CopyClear before media outlets will accept the advertisements.
- (c) The ASAI offers a pre-clearance service for interested advertisers, but this is a voluntary service and there is no obligation on advertisers to use it.

Aside from the above, media outlets do not generally offer any form of pre-clearance service for advertisements.

1.8 How does the government enforce advertising laws? What are the potential remedies?

- (a) The main agency that, in practice, deals with complaints regarding advertising is the ASAI, which is not actually a government body. Most consumers will make their complaint to the ASAI (or the BAI, for broadcast advertisements) and only look to a government agency in more extreme situations.
- (b) The CCPC has the power under the Consumer Protection Act 2007 to investigate and deal with complaints regarding issues such as misleading commercial practices or aggressive commercial practices (the definitions for which include advertising). It can initiate court proceedings against an offending advertiser or trader in relation to breaches of consumer protection legislation. Interestingly, the Consumer Protection Act 2007 provides an indemnity for the publisher of an advertisement if they were unaware it was in breach of the Act. The Act also permits a judge to have regard to any relevant provisions of the self-regulatory codes (such as the ASAI Code) when considering if a commercial practice was, eg, misleading; so a limited statutory basis is also provided for the self-regulatory codes.

The Act also permits the CCPC to bring either criminal or civil proceedings and grant remedies including:

- prohibition orders restricting future commercial practices of that nature;
- fines; or
- imprisonment in extreme situations.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor can bring a complaint to the ASAI under its intra-industry complaint system. Usually such complaints revolve around issues such as substantiation. The complaining competitor will be asked to substantiate its own complaint before it is investigated, which is a change from the general practice where a consumer may complain and the burden of proof falls on the advertiser.

A competitor is also free to use the Irish courts should it feel its legal rights have been breached by an advertisement. This is particularly common if there are intellectual property rights being disputed or the advertisement complained of is utilizing comparative advertising with the complaining competitor's product. The competitor can raise a complaint either through common law actions, such as passing off, or based on the European Communities (Misleading and Comparative Marketing Communications) Regulations 2007.

Some competitors will favor the courts, as this permits injunctive proceedings which can be important from a time perspective if an offending advertisement is running at the time. The ASAI intra-industry system can take some weeks to process complaints.

The only remedy available through the ASAI is either amendment or withdrawal of the offending advertisement, and the ASAI may then set requirements on future advertisements by that offending advertiser.

The courts offer various remedies depending on the legislation on which the claim is based. An award of damages and payment of legal costs would be the most common remedy. The risk for a complaining advertiser is that the costs of injunctive proceedings are significant and if its complaint is ultimately unsuccessful it may be ordered to pay the other party's costs.

1.10 When do consumers have a right of action? What are the potential remedies?

The Consumer Protection Act 2007 allows consumers to challenge advertising and advertising practices in the Irish courts or to make a complaint to the CCPC. A consumer has a right of action for damages (including exemplary damages) against a trader accused of prohibited, aggressive or misleading commercial practices. Those proceedings can be brought in the District Court, Circuit Court or High Court, so there is no limit to the amount of damages that can be awarded.

It is, however, more common for a consumer to bring their complaint to the ASAI. Although it offers no provision for damages, it does offer a free, zero risk, complaints service to consumers who can bring their complaint without the accompanying risk and cost of court proceedings.

Similarly, complaints are frequently brought to the BAI regarding broadcast advertising for the same reason—it offers a free and zero risk service.

In terms of remedies under the self-regulatory system, there are no direct compensatory remedies offered to the complaining consumer. Instructions to amend or withdraw the advertisement are the usual sanctions, and the ASAI can also instruct an advertiser to engage in the future in compulsory copy advice for its advertisements. The ASAI Board can also fine members who refuse to accept its decisions.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Ireland have a primary advertising self-regulation system?

Yes, the ASAI Code. The ASAI represents the primary advertising self-regulatory system. It is a body set up and financed by the advertising industry. The ASAI is also a member of the European Advertising Standards Alliance, and cross-border complaints can be processed through them.

The majority of advertisers, media outlets and agencies in Ireland are members of the ASAI, and one of the conditions of membership is an agreement to abide by its Code. The Code applies to commercial marketing communications and to sales promotions that promote the sales of goods or services. The Code is set up in various sections which deal with general principles and then more specifically with industry-specific regulations.

Complaints are first evaluated to ensure they come within the ambit of the Code and then considered by its Complaints Committee.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes, the ASAI Code. It was most recently revised in 2016.

The general principles are that:

- (a) marketing communications should be legal, decent, honest and truthful;
- (b) marketing communications should be prepared with a sense of responsibility to consumers and to society;
- (c) marketing communications should respect the principles of fair competition generally accepted in business;
- (d) a marketing communication should not bring advertising into disrepute; and
- (e) primary responsibility for observing the Code rests with advertisers.

In general terms, the purpose of the Code is to ensure that marketing communications do not mislead or cause general offence. The general principles are supplemented by rules regarding specific industries and types of advertising, as well as various other areas, such as substantiation.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

There is a complaints procedure which deals with complaints from consumers and from competitors:

- (a) Complaints made by consumers can be made either in writing or via the online complaints form published on the ASAI website. The complaint is then considered by the ASAI Secretariat to confirm it falls within the remit of the Code. If it falls within the remit, then the details of the complaint will be sent to the advertiser who will be asked to provide a response within a set time frame.

Once the response is received, the Secretariat will summarize the case and prepare a report (including a recommendation) for the Complaints Committee, who will consider it at their next meeting and issue their decision (and any sanctions). Prior to that meeting, the complainant and responding advertiser will also be given a copy of the Secretariat's report and recommendation and can provide their own further submissions for the Complaints Committee to consider.

- (b) The same process can be followed by a competitor seeking to make an intra-industry complaint. The difference is that a competitor will be asked to substantiate its claim, and when the decision is published the name of the competitor will be published (unlike consumer complaints where the consumer's name is not disclosed).

2.4 Is the self-regulation system effective? Is it widely used and followed?

Generally, the system works well and is effective. Most advertisers are members of the ASAI and are, therefore, bound to comply with any decision regarding the ASAI Code and a complaint based on one of its advertisements.

There are two general difficulties that arise:

- (a) Firstly, if the advertiser is not a member, they have no obligation to comply with the ASAI Code or a decision of the Complaints Committee. This happens infrequently, and such advertisers can publish marketing communications which are often the cause of a significant level of complaints. Media outlets may refuse to run the advertisements concerned, but the internet and social media may lead to widespread publication regardless.

- (b) A second difficulty that arises is the speed at which complaints can be processed. There is a fast-track procedure, which can be used if an advertisement is the subject of a lot of complaints, but generally it can take weeks for a complaint to be processed and a decision made.

2.5 Are the self-regulatory system's decisions reported?

Yes, the ASAI publishes its decisions on its website on a quarterly basis and the decisions are also published via press release. Decisions will disclose details of:

- the advertiser (but not the complainant's private details unless it is a competitor-complaint),
- the complaint made,
- the response from the advertiser, and
- the decision from the Complaints Committee.

An archive of all recent decisions is also available on the ASAI website.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Adherence to the first of the general principles detailed above (ie, that marketing communications should be legal, decent, honest and truthful) is advisable. Most complaints that arise relate to either:

- advertisements that cause offence; or
- advertisements that a consumer may feel are misleading.

The ASAI Complaints Committee will look at how the advertisement complies with general principles, and will also consider the response from the advertiser to the complaint. Advertisers who fail to reply, or engage very little with the process, are likely to find the complaint upheld. Areas of focus (without picking out specific industries) should be to ensure compliance with the general principles and to ensure that a detailed and valid response is made to any complaint through the ASAI.

2.7 Are there any other self-regulatory systems that govern advertising practices in Ireland?

Yes, the BAI has its own self-regulatory codes for broadcast advertisements. Since 2004, there has been a separate code of practice regulating children's broadcast advertisements.

There are also industry-specific regulatory codes in areas such as pharmaceutical products, financial services and direct marketing.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Ireland (eg, consumer protection laws, IP laws, unfair competition laws)?

- (a) The chief piece of legislation, as set out above, is the Consumer Protection Act 2007. This replaced a multitude of historic legislation concerning consumer information, pricing and advertising. It also implements the EU Unfair Commercial Practices Directive into Irish law. The various sections of the Act are discussed in more detail throughout this chapter.
- (b) Advertisers who use broadcast media need to be aware of the Broadcasting Act 2009 (which established the BAI) and which provides a basis for application of the Broadcasting Codes.

- (c) Advertisers seeking to run prize competitions will need to be aware of the Gaming and Lotteries Acts as amended by the Gaming and Lotteries (Amendment) Act 2019 which affect nearly all prize competitions run on an ‘instant win’ format and will often need to adjust the mechanics of the promotion to fit within ‘permitted lotteries’ or to avoid the competition being deemed an illegal lottery.
- (d) The various pieces of intellectual property legislation which affect advertising in Ireland are the Trade Marks Act 1996, the Patents Act 1992 and the Copyright and Related Rights Act 2000.

The list of laws that can apply is too lengthy for full inclusion here—the ASAI, in the Appendix to its Code, lists over 60 different pieces of legislation which were taken into account when the Code was being prepared.

3.2 Is substantiation required for advertising claims?

The ASAI Code states that ‘advertisers should satisfy themselves that they will be able to provide documentary evidence to substantiate all claims, whether direct, or indirect, expressed or implied, that are capable of objective assessment’. Generally, any claim made in advertising may require substantiation. If a complaint is made about a claim made in an advertisement, the ASAI Secretariat will normally seek independent, documentary evidence.

Additionally, the Consumer Protection Act 2007 provides some level of protection for consumers and obligations on producers/advertisers. It includes a list of 25 prohibited commercial practices, and also a more general prohibition on misleading advertising. A claim made in an advertisement which is subsequently disclosed as being incapable of substantiation will be deemed misleading under the Act.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There is no specific law on puffery and no rules that distinguish it from claims that do require substantiation. The ASAI Code (while stating that all claims should be capable of substantiation) does allow for ‘obvious untruths or deliberate hyperbole’ that are permissible, although they cannot alter any material facts.

3.4 What are the rules governing the use of disclosures in advertising?

The rules governing the use of disclosures are industry specific. For example, under the Central Bank of Ireland’s Consumer Protection Code, certain financial advertisements must disclose that ‘the value of investments can go up as well as down’, or that ‘you may lose your home if repayments are not met’ (depending on the type of financial product being sold). There are requirements under the BAI Communications Code regarding broadcast advertisements for certain food types, and separate requirements under the various alcohol advertising codes for disclosures on alcohol advertising regarding responsible drinking.

Generally, it is advisable to refer to the Consumer Protection Act 2007 or the ASAI Code, both of which will generally seek to protect consumers from misleading advertising. If a consumer is likely to be misled by a lack of disclosure, then the advertiser may be in breach of the Act or the Code.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The ASAI Code includes a specific section on the use of testimonials and/or endorsements. An advertiser seeking to refer to a testimonial needs to have that testimonial in signed and dated documentary form. The testimonial should be available on request and, even then, the testimonial can only be used with the permission of the person providing the testimonial. If that person is being paid, then the advertisement should disclose that they have received a gratuity for their part in the advertisement.

The Consumer Protection Act 2007 places a prohibition on claims of endorsement by traders if those claims are not accurate.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific laws on product demonstrations. Provisions in the Consumer Protection Act 2007 relating to misleading advertising can equally be applied to product demonstrations without the need for any specific reference to a product demonstration.

The BAI Commercial Communications Code of Practice contains specific rules on broadcast items, such as interactive advertising or ‘teleshopping’, which would generally be perceived as product performance. Such forms of advertising need to be clearly distinguished from program content so that it is clear they are a form of advertising.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted. Chiefly, it is governed by the European Communities (Misleading and Comparative Marketing Communications) Regulations 2007. Additionally, the Consumer Protection Act 2007 places a prohibition on advertisements that may seek (whether deliberately or by accident) to cause confusion between the advertised product and a competitor’s product. Comparative advertising is permitted, provided it does not mislead and is not likely to confuse consumers. An advertiser can identify its competitor by name, or use its trademark, provided that in doing so it does not seek to discredit the competitor or denigrate its trademark. Advertisements need to be ‘like for like’ in terms of the comparison.

The ASAI Code also specifically permits comparative advertising subject to compliance with the Code.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

A trademark or name of a competitor can be used, provided the advertisement does not denigrate or discredit the rival trademark or competitor’s name. The Trade Marks Act 1996 can be used to enforce the rights of a trademark holder if its trademark is being illegally used as part of an advertisement. Additionally, the common law of ‘passing off’ has been used in the courts in the past in circumstances where a rival brand owner may feel its name, trademark or product is being used in a comparative advertisement designed to cause confusion between products.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

Yes, the Consumer Protection Act 2007 specifically states that a claim about geographical origin which is not correct will be seen as misleading within the terms of the Act. The ASAI Code would also put such claims within their definition of ‘misleading advertising’, although it does not have a specific section for geographical claims.

EU Regulation 1169/2011 on the provision of food information to consumers applies to all foods, and places an obligation on food business operators to indicate the country of origin or the place of provenance of a food whenever absence of this information is likely to mislead consumers as to the true country of origin or place of provenance of that product. EU law also has mandatory origin information provisions for certain products under product-specific rules (eg, beef and beef products, fish, fresh fruit and vegetables, honey and olive oil). The European Union (Origin Labeling of Meat) Regulations 2015 also set out specific requirements regarding geographical origin of meat products.

3.10 Are there any special rules governing product packaging?

Yes, although it depends on the nature of the product in question. The European Union (Provision of Food Information to Consumers) Regulations regulate the information that must be displayed on food packaging. The Regulations apply to operators at all stages in the food chain and to all foods intended for consumption by consumers, regardless of whether they are sold in bulk quantities first and subsequently repackaged. There are also separate standards in place for items marked ‘organic’ or ‘fairtrade’.

Additionally, there are Regulations on labeling textiles and footwear, with specific rules for disclosing product materials and the content of those materials.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no specific rules or guidance on the use of ‘dark practices’. The CCPC has conducted sweeps of local websites this year searching for dark patterns, but so far there has been no change to the ASAI Code or any specific legislation enacted to deal with the issue. The general principles of the ASAI Code highlighted in question 2.2 above would be likely to apply in any case.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no specific rules or guidance on artificial intelligence as it relates to advertising in Ireland as of yet. Interestingly, the ASAI uses AI to monitor certain forms of social media advertising (such as influencers).

4 PRICE ADVERTISING

4.1 What are Ireland’s rules regarding price advertising?

The Consumer Protection Act 2007 states that an advertisement will be deemed misleading if incorrect information is provided to consumers concerning the ‘price of the product, the manner in which that price is calculated or the existence or nature of a specific price advantage’. An advertisement which is misleading in terms of pricing is therefore in breach of the Act and the brand owner will face the risk of penalties. The CCPC has published guidelines on price advertising to assist retailers with this. There is also specific legislation on product pricing, including EC (Requirements to Indicate Product Prices) Regulations 2002 and its amendment regulations. In addition, there are sector-specific price orders which apply to specific industries.

The ASAI can investigate complaints on price advertising on the basis that the advertisement was misleading. Its quarterly case reports constantly contain details of complaints regarding pricing.

4.2 What are Ireland's rules regarding advertising 'free' products?

The Consumer Protection Act 2007 details unwarranted claims for 'free' products in its list of prohibited commercial practices. The use of the word 'free' in an advertisement is prohibited unless the consumer pays nothing other than the cost of responding to the promotion and reasonable delivery charges. ComReg, in its Code of Practice for premium rate numbers, prohibits the use of 'free' products in promotions if the consumer must then pay premium rate tariffs to receive their 'free' product.

Additionally, the ASAI Code contains provisions regulating the use of 'free' products. Again, it specifies that the offer can only be described as 'free' if the consumer pays no more than reasonable delivery costs. If consumers must make numerous purchases to get their 'free product' then this needs to be highlighted.

4.3 What are Ireland's rules regarding sales and special offers?

The Consumer Protection Act 2007 states that providing information on previous prices (which may give an impression of greater reductions to the current offered price) can be misleading and therefore a breach of the Act. The Act states that if a complaint is made, consideration will be given as to whether the product was previously offered in good faith at the higher price and at the same place of business and for a reasonable time.

The general provisions of the ASAI Code will also apply—that the advertisement for the sale or special offer should be legal, honest, decent, truthful and should not mislead.

4.4 What are Ireland's rules regarding rebates?

There are no specific rules regarding rebates, save the general rules on misleading advertising contained in the Consumer Protection Act 2007 and the ASAI Code.

The only exception to this relates to financial services products. Some financial products offer rebates as part of the contract with a consumer. The Central Bank of Ireland Consumer Protection Code states that rebates must be paid within 5 business days of falling due (if the rebate is valued above €10).

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no key restrictions. Any retailer would be advised to consider the guidelines published by the CCPC to avoid any issues arising.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) Under the Public Health (Tobacco) Act 2002 and its amending Act there is a blanket ban on tobacco advertising.
- (b) Alcohol may not be advertised unless it carries the CopyClear reference number to show it has been approved by that agency. There are also restrictions on time and location of alcohol advertising under the Public Health (Alcohol) Act 2018.

- (c) The Medicinal Products (Control of Advertising) Regulations 2007 restrict and prohibit advertising of medicinal products and particularly prescription medicines.
- (d) There are various prohibitions on political or religious advertising under the Broadcasting Act 2009.
- (e) The BAI Communications Code places certain prohibitions on advertisement of foods with high fat, salt, and sugar content, and, under the European Communities (Infant Formulae and Follow on Formulae) Regulations 2007, there is a prohibition on the advertisement of infant formula.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The BAI Communications Code prohibits certain advertising practices in broadcast advertisements. These include surreptitious and subliminal advertising. Product placement is only permitted in limited circumstances and with disclosures in place.

The Consumer Protection Act 2007 refers to and lists prohibited commercial practices, which could be taken to include particular advertising practices.

Electronic communication is commonly used for advertising, but there are prohibitions in place on the use of marketing emails under the e-Privacy Regulations 2011 and the Data Protection Act 2018.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

There are no specific laws for advertising relating to indecency or obscenity. The ASAI Code is generally relied on for complaints regarding advertisements that cause offence. It contains a specific section on decency and propriety and states that a ‘marketing communication should contain nothing that is likely to cause grave or widespread offence’.

The BAI Communications Code contains similar provisions regarding decency and propriety.

In theory, an advertisement that causes widespread offence could fall foul of public decency laws such as the Public Order Act 1994.

Additionally, for an advertisement causing offence on religious grounds, the Defamation Act 2009 somewhat controversially extended its remit to blasphemy, whereby someone publishes or utters blasphemy if ‘he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and ... intends, by the publication or utterance of the matter concerned, to cause such outrage’.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

In certain circumstances, advertisers may be asked to clearly identify the advertising as such or to identify the sponsor. For social media posting or the use of ‘influencers’, the content needs to be recognizable as advertising and needs to carry suitable disclosures. Editorial content is discussed below. The ASAI published specific guidance in October 2023 on the disclosures that must be used by influencers on social media and when they must be used.

Sponsorship is permitted on broadcast advertising under the BAI Communications Code, and is specifically differentiated from advertising as defined in the Code. There are, however, specific restrictions on sponsorship in the Code and obligations placed on the sponsor/advertiser.

There is also a specific code of practice relating to alcohol marketing and sponsorship. This focuses on the sponsorship of events (such as concerts or sporting events) by alcoholic drinks companies and places restrictions on what is permissible and in what circumstances such sponsorship can occur (eg, based on the age profile of the likely attendees). The Public Health (Alcohol) Act 2018 also contains specific restrictions on certain types of sponsorship.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are specific rules regarding the use of editorial content or ‘advertorials’, and it is particularly important that there is disclosure of the fact that it is an advertisement rather than a genuine broadcast or article. The Consumer Protection Act 2007 states that an advertisement will be deemed misleading if it causes or could cause an average consumer to make a transactional decision that they would not otherwise make. Advertising content hidden as entertainment or as an editorial could easily be construed as breaching that legislation. Additionally, the Act contains, amongst its list of prohibited practices, a prohibition on editorial content being used without disclosure that it is a paid promotion.

The ASAI Code also specifically states that advertising and promotions need to be designed in such a way that they can be clearly differentiated from normal, non-advertising editorial content. Any advertising content integrated with entertainment or editorial materials would also need to comply with all other provisions of the ASAI Code.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Product placement is permitted under the BAI Communications Code, but the broadcaster is required to display a ‘PP’ sign signifying product placement before and during the show, and then to notify viewers in the end credits of the details of the companies who have paid for product placement in the programming.

Product placement is, however, only permitted in certain programming and is specifically prohibited in children’s programming and in certain light entertainment or chat shows.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Although there is no specific legislation in place governing the use of social media in advertising, the ASAI Code was extended in 2013 to cover all elements of social media. The general provisions of the ASAI Code of Standards now extend equally to any form of social media advertising. The method used to include social media in the Code was to extend the remit of the Code to ‘marketing communications in non-paid-for space online, under the control of the advertiser or their agent, including but not limited to advertisers’ own websites’.

Additionally, the obligation on alcoholic drinks advertisers to have their advertisements cleared by CopyClear has extended to social media advertising since 2013. CopyClear applies the same definition as the ASAI in considering whether a social media advertisement falls within its remit.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The ASAI issued guidelines on this when it brought social media within the remit of its Code. If the answer to one or both of the following two questions is 'yes', and the content is deemed to be a marketing communication, then the user generated content will fall within the remit of the Code:

- Did the advertiser originally solicit the submission of user generated content from individuals, then adopt and incorporate it within their own marketing communications? or
- Did an individual provide the advertiser, on an unsolicited basis, with material which the advertiser subsequently adopted and incorporated within their own marketing communications?

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

The laws surrounding social media (and particularly advertising on social media) remain largely untested before the Irish courts.

The law of defamation is being used as a method of controlling use of social media and that can impact on advertisers. The Defamation Act 2009 does not specifically deal with user generated sites such as Twitter, Facebook or YouTube. However, a defamed party has one cause of action for multiple publications, and this is important in respect of a defamatory statement which is published on the internet. Where a defamed party is unable to identify the author of a defamatory statement on the internet, the internet service provider or the social media service provider may be held liable rather than the author. Advertisers need to be aware of this, particularly if they allow publication of user generated content on their own websites or on social media pages such as a brand Facebook page.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Data protection laws will apply, depending on how the information is collected from an individual and whether the proper consents are sought and obtained.

Use of an individual is permissible in advertising, but only with the necessary consents in place. Advertisers running conventional advertisements will generally put agreements in place with any individual featured in their advertisement.

The ASAI Code also deals with this issue relating to publicity for prize winners in competitions. It states that the privacy and safety of the individual should be borne in mind, and only their name, county of residence and photograph can be published. For prize competitions, the consent of individuals is generally obtained by their acceptance of the terms and conditions, which will include a clause confirming their agreement to use of their photograph.

9.2 Are there situations when permission is not required?

As a general rule, permission should always be obtained. It may be that an individual featured in an advertisement may already have some form of contract in place with an agency permitting use of their photograph, in which case further consent would not be required.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

This depends on the nature of the material or place in question. For example, the Irish Government has published guidelines on the use of the Irish flag at various events, and while it does not specifically deal with advertising, it does state that the flag should not be shown covered in slogans and should not be portrayed as dirty or tattered or lying on the ground. The ASAI Code can equally be applied to any such advertisement.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Advertisers should exercise caution in the use of another company's branded product in their advertisement, as it is a breach of the Trade Marks Act 1996 to use a third-party trademark without consent (or, in the case of a piece of work, a breach of the Copyright and Related Rights Act 2000). If the branded product is being used to indicate the purpose of a product or service, particularly as accessories or spare parts, then that is generally permissible under the Trade Marks Act 1996. It will, therefore, depend on the content of the advertisement and how the branded product is used (in many cases the third party would be happy to have their product featured without any cost) but, generally, it would be advisable to seek consent to use of the product.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Ireland which affect advertising (eg, Swedish gender equality law)?

There are no special rules, but advertisers should be aware of the general principle that an advertisement should not be likely to cause offence.

The compulsory clearance for alcohol advertising is somewhat particular to Irish culture, in that it is designed to combat what the Irish Government and health bodies in Ireland felt was an unhealthy level of alcohol consumption.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Religion can sometimes be a factor, with campaigns that have run successfully in other countries being the subject of complaints in Ireland. Ireland would traditionally be seen as a conservative, Catholic country, and regulators such as the ASAI will bear that in mind when adjudicating on a decision. Advertisers need to consider whether an advertisement is likely to cause offence on that basis.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Ireland?

Advertisers should start by seeking to adhere to the general principles of the ASAI Code by keeping the advertisement or promotion 'legal, honest, decent and truthful'. Additionally, the Consumer Protection Act 2007 provides widespread protection for consumers, so advertisers should be aware of the need to avoid anything that could be construed as 'misleading'.

 ISRAEL 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Israel?

Advertising is regulated by various laws (in the form of primary legislation), enacted by the Israeli parliament, the Knesset. These laws usually provide government ministers with regulatory powers. For example, the Consumer Protection Law 1981 ('CPL') empowers the Minister of Industry and Commerce to make regulations related to consumer protection. Pursuant to the CPL, the Minister has enacted numerous regulations, such as the Consumer Protection Regulations (Advertisements Targeted at Minors) 1991.

While legislation such as the CPL empowers the relevant ministers to make advertising and marketing regulations, on a practical level it should be noted that government ministers are not primarily concerned with advertising and the enforcement of advertising laws and regulations. In practice, it is the courts which are the primary bodies which enforce and interpret the various advertising laws and regulations.

Commercial television and radio are regulated by a non-governmental body, the Second Authority for Television and Radio ('Second Authority'). This body will be discussed in the sections below.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The term 'advertisement' is defined as 'a message which may promote, directly or indirectly, a product, service, business or any other commercial interest, either in exchange for consideration or without consideration'. An advertisement may include announcements and sponsorship.

The contents of the 'message' are the determining factor, not the method by which the message is transmitted/conveyed.

1.3 What is the basic regulatory framework for advertising regulation?

There is no general 'Advertising Law' in Israel. The CPL and its Regulations principally govern advertising.

Additionally, there are certain types of goods and services (such as alcohol, tobacco and banking services) which are specifically covered by ad hoc laws and regulations.

There are also specific advertising rules housed in the legislation governing commercial television and radio broadcasts.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Unsolicited marketing communications such as spam have become common in Israel.

The Israel Communications Law (Bezeq and Broadcasting) 2008 ('2008 Law') addresses unsolicited marketing communications sent via electronic means, such as email, fax machines, automatic dialing systems and short written messages, such as SMS messages.

The law in this area is technical and complex. In short (and subject to qualifications), Israel has adopted the 'opt in' model whereby a message sender must receive clear informed consent from a recipient before sending a directing marketing communication. Consent must be given in writing or within a recorded conversation. A recipient, who has consented to the receipt of such communications, reserves the right to withdraw their consent at any time.

All marketing communications falling within the ambit of the 2008 Law must clearly show the word 'Advertisement' at the beginning of the message. Additionally, the advertiser's identity must be made clear in the communication and include the advertiser's address and the option to unsubscribe from future communications.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

The laws and regulations relating to the promotion, sale and advertising of tobacco, alcohol, food and beverages and pharmaceuticals are relatively stringent and detailed:

(a) **Tobacco and alcohol:**

- (i) Pursuant to the Limitation of Tobacco Advertisement Act 1983, it is prohibited to market tobacco products with accompanying free prizes, gifts or the right to participate in a sweepstake or competition. Tobacco product packages must include a warning sticker which states: 'Warning—the Ministry of Health determines that smoking causes serious diseases'.
- (ii) The Consumer Protection Regulations (Advertisements and Marketing Methods Targeted at Minors) 1991 prohibit advertisements and marketing methods which encourage minors to consume alcoholic beverages and the use of cigarettes or other tobacco products.
- (iii) The Second Television and Radio Authority Rules (Television Advertising Ethics) 1994 ('Second Authority Ethics Rules') prohibit the advertising of tobacco products on private/commercial television. Though these Rules do not prohibit advertising alcoholic beverages, they prohibit broadcasting advertisements that portray the consumption of alcohol as beneficial to quality of life, health, success, mental or physical capabilities or sexual performance.

(b) **Food:** Pursuant to the Protection of Public Health Regulations (food) (Nutritional Labeling) 2017, food and beverages that contain a high level of fat, salt, and sugar must be labeled.

(c) **Pharmaceuticals:** Naturally, due to the nature of pharmaceuticals, their marketing and promotion is subject to stringent laws and regulations. The laws and regulations relating to the sale and promotion of non-prescription medicines are more lenient when compared to the sale and promotion of prescription medicines:

- (i) The Ministry of Health's Procedure No 24 prohibits the advertisement of prescription medicines other than in exceptional circumstances.
- (ii) When advertising non-prescription medicines, advertisers should not target children.

1.6 Are any government pre-approvals required?

Generally, advertisements do not require government pre-approval. That being said, there are some restricted industries which do require pre-approval:

- (a) Pursuant to the Pharmacists Regulations (Preparations) 1986, it is prohibited to advertise pharmaceutical products in the media or non-scientific journals without authorization from the General Director of the Ministry of Health. Advertisements in this category must be submitted using a template form to the Ministry of Health. The Ministry may approve/reject and/or amend the request within 21 days of its receipt. Approval is valid for one year subject to renewal.
- (b) In relation to advertising on commercial television, the General Manager of the Second Authority may determine advertising categories which require prior approval before being broadcasted. Using these powers, the Second Authority pre-approves advertisements targeted at minors, advertisements with sexual content or sexual innuendo and other sensitive topics.

1.7 Does the media pre-clear advertising?

Though there are exceptions, advertisements on private/commercial television stations (in contrast to public/state television stations), require pre-clearance. State-run television, for the most part, does not broadcast advertisements. Private television channels regularly and extensively broadcast television advertisements. The Second Authority, the body which governs broadcasting on Israel's private television, pre-approves advertisements in certain sectors, such as those relating to health, advertisements targeted at minors and other sensitive areas.

Advertisers and advertising agencies which adhere to a pre-signed Advertisement ethical code—the Second Authority Ethics Rules (as to which see question 2.2 below) are not required to pre-clear advertising with the Second Authority.

1.8 How does the government enforce advertising laws? What are the potential remedies?

As mentioned above, advertising is regulated on the national level. Israel's Parliament enacts laws which provide regulatory powers to the governmental ministries and ministers which enforce the laws.

Additionally, the Consumer Protection Commissioner, empowered by the CPL, enforces the CPL and its regulations. The Commissioner has the right to request that:

- (a) an infringer of the CPL submit a written undertaking to cease any breach of the CPL or amend the breach by publishing a statement;
- (b) a court issue an injunction against a breach of the CPL; and
- (c) a court issue a mandatory injunction, which may include a corrective statement.

The main enforcers of advertising laws in Israel are the courts. The courts will often determine whether the relevant laws are being respected or breached while reviewing legal conflicts. Government bodies will often enforce advertising laws by taking action against infringers within the court system.

1.9 When does a competitor have a right of action? What are the potential remedies?

The laws relating to 'standing' (ie, the right to approach the courts) are very liberal in Israel. If a company or individual considers that it is being wronged by a competitor due to an advertisement, legal remedies via the courts are generally available to these parties.

For example, a competitor may sue an advertiser if it is alleged that an advertisement infringes the competitor's intellectual property rights or misleads the public in relation to the competitor's goods or services. If there is a finding in the competitor's favor, remedies will usually include injunctions and monetary relief.

Additionally, competitors and individuals may petition the High Court of Justice in Administrative law matters. High Court petitions usually involve companies that challenge the Second Authority's regulatory powers in relation to commercial/private television advertisements. For example, if a competitor feels that the Second Authority erroneously cleared an advertisement, it may petition the High Court of Justice and request that it order the Second Authority to act or refrain from acting in a certain manner.

1.10 When do consumers have a right of action? What are the potential remedies?

The right of action and remedies discussed in question 1.9 above are available to both consumers and competitors. Additionally, consumers, under certain circumstances, may form part of a class action.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Israel have a primary advertising self-regulation system?

Advertising, in its entirety, is not governed by a single self-regulatory body. However, as mentioned above, there is a regulatory body connected to advertising on private/commercial television and radio. This body, the Second Authority, regulates commercial broadcasting in radio and television. The Second Authority is involved in monitoring program content and also advertisements broadcast on commercial television.

Commercial television and radio, in contrast to public television, is primarily financed by advertisements. Thus, the number of advertisements broadcast on both commercial television and radio is considerable and the Second Authority's role has a huge impact on viewers.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Due to its regulatory powers, the Second Authority set the Second Authority Ethics Rules (Ethics Rules) in 1994. These Rules are extensive and precisely set out what is prohibited and allowed in television and radio advertising.

The Ethics Rules' main principles state that it is prohibited to broadcast advertisements that harm human dignity, good taste or are offensive to the public. Moreover, advertisements may not be negligent, must be truthful and may not mislead the average viewer.

Additionally, advertisements may not be racist, encourage discrimination, infringe privacy rights, or contain violence, criminal activity or drug use.

In general, with few exceptions, the Ethics Rules prohibit product placement. The issue of product placement is discussed in question 7.1 and 7.2 below.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Second Authority does not have a dispute resolution mechanism similar to the court system. It does, however, monitor broadcast advertisements and examines complaints lodged by the viewers (which may, of course, include competitors). When this reveals an alleged breach of the relevant rules and regulations, the Second Authority commences an investigation in relation to the broadcaster. Thereafter, the Violations Committee holds an internal deliberation, determining if a breach has been committed. If a breach of the relevant rules has been committed, the Second Authority has a number of sanctions and actions it may take, including forfeiture and deprivation of advertising space. The broadcaster can appeal the matter before the Second Authority's Director General and the Second Authority Counsel.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The effectiveness of the Second Authority's self-regulation system is a matter of debate in Israel.

On the one hand, advertisements on commercial television are regularly monitored and dealt with if they breach the relevant laws, regulations and codes.

On the other hand, the system is far from perfect. For example, it is clear that the Second Authority has not managed to effectively enforce the relevant rules relating to product placement on commercial television.

2.5 Are the self-regulatory system's decisions reported?

The Second Authority's decisions relating to advertising are reported on its official website. High profile cases, which draw public attention, are reported in the press and media.

If the matter/dispute reaches the Israeli courts, the judgment must be published, as all judgments (not just advertising-related), must be published in accordance with the law.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

When a company advertises its goods or services in comparison to goods or services offered by its competitors, the advertiser must be particularly mindful of advertising rules and regulations.

Unsurprisingly, such comparative advertising increases the risk of competitor complaints or legal action against an advertiser if the competitor feels it is being wronged by the relevant advertisement.

Advertisers should take care when making statements as to the quality, price and various attributes of their goods/services. Misleading consumers and making false statements draws attention and action from competitors and dissatisfied consumers.

There are some areas which draw 'extra attention' and are challenged on regular basis. Health-related advertisements are regularly challenged, as are 'sexy', revealing advertisements displaying goods such as lingerie and bathing suits.

2.7 Are there any other self-regulatory systems that govern advertising practices in Israel?

Not applicable.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Israel (eg, consumer protection laws, IP laws, unfair competition laws)?

As mentioned above, the CPL and its associated Regulations govern advertising in Israel. The CPL plays a dominant role in consumer protection and advertising law (including claims made within advertisements). The overarching principle of the CPL is that claims made within advertising must be accurate and not misleading.

Intellectual property laws, such as the Trademark Ordinance and the Commercial Tort Law, may be useful in advertisement actions where advertisers infringe their competitors' trademark and/or commit the tort of passing off.

Additionally, under certain circumstances, the unjust enrichment law can be influential in an advertising context. This law is designed to prevent defendants from profiting from their wrongful acts, which can often provide a cause of action where the circumstances do not easily lend themselves to a straightforward intellectual property infringement claim.

3.2 Is substantiation required for advertising claims?

The CPL prohibits the misleading of consumers. Accordingly, advertisers should take note when making claims and statements.

In accordance with the CPL, if an advertisement contains facts relating to goods or services, or statements relating to test results and/or expected results due to the use of a product, the Consumer Protection Commissioner may demand substantiating evidence. If the Commissioner demands such evidence, and the evidence is not provided (or the evidence provided is not sufficient), it will be presumed that the advertisement was misleading.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Mere 'puffery' is common within Israeli advertisements and is usually accepted. However, advertisers must be careful to ensure that statements and claims do not exceed 'puffery' and amount to false and misleading statements. Advertisements containing puffery which border on false statements are likely to be challenged by competitors.

The courts and other relevant bodies will be less forgiving when examining 'puffery' targeted at minors, who naturally find it more difficult to distinguish between puffery and fact.

Although the CPL does not define 'puffery', the Ethics Rules explicitly prohibits advertisements which contain 'exaggerations that exceed vague praises'. Therefore, it can be concluded that mere exaggerations that do not exceed vague praises are acceptable in this context.

3.4 What are the rules governing the use of disclosures in advertising?

According to the CPL, companies must disclose all defects and material traits which substantially decrease the value of the goods or services they advertise.

There are a few areas in advertising which require specific disclosures:

- (a) Pharmaceutical advertisements must include statements as to the active ingredients of the advertised goods.

- (b) The Israeli legislature enacted a law that governs the use of fashion models in the advertising industry. The law, titled 'Weight Limitation in the Modeling Industry Act 2012', is also referred to as the 'Model Act' or the 'Photoshop Act'. In accordance with this Act, if an advertiser alters the appearance of the model by digital means, the advertisement must contain a notice which clarifies that the model's body features have been graphically altered.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

According to the Ethics Rules, the Second Authority's Director General may demand documents signed by a testifier, testifying that statements made in an advertisement are truthful. Under the CPL, the Consumer Protection Commissioner has similar powers.

3.6 What are the rules governing the use of product demonstrations in advertising?

In accordance with its general principles, the CPL dictates that all the major advertising laws and regulations prohibit misleading consumers. Thus, any demonstration must be conducted in an accurate manner.

The Ethics Rules explicitly prohibit the use of technical means (such as photography 'tricks') to an extent which will confuse or mislead the average consumer.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertisements are permitted, provided that they adhere to the relevant laws and regulations. As mentioned above, pursuant to the CPL, if an advertisement contains facts relating to goods or services, or statements relating to test results and/or expected results due to use of a product, the Consumer Protection Commissioner may demand substantiating evidence. Obviously, this is particularly relevant to comparative advertising.

The Ethics Rules allow comparative advertising, provided that the compared products are similar and the bases of comparison are identical. The points of comparison must refer to facts which can be substantiated, and cannot be presented in a manner which creates an artificial advantage. It is prohibited to claim that a product is generally superior based on limited comparison.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Advertisers often use competitors' trademarks within advertisements. This is legitimate, provided that use of a trademark is required for identifying the goods and is executed in a reasonable and fair manner. Additionally, use of another's trademark must not mislead as to the identity of the trademark owner.

According to the Israel Supreme Court ruling in *Ariel McDonald v McDonald's Ltd*, an advertiser may use the trademark of a competitor in a comparative advertisement. However, an advertiser may not use a competitor's trademark merely to diminish its competitor's reputation without comparison.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The CPL generally prohibits misleading consumers. Obviously, this includes misleading consumers as to geographical origin. Moreover, the CPL specifically prohibits misleading consumers in relation to the 'place of production'. Thus, if an advertisement or a product misleadingly claims that a product is manufactured in a certain country, this would constitute a clear breach of the CPL.

3.10 Are there any special rules governing product packaging?

Generally, per the Consumer Protection Ordinance (the Marking of Goods) 1983, all packaging must, *inter alia*, include:

- (a) the name of the product;
- (b) the trademark;
- (c) the country of manufacture; and
- (d) the quantity/weight measurements.

Additionally, there are countless rules and regulations relating to the technicalities of packaging various types of products. Different product types, such as food products, fashion, pharmaceuticals, have specific applicable laws. It should be mentioned that alcoholic beverages and tobacco products must contain health warnings.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Though the phrase ‘dark practices’ is not currently used in Israeli legislation, it is clear that the CPL, which generally outlaws misleading consumers, will be a useful tool in preventing dark practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

As of yet, there are no special rules or guidance on artificial intelligence.

4 PRICE ADVERTISING

4.1 What are Israel’s rules regarding price advertising?

The CPL generally prohibits misleading consumers. Without prejudice to the general concept of ‘misleading’ practices, it lists fundamental issues that form the core of fair trade. This Section, which relates both to marketing and advertising, specifically prohibits misleading consumers as to the price of the goods or services.

The CPL also explicitly states that advertisers must not advertise the price of the goods or services, unless the advertised price is the overall price in local Israeli currency.

4.2 What are Israel’s rules regarding advertising ‘free’ products?

Free goods and premiums are generally permissible, provided that they adhere to the CPL’s disclosure obligations and do not mislead or confuse consumers.

The Ethics Rules prohibit offering ‘free’ gifts, unless they are completely free, excluding the cost of postage. Goods or services offered in exchange for the purchase of additional goods and services must be clearly described as such and cannot be described as ‘free gifts’.

4.3 What are Israel’s rules regarding sales and special offers?

As stated above, an advertiser may not mislead consumers as to ‘sales’ and ‘special offers’. Pursuant to the CPL, when a vendor offers goods in a ‘special offer’, it must clearly:

- (a) state what goods are included in the special offer;
- (b) disclose the ‘ordinary price’ and the terms of the ‘special offer’;
- (c) if publicly advertising the fact that it is holding a special offer, the amount of goods in stock within the offer; and

- (d) if there are specific circumstances or characteristics that apply to goods that are offered within a sale or special offer (such as low quality, short expiration period, etc), disclose any such special circumstances or characteristics.

4.4 What are Israel's rules regarding rebates?

There are no specific rebate rules and regulations. However, the general principle of the CPL prohibits the misleading of consumers. Accordingly, if an advertiser offers a rebate, but, in reality, refrains from doing so, the courts would have no difficulty in upholding the law against the advertiser.

The Ethics Rules, which govern advertising on commercial television, specifically state that an advertisement that offers a free gift, conditional on the purchase of an additional product, must clearly state the condition. Obviously, this could apply to 'rebates'.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Not applicable.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) **Pharmaceuticals:** Due to the nature of pharmaceuticals, their marketing and promotion is subject to stringent primary laws and regulations. The laws and regulations relating to the sale and promotion of non-prescription medicines are lenient in comparison to the sale and promotion of prescription medicines. Though companies may advertise non-prescription medicines, they cannot be targeted at children, distributed within sweepstakes, distributed as free samples, or distributed within a promotion of non-medicinal products. Pursuant to the Ministry of Health's Procedure No 24, it is prohibited to advertise prescription medicines other than in certain exceptional circumstances.
- (b) **Tobacco and alcohol:** The laws and regulations relating to the promotion, sale and advertising of tobacco and alcohol are stringent and detailed. Tobacco may not be advertised on radio or television, in the cinema or other public screenings, or in publications targeted at minors. Alcohol may not be advertised on billboards or publications targeted at minors.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Advertisers and promoters will often use draws and games to promote their goods and services. This should be done with caution in Israel. The Israel Penal Law 1977 carries criminal sanctions for unauthorized games and draws.

An unauthorized game is defined as a 'game in which one may win money, its equivalent or a benefit due to the results of a game, and the results are more dependent on luck than on understanding or capability'. Therefore, a promotional game which is more dependent on skill than on luck will be legal. There are no clearly defined skill thresholds.

A draw is defined as ‘any arrangement where, by the draw of fate or other means, one can win money, its equivalent or a benefit, and the winning is more dependent on fate than on understanding or capability’.

Advertisers and promoters should take care prior to launching games and draws, making sure they do not breach the relevant laws.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The law in Israel attempts to safeguard against advertisements which are not decent and are offensive to the viewing public. The courts and regulatory bodies have the task of maintaining a balance between freedom of speech and the protection of the viewing/consuming public.

According to the Israeli constitution (and as prescribed in the Basic Law: Human Dignity and Liberty) it is prohibited to violate the ‘life, body or dignity of any person’. Thus, in extreme cases, viewers who consider advertisements offensive in the extreme may claim that their dignity has been violated.

The Ethics Rules explicitly prohibit advertisements which violate ‘human dignity, good taste or public feeling’.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The Second Television and Radio Authority Rules (Broadcasting Sponsorship and Service Broadcasts) 1990 set clear and very detailed rules relating to sponsorship. The sponsor and identifying data relating to the sponsor must be screened and announced on television and announced on radio. ‘Identifying data’ includes the name of the sponsor and may include the screening of the sponsor’s trademark/logo. The sponsorship announcement may also mention the sponsor’s products, but may not mention the product’s qualities.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

According to the CPL, an advertisement which causes the average consumer not to recognize the fact that they are viewing (or hearing) an advertisement, will be considered a ‘misleading’ advertisement.

Generally, save in exceptional circumstances, the Ethics Rules, which relate to commercial television, prohibit ‘incidental’, ‘masked’ and ‘unconscious’ advertisement. Advertisements may only be broadcast within an ‘advertisement broadcast’ as defined by the law. There are exceptions when broadcasting sports events or fund-raising charitable events.

Similarly, the Second Television and Radio Authority Rules (Advertisement Placement and Commercial Credit within Radio Broadcasting) 1999, which relate to commercial radio, prohibit the blurring of editorial content with advertising content.

According to the Second Television and Radio Authority Rules (Advertising Content in Television) 2021, if an advertised product appears within a television program, a 'product placement' logo must appear on screen for the duration of the appearance of the product. Additionally, a notification of the product placement must appear within the credits at the commencement and ending of the program.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

As stated above, generally, integrating advertisements with other content is prohibited. On television, advertisement intervals are clear and easily separated from the editorial content.

On radio, the boundary between editorial and advertising content is not as clear. Therefore, the relevant law makes it obligatory to announce radio broadcast advertisements to distinguish such advertising from editorial content. The radio announcer must identify the commencement and end of broadcast advertisements.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There is no single 'Social Media Law'. The main legal controls on advertising and marketing via social media in Israel are those prescribed in the CPL and its associated regulations. These provide prohibitions, instructions and guidelines on the manner in which companies can market and advertise goods.

The CPL governs all methods of advertising and marketing, including advertising via social media. Other laws which are often relevant to advertising and marketing via social media include the Trademark Ordinance, the Commercial Torts Law, the Privacy Protection Law, and the Prohibition of Defamation Law.

Products are often advertised in social media. While the law does not prescribe the manner in which to distinguish non-advertisement content from 'normal' content, it is clear that the reader must be able to distinguish between advertising content and non-advertising content. This is usually accomplished by adding the words 'advertisement' or 'sponsored' to the content.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

As a general principle, an advertiser is responsible for content on its Facebook page, its website or any other site it controls.

If infringing user-generated content is posted on an advertiser's site, the court will primarily examine the degree of control the advertiser has over the relevant digital channel. Additionally, the court will examine the manner in which the advertiser acted once it became aware of the alleged infringement.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Not applicable.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Privacy Protection Law 1981 prohibits the infringement of an individual's privacy. Specifically, it prohibits:

- (a) the publication of embarrassing photos of an individual;
- (b) using an individual's name, photo or voice for profit; or
- (c) publishing private information on an individual's private personal life.

In some cases, such publications may also amount to defamation as prescribed in the Law Against Defamation 1965.

There is no single 'Rights of Publicity Law' in Israel (ie, concerning the right to profit from one's image/name/fame). However, in recognizing principles drawn from US statutes and case law, the Israeli courts have recognized that a person cannot unlawfully profit from unauthorized use of another person's image.

9.2 Are there situations when permission is not required?

According to *obiter dicta* made by the Israeli District Court (Jerusalem), in Civil Case No 6157/04, *David Dvash v Chomski & Vershevski*, it appears that permission to use an individual's image in advertising is not required after the death of that individual. Therefore, it is arguable that the 'right of publicity' ceases upon death and there is no need to seek permission from the deceased's estate for such use of the deceased's image.

Additionally, the civil law defenses, such estoppel, undue delay, and the Statute of Limitations may negate the need for permission in this respect.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Pursuant to the Ethics Rules, as a general rule, it is prohibited to broadcast advertisements in which the actors are dressed in formal uniforms used by governmental bodies (such as the police and armed forces).

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

An actor may wear another company's branded goods when appearing in advertisements. However, the other company's goods may not be the primary subject-matter or focus of the advertisement. As such, rules prohibiting the misleading of consumers and 'incidental' advertisements (discussed in question 7.1 above) apply.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Israel which affect advertising (eg, Swedish gender equality law)?

Minority groups are protected by the 'Basic Law: Human Dignity and Liberty' and general prohibition clauses relating to 'good taste, dignity and public feeling'. Moreover, television and radio-related Acts/Regulations contain provisions which unequivocally outlaw advertisements which harm minority groups or any group of people.

Advertisements which negatively stereotype (including on gender grounds) or are offensive are also prohibited. However, unsurprisingly, the courts have a difficult task in determining which advertisements stereotype or are offensive to a degree that justifies judicial intervention.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

It should be noted that television advertisements containing religious messages are prohibited by the Ethics Rules.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Israel?

It is safe to assume that, in the future, advertisements via social media will increasingly be subject to review/challenge before the courts. While there is currently no specific law relating to social media, consumer protection laws certainly apply to these media channels. In light of this, companies should refrain from any prohibited acts referenced above, irrespective of the platform in which the advertisement is conveyed.

 ITALY 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Italy?

Legislative Decree No 206 of 2005 ('Consumer Code') and Legislative Decree No 145 of 2007 lay down general provisions on unfair commercial practices, misleading advertising and comparative advertising, in connection with business-to-consumer relations and business-to-business relations.

Further, commercial communications are also regulated by provisions specific to certain products or services, relating to certain media or applying to a particular target audience; therefore, such provisions are scattered across a multitude of statutes, regulations and industry rules. Ethical codes or voluntary guidelines will also come into play.

A self-regulation system is in place, administered by the Institute for Self-Regulation in Advertising ('IAP') (see question 2 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

- (a) 'Advertising' is defined by EU Directives as 'any message diffused—in any form and any way—in the course of a trade, business, craft or profession with the aim of promoting the transfer of immovable property or real estate, the supply of goods or services and the constitution or transfer of rights and obligations relating to them'.
- (b) IAP's Self-Regulation Code ('SR Code') (as to which see question 2.2 below) states that 'the term 'marketing communication' shall refer to advertising and all other forms of communication including corporate and institutional messages whose aim is to promote the sale of goods or services regardless of the modalities used as well as appeals to the public'.

1.3 What is the basic regulatory framework for advertising regulation?

- (a) Primary sources of law which should be considered by advertisers are:
 - the Italian Civil Code (unfair competition);
 - the Consumer Code (unfair commercial practices);
 - Legislative Decree No 145 of 2007 (misleading and comparative advertising);
 - the Audio-Visual Media Service Code (Legislative Decree No 208 of 2021) (radio, TV and audio-visual media services); and
 - the SR Code, administered by the IAP.
- (b) Moreover, the EU Digital Service Act (Regulation 2022/2065/EU) ('DSA') provides for transparency obligations in relation to the advertising on online platforms.
- (c) Sector, product/service and media-specific provisions:
 - Legislative Decree No 219 of 2006 (medicines);
 - Legislative Decree No 137 of 2022 (medical devices);
 - Legislative Decree No 231 of 2017 (food);
 - Legislative Decree No 300 of 2004 and Legislative Decree No 6 of 12 January 2016 (the sponsoring of tobacco products);
 - Law No 125 of 2001, Audio-Visual Media Service Code and SR Code (alcoholic beverages);
 - Law No 189 of 2012, Law No 208 of 2015 and Legislative Decree No 87 of 2018 (gambling).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) The general principles and criteria governing commercial communication usually apply, irrespective of the media used for diffusing the advertising messages.
- (b) There are provisions in place to regulate advertising on radio, TV or audio-visual media services, but they mostly refer to the general principles related to such means of communication. In some cases, such provisions set bans or restrictions for specific products and services or outline rules relating to specific audiences (eg, references to violent, sexually explicit or improper content in content targeted at vulnerable audiences, such as children and minors). Specific transparency obligations apply to the advertising on online platforms under the DSA.
- (c) Local supervisory authorities (such as the Italian Data Protection Authority) may issue specific guidelines, which advertisers must take into account for their commercial communications. Such guidelines refer to monitoring and profiling practices, to online behavioral advertising, geo-location targeting, advertising on social media, and use of cookies and apps.
- (d) Lastly, the DSA established that the providers of online platforms shall not present advertisements on their interface based on profiling using:
 - (i) personal data of the recipient of the service when they are aware with reasonable certainty that the recipient of the service is a minor; or
 - (ii) special categories of personal data.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Several restrictive provisions are sector-specific (eg, for tobacco manufacturers) or product-specific (eg, for alcoholic drinks or pharmaceuticals). Other provisions make reference to the target audience (eg, children or minors).

Some examples include, but are not limited to:

- (a) **Alcohol:** Commercial communications for alcoholic products are subject to a range of restrictions. Aside from compliance with provisions governing the promotion and the selling of food and beverages, and with the regulations on labeling and advertising of food products, the following also apply:
 - the Consumer Code for potentially harmful products provides additional requirements to be fulfilled;
 - Law No 125 of 2001 addresses the advertising of alcoholic beverages and provides for specific restrictions (also in connection with the advertising of super-alcoholic beverages);
 - the Audio-Visual Media Service Code contains further restrictions for such commercial communications, especially when targeted towards minors; and
 - the SR Code states that advertising of alcoholic drinks must not be targeted, directly or indirectly, to minors and calls for compliance with principles and criteria identical to those mentioned above.

- (b) **Tobacco and related products:** There is a strict ban with regards to the advertising of tobacco products. This was introduced by Law No 165 of 1962 and was confirmed in Law No 52 of 1983. Legislative Decree No 300 of 2004, which implemented EU Directive 2003/33, provides only one exception for the advertising of tobacco products in publications intended exclusively for professionals in the tobacco trade. Further bans are provided for by:
- the Audio-Visual Media Service Code (eg, in connection with sponsorship and teleshopping);
 - Legislative Decree No 6 of 12 January 2016 which prohibits the advertising of electronic cigarettes and refill liquid containers. The only exceptions are if the commercial communications are intended exclusively for professionals in the tobacco trade and if the publications are edited in third States and not primarily directed to the EU market.
- (c) **Medicines:** Stringent provisions contained in Legislative Decree No 219 of 2006 govern advertising of pharmaceuticals, covering prescription-only medicines ('POM's) as well as over-the-counter products ('OTC's) and non-prescription ('SOP's) products. They consider 'advertising' as 'any informative action, aimed at reaching out to prospective clients and with the purpose of promoting the prescription, supply, sale or consumption of pharmaceuticals'. The definition covers:
- the soliciting of agents to health care professionals,
 - the supply of free samples,
 - offers of benefits of any kind resulting in favor towards the prescription, and
 - the sponsoring of meetings, events or scientific conferences attended by health care professionals.
- A total advertising ban applies to pharmaceuticals not authorized for commercial distribution. POMs may not be advertised to the general public, who can be addressed only with advertising for products that are conceived and manufactured for use without the intervention of a physician for diagnosis, prescription and surveillance during their consumption (ie, OTCs and SOPs). The ban also covers all custom-made medical devices and medical devices to be sold only on medical prescription (or to be used only with the assistance/supervision of a doctor or a health professional), pursuant to Legislative Decree No 137 of 2022. Advertising for a pharmaceutical or a medical device, when allowed, must comply with certain requirements. Limitations also apply to the advertising of OTCs.
- (d) **Food and drink:** Specific prescriptions on labeling and information requirements apply (with regard to the characteristics, components and storage requirements of the product).
- (e) **Automotives:** Presidential Decree No 84 of 2003 requires all promotional material to comply with the prescriptions contained in a standard form as well as to give indications on fuel consumption and CO2 emissions for all car models advertised. All advertising performed at the point of sale must fulfil specific requirements. Car dealers must provide a clear label regarding fuel consumption and CO2 emissions in respect of each vehicle offered for sale or lease (such labels must also be presented in a standard format, prescribing the use of a particular text font).
- (f) **Gambling:** Games of chance are state run and may be operated only after having obtained a license. Only duly licensed operators are allowed to advertise games of chances (advertisement by unlicensed operators is punished pursuant to criminal law) in accordance

with the restrictions provided for by the Customs Agency. Recently, Italian lawmakers have been confronted with increasing concerns about the booming popularity of gaming (especially online gaming) and about the harmful impact on vulnerable persons, such as elderly people and minors, and have responded as follows:

- (i) Law No 189 of 2012 allows advertising of gaming with cash prizes—irrespective of the media used—only under the condition that it:
 - does not excessively incentivize gaming,
 - does not feature minors,
 - contains specific alerts about the risks of addictiveness, and
 - offers clear and easily accessible indications on winning chances.

Additional restrictions apply (again for all media) to advertising capable of reaching an audience of minors. Infringement is sanctioned with fines (of €100,000–€500,000), which can be served on both the advertiser as well as the media company. Corrective advertising will also be awarded.

- (ii) Law No 208 of 2015 has further tightened restrictions by providing that advertising of gaming with cash prizes is banned completely in generalist TV (meaning TV broadcasting mainly non-thematic programs addressed to the general public) and radio broadcasts from 7.00 am to 10.00 pm.
- (iii) Legislative Decree No 87 of 2018 prohibits all forms of advertising, even indirect, concerning games of chance and gambling. In 2019 the Communication Authority ('AGCOM') issued some guidelines on the implementation of the ban provided in this Decree. This is currently a hot topic that is the object of proceedings before the AGCOM and higher courts.

Although this last Decree provides for a broad prohibition, the previous pieces of legislation have not been formally repealed, so they are still in force from a formal perspective.

- (g) **Toys:** The SR Code sets specific criteria for marketing games, toys and educational products for children. The Ethics Code, adopted on 29 November 2002 by Italian TV and broadcasting companies, as subsequently amended, provides guidelines for advertising toys.
- (h) **Consumer credit:** Pursuant to Legislative Decree No 385 of 1993, any advertising containing the interest rate or any other value relating to the cost of credit (ie, a financial offer) must contain some minimum elements to be clearly displayed, such as:
 - the annual interest rate—TAN—whether fixed or variable;
 - the total amount of the credit and the expenses included therein;
 - the total annual rate payable—TAEG—interest and expenses;
 - the total amount due by the consumer; and
 - the amount of each payment.

The normative framework will likely evolve in due course in view of the future implementation of EU Directive 2023/2225 on consumer credit, recently adopted in September 2023 and including provision on the advertising of credit agreements.

- (i) **Financial, banking, insurance, investment operations and cryptocurrency products and services:** Pursuant to sectoral rules and regulations (eg, regulations issued by the Italian national commission for listed companies and the stock exchange), as well as pursuant to the SR Code, the advertising of these products and services is subject to

restrictions and requirements. For instance, according to the SR Code, commercial communications promoting such products and services must provide clear and complete information regarding:

- the promoter,
- the nature of the proposal,
- the quantity and the characteristics of the offered good/services,
- the conditions of the operations, and
- the risks.

1.6 Are any government pre-approvals required?

The local legal framework does not require any general government pre-approvals. Ad hoc pre-approvals may be required by sectoral regulations.

1.7 Does the media pre-clear advertising?

The local legal framework provides no obligation to seek pre-clearance. All major media companies usually perform some advance clearance in-house in order to avoid legal issues and fines, both for their clients and themselves.

On request of an advertiser or of an agency, the IAP offers copy clearance with respect to planned campaigns or commercials. Such advance evaluation precludes action from the IAP's Review Board, but not also petitions filed with the Jury by a competitor or intervention from other authorities (eg, the Competition Authority ('AGCM') or a claim filed with a court (see question 2.1 below).

Compliance with the provisions of the SR Code does not prevent media companies from applying stricter standards.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Responsibility for supervision and enforcement is assigned to a number of different authorities:

- (a) ordinary civil courts: which deal with these issues in the context of claims (stemming from competitors) dealing with matters relating to unfair competition;
- (b) the AGCM: this is in charge of controlling unfair commercial practices, misleading and unfair comparative advertising;
- (c) the AGCOM: this controls radio, TV and audiovisual media services advertising; and
- (d) an efficient self-regulation system is in place, administered by the IAP—a private organization—which the entire advertising industry, inclusive all major media companies, adheres to. The system is based on the provisions of the SR Code, enforced through standard clauses contained in all contract forms used by the advertising industry (see, further, question 2).

The local legal framework provides for 'parallel competence', meaning that filing a complaint with the IAP does not preclude access to regulatory authorities or to a civil court.

1.9 When does a competitor have a right of action? What are the potential remedies?

- (a) Statute: Pursuant to the Italian Civil Code, competitors alleging to have been damaged by misleading or illicitly comparative advertising may bring an action for unfair competition before the Ordinary Court. Other civil actions are available under the provisions of the Intellectual Property Code.

- (b) Regulatory authority: Pursuant to Italian law, any competitor is entitled to bring unfair or misleading advertising before the AGCM to rule on the complaint. The AGCM may also institute the proceedings *ex officio*, and it also has the power to obtain relevant information, to conduct investigations and to negotiate commitments with advertisers.

The AGCM may order:

- the withdrawal of unfair or misleading advertising or
- prohibit unfair or misleading advertising whose publication is imminent (in case of urgency, AGCM may order an interim suspension of the unlawful advertising).

In addition, AGCM may order:

- the publication of its decision to withdraw the unfair or misleading advertising or
- the publication of a notice of amendment.

When the unfair or misleading commercial practice has been or will be broadcast, the AGCM will consult the AGCOM before taking any action against the advertiser.

Infringement of the general prohibition against misleading, surreptitious and illicitly comparative advertising is sanctioned by the AGCM with a fine from €5,000 up to €10M (with a minimum fine of €50,000 if advertising encourages behavior prejudicial to health or safety or it is likely to be viewed by minors).

In case of an interim suspension of the unfair or misleading practice, if the advertiser fails to comply with the order of the AGCM, the AGCM may issue a further penalty ranging from €2,000 up to €20,000.

- (c) Self-regulatory proceedings: A competitor can file a petition with the IAP's dispute resolution body ('Jury'). Petitioners should submit their requests through a written memorandum, containing a description of the questioned commercial communication as well as the grounds of the challenge.

Upon a finding of non-compliance with the SR Code's provisions, the Jury will:

- order an advertiser to halt the infringing campaign within a given deadline (usually five working days); or
- publish its decision with the IAP's Secretariat.

All media used for broadcasting the infringing commercial communication and adhering to the SR Code are to comply with the decisions issued by the Jury.

In addition, temporary desist orders can be issued by the IAP's Review Board (a separate body to the Jury) at any time, when a questioned commercial communication appears to be patently in violation of the SR Code's rules.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers (or their associations) have a right of action for misleading advertising as well as unfair commercial practices.

They may benefit from remedies identical to those available to competitors, except for court action relating to unfair competition (see question 1.9(a) above).

The self-regulatory system may be accessed by anyone who believes they have suffered prejudice from marketing communication activities contrary to the SR Code. Individual consumers and consumer rights associations may submit a complaint free of charge to the Review Board regarding a marketing communication allegedly breaching the rules of the SR Code.

Class actions may also be involved depending upon the circumstances in case of violations of consumers' rights.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Italy have a primary advertising self-regulation system?

Italy has had an efficient self-regulatory system in place since 1966. It is administered by IAP, a private industry organization, which also governs public TV. The system works for the entire sector of commercial communications and members are advertisers (through their associations), professionals performing services in-house (agencies, technicians, providers, practitioners, generally through their associations), and all of the media (press, TV, radio, directly as well as through their associations).

The self-regulatory system can be activated:

- (a) *ex officio* by the Review Board or the IAP's Secretariat;
- (b) by a consumer (individually as well as through a consumer protection association) by way of a petition submitted to the Review Board, which, after a preliminary investigation, may:
 - ask for the advertising to be amended and/or issue a desist order (in cases of patent violations of the SR Code) or
 - decide to approach the Jury and to proceed with a formal proceeding; or
- (c) by a complaint directly filed with the Jury (the IAP's dispute resolution body), where stakeholders feel that their interests have been prejudiced by the campaign in question—in violation of the SR Code—by a subject bound (through personal membership, adherence to an association member of the IAP, or by acceptance of the standard clause) to comply with the SR Code's provisions.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The system is based on the provisions of the SR Code, which applies through contractual agreements obliging all members of the IAP to include a compliance clause in their standard contracts.

The SR Code contains:

- rules of behavior;
 - special rules governing sales systems:
 - credit sales,
 - distance selling,
 - unsolicited supply of goods,
 - special sales, and
 - prize promotions,
- as well as certain product/service categories:
- alcoholic beverages,
 - cosmetics and personal hygiene products,
 - food supplements and health foods,
 - physical and aesthetic treatments,
 - medicines and curative treatments,
 - educational courses,
 - financial and real estate transactions,
 - insurance and banking products/services,

- crypto activities,
- travel packages,
- games, toys and educational products for children,
- gaming and gambling;
- a complaint system (procedure, organs and sanctions);
- protection of advertising ideas/creative concepts; and
- specific guidelines for social advertising (which includes fund-raising for social, humanitarian and health-care initiatives).

The rules of behavior, as well as the special provisions focusing on certain sales systems, reflect the general principles laid down in the ICC Consolidated Code of Advertising and Marketing.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

At the end of the hearing, the Jury submits its decision, announcing its findings and judgment to the parties involved in the dispute.

If the Jury finds that the advertising was not in compliance with the SR Code's provisions, the Jury will:

- order the offending party to cease the infringing campaign within a given deadline (usually five working days); and
- publish its decision as soon as possible with the IAP's Secretariat (which is responsible for providing a copy to the parties involved and to any other interested organization).

The decisions of the Jury are final and there is no right of appeal.

The Jury is not entitled to impose fines for advertising that infringes the SR Code.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Notwithstanding the fact that the IAP is not entitled to impose fines or to award damages, compliance with the Jury's decisions is widely supported by the fact that all the relevant stakeholders in the advertising sector are active members within the system. Compliance is certainly driven by the fact that the decisions of the Jury and the freezing injunctions of the Review Board have an obvious impact on the offender's professional image and business reputation. Moreover, although the SR Code is binding only on a voluntary basis, the Supreme Court of Cassation has deemed breach of the SR Code (even by companies which have not agreed to adhere to it) to be unfair competition, as a behavior which does not meet market standards of professional ethics.

In 2022, the Review Board handled 395 cases and requests. During the same period, the Jury issued 14 decisions.

2.5 Are the self-regulatory system's decisions reported?

An excerpt of each decision is posted on the IAP website and the whole decision is stored in a database. The effects of such disclosure are similar to those of corrective advertising, but the parties involved in the dispute are not allowed to use the Jury's decision for marketing purposes.

All media used for broadcasting the infringing advertising are required to comply with the decisions (and to stop further broadcasting of the offending campaign). In case of non-compliance, a desist order is reiterated and the notice of such behavior is published by the IAP in such media channels it deems appropriate.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

According to recent statistics released by the IAP, the formal interventions of the Review Board primarily refer to the following business sectors:

- personal care (39%);
- nutritional supplements (22%);
- food and beverages (16%);
- other sectors (23%).

The Jury's decisions refer to:

- telecommunication services (29%);
- healthcare and wellness (50%); and
- other sectors (21%).

2.7 Are there any other self-regulatory systems that govern advertising practices in Italy?

There are no other self-regulatory systems in place equal to that administered by the IAP.

The Audio-Visual Media Service Code urges providers to stipulate codes of conduct that regulate access to improper content when present in programs for children or minors. Such codes should address food and beverages, especially if they are high in salt, fat, sugar or sodium.

On 29 November 2002, Italian TV and broadcasting companies adopted—in co-operation with the Department of Telecommunication—a Code of Ethics setting out measures to protect minors (with particular attention to audiences aged between 0 and 14 years). It establishes a set of requirements and limitations for all commercial communications broadcast during a 'protected period' (ie, from 4.00 pm to 7.00 pm).

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Italy (eg, consumer protection laws, IP laws, unfair competition laws)?

Please see question 1.3 above.

3.2 Is substantiation required for advertising claims?

(a) The SR Code:

- This stipulates that messages and content used for commercial communication 'must be capable of substantiation to prove the truthfulness of the data, descriptions, statements, illustrations used'.
- An identical principle applies to quotations from and references to scientific and technical tests.
- The SR Code also contains special provisions on claims relating to warranties.

(b) Statute law does not set a specific substantiation requirement, but the latter will come into play for the following reasons:

- (i) According to the Italian Civil Code, whoever initiates a court action in order to assert a right has to prove the facts upon which such right is based. Whoever contests such action, or claims that the claimant's right no longer exists, must prove the facts underlying the defense arguments. Any agreement intending to reverse or modify the burden of proof is void.

- (ii) The Consumer Code considers as unfair commercial practice any advertising claim containing untruthful information or presentations capable, even if factually correct, of deceiving an average consumer. The same effect will occur with respect to misleading omissions.

Therefore, an advertiser, whose campaign is questioned, will need to prove both the correctness of all claims made and respond with documentary evidence providing specific substantiation.

3.3 **Are there certain types of advertising messages that do not require substantiation (ie, puffery)?**

The SR Code bans all marketing communications containing misleading statements, representations or omissions. However, claims that are ‘patently hyperbolic’ are exempt from this ban (eg, ‘drink/use product X and you will look 25 years younger’). The obvious assumption is that excessively exaggerated statements will not induce consumers into error.

There is no identical provision in statute, but the argument is still valid, as misleading conduct is not proven easily.

Advertisers need to consider that such exemption does not cover all superiority claims. Such statements require great attention as they may easily result in misleading or incorrect comparative advertising.

3.4 **What are the rules governing the use of disclosures in advertising?**

In accordance with EU Directive 114/2006 on misleading and comparative advertising, implementing Legislative Decree No 145 of 2007 defines as ‘misleading advertising’ any commercial communication ‘which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behavior’.

The wording of all claims made by advertisers will, therefore, have to comply with the above principle and must be clear, easy to understand and transparent with respect to elements such as:

- the characteristics of goods or services;
- their actual availability;
- their nature, execution, and composition;
- their method and date of manufacture or provision;
- their fitness for purpose;
- their specification;
- their geographical or commercial origin;
- the results that are to be reasonably expected from their use;
- the price (and the manner of its calculation); and
- the conditions on which the goods are supplied or the services provided.

Small print in traditional advertisements or alerts presented with excessive speed in commercials must consider the ‘transparency principle’. Failure to do so may easily transform them into an unfair and misleading commercial practice.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

- (a) The SR Code requires testimonials to be ‘authentic, responsible and verifiable’. Testimonial statements must avoid being misleading as to the product’s or service’s characteristics and effects. Attention has to be paid to the person who is giving the testimonial: there is a specific ban on health professionals advertising pharmaceuticals, but on several occasions the Jury has also considered the endorsement of cosmetic products by such professionals (especially when conveying the impression of therapeutic effects deriving from the use of such products) to be a misleading and questionable practice.
- (b) Local regulation allows consumers to be quoted as a part of a testimonial, but requires testimonials to be authentic, responsible and verifiable. Therefore, advertisers should be prepared to give proper evidence on who was actually interviewed, how and when such interviews took place and what interviewees actually said.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific provisions to regulate product demonstrations. Clearly, the general bans and restrictions will apply. In addition, statements made and presentations performed will need to:

- avoid being misleading; and
- be backed by adequate substantiation on the request of a regulatory authority.

Excessive purchase pressure on consumers (eg, by conveying the impression that a certain product will be available—or be on sale at particularly advantageous conditions—only for a very short time period), will be considered as an unfair commercial practice.

Product demonstrations, performed in the context of TV programs offering products for sale, must restrain from overly aggressive practices, especially when likely to be viewed by minors.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is regulated in the Consumer Code with respect to business-to consumer relations and must, therefore, avoid any misleading or unfair commercial practice.

For business-to-business relations, Legislative Decree No 145 of 2007 requires that comparative advertising must:

- not be misleading;
- compare goods or services meeting the same needs or be intended for the same purpose;
- objectively compare material;
- have verifiable and representative features (including price);
- avoid confusion with products or services of a competitor; and
- avoid discrediting or denigrating their trademarks, and infringing trade names or other distinguishing signs of a competitor.

Companies engaging in comparative advertising must also consider the Civil Code’s provisions on acts of unfair competition.

According to the SR Code, ‘Comparative advertising is permitted when it helps to explain the technical or financial features and benefits of promoted products and services, objectively comparing the relevant basic, technically verifiable and representative features of competitive goods and

services that meet the same needs or are intended for the same purpose. Comparisons should be fair and not be misleading, nor generate the risk of confusion, or discredit or denigrate others. Comparisons should not draw unfair advantage from the notoriety of others’.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

Competitors’ trademarks may be included in comparative advertising, provided that such use is performed in a fair way and without denigration (this is necessary to meet also all the other requirements set for comparative advertising):

- (a) Legislative Decree No 30 of 2005, laying down the Industrial Property Code, allows the use of a protected trademark when necessary to refer to goods or services of the owner of that trademark, especially if it is needed to indicate the intended purpose of a product or service.
- (b) Legislative Decree No 145 of 2007 requires, inter alia, that comparative advertising:
 - (i) does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name and
 - (ii) does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products.
- (c) The SR Code demands that ‘any exploitation of the name, trademark, notoriety and corporate image of other marketers should be avoided, if it is intended to generate an undue advantage’.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

- (a) The SR Code requires claims to avoid any statement that could mislead consumers on the geographic origin of products.
- (b) Moreover, the Consumer Code considers as misleading all commercial practices containing false information on the geographic origin of the products which are capable of causing consumers error.
- (c) Furthermore, other rules on the import, sale and counterfeiting of goods bearing the ‘made in’ indication exist, for instance:
 - Regulation No 952/2013, laying down the Union Customs Code;
 - Law No 55 of 2010 providing special rules concerning the ‘Made in Italy’ indication for certain industries such as textile, leather and footwear; and
 - the Industrial Property Code, providing protection for geographical indications and designations of origin against any unduly use which is able to mislead the public.

3.10 Are there any special rules governing product packaging?

- (a) Product packaging is subject to general advertising law principles, including:
 - under the SR Code, claims must avoid any statement or representation that is able to mislead consumers and
 - under the Consumer Code, all commercial practices containing false information capable of causing consumers error are considered to be misleading.

- (b) In addition:
 - The Consumer Code lists certain minimum information that must be indicated on the packaging of products that are addressed to consumers and are marketed in Italy (such as the legal name or the classified name of the product and the name, business name or trade name and the registered office of the producer or that of an importer established in the European Union); and
 - The provisions in the Consumer Code must be viewed together with regulations providing for more specific rules in particular sectors, such as EU Regulation 1924/2006 on nutrition and health claims made on foods, and EU Regulations 1223/2009 and 655/2013 on cosmetic products.
- (c) Furthermore, regulations governing other aspects of product packaging exist (eg, Legislative Decree No 152 of 2006 providing for environmental regulations).

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Although there are no specific rules or guidance regulating the use of dark practices specifically in the advertising framework, currently the use of dark patterns is a hot topic.

- (a) European Data Protection Board’s Guidelines 3/2022 offer practical recommendations to social media providers as controllers of social media, designers and users of social media platforms on how to assess and avoid so-called ‘deceptive design patterns’ in social media interfaces that infringe on GDPR requirements. The Guidelines consider ‘dark patterns’ as interfaces and user experiences implemented on social media platforms that attempt to influence users into making unintended, unwilling, and potentially harmful decisions regarding the processing of their personal data.
- (b) The Italian Data Protection Authority has sanctioned the use of dark patterns, as they can hinder the user’s ability to effectively protect their personal data and make conscious choices, in violation of principles under the GDPR.
- (c) The EU DSA seems to prohibit the use of dark patterns by stating that ‘providers of online platforms shall not design, organize or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions’.
- (d) Moreover, in general, the use of dark patterns might be considered as an unfair commercial practice in violation of the Consumer Code.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are not any special rules on AI in relation to advertising.

4 PRICE ADVERTISING

4.1 What are Italy’s rules regarding price advertising?

Statements about prices (or about their method of calculation) are one of the elements subject to special attention when the IAP, regulatory authorities or courts scrutinize advertising claims as to their misleading potential. In particular:

- (a) Legislative Decree No 114 of 1998 sets out that all products offered at the point of sale must show the actual price charged to consumers in a clear and easily readable way.

- (b) Legislative Decree No 24 of 2023, that has recently implemented the so-called EU Omnibus Directive (Directive 2019/2161), has introduced new rules on price advertising. As a general rule, announcements of price reductions must indicate the lowest price charged in the previous 30 days, (although a few specifics and exceptions apply). Moreover, concerning distance contracts, the professional must provide the consumer with information about price personalization based on automated decision-making.
- (c) For purposes of adequate consumer information, the Consumer Code requires all advertising to report the price per unit, if different from the price of the product put on sale.
- (d) The SR Code specifies price indications to be among the elements to be taken into account when evaluating promotional messages as to their misleading effects.

4.2 What are Italy's rules regarding advertising 'free' products?

As explained more in detail in question 4.4 below, products awarded for free, in addition to those purchased by consumers (or where additional quantities of such product are awarded, eg, 'Buy three for the price of two') are not subject to limitations. Should different products be offered, the special regulation on sales promotions (Presidential Decree No 430 of 2001) may become relevant.

All promotional messages for 'free' products will need to be considered in light of the requirements set in the Consumer Code with respect to misleading information or omissions.

4.3 What are Italy's rules regarding sales and special offers?

- (a) 'Special sales' (ie, end-of-season and below-cost sales) are subject to the provisions laid down in Legislative Decree No 114 of 1998. They may only be performed during specific periods (eg, end of season) or in special circumstances (eg, business discontinuance or transfer or restructuring of point of sale). Clear and exact indications are required as to normal sales prices as well as to the discounts/rebates applied. Local administrations (such as the regions and the municipalities) have additional competence as to advertising, consumer information and duration of special sales.
- (b) Presidential Decree No 218 of 2001 governs below-cost sales:
 - setting special administrative requirements and limitations as to their:
 - duration (maximum ten days),
 - number (maximum three times per year) and
 - products put on sale (not the entire stock of goods offered),
 - imposing correct consumer information and transparent advertising, and also
 - preventing businesses that have achieved a dominant position in a certain market from performing such sales.
- (c) The SR Code holds that 'marketing communication relating to special sales of any kind, in particular promotional sales, should clearly specify the additional benefit deriving from the purchase, as well as the duration of the offer. The duration of the offer does not need to appear on the packaging'.

4.4 What are Italy's rules regarding rebates?

- (a) Rebates or discounts on sales prices may be freely awarded to consumers as long as they are applied on a specific product contextual to the moment of its purchase. They may also result in an additional, free quantity of the purchased product. Should discounts concern a product different to that purchased, they have to avoid any instrumental promotional intent with respect to the different product in order to remain exempt from the provisions governing sales promotions.
- (b) Advertising for rebates or discounts will need to consider the Consumer Code's provisions on exact and correct information about a product's price and its calculation; demonstrating such consideration is a key element for assessing whether unfair commercial practices—through misleading information—are in play.
- (c) When such advertising originates (and rebates are announced) directly from the manufacturing company, it must be borne in mind that producers cannot impose sales prices on retailers (Law No 287 of 1990 granting fair competition in the market).

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

- (a) In 2012, the AGCM issued a memorandum dedicated to commercial communication promoting cosmetic products. The memorandum sets guidelines for evaluating both the effectiveness of claims made as well as the methods and results of clinical and scientific tests performed on such products.
- (b) Misleading green claims (also referred to as 'greenwashing') are currently a hot topic. Green claims are not directly addressed by legal provisions, but the SR Code establishes that claims on environmental or ecological benefits must:
 - (i) be based on truthful, pertinent and scientifically verifiable evidence, and
 - (ii) ensure a clear understanding of which aspect of the product or activity the claimed benefits refer to.

Moreover, the ACGM has enforced the general provisions on unfair commercial practices to sanction the use of environmental claims that, for instance, provide misleading information on the actual scope of the claim, or are not strongly substantiated. At EU level two proposed directives will likely change the regulatory scenario in the coming years.

- (c) Lastly, with the implementation of the so-called Omnibus Directive (Directive (EU) 2019/2161), new unfair commercial practices under the Consumer Code have been introduced, for instance concerning reviews and sales of tickets.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Strict advertising bans are in place for specific products or services. Such bans refer to certain medicines and medical devices as well as to tobacco products, irrespective of the media used. Additional (sometimes media-specific) advertising restrictions apply when the promotional messages are targeted (or likely to reach out) to an audience of minors (eg, alcoholic beverages, certain food products and gaming services). A ban on any form of advertising of games of chance and gambling has been introduced by Legislative Decree No 87 of 2018.

While sales and purchases of weapons and ammunition are heavily restricted and regulated, there is no specific provision governing the promotion (and advertising) of such products. The general principles on dangerous products and safety will, therefore, come into play:

- (a) According to the SR Code, ‘marketing communication involving products that may potentially endanger health, safety or the environment, especially when such dangers are not immediately recognizable, should indicate such dangers clearly. In any case, marketing communication should not contain descriptions or representations that may lead consumers to be less cautious than usual or less watchful and responsible towards their own health and safety, and that of others’.
- (b) Legislative Decree No 145 of 2007 considers as misleading any advertising for products potentially harmful to the targeted public’s health or safety, when omitting to provide adequate notice on such critical aspects and, therefore, capable of inducing users to not adopt proper caution and attention.
- (c) The Italian branches of all major online platforms or service providers will obviously apply locally the policies and limitations they have established in their domestic terms of service. Usually, they will not allow their users to promote or advertise firearms and ammunition. These restrictions generally also cover the sponsoring of (and sometimes even generic reference to) such products.

5.2 **Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?**

According to the Consumer Code, commercial practices resulting in repeated and unsolicited purchase invitations, directed to consumers via phone, fax, email or any other distance communication, will be considered as ‘aggressive in any case’. Advertisers will need to take into account that, according to the privacy regulations, promotional messages by these methods are strictly ‘opt-in’, and thus require prior notice and consent.

Law No 5 of 2018 regulates the opt-out register that is implemented by the Presidential Decree No 26/2022. The opt-out register covers calls to both fixed and mobile telephone numbers, but it does not cover SMS. The ‘operator’, meaning any natural or legal person who intends to use the telephone and the postal mail for sales and marketing purposes and for market research, must register with the system and communicate the list of telephone numbers to be used. Operators making marketing communications by phone, with or without the intervention of a human operator, are required to check the opt-out register on a monthly basis, and, in any case, prior to the start of each promotional campaign, and to ensure that their lists are updated.

5.3 **Are there any laws or regulations governing indecency or obscenity that apply?**

Aside from promotional messages that may result in a criminal offence:

- (a) The SR Code provides that a ‘marketing communication should not contain statements, audio or visual treatments depicting physical or moral violence or, that may be considered indecent, vulgar or repugnant to prevailing standards’.
- (b) The Audio-Visual Media Service Code states, as a general principle, that commercial communication must avoid prejudicing human dignity.
- (c) The 2002 Code of Ethics, as subsequently amended, requires that minors appearing in programs must not be confronted with vulgar topics or situations. In addition, all companies adhering to the Code of Ethics are called to monitor, in advance, advertising, trailers or promos for content that could potentially be harmful to minors.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

According to the Audio-Visual Media Service Code, sponsored audio-visual media services or TV programs must report the sponsor's name or logo (at the beginning as well as at the end of the program). Sponsorship is subject to all bans, restrictions and limitations that apply to advertising. TV sponsorship is regulated in detail under a relevant regulation.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

- (a) For print materials the topic is governed by a general principle set out both by statute and the SR Code. This principle imposes an obligation on all advertising to comply with a transparency requirement.
- (b) As for TV programs:
 - the provisions on product placement contained in the Audio-Visual Media Service Code apply and
 - some TV broadcasters have adopted ad hoc self-regulatory guidelines specifically concerning branded content, shared also with the AGCOM.
- (c) Legislative Decree No 145 of 2007 holds that:
 - all advertising must be immediately identifiable as such; and
 - press advertisements are to be distinguished from other editorial content through easily perceivable graphic means.
- (d) The SR Code states that 'Marketing communication must be clearly distinguishable as such. When a medium presents news and other editorial matters to the public together with marketing communication, it should be ensured that the marketing communication is readily distinguishable as such'.

Such a general transparency requirement, governing all advertising, irrespective of the form and broadcast means needs to be duly considered any time promotional messages are integrated with entertainment or editorial content. Non-compliance exposes advertising to be considered as an unfair commercial practice.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Statute as well as the SR Code set a general principle, according to which advertising has to be 'clearly and immediately recognizable as such'. In addition, the SR Code requires that 'when a medium presents news and other editorial matters to the public simultaneously with marketing communication, it should be ensured that the marketing communication is readily distinguishable as such'.

In Italy, companies frequently sponsor TV programs. The Audio-Visual Media Service Code requires such programs to immediately highlight the show as 'sponsored' and to offer specific indication about the sponsor (or its logo) at the program's beginning and end.

The Audio-Visual Media Service Code also requires that where a TV program containing product placement has been produced or commissioned by the provider/an affiliated company, such program shall be identified as containing product placement by an announcement at the start and end of the program and after advertising breaks.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

- (a) In Italy there is no specific law or regulation designed to regulate advertising via social media as such. Accordingly, these activities are subject to general rules applying to consumer protection and commercial communication, as well as those provisions that may come into play with respect to online platforms.
- (b) The SR Code sets forth two key provisions:
 - (i) Testimonials and other forms of endorsement of a product, having a promotional nature, should be recognizable as such.
 - (ii) Marketing communication must be clearly recognizable as such, including when is carried out through means or forms of communication where other types of content (such as news or other editorial matters) are circulated.
- (c) In addition, the IAP has adopted the so-called ‘Digital Chart Regulation’, which specifically addresses the key legal aspects raised by the use of online media for marketing and advertising purposes. The objective of the Digital Chart Regulation is to conduct a survey of the most commonly-used forms of marketing communication online and in the digital context in general. The Regulation is divided into several chapters, focusing respectively on:
 - recognizability;
 - endorsement;
 - video;
 - invitations to events;
 - user-generated content;
 - in-feed units;
 - paid search units;
 - recommendation widgets;
 - sharing promo codes and affiliate marketing;
 - in-app advertising; and
 - advergames.

Within the section on endorsement, the Digital Chart Regulation specifically addresses the role of influencer marketing. Influencers are defined as figures ‘who are able to influence consumers in choosing a product and express opinions about a brand’. The Regulation provides that ‘when comments or opinions expressed by a celebrity, influencer or blogger about a product or brand have the characteristics of a marketing communication, they are subject to Self-Regulatory Code application’.

Also, the Regulation states that, if not made clear by the context, the promotional purpose of the comment or opinion must be disclosed to the user in an appropriate manner. Although there is no specific or compulsory way for making such disclaimer to users, the promotional nature of content posted on social media can be disclosed through the use of wording such as ‘Advertising’, ‘Promoted by’, ‘Sponsored by’, ‘in partnership with’, to be placed at the top

of the relevant post followed by the name of the brand. Additionally, these words must be included among the first three hashtags: #Advertising, #Sponsored by or #ad followed by the name of the #brand.

However, in cases where the relationship between the influencer and the advertiser is limited to the advertiser occasionally sending products free or in exchange for a limited amount, and the influencer names these products, uses them or displays them on social media, this disclosure-notice is not required and can be replaced by the simple wording: 'product sent by' followed by the name of the brand.

- (d) Furthermore, in connection with influencer marketing, in 2017 the AGCM sent to some of the most popular Italian influencers a moral suasion letter, inviting them to comply with the provisions of the Consumer Code on transparency in advertising. In particular, the AGCM gave some instructions to reveal the real nature of the message whenever there is a commercial purpose, requiring influencers to use wordings/hashtags (partially coinciding with those provided for by the Digital Chart Regulation) whenever there is a business relationship between them and the branded product (eg, '#advertising', '#promoted by', '#in partnership with' followed by the name of the brand). Other moral suasion letters have been sent by the AGCM in 2018. In the years following these letters, the AGCM's enforcement actions also covered cases of hidden product placements on social media.

In addition to the above, specific bodies of rules may be adopted by the various authorities whose regulatory powers may affect social media, including the AGCM, the Italian Data Protection Authority and the AGCOM.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Such potential liability will depend on the advertiser's role. The problem will usually occur in relation to user generated content, uploaded to—and presented on—online platforms.

If there is a relationship between the advertiser and the user posting the content, the advertiser would be regarded as liable for the content posted; if not, as in the case of content freely and autonomously posted by the user without any input by the advertiser (eg, payment of a sum in exchange for the upload of the post or supply of the product which the post relates to), then the advertiser would not be regarded as liable.

Generally speaking, in connection with the liability of hosting providers, under the E-Commerce Decree (Legislative Decree No 70 of 2003), a hosting provider:

- (a) cannot be held liable for the content uploaded on the platform, if it did not have actual knowledge of the unlawful nature of said content and was not aware of facts or circumstances from which the unlawfulness of said content was apparent; or
- (b) upon obtaining such knowledge or awareness, it acted expeditiously to remove or disable access to the content.

To this end, a hosting service provider is considered to have knowledge over unlawful content being hosted on the platform once it has received notice either from an authority and/or any source (eg, a report made on the platform, an *ex parte* warning letter, etc). The Italian Court of Cassation, in the recent *RTI v Yahoo!* (No 7708/2019) decision, indicated that any communication received by the platform relating to unlawful content being hosted thereon suffices to consider the platform on notice.

Moreover, in that case, the Court of Cassation identified a distinction based on the concrete activities of the hosting provider. In particular, it laid down certain elements to indicate whether a hosting service provider can be considered an ‘active’ hosting provider or a ‘passive’ one. The distinction being relevant in order to assess the liability regime applicable. The court listed some activities which might suggest that the hosting provider is manipulating third-party content (though not all need be present):

- filtering,
- selection,
- indexing,
- organization,
- cataloging,
- aggregation,
- evaluation,
- use,
- modification,
- extraction, or
- promotion of content,

if made in the context of a business-oriented management of the service. If the hosting provider does manipulate third-party content, it can be considered ‘active,’ while, if it does not, it is a ‘passive’ hosting provider. Being qualified as an active hosting provider entails that the hosting provider cannot rely on the liability exemption described above. As a consequence, an active hosting provider is subject to the ordinary liability regime under general tort law principles.

Finally, the Court held that, pursuant to the liability regime prescribed under the E-Commerce Decree, hosting providers are not subject to a general obligation to monitor the information that users upload or transmit on the platform, nor to a general obligation to seek out facts or circumstances indicating illegal activities. This is a general principle, applicable to both ‘passive’ and ‘active’ hosting providers.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Local courts will consider—and usually follow—caselaw affirmed by the Court of Justice of the European Union in this respect (see the CJEU decisions of *Google v Louis Vuitton* (23 March 2010) and *L’Oreal v eBay* (12 July 2011)).

There is no significant caselaw on the liability of advertisers in connection with the use of social media and user generated content. Local courts have substantially ruled on the topic of the liability of hosting providers.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual’s name, picture, likeness, voice and identity in advertising?

The basic principle to bear in mind is that the use of a person’s name or image without consent is prohibited, as they both pertain to an individual’s ‘personality rights’. Such rights are governed by provisions set both by the Civil Code and by the Copyright Act (Law No 633 of 1941).

- (a) According to the Civil Code:
- ‘Every person has a right to the name given’ and is entitled to protection against prejudicial use performed by others; and
 - The image of a person, or of their parent, spouse, or child, can be exhibited or published only if such use is explicitly permitted by law and provided that the use is not prejudicial to the dignity or reputation of the person represented.
- Should abuse occur, a Civil Court, upon request of the interested party, can order termination and decide on the damages.
- (b) The Copyright Act provides that a person’s picture may not be exhibited, reproduced and put on sale without their consent. Local courts take the view that the law assigns an economic value to a person’s name and image (especially if the person is famous). Therefore, unauthorized use of a person’s image/picture for marketing purposes results in prejudice and damaging effects, because the represented person is deprived (at least) of the remuneration obtainable by giving consent to the use.
- Also, a person’s image/picture may not be exhibited or put on sale, if such use causes prejudice to the represented person’s honor, dignity or reputation.
- The following are some of the ancillary issues that advertisers are well advised to bear in mind:
- consent is valid and effective between parties, but is not automatically transferable to third-party subjects (an aspect that may easily become relevant when the advertising campaign or the marketing material is handed over to client’s affiliates);
 - in local jurisprudence and literature differing opinions may be found on whether consent is revocable or not; and
 - consent would not cover demeaning or deceptive uses eventually performed with respect to individuals’ names or images, if not explicitly authorized (in addition, in such cases consent would easily be considered as revocable).
- (c) From a privacy law perspective, consolidated Italian case-law deems that, according to Legislative Decree No 196 of 2003 (the Data Protection Code) an individual’s details, including their image, constitutes personal data and their commercial use has to be considered as a ‘processing of personal data’. Accordingly, the processing needs to be grounded on (at least) one of the legal bases laid down in the applicable privacy law (as to which see the EU GDPR Article 6).

9.2 Are there situations when permission is not required?

Exceptions to the consent requirement apply when the reproduction of a person’s image is justified by their notoriety (Copyright Act) or by public interest (eg, for purposes of information to the general public—according to consolidated case law of the Italian courts, consent is not required any time an interest exists to deliver information to the general public. However, according to local courts, such an interest does not occur when the use is performed for marketing purposes).

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

- (a) Historical buildings, monuments and artwork are considered to be cultural heritage, and are, therefore, subject to the special provisions laid down in the Constitution and in the Code for the Arts and Landscape (Legislative Decree No 42 of 2004).
- (b) The use of cultural heritage has to be in line with its intended use (a church or a museum are obviously inappropriate for certain uses). Central or local authorities are in charge of supervising that no improper use occurs. Individual (private) use of cultural heritage is possible, but subject to prior authorization (which is given on payment of a fee). With respect to the use of art works, monuments or historical buildings in advertising material, the supervising authorities are entitled to exercise an advance review of all aspects of the planned campaign, and may impose modifications at their discretion. The decision whether to give or deny authorization will be determined on a case-by-case basis. There is no objective set of criteria to rely on.
- (c) Lastly, with the Ministerial Decree No 161 of 11 April 2023, the Italian Ministry of Culture issued the guidelines for the determination of the minimum amounts of fees and royalties for the exploitation of cultural works under the custody of Italian institutions.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

While there is no absolute ban on using a third party's branded product in advertising, such use remains uncertain and requires great attention. First of all, such use will have to be 'functional' and 'contextual', eg, a runner will necessarily wear training shoes from one or other (frequently recognizable) brand; a model promoting an elegant evening dress will usually be shown with (also easily recognizable) luxury shoes and accessories of an identical quality level. Second, it will be necessary to demonstrate that the advertiser does not gain an unfair advantage through the association of its product with the use of another brand.

Therefore, advertisers need to bear in mind that the association of their products with branded items of third parties will be evaluated on a case-by-case basis. Such practice may easily fall foul of the provisions of the Civil Code that govern acts of unfair competition.

Further, the Industrial Property Code allows third-party use of a trademark that complies with good and fair business practices and prevents such use any time there is a risk of confusion with another company's logo, trademark or distinctive sign.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Italy which affect advertising (eg Swedish gender equality law)?

Advertisers will have to consider a general principle, expressed in the SR Code as 'marketing communication should respect human dignity in every form and expression and should avoid any form of discrimination'.

In recent years, the IAP has shown increased focus—both through *ex officio* desist injunctions as well as by dealing with complaints—on sexist advertising.

The Audio-Visual Media Service Code expressly requires audio-visual commercial communication to restrain from performing (or promoting) any form of discrimination in relation to gender.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

The SR Code requires commercial communications not to ‘offend moral, civil and religious beliefs’. Moreover, the non-discrimination requirement set by the Audio-Visual Media Service Code applies to race, ethnic origin, nationality, religion, sexual orientation and physical disabilities.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Italy?

Commercial communication always involves the collecting and storing of personal information and, therefore, results in the invasion of privacy of individuals. Performing such practices in Italy, or making use of technical equipment located in the country, will make the provisions of the Data Protection Code applicable (which sets a strictly opt-in mechanism and requires advanced notice and consent). Such a result will also occur when companies place apps or cookies on a local resident’s device.

Transferring personal information from Italy to non-EU member states is governed by specific legal and administrative requirements.

 JAMAICA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Jamaica?

In Jamaica advertising is regulated by multiple Acts and attendant Regulations and Codes, including:

- Fair Competition Act;
- Consumer Protection Act;
- Copyright Act;
- Trade Marks Act;
- Town and Country Planning Act;
- Advertisements Regulation Act;
- Food and Drugs Act;
- Food and Drugs Regulations;
- Standards Act;
- Registration of Business Names Act;
- Broadcasting and Radio Re-Diffusion Act;
- Television and Sound Broadcasting Regulations;
- Betting Gaming and Lotteries Act;
- Defamation Act;
- Hire Purchase Act;
- Insurance Act;
- Obscene Publications (Suppression of) Act;
- Sale of Goods Act; and
- Cinematograph Act.
- Jamaican Code of Advertising Practice;
- Children’s Programming Code; and
- Code of Marketing Communication Practices for Beverage Alcohol Products.

A number of other statutes regulate the advertising of professional services.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The Advertisements Regulation Act, Consumer Protection Act and Town and Country Planning Act define ‘advertising’ as:

- (a) any sky sign, notice, bill, placard, poster and other similar publication;
- (b) any form of communication made to the public or a section of the public for the purpose of promoting goods or services; and
- (c) any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction including any hoarding or similar structure used or adapted for use for the display of advertisements.

The Fair Competition Act also defines ‘advertisement’ as ‘any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services’, thus covering all forms of advertising.

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework for advertising comprises statutes, governing bodies and codes. As to the statutes, see question 1.1 above.

The Consumer Protection Act and the Fair Competition Act, which regulate matters pertaining to false or misleading advertisements, are administered by the Consumer Affairs Commission and the Fair Trading Commission.

The Television and Sound Broadcasting Regulations govern advertising content of licensed commercial broadcasters, and are administered by the Broadcasting Commission.

Other governing bodies include the Bureau of Standards, which monitors trade in certain products to ensure compliance with prescribed standards, the Ministry of Health (Foods & Medicines) and the National Compliance Regulatory Authority ('NCRA'). The NCRA started as a division of the Bureau of Standards and now operates as a separate statutory body under the Ministry of Industry and Commerce. The NCRA focuses on food safety and operates a food safety inspectorate which inspects and monitors all pre-packaged food establishments in Jamaica.

The main codes are the media industry's Jamaican Code of Advertising Practice ('JCAP'), the Code of Marketing Communication Practices ('MCAP') for the alcohol industry and the Children's Programming Code ('CPC').

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Regulation of advertising in Jamaica is mainly geared towards ensuring that the content of the advertisement is not in contravention of any act or regulation. The advertising laws prohibit false and misleading advertisements generally.

Text message advertising is not specifically regulated in Jamaica.

The Town and Country Planning Act regulates the display of advertisements in prescribed areas of development for which planning permission is needed. The Act regulates the dimensions, appearance and position of advertisements to be displayed in certain areas and the manner in which they may be affixed to the land.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) **Food, drugs and cosmetics:** The Food and Drugs Act regulates advertising practices in the food, drug and cosmetic industries. The Act stipulates that no person shall advertise any food, drug, cosmetic or device to the public for the cure of certain diseases, illnesses or abnormal physical states. The Act also prohibits misleading advertisement of food, drugs and cosmetics.
- (b) **Tobacco:** The Public Health Act regulates the advertising of tobacco products. It stipulates that all tobacco products shall contain on their packages a permanently affixed health warning advising tobacco users of the health risk posed by the use of tobacco and tobacco products and penalizes 'every manufacturer or retailer who sells or offers for sale a tobacco or tobacco product in packaging that does not bear a graphic warning'. Further 'no tobacco

product, including a single stick shall be sold or offered for sale without health warnings.’ No tobacco product package may make any claim suggesting that its use is not hazardous or is any less hazardous than other tobacco products.

The Broadcasting and Radio Diffusion Act and the Television and Sound Broadcasting Regulations prohibit any commercial broadcaster licensee from advertising any tobacco products.

- (c) **Gambling:** The Betting Gaming and Lotteries Act regulates various forms of gambling in Jamaica through the Betting Gaming and Lotteries Commission (‘BGLC’). Certain forms of gaming require a license from the BGLC.

The Betting Gaming and Lotteries Act defines ‘lottery’ as ‘any games, method or device, including electronic game, method or device not requiring the participation of the players involved, whereby money or money’s worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, held, drawn, exercised or managed, whether in Jamaica or elsewhere.’ Games of chance which do not require a degree of skill, are governed by the Act, and require the prior approval of the BGLC.

- (d) **Alcohol:** MCAP provides guidance on the marketing of alcoholic beverages. For example, advertisements for alcohol may not be addressed directly or indirectly to persons under the age of 18, or depict minors in any way to suggest that they are drinking alcoholic beverages.

- (e) **Legal services:** Advertising by the Legal Profession is regulated by the General Legal Council (‘GLC’) under the Legal Profession (Canons of Professional Ethics) (Amendment) Rules 1998 (as amended) which provides that lawyers must advertise in a conservative, non-competitive manner. The GLC has since issued extensive guidelines which, among other things, indicate advertisements that may be deemed to be misleading or deceptive. The 2018 Advertising Guidelines state, for example, that:

- It is misleading to use the words ‘and Company’, ‘&’, ‘Group’, ‘Suite’, ‘and Associates’, or ‘& Associates’ when one is a sole practitioner, as such an advertisement suggests a firm of Attorneys when it is not.
- In relation to social media platforms, such as Facebook, Twitter, YouTube, and LinkedIn, which provide for rankings and testimonials, attorneys should exercise due care before linking to, publishing, or endorsing such comments, as this could amount to misleading and deceptive conduct on the part of the attorney where the comments are inaccurate, untrue or outdated.
- It may be misleading to use a nickname, moniker, motto, domain name or trade name that suggests an ability to obtain results; for example, ‘divorcein2months.com’; ‘www.guaranteedwin.com’.
- It is misleading to quote a blanket fee for a type of matter which creates the expectation that the fee will cover all work done, when this is not in fact the case. In addition, it should be made clear whether amounts such as disbursements and taxes will be charged in addition to the fee.

- (f) **Insurance agents and Chartered professions such as accounting:** These are also regulated by special laws. An individual or institution may not be referred to as ‘chartered’ unless designated by Royal Charter or other duly constituted authority.

1.6 Are any government pre-approvals required?

There are no mandatory government pre-approvals for advertisements in Jamaica except for content owned or regulated by the government. However, advertisements for certain types of products or services must comply with prescribed laws, regulations and standards applicable to the particular industry, product or service. For example the Standards Act regulates the packaging, labeling, description and advertising of commodities for which a standard specification has been declared by the Bureau of Standards.

1.7 Does the media pre-clear advertising?

No formal structure for pre-clearance of advertising exists in media houses in Jamaica. While some media houses will internally vet advertisements before they are aired, the onus is on program sponsors/advertisers to comply with the relevant laws and codes of practice on advertising. Media houses generally rely on advertising agencies/sponsors to obtain consents and releases that may be required for using talent or music and other content in advertisements and to seek legal counsel in determining whether advertising content contravenes any fair competition, consumer protection or intellectual property laws (particularly a competitor's trademark rights, copyright or any privacy or related rights). Under the JCAP, the Council provides the media with individual advice and guidance, particularly at the pre-publication stage. The MCAP also provides guidance on the advertising of alcoholic beverages.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Some statutes impose criminal liability for the contravention of the provisions on advertising and set out specific fines and terms of imprisonment for the commission of offences. For example:

- (a) Under the Consumer Protection Act, a person found guilty of engaging in misleading or deceptive conduct in the course of trade or business or conduct that is likely to mislead the public as to the nature, purpose or characteristics of goods or services, or a person who makes a false or misleading representation in relation to goods or services in the course of trade, is liable to a fine not exceeding J\$1 million or imprisonment for a term not exceeding one year, or both. The Advertisement Regulations Act stipulates that any person who contravenes the Act shall be liable on conviction to a fine of J\$20 and a further fine of J\$4 for every day during which the offence is continued after conviction.
- (b) Under the Fair Competition Act if a court finds a person in contravention of the misleading advertising rules in the Fair Competition Act, it may order the offender to pay to the Crown a penalty not exceeding J\$1 million in the case of an individual and not exceeding J\$5 million in the case of a corporation. The court may also grant an injunction restraining the offending person from engaging in false or misleading advertising.
- (c) The Fair Trading Commission, established under the Fair Competition Act, is mandated to carry out, on its own initiative or at the request of any person investigations in relation to the conduct of business in Jamaica to determine whether any enterprise is engaging in business practices in contravention of the Act and the extent of such practices. Refusal or failure to comply with a requirement of the FTC to appear before the Commission and or to give evidence can amount to an offence punishable by a fine not exceeding J\$20,000 or to imprisonment for a term not exceeding two years or to both.

1.9 When does a competitor have a right of action? What are the potential remedies?

The Fair Competition Act gives a competitor a right of action to recover damages for loss resulting from breach of the Act. The Act prohibits misleading advertising by providing that a 'person shall not, in pursuance of trade and for the purpose of promoting, directly or indirectly, the supply or use of goods or services or for the purpose of promoting, directly or indirectly any business interest, by any means' make any representation to the public that is false or misleading or is likely to be misleading in a material respect. A representation to the public in the form of a statement, warranty or guarantee that a particular service is of a particular quality when it is not so, or that is not based on adequate research, will be misleading. If such an advertisement causes loss to a competitor, the competitor may claim damages.

1.10 When do consumers have a right of action? What are the potential remedies?

The Consumer Protection Act provides that a complaint may be made by any person or body who claims to have suffered a disadvantage in relation to the acquisition of goods or services. The Consumer Protection Tribunal hears consumer complaints and has power to establish remedies and make the following types of orders:

- declaring certain transactions to be in breach of the provisions of the Act;
- prohibiting the withholding of supplies or threat thereof;
- suspending or modifying any terms or conditions in an agreement which are manifestly unfair to the consumer or are in contravention of the Act;
- prohibiting the attachment of any extraneous conditions to any transaction;
- requiring the publication of a price list;
- requiring the payment of refund and interest where appropriate;
- requiring the delivery of goods and services; and
- at the request of a party, to protect the confidentiality of that party's trade secrets or other confidential information.

Moreover, where a provider fails without reasonable cause to meet an advertised delivery date, and the customer chooses to not accept the goods, the Consumer Protection Act states that the provider must refund to the customer all moneys paid, plus any interests on any amount not refunded etc. The Act also provides for a fine of up to two million dollars or up to two years imprisonment for contravention of the conditions for demanding and accepting payment.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Jamaica have a primary advertising self-regulation system?

The self-regulation systems for advertising are based on JCAP and MCAP, which complement current advertising laws:

- (a) JCAP is based on the British Code of Advertising Practice and the International Code of Advertising Practice. JCAP represents advertisers, advertising agencies, media, manufacturing, trading and other public and private concerns in the interest of the consumer.

The Code is administered by the Advertising Council of Jamaica whose membership comprises representatives of the Media Association Jamaica Limited, the Advertising Agencies Association Jamaica Limited ('AAAJ'), the Private Sector Organization of Jamaica

Limited, and the National Consumers League Limited. Its main purpose is to set out guidelines for professional conduct and provide the public with the set of limitations accepted by those using or working in advertising. Administrators of JCAP believe that ‘professional regulations, voluntarily applied, can ensure the elimination of dubious practices more speedily than government legislation’ and all concerned agree to observe the Code. Observance of the Code serves to uphold the status of advertising as having an integral role in the marketing of goods and services. The Code also seeks to ‘maintain standards in an area of communication which defies legal distinction—that of good manners and taste.’

- (b) MCAP was developed by the Jamaica Alcohol Beverage Association which represents producers, distributors and marketers of beverage alcohol products. This Code is aimed at guiding members involved in marketing beverage alcohol products. Members are obliged to provide advertising agencies, media buyers and other parties involved in advertising or marketing with a copy of the Code.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The JCAP and MCAP are self-regulatory advertising codes:

- (a) JCAP is the principal self-regulatory code for advertisers in Jamaica. The Code sets out criteria for professional conduct and gives an indication to the public of the limitations accepted by those using or working in advertising. The key principles of JCAP include that advertisements should:
 - be decent (ie, not contain statements or visual presentations offensive to the standards of decency and good-manners prevailing among those who are likely to be exposed to them);
 - be honest (ie, not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge);
 - not without justifiable reason play on fear;
 - not exploit the superstitious;
 - not contain anything which might lead or lend support to acts of violence, nor appear to condone such acts;
 - not contain anything which might lead or lend support to criminal or illegal activities nor appear to condone such acts; and
 - be truthful (ie, all descriptions, claims and comparisons which relate to matters of objectively ascertainable fact should be capable of substantiation and advertisers/advertising agencies are required to be ready to produce such substantiation to the Council).
- (b) Key principles of the MCAP include that marketing communications should:
 - not be unethical, offend against generally prevailing standards of taste and decency, or otherwise question, challenge or impugn human dignity and integrity;
 - not present abstinence or moderation in a negative way or suggest that refusing a drink is wrong or foolish; and
 - not contain words, images, symbols or portrayals which are likely to be considered offensive or demeaning to people of any gender or any race, religion, culture, sexual orientation or other group.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

There are mechanisms for dealing with complaints within the context of the Codes:

- (a) JCAP stipulates that when there is a complaint from a member of the public that the code of practice has been breached, the complaint should be addressed to the Advertising Council of Jamaica. Complaints submitted to the Council must be in writing and must provide examples of references to the advertisement in question. The complainant and the advertiser and/or the advertising agency have a right to appear before the Council in support of or to oppose the complaint and may be represented by an attorney-at-law. The Council is responsible for reviewing the complaints and applying sanctions where applicable. The Council may also originate a complaint if it identifies a breach. The Council will first bring the complaint to the attention of the advertiser in order to rectify the violation. If the advertiser fails to correct the breach the Council may impose sanctions.
- (b) MCAP has a Complaint Review Board which, when necessary, meets to consider complaints from members or other interested parties, including members of the public.

2.4 Is the self-regulation system effective? Is it widely used and followed?

- (a) JCAP is widely adhered to by private sector companies which are members of the associations that make up the membership of the Advertising Council of Jamaica, namely: the Media Association Jamaica Limited, the AAAJ, the Private Sector Organization of Jamaica Limited, and the National Consumers League Limited.
- (b) MCAP was developed by the Jamaica Alcohol Beverage Association ('JABA'), an industry association representing producers, distributors and marketers of beverage alcohol products in Jamaica, and is widely used by its members.
- (c) The ASA, which is responsible for ensuring that basic requirements of professional standards are met by its registered members, is also effective.

2.5 Are the self-regulatory system's decisions reported?

Decisions are reported within the Advertising Council of Jamaica, JABA and the ASA, where their respective members are updated on any developments or issues in meetings. There is no general requirement for public disclosure.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The general ambit of the Codes includes specific categories of advertisements such as alcoholic beverages, privacy and safety and general honesty and integrity in advertising:

- (a) JCAP: All advertisements must:
 - be legal, decent, honest and truthful;
 - be responsible to the consumer;
 - conform to the general principles of fair competition;
 - not bring advertising into disrepute or reduce confidence in advertising as a service to industry and the public, and so on.
 - not play on fear;
 - not exploit the superstitious;
 - not contain anything that may lend support to acts of violence, illegality or criminal acts.

The Code also prohibits the exploitation by an advertiser of a third party's name or goodwill including their trade name or trademark or product and the imitation of slogans, general layout, visuals and music or sound effects.

- (b) Similarly, MCAP stipulates that advertisements should:
- not be unethical, offensive against generally prevailing standards of taste and decency, or otherwise question, challenge or impugn human dignity and integrity;
 - not present abstinence or moderation in a negative way or suggest that refusing a drink is wrong or foolish; or
 - not contain words, images, symbols or portrayals which are likely to be considered offensive or demeaning to people of any gender or any race, religion, culture, sexual orientation or other group.

2.7 Are there any other self-regulatory systems that govern advertising practices in Jamaica?

The AAAJ re-established the ASA as a watchdog body for the industry, noting that advertising executives favor self-monitoring over policing by an outside regulator such as the Broadcasting Commission. The AAAJ is an independent body within the industry that seeks to ensure that advertisers adhere to the highest standards of communication and comport with the industry's codes of practice.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Jamaica (eg, consumer protection laws; IP laws; unfair competition laws)?

See question 1.1 above.

3.2 Is substantiation required for advertising claims?

- (a) **Medical and Related Products:** Health claims from advertisements in relation to medical and related products are specifically addressed in JCAP which covers the following categories:
- (i) medicines, medical and surgical treatments and appliances;
 - (ii) toiletries and other products which claim or imply therapeutic or prophylactic qualities; and
 - (iii) any other product which is advertised, whether wholly or in part, upon the basis that it may improve, restore or maintain the user's health or his physical or mental condition.

JCAP provides that claims for medical or other professional support for a product whether in copy or illustration, or otherwise, should be substantiated and the extent of such support should not be exaggerated.

- (b) **General:** Points of comparison should be based on facts which can be substantiated and should not be unfairly selected. In particular, the basis of comparison should be the same for all the products being compared and should be clearly stated in the advertisement so that it can be seen that like is being compared with like.

JCAP also provides that ‘where a substantial division of informed opinions exists, or may reasonably be expected to exist, as to the acceptability of any evidence which is required to substantiate a claim in an advertisement, that advertisement should neither state nor imply that the claim is universally true or that it enjoys universal support, nor that it represents anything other than the advertiser’s opinion or the opinion of such other authorities as may be named.’

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Puffery is permissible; however, the advertiser may not use puffery to mislead potential consumers. JCAP states that ‘obvious hyperbole, which is intended to attract attention or to amuse is permissible provided that it is not likely to be taken as a positive claim to superior or superlative status’ as it would be seldom possible to substantiate general claims made by advertisers. JCAP further stipulates that ‘consumers should not be led to overestimate the value of goods whether by exaggeration or through unrealistic comparisons with other goods or other prices’.

3.4 What are the rules governing the use of disclosures in advertising?

The relevant statutes focus mainly on the prohibition of false and misleading advertising and promote adequate and accurate disclosures with regard to product information. For example, there are provisions in the Food and Drugs Act relating to this.

As a general rule, an advertisement should clearly identify the advertiser on whose behalf it is published. In relation to political broadcasts the commercial broadcaster must ensure that the name of the political party or sponsor, if any, on whose behalf the broadcast is made, is announced in any announcement or advertisement of that broadcast, immediately before the commencement and immediately after the end of the broadcast.

The Consumer Protection Act stipulates that, in addition to the requirements of other enactments relating to the packaging, labeling or description of goods, a provider must provide a consumer with all the information concerning the goods being sold. For instance, they must provide where applicable, the origin, the price in Jamaican currency, care, terms, components, proper use, weight, size, and instructions for assembly and installation of the goods.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Testimonials are addressed in JCAP, which states that advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience of a reasonable person. Further, testimonials which are no longer applicable should not be used. The Code also stipulates that testimonials should not make claims to efficacy which cannot be justifiably accredited to use of the product. Moreover, particular care must be taken to ensure that advertisements based on fictional characters are not framed to give the impression that real people are involved; in particular, they should not contain ‘testimonials’ or ‘endorsements’ which may give such an impression. JCAP advises that ‘where any testimonial contains an expression which conflicts with the Code, advertisers may amend the testimonial in question so as to remove the source of conflict, provided that, in so doing, the advertiser does not distort the sense of original views expressed by the person giving the testimonial’.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstrations in advertising are not specifically addressed in any of the codes or statutes. However, the general principles and guidelines outlined in the statutes and the codes would be applicable.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertisement is permitted, provided it comports with certain rules laid out in the Fair Competition Act, the Trade Marks Act and JCAP. Generally, such advertisements must not be misleading and must not discredit, denigrate or bring contempt on a competitor or its trade mark, or seek to capitalize on the reputation of the competitor's mark.

According to JCAP, advertisements containing comparisons with competing products or services are permissible in the interest of vigorous competition and public information, provided they comport with the terms of the Code. The advertisement should not confer unfair disadvantage upon the competition and should be based on facts that can be substantiated. However, in light of the Code's prohibition against unjustifiable use of the name or initials of any firm, company or institution and its prohibition against taking unfair advantage of the goodwill attached to the trade name or symbol of another firm or its product/service, Jamaican advertisers usually shy away from direct references to a competing product or service.

3.8 Are there any special copyright or trade mark rules that may impact comparative advertising (eg, whether a competitor's trade mark or products may be used)?

Under the Trade Marks Act, use of a trademark by an unauthorized user in advertising would normally constitute an infringement. However, comparative advertising which is fair and honest is permissible without the authorization of the proprietor of the registered mark in question, provided that such use accords with honest practices in industrial or commercial matters and does not take unfair advantage of, and is not detrimental to, the distinctive character or the reputation of the trademark.

The Copyright Act generally confers on the copyright owner the exclusive right to authorize the use or copying of a protected work, and, therefore, certain uses of a competitor's works may infringe copyright. The misuse of a competitor's trade mark that comprises or contains an original artistic work could amount to copyright infringement. Further, unauthorized reproduction or modification of an original musical or other artistic work could amount to copyright infringement.

JCAP stipulates that advertisements should not be so similar in general layout, copy, slogans, visual presentation, music or sound effects to other advertisements as to be likely to mislead or confuse.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Labels must give country of origin.

Under the Consumer Protection Act, before payment is made for goods, the consumer should be provided with all information concerning the goods being sold. This information includes the origin of the goods. Moreover, no person in the course of business or trade in connection with the supply of goods or services may make a false or misleading representation concerning the place of origin of goods; anyone who does so is liable to a fine of up to J\$1 million or imprisonment for a term not exceeding one year.

As regards food, the Standards (Labeling of Processed Food) Regulations 1974 state that where food is processed in Jamaica the label must contain the words ‘made in Jamaica’, or ‘manufactured in Jamaica’, or ‘processed in Jamaica’, or ‘distilled in Jamaica’, or ‘bottled in Jamaica’, or ‘packed in Jamaica’, or ‘grown in Jamaica’, or ‘product of Jamaica’, as the case may be. Furthermore, where the food is processed in any country other than Jamaica, the name of that country must be stated. Any seller who offers processed food for sale in containers which breach the law will be fined and, in default of payment, may be imprisoned.

Trade marks which consist of or contain a representation of the Coat of Arms of Jamaica, the National Flag of Jamaica, or any other Jamaican national emblem or symbol, are not registrable unless the Registrar is satisfied that consent has been given by or on behalf of the Government of Jamaica. For marks which contain:

- the name ‘Jamaica’ or abbreviations or homonyms thereof;
- a map of Jamaica or national colors of Jamaica; or
- a national emblem or symbol of Jamaica,

the Registrar may impose a condition or a limitation on the mark in the Register, to the effect that goods or services for which the trade mark is registered, must originate in Jamaica. These rules also apply in relation to use of another country’s name, national symbols and emblems.

3.10 Are there any special rules governing product packaging?

Several laws and regulations set out guidelines and requirements for product packaging for particular products.

- (a) Under the Food and Drug Act, a ‘package’ includes anything in which any food, drug, cosmetic or device is wholly or partly contained, placed or packed. This Act states that a person shall not label or package any food, drug, cosmetic or device in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety. Where there is a standard prescribed for such items, packaging must comply with the prescribed standard.
- (b) Under the Public Health (Tobacco Control) Regulations 2013, a ‘package’ is defined as any covering, wrapper, container, carton, bag or other enclosure that contains a tobacco product. The regulations require health warnings on all tobacco product ‘packages’, which includes both unit packaging and cartons. The regulations also set out graphic health warnings for use on packages of smoked tobacco products.
- (c) The Bureau of Standards also issues guidelines for packaging of certain products. For example, in July 2017, the Bureau issued new sugar labeling and packaging standards, whereby sugar sold in quantities less than or equal to 10 lbs must be pre-packaged in bags that are heat sealed, and not tied with a string or knotted.
- (d) Pursuant to the government of Jamaica’s Energy Conservation Policy, a Mandatory Energy Efficiency Labeling Program has been implemented and targets importers of household appliances, such as home refrigerators, air condition units and wine chillers. These units must be registered and tested under the program prior to sale in Jamaica and must be affixed with the corresponding energy efficiency label.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no special rules or guidance on the use of dark practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules or guidance on artificial intelligence in relation to advertising.

4 PRICE ADVERTISING

4.1 What are Jamaica's rules regarding price advertising?

Price advertising is considered critical to fair competition. Accordingly, the Fair Competition Act stipulates that no person who advertises a good for sale should, during that period, supply goods at a higher price than the price previously advertised. An exception is made, however, in situations where an advertisement appears in a catalog or other publication in which it is prominently stated that the prices contained therein are subject to error, once the advertiser establishes that the price advertised was in error, or where such an advertisement is immediately followed by another advertisement correcting the price mentioned in the first advertisement.

4.2 What are Jamaica's rules regarding advertising 'free' products?

JCAP stipulates that products should not be advertised as 'free' where there is any cost to the consumer other than costs associated with any delivery, freight or postage. Where such a cost is required to be paid by the consumer, there must be a clear statement within the advertisement that this is the case.

Furthermore, where a claim is made that if one product is purchased another product will be provided 'free', the advertiser should be able to show that it will not be able immediately and directly to recover the cost of supplying the 'free' product, whether in whole or part.

Additionally, the Code states that a trial may be described as 'free' although a customer will be expected to pay the cost of returning the goods, provided that the advertiser has made clear the obligation to do so.

4.3 What are Jamaica's rules regarding sales and special offers?

The Fair Competition Act provides that a 'person shall not advertise, at a bargain price, goods or services which he does not supply in reasonable quantities having regard to the nature of the market in which he carries on business, the nature and of the business carried on by him and the nature of the advertisement'.

4.4 What are Jamaica's rules regarding rebates?

The Consumer Protection Act and the Sale of Goods Act entitle consumers to cash rebates for defective goods. Where a consumer is encouraged to purchase a good based on the provider's declaration and description of the good, and the consumer subsequently realizes that the good is defective or materially different than what was described, the consumer may return the good to the provider. The provider should, after taking such time as reasonably required to verify the matters, offer to the consumer in exchange for returned goods, monetary compensation for the value of the goods or such other amount as agreed between the consumer and provider. However, a refund of the good may only be made if the good is returned in the condition it was offered or with minimal damage resulting from exposure.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The Fair Competition Act states that the following retail advertising practices are prohibited:

- (a) Any publication by a supplier of goods of an advertisement that mentions a resale price for goods in an attempt to increase the selling price of goods;
- (b) False and misleading advertisements (ie, when an advertiser publishes advertisement about a product or service that is misleading or likely to mislead);
- (c) The practice of 'bait and switch' (ie, when a merchant advertises at a bargain price, goods or services which it does not supply in reasonable quantities). The Act stipulates that whatever goods or services are advertised must be available for purchase immediately; and
- (d) The sale of goods above the advertised price. This is to prevent advertiser from advertising at one price and increasing the price once a customer is in the store.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

There are restrictions on the advertising of tobacco products. Jamaica became a party to the WHO Framework Convention on Tobacco Control in 2005. This treaty, in conjunction with local tobacco-related legislation, has resulted in numerous restrictions and regulations on tobacco advertising, such as the banning of advertisements of tobacco products in the electronic media such as domestic television and radio, as well as in cinemas. There are also strict regulations regarding outdoor advertising and brand marking. Recently-enacted tobacco regulations require 75% of the surface area of cigarette packaging to be covered with health warnings regarding the dangers of smoking.

Under JCAP:

- advertisements for products that claim to 'improve' inherent racial characteristics are prohibited;
- no advertisement may claim or suggest that any drink can contribute to sexual prowess; and
- advertisements which may jeopardize the safety of children, such as ones which would cause children to believe that not owning a product will make them inferior, are prohibited.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) The advertising laws prohibit false and misleading advertisements generally.
- (b) Telemarketing to mobile phones is not prohibited in Jamaica.
- (c) There are also some rules which prohibit advertising of alcohol to certain specific categories of persons and restrict advertising in certain media:
 - (i) For example, JCAP prohibits advertising alcoholic beverages to or targeting children in that 'advertisements for alcoholic drinks should not be addressed directly or indirectly to those under 18, nor should such advertisements picture them, or other young people who might be taken to be less than 18, in any way which might suggest that they were drinking.'

- (ii) Similarly, MCAP stipulates that ‘marketing communications for beverage alcohol products should not be targeted or intended to appeal primarily to persons under 18 years of age either through selection of media aimed exclusively or predominantly at such persons, or through style of presentation or content’. MCAP members’ websites and other marketing communications on the Internet must ask for positive confirmation that those who use the site are over the legal drinking age and should also contain a responsible drinking message and links to a Social Aspects Organization’s website. (Social Aspect Organizations are non-profit organizations usually partially or wholly funded by the beverage alcohol industry that exist specifically to address the areas of misuse associated with alcohol).

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) The Towns and Communities Act prohibits in public places persons from selling or distributing, or offering for sale or distribution, or marking on any fence, wall or any building, any obscene figure, drawing, painting, or representation, or singing any profane, indecent or obscene song or ballad, or writing or drawing any indecent or obscene word, figure, or representation, or using any profane, indecent or obscene language.
- (b) The Obscene Publications Act criminalizes the making, producing and/or possession by any person of any obscene writings, drawings, prints, paintings, printed matter, films, for the purpose or by way of trade.
- (c) JCAP stipulates that, ‘advertisements should not contain statements or visual presentations offensive to the standards of decency and good manners prevailing among those who are likely to be exposed to them’. The Broadcasting Commission has also published directives on the prohibition of explicit or violent content.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The Television and Sound Broadcasting Regulations make provisions concerning commercial broadcasts:

- (a) **General Requirements:** A licensee who engages in commercial broadcasting shall cause to be kept at its broadcasting station for inspection by an authorized person during business hours of that station, a record of the name of the sponsor of an announcement.
- (b) **Political Broadcasts:** In relation to a political broadcast, a licensee who engages in commercial broadcasting must:
 - (i) ensure that the name of the political party or sponsor, if any, on whose behalf the broadcast is made, is announced in any announcement or advertisement of that broadcast, immediately before the commencement and immediately after the end of, such broadcast; and
 - (ii) not permit any such broadcast other than an advertisement thereof to be dramatized.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

According to JCAP: ‘Advertisements should be clearly distinguishable as such whatever their form and whatever the medium used. When an advertisement appears in a medium which contains news, editorial or program matter it should be so designed, produced and presented that it will be readily recognized, as an advertisement.

In print media, wherever there is any possibility of confusion, the material in question would be identified by the words ‘ADVERTISEMENT’ or ‘ADVERTISEMENT FEATURE’, and should be boxed in or otherwise distinguished from surrounding or accompanying editorial matter. By-lines naming staff journalists should not be used.’

7.2 Are there any special disclosures or other obligations when integrating advertising content with other content?

See question 7.1 above.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

MCAP addresses Internet advertising. MCAP members’ websites and other marketing communications on the Internet must ask for positive confirmation that those who use the site are over the legal drinking age, and should also contain a responsible drinking message and links to a Social Aspects Organization’s website.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser’s Facebook page)?

This is not specifically addressed in any codes or rules. However, rules relating to testimonials and endorsements would apply if the advertiser is representing the statement as a testimonial. See question 3.5 above.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

No.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

JCAP states that 'Advertisements should not (subject to certain specified cases) portray or refer to by whatever means, any living persons, unless their express prior permission has been obtained'. This requirement applies to all persons, including public figures and foreign nationals. Advertisers should also take care not to offend the religious or other views of those connected in any way to deceased persons depicted or referred to in any advertisement. Although JCAP's requirement of express prior permission relates only to living persons, there are cases in which deceased persons could assert this right through their estates or personal representatives, based on the tort of appropriation of personality (an extension of the common law of passing off) which has been recognized by the Jamaican Courts.

While there is no statutory right of publicity, the existence of a property interest as distinct from a privacy interest attached to a personality was recognized in the Jamaican case of *The Robert Marley Foundation v Dino Michelle Ltd*. The court held that Bob Marley, a celebrity at home and abroad, had a right to the exclusive use of his image and likeness. The right entitled him to exploit it commercially and that right survived his death. The decision has been followed in subsequent local decisions.

Although the Bob Marley case restricted the application of the tort to celebrities, a subsequent Supreme Court first instance decision, *Messam v Morris and Williams HCV 1219/2004*, has extended its application to all persons. Georgia Messam brought a claim against Messrs Morris and Williams for breach of contract, negligence and wrongful appropriation of personality when the first defendant, Clive Morris, a photographer who Messam engaged to photograph her at a party so she could send the pictures to her fiancé, instead handed the pictures to Milton Williams, editor of *Hardcopy*, a magazine he worked for. The pictures were published without Miss Messam's consent. Messam succeeded on breach of contract and wrongful appropriation of personality with nominal damages of J\$1.00 for each claim with costs. Justice Sykes ruled that the claimant need not be a celebrity in order for the tort to be established (referring *Joseph v Daniels* 4 BCLR (2d) 239; and *Athans v Canadian Adventure Camps* 17 OR (2d) 425). Disagreeing with Clarke J in the *Bob Marley* case, Sykes J posited that the tort is not designed to protect celebrities, but to protect a person from the loss of marketing their image and therefore targets wrongful commercial use of personality. He also departed from Clarke J on the point that it is necessary to prove that there was a detriment to the celebrity or those claiming through or under them.

The Copyright Act recognizes the right to privacy in photographs and films. A person who commissions the taking of a photograph or the making of a film for domestic or private purposes can prevent the copying, broadcasting and other commercial use of that photograph or film. Interestingly, no reference was made to this right in the Messam case, even though it appears to be directly on point.

9.2 Are there situations when permission is not required?

JCAP outlines some situations in which permission is not required:

- (a) The use of crowd or background shots in which individuals are recognizable, provided that neither the portrayal, nor the context in which it appears, is defamatory, offensive or humiliating.

- (b) Advertisements for books, films, radio or television programs, press features and the like, which contain portrayals of or references to featured individuals (eg, an ad for a film/book about great Jamaican musicians or athletes containing references to Peter Tosh or Usain Bolt, respectively).
- (c) Police or other official notices.
- (d) Where, in the Council's opinion, the reference or portrayal in question is not inconsistent with the subject's right to a reasonable degree of privacy and does not constitute an unjustifiable commercial exploitation of his fame or reputation.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are some specific rules governing how certain types of materials should be used generally and these rules impact on use in advertising. For example, these include national symbols and heritage sites which are protected. While use of national symbols/emblems, is generally permitted, there are specific rules governing how they should be used. In particular, in relation to the National Flag of Jamaica, written permission should be sought from the Chancery in the Office of the Prime Minister before it is used. In relation to heritage sites, photographers ought to obtain permission to photograph such sites, and commercial use of the photographs must be licensed by the Jamaica National Heritage Trust. However, 'Freedom of panorama' is recognized under the Copyright Act, which limits copyright claims in relation to depictions of pictorial, graphic, sculptural, and architectural works which are permanently situated in a public place or in premises open to the public. The doctrine is not limited to non-commercial uses. Therefore, making a graphical representation of such works, photographs or filming such work or broadcasting a visual image of it would not be an infringement of copyright.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

It is generally permissible to use other companies' recognizable non-competing products in advertising, although the practice is not to feature such products or brands. However, where the personality featured in an advertisement has a main sponsor, if the advertiser requires the personality to wear their branded product which does not compete with the main sponsor's product, the personality's appearance may be allowed or prohibited by the personality's main sponsor, depending on the advertiser or the type of product being advertised.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Jamaica which affect advertising (eg, Swedish gender equality law)?

No.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Jamaica is generally a conservative and a largely Christian country with a relatively small population. Advertisements which openly promote a liberal or homosexual lifestyle will generally be considered offensive and may also be challenged as being illegal.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Jamaica?

While a considerable degree of legislative freedom exists in relation to advertising in Jamaica, it would be prudent for advertisers and potential advertisers to exercise some restraint in advertising and marketing their products or services, and to pay keen attention to content which may be considered obscene, profane or immoral, especially in connection with adult industries such as alcohol and tobacco.

 JAPAN 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Japan?

Advertising in Japan is regulated under a number of statutes, including the Act against Unjustifiable Premiums and Misleading Representations ('AUPMR'), the Act on Specified Commercial Transactions ('ASCT'), and other acts and guidelines in respect of specified industries.

There are also 'fair commission codes', voluntary rules made by trade associations, such as the alcohol beverage industry, the real estate industry, the automobile industry, etc in accordance with the AUPMR in order to standardize expressions in advertising appropriate for each industry. Since each fair commission code is authorized by the Minister of the Consumer Affairs Agency ('CAA') and the Fair Trade Committee, a member company which obeys its fair commission code will not be censured for infringement of the AUPMR.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

There is no definition of 'advertising' under the AUPMR, which instead refers to 'representations', which are defined as any advertisement or other representation which a business makes as a means to induce customers with respect to the substance of the goods or services which it supplies, or the trade terms or any other matter concerning their supply. There is no restriction on the type of media advertisements that may appear in newspapers, magazines, flyers, TV, radio, signboards, the internet (including banners), social media, email messages, direct mail, etc.

1.3 What is the basic regulatory framework for advertising regulation?

The AUPMR provides the main regulatory framework, and is supplemented by industry-specific regulations, such as:

- (a) the ASCT;
- (b) the Medical Care Act;
- (c) the Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices ('Pharmaceutical and Medical Devices Act') (formerly the Pharmaceutical Affairs Act);
- (d) the Health Promotion Act; and
- (e) the Outdoor Advertisement Act.

The industry-specific 'fair commission codes' (as to which see question 1.1 above) also contain rules applicable to advertising, and there are also a number of advertising guidelines issued by government bodies responsible for specific industries.

In addition, local ordinances on advertising issued by local governments prohibit certain kinds of advertising (eg, advertising on gambling and any immoral advertising).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Certain activities designated under the ASCT (eg, door-to-door sales, mail order sales, telemarketing sales, multi-level marketing transactions, and business opportunity sales transactions) are required to indicate certain information when advertising goods, rights, or services (eg, price, when payment

is due, method of payment and cancellation). Misleading advertising and sending email advertising without the prior consent of the addressee are prohibited. If a seller or a service provider fails to comply with these requirements, the Ministry of Economy, Trade and Industry ('METI') may order the seller or the service provider to suspend the business activities in question, either partially or completely, for up to three years. In addition, a fine of up to ¥300 million may be imposed on the seller or the service provider.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) Under the Medical Care Act, advertising of a medical practice, dental practice, hospital, or clinic is generally not permitted. An exception to this is:
 - (i) the fact that the person is a physician or dentist, (and their age, and a brief personal record); and
 - (ii) the name, telephone number, and information that indicates the location of the hospital or clinic,
 and other information related to these people as specifically permitted by the Minister of Health, Labor and Welfare as information that contributes to recipients of medical care making appropriate choices with regard to that care.
- (b) The Pharmaceuticals and Medical Devices Act prohibits false or exaggerating advertising in relation to the name, effect, or efficiency of a medicine, quasi-drug, cosmetic or medical equipment (see question 5.1 below).
- (c) Advertisements by lawyers, law firms, and foreign lawyers are strictly limited; advertising which is, eg, false, comparative, infringes regulations of bar associations, or is damaging to, or in danger of damaging the dignity of lawyers, etc, is prohibited (see question 5.1 below).

1.6 Are any government pre-approvals required?

No, though general advice may be sought from regulators.

1.7 Does the media pre-clear advertising?

Some large media organizations have their own policies that require pre-clearance of advertising, but there is no legislation requiring pre-clearance by the media.

The Advertising Review Counsel, Japan ('ARC'), a public interest incorporated foundation authorized by the government and which was originally established by the major Japanese newspaper companies, can also research and report on the contents of advertising prior to publication or broadcast, if requested to do so by a member media organization. However, such ARC reports are not legally binding, and do not provide the advertiser with any protection.

1.8 How does the government enforce advertising laws? What are the potential remedies?

If a representation in advertising is found to be misleading, the Secretary General of the CAA and/or a prefectural governor of the location where the advertising is published may order the advertiser to:

- cease the misleading representation,
- take the measures necessary to prevent a reoccurrence, and/or
- take any other necessary action, including public notice of the matters relating to the implementation of such measures under the AUPMR.

These are commonly known as ‘cease-and-desist orders’, but they may be issued even if the violation has already ceased.

In the event that an advertiser makes a misleading representation on superiority (of quality) and/or favoritism (of value), the Minister of the CAA may order the advertiser to pay to the government a surcharge of 3% of the value of sales of the subject goods or services for the preceding three years, which is calculated retroactively from the last date of the misleading representation. If the calculated amount of the surcharge is less than ¥1.5 million, the surcharge will not be imposed.

Where a seller or a service provider designated under the ASCT has violated:

- (a) the obligation to indicate certain information when advertising goods, rights, or services (for example, price, when payment is due, method of payment, and cancellation);
- (b) the prohibition on misleading advertising; or
- (c) the prohibition on sending email advertising without consent,

and METI finds that the conduct is likely to significantly prejudice the fairness of a transaction arising from mail-order sales and the interests of the purchaser or the service recipient, or if the seller or the service provider fails to comply with the above obligations and abide by the above prohibitions, then METI may order the seller or the service provider to:

- suspend its business activities that are connected with such mail order sales, either partially or completely, for up to two years; and/or
- pay a fine of up to ¥3 million.

In addition, a fine of up to ¥3 million may be imposed on the seller or the service provider.

1.9 When does a competitor have a right of action? What are the potential remedies?

- (a) If an advertisement infringes the rights of a competitor, the competitor may bring a lawsuit against the advertiser. The competitor may ask the court for:
 - (i) an injunction;
 - (ii) damages; and
 - (iii) other remedies.

However, litigation is costly and time consuming, so advertising-related litigation of this kind is rare.

- (b) A competitor may also complain to the Japan Advertising Review Organization (‘JARO’), a self-regulatory body established by the advertising industry, which handles complaints and inquiries from consumers, competitors and others, and makes recommendations for modification or discontinuance of questionable representations, and request them to recommend that the advertiser modify or discontinue any questionable advertising. This is relatively inexpensive, and generally produces reasonable results.
- (c) Notifying a prefectural governor and/or the CAA is another option. Handling of complaints is at the discretion of the prefectural governor or the CAA, so notification is not always an effective remedy. That said, in certain sectors, such as the telecommunications and consumer goods sectors, the relevant authorities are often proactive in gathering information and providing administrative guidance, so notification may be effective in some situations.
- (d) In practice, directly contacting and discussing questionable advertising with the advertiser or the advertising agency that is handling it can be a faster and more effective alternative.

1.10 When do consumers have a right of action? What are the potential remedies?

In practice, consumers usually challenge advertising through the CAA or the JARO, although consumers have a right of action if the advertising has infringed the consumer's rights. Anyone may contact the CAA and the JARO, and no grounds are required to bring a complaint with either of these organizations.

If the CAA receives notice of questionable advertising, the CAA will research the advertising, and if it agrees that the advertising is misleading, it may issue a cease-and-desist order as described in question 1.8 above.

If the JARO receives a complaint or an inquiry concerning certain advertising, it examines the matter and, where necessary, recommends the advertiser to modify or discontinue making questionable representations. Advice or information is also provided in response to inquiries.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Japan have a primary advertising self-regulation system?

Each industry generally has its own code of practice in addition to the 'fair commission codes' in certain industries. These are voluntary rules, but members generally follow these rules once formulated. Advertising agencies and media companies are also generally familiar with, and comply with, the rules specific to their clients' industries.

Also see question 1.9 above regarding the JARO.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The medical sector is strictly self-regulated. For example, the Fair Competition Code for Prescription Drugs prohibits pharmaceutical companies from offering premiums to medical institutions as a means of unjustly enticing them to trade in prescription drugs.

The Japan Pharmaceutical Manufacturers Association ('JPMA'), which is a voluntary association comprising research-oriented pharmaceutical companies, established codes of ethics regarding promotional activities for ethical pharmaceutical products in 1976, and has revised these several times since. JPMA established its code of practice in 1993 in accordance with the International Federation of Pharmaceutical Manufacturers and Associations, and has revised it as necessary. Inter alia, the JPMA Code of Practice provides that:

- the provision of information is prohibited prior to approval and recommendation of off-label use; and
- samples shall always be supplied only in the minimum quantity necessary, and together with information relating to the drug.

The Japan Federation of Medical Devices Associations, consisting of manufacturers and suppliers of medical and health-care devices, equipment, instruments and materials, has established a Code of Ethics, a Charter of Corporate Behavior, and a Medical Device Industry Promotion Code.

Some industries, such as the alcohol and tobacco industries, have self-regulatory advertising codes. These voluntary rules basically stipulate:

- protection for minors (restrictions on the times of broadcasts, media, and use of celebrities appealing to the younger generation);
- health warnings, including the manner in which these are presented (eg, wording, point size of type, and timing of the warning).

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Non-compliance with a self-regulatory advising code is very rare and could directly lead to a cease-and-desist order by the CAA and calls for a commercial boycott by consumers.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Yes.

2.5 Are the self-regulatory system's decisions reported?

It depends on the industry. Usually, such decisions will be disclosed to the public (eg, on the website of an industry association) or such information will be shared within the self-regulatory system.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The medical/health-related sector is strictly self-regulated (please see question 2.2 above).

Some voluntary rules (eg, on alcoholic beverages, and on tobacco) prohibit certain advertising in order to protect minors.

2.7 Are there any other self-regulatory systems that govern advertising practices in Japan?

No.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Japan (eg, consumer protection laws, IP laws, unfair competition laws)?

Advertising claims are governed by:

- (a) the Unfair Competition Prevention Act;
- (b) the Copyright Act;
- (c) the Trademark Act;
- (d) the Pharmaceuticals and Medical Devices Act;
- (e) the Health Promotion Act;
- (f) the Outdoor Advertisement Act;
- (g) the AUPMR; and
- (h) the ASCT.

3.2 Is substantiation required for advertising claims?

There are no specific rules on substantiation. However, tests and studies must be objective, supported by results and facts, and fair.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

No. There is no concept of 'puffery'.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific rules governing the use of disclosures.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsement by third parties may not be used without prior consent and must not mislead consumers. Industry codes of practice generally stipulate that testimonials, statements of opinion, beliefs and experience must not mislead consumers, and advertisers must use disclaimers on such statements, such as ‘this is an individual experience and not for everyone’. Professional comments, eg, by a doctor or a specialist, must be general and not for a specific good or service.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted. The comparison must be proven objectively, supported by evidence, and presented correctly, appropriately, and fair in methodology. It is permissible to identify a competitor by name or product, although it is rare to do so in practice.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

There are no special copyright rules that may impact comparative advertising.

Under the Trademark Act, to display or distribute advertising materials affixed with a trademark is deemed to be ‘use’ of the trademark. Putting another person’s trademark on advertising material without consent would be an infringement of the trademark.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

The Act on Protection of Names of Specific Agricultural, Forestry and Fishery Products and Foodstuffs (‘GI Act’) has been enforceable since June 2015 in order to secure the profits of producers of specific agricultural, forestry and fishery products and foodstuffs (‘SAFFPF’) by establishing a system for protection of names of SAFFPF based on Annex 1C of the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights. 134 local products and five international foods (Italian Parma Ham, (*Prosciutto di Parma*), Luc Gan Lychee (Vietnam), Binh Thuan Dragon Fruit (Vietnam), Doi Tung Coffee (Thailand), and Doi Trang Coffee (Thailand)) have been registered as Geographic Indication (‘GI’) in Japan as of 20 July 2023.

The information required for an application for registration to the Minister of Agriculture, Forestry and Fisheries (‘MAFF’) for GI designation of agricultural, forestry and fishery products and foodstuffs includes the product’s:

- (a) name;
- (b) place of production;
- (c) characteristics; and
- (d) method of production.

No person may affix a GI pertaining to a SAFFPF, or an indication similar to it, on agricultural, forestry and fishery products and foodstuffs belonging to the classification to which the SAFFPF under the registration is affiliated, or to agricultural, forestry and fishery products and foodstuffs manufactured or processed using those products as a main raw material or ingredient, or on its package, etc.

MAFF regularly monitors whether the production process management is conducted appropriately. In addition, if a GI is infringed, MAFF may issue an injunction to correct the unlawful use of GIs.

3.10 Are there any special rules governing product packaging?

The Act for Promotion of Effective Utilization of Resources requires that packaging be labeled for effective recycling:

- (a) In the packaging of pharmaceutical products, legal descriptions such as:
 - (i) the name of the manufacturer and seller;
 - (ii) the name of the drug;
 - (iii) the serial number;
 - (iv) a description indicating the type of city drug; and
 - (v) the expiration date,
 are required.
- (b) For food products, details of:
 - (i) ingredients;
 - (ii) additives;
 - (iii) expiration date/consumption date, etc,
 are also required.

Many local governments regulate overabundant, excessive packaging through local regulations.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

In March 2023, the CAA designated stealth marketing as a misrepresentation in a Notification based on the AUPMR (in force October 2023). The Notification covers:

- (a) advertisements that the general public might not recognize as advertisements; and
- (b) statements in all media, ie, not only the Internet (such as Social Networking Services postings and review postings), but also TV, newspapers, radio, magazines, etc; but
- (c) only businesses that supply goods and services (advertisers); third parties such as influencers who receive requests from companies (advertisers) to advertise or promote their products and services, and advertising companies are not included in the scope of the Notification.

If, as a result of an investigation by the CAA, a business is found to have violated the Notification, a cease-and-desist order will be issued against the business, and the contents of the order will be made public. Examples of a cease-and-desist order include an order:

- to discontinue the statement,
- to inform the general public of the violation,
- to take measures to prevent recurrence, and
- not to repeat the violation in the future.

The Commissioner of the CAA determines the standards for the operation of the Notification, and the CAA publishes the Stealth Marketing Notification Guidebook, which explains the contents of the Notification and provides examples of what may or may not be determined to be a business's 'statement'.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No. Japan is moving toward developing non-legally binding guidelines rather than rule-based regulations.

4 PRICE ADVERTISING

4.1 What are Japan's rules regarding price advertising?

There is no specific rule regarding price advertising. Tax laws requires that the total price of a good or service includes consumption tax, if the price is indicated, although this requirement has been relaxed for a short period until consumption tax is raised to 10%. Indication of price is optional, excepting ASCT industries which require price indication.

4.2 What are Japan's rules regarding advertising 'free' products?

If such 'free' products are deemed to be 'premiums' under the AUPMR, then there are limitations on, inter alia:

- (a) the maximum value of each premium or the total number of premiums;
- (b) the kind of premiums; and
- (c) the method by which they are offered.

4.3 What are Japan's rules regarding sales and special offers?

Sales and special offers are allowed unless they are deemed to be 'dumping', which is prohibited by antitrust laws.

4.4 What are Japan's rules regarding rebates?

There are no specific rules on rebates except where they are offered to governmental officers, in which case this may constitute bribery. In addition, if a rebate affects pricing, it may be contrary to antitrust laws and regulations.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

No.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) Under the Medical Care Act, advertising of a medical practice, dental practice, hospital, or clinic is not permitted, with certain exceptions; see question 1.5 above.
- (b) Advertisements by lawyers, law firms, and foreign lawyers are strictly limited in Japan; advertising which is, eg, false, comparative, infringes regulations of the national bar association and local bar associations, or damaging or in danger of damaging the dignity of lawyers, etc is prohibited. There is no prohibition on the type of media that may be used, but the wording, placement, and method of advertising are strictly limited.
- (c) The Pharmaceuticals and Medical Devices Act prohibits:
 - (i) false or exaggerating advertising in relation to name, effect, or efficiency of a medicine, quasi-drug, cosmetic or medical equipment;
 - (ii) advertising that misleads consumers that a doctor can guarantee the effect or efficiency of a medicine, etc; or
 - (iii) promotes abortion, or uses an obscene document or image in relation to a medicine, etc.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) Spam email (ie, sending advertising through email without consent) is prohibited under the ASCT.
- (b) There are no legal prohibitions on subliminal messages. However, the regulations of the Japan Commercial Broadcasters Association prohibit the use of subliminal effects in broadcasting, so, in practice, it is not possible to broadcast advertising with subliminal messages.
- (c) ‘Stealth marketing’ is, in effect, prohibited as described in question 3.11 above.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Criminal Code prohibits the distribution, sale or display in public of any obscene document, drawing, etc. Enforcement is somewhat lax.

Each of the large media organizations has self-regulatory rules on usage of words and expressions, and indecent or obscene advertising is generally limited to media that is exclusively for adults.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

No. However, misleading advertising is prohibited in accordance with AUPMR, and an article-style advertisement (‘advertorial’) in the press usually shows who the advertiser/sponsor is.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

No.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

No. In practice, a copyright notice is included in such advertising, and the licensor of such work will require a copyright notice in a footnote.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

No.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

No.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

No.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

A person who consents to their image being used in advertising consents to the use of their name, picture, likeness, voice, and identity (if any) in practice, although there is no specific rule. There is no general rule on 'fair use' of publicity in Japan, and privacy and certain kinds of publicity are protected by the Constitution. An advertising agency will not use an individual's name, picture, likeness, voice or identity without consent.

9.2 Are there situations when permission is not required?

No. However, an infringement of privacy or publicity is too trifling to seek compensation for where an individual cannot be identified because the picture or likeness is unclear.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There is no specific rule governing the types of materials that must be cleared before they are used in advertising; however, consent for the use of trademarks, copyright and publicity is required by other laws.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

It is generally not permissible to use other companies' recognizable products in advertising without permission. However, it would be permissible to use such recognizable products in comparative advertising, though this is somewhat rare in Japan (see question 3.8 above).

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Japan which affect advertising (eg, Swedish gender equality law)?

No.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

No.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Japan?

It is very important to conduct cultural research in Japan before advertising there; as what may be acceptable or, for example, amusing abroad may not be so in Japan. In addition, trademarks etc, used abroad may infringe local trademarks.



KENYA



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Kenya?

There is no overarching law that solely regulates advertising; rather, advertising in Kenya is regulated through certain industry specific laws contained in various laws, codes and guidelines:

- (a) the County Outdoor Advertising Control Act (No 19 of 2020) was enacted to regulate outdoor advertisement at county level;
- (b) the Data Protection Act (No 24 of 2019) regulates the commercial use and handling of personal data of data subjects by both data controllers and processors. Additionally, the Data Protection (General) Regulations 2021 regulate the use of personal data for marketing and provide data subjects with the option to decline direct marketing communications;
- (c) the Constitution of Kenya 2010, the Consumer Protection Act 2012 and the Competition Act 2010, which provide for general principles on representations made to consumers in advertising; and
- (d) the Code of Advertising Practice and Direct Marketing ('the Code'), which is a self-regulatory code published by the Marketing Society of Kenya.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The types of communications considered as advertising vary depending on both the particular law, code or guideline engaged, and the product or service being advertised:

- (a) Under the County Outdoor Advertising Control Act, any communication constituting a notice or representation employed wholly or partly to draw the attention of the public or promote any product or service is considered advertising.
- (b) The Code, on the other hand, includes the following communications as advertising:
 - (i) advertisements on print and electronic material;
 - (ii) outdoor advertisements;
 - (iii) cinema and video commercials;
 - (iv) advertisements in non-broadcast electronic media; and
 - (v) view data services such as telephony advertising.

The Code also regulates online advertising.

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework for advertising is contained in the respective laws or codes which govern advertising. There are also various bodies tasked with enforcement of advertising regulations, key amongst which being the Kenyan courts, the Advertising Standards Committee ('ASC'), the Competition Authority of Kenya, the Office of the Data Protection Commissioner, and the Communications Authority of Kenya. The Capital Markets Authority published draft regulations in 2011 which were to apply to investment advertising, but these regulations have not come into force.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Certain types of advertising are specifically regulated. For instance:

- (a) The Code regulates disparagement of advertisers, comparative advertising and testimonials.
- (b) Television advertisements are regulated by the Kenya Information and Communication (Broadcasting) Regulations ('Broadcasting Regulations'), which contain several guidelines regarding content of advertisements and the time periods during which advertisements for certain products should be broadcasted. For example, they require, that a licensee must exercise due care in order to avoid content that may disturb or be harmful to children, contains offensive language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence.
- (c) The Consumer Protection Act prohibits advertising of internet gaming sites that are operated contrary to any written law.
- (d) The Data Protection Act regulates the use of personal data for commercial purposes such as advertising. Data controllers and processors are required to obtain the consent of data subjects before using personal data to advertise. The Data Protection Regulations prohibit the use of personal data for advertising unless such data is expressly collected with consent for such use.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Advertising in the drinks, tobacco, gaming, pharmaceutical and financial services industries are specifically regulated:

- (a) Advertising of tobacco products is regulated by the Tobacco Control Act.
- (b) Advertising of alcoholic products is regulated by the Alcoholic Drinks Control Act.
- (c) Promotions of products and services are regulated by the Betting, Lotteries and Gaming Act, while advertising of internet gaming sites is regulated by the Consumer Protection Act.
- (d) The Pharmacy and Poisons Board has published Guidelines for Advertisement and Promotion of Medicines and Medical Devices in Kenya.
- (e) The Law Society of Kenya has developed a regulatory code of advertising for its members, called the Advocates' (Marketing and Advertising) Rules.
- (f) The Central Bank of Kenya has published Prudential Guidelines to regulate advertising by institutions licensed by the Central Bank of Kenya, which include banks and micro finance institutions. The Central Bank of Kenya also regulates advertising by digital lenders through the Central Bank of Kenya Digital Credit Providers Regulations.

1.6 Are any government pre-approvals required?

There are no Government approvals required in the regulated industries.

1.7 Does the media pre-clear advertising?

The media does pre-clear advertisements. Rules guiding broadcasters on the factors to consider before airing advertisements are contained in the Broadcasting Regulations. The Broadcasting Regulations task broadcasters with ensuring that any descriptions or claims made in all

advertisements aired are substantiated by the advertiser. Broadcasters also have an obligation to ensure that advertisements do not contain claims which may mislead members of the public in relation to the products or services advertised and that the advertisements do not unfairly attack or discredit products or services of other advertisers.

1.8 How does the government enforce advertising laws? What are the potential remedies?

There is no specific body established by the Government to enforce advertising laws. However, the Government can enforce advertising laws through the courts and the industry specific regulatory bodies. Outdoor advertising is governed at the County level, where the County Governments license and give approvals to entities.

The ASC sits as a tribunal and gives rulings and judgments on complaints made to the Advertising Standards Body of Kenya ('ASBK') (see question 2.3 below).

Some statutory bodies have powers to directly enforce advertising laws, for example:

- (a) the Central Bank of Kenya has power to issue a directive to any financial institution licensed by it, to amend or refrain from issuing any advertisement which the Central Bank of Kenya considers to be misleading;
- (b) the Competition Authority may impose fines and penalties where advertisement may result in consumer harm;
- (c) the Office of the Data Protection Commissioner ('ODPC') may impose fines where advertising utilizes personal data without meeting compliance requirements; and
- (d) the Betting Control and Licensing Board has the mandate to regulate advertising by players in the betting and gaming industry.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor has a right of action where an advertiser gives false or misleading information which directly or indirectly makes reference to the competitor or its products in an advertisement. A competitor may also commence an action where an advertiser makes a claim with respect to its product that is misleading to consumers. The remedy likely to be awarded by the court is an injunction restraining an advertiser from further broadcasting advertisements containing false or misleading information. Although there is a relevant advertising dispute currently before the Kenyan High Court, to date there have not been any court decisions granting damages with respect to advertising disputes. However, in the matter presently before the courts, the claimant has sought damages with respect to reduced sales of its products allegedly occasioned by the misleading advertisements.

1.10 When do consumers have a right of action? What are the potential remedies?

A consumer has a right of action where they suffer loss after consuming a product or using a service pursuant to an advertisement for the product or service which contained false or misleading information. The remedy available to such a consumer would be an award of damages by the court.

A consumer can also file a complaint with the ASC (see question 2.3 below).

2 SELF-REGULATORY FRAMEWORK

2.1 Does Kenya have a primary advertising self-regulation system?

The Code is a self-regulatory code which applies to advertising conducted in Kenya. However, this Code is not binding and adherence to its provisions is voluntary, based on the goodwill of advertisers. The Code only applies to all members of the Marketing Society of Kenya ('MSK') who have subscribed to the Code. The majority of corporate bodies in Kenya are members of the MSK.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The MSK and the Association of Practitioners in Advertising ('APA') under the umbrella of the ASBK have established the Code to regulate advertising and marketing by its members. The Code binds advertisers, practitioners in advertising and media owners who have the principal responsibility of observing the terms of the Code.

The Code provides four basic principles to which advertisements must conform:

- (a) **Legal:** Advertisements must be legal in that their contents must not breach the laws of Kenya and must also not lend support to criminal or illegal activities.
- (b) **Decent:** Advertisements must not contain anything which is likely to lead to serious or widespread offence, indignation, umbrage or resentment on grounds of race, tribe, religion, sex, sexual orientation or disability.
- (c) **Honest:** Advertisements should not contain anything which offends or takes advantage of the susceptibility or vulnerability of consumers; nor should they resemble each other so closely as to be misleading or cause confusion.
- (d) **Truthful:** Advertisements should readily be supported with relevant documentation and evidence to establish and substantiate all descriptions, claims and comparisons prior to acceptance for publication or transmission.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Code provides for a dispute resolution mechanism for the hearing and settlement of complaints made against advertisers. In the first instance, the ASC, established by the Code, receives, considers and acts upon complaints which are brought to the attention of ASBK. Complaints made to the ASC may emanate from competitors, consumers or members of the public, or from criticism from the media. Decisions of the ASC are arrived at by a vote of the majority of the members.

The ASC is entitled to impose the following sanctions on an offending advertiser or respondent in a complaint or dispute:

- (a) order the withdrawal of an advertisement in its current format;
- (b) direct the advertiser to submit the proposed amendment to the Secretariat for pre-publication advice;
- (c) subject the advertiser to pre-publication advice in respect of future advertisements for a specified period;
- (d) publish the names of defaulters in the local media;
- (e) require media members of the ASBK to withhold advertising space from the respondent; and
- (f) refer the advertiser to a disciplinary hearing with one of the umbrella associations.

The Code also establishes the Standards Appeal Council ('the Council') to consider and determine appeals from parties who are aggrieved by decisions of the ASC.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system, although not widely used, is effective and is fast gaining legitimacy among advertisers. This is largely because, where parties submit to the jurisdiction of the ASC, decisions of the ASC and the Council are enforceable against offending advertisers. Kenyan courts have also recognized the dispute resolution role played by these two bodies, as was seen in the *Unilever v Proctor & Gamble* dispute, in which the High Court of Kenya observed that the ASC could be used as a forum for adjudication of advertising disputes where the parties involved submit to its jurisdiction.

2.5 Are the self-regulatory system's decisions reported?

Some decisions of the ASC and Council are reported online on the ASBK website <http://advertisingstandards.or.ke/rulings/>. However, some decisions are not reported in order to safeguard confidentiality with respect to the parties involved and their affairs.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Advertisers should be aware that, even though the Code prescribes certain minimum standards for advertising various products, these provisions are subject to statutory provisions, including those relating to:

- (a) cigarettes (Tobacco Control Act);
- (b) alcoholic products (Alcoholic Drinks Control Act); and
- (c) pharmaceutical products (Pharmacy and Poisons Act).

Companies advertising products whose advertisement is regulated by specific statutes should be familiar with those provisions, since non-observance is bound to attract stiff penalties.

2.7 Are there any other self-regulatory systems that govern advertising practices in Kenya?

There are no other self-regulatory systems that govern advertising practices in Kenya.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Kenya (eg, consumer protection laws, IP laws, unfair competition laws)?

The general rules governing advertising claims are found in the Constitution, the Consumer Protection Act and the Competition Act:

- (a) The Constitution guarantees the right of consumers to information which is necessary for them to gain the full benefit from goods and services. One of the ways in which this information is relayed to consumers is through advertising.
- (b) The Consumer Protection Act prohibits the making of false, misleading or deceptive representations to consumers, and describes instances of what constitutes false, misleading or deceptive representations.
- (c) The Competition Act makes it an offence for any person to make false, misleading or unconscionable representations in connection with the promotion, by any means, of the supply or use of goods or services.

3.2 Is substantiation required for advertising claims?

Under the principle of truthfulness in advertising, advertisers are obliged to substantiate all advertisements with relevant documentation and evidence in support of all descriptions, claims and comparisons prior to acceptance of the advertisement for publication or transmission. The evidence to be used to substantiate the description, claim or comparison must come from a credible independent research entity acceptable to ASBK. Where research is conducted in-house by the advertiser, such research results must be evaluated and confirmed by a credible independent research entity. The responsibility of substantiation lies solely with the advertiser and remains with them, even when handling of advertising is delegated to an agent.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

All types of advertisements require substantiation without exception.

3.4 What are the rules governing the use of disclosures in advertising?

Disclosure requirements in advertising vary depending on the product or service being advertised. For example:

- (a) Under the Betting, Lotteries and Gaming Act, betting tipsters are required to disclose to publishers their real names and permanent addresses.
- (b) Advertisements for financial services rendered by institutions licensed under the Banking Act must disclose the full physical address and contact details of the advertiser.
- (c) Marketers engaged in e-commerce with consumers must provide accurate, clear and easily accessible information about themselves and about the goods or services offered to enable consumers to make an informed decision about whether to enter into the transaction.
- (d) The Alcoholic Drinks Control Act provides that no person shall promote an alcoholic drink so as to create a false impression that:
 - (i) a link exists between consumption of that drink and social or sexual success;
 - (ii) consumption of that drink is acceptable before or while engaging in driving, operating machinery, sports or other activities that require concentration in order to be carried out safely;
 - (iii) that the alcoholic drink has a therapeutic value or that it has the ability to prevent, treat or cure any human disease; and
 - (iv) it is wrong or foolish to refuse that drink.

As a matter of practice, alcoholic products in Kenya usually contain the following warning messages: 'Excessive consumption of alcohol is harmful to your health. Not for sale to persons under 18 years.'
- (e) The Tobacco Control Act provides that, subject to the provisions of Part V of the Act, no person should promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element or one that evokes a tobacco product or element. The Act also prohibits the advertisement of any tobacco product on any medium of electronic, print or any other form of communication or the promotion of tobacco or a tobacco product by means of lifestyle advertising.

- (f) As regards advertisements for financial services, as indicated earlier in this chapter, the Capital Markets Authority had published draft Capital Markets Authority Advertising Regulations 2011, but these regulations have not come into force. These regulations define ‘investment advertisement’ to mean ‘any form of advertisement made to any person in Kenya which contains or refers to an invitation or inducement to subscribe for or purchase any form of investment (whether that investment constitutes particular securities which are or are to be offered for subscription or purchase or related generally to investment in some form of securities)’.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Rules governing use of testimonials and endorsements in advertising require that any testimonial or endorsement must be genuine and must relate to a consumer’s personal experience over a reasonable period. Testimonials should not contain claims in relation to a product’s effectiveness which cannot justifiably be attributed to use of the product.

Advertisers are not required to seek a person’s permission before using a statement as a testimonial or endorsement.

The Code places restrictions on testimonials from people resident outside Kenya, which are unacceptable unless the address and country of residence of the person making the testimonial is made available to the ASBK.

The Code prohibits depiction or endorsement in a cigarette advertisement of any celebrity in the entertainment or sporting world or any other person who may appeal to persons below 18 years old.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific laws or regulations governing the use of product demonstrations in Kenya.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted by the Code. The guiding principle in all comparisons is that all products/services should be promoted on their own merits and not on the demerits of competitive products. The following rules should be adhered to:

- (a) claims made in the comparative advertisement must not be misleading or confusing;
- (b) only facts capable of substantiation can be used in a comparative advertisement;
- (c) the comparative advertisement must not infringe on advertising goodwill;
- (d) the comparative advertisement must not disparage other advertisements; and
- (e) products or services compared in a comparative advertisement must have similar characteristics.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

The Trade Marks Act prohibits the use of a trademark in Kenya which is identical or similar to a registered trademark or a well-known mark entitled to protection under the Paris Convention or the World Trade Organization Agreement and which is likely to cause confusion among users of the goods or services. This general prohibition also covers use of trademarks in comparative advertising. There are no special rules on copyright. Copyright in advertisements would, therefore, need to be protected under the normal rules of copyright as set out in the Copyright Act.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

The Code requires that claims on geographical origin must not be misleading and they must be factual. Additionally, we anticipate that geographical indications will be covered in the Intellectual Property Protocol under the African Continental Free Trade Area (‘AfCFTA’) Agreement.

3.10 Are there any special rules governing product packaging?

There are special rules governing product packaging that are sector-specific. For instance, there are rules which apply to alcoholic beverages, tobacco products, pharmaceuticals, food and chemical substances. These rules provide, inter alia, for the warnings that should be included on the product packaging and the relevant information that should be provided to consumers.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no specific rules or guidance on the use of dark practices, and such practices are regulated through the extensive set of laws referred to in question 1.1 above. The Consumer Protection Act, for instance, prohibits the making of false, misleading or deceptive representations, without limitation as to what constitutes such representations. This included a representation that uses exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact, which would result in deceiving or manipulating a consumer. The Data Protection Act on the other hand, restricts the use of personal data by data controllers and processors for purposes that would have a negative impact on data subjects.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There is currently no specific law that governs the use of artificial intelligence for advertising. However, advertisers intending to use AI especially for targeted marketing or advertising must comply with the requirements of the Data Protection Act where they intend to use personal data. The Data Protection Act requires entities intending to collect, use, and store personal data to register as either a data controller, data processor, or both. Additionally, the collection, use and storage of personal data must be done with the express and informed consent of the data subject, and further comply with the requirements of the Act. These may include carrying out an impact assessment to determine the risks involving personal data. The Data Protection Regulations require that data subjects be informed that the purposes for which their personal data is collected includes direct marketing, for which they must consent.

4 PRICE ADVERTISING

4.1 What are Kenya’s rules regarding price advertising?

The following rules apply with regard to price advertising in Kenya:

- (a) the stated price should be clear and should match the product advertised;
- (b) the price must be quoted in full, and should be the selling price at which the goods will be sold to purchasers making immediate payment;
- (c) the prices quoted must include all necessary incidental costs without which the product cannot be purchased and taxes (including VAT and other non-optional taxes and duties); and
- (d) if the price of one product is dependent on the purchase of another, the advertisement should clarify the extent of any commitment made by purchasers.

4.2 What are Kenya’s rules regarding advertising ‘free’ products?

Advertisement of ‘free’ products is subject to the following rules:

- (a) advertisements offering ‘free’ goods should indicate that such goods are only received subject to purchase;
- (b) no product should be advertised as ‘free’ where there is cost to be incurred by a consumer, other than the actual cost of any delivery, freight or postage, and, where such costs are payable by the consumer, the advertisement should clearly indicate this;
- (c) where incidental costs of delivery, freight or postage exceed those that would typically arise if a comparable product was bought from a comparable source, the product should not be advertised as ‘free’; and
- (d) advertisers should not seek to recover the costs of the products which they describe as ‘free.’

4.3 What are Kenya’s rules regarding sales and special offers?

The Code provides general guidelines with regard to special offers, and places the following restrictions on special offers:

- (a) an advertiser must not make an offer which requires a person to notify the advertiser that they do not wish to receive further goods unless this condition is made clear in the original offer and accepted by the consumer; and
- (b) an advertiser should not dispatch goods to a potential buyer unless an order has been received or the consignment is clearly shown to be ‘free’.

Regulations governing advertisement of certain specific products also contain provisions on special offers. The Guidelines for Advertisement and Promotion of Medicines and Medical Devices in Kenya, for example, ban offering free samples, bonus offers and discounts on any medicine sold directly to the public.

4.4 What are Kenya’s rules regarding rebates?

There are currently no rules on rebates in Kenya.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are currently no other key restrictions regarding retail advertising practices in Kenya.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

All products and services may be advertised on all types of media available for advertising. However, there are controls on how certain products, including tobacco and alcoholic products and medicines, can be advertised. The Code, for example, restricts television advertising of cigarettes to times when the audience is likely to consist of adults only and preferably after 9.00 pm.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Pursuant to the Kenya Information and Communication (Consumer Protection) Regulations, it is an offence to directly market products using automated calling systems without human intervention, facsimile machines or electronic mail without the consent of the subscriber.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Regulations governing indecency and obscenity are contained in the Broadcasting Regulations, which oblige broadcasters to ensure that content aired on their stations does not contain:

- (a) offensive language, including profanity and blasphemy;
- (b) sexual matters in an explicit and offensive manner;
- (c) glorification of violence; and
- (d) anything which is likely to incite or perpetuate hatred of any person or section of a community on account of race, ethnicity, nationality, gender, sexual preference, religion or culture.

Content aired by broadcasters includes advertisements. Therefore, these prohibitions also apply to television and radio advertisements.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The following rules apply with regard to identification of advertisers or sponsors:

- (a) the identity of advertisers should always be disclosed in features, announcements or promotions whose content is controlled by the advertisers;
- (b) all distance selling advertisements with written response mechanisms, for example, advertisements sent by registered post, facsimile or electronic mail must contain the names and addresses of the advertisers;
- (c) advertisements by political parties must clearly be identified and distinguished so as not to be confused with normal programming; and
- (d) sponsorship of a program by an advertiser must be acknowledged immediately before and after the program is broadcast and the connection between the program's subject matter and the sponsor's commercial activities must be identified.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules governing the integration of advertising and entertainment content. However, general rules against passing off in trademark and substantial copying and reproduction of material protected under copyright apply. There are no rules regulating product placement in Kenya.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special disclosure obligations when integrating advertising content with other content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules governing advertising on social media. However, advertisers will be liable if they make false, misleading or deceptive representations to consumers, which are prohibited under the Consumer Protection Act.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Please see question 8.1 above. Where a consumer places a false, misleading or deceptive statement on an advertiser's Facebook page, the advertiser could avoid liability by demonstrating that the consumer acted on their own and not on instructions from the advertiser.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are currently no judicial decisions with regard to advertising on social media and user generated content.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Image rights are recognized and protected under Kenyan law. Therefore, before a person's picture or likeness is used in advertising, the consent of that person should be obtained. The person's consent should also be obtained where their name or voice is used in an advertisement, since this might be considered by consumers to be an endorsement of the product or service being advertised. There is no prescribed process for obtaining consent. It is a contractual arrangement with the owner of the image rights.

Data protection is now a paramount consideration under the law. The Data Protection Act and Data Protection Regulations require that personal data may only be used for the purposes for which it is collected, and only with the informed consent of the data subject can such data be used for direct marketing or advertising.

9.2 Are there situations when permission is not required?

There are no situations when consent is not required.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no specific rules governing types of materials which must be cleared before they are used in advertising. However, some organizations have their own internal approval procedures that apply to materials used in advertising.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

It is not permissible to use other companies' recognizable products in advertising without the companies' consent, as this would amount to infringement of either trademark or copyright, or the tort of passing off.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Kenya which affect advertising (eg, Swedish gender equality law)?

The Code requires that, in order to preserve cultural and traditional norms and practices, characters and situations depicted in cigarette advertisements should not be shown in such a way that they directly or indirectly imply traditional values, aspirations or historical associations, or behavioral norms of the community to which the advertisements is aimed.

The National Flags, Emblems and Names Act prohibits the use of the national flag of Kenya, certain specified emblems and specified names or their imitations in advertisements without government permission.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

We are not aware of any other cultural norms that should be considered.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Kenya?

Other than the principles set out above, there are no general principles applicable to advertising in Kenya that we would wish to highlight.

 KUWAIT 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Kuwait?

In the State of Kuwait, the Kuwait Municipality, Communication and Information Technology Regulatory Authority ('CITRA') and the Ministry of Information ('MOI') are responsible for overseeing the telecommunications sector, information and broadcasting (including all types of advertisement).

Distribution or broadcasting of the following via any media is prohibited by Law No 61 of 2007 ('Audiovisual Media Law') and may not be distributed/broadcast at any time. There is a criminal penalty associated with such actions, including imprisonment and fine:

- Material prejudicing the Divine Self, the angels, the Holy Qur'an, the prophets, the good companions or the wives of the Prophet—peace and blessings be upon him, or subjecting them to ridicule or any other means of expression as provided in Law No 31 of 1970, amending some provisions of the Penal Code (Law No 16 of 1960).
- Inciting the overthrow of the country's system of government or urging a change of this regime by force or by unlawful means, or advocating the use of force to alter the country's existing social and economic order, or to embrace doctrines aimed at the unlawful destruction of the statutes in Kuwait.
- Criticism of the person of His Highness the Amir of the country. Moreover, no statement will be attributed to the Amir without written permission from the Amiri Diwan.
- Contempt for or contempt of the Constitution of Kuwait, or incitement to violate its provisions.
- Insult or contempt of the judiciary or members of the Public Prosecutor's Office or any violation of the impartiality and neutrality of the judiciary.
- Violating public morals or inciting public disorder, violating laws or committing crimes;
- Disclosure of reports of official confidential communications or conventions and treaties concluded by the Government of Kuwait prior to their publication in the Official Gazette, except with the special permission of the ministry concerned.
- Material that may damage the value of the national currency or destabilizing the country's economic situation or disclosing the bankruptcy of merchants, commercial companies, banks or money changers without special permission from the competent court.
- Disclosure in any official meeting or in documents, documents, decrees or any papers or publications whose confidentiality or non-publication is determined by the Constitution or by law.
- Infringement of the dignity, privacy or religious beliefs of persons.
- Material advocating or inciting hatred or contempt for any category of society.
- Material affecting the private life of a staff member or person in charge of a public service or false statements or acts that include slander or libel of their personality.

Kuwait legislation provides for specific regulations governing specific type of advertisement, including:

- (a) radio advertisements;
- (b) TV advertisements;
- (c) electronic advertisements; and
- (d) advertisements in a public place.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The following pieces of legislation include terms that can be considered as definitions for advertisement or promotional activity in Kuwait:

- (a) In Municipality Decree No 559 of 2023, ‘advertisement’ means every medium intended to inform a person or a group of people about a commodity, industrial or commercial product, device, machine, or any commercial, industrial or professional business activity, whether in the form of writing, drawing, image, sound, light, or by other means. Further it adds that an advertisement may be made of any kind of material including wood, metal, paper, cloth, plastic, glass, etc.
- (b) Law No 68 of 2017 and Law No 69 of 2017 and their Executive Regulations regulate radio and TV advertisements, and include the following definitions:
 - ‘commercial advertisement’ is advertising that promotes goods, products, services, etc, with the aim of achieving monetary profit;
 - ‘awareness advertisement’ is an advertisement that aims to raise awareness, to guide, or organize society, and does not aim to achieve material profit;
 - ‘regular advertisement’ is an advertisement that includes one ad material;
 - ‘compound advertisement’ is an advertisement that includes more than one ad material;
 - ‘mobile advertisement’ is an advertisement in which a radio/TV ad is shown for a specified duration of seconds;
 - ‘advertisement tape’ (or ‘Ki roll’) is the passage of advertising material at the bottom of the television screen during a specified period of time;
 - ‘visual advertisement’ is the display of the logos of the advertisers on the field of the stadium during the transmission of sports matches on television by a special device (virtual).
 - ‘announcement in exchange for prizes’ is an indication by a radio program presenter when announcing the name of the winner of the name, address and phone numbers of the award provider.
 - ‘advertisement in exchange for telecommunications services’ is mentioning the phone numbers of telecommunications companies through radio stations, so that the public can communicate with their programs.
- (c) According to Audiovisual Media Law:
 - (i) ‘audio and video media’ means any television or radio broadcasting process addressed to the public or particular categories thereof through signals, images, sounds or graphics that are not characterized by private broadcasting, through stations, channels, waves and other modern technologies related to television or radio broadcasting, and

- (ii) 'broadcasting' means the transmission of video or audio programs via electromagnetic waves through satellites or other means of whatever nature or description; the public are able to receive them through the technical means of various appellations.
- (d) Law No 8 of 2016 ('E-Media Law') provides that:
 - (i) 'electronic media' is any activity that includes publishing or broadcasting materials or forms or media services of electronic content that is produced, developed, upgraded, circulated, broadcasted, published or accessed through the internet or any other communications network, and
 - (ii) 'electronic publication' means transmitting, broadcasting, sending, or receiving electronic media activities through the internet or any other communications network by using systems or electronic applications, whatever their nature is, and other means of modern technology for general circulation. This should include electronic advertisement.

1.3 What is the basic regulatory framework for advertising regulation?

In addition to the prohibited advertising contents set under the Audiovisual Media Law (as listed under question 1.1 above), Ministerial Resolution No 167 of 2016 concerning the Prohibition of the Publication and Broadcasting of Commercial and other Advertisements provides as follows:

- (a) Any commercial or other advertisements in publications, newspapers, audio, visual or electronic media shall not violate the provisions of the legislation in force and the provisions of public order or public morals;
- (b) It is prohibited to publish or broadcast any commercial or other advertisements in publications, newspapers, audio, visual or electronic media if they include the following:
 - Logos that praise some countries against other countries;
 - Images that praise some political and religious figures in countries in which there are political or religious conflicts;
 - Logos that praise or support some religious or political parties inside or outside of Kuwait;
 - Violation of national unity, values and principles of Islam and the position of religious symbols;
 - Fireworks, firecrackers, Electroshock weapons of all kinds, sound weapons and materials causing tears or temporary blindness;
 - Materials of security nature;
 - Inciting juveniles to violence or committing crimes;
 - Exposing foster children sponsored by the Ministry of Social Affairs and Labor;
 - Disparaging the disabled or discriminating between them and their healthy peers;
 - The activities of nurseries in violation of the internal regulations governing the work of such nurseries, especially advertisements related to:
 - admitting children over the age of four years,
 - providing child support courses or classes or opening a children's club, or
 - opening sports classes inside the nursery;
 - Selling books related to witchcraft and learning magic;
 - Witchcraft and healing ability;

- Purchase of citizen civil cards for the purpose of subscribing to shares of joint stock companies of all kinds;
 - Cigarettes, tobacco and derivatives thereof;
 - The activities of the investment of funds and financial facilitations such as loans for the purchase of vehicles or objects sold in instalments (also known as 'cash settlement') or payment of debts, without obtaining prior approval of the Ministry of Commerce and Industry (MOCI);
 - Marketing offers related to discounts, free gifts or rewards, or collecting the money of others or selling property outside of Kuwait, without obtaining prior authorization from the MOCI;
 - Treatment with 'ruqyah' without authorization from the Ministry of Health (MOH);
 - Medicines, stimulants, herbs, beauty products and health-related without obtaining an authorization from the MOH;
 - Advertising by or from an educational institution, university or college not accredited by the Ministry of Higher Education or the Private Universities Council;
 - Tutoring in one of the different stages of education, preparing, offering or selling memoranda, research or model answers, without obtaining prior authorization from the Ministry of Education or the Ministry of Higher Education;
 - Opening a charity market for the purpose of collecting money and the like without obtaining the approval of the Ministry of Social Affairs and Labor;
 - Collecting donations for internal or external entities without obtaining approval from the Ministry of Social Affairs and Labor;
 - Leasing ships or carrying out maritime voyages without obtaining the approval of the Ministry of Transport; or
 - Promoting the sale of all kinds of foods and drinks prepared in private houses and the like without obtaining the approval of the Municipality.
- (c) It is also prohibited to publish or broadcast any commercial or other advertisements in publications, newspapers, audio, visual or electronic media, without obtaining an authorization from the Ministry of Interior, if they include the following:
- Selling and trading all kinds of blade weapons and air guns;
 - Selling surveillance cameras and covert listening devices of all kinds;
 - Services provided by companies using the automated systems of the Ministry of Interior;
 - Weapons of mass destruction (nuclear/chemical/biological) and materials or vehicles used in or related to such weapons; or
 - Masks or equipment for personal or public protection related to weapons of mass destruction or devices related to radiological, chemical or biological measurements.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Yes. CITRA's regulations provide certain restrictions on advertisement messages sent by the licensed telecommunication service providers to its customers.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes. Resolution No 167 sets out requirements for obtaining approvals of certain governmental bodies in Kuwait before advertising. For instance, advertising about private educational institutions prior approval from the Ministry of Education must be obtained. Similarly, for advertising health centers and private clinics, prior approval of the MOH must be obtained. See further question 1.3 above.

1.6 Are any government pre-approvals required?

Yes, depending on the targeted media (radio, TV or electronic advertisement) and the subject or content of such advertisement.

1.7 Does the media pre-clear advertising?

Yes. For example, any advertisement in a public place must be cleared by the relevant Kuwaiti municipality.

1.8 How does the government enforce advertising laws? What are the potential remedies?

In addition to the sanctions set under the advertisement legislations, the government may block access to any advertisement violating the applicable regulations.

1.9 When does a competitor have a right of action? What are the potential remedies?

This would have to be considered on a case-by-case basis. However, if the matter was reported to CITRA or the MOI, then they may levy fines on the advertiser or the media outlet that carries the advertising.

1.10 When do consumers have a right of action? What are the potential remedies?

From a consumer protection perspective, Law No 39 of 2014 ('Consumer Protection Law') prohibits the advertisement, selling, display, provision or promotion of goods or/and services by any means that comprise false information or data. In the same context, the Executive Regulation of the Consumer Protection Law provides that a description, advertisement or offer of good and/or service shall be deemed false if it includes a false offer, information, or allegation that shall directly or indirectly lead to create an invalid or misleading impression to the consumer; and in particular, if it includes one or more of the following elements:

- nature, composition, basic specifications or elements of the product from which it is composed, its quantities, form or appearance;
- source, reality, manufacturing, date of production, date of validity, conditions of use, precautions for use, weight, volume, amount, measurements, energy, standards or other measurements;
- country of origin, country of export, or party producing the product;
- contractual conditions and measures, including the after-sale service, guarantee, price and means of payment;
- prizes, certificates or quality marks;
- trademarks, emblems or statements; and/or
- specifications of the good or the service and results expected from the use thereof.

The Law further provides that all advertising must be in Arabic and may not be published unless approved by the competent authority.

Consumers and users may submit a complaint against the advertiser before the Consumer Protection Authority and request a block on the content before the MOI and at CITRA's website (<https://citra.gov.kw/sites/en/Pages/WebContentRequest.aspx>). Violations shall be punished by fines not exceeding KWD 5,000 and/or imprisonment for a period not exceeding six months.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Kuwait have a primary advertising self-regulation system?

In Kuwait, there is no established self-regulating body.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Not applicable.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Not applicable.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Not applicable.

2.5 Are the self-regulatory system's decisions reported?

Not applicable.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Not applicable.

2.7 Are there any other self-regulatory systems that govern advertising practices in Kuwait?

Not applicable.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Kuwait (eg, consumer protection laws; IP laws; unfair competition laws)?

(a) For a discussion of the Consumer Protection Law please see question 1.10 above.

(b) With respect to IP laws in Kuwait, the law generally allows for the reporting and republishing of visual works available to the public in the context of news coverage of current events. Law No 75 of 2019 ('Copyright Law') states that protections provided by the Copyright Law shall not include news and current events which constitute mere information releases. Third parties may use works in certain special cases without the permission of the copyright owner and without compensating them, provided that such use does not interfere

with the normal exploitation of the work and does not cause undue harm to the legitimate interests of the right holder, although the source and name of the author should be cited, if possible. Newspapers, periodicals, or broadcasting organizations would be able to use this legitimate use exemption, and they may publish excerpts from an audio, visual, or audio-visual work available to the public in the context of news coverage of current events. Any agreement to the contrary of these limitations shall be null and void.

(c) With respect to unfair competition, Law No 72 of 2020 ('Competition Law'), along with its Executive Regulations, provides that persons/entities shall be prohibited from entering into any agreements or carrying out any activities, which are related to horizontal or vertical relationships resulting in the following:

- Setting the prices of the products, directly or indirectly, by:
 - increasing, decreasing or fixing prices,
 - imposing any restrictive commercial conditions in relation to the sale or distribution of a commodity or the supply of a service, or
 - any other way that contradicts the market mechanism;
- Dividing or sharing product markets, whether by territory, volume of sales or purchases, the type of products sold, or by any other means;
- Fixing the volume of production, distribution or sale of any commodity; or specifying the method or means of providing any service;
- Limiting technical development or investment with regard to the production, distribution, or sale of any commodity, or the provision of any service; or
- Collusive tendering or bidding for sale, purchase or supply of any products.

Hence, no one should enter into any agreements or carry out any advertisement activity that may distort, restrict or prevent competition.

3.2 Is substantiation required for advertising claims?

A complaint submitted by an end user/customer against a certain advertisement does not require substantiation.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There are no specific regulations providing for advertising messages that do not require substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific laws in place.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsements and testimonials fall under the general rules under the Consumer Protection Law. They must be accurate and those providing them must have given explicit consents to publish same.

3.6 What are the rules governing the use of product demonstrations in advertising?

As with all advertising, it must be fair and accurate.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

The Consumer Protection Law does not give a specific definition of comparative advertisements, but it does stipulate a prohibition on advertising the sale, display or offer or promotion of goods or services by any means which includes false information or data, meaning that comparative advertising is strongly prohibited by law if it includes incorrect information, whether related to the commodity and service offered by the professional or the competitive item and service.

Even though there is no explicit prohibition of comparative advertisement under Kuwait laws, comparative advertising may be considered a form of unfair competition if it aims to exercise any of the acts listed under the Competition Law (see question 3.1(c) above).

Having said that, the prohibition does not apply to the principle of comparison itself, but to the illegal practices such comparison may result in. Comparative advertising is lawful provided that such advertising does not amount to unfair competition, and does not contravene provisions of the advertising regulations, the relevant provisions of the Consumer Protection Law or the prevention of fraud or the protection of intellectual property rights.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There is no specific law regulating comparative advertising, but the Competition Law applies to the misuse of intellectual property rights, trademarks, patents and publications if this should result in damage to competition and the protection of free trade. As a result, it can be argued that using a competitor's trademark with the aim of comparing products could be interpreted as unlawful use.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The applicable regulations regarding rules of origin under Kuwait law include:

- (a) Ministerial Decision No 361 of 2019, which prohibits importation, handling or selling of any products that do not satisfy the certificate of origin requirement, indicating their point of origin; and
- (b) Ministerial Decision No 361 of 2019, which requires that the certificate of origin shall be authenticated and attested up to the level of the Kuwaiti consulate in the country of origin.

In addition, it should be noted that Kuwait authorities adopt specific rules with respect to dealing with Israel, which includes a total ban of products made or originated in Israel entering into Kuwait according to the Israel Boycott Law No 21 of 1964—so Israel cannot be a country of origin. According to this law, all forms of entrance, trading, possession and handling of Israeli-made products and commodities are prohibited in Kuwait. Commodities and materials are considered of Israeli origin if they are made of Israeli-manufactured materials, whether entirely or in part, and whether products are imported directly or indirectly from Israel. Products are also considered of Israeli origin and subject to the prohibition if they are shipped through Israel or manufactured outside of Israel to be exported for the benefit of Israel or for anybody affiliated with Israel.

3.10 Are there any special rules governing product packaging?

Yes, generally, packaging must include labels in Arabic. The Consumer Protection Law requires the labels to set out, in particular:

- the production date of the commodity,
- its expiry date,
- its ingredients and properties,
- any inherent hazard, and how to avoid it, together with any precautions related to its use.

There are specific requirements applicable to certain type of products, for example:

- the MOH's requirements regarding food packaging,
- the Gulf Cooperation Council's Guidance for Presenting the Summary of Product Characteristics, the Patient Information Leaflet and Labeling, which states that the particulars to appear on the outer packaging and the immediate packaging of pharmaceutical medicines must include:
 - the manufacturer name,
 - the marketing company, and
 - the name, telephone number, e-mail, and address of the marketing authorization holder.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

There are no specific regulations regarding 'dark practices'; however, it is mandatory to abide by the rules set under the Consumer Protection Law.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

As of yet, Kuwait does not have specific regulations on AI in advertising. The only applicable legislation in such cases would be the E-Media Law.

4 PRICE ADVERTISING

4.1 What are Kuwait's rules regarding price advertising?

The Consumer Protection Law prohibits advertising that could be considered misleading or deceptive.

4.2 What are Kuwait's rules regarding advertising 'free' products?

Please see response to question 4.3 below regarding sales and special offers.

4.3 What are Kuwait's rules regarding sales and special offers?

For merchandise and giveaways, the applicant for a license to run this type of promotion must be the local registered company or agent. A license must be procured from the Competent Department of the MOCI at least one month before the date of any offer to be made. The procedure is as follows:

- (a) Submission of a license application to which the following are attached:
 - statements including the commodities offered;
 - the value of the real cost of the commodities covered by the offer, substantiated by proofs;

- types and trademarks of the commodities covered by the offer;
 - the sale price applicable within the month preceding the submission of the license application and during the offer;
 - bills of sale within the month preceding the offer;
 - any other documents showing the commodities covered by the offer and the discount rates, as may be required by the Competent Department of the MOCI.
- (b) Payments for issuance of the license:
- KWD 50 for issuing the license.
 - KWD 25 for extending the license period.

The license shall be issued on the form approved by the MOCI and shall indicate any special conditions or rules relating to the type of license. There are also additional considerations the licensee should take into account, explained in detail in the executive regulations of the Consumer Protection Law.

4.4 What are Kuwait's rules regarding rebates?

Please see response to question 4.3 above.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There may be additional restrictions which advertisers should be aware of, depending upon the product being advertised.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc.)?

In general, it is prohibited to publish anything that would breach public morals and violate public order or commit a crime. Further, it is prohibited to advertise fireworks, firecrackers, weapons, tear gas, or tobacco. Please see the complete list under the response to question 1.3.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

It is prohibited for an advertiser to promote misleading medical results as per Resolution No 87 of 2023 concerning Controls and Regulations for the Medical Advertising Process.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Indecency or obscenity would likely breach public morals and thus not be tolerated.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

According to Resolution No 167, any licensed commercial advertisement must include mention of the licensing entity and the license number in a prominent place.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

No.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

No.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

If social media is used for medical advertising processes, there are certain considerations to take into account. For instance, Resolution No 87 applies to any material or content of any form or type that is published with the intent of promoting health services or their prices, or any product, treatment, or medical device, whether by practitioners, health facilities, their owners or managers or at their request, and whether or not a fee is paid for such publication. Resolution No 87 is applicable to the private sector, and does not extend to advertisements issued by the MOH or any other governmental health institution.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Please see response to question 8.1 above.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Not at this time.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Written permission should be obtained to use any of the above.

9.2 Are there situations when permission is not required?

Yes—see question 3.1(b) above.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Not applicable.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Please see question 3.1(b) above.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Kuwait which affect advertising (eg, Swedish gender equality law)?

Advertisements should not violate provisions of the applicable legislation, public order, or public morals in Kuwait.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertising should not violate national unity, values, and/or the principles of Islam.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Kuwait?

Generally, it is important to note that the relevant laws in Kuwait prohibit advertising that could be misleading or deceptive.

 LATVIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Latvia?

Advertising is primarily regulated by the Advertising Law and other legislation related to marketing such as the Unfair Commercial Practices Prohibition Law. The Electronic Mass Media Law deals with advertisements in the media.

Advertising is also regulated under Consumer Rights Protection Law. Sector-specific legislation may also cover issues regarding the advertisement of goods thereunder, such as alcohol, tobacco, lotteries, consumer credits and others.

In addition, there is intellectual property and data protection legislation that is relevant in advertising as well.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

‘Advertising’ is defined as ‘any form or any mode of announcement or endeavor associated with economic or professional activity, intended to promote the popularity of or demand for goods or services (including immovable property, rights and obligations)’.

The Supreme Court has held that the determination of a communication to be an advertisement must be made on a case-by-case basis, taking into account the intention thereof.

1.3 What is the basic regulatory framework for advertising regulation?

The general regulatory framework for advertising is encompassed in the Advertising Law, which sets out the basic provisions. The Advertising Law is the *lex generalis*. Regarding consumers and B2C advertising relationships, the *lex specialis* is the Unfair Commercial Practices Prohibition law.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The Advertising Law contains general provisions regarding the matter, however, some advertising practices are subject to specific laws which govern their advertising. Whilst not exhaustive, the following list sets out the main additional provisions:

- TV advertising;
- Communication with consumers; and
- Direct marketing to children.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) **Alcohol:** The advertising of alcoholic beverages is not prohibited; however, there are certain restrictions. The Electronic Mass Media Law stipulates restrictions on commercials related to alcoholic beverages—advertisements of alcoholic beverages other than wine or beer are prohibited.

There are also restrictions regarding the permissible content of the advertisements as well as the placement thereof. The provisions of the Alcohol Circulation Law provide specific requirements for content that must be included in the advertisements, such as reference to the negative effects of alcohol. It must be mentioned that amendments to the Alcohol Circulation Law detailing new, stricter requirements are currently under review by the Parliament.

- (b) **Tobacco:** The advertising of tobacco products is regulated by the Law on the Handling of Tobacco Products, Herbal Products for Smoking, Electronic Smoking Devices and Their Liquids. Tobacco products must include warning labels regarding the negative effects on health. The advertisement of tobacco products is allowed only in publications intended for tobacco traders, and at closed-off premises where only such goods are sold.
It is forbidden to show persons smoking, distribute tobacco goods for free and advertise tobacco product imitations (toys, sweets etc) to minors. It is also forbidden to have tobacco products on display in non-specialized shops.
- (c) **Pharmaceuticals:** Advertising of pharmaceuticals to consumers is prohibited if the pharmaceuticals are prescription-only, partly or fully covered from State budget funds, or contain psychotropic or narcotic substances controlled in Latvia.
Advertising is restricted to pharmaceuticals sold without prescription. A basic requirement is to include information on the correct usage, an invitation to consult with a physician or pharmacist regarding the use of the medicinal product, and an explicit invitation to carefully read the instructions.
- (d) **Lotteries:** Under Latvian law, there are several types of lotteries. Lotteries of goods and services, for which a person does not have to pay a participation fee but must purchase a product in order to participate, may only be advertised if they have received a permit. Accordingly, the permit number must be included in the advertisement.
Advertising of gambling is prohibited.
- (e) **Consumer credit:** Under the Consumer Rights Protection Law consumer credit may only be advertised in specific places and websites. General advertisements on TV or radio are prohibited. The advertisements must also include definitive and final calculations of the cost of the credit.
- (f) **Food supplements:** Only those food supplements registered with the Latvian Food and Veterinary Service may be advertised in Latvia. Such advertisements must include a specific disclaimer that the product does not replace balanced nutrition.
- (g) **Energy drinks:** Energy drink advertising or energy drink-related audio and audiovisual commercial communications may not be addressed to persons under the age of 18, and placement of such advertising in media is subject to specific rules laid down in the Energy Drinks Circulation Law.
- (h) **Politics:** There are certain restrictions for pre-election campaigns, including blackout periods for publishing material, along with reporting and language requirements. The Pre-election Campaign Law prohibits covert pre-election campaigns or concealed advertising.

1.6 Are any government pre-approvals required?

Generally, no. The instalment of external advertisements (eg, on billboards, shop windows, poles, etc) requires a permit from the municipality. Permits are issued by the administration of the municipality in which territory the external advertisement is to be erected.

1.7 Does the media pre-clear advertising?

Yes.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The implementation of the requirements for advertising set out in the legislation is carried out by state-appointed authorities, namely the:

- Consumer Rights Protection Centre,
- Food and Veterinary Service,
- Data Protection Inspectorate, and
- Health Inspectorate.

For non-compliance with the statutory requirements, the advertising entity may be given a warning, or a fine the amount of which depends on its annual turnover. In the worst-case scenario, a fine of up to 4% of its annual turnover (up to a maximum of €2 million) may be imposed for a severe breach of unfair commercial practice laws; in cases where the infringement has taken place only in the territory of Latvia, the maximum fine is limited to €300,000.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may have a right of action when products or brands are compared in the advertisement and such comparison is misleading to the consumer (especially, if the competitor's brand or product is discredited, diminished, or otherwise used falsely). Also, a competitor may bring a claim if certain products or services are hidden in the advertisement or when misleading claims are used.

The potential remedies are civil damages.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumer confronted with potentially misleading advertising have a right to contact the Consumer Rights' Protection Centre by submitting a claim and enclosing evidence.

Consumers who are victims of unfair commercial practices are entitled to:

- price reimbursement,
- price reduction or
- termination of the contract

depending on the seriousness and nature of the infringement, the damage suffered by the consumer and other relevant circumstances.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Latvia have a primary advertising self-regulation system?

Yes. The Latvian Advertising Association is the largest association in the advertising industry which brings together advertisers, media and agencies. The Latvian Advertising Association has its own Ethics Board that is responsible for review of potential infringements of advertising practices (please refer to questions 2.2 and 2.3 below).

2.2 Is there a self-regulatory advertising code? What are the key principles?

The Latvian Code of Ethics for Advertising Professionals is a code created by the Latvian Advertising Association, promoting compliance with the conditions as set out by the Consumer Rights Protection Law. Its key principles include:

- Honesty and fairness;
- Respect for the right to private life, use of name and trademark;
- Compliance with laws and regulations; and
- Professional integrity.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Code of Ethics for Advertising Professionals introduces the Ethics Board which is entitled to review cases related to infringement of the Code of Ethics. If the Ethics Board establishes an infringement, it may either issue a warning to the infringer or suggest to the media that they not disseminate the particular advertising until the deficiencies have been remedied. The recommendation to the media is made by sending the decision to the media in which the advertisement has been or is being distributed, as well as to the media in which the advertisement is to be distributed, if objectively possible.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Yes, it is usually effective and followed by the signatory parties.

2.5 Are the self-regulatory system's decisions reported?

Yes. Decisions of the Ethics Board are published on the website of the Latvian Advertising Association within one week of their adoption: <https://www.lra.lv/lv/etikas-padome/>.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Please see question 2.2 above.

2.7 Are there any other self-regulatory systems that govern advertising practices in Latvia?

There are no notable self-regulatory systems, except for those described above.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Latvia (eg, consumer protection laws; IP laws; unfair competition laws)?

The Advertising Law and the Unfair Commercial Practices Prohibition Law are the two most relevant laws that govern advertising in Latvia. In addition, the statutory intellectual property laws such as the Trade Mark Law and the Copyright Law will normally have to be considered.

3.2 Is substantiation required for advertising claims?

Yes. According to the Advertising Law all advertising must be lawful, truthful and objective, and created in accordance with fair advertising practices. Advertising must be in accordance with the principles of fair competition and it not be misleading. A trader will bear the burden of proof in demonstrating that the advertisement complies with the statutory requirements.

Advertising that is not in accordance with good marketing practices is considered an unfair commercial practice if it has a material impact on the consumer's or trader's ability to make a transactional decision.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

To the best of our knowledge, there are no claims which would not require substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

The Electronic Mass Media Law states that if a broadcast is sponsored in whole or in part, this must be clearly indicated at the beginning and also in the middle or end of the broadcast, by showing the name, emblems and trademarks, if any, of the sponsor, or by reference to the goods or services of the sponsor.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The Advertising Law maintains that the information used in advertising must be factually correct, accurate and in accordance with statutory requirements. Nevertheless, even if the information is factually correct, depending on the way it is communicated to the consumer, the advertisement may still be considered misleading. For instance, portraying a person as a certified specialist if they are not one, may be challenged under the Unfair Commercial Practices Prohibition Law.

3.6 What are the rules governing the use of product demonstrations in advertising?

The use of product demonstrations is not regulated specifically. Therefore, it can be concluded that product demonstrations in advertising are allowed. The claims made during the demonstration must be substantiated.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Latvia has implemented EU Directive 2006/114/EC concerning Misleading and Comparative Advertising. So long as the advertisement adheres to the requirements set out in the Directive, it is permissible.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

The proprietor of a registered trademark has the exclusive right to prohibit the use of a trademark in advertising which is in contradiction to the existing framework for comparative advertising. Furthermore, the requirements set out in the EU Directive must be observed.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

Yes, under the Advertising Law, goods or services bearing a designation of origin must be compared with goods or services bearing the same designation of origin.

3.10 Are there any special rules governing product packaging?

There are no specific rules regarding packaging in the Law on Advertising. Therefore, it can be concluded that advertising activities are not affected by the packaging of the product.

However, there are specific rules applicable to packaging and labeling of different categories of goods such as foods, electronic equipment, pharmaceutical drugs, clothes, etc, and which must be followed in order to ensure product safety and consumer protection requirements.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

The Unfair Commercial Practices Prohibition Law provides a comprehensive list of prohibited practices against consumers and is also applicable to advertising. As a general rule, commercial practices that could have a detrimental impact on the consumer’s economic behavior in relation to the products being advertised are forbidden. This refers to practices that significantly impair the consumer’s ability to make an informed decision and which could result in the consumer making a transactional decision they would not otherwise have made. Additionally, any form of misleading commercial practice is prohibited, including the misleading omission of information, such as hidden costs, bait-and-switch tactics, subscription traps, and so on.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Currently, there are no specific rules or guidance regarding artificial intelligence in advertising.

4 PRICE ADVERTISING

4.1 What are Latvia’s rules regarding price advertising?

In order to comply with national legislation, advertising has to be in conformity with:

- the Advertising Law;
- any and all specific provisions regulating the advertising of specific goods;
- the Unfair Commercial Practices Prohibition Law; and
- Cabinet of Ministers Regulation 178: Procedures for Indication of Prices of Goods and Services.

In general, advertisers should provide consumers with fair and accurate price information. When making claims about the price of a service or product in an advertisement, which should be valid for a certain period (not necessarily coinciding with the period of use of the advertisement), the advertiser must ensure that such a promise made in the advertisement to consumers is fulfilled. Failure to do that may trigger administrative liability for the unfair practice towards the consumers.

4.2 What are Latvia's rules regarding advertising 'free' products?

There are no specific provisions regarding this matter. Still, the advertisements must comply with the Unfair Commercial Practices Prohibition Law and not constitute misleading commercial practices.

4.3 What are Latvia's rules regarding sales and special offers?

With regard to sales and special offers, the requirements of the EU Omnibus Directive (2019/2161) apply. In essence, any notice about a reduction in the price of an item must specify the previous price of the item. The previous price means the lowest price charged by the seller within the last 30 days. In addition, the Consumer Rights Protection Centre has issued guidelines for indication of the price of goods and services (available at <https://www.ptac.gov.lv/lv/media/139/download?attachment>) to which traders should adhere.

4.4 What are Latvia's rules regarding rebates?

Please see question 4.3 above.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

To the best of our knowledge, there are no other local restrictions regarding price advertising except for what has been mentioned in this section 4.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Yes, there are products which are completely banned from advertising, and products which are strictly regulated. Eg:

- (a) **Tobacco:** Tobacco products may only be advertised in publications intended for tobacco merchants;
- (b) **Alcohol:** Only beer and wine may be advertised on television, and even then, specific requirements as to the content of the adverts apply;
- (c) **Pharmaceuticals:** Prescription-only pharmaceuticals may not be advertised to consumers; and
- (d) **Gambling:** Gambling advertising is prohibited outside the premises of the gambling venue.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are no advertising practices which are completely prohibited. However, advertising by telephone, email, fax, telex may only be provided with the consent, or at the request, of the advertising user; otherwise it is prohibited.

That said, there is one exception in the Law on Information Society Services which allows use of the email of existing customers for marketing of the seller's own goods or services, on condition that the customer was given a chance to refuse such marketing at the time when their email was collected (existing client exemption).

Furthermore, the Unfair Commercial Practices Prohibition Law prohibits the use of aggressive commercial practices, such as delivering persistent and undesirable offers to consumers by telephone, email or other communication channel.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Yes, the Advertising Law stipulates that only statements or visual images that do not contravene ethical, humanistic, moral, virtuous and decent standards may be included in advertising.

Indecency or obscenity is expressly prohibited in advertisements targeted at, or featuring, children. Otherwise, there are no statutory limitations regarding this issue.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

With regard to general advertising, advertisements must not include information about the advertiser/sponsor. However, this information must be made accessible to the publisher of the advertisement. Indeed, the publisher of the advertisement is prohibited from accepting advertising content without having obtained specified information about the responsible party (name, registration number and registered address of a business or name and personal ID code of an individual).

Concerning sponsored programs, the Electronic Mass Media Law stipulates that the goods or services of the sponsor must not be directly or even indirectly advertised within the program. Furthermore, the sponsor of a broadcast must be identified at the beginning and either in the middle or at the end of the broadcast (see question 3.4 above).

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

General marketing rules apply, meaning that all commercial communications or messages that involve advertising must be identified as marketing regardless of the way or manner they are presented.

The Electronic Mass Media Law provides that advertisements must be placed in blocks in the program (ie, ad breaks), thereby explicitly separating marketing-related media and the entertainment or other such programs.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Advertising content must be clearly distinguished as such. For instance, in social media posts, the person placing content for which they are being paid must add an appropriate hashtag, eg, #ad, #cooperation, #paidcontent, etc.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

The statutory provisions which regulate the marketing of goods apply in full to advertising on social media. Furthermore, the Unfair Commercial Practices Prohibition Law is of particular importance, as it is applicable to situations with B2C character.

The advertiser (eg, a blogger, or influencer) must explicitly indicate the presence of an advertisement, eg, by using a hashtag or including a statement in the description of the post, thereby informing the consumer about the sponsored, endorsed content or content made within a business partnership.

Content creators on social media must also adhere to regulations regarding the prohibition of tobacco and consumer credit advertisements, as well as the limitations on the marketing of alcoholic beverages, energy drinks and food supplements.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There is no definitive legislation regarding this matter, and the outcome largely depends on the particular circumstances of the case. While advertisers must adhere to both advertising and data protection legislation, they are not necessarily responsible for the user generated content on social media sites.

Nevertheless, according to caselaw of the European Court of Human Rights, owners of a website may be held liable for defamation regarding the user generated comments on their posts (see *Delfi AS v Estonia* (2015) Case No 64569/09). Furthermore, users may be held liable for defamatory and untrue comments related to the goods of the advertiser.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are several decisions of the Consumer Rights Protection Centre regarding requirements applicable to content on influencer accounts. The decisions are available on:

https://registri.ptac.gov.lv/sites/default/files/lemuma_izraksts_adriana_miglaine_.pdf

https://registri.ptac.gov.lv/sites/default/files/vineta_medunecka_lemums_24_04_2023_nr_9-pk_0.pdf

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Advertising Law prohibits the use of both official and ordinary person's likeness, name, surname, and other distinguishing features without the advertiser ensuring the proper consent of the person in question.

9.2 Are there situations when permission is not required?

Permission is always required in dealings of commercial or advertising nature.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Latvian law does not explicitly specify materials which must be cleared before their use in advertising. Nevertheless, the Advertising Law forbids the use of war propaganda and violence in advertising. It is also prohibited to express discrimination based on a variety of factors. Considering the above, the depiction of certain materials (eg, offensive signs, religious artifacts) may be limited.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The proprietor of a registered trademark has the right to prohibit others from using, without consent, any sign which is identical or similar to the goods and/or services for which the trademark is registered. The proprietor of the trademark may prohibit the use of such a sign in advertising.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Latvia which affect advertising?

Depiction of USSR and fascist symbols in advertising would not be acceptable and should be avoided. Further, under the Advertising Law, it is forbidden to discriminate in a marketing communication against a person on the grounds of race, color, sex, age, religion, political or other opinion, national or social origin, property, or other status.

In addition, advertisements must comply with specific provisions set out for the different media formats. For instance, advertisements airing on Latvian television channels must comply with the Latvian language requirement.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Please refer to question 11.1 above.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Latvia?

We advise always to be careful about the claims used in the advertisement. If in doubt about the claim, please seek legal advice.

 LITHUANIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Lithuania?

In Lithuania advertising is mainly regulated by the Law on Advertising. Besides that, there are other laws which regulate certain aspects of the advertisement activities, eg:

- Law on Provision of Information to the Public;
- Law on the Prohibition of Unfair Commercial Practices Towards the Consumers;
- Law on Electronic Communications;
- Law on the Protection of Minors against Detrimental Effect of Public Information;
- EU GDPR (sets the requirements of consent); and
- some sectorial laws: eg, Law on Alcohol Control, Law on Gambling (see question 1.5 below for a full list).

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

‘Advertising’ is described as a dissemination, in whatever form and by whatever means, of information relating to a person’s business, commercial, financial or professional activities, and which promotes its brand, encourages acquisition of goods or services, including real estate, and transfer of legal rights and obligations. The definitions of ‘advertising’ covers advertising on TV, in social media, by telephones, by email, external advertising and teleshopping.

1.3 What is the basic regulatory framework for advertising regulation?

The Law on Advertising provides the basic framework for advertising activities in Lithuania.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Speaking of advertisement channels (ie, via SMS, email, TV, radio, postal, social media, etc), all types of advertising are covered by the Law on Advertising. However, there are specific sectors which have stricter advertisement rules; for example, gambling, and the sale of alcohol and tobacco products are governed by sectorial laws which are, as a rule, stricter.

In addition to the basic framework, direct marketing communications by email are governed by the Law on Electronic Communications. See question 5.2 below.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes, the following industries have specific regulation of advertising:

- Food;
- Healthcare services and medical devices;
- Arms and ammunition;
- Cosmetic products;
- Biocidal products;

- Alcoholic beverages and tobacco products;
- Political activities;
- Energy drinks; and
- Gaming.

1.6 Are any government pre-approvals required?

Generally, no. Only the installation of external advertisements, eg, on billboards, shop windows, or poles requires a permit from the municipality. Permits are issued by the mayor or the municipal administration of the municipality in which territory the external advertisement is to be erected.

1.7 Does the media pre-clear advertising?

Yes.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The implementation of the requirements for advertising set out in the legislation is carried out by state-appointed authorities, namely the State Consumer Rights' Protection Authority, the State Food and Veterinary Service, State Data Protection Inspectorate, municipal administrations, the Department of Cultural Heritage under the Ministry of Culture, the Directorate of Protected Areas or the Department of Environmental Protection.

For non-compliance with the statutory requirements, the advertising entity may be given a warning or a fine depending on their annual revenue. In the worst-case scenario, a fine of up to 3% of the annual turnover of the advertising entity (but no more than €100,000) may be imposed for a severe breach of advertising laws.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may have a right of action when products or brands are compared in the advertisement and such comparison is misleading to the consumer (especially if the competitor's brand or product is discredited, diminished, or otherwise used falsely). Also, a competitor may bring a claim if certain products or services are hidden in the advertisement or when misleading claims are used.

The potential remedies are civil damages.

1.10 When do consumers have a right of action? What are the potential remedies?

If a consumer is confronted with potentially misleading advertising, they have a right to contact the State Consumer Rights' Protection Authority by submitting a signed request, stating their claim and enclosing evidence.

Consumers who are victims of unfair commercial practices are entitled to compensation, a price reduction or termination of the contract, depending on the seriousness and nature of the infringement, the damage suffered by the consumer and other relevant circumstances.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Lithuania have a primary advertising self-regulation system?

No. However, some of the self-regulatory functions are adopted by various associations and business leaders, eg, major telecommunications providers, Association of Drug's Manufacturers, Association of Manufacturers and Importers of Non-alcoholic Drinks, and the Lithuanian Marketing Association ('LiMA') <https://lima.lt/lt/apie-lima.html>.

2.2 Is there a self-regulatory advertising code? What are the key principles?

There are a few ethics codes related to advertising:

- Lithuanian Advertising Ethics Code;
- Ethics Code on Promotion of Pharmaceutical Drugs;
- Ethics Code on Direct Marketing by Phone; and
- Code for the Advertisement and Labeling of Energy Drinks.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Some ethics codes introduce dispute resolution bodies, like an arbitration tribunal (Code for the Advertisement and Labeling of the Energy Drinks) or a dispute resolution commission (Ethics Code on Promotion of Pharmaceutical Drugs). Others do not have any enforcement mechanism.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Yes, it is usually effective and followed by the signatory parties.

2.5 Are the self-regulatory system's decisions reported?

Usually not, as there are no such obligations within the ethic codes. However, severe breaches may be reported to the authorities.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

There are three main principles prescribed in the ethic codes:

- transparency,
- protection of minors, and
- respect for consumer's privacy.

Therefore, companies should follow these key elements in their advertising practice.

2.7 Are there any other self-regulatory systems that govern advertising practices in Lithuania?

To the best of our knowledge, we are not aware of any self-regulatory systems other than those described above.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Lithuania (eg, consumer protection laws, IP laws, unfair competition laws)?

- Law on Consumer Protection;
- Law on the Prohibition of Unfair Commercial Practices for Consumers;
- Law on Copyright and Related Rights;
- EU GDPR (governs questions of marketing consent).

3.2 Is substantiation required for advertising claims?

Yes. The basic principle is that the advertising must not be misleading. This principle is strictly enforced by the regulatory bodies if the advertiser cannot substantiate the truth of the claims used. The sufficiency of the evidence supporting the truth of the claims made in an advertisement is determined on a case-by-case basis. For example, health claims made in advertisement of food supplements should be substantiated by scientific research. In other cases, a survey of consumers can be a sufficient way to substantiate the advertisement claim.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

To the best of our knowledge, there are no claims which would not require substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

Pursuant to the Law on Advertising, disguised advertising is prohibited. Therefore, if there is a possibility that consumers will not recognize a promotion, it should be clearly and visibly marked with the word 'Advertisement'.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

According to the Law on the Prohibition of Unfair Commercial Practices Towards Consumers, endorsements and testimonials used as a part of an advertisement are not specifically regulated; however, the rules of the EU Omnibus Directive (2019/2161/EU) should be taken into consideration. According to the Omnibus Directive, endorsements and testimonials must be true and genuine and must be provided by actual consumers, not fake ones.

3.6 What are the rules governing the use of product demonstrations in advertising?

The use of product demonstrations is not regulated specifically. Therefore, it can be concluded that product demonstrations in advertising are allowed. The claims made during the demonstration must be substantiated.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Yes, pursuant to the Law on Advertisement, comparative advertising is allowed where certain conditions are met. In particular:

- the advertisement is not misleading;
- it compares goods or services meeting the same needs or for the same purposes;

- if comparing goods or services bearing a designation of origin, these are compared with goods or services bearing the same designation origin;
- it does not discredit the goods, services or brand of a competitor;
- the advertisement does not cause confusion between competing brands, etc.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Yes, the main rule to follow is, if competitor's trademarks, name or other distinctive signs are used in a comparative advertisement, such use may not discredit or degrade the competitor's trademarks, name or other distinctive signs.

Furthermore, the reputation of a competitor may not be used unfairly to advertise someone else's goods. Also, it must be ensured that goods are not promoted as copies of branded goods.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Yes, under the Law on Advertisement, goods or services bearing a designation of origin must be compared with goods or services bearing the same designation of origin.

3.10 Are there any special rules governing product packaging?

There are no specific rules regarding packaging in the Law on Advertising. Therefore, it can be concluded that advertising activities are not affected by the packaging of the product.

However, there are specific rules applicable to packaging and labeling of different categories of goods such as foods, electronic equipment, pharmaceutical drugs, clothes, etc., and which must be followed in order to ensure product safety and consumer protection requirements.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Advertising practices that are considered unethical, deceptive, or harmful to consumers or society, such as manipulative advertising, hidden fees and charges, the exploitation of vulnerable population (eg, children) are prohibited and closely monitored by the regulators. Some of such practices are listed in the Law on the Prohibition of Unfair Commercial Practices towards Consumers and Law on the Protection of Minors against the Detrimental Effect of Public Information. Below are a few examples of dark practices which are prohibited:

- (a) It is prohibited by the Law on the Protection of Minors against Detrimental Effect of Public Information to publicly disseminate any information which:
 - promotes gambling;
 - favorably depicts drug, alcohol or tobacco dependency;
 - favorably depicts criminal activity or idealizes criminals;
 - despises family values; etc
- (b) It is prohibited by the Law on the Prohibition of Unfair Commercial Practices towards Consumers to publicly claim, if it is not true:
 - that the product can be acquired only for a very short period of time;
 - that the seller shall be closing its business soon;
 - that certain ethics code is applicable to the seller, etc.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Currently, no. Artificial intelligence, like any other technology, can be used to generate advertising ideas, images, videos or other content as well as used to help analyze demographic data.

4 PRICE ADVERTISING

4.1 What are Lithuania's rules regarding price advertising?

Advertisers should provide consumers with fair and accurate price information. When making claims about the price of a service or product in an advertisement—which should be valid for a certain period (not necessarily coinciding with the period of use of the advertisement)—the advertiser must ensure that such a promise made in the advertisement to consumers is fulfilled. Failure to do that may trigger administrative liability for unfair practices towards consumers.

4.2 What are Lithuania's rules regarding advertising 'free' products?

In general, it is not prohibited to advertise something for 'free'; however, such advertising must correspond to reality. For example, whilst using the term 'free' in advertising is not automatically prohibited if consumers can only obtain the offered accessory by purchasing another item, cases where a product is described as 'free', but the consumer is required to pay—except for unavoidable costs arising from the consumer's reaction to the commercial practice (such as postage or telephone charges at normal rates, etc) and the cost of picking up the product or of paying for its delivery—is, usually, regarded as misleading commercial practices.

4.3 What are the Lithuania's rules regarding sales and special offers?

With regard to sales and special offers, the EU Omnibus Directive requirements apply. In essence, any notice about a reduction in the price of an item must specify the previous price of the item. The previous price means the lowest price charged by the seller within the last 30 days.

4.4 What are the Lithuania's rules regarding rebates?

The requirements of the EU Omnibus Directive apply. Please see question 3.3. above.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

To the best of our knowledge, there are no other local restrictions regarding price advertising except for what has been mentioned above.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Yes, there are products which are completely banned from advertising, and products which are strictly regulated. For example:

- Law on Alcohol Control prohibits the advertisement of alcohol beverages;

- Law on the Control of Tobacco, Tobacco Products and Related Products establishes a prohibition on the advertising of such products; and
- Law on Gambling allows very restricted advertisement (ie, only the trademark of the gaming organizer and the type of games can be advertised, and a special disclaimer must be added).

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are no advertising means which are completely prohibited. However, advertising by telephone, email, fax, and telex may only be provided with the consent or at the request of the advertising user, otherwise it is prohibited.

That said, there is one exception in the Law on Electronic Communications which allows the use of the email of existing customers for marketing the seller's own goods or services, on condition that the customer was given a chance to refuse such marketing at the time when their email was collected (existing client exemption).

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Yes. the Law on Advertisement and the Law on Provision of Information to the Public set out the general requirements for advertisements, according to which the advertisements must be:

- decent, respecting principles of public morality, honor and dignity of the person,
- free from hatred or discrimination, and
- free from encouraging of violence or aggression.

Furthermore, the Law on Protection of Minors against the Detrimental Effect of Public Information includes a requirement to make information which is likely to have an adverse effect on minors inaccessible to them.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Yes, amongst other details about the product itself, information about the seller is mandatory to be provided to the consumer under the Law on Prohibition of Unfair Commercial Practices towards Consumers.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Pursuant to the Law on Advertising, disguised advertising is prohibited. Therefore, if there is a possibility that consumers will not recognize a promotion as such, it should be clearly and visibly marked with the word 'Advertisement' or 'Sponsor'.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

See question 7.1 above.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules dedicated specifically for social media advertisement. General advertisement rules apply to all dissemination of content in the media, text entries, photographs, videos posted on social networks or personal blogs, as well as videos distributed on YouTube, Facebook and other platforms.

Advertising on social networks cannot be hidden, ie, it must be clearly indicated that the content displayed is an advertisement.

The State Consumer Rights Protection Authority has issued guidelines on the advertisement in the social media which can be found here:

<https://www.vvtat.lt/data/public/uploads/2019/12/reklamos-zymejimo-socialineje-erdveje-gaires-2019-12-10.pdf>

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Following the requirements of the EU Omnibus Directive, an advertiser must only post genuine feedback from consumers who actually have used the product or service. Moreover, the Law on Prohibition of Unfair Commercial Practices Towards the Consumers requires the advertiser to provide a method by which it may ensure that statements of such consumers are genuine. That said, the advertiser is responsible where untrue statements are posted.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Yes, below please find links to the recent case decisions regarding the social media advertisement:

- <https://www.vvtat.lt/data/public/uploads/2021/12/2021-09-09-12r-30-nutarimas-asun-israsas.pdf>
- <https://vvtat.lt/data/public/uploads/2022/12/2022-02-23-nutarimas-nr.-10e-412.pdf>
- <https://www.vvtat.lt/data/public/uploads/2021/01/2020-10-29-nutarimas-nr.-12r-66-del-uab-proservisai-reklamos-istatymo-pazeidimo.pdf>

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Advertising is prohibited if it mentions a natural person's name, surname, opinion, information about that person's private or public life or property, or uses their likeness without explicit consent.

9.2 Are there situations when permission is not required?

Consent is mandatory.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Yes, the Order of the Minister for Culture establishes rules for the installation of advertising in cultural site objects, their territories and protection zones. Such projects in cultural heritage objects and their territories must be agreed with the territorial division of the Department of Cultural Heritage. Some heritage sites (eg, those located in nature reserves, complex reserves or national parks) have special protection and advertising there is prohibited.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The proprietor of a registered trademark has the right to prohibit others from using, without consent, any sign which is identical or similar to the goods and/or services for which the trademark is registered. The proprietor of the trademark may prohibit the use of such a sign in advertising.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Lithuania which affect advertising (eg, Swedish gender equality law)?

Yes, the Law on Administrative Offences prescribes that depiction of the USSR and fascist symbols is prohibited. Therefore, the use of such signs in advertisements must be avoided.

Furthermore, the Law on Equal Opportunities prescribes that an advertiser must ensure that information provided in its advertisement does not downgrade, despise or provide privileges based on the race, gender, nationality, citizenship, language, disability or any other distinctive grounds.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Pursuant to the Law on Advertising, it is prohibited to degrade any religious symbols of the registered religious denominations in the advertisement.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Lithuania?

We advise always to be careful about the claims used in advertising. If in doubt about a claim, please seek legal advice.



LUXEMBOURG



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Luxembourg?

In Luxembourg advertising is not regulated by a single law but by a wide variety of laws and regulations. Some general principles apply to all kinds of products. The legal provisions protecting consumers or concerning unfair competition are examples of this. Certain categories of products such as drugs, alcohol, tobacco and financial products are specifically regulated, as are types of media such as television and emails. Provisions relating to personal data as well as intellectual property may also impact upon advertising to a certain extent.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Advertising is widely defined as ‘any form of communication made in connection with a commercial, industrial, artisanal or liberal activity which has the effect of promoting the supply of goods or services.’ The simple fact of showing a product on the internet, for instance, can be regarded as advertising.

1.3 What is the basic regulatory framework for advertising regulation?

Advertising is generally allowed in Luxembourg, except where it is expressly prohibited or regulated by a specific law or regulation. Some legal requirements apply to all types of advertising, while others only apply to specific categories of products or services, or to specific means of communication. There is no clearance scheme and no enforceable code of practice for advertising in Luxembourg.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) **Text messages:** The use of text messages for the purposes of direct marketing, whether using an automated system or not, is only allowed if a subscriber or user has given their prior consent (opt-in).
- (b) **Emails:** The use of emails for the purposes of direct marketing is allowed only in respect of customers who have given their prior consent (opt-in). However, where email addresses are obtained from customers in the context of the sale of a product or a service, such data may be used for the direct marketing of similar products or services in respect of which customers have a right to object (opt-out).
- (c) **Automated calling system:** The use of an automated calling system for direct marketing purposes is only allowed if a subscriber or user has given their prior consent (opt-in).
- (d) **Audiovisual commercial communications:** These have to meet specific additional requirements. By way of example, they must:
 - (i) be identifiable as such (surreptitious advertising is prohibited, and placement of products is only authorized if consumers are duly informed);
 - (ii) not use subliminal techniques;
 - (iii) not infringe human dignity;
 - (iv) not include discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation; or
 - (v) not encourage misbehavior that can be detrimental to health or security or to the protection of the environment.

- (e) **Radio:** In addition to the rules applying to advertising in general, radio advertising must, in particular, comply with certain volume limits and must not exceed a certain frequency set by the applicable regulation. The specific requirements relating to audiovisual commercial communications set out above have not yet been extended to radio advertising.
- (f) **Online advertising:** This is regulated indirectly through regulations applying to specific products or services.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Several industries are subject to specific laws which govern their advertising. These are some of the main ones, but the list is not exhaustive:

- (a) **Alcohol:** Alcohol advertising is permitted in all media, subject to compliance with several requirements which include:
 - (i) For any audiovisual commercial communications, the Law of 27 July 1991 on Electronic Media, as amended ('Law on Electronic Media') provides that communications relating to alcoholic beverages must not be aimed specifically at minors and must not encourage immoderate consumption of such beverages.
 - (ii) Television advertising and teleshopping for alcoholic beverages must not specifically target minors or depict minors consuming these beverages. Claiming that alcohol has therapeutic qualities, is a stimulant, a sedative or a means of resolving personal conflicts is also prohibited.
- (b) **Tobacco:** Tobacco advertising is prohibited (the Law of 11 August 2006, as amended, concerning anti-smoking), except for advertising placed inside tobacco shops provided certain conditions are met, online advertising restricted to professionals or directed at consumers located outside the European Union.
- (c) **Medicines:** Advertising prescription-only medicines is prohibited, except to professionals. Advertising of medicines which are not prescription-only is permitted provided that a marketing authorization has been obtained from the Ministry of Health.
- (d) **Food and Drink:** Advertising and labeling for food and drink is regulated.
- (e) **Automotive:** Advertising for cars must contain specific disclosure on fuel economy and CO2 emissions.
- (f) **Financial products:** Advertising for financial products must contain a specific disclaimer when referring to the past performance of a product, or contain specific information when advertising consumer credit.

1.6 Are any government pre-approvals required?

Advertising of medicines is submitted to a prior approval; any advertising reaching the public through any means whatsoever is prohibited if it has not been previously authorized by the Minister of Health or by an official appointed by the Minister for this purpose. However, this prohibition does not apply to general advertising, mentioning exclusively the name and composition of the product, the name of the manufacturer and his address.

1.7 Does the media pre-clear advertising

It is not a common practice and not mandatory. However, advertisers, media and agencies can make a request for prior advice on their ads to CLEP (as to which see question 2.1).

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Luxembourg Independent Audiovisual Authority ('ALIA') ensures compliance with legal and regulatory provisions regarding the content, presentation, duration, and insertion of commercial communications by service providers, in order to preserve the integrity of programs. This means that audiovisual commercial communications must, inter alia:

- (a) comply with the general principles applicable to advertising regulation;
- (b) be devoid of illegal or harmful content; and
- (c) be clearly identifiable as audiovisual commercial communication.

Advertising issues may also be handled by the criminal courts at the request of the *Procureur d'Etat* (State Prosecutor), a consumer or a competitor. The civil courts may also consider advertising matters at the request of a consumer or an authorized consumers' association, a competitor or the Ministry of the Economy.

In addition, CLEP (see question 2.1 below) can consider any individual's claim.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may bring an unfair competition claim before the courts if someone acting in the same field of activity does not comply with advertising law and regulation. A court may order the defendant to stop the infringing advertising and to pay the claimant damages as compensation for the loss suffered.

The claimant may also file summary proceedings seeking injunctive relief. Failure to comply with such an injunction may lead to a criminal fine ranging from €251–€120,000.

In the event of the illegitimate use of a trademark in advertising (unlawful comparative advertising, for instance), the trademark owner may bring proceedings for infringement of its intellectual property, seeking an injunction preventing the use of its trademark as well as damages.

In some circumstances when there are no intellectual property rights at hand, a company may also bring a claim for '*parasitisme*' against another when the latter tries to take advantage of the reputation the former company has acquired or the investment it has made.

1.10 When do consumers have a right of action? What are the potential remedies?

The Luxembourg Consumer Code prohibits unfair commercial practices (which could include advertising or marketing), such as misleading or aggressive commercial practices committed by a professional and directly connected to the promotion, sale or supply of a product to consumers.

A commercial practice is more likely to be regarded as misleading if, in its factual context, it causes or is likely to cause the consumer to take a decision that he would not otherwise have taken. It applies to any marketing of a product, including comparative advertising, which creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor.

In the event of unfair commercial practices, consumers can bring actions either before the criminal or civil courts. A fine ranging from €251–€120,000 can be imposed as a criminal sanction.

Consumers can obtain compensatory damages by proving that the advertising has caused them loss. They can also obtain a court order preventing the advertiser from continuing to engage in unfair commercial practices which can carry a daily penalty where compliance is delayed. Such an order can also be obtained through summary proceedings.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Luxembourg have a primary advertising self-regulation system?

The *Commission Luxembourgeoise pour l’Ethique en Publicité* (‘CLEP’) acts as a self-regulatory body in Luxembourg. CLEP was set up by the *Conseil Luxembourgeois de la Publicité* (‘CLP’), which is a non-profit association formed by the country’s major active players in the fields of marketing and commercial communications. CLEP aims to maintain standards of loyalty and ethics for advertising in all media throughout the Grand-Duchy of Luxembourg.

CLEP advises the advertising community and handles complaints. It is also entitled to act on its own initiative. CLEP can ask for modifications or decide to ban an advertisement, but its decisions are only binding on members of the CLP. Any advertiser may become a member of the CLP provided a membership fee is paid. At present, the CLP has approximately 60 members.

2.2 Is there a self-regulatory advertising code? What are the key principles?

CLEP has enacted a Code of Ethics which sets out non-compulsory general guidelines relating to advertising, as well as guidelines specific to children, alcohol or drugs.

No communication should impair public confidence in marketing. The main principles are set out below:

- (a) **Decency:** Marketing communications should not contain statements or audio or visual treatments which offend standards of decency currently prevailing in the country and culture concerned.
- (b) **Honesty:** Marketing communications should not abuse the trust of consumers or exploit their lack of experience or knowledge. Relevant factors likely to affect consumers’ decisions should be communicated in such a way and at such a time that consumers can take them into account.
- (c) **Social responsibility:** Marketing communications should respect human dignity and should not incite or condone any form of discrimination, including that based upon race, national origin, religion, gender, age, disability or sexual orientation. They should not, without good reason, play on fear or exploit misfortune or suffering, nor should they appear to condone or incite violent, unlawful or anti-social behavior.
- (d) **Environmental responsibility:** Marketing communications should refrain from encouraging the consumer to behave irresponsibly towards the environment.
- (e) **Respect for privacy:** Marketing communications should strictly observe the rules ensuring the protection of privacy, in particular, by refraining from using personal documents for advertising purposes.
- (f) **Truthfulness:** Marketing communications should be truthful and not misleading. They should not contain any statement, claim or audio or visual treatment which, directly or by implication, omission, ambiguity or exaggeration, is likely to mislead the consumer.

Communications should also conform to the principles of fair competition, as generally accepted in business.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

CLEP can directly examine any ethical question as follows:

- (a) At the request of an advertiser or on its own initiative, CLEP can review advertising before it is broadcast. A consumer can also ask CLEP to consider a complaint by providing their surname, first name and full address. The complainant will receive an acknowledgement of their complaint within 10 working days. Meanwhile, the respondent advertiser will be informed of the complaint and given 10 working days to communicate their response.
- (b) If the matter comes before an ordinary or an administrative court before or during CLEP's consideration of the complaint, CLEP can decide to abandon the complaint, either permanently or temporarily.
- (c) If, after examination, CLEP considers the advertising to be a breach of its Code of Ethics, the respondent advertiser will be asked in writing to modify or withdraw the offending advertising.
- (d) If there is no answer, or in the case of a refusal by the respondent advertiser, CLEP can advise the media not to broadcast, or to suspend the broadcasting of, the offending advertising.
- (e) When it appears that the issue is exclusively about decency, CLEP limits itself to providing an opinion. Responsibility for complying with that opinion then falls upon the respondent advertiser, the advertising network and the media.
- (f) CLEP's opinions and decisions have to be delivered within 15 working days of the complaint being submitted.

2.4 Is the self-regulation system effective? Is it widely used and followed?

CLEP does not yet play a major role in regulating advertising practice in Luxembourg. The first version of CLEP's Code of Ethics was enacted in 2009 and, to date, it has issued very few decisions. Nor has CLEP provided specific guidance which can serve to interpret legal provisions.

In 2015, a new version of the Code of Ethics containing specific provisions on online behavioral advertising was adopted and provides the following:

- (a) Online marketing communications should ensure that the public is comfortable using digital media, in particular by ensuring that features such as weight, dimensions, the use of sound and the duration of marketing communications are reasonable.
- (b) Processing of behavioral data by electronic means, such as cookies or fingerprinting for marketing purposes, requires the prior consent of the data subject concerned. Behavioral advertising must be clearly identifiable as such.

That said, there are also relatively few court decisions on advertising issues, which perhaps indicates that advertisers are capable of self-regulation.

2.5 Are the self-regulatory system's decisions reported?

Theoretically, the decisions of CLEP can be published on its website, but no decision has been published so far.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Not applicable.

2.7 Are there any other self-regulatory systems that govern advertising practices in Luxembourg?

In Luxembourg, various industries have also enacted their own code of ethics which contain provisions on advertising, marketing and commercial communications, for example, the Code of Ethics of the Luxembourg Pharmaceutical Association and the Code of Ethics of the Luxembourg Bankers Association.

In addition, CLEP is a member of the European Advertising Standard Alliance and refers to EASA guidelines and Code of Ethics.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Luxembourg (eg, consumer protection laws, IP laws, unfair competition laws)?

The basic laws governing advertising claims are as follows:

- (a) the Luxembourg Consumer Code (Business-to-Consumer);
- (b) the Law on sales, sidewalk sales and misleading and comparative advertising (Business-to-Business and Business-to-Consumer);
- (c) the Data Protection Law in the electronic sector (this contains provisions which apply, for example, to online behavioral advertising);
- (d) the Law on Electronic Media;
- (e) the Law on Copyright, Related Rights and Databases;
- (f) the Benelux Convention on Intellectual Property (Trade Marks, Designs and Models); and
- (g) the EU General Data Protection Regulations (GDPR) and the Luxembourg Data Protection Law.

Various other Luxembourg laws contain provisions on advertising in specific sectors such as for the labeling and packaging of foodstuff, financial services, medicines, tobacco and alcohol.

3.2 Is substantiation required for advertising claims?

Advertising claims must not be misleading; ie they must be true, accurate and, in particular, capable of substantiation. However, there are no requirements about what might constitute valid evidence. For instance, there is no requirement for a minimum number of individuals to test a product in order to substantiate a claim that a product shows a particular rate of efficiency. However, an advertising statement based on tests conducted on only ten individuals is very likely to be regarded as not being accurate and therefore misleading.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Luxembourg legal provisions regarding misleading advertising apply to all commercial communications, and do not include any derogations for certain types of advertising claims. As a result, any advertising messages claiming a result or including a comparison with competitors (such as being 'the best' or 'No 1' for instance) need to be substantiated.

However, not all laudatory messages or exaggerations are regarded as being misleading. Such messages are tolerated if there is obviously no risk of confusion on the part of the public. For instance, claiming that a product is eco-friendly does not necessarily require proof that it has no impact on the environment, as that is obviously impossible. It does, however, need appropriate substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

Disclosures, where legally required, must not be misleading. They must be accurate, comprehensible by consumers, and legible. There are, however, no specific legal requirements about the size or type of font used, or the size of disclosures.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsements and testimonials are not regulated as such in Luxembourg. They must, however, comply with the general rules which apply to advertising and, notably, must not be misleading or unfair.

In particular, advertisers must not mislead consumers through any statements or signs which make consumers believe that the products advertised benefit from any sponsorship or support, whether it be direct or indirect.

An advertisement can also be considered to contain a misleading omission where an advertiser hides or provides material information in an unclear, unintelligible, ambiguous or untimely manner; or where the advertiser fails to identify the commercial intent of its commercial practice. An example of this is where, instead of ordinary people, actors are used in an advertisement to endorse a product without making it clear that the testimonials are not real.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstrations in advertising are not specifically regulated. The general rules regulating advertising may apply and especially those concerning misleading advertising.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is defined as ‘any advertising that, explicitly or implicitly, identifies a competitor or goods or services offered by a competitor’.

Comparative advertising is considered lawful provided that it respects the conditions set by the law, notably, it:

- (a) must not be misleading;
- (b) must only compare goods or services having the same purposes;
- (c) must not discredit or denigrate the compared products or services; and
- (d) must not create a confusion on the market between the advertiser and a competitor.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

Luxembourg law does not require that the competitor’s trademark or product be marked by a specific symbol such as ‘TM’, ‘®’ or ‘©’. If comparative advertising meets the legal requirements, the trademark or copyright owner has no right to challenge the use by a competitor of its trademark or copyrighted product in advertising. However, it may bring a claim for infringement of its intellectual property before the courts and claim injunctive relief as well as damages.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Any advertising claiming that a product has a certain geographic origin should comply with general rules concerning the prohibition of unfair commercial practices and misleading advertising.

According to the Luxembourg Consumer Code: 'A commercial practice shall be regarded as misleading if it:

- (a) contains false information; or
- (b) in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:
 - (i) the existence or nature of the product,
 - (ii) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, **geographical or commercial origin** or the results to be expected from its use, or the results and material features of tests or checks carried out on the product'.

If comparative advertising concerns products having a designation of origin, the advertising is only lawful if it compares products having the same designation of origin.

Specific rules may apply to certain types of products (wines, cheese, champagne, honey, flour).

3.10 Are there any special rules governing product packaging?

Product packaging should comply with general rules concerning the prohibition of unfair commercial practices and misleading advertising.

There are special labeling rules governing specific types of products (wines, tobacco, foodstuffs, medicine etc):

- (a) **Food:** As regards foodstuffs, specific information must be provided, such as:
 - (i) the name of the food;
 - (ii) the list of ingredients;
 - (iii) any ingredient or processing aid causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;
 - (iv) the quantity of certain ingredients or categories of ingredients;
 - (v) the net quantity of the food;
 - (vi) the date of minimum durability or the 'use by' date;
 - (vii) any special storage conditions and/or conditions of use;
 - (viii) the name or business name and address of the food business operator;
 - (ix) the country of origin or place of provenance where provided for;
 - (x) instructions for use where it would be difficult to make appropriate use of the food in the absence of such instructions;
 - (xi) with respect to beverages containing more than 1.2% by volume of alcohol, the actual alcoholic strength by volume; and
 - (xii) a nutrition declaration.

(b) **Cosmetics:** Sale of cosmetics as well as labeling are mainly regulated by EU regulations. Luxembourg law requires specific information to be displayed at least in one of the Luxembourg official languages (either French, German or Luxembourgish). The information required includes:

- (i) nominal content (ie given by weight or by volume, except for packaging containing less than five grams or five milliliters, free samples and single-application packs); and
- (ii) date of minimum durability until which the cosmetic product, stored under appropriate conditions, will continue to fulfill its initial function.

EU Regulations also contain a list of substances which require special precautions as well as associated warnings (such as ‘not to be used on peeling or irritated skin’, ‘not to be swallowed’, ‘avoid contact with eyes’, etc) to be displayed on packaging. Where it is impossible for practical reasons to label particular precautionary information on the product itself, this information shall be mentioned on an enclosed or attached leaflet, label, tape, tag or card or warned by a specific symbol.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Luxembourg does not have specific rules or guidance on the use of ‘dark practices’ (known as ‘dark patterns’). However, Luxembourg refers to the guidelines provided by the European Commission, the European Data Protection Board, and European Regulations.

The EU Digital Services Act includes the first express prohibition on dark patterns in EU law. ‘Dark patterns’ is a concept that is generally used to refer to practices in digital interfaces that steer, deceive, coerce, or manipulate consumers into making choices that often are not in their best interest. Some examples of this specific practices include:

- (a) **Sneaking:** additional purchases of goods or services imposed on users (eg, by sneaking them into their basket, by hidden subscription, drip pricing and hidden cost);
- (b) **Hindering:** obstructing or blocking users from becoming informed or managing their choices (eg, dead end, misleading information, prolonging user experience by continually questioning their initial choice);
- (c) **Fickle:** user interface (‘UI’) design is inconsistent or not clear, making it hard for the user to navigate to make the choices they want to make (eg, inconsistent approach to presenting same information to cause confusion, publishing information on a page that does not belong there);
- (d) **Deception/misdirection:** UI creates to distract from relevant information or to frustrate the usual expectations of user interface design (eg, intentional or obvious ambiguity to confuse user, uses flashy visual to distract user from alert or request, bait and switch, and ad labeling or disguised ads).
- (e) **Overloading:** an avalanche of requesting information, options, or possibilities to prompt user to make certain choices (eg, making information difficult to locate, distracting users with too many options so they choose most advantageous option for the site);
- (f) **Obstacles:** users face various obstacles to dissuade them from taking certain actions (eg, difficult cancellations, hidden information, price comparison prevention, pre-selects advantageous options for site, visual that ‘nudge’ the user away from selecting disadvantageous option for site);

- (g) **Pressure:** repeatedly being asked to act or being confronted with alleged social norms/scarcity of goods (eg, confirm framing, suggestion that the availability of goods or services is limited, countdowns, nagging or continuous prompting, use of ‘positive’ user testimonial to influence decisions);
- (h) **Force:** users are (de facto) forced to take action or acquiesce to do something (eg, forced registration of unrelated condition to access goods and/or services, renewal of free/discounted subscriptions for a fee or higher price); and
- (i) **Left in the dark:** UI designed to hide information or choices (eg, language discontinuity, conflicting information, ambiguous wording, or information).

They are also several EU legislative Acts that regulate, directly or indirectly, dark pattern and other business-to-consumer unfair commercial practices that manipulate consumer behavior, such as:

- the Unfair Commercial Practices Directive;
- the Consumer Rights Directive;
- the Digital Markets Act;
- the Audiovisual Media Services Directive; and
- the GDPR.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Luxembourg law does not yet have specific rules or guidance on AI related to advertising. Nevertheless, Luxembourg has established a stringent legal framework to ensure consumer protection, combat unfair commercial practices, and safeguard personal data and privacy.

Concerning the creation of advertising content (such as drafting promotional messages, generating images for commercial purposes, and interactive voice advertising), transparency is a fundamental aspect of any regulation. In this context, all commercial communications must be immediately and unambiguously identifiable through appropriate information. Hence, any use of artificial intelligence must be explicitly disclosed to the public (eg, advertisers must indicate when AI has been used to create a model, an influencer, an image, a voice; use relevant hashtags for AI-generated texts on social media platforms, etc.)

The AI Act being prepared by the European Union is without prejudice to the rules laid down by other EU legal acts related to consumer protection. Therefore, practices that are prohibited by EU legislation, including consumer protection law, will not be affected by the AI Act. Furthermore, the AI Act will also provide that unfair commercial practices are prohibited, irrespective of whether they are carried out having recourse to AI systems or otherwise. In such a setting, lawful commercial practices that comply with EU law in advertising will not be regarded as violating an AI Act prohibition.

The AI Act also does not affect the protection of personal data (including concerning consumers) as provided in the EU GDPR. This is clarified by the current text of the AI Act and by Luxembourg Data Protection Authority publications. Therefore, practices that are prohibited by EU legislation, including data protection law, will not be affected by the AI Act. The right to privacy and the protection of personal data will have to be guaranteed throughout the entire lifecycle of AI systems. Consequently, GDPR principles, legal basis for the processing of personal data, and data subject rights, all apply to the processing of personal data by AI systems. This also includes data subject rights to object to profiling for marketing purposes, and the right not to be subject to a decision based solely on automated processing (including by AI algorithms). The GDPR principles of data

minimization and data protection by design and by default will also apply. Providers and users of AI systems will have to implement state-of-the-art technical and organizational measures to protect fundamental rights of individuals.

Finally, the AI Act will regulate specific AI systems that may have an impact in advertising, including AI systems:

- (a) that deploy subliminal techniques to make a person take a decision that it would not otherwise have taken, and
- (b) that generate or manipulate text, audio or visual content that would falsely appear to be authentic or truthful and which features depictions of people appearing to say or do things they did not say or do ('deep fake').

However, the AI Act will not regulate the use of copyrighted protected works as training data for AI systems, nor the protection of the AI systems output by copyrights. This will be a matter to be regulated by EU law on copyright and related rights, that the AI Act does not affect.

4 PRICE ADVERTISING

4.1 What are Luxembourg's rules regarding price advertising?

There is no obligation to indicate the price of goods and services in advertising, although, when it is done, the price must be disclosed in a legible, unambiguous and visible manner. It must be written in Euros and include VAT and other taxes. The price paid cannot be higher than the price displayed. As a result, if the advertised price only applies to specific cases, the conditions to qualify for this price must be disclosed in a clear manner. In addition, the price indicated in an advertisement (eg, in an advertising leaflet or on television) forms part of the sales or service contract subsequently concluded. If the price subsequently charged is not the same as the advertised price, the consumer has the right to rescind the contract.

4.2 What are Luxembourg's rules regarding advertising 'free' products?

Sales with a free gift, where free products or services are offered with purchases, have been lawful in Luxembourg since 2002. However, it should be noted that it is an unfair commercial practice to state that the product is free of charge when the consumer must still pay something other than the cost of responding to the offer (postage, telephone call) or delivering the goods. There are no restrictions regarding the value of the free gift compared to the price of the purchase.

Exceptions exists for:

- (a) medicines, which cannot be offered for free unless it is on an exceptional basis and only to qualified persons;
- (b) tobacco products, which cannot be offered for free; and
- (c) alcoholic beverages, which cannot be offered for free to minors under 16.

4.3 What are Luxembourg's rules regarding sales and special offers?

In Luxembourg, the term '*soldes*' (bargain sales) can only apply to sale offers or sales with reduced pricing made during a 'sales' period, which only takes place twice a year, each period not exceeding a maximum of one month. The price of goods offered on sale must be genuinely lower than the price usually charged by the seller for the same goods. A Grand-Ducal regulation fixes the opening and closing dates of periods of 'sales' every year. These restrictions do not apply to online shops. Special offers are possible during other periods of the year, provided they are not described as '*soldes*'.

4.4 What are Luxembourg's rules regarding rebates?

Under the current regime, rebates are no longer specifically regulated in Luxembourg. To be lawful, they must, however, not be misleading and construed as unfair commercial practices.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

When implementing price reductions or promotions, the advertiser must display the reference price. For products sold in shops, this is: the lowest price at which the product was offered for sale during the previous 30 days. Discretionarily, the advertiser can opt for an extended time frame for reference. Where the product has been on sale for less than 30 days, the reference price is the lowest price applied to that product since it was launched in that shop.

In the case of successive price reductions on the same product marketed in the shop, the reference price is the price before the first price reduction.

Any price reduction, the reduced price, and the reference price must be displayed in an unambiguous, easily identifiable, and easily legible manner. In addition, other rules on indicating certain prices, such as the obligation to provide a dual indication of certain prices, remain valid when announcing price reductions.

Advertisers may not:

- display reductions on products that have never been on sale in the shop concerned,
- display price reductions without a reference price, or
- increase the price initially to be able to display a larger reduction later.

The same obligations apply to online sales. Penalties apply in the event of non-compliance.

The following are exceptions to the obligation to display the reference price:

- (a) Conditional offer advertisements are not considered to be price reduction advertisements;
- (b) Advantages reserved only for a limited number of customers participating in a loyalty program are not considered to be price reduction advertisements;
- (c) The display of a price other than the reference price is possible if the reference is clearly explained and does not create confusion with a price reduction; and
- (d) Discounts not announced at the checkout are still possible.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) **Tobacco:** All forms of tobacco advertising are prohibited (except for advertising placed inside tobacco shops, provided certain conditions are met, and online advertising restricted to professionals or targeted to non-EU countries). This prohibition includes the use of the trademark or logo on everyday objects other than those directly related to smoking.
- (b) **Medicines:** Advertising medicines that cannot be delivered without a medical prescription, or which contain narcotics or are reimbursable by the healthcare system, is prohibited (except to professionals and under specific conditions).
- (c) **Legal services:** As a rule, advertising legal services is prohibited.

- (d) **Alcohol:** The advertising of alcoholic beverages must not be explicitly targeted at minors and must not encourage the excessive consumption of alcoholic drinks.
- (e) **Teleshopping:** the broadcast of teleshopping sequences is prohibited during children's programs.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Misleading advertising is prohibited. Advertising will be considered as misleading if, in any way, including in its presentation, it deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and, by reason of its deceptive nature, is likely to affect their economic behavior or, for those reasons, injures or is likely to injure a competitor.

For example, direct marketing using an automated calling/communication system is only allowed if the subscriber or the user has given their prior consent (opt-in).

Product placement is prohibited in audiovisual media services in news, current affairs, consumer, religious, and children's programs. However, it is allowed in all other content produced after 19 December 2009, subject to the condition that viewers are clearly informed of the existence of product placement through appropriate identification at the beginning and end of the program, as well as when a program resumes after a commercial break, in order to prevent any confusion on the part of the viewer.

The broadcasting of teleshopping sequences during children's programs is prohibited.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Luxembourg law does not have general provisions on decency in advertising as such, although audiovisual commercial communications must not prejudice human dignity.

In addition, indecency in advertising, whatever the media involved, will be considered in the light of the criminal prohibition on affronting public decency. This prohibition is general and does not only concern advertising. Other specific criminal offences which might apply to advertising include discrimination or incitement to hatred based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. Incitement to violence, hatred, or terrorism in advertising is strictly prohibited. This encompasses any encouragement of violence or hatred towards specific groups or individuals based on specific reasons, as well as any public provocation to commit a terrorist offense in accordance with relevant legal provisions.

Furthermore, for the protection of minors, advertising must not cause physical, mental, or moral harm to minors:

- by exploiting their inexperience or credulity to directly incite them to make a purchase, or to persuade their parents to do so; or
- by unjustifiably portraying minors in dangerous situations.

CLEP's Code of Ethics provides that advertising must respect human dignity. In this regard, advertising must not denigrate, offend or show contempt for either men or women. Representation of the body in advertising must be decent and not excessive.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Yes, commercial communications must indicate the name of the person or company on whose behalf it is made.

There are also specific provisions which vary depending on the media used. These are some examples:

- (a) **Print:** It is mandatory to mention the details of the advertiser including, as a minimum, its corporate name, corporate form, address of registered office, and company registration place and number.
- (b) **Flyers:** Information which must feature on flyers includes the advertiser's corporate name, corporate form, address of registered office, company registration place and number, place where the publication has been printed or produced and place where the publication has been made available to the public.
- (c) **Digital:** It is standard practice to include a hyperlink enabling consumers to find the advertiser/sponsor's details.
- (d) **Sponsored programs:** The name, logo and/or any other symbol of the sponsor must be clearly indicated.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Yes, as a general rule the advertiser must not mislead consumers. Any advertising must be clearly identified as such in order not to be construed as clandestine advertising.

Advertorials (ie advertisements giving information about a product or service in an editorial manner) are allowed, provided that it is made clear to consumers that the advertiser paid for it and that it is advertising. In newspapers or other written publications, this is generally done by including the word '*publi-communique*' (Advertising' or 'Advertorial') at the top of the article. On the radio, the message generally starts with a disclaimer indicating that it is an advertisement.

Product placement is prohibited in audiovisual programs produced after December 2009 and, always, in programs for children. There are some exceptions: product placement is permitted in movies as well as series or entertainment programs, subject to certain conditions, in particular, that the public is clearly and appropriately informed of the product placement at the beginning and at the end of the program.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Yes. Viewers must be clearly informed about product placement. Product placement must be identified in an appropriate manner for programs at the beginning, during and/or at the end of programs, as well as after a commercial break, except if the program has not been produced or ordered by the media service provider or one of its affiliates.

Viewers must also be clearly informed about sponsored programs. Sponsored programs must be clearly identified as such by the name, logo and/or any other symbol of the sponsor, such as a reference to its product(s) or service(s), or a distinctive sign thereof, in an appropriate manner for programs at the beginning, during and/or at the end of the programs.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Advertising and marketing via social media are not regulated as such, but must comply with Luxembourg laws governing advertising and marketing in general (provided, of course, that the advertisement or the marketing is available in Luxembourg). The following provisions may be of particular relevance:

- (a) the Luxembourg Consumer Code (Business to Consumer);
- (b) the Law on sales, sidewalk sales and misleading and comparative advertising (Business to Business and Business to Consumer);
- (c) the rules applying to online behavioral advertising. Although this area is not subject to any specific regulation, the Data Protection Law in the electronic sector applies. It aims at strengthening transparency and fair use standards, particularly with regard to the use of cookies. For example:
 - (i) prior consent (opt in) is needed for the use of cookies, unless the cookie is strictly necessary for the provision of a service to that subscriber or user;
 - (ii) subscribers or users must be provided with clear and comprehensive information about the purpose of the practice. In particular, they should be notified about the identity of the advertising network provider, and that the cookie will allow the advertising provider to collect information; and
 - (iii) browser settings can be used as a means of obtaining consent, but the consent must be obtained prior to the use of cookies.

In addition, the CLEP's Code of Ethics contains some specific provisions on online behavioral advertising. However, these provisions are non-binding.

Some general guidelines to keep in mind while using social media for advertising purposes:

- Use the social media tools: if the social media allows it, activate the sponsorship tool (eg, Instagram Branded Content tag);
- Wording of appropriate disclosure: such as phrases used to correctly identify the nature of the agreement with the advertiser (eg, 'these products have been sent by [X] for free to give a review', 'the trip was sponsored by [X]');
- Make it clear that each post is a commercial communication by adding some hashtags and/or keywords (eg, *#Publicité*, *#Collaborationcommerciale*, *#werbung*, *#anzeige*);
- Time of the disclosure: hashtags and keywords should appear instantly and be appropriate to the medium and message (eg, displayed at the beginning of the video or story and mentioned at the very top of the description or text that comes with the post).

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Yes, an advertiser may be held liable for statements made by consumers on its website or Facebook page, but only in limited cases. In such cases, the advertiser can be regarded as a web host, which means that it will only be held responsible for the information stored if:

- (a) the information stored is obviously illicit or if the advertiser has been made aware of its illicit character, and
- (b) does not quickly act to remove the information or make access to it impossible from the moment it becomes aware or should have become aware of the illicit content.

With the GDPR, businesses and organizations that want to use user generated content must do so with the express consent of the creator.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Not applicable.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The use of an individual's name, picture, likeness, voice and identity in advertising requires their prior consent. Specific authorization must be obtained from an individual to use those elements for advertising purposes. Non-compliance with these requirements entitles the individual to request the withdrawal of the advertising together with compensatory damages. In addition, specific information must also be provided to comply with the GDPR, especially concerning the identity of the data processor, the purposes of the processing, and the rights of the data subjects. Non-compliance with these legal provisions may lead to criminal sanctions or administrative fines.

9.2 Are there situations when permission is not required?

Not applicable.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Whatever the materials used in advertising, the general principles described above apply, including those regarding the use of national emblems or images of statesmen. Consumers must not be misled by ads giving the impression that the advertising is an official communication or is made in co-operation with an official body.

The use of a public monument or place may, in certain cases, require the prior authorization of the architect, especially if the architect is still alive or died less than 70 years ago.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The use of a third party's trademark is allowed in advertising, provided that there is no risk of confusion as to the origin of the products. It is not, however, possible, as a rule, to show in advertising another company's product which is protected either by copyright or as a design without their prior authorization.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Luxembourg which affect advertising (eg, Swedish gender equality law)?

Luxembourg is a multilingual country as it has three official languages: Luxembourgish, French and German. Many other languages, such as English and Portuguese, are also spoken. There is no specific requirement regarding the language that must be used in advertising. However, when particular disclaimers are needed, it is highly advisable to use one of Luxembourg's three official languages. In practice, French and German are commonly used in written advertising, as well as, to a lesser extent, English (even though it is not an official language.) Luxembourgish is mainly used in radio or television advertising.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

None, other than those common to all countries that respect human rights, such as not inciting hatred or discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age, or sexual orientation.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Luxembourg?

When advertisers operate in Luxembourg, it is advisable to seek legal local advice and adapt the campaign to local rules.

It is also advisable to keep in mind:

- (a) the three official languages in relation to the target of the advertising;
- (b) the higher level of information and transparency required under the GDPR; and
- (c) the DSA may also add new obligations and rules with which advertisers must comply.

 MALAYSIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Malaysia?

In Malaysia, advertising is governed through the Advertising Standards Authority ('ASA') to promote and enforce high ethical standards in advertisements. The Malaysian ASA was created as an independent body that ensures that advertising complies with relevant codes and initiatives while functioning as a complaints mediation service. Its tasks include:

- (a) managing complaints and issues raised by consumers, companies and other relevant parties pertaining to advertising content and standards;
- (b) resolving complaints in an effective and professional manner while adhering to existing rules and guidelines;
- (c) managing and promoting the complaints aspects of the advertising self-regulation system in Malaysia;
- (d) building confidence amongst all members of the advertising industry, the corporate world, the government and the community at large in the advertising self-regulation system;
- (e) ensuring propriety in advertising to match the Malaysian value system and psyche;
- (f) assisting in the design, creation and implementation of best practices in complaints-handling procedures and protocols; and
- (g) staying abreast of the advertising, branding and communications industry in order to effectively uphold high advertising standards.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

'Advertisement' is defined in the Malaysian Communications and Multimedia Content Code ('CMCF Code') as 'content of a public nature, whether for the sale or purchase or provision of goods or services, or constituting of an invitation to participate in an activity, and conveyed by or through any signage, image or sound disseminated through electronic or paper medium for advertising purposes'. For the purposes of the Malaysian Code of Advertising Practice ('ASA Code') 'advertisement' applies to marketing communication or advertising wherever it may appear in the printed form. It includes advertising in leaflets, circulars, posters, billboards, cinemas, advertising claims on packs, labels and point of sale material'.

1.3 What is the basic regulatory framework for advertising regulation?

See question 1.1 above.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The ASA Code and the CMCF Code provide parameters on all forms of advertising practices whether in print, digital media or by means of telecommunication. The ASA Code provides:

- (a) **Advertisements on audio text services:** Advertisers should clearly indicate to system users whether or not their services are free of charge, and should not charge users unless such warnings have been provided beforehand. Advertisements should indicate the cost of the services.

Advertisement of audio text hosting services aimed at young persons or children must carry the following warning messages: 'This call costs RMX.XX per minute/per call. Callers under 18 must seek a parent's or guardian's approval before calling'.

- (b) **Advertisements for chat line and related services:** These must include the company's name and office number. Chat line advertisements should always include the legal age limit for callers and warnings on the dangers of meeting up with strangers encountered through chat lines.

Where an advertisement gives the website address (uniform resource locator or URL) for non-chat services, that page must not have links or 600 numbers to chat services. Advertisements for chat lines and related services should not contain lewd, sexually suggestive or offensive material.

- (c) **Children:** The use of children or young people in an advertisement is not encouraged unless the products advertised are relevant to them, and also in the context of promoting safety for children and young people. Further, advertisements pertaining to the activities of a society or club for children and young people must be that of a club or society that is properly supervised.
- (d) **Cosmetics:** Advertisement claims for vitamins in cosmetics should be restricted to a statement that the product contains a specified vitamin or vitamins.

1.5 **Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?**

The advertising of pharmaceuticals is regulated by the Medicines (Advertisements & Sales) Act 1956 and the Medicines Advertisements Board Regulation 1976. Other practices and products are prohibited: see questions 5.1 and 5.3 below.

1.6 **Are any government pre-approvals required?**

Government pre-approvals are required for controlled products. For example, medicinal products need to be approved by the Medicine Advertisement Board, which is part of the Ministry of Health. The Board may:

- (a) issue approval for an advertisement;
- (b) review, revise its policies and guidelines as necessary; or
- (c) cancel/withdraw the approval granted.

1.7 **Does the media pre-clear advertising?**

TV, radio and newspapers advertisements are pre-cleared before they are broadcast or published. Under their licenses, broadcasters must take reasonable steps to ensure that the advertisements they broadcast are compliant with the ASA Code and the CMCF Code.

Foreign advertisers must have a local contact address or have a local distributor's address placed in all forms of advertisements.

1.8 **How does the government enforce advertising laws? What are the potential remedies?**

The Ministry of Domestic Trade, Co-operatives and Consumerism and the Ministry of Health have their respective enforcement divisions. The enforcement divisions monitor advertisements advertised in the print and electronic media to ensure compliance with the existing rules and

legislation. They also conduct investigations into cases involving advertisements of products. Errant advertisers face a maximum fine of RM50,000 (US \$15,000) or a prison term of up to three years. Advertising agencies can be fined up to RM100,000 (US \$30,000) for a first-time offence and RM200,000 (US \$45,000) for subsequent infringements.

1.9 When does a competitor have a right of action? What are the potential remedies?

Malaysia has established the Competition Act 2010 and the Price Control and Anti-Profiteering Act 2011 and adopted Article 10bis of the Paris Convention to avoid unfair trade. An 'act of unfair competition' is defined as any act of competition contrary to honest practices in industrial or commercial matters which includes false advertising. The Competition Act empowers the Competition Commission to conduct market reviews, and to carry out investigations and enforcement duties. The Act also establishes a Competition Appeal Tribunal which has the exclusive jurisdiction to review any decision made by the Commission. As regards penalties, first-time offenders are required, unless otherwise expressly provided, to pay a fine not exceeding RM5 million (US \$1.5 million) for companies or not exceeding RM1 million (US \$300,000) for individuals. Individual offenders may, in addition to, or in lieu of fine, be subjected to an imprisonment term not exceeding 5 years.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers are protected under the Consumer Protection Act 1999. The Act states that suppliers and manufacturers are prohibited from using misleading and deceptive conduct, false misrepresentation and unfair claims in selling their products or services. The Act gives consumers the right to claim for damages for unfair practices from the supplier and manufacturer. Under this Act, an aggrieved consumer may refer any dispute or claim of less than RM10,000 (US \$3,000) to the established Consumer Redress Tribunal.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Malaysia have a primary advertising self-regulation system?

Malaysia practices an advertising self-regulation system. The Malaysian ASA was established in 1977 to provide independent scrutiny of the then newly-created self-regulatory system set up by the industry. Its chief tasks are to:

- (a) promote and enforce high ethical standards in advertisements;
- (b) investigate complaints;
- (c) identify and resolve problems;
- (d) ensure that the system operates in the public interest; and
- (e) act as a channel for communications with those who have an interest in advertising standards.

The constituent members of the ASA are the Malaysian Advertisers Association, the Association of Accredited Advertising Agencies of Malaysia, the Malaysian Newspaper Publishers Association, the Media Specialists Association and the Outdoor Advertising Association of Malaysia.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Malaysia's self-regulatory advertising code is the ASA Code (for paper publications) and the CMCF Code (for electronic media).

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Complaints from members of the public, or those representing them, that the Code has been breached should be addressed to the Chairman of the ASA (for print advertising) and the CMCF (in respect of all other forms of advertising), including sufficient details of the complaint, along with contact information, especially the postal address or email, of the complainant. It is helpful if complainants can, wherever possible, provide examples of, or copies of, any advertisements to which they take exception. Investigations will not be initiated without written confirmation from the complainant.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system is effective. Sanctions are common for those who violate the Code. The principal sanctions are:

- (a) the withholding of advertising space from advertisers; and
- (b) the withdrawal of trading privileges from advertisers/advertising agencies.

Both sanctions are applied by the media. In addition, there is the sanction of adverse publicity.

2.5 Are the self-regulatory system's decisions reported?

No. The ASA of Malaysia will only inform the parties involved of their decision. However, the ASA have discretion to publish details of the outcome of investigations it has undertaken.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Advertisements in Malaysia must be legal, decent, honest and truthful. Advertisements must project the Malaysian culture and identity, reflect the multi-racial character of the population and advocate the philosophy of 'RUKUN NEGARA' which reads as follows:

- (a) believe in God;
- (b) loyalty to king and country;
- (c) upholding the constitution;
- (d) rule of law;
- (e) good behavior and morality.

Advertisements must not identify or type-cast each particular racial group or sex with vocations, traditional values and backgrounds.

2.7 Are there any other self-regulatory systems that govern advertising practices in Malaysia?

No.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Malaysia (eg, consumer protection laws, IP laws, unfair competition laws)?

The Trade Descriptions Act 2011 states that it is an offence for any person to apply a false trade description to any goods, or supply or offer to supply, or exposes for supply or has in their possession, custody or control for supply, any goods to which a false description is applied. For false description made through advertisement, the presumption of liability is on the person who, directly or indirectly, offers to supply goods or services. It means that, for any false description of goods placed in an advertisement, action can be instituted against the manufacturer or seller of the goods. False description of goods in and by advertisement is also regulated under the Direct Sales Act 1993.

The Consumer Protection Act 1999's latest amendment in 2010 introduced a Committee on Advertisements, which provides power to the Ministry of Trade to take action against those that produce false and misleading advertisements.

3.2 Is substantiation required for advertising claims?

Advertisements should not contain any statements or visual presentation which directly or by implication, omission, ambiguity, or exaggerated claim, is likely to mislead the consumer about the product advertised, the advertiser, or about any other product or advertiser. All descriptions, claims and comparisons which relate to matters of objectively ascertainable fact should be capable of substantiation; and advertisers and advertising agencies are required to hold such substantiation ready for production without delay to the Malaysian ASA.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

It is seldom possible to substantiate general claims by an advertiser that its product is of superlative quality ('best', 'finest') in a manner which is universally acceptable. Such claims, however, are permissible, provided that their inclusion in an advertisement does not create a false impression concerning any quality possessed by the product which is capable of assessment in the light of generally accepted standards of judgement. Obvious hyperbole, which is intended to attract attention or to amuse, is permissible, provided that it is not likely to be taken as a positive claim to superior or superlative status.

3.4 What are the rules governing the use of disclosures in advertising?

Truthfulness and honesty are the key rules in the use of disclosures in advertising.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience, over a reasonable period of time, of the person giving it. Testimonials or endorsements which are obsolete or otherwise no longer applicable, (eg, where there has been a significant change in formulation of the product concerned) should not be used. Testimonials from persons who reside outside Malaysia are not acceptable unless an indication of their address and country of residence is given in the advertisement.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstrations are permissible in Malaysia. Placement advertisements are usually permissible if tastefully done.

When advertising motor vehicles, advertisements must not depict irresponsible or illegal motoring practices. Vehicle capabilities may be demonstrated on a track or circuit that is clearly not on a public highway.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted for advertisements communicated electronically (this includes television, radio, online services and audio text hosting services). The CMCF Code states that:

- (a) Comparative advertising is allowable in the interest of vigorous competition and public information. It shall, however, respect the principles of fair competition, and shall be so designed that there is no likelihood of the consumer being misled as a result of the comparison.
- (b) The subject matter of a comparison shall not be chosen in such a way as to confer an artificial advantage upon the advertiser or so as to suggest that a better bargain is offered than is truly the case.
- (c) Points of comparison shall be based on facts that can be substantiated and should not be unfairly selected.
- (d) Advertisers should not attack or discredit other businesses or their products.
- (e) Advertisers should not make unfair use of the goodwill attached to the trademark, name, brand, logo, slogan or the advertising campaign of any other organizations.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

In Malaysia, the Trade Marks Act 2019 does not expressly disallow comparative advertising. There has yet to be a reported decision of the High Court or higher court on the issue of comparative advertising in Malaysia. However, Section 54(3)(h) of the Trade Marks Act 2019 is very similar to the old UK trademark law, which disallowed comparative advertising by using a competitor's trademark.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The ASA Code states that claims relating to geographic origin must not be misleading.

3.10 Are there any special rules governing product packaging?

The Malaysian ASA Code cautions that particular care should be taken in the packaging and labeling of goods to avoid causing confusion with competing products.

Product packaging is also regulated under the Consumer Protection Act 1999. Packaging of goods must be in conformity with the safety standard, and statements made about the goods on any packaging or label on the goods must be true and not misleading.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

No. There are no specific rules or guidance that specifically target the use of ‘dark practices’ such as manipulative, exploitative or disguised advertising.

Be that as it may, the ASA Code does curtail certain exploitative practices—such as by imposing additional restrictions on advertising that is targeted towards children.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No, the framework presently does not provide any special rules or guidance concerning the use of artificial intelligence in advertising.

4 PRICE ADVERTISING

4.1 What are Malaysia's rules regarding price advertising?

Some of the general principles set out in the ASA Code and CMCF Code regarding the quotation of prices are:

- (a) The stated price or value must not be misleading;
- (b) If the price of one product depends on the purchase of another, the extent of the consumer’s commitment, if any, must be made clear;
- (c) Claims which use formulas such as ‘prices from as low as RMX.XX’ are not acceptable where there is a likelihood of the consumer being misled as to the availability or as to the applicability of the benefits offered. Such claims should not be used:
 - (i) when the price or other advantage claimed bears no relation to the general level of prices or benefits, and in particular where it does not apply to the goods or services actually advertised or to more than an insignificant proportion of them, or
 - (ii) when the claims apply to spoiled or imperfect goods, or to goods or services, which are in some respect less complete, or subject to greater limitations than the bulk of those on offer.

4.2 What are Malaysia's rules regarding advertising ‘free’ products?

If the term ‘free’ is used, then it must truthfully be free of monetary considerations.

If a bundled product is free eg, ‘free sample’, this is acceptable if the main product is not overly above normal prices.

Products should not be described as ‘free’ if there is additional cost to the consumer, other than the actual cost of any delivery, freight or postage.

4.3 What are Malaysia's rules regarding sales and special offers?

A ‘sale’ in an outlet is permissible as long as it is truly sold at a price lower than the previously advertised price.

A merchant can be taken to task by the ASA for false use of the word ‘sale’ or ‘discount’ or ‘special offers’.

4.4 What are Malaysia's rules regarding rebates?

Cash rebates, if an inducement to buy further products, are not permissible. However, rebates in the form of vouchers are permissible, as long as the rebate vouchers are not restricted in product choice within the same merchant outlets.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

In all cases, the merchant's address, date of purchase, the actual price paid to the merchant and the discount applied or voucher rebate amounts must all be transparent to the buyer.

An undertaking in an advertisement for money back guarantee must clearly state the time period/duration for the claim to be made by the consumer and also should make due allowance for the time taken for delivery and return of the product in the advertisement.

Meanwhile, the word 'guarantee' should not be used in any way that could diminish consumers' legal rights. Substantial limitations should be spelt out in the advertisement. Before commitment, consumers should be able to obtain the full terms of the guarantee from the advertisers. Advertisers should also inform consumers about the nature and extent of any additional rights provided by the guarantee in their advertisement, over and above those stipulated by law, and should make clear how to obtain compensation.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) **Tobacco:** Under the Control of Tobacco Product (Amendment) Regulations 2013, the advertising of tobacco products is prohibited on TV, radio, in newspapers and magazines and other domestic print media.
- (b) **Alcohol:** Under the ASA and CMCF Codes, the advertising of alcohol on TV and radio is prohibited. Direct advertising in newspaper and magazines and other domestic print media is not allowed.
Children should not be portrayed in advertisements for alcoholic beverages; however, in a scene where it would be natural for them to be present (eg, a family situation), they may be included; provided that it is made clearly that they are not drinking alcoholic beverages.
Advertisements should not depict activities or locations where drinking alcohol would be unsafe or unwise. In particular, advertisements should not associate the consumption of alcohol with operating machinery, driving, any activity relating to water or heights, or any other occupation that requires concentration in order to be done safely. The content of advertisements should never associate drink with driving.
- (c) **Pork products:** Under the ASA and CMCF Codes, the advertising of pork products is prohibited on TV, radio and in newspapers, magazines and other domestic print media.
- (d) **Weapons/violence:** Under the ASA and CMCF Codes, the advertising of weapons or advertising depicting weapons and violence is prohibited on TV, radio and in newspapers, magazines and other domestic print media.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Restricted—Advertising must not contravene the Personal Data Protection Act 2010.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The ASA Code and the CMCF Code prohibit the exposure of body parts, scenes of an amorous, intimate or suggestive nature, and kissing between adults in advertisements on TV, radio, newspapers, magazines and other domestic print media. Clothes imprinted with words or symbols which could convey undesired messages (such as menacing contents) are similarly prohibited.

Under the CMCF Code, advertisements must not project women as an object for sex or be shown to merely satisfy men's desire and satisfaction; and must portray positive images of women.

Also, the use of crude words or references, hate speech and offensive language/terms are very likely to cause offence (and are therefore prohibited), especially if the language is in conflict with audience expectation in the advertisement. For example:

- (a) crude words or reference to sexual intercourse and sexual organs;
- (b) any portrayal (words, speech or pictures, etc), which denigrates, defames or otherwise devalues a person or group on the basis of race, ethnicity, religion, nationality, gender, sexual orientation or disability; or
- (c) the use of disparaging or abusive words.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The CMCF Code provides that advertisers, sponsors, online publishers, broadcasters and owners of other electronic media should ensure that their advertisements are designed and presented so as to be readily recognized as an advertisement. The advertiser/sponsor's advertisement features, announcements or promotions are disseminated in exchange for a payment or other reciprocal arrangement. Therefore, if the content of the advertisement is controlled by the advertisers/sponsors, it should also be clearly identified as such in their advertisements.

Whilst advertisements on alcoholic drinks and liquor are not allowed in Malaysia, an alcoholic drinks company is allowed to be the advertiser/sponsor for an international sporting event held in Malaysia, such as F1, A1 or GP (under special exemptions). In such circumstances, the company is allowed only to promote and advertise the fact that it is a sponsor to the sporting event, not directly advertise its products. In addition, alcohol companies are permitted to use their logo or trade name as part of the characteristics and branding of their advertising (eg, Johnny Walker, Fosters Beers, Absolut and Chivas).

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Yes, there are a few special rules governing the integration of advertising content and entertainment (or editorial) content in Malaysia. These rules are laid out in the ASA Code and the CMCF Code.

The ASA Code provides that advertisement must be clearly distinguished from editorial content. Where paid-for space is in the style of an editorial, particular care is needed to ensure that no part of it can be mistaken for editorial matter. The word ‘advertisement’ should stand alone, at the head of the advertisement in such size and weight and type as to be easily seen.

Similarly, advertisements targeted at children must be clearly recognizable as such and separated from editorial matter.

Moreover, the CMCF Code states that, in creating and offering news, reports, entertainment and advertisements, content providers must bear in mind the need for a balance between the desire of viewers, listeners and users to have a wide range of content options and access to information on the one hand and the necessity to preserve law, order and morality on the other.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Yes, in general all advertisements must provide a special disclosure when integrating advertising content with other content. See question 7.1 above.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Yes. By Section 211 of the Communication and Multimedia Act 1998, ‘No content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.’

Also, a point to note is that advertising on social media should not infringe any third-party intellectual property rights.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser’s Facebook page)?

Yes.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

To the best of our knowledge and legal research, there have been no decisions under the Communication and Multimedia Act specifically relating to advertising.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

There are no specific rules or prohibition on using an individual's name, picture, likeness, voice, and identity in advertising under the Communications and Multimedia Act 1998, the ASA Code and the CMCF Code.

However, it is important to note that the Malaysian Constitution provides that 'No person shall be deprived of their life or personal liberty save in accordance with law.' In 2010, Federal Court Judge Gopal Sri Ram ruled in the case of *Sivarasa v Badan Peguam Malaysia* that the right to personal liberty includes a right to privacy.

The tort of invasion of privacy was not recognized in Malaysia until recently. Formerly, in the cases of *Ultra Dimension Sdn Bhd v Kook Wei Kuan* [2004] 5 CLJ 285 (where the defendant took a photograph of a group of kindergarten pupils, including the plaintiff's child, at an open area outside the kindergarten and published it in two local newspapers) and *Lew Cher Phow @ Lew Cha Paw v Pua Yong Yong* [2009] 1 LNS 1256, Johor Bahru High Court Civil Suit No MT 4-22-510-2007 (application to restrain the defendants from having a CCTV which faced their house and to remove the same), the Malaysian High Court had held that invasion or violation of privacy is not a recognized tort or a cause of action in Malaysia. Similarly, in the High Court case of *Dr Bernadine Malini Martin v MPH Magazines Sdn Bhd & Ors* [2006] 2 CLJ 1117, the Court again stated that invasion of privacy is not an actionable wrongdoing.

However, departing from the previous position, the Court of Appeal, in the case of *Maslinda Ishak v Mohd Tahir Osmans* [2009] 6 CLJ 653 granted the plaintiff damages (though the defendant's conduct was also a criminal offense); and the case of *Lee Ewe Poh v Dr Lim Teik Man* [2010] 1 LNS 1162 is the first reported Malaysian case that expressly recognizes the invasion of privacy as an actionable tort. Both the *Maslinda Ishak* and *Lee Ewe Poh* cases concern the issue of women's modesty.

9.2 Are there situations when permission is not required?

See question 9.1 above.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Yes—advertising is governed through the ASA. The ASA Malaysia is the independent body responsible for ensuring that the self-regulatory system works in the public interest. The primary object of the ASA Code is the regulation of commercial advertising. It applies therefore (except as expressly provided) to all advertisements for the supply of goods or services or the provision of facilities by way of trade, and also to advertisements other than those for specific products which are placed in the course of trade by or on behalf of any trader.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Yes, it is permissible to use other companies' recognizable products, and show, eg, their trademarks in advertising. The use is statutorily and legally necessary to indicate the intended purpose, and therefore it does not constitute as an infringement. This position is based on the Malaysian Trade Marks Act 2019, which states that a registered mark of a recognizable product is not infringed by the use of the mark where it is necessary to indicate the intended purpose of a product, provided the use is in accordance with honest practice.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Malaysia which affect advertising (eg, Swedish gender equality law)?

Advertisements should not contain statements or visual presentation which are, or likely to be, interpreted to be contrary or offensive to the standard of morality or decency prevailing in Malaysian society. See question 5.3 above.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertisements should not directly or by implication exploit the religious requirements/beliefs of any community.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Malaysia?

No.

 MEXICO 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Mexico?

In the past few years, the Mexican Authorities have been very active regarding advertising regulations; hence the Outdoors Advertising Law of Mexico City, Technical Standard 051 on the labeling of packaged foods, and the Federal Consumer Protection Agency's Influencers Guide (although the latter is not strictly a mandatory regulation).

However, there is no specific or unique Advertising Code in Mexico. Advertising regulation is dispersed through several laws, which are enforced by different authorities, each in its own sphere of competence.

Thus, the applicable law, regulation and standards will depend on the kind of products or services being advertised. Some products or services, particularly those related to health, are more regulated than others.

This creates a panorama of complexity with regards to the relevant authority to hear the case, enforce the applicable law and the proceedings to follow.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

There is no specific definition for 'advertising'. However, in accordance with the Federal Consumer Protection Law, information and advertising regarding goods, products or services, released through any media or mean, shall be truthful, verifiable, and exempt of texts, dialogues, sounds, images, trademarks, designations of origin, and other descriptions that lead or may lead to mistake or confusion by being either deceptive or unfair.

The Guidelines for the Analysis and Verification of Information and Advertising issued by the Federal Consumer Protection Agency ('Profeco'), define the term 'media' as 'those platforms that are used to disseminate advertisements in general and that include television, cinema, radio, billboards, the sides of transportation, neon signs, posters, newspapers, magazines, direct mail, catalogues, brochures, flyers, point of sale material, as well as any other media, whether printed, electronic, by phone, computer, telecommunication or through other technologies'.

1.3 What is the basic regulatory framework for advertising regulation?

- (a) The Federal Consumer Protection Law establishes norms against misleading advertising, sets the rules for comparative advertising and regulates offers and promotions. The main focus of this Law is consumer protection. The Federal Consumer Protection Agency is responsible for enforcing this Law.
- (b) The General Health Law and its Regulations regulate the advertising of products and services used for health and human consumption. The Federal Commission for the Protection against Sanitary Risks is responsible for enforcing this Law.
- (c) The Outdoors Advertising Law of Mexico City regulates the installation, distribution, maintenance, length of display and removal of advertising media in public spaces or on any other property visible from outside in Mexico City. Similar laws or regulations exist in the other 31 subnational entities or states.

There are other Laws that regulate specific topics, such as:

- (d) the Federal Radio and Television Law, that establishes the main provisions for television and radio broadcasting of advertisements;
- (e) the General Tobacco Control Law and its Regulations, that forbid any type of tobacco advertising; and
- (f) the Federal Law for the Protection of Industrial Property ('Industrial Property Law'), which considers that engaging in acts, contrary to proper practice and custom in industry, commerce and services, that amount to unfair competition and that relate to the subject-matter regulated to the Law, shall constitute an administrative infringement.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

There are no specific regulations for certain types of advertising practices—general rules apply.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) The main industries whose advertising practices are specifically regulated are products for health and human consumption such as:
 - food products,
 - non-alcoholic and alcoholic beverages,
 - pharmaceuticals and medical devices,
 - cosmetics,
 - insecticides, and
 - toxic substances.

The General Health Law and its regulations regulate the advertising of these products.

- (b) The General Tobacco Control Law and its Regulation practically forbids tobacco advertising; it is only allowed in adult magazines under some restrictions.
- (c) Specific Laws such as the Transparency Law of Financial Services regulate advertising of financial services.
- (d) The Regulations to the Federal Gambling and Draws Law state that advertising regarding gambling/draws may only be carried out and shown after the Ministry of the Interior has granted the gambling house/draw organizer a permit to operate.

1.6 Are any government pre-approvals required?

- (a) The advertising of some products for health and human consumption such as:
 - alcoholic beverages,
 - tobacco,
 - pharmaceuticals and medical devices,
 - insecticides and
 - toxic substances

require a previous authorization granted by the Federal Commission for the Protection against Sanitary Risks. The Federal Commission for the Protection against Sanitary Risks has the ability to order broadcasting media to suspend advertising that does not have authorization or does not comply with the General Health Law and its regulations.

- (b) Additionally, food advertising when it includes the front labeling system, and is broadcast on television, cinemas, or over the internet or other digital platforms, will be subject to approval by the Ministry of Interior through the Federal Commission for the Protection against Sanitary Risks.
- (c) Under the Outdoors Advertising Law of Mexico City, the Secretary of Mobility of Mexico City requires permits for advertising materials displayed in public sites, such as buildings, houses, and restaurants. Interested parties must file an application and pay government fees to the authority, which will reviewing the advertising and issue the permission if this complies with the Law.

1.7 Does the media pre-clear advertising?

Media platforms do not pre-clear advertising. However, the Federal Consumer Protection Agency and the Federal Commission for the Protection against Sanitary Risks provide pre-clearing services. Interested parties submit the proposed advertising and the authorities answer with comments or suggestions. However, the pre-clearance is not binding and there is no guarantee that advertising that has been pre-cleared will be definitively allowed.

1.8 How does the government enforce advertising laws? What are the potential remedies?

- (a) The Federal Consumer Protection Agency can initiate actions for misleading advertising *ex officio* or following a complaint. The authority will then require the party responsible for the advertising to answer the complaint and file evidence.

Once the party responsible for the advertising answers the complaint, and after analyzing the evidence in the authority's laboratory if necessary, the Federal Consumer Protection Agency may decide to close the file or initiate an infringement proceeding. If a violation of the law is confirmed, the authority may order:

- suspension of the advertising;
- that the information in the advertising be corrected; or
- the imposition of economic fines.

In case of recidivism, the Federal Consumer Protection Agency may fine the infringer up to 10% of its annual gross income obtained from the commercialization of the goods, products or services contained in the applicable advertising corresponding to the last fiscal year in which the infringement was committed.

- (b) The Federal Commission for the Protection against Sanitary Risks can also initiate actions for misleading advertising *ex officio* or following a complaint. If a violation of the law is confirmed, the authority can impose economic fines. As is the case with the Federal Consumer Protection Agency, the Federal Commission for the Protection against Sanitary Risks has the power to order the broadcasting media to suspend advertising of products that may violate the General Health Law and its regulations.

1.9 When does a competitor have a right of action? What are the potential remedies?

- (a) Competitors may file a complaint before the Federal Consumer Protection Agency and/or the Federal Commission for the Protection against Sanitary Risks for misleading advertising (see question 1.8 above). If the advertising is confirmed to be misleading, the authority may

impose economic fines on those responsible for the advertising. However, after the competitor files the complaint, they are no longer part of the proceeding, and only notified of the final decision of the authority. They will not obtain remedies at this stage.

- (b) Competitors may try to seek economic relief before civil courts in case of comparative misleading advertising after the decision of the Federal Consumer Protection Agency becomes final and firm.
- (c) Finally, competitors may participate actively against misleading advertising that involves intellectual property rights and denigrates their products or services, their industrial or commercial activity or establishment. However, this provision does not apply to the comparison of products or services protected by a trademark for the purpose of informing the public, provided that the comparison is not biased, false or exaggerated within the meaning of the Federal Consumer Protection Law (see question 3.7 below).

The Mexican Institute of Industrial Property ('IMPI') holds these actions under the Federal Law for the Protection of Industrial Property. The authority may impose economic fines on the infringer and order preliminary injunctions, such as an order to suspend the advertising.

The party that seeks economic relief from intellectual property infringement can only pursue damages after such infringement has been declared by the authorized administrative authority. The law states that a civil judge has the ability to determine damages, the minimum amount of which is of 40% of the commercial value of the infringing product. No other type of damages are allowed in the law.

1.10 When do consumers have a right of action? What are the potential remedies?

- (a) Consumers may file a complaint before the Federal Consumer Protection Agency and/or the Federal Commission for the Protection against Sanitary Risks for misleading advertising (see question 1.8 above). If the advertising is confirmed to be misleading, the authority may impose economic fines on those responsible for the advertising. However, after the consumer files the complaint, they are no longer part of the proceeding, and only notified of the final decision of the authority. They will not obtain remedies at this stage.
- (b) Consumers may obtain remedies only if the party responsible for the advertising does not comply with an offer or promotion in the terms it was advertised. In such a case, at the consumer's request, the Federal Consumer Protection Agency will fix a date and hour to hold a settlement hearing in order to mediate the interest of the parties. If they do not reach an agreement, the consumer may initiate other actions before the civil courts.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Mexico have a primary advertising self-regulation system?

The National Council for Advertising Self-Regulation and Ethics ('CONAR') is the Mexican self-regulatory body in charge of promoting and enforcing the Code of Ethics of the advertising industry, by providing pre-clearance services and deciding disputes regarding advertising matters.

2.2 Is there a self-regulatory advertising code? What are the key principles?

CONAR has a Code of Ethics which states general principles of advertising. The key principles are the following:

- (a) **Legality:** Advertising should comply with applicable Law.
- (b) **Veracity and Honesty:** Information about the characteristics of products or services must be truthful and verifiable. In addition, advertisers should be honest and avoid the use of misleading or partial information that may mislead consumers.
- (c) **Respect and Dignity:** Advertising should avoid the use of images, text or sounds that offend the standards of decency according to the values of Mexican society, without prejudice to minorities. Advertising should avoid the promotion of violence, discrimination and denigration of any kind.
- (d) **Fair Competition:** Advertising should not denigrate, copy or imitate, directly or indirectly, creative advertising or ideas of third parties.
- (e) **Comparative Advertising:** Comparative advertising should be objective, verifiable, representative and relevant in the comparison. It can highlight benefits of the goods or services with respect to others, but always in a positive way without pejoratively qualifying the products or services of the competitor.
- (f) **Health, Welfare and Environmental care:** Advertising should avoid the use of images, texts and sounds that may induce persons to carry out activities contrary to physical and mental health or environmental care.
- (g) **Protection of Children:** Advertising addressed to children should take into account their vulnerability, critical capacity and experience. It should also avoid the use of images, texts or sounds that may represent a risk to their health or their respect for family or school authorities.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Yes—CONAR has a dispute resolution mechanism.

Any interested party may file a complaint before CONAR, which will then notify the advertiser concerned. The advertiser will then answer the complaint and the Council will issue a resolution. This proceeding can take about 15 working days.

This decision can be appealed once before CONAR, which will notify the advertiser concerned. The advertiser will answer the appeal and then the Review Committee will study the case and issue a resolution. This proceeding can also take 15 working days.

Resolutions are binding for members.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system is effective, since it is faster than any other legal proceeding and the resolution is binding on members of CONAR.

Even when a party is not a member, or refuses to comply with the resolution, the Council may notify the competent authority if the advertising violates the applicable Law. Thus, the authority can then initiate legal actions.

CONAR has signed cooperation agreements with different authorities involved with advertising, such as the Federal Consumer Protection Agency and the Federal Commission for the Protection against Sanitary Risks.

2.5 Are the self-regulatory system's decisions reported?

The resolutions issued by CONAR are reported to the parties. Additionally, the Council publishes its resolutions on its webpage.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

CONAR also promotes the Self-Regulation Code for Food and Non-Alcoholic Beverages Advertising targeted towards Children ('PABI Code'). This Code intends to set the self-regulatory advertising standards for those products directly targeted towards children, which are stricter than the principles of the Code of Ethics.

In addition, CONAR has signed cooperative agreements with different authorities and can inform them about advertising that may violate the law.

2.7 Are there any other self-regulatory systems that govern advertising practices in Mexico?

N/A

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Mexico (eg, consumer protection laws, IP laws, unfair competition laws)?

- Federal Consumer Protection Law and its Regulations;
- Federal Law for the Protection of Industrial Property;
- Federal Copyright Law;
- General Health Law and its Regulations in regard to advertisements;
- Transparency of Financial Services Law;
- Commercial Code (unfair competition);
- Regulations to the Federal Gambling and Draws Law;
- Guidelines for Comparative Advertising or Information on Prices of Goods, Products or Services;
- Regulations on Health control of Products and Services and Guidelines;
- Federal Telecommunication and Radio Law;
- Outdoors Advertising Law of Mexico City; and
- Federal Consumer Protection Agency's Influencers Guide.

3.2 Is substantiation required for advertising claims?

According to Mexican Law, advertising claims must be truthful and verifiable. Therefore, the authority can verify at any time the substantiation of the advertising claims through visits or documentation requirements.

In the specific cases of:

- health services,
- herbal remedies,
- alcoholic beverages,
- tobacco,
- drugs,
- dietary supplements,
- medical equipment,
- pesticides,
- cosmetic surgery procedures,
- beauty services,
- food and
- non-alcoholic beverages,

a license issued by the Federal Commission for the Protection against Sanitary Risks is required before the release of any advertising campaign. In order to obtain permission, advertisers must submit documentation that sustains the advertising claims before the authority.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

In principle, in accordance with the Federal Consumer Protection Law, all advertising must be truthful and verifiable and free of texts, dialogues, pictures or sounds and other descriptions that lead or may lead to mistake or confusion by being deceptive or unfair. However, ‘puffery’ cannot be considered illegal per se, as long as it is obvious to the consumer that the characteristics of a product or service are exaggerated in the advertising. In any case, the analysis of whether or not the puffery elements in the advertising are acceptable will be made on a case-by-case basis by the authority.

3.4 What are the rules governing the use of disclosures in advertising?

As mentioned previously, according to the Consumer Protection Law, all advertising shall be truthful and verifiable and exempt of texts, dialogues, sounds, images, trademarks, descriptions that lead or may lead to mistake or confusion by being either deceptive or unfair.

Deceptive or unfair information or advertising shall be understood to be that which makes reference to characteristics or information related to any good, product or service that, either truthfully or not, misleads or causes confusion due to the imprecise, false, exaggerated, biased, contrived or tendentious manner in which it is presented.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The Consumer Protection Law, establishes that the Federal Consumer Protection Agency may issue guidelines for the analysis and verification of such information or advertising in order to avoid misleading or confusing the consumer, considering the temporal context in which it is disseminated, the moment in which it is transmitted with respect to other contents disseminated and the economic or special circumstances of the market. Said law also establishes certain requirements for any endorsement given by professional associations with regard to products or services, such as the need for appropriate scientific and objective evidence that substantiates those products’ and services’ characteristics.

Additionally, as being part of advertising, both endorsements and testimonials must comply with the general rule laid down in the Federal Consumer Protection Law by which information and advertising must be truthful, verifiable, and exempt of text, dialogues, sounds, images and other descriptions that lead or may lead to mistake or confusion by being either deceptive or unfair.

Moreover, the Regulations to the General Health Law also establish limitations on the use of sports personalities in the advertising of alcoholic beverages.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules in Mexico governing the use of products demonstrations; however, as part of advertising it must comply with the general rule laid down in the Federal Consumer Protection Law whereby information and advertising must be truthful, verifiable, and exempt of text, dialogues, sounds, images and other descriptions that lead or may lead to mistake or confusion by being either deceptive or unfair.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Yes, according to Mexican law, any information or advertising that compares products or services, either of the same trademark or of different trademarks, may not be misleading or unfair due to the imprecise, false, exaggerated, biased, contrived or tendentious manner in which it is prepared. Comparative advertising is permitted in Mexico, as it is made in order to inform consumers.

Additionally, there are some specific regulations (Guidelines for Comparative Advertising or Information on Prices of Goods, Products or Services) regarding comparison of prices, which include rules such as:

- comparison should be made with exactly the same product;
- prices of goods compared should not be expressed in percentages; and
- proof of purchase of the products whose prices are compared must be displayed.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

According to the Industrial Property Law, trying to achieve the purpose of denigrating the products, services, industrial or commercial activity or property of another competitor could be an administrative offense. Comparing products or services protected by a trademark will not be considered illegal if it is done for the purpose of informing consumers, and provided that the comparison is not biased, false or exaggerated in terms of the Federal Consumer Protection Law.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Any claim which includes a reference to the geographic origin of a product is subject to the general rule established in the Federal Consumer Protection Law which states that information must be truthful, verifiable, and exempt of text, dialogues, sounds, images and other descriptions that lead or may lead to mistake or confusion by being either deceptive or unfair. As with any other type of claim, a geographic origin claim must be substantiated when so required by the Federal Consumer Protection Agency.

Additionally, the Industrial Property Law contemplates that signs that are identical or confusingly similar to geographical areas, whether proper or common, maps, town names or adjectives, when these indicate the origin of the goods or services and may cause confusion or error as to their origin, cannot be registered.

3.10 Are there any special rules governing product packaging?

(a) The Federal Consumer Protection Law states that the information shown on national or foreign products or their labels, bottles/containers, packaging and in the relevant advertising must be:

- expressed in the Spanish language, using understandable and legible terms, and in accordance with the metric system; and
- the price should be given in Mexican currency.

This information may be additionally expressed in another language or in another measurement system, provided that Spanish is used simultaneously. However, in the case of registered trademarks, these can be displayed in advertising in Mexico without a translation into Spanish.

(b) Labeling for pre-packaged food and non-alcoholic beverages of domestic or foreign manufacture, which are marketed in our country, is mandatory. The front labeling must clearly and truthfully warn the end-user about content that represents a health risk when consumed in excess. This labeling consists of five octagon-shaped warning stamps, which clearly, simply and visibly indicate when a product contains high levels of: calories, saturated fats, trans fats, sugar and sodium.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Yes. The Consumer Protection Law and Mexican official standards establish provisions to protect consumers from deceptive activities by suppliers, such as dark patterns.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules regarding ‘the use of artificial intelligence’, other than complying with the regulations for regular publicity. However, considering the continuous growth of this field, Mexican legislators have been working in regulation projects to address this issue.

4 PRICE ADVERTISING

4.1 What are Mexico’s rules regarding price advertising?

- (a) According to the Federal Consumer Protection Law, any supplier is bound to give information about and respect the prices, fees, interest, charges and any other conditions which they have offered, assumed, or agreed upon with the consumer regarding the delivery of a good or the rendering of a service.
- (b) In addition, the supplier is bound to exhibit, in a prominent manner, the total amount to be paid for the goods or services such supplier offers.
- (c) Price advertising in Mexico must be shown in Mexican currency.

4.2 What are Mexico's rules regarding advertising 'free' products?

Advertising 'free' products must comply with the general rule laid down in the law by which the information must be truthful, verifiable, and exempt of text, dialogues, sounds, images and other descriptions that lead or may lead to mistake or confusion by being either deceptive or unfair.

4.3 What are Mexico's rules regarding sales and special offers?

Any 'offer' 'sales' 'discount' 'markdown' shall be understood as offering to the public products or services of the same quality at a reduced price or at a price lower than the regular price at those commercial premises. Suppliers must also observe the following rules:

- (a) The conditions, as well as the period of time for which the sale will run, and/or the volume of the goods offered, shall be indicated in the advertising.
- (b) If a period of time is not set, the assumption will be that the goods/services are offered for an indefinite period of time until public announcement of the revocation of the promotion or offer is made, in a sufficient manner and through the same media used for the original advertising.
- (c) Any consumer that meets the requirements shall be entitled to acquire the goods/services during the established period of time or for as long as they are available.

4.4 What are Mexico's rules regarding rebates?

Purchasing policies and rebates must specify clearly deadlines, terms and conditions.

If the rebate is part of a door-to-door, non-immediate or indirect selling, suppliers must specify:

- the option of requesting a return and next steps;
- how the costs of transportation and shipment of goods are covered;
- approximate information on delivery dates; and
- the name and address of the supplier.

In case of breach, the consumer is entitled to replacement of the product or the return of the amount paid, and, in any case, to a refund or compensation, in the following cases:

- when the net content of one product, or the amount delivered, is less than the amount indicated in the container or packaging;
- if the good does not correspond to the quality, trademark or specifications;
- if the good has been repaired but is not left in adequate conditions for its use or purpose; and
- where service is rendered in a deficient manner or not rendered or provided due to causes attributable to the supplier.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Please see questions 4.2, 4.3 and 4.4 above.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Yes, there are.

According to the Tobacco Control General Law, all advertising, promotion or sponsorship of tobacco products in any form is forbidden through all media channels.

In addition, the following prohibitions and limitations must be taken into account:

- prescription medicines (prohibition);
- alcoholic beverages (a permit is required from the applicable Mexican authorities);
- gambling/raffles/draws (a permit is required from the applicable Mexican authorities);
- financial services (a number of requirements are established by the applicable Mexican authorities and must be observed);
- dietary supplements (a permission is required from the applicable Mexican authorities); and
- guns (the Federal Law on Guns and Explosives states that such advertising must be limited to sports guns for the use in hunting and in a shooting range).

Since July 2014, there is a new set of Guidelines which have set new parameters regarding the nutritional value of non-alcoholic beverages and food. Those parameters have to be met in order to establish the type of TV programs in which the advertisements of food and non-alcoholic beverages can be aired. If the nutritional value is not according with such Guidelines such products can only be aired in the following time schedule:

- Monday through Friday: 0.00 am to 2.40 pm and 7.30 pm to 11.59 pm;
- Saturday and Sunday: 0.00 am to 7.00 am and 7.30 pm to 11.59 pm.

Also, such products with low nutritional value can be aired during the transmission of the following types of programs: soap operas, sports, news, and series which are not for a target audience of under 18s.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

No, there are no specifically prohibited advertising practices. However, in cases where a person who has received advertising asks that no more advertising is sent to them, the advertiser must not send additional advertising to that person.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

No, there are no such specific laws. However, the Mexican Constitution establishes a human/fundamental right, which can be exerted by individuals, organizations and businesses, consisting of the freedom to communicate opinions, information and ideas through any means (this includes advertising). This freedom of expression is limited in the following cases:

- attacks on the public morality or on a third party's private life or rights; or
- causing a crime or provoking disturbances on public order.

In addition, anti-discriminatory rules might apply when advertising implies attacks on a gender, race, and religious basis.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There is a general rule requiring that any advertisement has to identify the advertiser/sponsor. This general rule is set both in the Federal Civil Code (which regulates all kinds of offerings) and by the Federal Consumer Protection Law.

The new Influencer Guidelines by Consumer Protection Agency suggest that any promotion made by content creators must clearly state, by adding hashtags and other mechanisms, whether that content or promotion has been paid for or sponsored by a third party.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Under the Federal Telecommunications Law (which deals with open signal TV, satellite/cable TV, and radio), the integration of advertising content with any editorial content is prohibited, in order to avoid any possible deceitful advertising.

Additionally, advertising must, in any case, comply with the general rule established in the Federal Consumer Protection Law which states that the information in ads must be truthful, verifiable, and exempt of text, dialogues, sounds, images and other descriptions that lead or may lead to mistake or confusion by being either deceptive or unfair.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

No, there are no special disclosures or other obligations when integrating advertising content. However, the general rule established in the Federal Consumer Protection Law, which states that the information in ads must be truthful, verifiable, and exempt of text, dialogues, sounds, images and other descriptions that lead or may lead to mistake or confusion by being either deceptive or unfair, is applicable.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no formal regulations governing social media advertising, yet. However, on 21 August 2023, the Federal Consumer Protection Agency published the Advertising Guide for Influencers which, although not binding, points out a clear path to follow in order to respect the regulation of advertising in digital media in Mexico.

In this Guide, the Consumer Protection Agency reiterates that the Federal Consumer Protection Law is the main law that regulates commercial advertising in Mexico.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser’s Facebook page)?

No, the advertiser cannot be held responsible for advertising claims made in user generated content, unless there is a contract in place, in which case either party may be liable, depending on the terms of the contract.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Neither the Mexican courts nor the self-regulatory body has issued any decision regarding the use of social media advertising and user generated content.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual’s name, picture, likeness, voice and identity in advertising?

According to the Federal Authors’ Rights Law, a portrait of a person may only be used or published with the express consent of the person portrayed or their representatives or of the owners of the corresponding rights. The authorization to use or publish the portrait may be revoked by the person who gave it, who, in that case, shall be liable for the damages and prejudice that might be caused by such revocation. Such consent includes the use of the portrait for advertisements. Recent rulings by Mexico’s Federal courts have interpreted this Law in such a way that the term ‘portrait’ has to be understood in a wider context and in different types of technologies, establishing the right of all individuals to protect their own likeness/image and to authorize or reject its use by third parties in all kind of means and/or media.

On the other hand, Federal Personal Data Protection Law has the purpose of protecting all personal data held by private parties, which may include advertisers and sponsors, in order to regulate its legitimate, controlled and informed data processing, to ensure the privacy and the right to informational self-determination of individuals. Any use or treatment of personal data, such as one’s name, has to be authorized by its proper owner.

9.2 Are there situations when permission is not required?

No—both Laws establish the obligation to obtain permission for the use of such type of information and images.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Yes, there are some specific rules with regard to this topic. Under the Federal Law on Archaeological, Artistic and Historic Monuments and Sites Law, any use of sites or monuments with any archaeological, historic or artistic value must be authorized by the National Institute of History and Anthropology or by the National Institute for the Fine Arts and Literature.

Cases in which a permit from the relevant authorities is required should also be taken into account (see question 5.1 above).

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

No, because it might be a cause of a trademark infringement in accordance with the Industrial Property Law. An authorization or license from the trademark owner must be obtained.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Mexico which affect advertising (eg, Swedish gender equality law)?

Advertisers must observe, in the contents of their ads, the Mexican Constitution, which states: 'Any form of discrimination, based on ethnic or national origin, gender, age, disabilities, social status, medical conditions, religion, opinions, sexual orientation, marital status, or any other form, which violates the human dignity or seeks to annul or diminish the rights and freedoms of the people, is prohibited.'

In January 2022, the Federal Law for the Protection of the Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities was published. This law stipulates that if advertising material includes any element that is part of the cultural heritage of an indigenous community, authorization is required. Mexican Law considers that 'indigenous communities' are those that descend from populations that inhabited the current territory of the country at the beginning of colonization and that conserve their own social, economic, cultural, and political institutions or part of them. This definition is extremely broad, so proceeding with caution in advertising activities that may include Mexican indigenous elements is strongly recommended.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

No, there are not.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Mexico?

Advertisers must be very careful regarding the information they might be transmitting about their products or services. In particular:

- (a) When using comparative advertising, although it is permitted in Mexico, advertisers must avoid any kind of possible misconduct that might affect the reputation of any competitor. Also, they have to be aware of a possible trademark right infringement.
- (b) Deceitful advertising is heavily scrutinized by both the Federal Consumer Protection Agency and the Federal Commission for the Protection against Sanitary Risks in order to avoid any possible risks for consumers. So, advertisers must be aware of the rules against deceitful advertising.

 MOROCCO 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Morocco?

Advertising in Morocco is regulated through several laws and regulations, including:

- Press and Publication Law (Law No 88-13): This law governs various aspects of advertising in print media, including newspapers and magazines.
- Audiovisual Communication Law (Law No 77-03): This law regulates advertising on television and radio.
- Consumer Protection Law (Law No 31-08): This law includes provisions related to misleading advertising and consumer rights.
- Trademark Law (Law No 17-97): Trademark ownership and intellectual property rights are important for advertising approval.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Advertising in Morocco encompasses a wide range of communication methods, including television, radio, print media, billboards, online advertising, and social media promotions. The determination of what constitutes ‘advertising’ is based on the promotional nature of the communication and its intention to promote a product, service, or brand.

1.3 What is the basic regulatory framework for advertising regulation?

Advertising in Morocco is generally subject to regulations ensuring fairness, transparency, and consumer protection. Advertisers must comply with the specific laws and regulations governing different types of media (eg, press, audiovisual, online), as well as general consumer protection laws.

1.4 Are there certain types of advertising practices that are specifically regulated (eg. text message advertising)?

Television and radio advertising, for example, are subject to specific regulations under the Audiovisual Communication Law. Additionally, tobacco and alcohol advertising are heavily restricted and subject to specific rules and limitations.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes, industries such as tobacco and alcohol have specific restrictions on their advertising practices. There are also regulations in place for pharmaceutical and healthcare product advertising.

1.6 Are any government pre-approvals required?

Certain products or services may require pre-approval or permits before advertising. For instance, pharmaceutical products may need approval from relevant authorities.

1.7 Does the media pre-clear advertising?

Media outlets in Morocco may have their own pre-clearance procedures to ensure compliance with advertising regulations. Proof of trademark ownership and compliance with content guidelines may be required.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The government enforces advertising laws through regulatory authorities, such as the High Authority of Audiovisual Communication ('HACA'). Remedies for non-compliance may include fines, warnings, or bans on advertising.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors can take legal action if they believe a competitor's advertising is false, misleading, or in violation of competition laws. Remedies may include cease-and-desist orders or damages.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers can take legal action if they are harmed by misleading advertising. Remedies may include refunds or compensation for damages.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Morocco have a primary advertising self-regulation system?

Morocco does not have a primary advertising self-regulation system.

2.2 Is there a self-regulatory advertising code? What are the key principles?

No, there isn't a specific self-regulatory advertising code in Morocco.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

N/A

2.4 Is the self-regulation system effective? Is it widely used and followed?

N/A

2.5 Are the self-regulatory system's decisions reported?

N/A

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

N/A

2.7 Are there any other self-regulatory systems that govern advertising practices in Morocco?

No specific self-regulatory system governs advertising in Morocco, other than existing laws and regulations.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Morocco (eg, consumer protection laws, IP laws, unfair competition laws)?

See question 1.1 above.

3.2 Is substantiation required for advertising claims?

Yes, substantiation is required for all claims in Morocco.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

N/A

3.4 What are the rules governing the use of disclosures in advertising?

N/A

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

N/A

3.6 What are the rules governing the use of product demonstrations in advertising?

While there are no specific rules governing product demonstrations, advertising content should comply with relevant laws and not be misleading.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is allowed in Morocco, but must be truthful, not misleading, and based on accurate and verifiable information.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether the use of a competitor's trademark or products may be used)?

Comparative advertising should not infringe on the intellectual property rights of others.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Claims related to geographic origin are allowed as long as they are accurate and not misleading.

3.10 Are there any special rules governing product packaging?

N/A

3.11 Are there any special rules or guidance on the use of 'dark practices'?

N/A

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

N/A

4 PRICE ADVERTISING

4.1 What are Morocco's rules regarding price advertising?

Price advertising should be transparent and not misleading. Pricing information must accurately reflect the actual cost to the consumer.

4.2 What are Morocco's rules regarding advertising 'free' products?

Advertising 'free' products should accurately represent the terms and conditions for obtaining the free item, and any additional costs or requirements should be disclosed.

4.3 What are Morocco's rules regarding sales and special offers?

Sales and special offers should not mislead consumers, and any conditions or limitations should be clearly communicated.

4.4 What are Morocco's rules regarding rebates?

N/A

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

N/A

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised or may not be advertised in certain media (eg, guns, medicines, etc)?

Certain products, such as tobacco and alcoholic beverages, have restrictions on their advertising. For example, there may be limitations on the time and manner of advertising these products.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

False, misleading, or deceptive advertising is prohibited. Additionally, advertising that promotes violence, hatred, or discrimination is not allowed.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) Law No 31-08 enacts consumer protection measures, potentially covering aspects of indecency and obscenity in advertising by ensuring fair and clear information.
- (b) Prohibition of advertising gambling and alcohol on television indicates a concern for maintaining public decency in advertising content.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor is?

Advertising in Morocco should clearly identify the advertiser or sponsor. Transparency in sponsorship and advertising is encouraged.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

N/A

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

N/A

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

While Morocco does not have specific laws governing social media advertising, general advertising laws apply, and advertisers should ensure that their social media promotions comply with these laws.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There are no specific regulations governing this matter at present. However, advertisers should ensure that user generated content used in advertising is truthful and complies with advertising laws.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user-generated content?

N/A

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice, and identity in advertising?

Using an individual's name, picture, likeness, voice, or identity in advertising without their consent may violate their privacy rights.

9.2 Are there situations when permission is not required?

Permission is generally required for using any individual's personal information in advertising, unless it falls under a recognized exception, such as public figures in certain contexts.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There may be specific requirements for using certain types of materials or locations in advertising. Companies should consult relevant authorities or obtain necessary permits when using such materials or locations in advertising.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Using recognizable products from other companies in advertising is generally allowed, as long as it does not mislead consumers and complies with intellectual property laws.

11 CULTURAL CONCERNS

11.1 Are there any rules particular to the culture of Morocco affecting advertising (eg, Swedish gender equality law)?

The use of religious or cultural symbols in advertising should be approached with sensitivity, and advertisers should be aware of cultural norms and sensitivities when creating advertisements.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertisers should respect local customs and cultural norms when creating advertising content, especially when dealing with sensitive topics or symbols.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Morocco?

Advertisers should conduct thorough legal reviews by local professionals before publishing any advertisement to ensure compliance with Moroccan advertising laws and regulations. Additionally, staying updated on evolving advertising regulations in Morocco is crucial for successful advertising campaigns in the country.

THE NETHERLANDS

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the Netherlands?

In the Netherlands, there are four primary sources of advertising regulation:

- (a) Firstly, advertising is regulated by consumer protection laws, such as:
 - (i) the Unfair Commercial Practices Act;
 - (ii) the Distance Selling Act (part of the Dutch Civil Code, and based on the EU Unfair Commercial Practices Directive, the EU Consumer Rights Directive, the EU Unfair Contract Terms Directive and the EU Consumer Sales Directive); and
 - (iii) the Price Indication Decree (based on the EU Price Indication Directive).
- (b) Secondly, there are sector specific laws that include specific advertising rules for certain products or services, such as:
 - (i) food products (eg, the EU Claims Regulation, the EU Regulation on Food Information to Consumers (1169/2011) and the Commodities Act);
 - (ii) medicinal products (the Medicines Act;
 - (iii) tobacco products (the Tobacco Act); and
 - (iv) financial services (the Financial Services Act).

In addition, the Telecommunications Act, (based on the EU ePrivacy Directive) is applicable to advertising through telecommunications and the Media Act to advertising by broadcasting media.
- (c) Thirdly, intellectual property laws, (eg, the Copyright Act), may regulate advertising content.
- (d) Finally, the Netherlands has a strong self-regulatory system. Consumers and competitors may file complaints with the Advertising Code Committee ('ACC') (which is an independent body of the self-regulatory body the Advertising Code Authority ('SRC')) regarding advertising that they consider not compliant with the general Advertising Code or the special advertising codes aimed at specific industries or types of advertising. In addition, some sector-specific self-regulatory codes and guidelines have been established by other Dutch self-regulatory authorities (refer to question 1.4 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The general Advertising Code ('Advertising Code') defines 'advertising' as 'any form of public and/or systematic direct or indirect commendation of goods, services and/or ideas by an advertiser or, on its behalf, with or without the help of a third party'. Virtually all communication instigated by an advertiser recommending its products or services (or even ideas) is considered to be advertising. Examples include editorials, packaging and defamatory articles. However, communications that are purely informative fall outside the scope of the definition.

In addition, the Unfair Commercial Practices Act is applicable to any 'commercial practice', which is defined as 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers'. 'Advertising' is not further defined, but, in principle, any commercial communication directly connected with the promotion, sale or supply of a product or service falls within the scope of advertising and/or marketing to which the Unfair Commercial Practices Act is applicable.

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework for advertising comprises the civil law and the system of self-regulation. The Dutch Civil Code regulates three types of commercial practices: B2B advertising, B2C advertising and comparative advertising. The self-regulatory system provides for a 'general' Advertising Code that is applicable to all advertising and numerous specific codes aimed at specific types of advertising, such as advertising relating to alcohol, travel offers, or sustainability (please refer to question 1.1 above).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

There are sector specific laws that include specific advertising rules for certain products or services, for example, food products, medicinal products, tobacco products and financial services (refer to question 1.1(b) above).

In addition to the general Advertising Code, the ACC has established special advertising codes aimed at specific industries or types of advertising:

- Code for Fieldmarketing 2023;
- Advertising Code for Alcoholic Beverages ('RVA');
- Advertising Code for Alcohol-free and Low-Alcohol Beer;
- Letter Box Advertising, Door-to-door sampling and Direct Response Advertising Code;
- Advertising Code for the use of the Postal Filter 2021;
- Code for the Distribution of Unaddressed Printed Advertisements;
- Code for Distribution of Advertisements by Email 2012;
- Advertising Code for Telephone Information Services;
- Advertising Code for Games of Chance Offered by Licensees, by Virtue of the Betting and Gaming Act 2015;
- Advertising Code for Online Games of Chance 2023;
- Code for Sustainability Advertising;
- Code for Passenger Cars;
- Advertising Code for Travel Offers 2014;
- Mobile Services Advertising Code;
- Advertising Code for Social Media & Influencer Marketing ('RSM');
- Telemarketing Code 2021;
- Advertising Code for Food Products 2019;
- Code for advertising directed at children and young people ('KJC');
- Code for advertising medicines to the general public 2019;
- advertising code for self-care medical products 2019;
- Code for health product promotion ('CAG');
- advertising code for cosmetic products 2023;
- Infant and Follow-on Formulae Advertising Code; and
- Code for medical cosmetic treatments performed by physicians.

There are also some sector-specific self-regulatory codes and guidelines have been established by other Dutch self-regulatory authorities, for example:

- the Code of Conduct for Pharmaceutical Advertising by the Dutch Foundation for the Code for Pharmaceutical Advertising ('CGR');
- the Code of Conduct for Advertising Infant Formula by the Association of Dutch Manufacturers of Infant and Dietary Foods ('VNFKD');
- the Code of Conduct for Promotional Games of Chance ('CCPGC') by the Netherlands Gambling Authority;
- the Code for the promotion of veterinary products by the Royal Dutch Veterinary Association and the trade association of Manufacturers and Distributors of Veterinary Medicines; and
- important guidelines published by the Netherlands Authority for Consumers and Markets ('ACM') applicable to advertising, such as the Guidelines on the protection of the online consumer and the Guidelines Sustainability claims.

In addition, the Telecommunications Act is applicable to advertising through telecommunications (such as emails, text messages and telemarketing) and the Media Act to advertising by broadcasting media.

1.5 **Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?**

There are several industries that are subject to specific laws that govern their advertising. Some sectors also have their own specific, self-regulatory advertising codes. When the specific self-regulatory codes apply, the Advertising Code shall remain fully in force.

Other rules regarding advertising for specific products such as tobacco, medicinal products, health products, drugs and geographical indications can be found scattered across different laws, regulations and directives. The list of advertising provisions for specific products is extensive.

In particular, the following industries are bound by industry-specific regulatory regimes:

- (a) **Alcohol:** The Media Act, the Licensing and Catering Act, the Alcohol Act and the RVA apply. The RVA provides that TV commercials may not feature models or persons who look younger than 25 years old. Alcohol advertising may not suggest drinking alcohol is a sign of maturity or social success. It is also not allowed to advertise excessive alcohol consumption, such as using pitchers or a large bottle of alcohol with only few 'drinkers'. In addition, alcohol advertising may not reach an audience comprised of more than 25% minors, is not allowed in media aimed at minors, or on radio or television prior to, during or immediately after programs that are heard or viewed by more than 25% minors. Furthermore, under the Media Act, it is forbidden to advertise alcohol before 9.00 pm.
- (b) **Tobacco:** The Tobacco Act is applicable to the advertising of tobacco products. Every form of advertising tobacco (or tobacco-related products) is, in principle, strictly prohibited (including giving away tobacco products for free and sponsoring tobacco products). There are some strict exceptions. For example, regarding certain types of advertising in specific specialty shops. However, advertising may not be aimed at minors and must contain health warnings. Advertising in shop windows is always prohibited. In general, the same rules that apply to tobacco advertising, also apply to advertising for e-cigarettes. Advertising tobacco-related products (such as electronic cigarettes and refills/cartridges—both with and without nicotine—and herbal products intended for smoking) is also prohibited.

- (c) **Pharmaceuticals (prescription and over-the-counter):** The law makes a distinction between non-prescription and prescription-only pharmaceuticals. The Medicines Act, the Code of Conduct for Pharmaceutical Advertising, the Code for advertising medicines to the general public 2019, the Advertising code for self-care medical products and/or the CAG may apply to advertising of any medicinal product.

Advertising over-the-counter pharmaceuticals is allowed but bound by restrictions (eg, no exaggeration of properties). Public advertising of prescription pharmaceuticals is, in principle, prohibited. However, under strict conditions, advertising of such products may be directed to professionals.
- (d) **Food and drink:** Several European regulations (such as the Nutritional and Health Claims Regulations and the EU Regulation on Food Information to Consumers), the Commodities Act and the Advertising Code for Food Products apply. This Advertising Code also gives specific rules on food advertising aimed at children (up to twelve years old). Also, the Advertising Code for Alcohol-free and Low-Alcohol Beer is applicable to advertising for alcohol-free and low-alcohol beer.
- (e) **Automotive:** Regulations applicable to advertising in the automotive sector include the Code for Sustainability Advertising and the Code for Passenger Cars. The EU Vehicle Labeling Directive has been implemented in national law by the Energy Consumption Passenger Cars Labeling Decree. Advertising for cars may, for example, not give rise to aggressive, dangerous or environmentally unfriendly behavior. Furthermore, several strict provisions exist regarding the display of CO2 burden and fuel consumption.
- (f) **Gambling (including lotteries):** The Betting and Gaming Act, the Advertising Code for Games of Chance Offered by Licensees, by Virtue of the Betting and Gaming Act 2015, the Advertising Code for Online Games of Chance 2023 and the CCPGC are applicable to advertising for gambling. Untargeted advertising for online gambling has recently been prohibited in the Netherlands, as has the use of role models in gambling advertising. Advertisements cannot be aimed at people up to 24 years old and advertising on television can only appear between 7.00 pm and 6.00 am. Sponsoring online gambling is allowed for television programs and events only until 1 July 2024 and for sports until 1 July 2025. After this, sponsoring online gambling is no longer allowed.

Promotional games of chance are permitted without a license in the Netherlands, although bound by the rules of the CCPGC. The CCPGC includes strict rules for 'large' promotional games of chance (ie, when the total value of the prizes or premiums is more than €4,500), such as obligatory general gaming conditions and limitations on the total value of the prizes and the total number of promotional games of chance per year. If the value of the prize does not exceed €4,500, these specific restrictions do not apply and only the 'general' rules of the CCPGC apply.
- (g) **Travel:** The Advertising Code for Travel Offers 2014, based on EU Regulation 261/2004 applies. The ACM prioritizes the monitoring of the travel industry. The ACM is able to impose high fines. Travel offers may not be used as a carrot: the consumer should be able to book the offer for the advertised price.
- (h) **Financial products and services:** The Financial Services Act contains provisions on advertising financial services and products. Advertising for financial services/products (lending operations) should contain specific warnings/disclaimers (eg, mentioning the availability of a so-called 'Financial Leaflet' and pointing out financial risks involved).

- (i) **Therapeutic products** (ie, products which claim to have health benefits but which are not medicines or pharmaceuticals, such as vitamin supplements): The EU Food Supplements Directive (2002/46) is implemented in the Netherlands in the Commodities Act Decree on food supplements, the Commodities Act Regulation on Food Supplements and the Commodities Act Regulation Exemption Food Supplements. Furthermore, specific rules for health products, including food supplements, can be found in the CAG.

Based on the CAG, advertising for health products may not make any misrepresentation and may not be misleading. The use of medical claims in health product advertising is not allowed. There are ongoing legal discussions as to whether a prohibited medical claim accompanying a food supplement should be fined under the Medicines Act (EU Medicines Directive) or the Commodities Act (EU Regulation on Food Information to Consumers). Health claims are allowed, but their use is subject to specific rules and restrictions.

Upon request, the Inspection Board for the Public Promotion of Medicines and Health Products ('KOAG KAG') can perform a preventive assessment of advertisements of health products for compliance with the CAG. If the advertisement is approved, an approval number is provided, which can be included in the advertisement.

1.6 Are any government pre-approvals required?

In the Netherlands, advertisers generally do not need statutory pre-approvals to operate. In some industries, particularly those involving alcohol, medical devices, and medicinal or health products, there may be a requirement for pre-approval through self-regulation. For example, members of the Foundation for Responsible Alcohol Consumption ('STIVA'), the sector organization for alcohol advertising, are obliged to clear all advertisements on radio, television and cinema with STIVA before publication. It is important to note that only organizations participating in the self-regulation system are obliged to seek pre-approval. Nevertheless, it is advisable for all advertisers to adhere to the self-regulatory framework. For example, the Dutch Food and Consumer Product Safety Authority ('NVWA') (the government regulator) will usually follow the stance taken by the industry regulator. Furthermore, in a complaint before the ACC, prior approval from a self-regulatory institution regarding a type of advertising (such as the packaging) will assist in achieving a positive outcome.

1.7 Does the media pre-clear advertising?

In most cases, there is no pre-clearance by the media. However, individual media usually apply their own general conditions, based on which they may refuse to broadcast an advertisement. Additionally, the ACC offers clearance advice (for a fee) on advertisements, though this advice offers no guarantees.

With respect to advertisements of health products, upon request, the KOAG KAG can perform a preventive assessment for compliance with the CAG. If the advertisement is approved, an approval number is provided, which can be included in the advertisement. Additionally, based on the Code of Conduct for Pharmaceutical Advertising, written pharmaceutical advertising must be reviewed by a scientific service, charged with providing information on the medicinal products advertised, prior to dissemination. Members of STIVA are obliged to clear all advertisements on radio, television and cinema with STIVA before publication.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The governmental bodies responsible for implementing and enforcing the advertising regime are:

- (a) the Dutch Media Authority ('CvdM') enforces the Media Act (surreptitious advertising, sponsorship);
- (b) the ACM enforces the Telecommunications Act (spam ban) and monitors (unfair) commercial practices;
- (c) the Dutch Data Protection Authority ('DDPA') enforces the EU General Data Protection Regulation ('GDPR');
- (d) the NVWA enforces all cases concerning human and animal health, based on, for example, the EU Claims Regulation, the EU Regulation on Food Information to Consumers, the Commodities Act and the Tobacco Act;
- (e) the Health and Youth Care Inspectorate enforces all cases concerning medicinal products, devices and services; and
- (f) the Games of Chance Authority enforces the Betting and Gaming Act.

These bodies focus mainly on major violations and often issue a warning first. However, they are authorized to impose high fines. The Public Prosecution Service could also play a role in some cases as some violations may also breach criminal laws.

However, the majority of minor advertising issues are handled by the self-regulatory institutions or by the competent Dutch courts. Self-regulatory bodies are responsible for enforcing (sector-specific) codes. For example:

- the ACC handles complaints regarding the Advertising Codes;
- the Promotion of Veterinary Products Committee handles complaints regarding the Code for the promotion of veterinary products;
- the KOAG KAG monitors the market and reviews all types of advertising for medical products, health products and medical devices (ie, clearance);
- the CGR monitors advertising of prescription-only medicines; and
- the VNFKD is responsible for implementing and enforcing the advertising regime on infant and follow-up formula.

Please refer to question 2.7 below.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor can take action against advertisements on several grounds, mainly related to misleading (comparative) advertising provisions included in the Dutch Civil Code (based on the EU Unfair Commercial Practices Directive and Misleading and Comparative Advertising Directive). It is generally accepted that the provisions in the Dutch Civil Code regarding misleading advertising intended for business-to-consumer relations can also be invoked by competitors. Based on the Dutch Civil Code, the competent court has the authority to, inter alia, impose a prohibition or a penalty, issue rectification orders, order a recall (for instance, in cases involving products with misleading advertising labels) and award damages. These types of cases are normally handled in interim injunction proceedings. Please note that during interim injunction proceedings, only an advance payment of damages can be awarded. Damages can only be awarded in separate proceedings on the merits.

If a competitor believes an advertisement violates a rule of the Advertising Code, or one of the specific advertising codes, it can file a complaint with the ACC. The ACC can only issue (non-binding) recommendations to refrain from certain advertising. The ACC cannot impose fines, corrections or prohibitions. However, the recommendation of the ACC are generally followed by advertisers and have (informal) authority with the Dutch courts. In addition, final decisions of the ACC are followed by nearly all Dutch media, resulting in the relevant advertising no longer being broadcast on radio and television. Furthermore, the decisions of the ACC are published online. In severe cases, the ACC may issue an ALERT, which involves the secretariat of the SRC issuing a public press release in associated media. This is typically done when an advertiser repeatedly violates the same regulation or when there is a (potential) risk to human health.

Also, competitors have the option to notify the ACM or the NVWA about unlawful trade activities. However, these authorities have discretion in deciding when to take enforcement action. Typically, the ACM and the NVWA operate on a project basis. While they have the authority to impose fines and penalties, they often send a warning letter first (refer to question 1.8).

In certain cases where criminal law is applicable, a competitor can even report the incident to the police (although this is rare).

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers may, at any time, file a complaint with the ACC based on the general Advertising Code and the numerous specific advertising codes. This procedure is very easy, free of charge to consumers and therefore commonly used. Refer to question 1.9 above for the potential remedies.

Additionally, consumers can (also collectively) initiate court proceedings regarding alleged violations of Dutch law. A court can rule on alleged violations of the statutory rules. However, the threshold to initiate court proceedings is much higher, as they are expensive and time-consuming, especially in comparison to the other options. However, court proceedings offer the advantage of obtaining injunctions, damages, and rectifications (refer to question 1.9).

Consumers can also notify the relevant authorities, such as the ACM, the NVWA and the DDPA with regard to the laws and regulations they monitor (refer to question 1.8 and 1.9).

2 SELF-REGULATORY FRAMEWORK

2.1 Does the Netherlands have a primary advertising self-regulation system?

The Netherlands has a self-regulatory advertising system. This system is well-known and widely used among consumers and businesses in the Netherlands. Consumers, NGOs and competitors may file complaints with the ACC regarding advertising that they consider not compliant with the general Advertising Code or the special advertising codes aimed at specific industries or types of advertising. See question 1.9 as to ACC decisions.

2.2 Is there a self-regulatory advertising code? What are the key principles?

In the Netherlands, there is a general self-regulatory code (the Advertising Code) and special advertising codes aimed at specific industries or types of advertising (refer to question 1.4 above).

Key principles of the Advertising Code are that advertising should be recognizable as such, in accordance with the law, codes and principles and must not be contrary to provisions of good taste

and decency. In general, the form and content of an advertisement must not undermine confidence in advertising or arouse feelings of fear or superstition. Also, advertising should not be dishonest, which means that it must not contravene the requirements of professional diligence and as a result disrupt the economic behavior of the average consumer reached, or targeted, as regards to the product. Certain types of misleading and/or aggressive advertising are by any means considered to be dishonest. Both the general and specific advertising codes are applied in spirit as well as by the letter. The burden of proof regarding the content of the advertisement is with the advertiser. If the specific codes that are aimed at specific industries or types of advertising apply, for example, when alcohol is being advertised, the general advertising code shall remain fully in force.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The findings (recommendations) of the ACC are not binding, but are generally followed by advertisers and have (informal) authority with the Dutch courts. In addition, a final decision of the ACC is followed by nearly all Dutch media (refer to question 1.9 above).

In straightforward cases, the Chairman of the ACC may reject a complaint without involving the plenary ACC. If the complainant disagrees with this rejection, they can object to the plenary ACC within fourteen days of the Chairman's decision.

Furthermore, a decision by the ACC can be appealed before the Board of Appeal by the complainant and/or the advertiser. The appealing party must file the appeal within fourteen days of the ACC's decision (by letter or email to the SRC).

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulatory system is highly effective and widely used. Advertisers generally follow recommendations of the ACC. Final decisions are published on the website of the SRC and if the circumstances warrant it, the ACC may ask the secretariat to publish a decision as an ALERT (which means that the secretariat will bring the decision to the attention of the public by means of a press release in associated media, to interested individuals or organizations and via placement on www.reclamecode.nl). According to the most recent annual report of the SRC, the compliance rate is 95%.

Within the SRC, the independent Compliance Department checks whether advertisers act in compliance with decisions of the ACC and the Board of Appeal. If not, they request the advertiser to do so. If the advertiser refuses to comply, this will be published on the website of the SRC. In this way, non-compliant advertisers will be brought to the attention of third parties, such as government regulators.

2.5 Are the self-regulatory system's decisions reported?

Decisions of the ACC and the Board of Appeal are published on the website of the SRC: www.reclamecode.nl. If the circumstances warrant it, the ACC may ask the secretariat to publish a decision as an ALERT (which means that the secretariat will bring the decision to the attention of the public by means of a press release in associated media, to interested individuals or organizations and via placement on www.reclamecode.nl).

All final decisions are accessible through a search engine on the website. Since 2016, the website of the SRC also discloses whether advertisers have complied with a decision.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

- (a) Advertisers should be aware of the need for advertisements to be recognizable as advertisements (for example, in relation to native advertising, and advertising on social media and other online channels).
- (b) Importantly, the self-regulatory system applies a very broad definition of ‘advertising’. Editorials, advertorials, or other ‘grey area communication’ that initially looks like information, are generally also considered to be advertising. Another example is non-commercial advertising which propagates concepts or ideas, for example, fundraising advertising for activists’ groups, such as Greenpeace. In cases that concern the latter form of advertising, the ACC issues a ‘non-committal advice’ instead of a recommendation in case of violation of the Advertising Code. The ACC does, however, assess this type of advertising with restraint in comparison to commercial advertising.
- (c) It is important to be transparent and not misleading in advertising. It is very easy to start a self-regulatory procedure (by both competitors and consumers) and are the order of the day in the Netherlands. The regulator is free to decide on all the different types of communication. Comparative advertising is also bound by the rules of the Advertising Code and frequently subject to assessment.
- (d) Finally, under the Betting and Gaming Act, games of chance are in principle prohibited, unless a license has been issued for that game. However, a license is not needed for promotional game of chance that complies with the CCPGC (refer to question 1.5(f)).

2.7 Are there any other self-regulatory systems that govern advertising practices in the Netherlands?

There are some sector-specific self-regulatory authorities that monitor sector-specific codes, for example:

- (a) the CGR monitors the Code of Conduct for Pharmaceutical Advertising and monitors the market (of prescription only medicines) by handling complaints and issuing advice at its own volition;
- (b) the KOAG KAG monitors the market and reviews all types of advertising for medical products, health products and medical devices (ie, clearance and handling complaints);
- (c) the VNFKD is responsible for implementing and enforcing the advertising regime on infant and follow-up formula;
- (d) STIVA monitors advertising for alcohol and pre-vets alcohol television commercials; and
- (e) the Committee for the Promotion of Veterinary Products handles complaints regarding advertising for the promotion of veterinary products.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in the Netherlands (eg, consumer protection laws; IP laws; unfair competition laws)?

In the Netherlands, in terms of statutory law, advertising is primarily governed by:

- (a) consumer protection laws (as to which please refer to question 1.1(a)),

- (b) sector-specific laws and the Telecommunications Act and the Media Act (see question 1.1(b)) and
- (c) intellectual property laws (please refer to question 1.1(c)).

Moreover, there are bilateral or multilateral instruments and treaties that have particular relevance for advertising in the Netherlands: the GDPR, the EU Digital Services Act (which will apply from 17 February 2024)), the EU Claims Regulation, the Benelux Convention on Intellectual Property and the European Trademark Regulation.

3.2 Is substantiation required for advertising claims?

Substantiation is extremely important for advertising claims. Claims must not be untrue or misleading. According to Dutch law (the Dutch Civil Code), the burden of proof regarding the material correctness and completeness of factual information in advertising is with the advertiser. The perception of the average consumer is relevant. The advertiser is required to be able to substantiate any advertising claim as it is perceived by the average consumer (ie, a consumer who is reasonably well-informed and reasonably observant and circumspect). If the average consumer is likely to interpret the claim as an objective claim, the advertiser must substantiate it with objective proof and/or research.

It is not generally required that substantiation for claims must be included in the advertisement itself, unless the claim is considered comparative advertising. Comparative advertising should be verifiable for the consumer and, therefore, should include or refer to information to allow the average customer to verify that the comparison is factually accurate.

Furthermore, it is important to note that, if a request is made by a competitor, the court may require substantiation evidence to be provided within a short period of time. If a claim cannot be (sufficiently) substantiated, it is presumed to be misleading.

Certain types of claims may need more substantiation (eg, (absolute) environmental claims). Furthermore, claims related to health and medical benefits must be supported by scientific evidence and meet the regulatory requirements.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Under Dutch law, making exaggerated statements or statements which are not meant to be taken literally (ie, 'puffery') is considered common and legitimate advertising that does not need to be substantiated. The use of such exaggerated statements in advertising is now so common that the average consumer will not perceive this type of communication as an objective claim. Whether a claim is regarded as puffery and not as an objective claim will be decided based on the perception of the average consumer. The average consumer is a consumer who is reasonably well-informed and reasonably observant and circumspect. Typical examples of 'puffery' in the Netherlands are advertising claims that are made in the cosmetics industry. As a rule of thumb, the more the claim conveys objectivity, the more likely the claim is not regarded as puffery and substantiation will be required for the claim not to be misleading. The courts or the ACC will decide if a claim needs to be substantiated on a case-by-case basis.

3.4 What are the rules governing the use of disclosures in advertising?

No specific self-regulatory rules exist regarding disclosures. However, the general rule that advertising should not be misleading also affects the use of disclosures. This implies that essential information must be made clear to consumers. Disclaimers should be placed on the same page where the claim is made. However, they can refer to another source (eg, a website) for further information, although limitations of fundamental importance need to be set out prominently in the advertisement itself. The requirements for setting out significant terms depend on the type of media that is used and the type of claims that are made. For example, the basis for claims that are made in comparative advertising should feature in the advertisement itself. A clear reference to a website where all further information regarding the comparison in the advertising can be found will generally suffice.

With regard to advertising in social media by influencers, based on the RSM, the fact that the post includes advertising should be disclosed, as well as the relevant relationship between the influencer and the advertiser. The RSM provides for further rules and guidance regarding the use of such disclosures.

Furthermore, based on the RVA, every advertisement for alcoholic beverages must display an educational slogan: ‘Geen 18, geen alcohol’ (‘no alcohol under 18’).

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

‘Testimonials’ and ‘endorsements’ are defined as written or spoken statements, often from a satisfied customer or user, that attest to the quality, effectiveness, or positive experiences of a product or service. Testimonials and endorsements are typically used in advertising to build trust and credibility. General advertising rules and requirements apply. Advertisers must therefore ensure that testimonials and endorsements are truthful and identifiable as advertising. Testimonials and endorsements that are communicated through social media (eg, by influencers) are generally assessed in the light of the RSM.

Testimonials and endorsements can come in various forms, including customer reviews. It is important to note that customer reviews are subject to specific rules and requirements based on unfair commercial practices law. For example, advertisers publishing customer reviews must disclose how they ensure that the reviews have been submitted by real consumers who have actually purchased the product or service. Customer reviews may only be presented as such if the advertiser has taken reasonable and proportionate efforts to verify the authenticity of them. These rules explicitly prohibit traders from altering customer reviews and ratings of their products or services. In addition, paying people to write fake reviews is prohibited under these rules.

3.6 What are the rules governing the use of product demonstrations in advertising?

No rules exist regarding product demonstrations in general. All product demonstrations in advertising fall within the general definition of advertising. Therefore, product demonstrations should comply with the advertising provisions, pursuant to the Advertising Code. The basic principle is that the advertising should not be misleading.

Additionally, certain industry-specific advertising provisions contain their own rules. For example, with alcohol marketing, no sampling may be directed at children. Letterbox advertising, door-to-door sampling and direct response advertising codes require that the goods and/or services that are offered are depicted and/or described clearly and truthfully and samples of goods must be safely packaged when delivered to the recipient.

In addition, with regard to product placement, certain rules apply that are designed to counter surreptitious advertising. According to the Media Act, product placement is allowed for commercial media services, except in programs on news and current affairs, on consumer issuers, of a religious or spiritual nature, or those intended for children under twelve. It is only allowed if the editors of the program guarantee the editorial independence of their employees through its editorial statute. The audience may not be directly encouraged by specific commendations to purchase the product, and no extreme attention may be paid to the product. Product placement is not allowed for medical treatments, or for alcohol between 6.00 am and 9.00 pm. There must be a clearly legible warning that a program/video contains product placement at the beginning and end of the program and of every interruption (commercial break) (and regarding videos, also in the description). These rules also apply to video influencers with more than 500,000 followers, at least 24 videos in the past 12 months, who get paid (or receive free products) for their videos and are registered with the Netherlands Chamber of Commerce.

Furthermore, special advertising codes may be applicable to product placement in advertising. For example, according to the RSM, influencers who receive consideration (which also includes, for example, receiving free products) for advertising products in their social media posts should make this known (eg, by '#ad'). Specific rules of the KJC apply to product placement in media (printed matter, television, games, etc) aimed at or used by children. Product placement of tobacco products is prohibited under the Tobacco Act.

3.7 **Is comparative advertising permitted? If so, are there any special rules that apply?**

Comparative advertising is any advertising that explicitly or implicitly mentions a competitor or goods/services offered by a competitor. Comparative advertising is, as far as the comparison is concerned, permitted if the following conditions are met:

- it is not misleading;
- it compares goods or services meeting the same needs or intended for the same purpose;
- it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- it does not cause the advertiser to be confused with a competitor, or the advertiser's trademarks, trade names, other distinguishing characteristics, goods or services with those of a competitor;
- it does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
- for products with designation of origin, it relates in each case to products with the same designation;
- it does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products; and
- it does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name.

In addition, any comparative advertising that refers to a special offer must clearly and unambiguously indicate the end and the beginning of the period during which that offer applies, or state that the special offer runs while supplies last or services can be provided.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Pursuant to European court rulings, trademarks may be used in comparative advertising if all the requirements for lawful comparative advertising are met (refer to question 3.7 above). Conversely, if a comparative advertisement featuring a competitor's trademark does not meet all the requirements, the use of the competitor's trademark constitutes a trademark infringement. Utilizing copyright-protected works of competitors in (unlawful) comparative advertising poses inherent risks.

It is important to note that in the event of trademark or copyright infringement, or infringement of other intellectual property rights, the losing party could be liable for significant costs, including legal costs. This financial consequence can significantly deter advertisers from using trademarks in comparative advertising due to the potential financial burden, creating a chilling effect. Please note that in the event of trademark infringement, Dutch courts may allow a cross-border injunction.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

There are no specific Dutch rules on claims relating to a geographic origin of a product. To protect certain names of local products and their geographic origin, the EU Regulation on quality schemes for agricultural products and foodstuffs (1151/2012) applies. This regulation outlines three different types of protection through quality labels:

- the protected designation of origin,
- the protected geographical indication and
- the traditional specialty guaranteed.

A producer of a product can only seek protection for names which are registered in the Database of Origin and Registration of the European Commission.

Furthermore, in accordance with the EU Regulation on Food Information to Consumers, the general rule is that the indication of the country of origin or place of provenance is mandatory if its omission may mislead the consumer as to the true country of origin or place of provenance of the food. The Commission Implementing Regulation (2018/775) provides clarification on how to display the information about the origin of the primary ingredient on labels.

Additionally, there are a number of other European regulations that include mandatory origin labeling for specific foods, such as for fresh, chilled or frozen meat from sheep, goats or poultry and for products such as olive oil and honey.

Since there are no specific national rules, the best practice is to assess whether the average consumer is liable to be misled.

3.10 Are there any special rules governing product packaging?

The fundamental principle governing product packaging is that it must not be misleading. Furthermore, specific rules apply to the labeling of certain products, such as foodstuffs, tobacco products and e-cigarettes, clothing and textiles, cosmetics and household chemicals. The most noteworthy rules regarding labeling and the inclusion of warnings on packaging are in place for foodstuffs and tobacco products and e-cigarettes.

A recent development in the Netherlands is the phenomenon known as ‘shrinkflation’. This involves reducing the size of a (food) product packaging while increasing or maintaining its price. Currently, the ACM does not classify shrinkflation as inherently misleading, this requires an examination on a case-by-case basis.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

In the Netherlands, ‘dark practices’ are generally prohibited under the rules on misleading (and aggressive) advertising originating from the EU Unfair Commercial Practices Directive and incorporated in the Dutch Civil Code. These rules prohibit dark practices in a broad sense, but some specific dark patterns are explicitly prohibited, because they are included in the so-called ‘black list’ of misleading commercial practices (eg, ‘bait and switch’, fake countdown timers and fake reviews) or are prohibited under specific legislation (eg, no ‘fake’ discounts may be used under the Price Indication Decree—please refer to questions 4.1 and 4.4 below). In addition, some dark practices can possibly also be prohibited under other consumer rules implemented in the Dutch Civil Code and originating from the EU Consumer Rights Directive (such as using a default option a consumer has to pay extra for) and the EU Unfair Contract Terms Directive (such as automatic renewal of a fixed-term consumer contract in the absence of a unreasonably early contrary notice from the consumer). The ACM monitors traders on the use of dark practices and gives guidance on the applicable rules in its ‘Guidelines on the Protection of the Online Consumer’, published on its website.

With regard to dark practices aimed at collecting and processing personal data, the rules of the GDPR apply. The European Data Protection Board has adopted Guidelines (03/2022) on dark deceptive design patterns in social media platform interfaces, with recommendations on recognizing and preventing ‘dark patterns’ on social media which may push people in giving as much personal data as possible in violation of the GDPR. In the Netherlands, the DDPA monitors compliance with the GDPR.

With the upcoming EU Digital Services Act, a ban on ‘dark patterns’ (ie, techniques that disrupt or restrict the ability of consumers to make free and well-informed decisions) will come into effect for providers of online platforms. This ban will apply only to online platforms and to practices that do not fall under the rules regarding unfair commercial practices (EU Unfair Commercial Practices Directive) or the GDPR.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Currently, there are no specific rules or guidance on the use of artificial intelligence (‘AI’) relating to advertising. Existing rules may apply depending on the context AI techniques are used in. The most important existing rules that may regulate using (generative) AI when creating advertising materials are intellectual property laws (eg, copyright law). There is possibly a higher risk of third parties and competitors finding advertising materials created using AI are breaching their intellectual property rights and starting legal proceedings, since (generative) AI often uses existing (protected) work to generate content. In addition, for example, when using personal data with AI applications, the rules of the GDPR will also apply. The use of AI in the EU will be regulated by the upcoming EU AI Act, likely to come into force at the end of 2025 or early 2026. The EU AI Act will apply to providers and users of AI applications. The current proposal prohibits certain ‘unacceptable’ AI applications. It also introduces specific obligations for ‘high-risk’ AI applications and lesser, minimum transparency obligations for certain other AI applications. Platforms used for advertising and marketing are not likely to fall within the ‘high-risk’ category. However, specific transparency requirements will apply when using AI applications that:

- (a) interact with humans (such as chatbots),
- (b) are used to detect emotions or determine association with (social) categories based on biometric data, or
- (c) generate or manipulate content ('deep fakes').

4 PRICE ADVERTISING

4.1 What are the Netherlands' rules regarding price advertising?

- (a) The general, and most important, rule is that price advertising may not be misleading. Advertising to consumers must always include prices inclusive of VAT, as should advertisements aimed at both consumers and businesses. In addition, some sectors have their own specific rules. For example, the Advertising Code for Travel Offers requires that the travel industry publish their prices including fixed, unavoidable costs (ie, additional and inseparable from the service) known at the time of publication that must be paid for the service offered, eg, booking fees.
- (b) The Price Indication Decree provides that the price of a product should be indicated clearly readable in euros on or nearby physical products in a store. For packaged products, the price per unit of measurement (eg, per kilo, liter or meter) should also be indicated. These price indication obligations do not apply for certain products listed in the Decree and products that are not pre-packaged and measured or weighed in the presence of the consumer. The rules of this Decree also apply to advertisements in which products are offered to a consumer and in which the selling price or the price per unit in measurement is indicated.
- (c) If an advertisement specifies the price of a product, it falls within the definition of an 'invitation to purchase'. If an advertisement so qualifies, specific information must be supplied, such as the main characteristics of the product, the identity of the advertiser and the full price of the product, including all taxes and all additional freight, delivery or postage costs (or if the price and/or costs cannot be reasonably calculated in advance, the manner in which the price and/or costs are calculated). These rules follow from the law and the Advertising Code.
- (d) In addition, with regard to distance selling to consumers (such as webshops), the full price of the offered products or services (or the manner in which the price is calculated), including all taxes and all additional freight, delivery, postage and other costs (or the fact that any such costs may be due) should be disclosed before the sale is made. Furthermore, with distance selling, if applicable, it should also be disclosed that the price is personalized based on automated decision making.

4.2 What are the Netherlands' rules regarding advertising 'free' products?

Products may be advertised for free. However, based on the rules regarding misleading advertising included in the Dutch Civil Code and the Advertising Code, it is misleading in all circumstances to advertise a product as being 'free of charge', 'for nothing' or 'available at no cost' if the consumer has to pay something else above the inevitable costs in order to respond to the offer and collect the product or have it delivered.

In addition, based on specific industry rules, it is not permitted to hand out samples of medicines or tobacco products free of charge. Furthermore, based on the RVA, alcohol advertising in which alcoholic beverages are supplied to consumers free of charge or for less than half of the regular (actual) sales price is prohibited.

4.3 What are the Netherlands' rules regarding sales and special offers?

The basic principle is that sales and special offers must be transparent and therefore not misleading. Based on the rules regarding misleading advertising included in the Dutch Civil Code and the Advertising Code, it is specifically misleading in all circumstances to falsely state that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice time (eg, false 'offer ending soon' type of deals). The ACM is currently actively enforcing the rules concerning online offers and the use of 'dark practices' in that context, such as the prohibition to use 'fake' countdown timers, when the same or a better offer is offered after the timer has reached zero.

4.4 What are the Netherlands' rules regarding rebates?

Recently introduced by the EU Omnibus Directive (2019/2161), the Price Indication Decree includes the obligation to indicate the 'prior price' with every 'price reduction announcement'. The prior price is the lowest sales price applied by the trader during a period not less than 30 days before the application of the price reduction. Exceptions to this rule apply in cases where:

- (a) the price reduction applies to certain products designated by ministerial regulation that spoil quickly or have a limited shelf life (in which case, the selling price applied immediately prior to the price reduction may then be indicated instead);
- (b) a price reduction is progressively increased (in which case, for a period of up to 3 months after the commencement of the first price reduction, the trader may indicate the lowest selling price applied by them during a period not less than 30 days prior to the application of the first price reduction); and
- (c) a product has been on the market for less than 30 days (in which case, the trader may indicate the lowest selling price during a period specified by the trader).

This obligation also not applies to conditional (combined) discounts (eg, buy 2 get 1 free), discounts offered through loyalty programs and comparisons with other prices (for example, recommended retail price, but this should be made very clear to the consumer).

In addition, rebates should always comply with the general rules regarding advertising. Rebates (for example, the amount of the refund) must not be misleading, untrue or contrary to provisions regarding good taste and decency. As an example, it is not allowed to mislead the consumer regarding the period in which the rebate is valid, or regarding any (extra) obligations for the consumer. The advertisement announcing the rebate needs to be clear about all conditions under which the rebate is valid, including the period.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Some sectors in the retail industry have their own rules, such as advertising for travel offers (Advertising Code for Travel Offers 2014), alcohol (RVA) and vehicles (Code for Passenger Cars). The general key requirement is to maintain transparency and to not be misleading in advertising regarding products.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

In the Netherlands, certain products or services may not be advertised or are subject to strict rules. For example, guns may not be advertised. Ads for online gambling services directed at the general public (except sponsoring) have recently been prohibited.

Additionally, strict restrictions are in place for advertising certain products and services, including drugs, tobacco (including related products such as electronic heating devices, vapes and e-liquids), medicinal products, (online) gambling and alcohol (including alcohol-free and low-alcohol beer). Advertising for certain (unhealthy) foods aimed at children (up to twelve years old) is prohibited (refer to question 1.5 above). Furthermore, there is a ban on spamming (refer to question 5.2 below).

In certain regions, additional advertising bans exist. For instance, there is a ban on advertising meat, fish and fossil fuels at bus stops in the province of North Holland. Moreover, there is a planned ban on meat product advertisements in public spaces in Haarlem starting from 2024.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are some restrictions related to the ban on spamming included in the Telecommunications Act, the Telemarketing Code 2021 and the Code for Distribution of Advertisements by Email 2012. It is prohibited to send electronic marketing messages (such as emails) or to approach natural persons by telemarketing without their prior (opt-in) consent. Under certain conditions, there are exceptions to this ban in relation to B2B communications and existing customers (who may be contacted by use of their contact details obtained during a prior sale in relation to similar goods/services of the same entity). In addition, consumers that have subscribed to the Postal Filter may not be sent addressed advertising. Consumers can also place a sticker in the immediate vicinity of their letterbox stating that they do not want to receive any unaddressed, printed advertising material and/or free local papers.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

In rare cases, indecent or obscene advertising may be deemed an unlawful act. Very rarely, criminal law might be applicable. Advertising that allegedly violates the principles of good taste and decency is typically brought before the self-regulatory ACC. The Advertising Code states that advertising must not be gratuitously offensive or conflicting with the principles of good taste and decency. However, the ACC tends to adopt a reticent attitude when issuing a ruling on such advertisements.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

In the Netherlands, advertising should be recognizable as such. This general rule implies that that it must be clear to consumers that they are confronted with advertising. As such, advertising must not be misleading as regards its source, commercial purpose or the characteristics of the advertiser.

However, there is no general rule that the advertiser should be identified in advertising. Specific rules may apply that result in the obligation to identify the advertiser. For example:

- (a) In cases where an advertisement qualifies as an ‘invitation to purchase’ (ie, it specifies the price of a product), specific information must be provided, including the identity of the advertiser.
- (b) In addition, based on the EU Digital Services Act, providers of online platforms that present advertisements on their online interfaces must ensure that, for each specific advertisement presented to each individual recipient, the recipients of the service are able to identify, in a clear, concise and unambiguous manner and in real time, the natural or legal person on whose behalf the advertisement is presented, or the natural or legal person who paid for the advertisement if that person is different from the natural or legal person referred.
- (c) With regard to direct mailings by post, the advertiser/sender must identify itself in every advertising material in such a way that it is easily recognizable and actually accessible to the recipient. The name and address of the advertiser/sender must be mentioned (a PO box number alone is not sufficient).
- (d) With regard to sponsorships, the Media Act includes specific provisions regarding indicating the advertiser. It must be made clear at the beginning or end of the program and optionally of every commercial break that it is sponsored, and the sponsor’s name must be stated. Between 6.00 am and 9.00 pm, sponsors that produce/sell alcohol must be mentioned neutrally. The mentioning of other sponsors may include their name, trademark or other distinctive sign and the public may not be directly encouraged by specific commendations to purchase the sponsors’ products/services.

7 **BRANDED CONTENT**

7.1 **Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?**

The Media Act contains some provisions based on EU Audiovisual Media Services Directive (2010/13), such as the length and content of advertising on television (commercials). The Advertising Code states that advertising on radio and TV must be clearly separated from the rest of the programs by visual and/or acoustical means. Product placement is allowed for commercial media services. However, it is bound by several specific rules, as laid down in the Media Act (refer to question 3.6 above). For example, extreme attention may not be paid to the product involved. Also, product placement is not allowed in videos directed at children under the age of twelve.

In addition, according to the RSM, influencers that receive consideration (also free products) for advertising products or services in their social media posts should make this known (eg by ‘#ad’).

If programs or products in programs are sponsored, specific rules of the Media Act regarding sponsorship apply (refer to question 6.1 above). Sponsored products/services may be mentioned or shown in the program and the name, trademark, products/services of the sponsor may be mentioned in the title, provided that the public is not directly encouraged by specific commendations to purchase the sponsor’s products/services. Vloggers operating through a channel that qualifies as an on-demand audiovisual media service under the Media Act must also comply with these obligations in the Media Act.

Furthermore, according to the KJC, an advertisement (including an ‘advertorial’) in a youth magazine or in other printed matter with an audience of over 25% of children must be headed by the word ‘advertisement’ in font size 12.

The KJC furthermore states that game and in-game advertising must be clearly recognizable by visual, virtual and/or acoustic means (appropriate for the children’s relevant level of understanding) and must distinguish itself from the game. In the game and before the game can be started, it should be made clear to children that the game or parts of it contain advertising.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

The general rule is that advertising should be recognizable. Therefore, it is common to distinguish advertising from other content by using ‘advertisement’ or ‘editorial’ as a headline. The content of the advertisement should comply with all rules for advertising. If a large part of a magazine contains the advertising of only one advertiser, in some cases the total magazine may be considered to be advertising.

As referred to in question 7.1 above, special rules regarding the indication that content includes advertising may apply. Under the RSM, influencers that receive consideration for advertising products in their social media posts should make this known.

Under the KJC, an advertisement (including an ‘advertorial’) in a youth magazine or in other printed matter with an audience of over 25% of children must be headed by the word ‘advertisement’ in font size 12. In-game advertising must be clearly recognizable and distinguished from the game itself, and in the game and before the game can be started, it should be made clear to children that the game or parts of it contain advertising.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

The self-regulatory Code for Social Media & Influencer Marketing (‘RSM’) elaborates on advertising on social media. These rules focus mainly on the recognizability of advertising in social media. Sponsored content (also product placement), whether on blogs, in forums, or status updates on social media, should be made recognizable by adding #spon, #ad, #advertisement, or ‘collaboration with @[advertiser]’ so that the relevant relationship between the advertiser and the distributor of the message (ie, that the distributor (eg, an influencer) receives consideration (which also includes, for example, receiving free products) in return for the post) becomes clear.

When an advertiser engages an influencer, both bear their own responsibility for compliance with the RSM. The advertiser must make an active effort to ensure that the influencer complies with the rules. Merely imposing a contractual obligation is not enough. The advertiser cannot exclude themselves from these obligations based on the fact that the influencer does not act according to the instructions.

It is not permitted to manipulate messages or other content on social media in a way that the consumer can be misled. This ban on manipulation supplements the prohibition on systematically creating and/or using false or non-existent identities in bulk to communicate about a product and/or

service through social media. The use of fake likes and fake followers is also not allowed. If advertising through social media targets children, the KJC applies alongside the RSM and the Dutch Advertising Code, imposing more stringent rules on the recognizability of such advertising.

With regard to audiovisual content, the Dutch Media Act is also of importance. Besides traditional radio, television and on-demand streaming services, the Media Act applies to video service platforms, such as YouTube and so-called on-demand media services. On 17 May 2022, the Dutch Media Authority ('CvdM') published the new Policy Rule on Qualification of Commercial Media Services on Demand 2022. Very briefly: vloggers on TikTok, YouTube, or Instagram with 500,000 or more followers and who post regularly, fall under the supervision of the CvdM and must join the SRC, register with NICAM (for age ratings) and comply with the rules of the Media Act (including the renewed policy rules of the CvdM on sponsorship and product placement).

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

An advertiser bears full responsibility for all the content on its website. In the event that statements on the website that qualify as advertising contain misleading or otherwise unlawful information, the advertiser is responsible.

User generated content can come in various forms, including customer reviews. General advertising rules and requirements apply to reviews. Advertisers must ensure that reviews are identifiable as advertising and need to be truthful. Reviews that are communicated through social media (eg, by influencers) are generally assessed in the light of the RSM (please refer to question 8.1 above). As referred to in question 8.1, when an advertiser engages an influencer, both bear their own responsibility for compliance with the RSM. Furthermore, an advertiser may not claim that reviews are authentic if this has not been verified. The use of fake likes and fake followers is explicitly prohibited in the so-called 'black list' (a list of business practices that are misleading under any circumstances). This follows from the e-commerce rules that apply since 28 May 2022 as a result of the implementation of the EU Omnibus Directive (also refer to question 3.5 above).

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

This area of law is developing rapidly. There are no key court or self-regulatory decisions worthy of mention at present. However, decisions tend towards a situation in which the advertiser has the obligation to moderate user generated content, for example, on its website and even social media.

Testimonials on, for example, a website are also allowed, although bound by rules. Testimonials should be true. If the content of testimonials is untrue, the advertiser is responsible. For example, if a product is presented in the testimonial as a medicine ('my headache completely disappeared'), when it is not a medicine, the advertiser is held responsible. Therefore, as an advertiser, it is very important to moderate the user generated content on websites or even on (own) social media sites such as Facebook. However, it is not permitted to delete negative reviews and only mention or use positive testimonials. If this type of editing is taking place, the advertiser should make this very clear.

There is one decision of the ACM worth mentioning. In January 2021, the ACM imposed an order subject to penalty on the web shop Bicep Papa BV for misleading consumers with fake likes and fake followers on Instagram. Bicep Papa is a company of the Dutch influencer Mobicep.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Any individual can challenge the use of their picture and identity (known as a 'portrait right'). Furthermore, case law shows that, under certain (additional) circumstances, a person can even object to the use of look-alikes, based on this portrait right, or to the use of a name, based on an unlawful act. Also, 'sound-alikes' may be challengeable based on an unlawful act. However, this is still a point of discussion. The key issue is whether the consumer will think that the person portrayed is connected to the advertiser or that they have given consent. Cases are handled on a case-by-case basis by the Dutch courts. In addition, the upcoming EU AI Act includes the obligation for users of AI applications that generate or manipulate image, audio or video content that appreciably resembles existing persons and would falsely appear to a person to be authentic or truthful ('deep fake') to disclose that the content has been artificially generated or manipulated (please also refer to question 3.12 above).

Moreover, the use of an individual's name, picture, likeness, voice and identity in advertising may be considered the processing of (biometric) personal data of that individual under the GDPR and, in that case, such processing should have a lawful basis, such as consent of that individual or a legitimate interest of the advertiser. Whether the GDPR applies, and which lawful basis can be used in that case, depends on the specific circumstances of the case.

9.2 Are there situations when permission is not required?

In cases concerning the use of a person's portrait and the use of a person's (biometric) personal data, the courts always balance the privacy interests (or, with regard to persons that would usually be paid to feature in advertising, the commercial interests of the individual concerned) against the freedom of speech of the advertiser. In some cases, this results in a judgment that states that the advertiser may use the portrait and/or the personal data without consent. This may be the case with regard to politicians. According to Dutch case law, in some situations it is allowed to use politicians in advertising. For example, when the advertisement refers to a recent development and the consumer will not think that the politician co-operated in the specific advertisement. Also, with regard to, for example, clear parodying use, consent of the individual is not always needed.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Use of copyright-protected work and trademarks must be cleared (for example, by obtaining permission from the rights holder) before they can be used (legally) in advertising.

Buildings can generally be featured in advertising, especially those located in public areas. However, some exceptions exist. For example, buildings may only be used if they are displayed in their present condition. As a result of this, pictures of buildings may not be modified as regards the environment or specific characteristics of the building.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

In general, other companies' recognizable products may not be used without consent, as this may infringe trademarks or copyrights of other companies. However, governmental authorities do not enforce these rights; enforcement is up to the rights holders involved.

There is one exception on copyright-protected works. This *de minimis* provision states that minor use of copyright-protected work is allowed. However, the self-regulatory authorities and the courts exercise restraint in applying this exception, as the general rule is that 'everything used in advertising is used on purpose'.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the Netherlands which affect advertising (eg, Swedish gender equality law)?

One example of a rule particular to the culture of the Netherlands is the Equal Treatment Act. This Act prohibits any discrimination, inter alia, in the advertisement of job offers. Another example is the Termination of Life of Request and Assisted Suicide Act. Such laws may influence the content of advertising. Furthermore, in the Netherlands, possession of weapons is not allowed. Therefore, weapons in advertising are also prohibited. On the other hand, homosexuality is accepted in the Netherlands. Therefore, if this 'theme' is used in advertising, it will be generally accepted.

The courts and the ACC are bound by the law and also follow generally accepted standards. These standards influence the values that determine good taste and decency. Thus, when the ACC reviews advertisements, it will be led and influenced by generally accepted Dutch norms in relation to good taste and decency. For example, there recently has been some controversy around the proposed changes to the Transgender Act, which include less stringent conditions to change the gender indication in passports (also for transgender persons below the age of 16). The ACC has recently ruled that a radio commercial in which an alleged mother expressed strong opposition to these changes to the Transgender Act and that resulted in many complaints, was needlessly offensive, mostly because it concerned a young and vulnerable group of people (young transgender people) and because the Committee considered the tone of voice in the commercial mocking, indignant, condescending and dismissive. However, the chairman of the Committee earlier rejected claims received in relation to posters that also included criticism on these proposed changes to the Transgender Act, because the limits applicable to the spreading of political views (which are judged with more restraint than commercial advertising) had not been exceeded.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

There is still some sensitivity towards the Dutch holiday, Sinterklaas. As this is mainly a holiday for children, during this period all eyes are on advertising aimed at children, which must not be misleading. In the Sinterklaas tradition, 'Zwarte Piet' (Black Pete), plays an important role. There is an ongoing discussion which fires up every year around 5 December regarding the role of Zwarte Piet in this Dutch tradition. Some people consider Zwarte Piet to symbolize racism and slavery.

The Netherlands is a multi-cultural country. Therefore, the cultures and religions of others are, to a certain extent, respected. Advertisements aimed at specific cultures are accepted. Most people in the Netherlands are very accepting towards other cultures or beliefs. There are, however, specific groups

in society that may be offended by some types of advertising. For example, not everyone was amused when a well-known clothing brand advertised with a kissing gay couple. The ad resulted in several complaints to the ACC. The chairman of the Committee rejected the complaints because the portrayal of people in a way which shows their (homo-)sexual preference must be considered socially acceptable in Dutch society, and discrimination based on sexual orientation is forbidden. On another note, the ACC considered that a television ad for a certain bread spread in which a black man was portrayed as a somewhat silly, awkward and ‘exotic’ person who differed from the white people in the ad in behavior and dress was needlessly offensive.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the Netherlands?

It is important to be transparent and not misleading in advertising. It is relatively easy to start (interim injunction) proceedings for a relatively low cost. Competitors are, therefore, inclined to bring a case before the court. Moreover, self-regulatory procedures are even easier to start (by both competitors and consumers) and are the order of the day. In general, it is always a good idea to seek local counsel review of your ads to ensure compliance with local rules and regulations, and to avoid cultural sensitivities.

Adhere to the Dutch Advertising Code and special self-regulatory codes, because they are considered very important in the Netherlands. Breach of these codes may damage your brand’s credibility.

Ensure that your data collection, processing, and storage practices comply with the GDPR standards. Implement a cookie consent mechanism on your website to comply with Dutch and EU regulations. Users should have the option to opt in or out of non-essential cookies.



NEW ZEALAND



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in New Zealand?

Advertising in New Zealand is regulated by a combination of self-regulatory bodies and legislation that impacts on, or restricts, advertising in New Zealand in some way.

Intellectual property, contract law, passing-off and defamation are all areas of law that are relevant to advertising, in addition to industry-specific laws, such as laws on gambling or tobacco. In respect of legislation, the Fair Trading Act 1986 ('FTA') is the primary act controlling marketing and advertising in New Zealand.

The FTA includes a general prohibition on conduct in trade that is misleading or deceptive or is likely to mislead or deceive. A series of general provisions capture advertising in any form that may mislead or deceive consumers.

The Advertising Standards Authority ('ASA') self regulates advertising in New Zealand, and provides guidance to advertisers by issuing various Codes and guidance notes. The ASA also provides a mechanism for complaints against advertisements to be made and heard.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The ASA considers that 'advertisement', in the context of the application of its Codes, should be taken in its broadest sense to include 'any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behavior of those to whom it is addressed'. The definition encompasses various traditional and new media, including websites, emails, social media and SMS messaging.

1.3 What is the basic regulatory framework for advertising regulation?

There are currently six Codes developed by the ASA which apply to the entire content of an advertisement. The Codes consist of a general Advertising Standards Code and five sector-specific Codes, namely the:

- (a) Alcohol Advertising and Promotion Code;
- (b) Children and Young People's Advertising Code;
- (c) Gambling Advertising Code;
- (d) Therapeutic and Health Advertising Code; and
- (e) Financial Advertising Code.

The Advertising Standards Code provides a number of overarching principles, including that advertisements must not mislead or deceive and must be prepared with a due sense of social responsibility.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The Unsolicited Electronic Messages Act 2007 prohibits commercial, electronic messages sent to or from New Zealand without the consent of the receiver. 'Electronic messages' covers email, fax, instant messaging, mobile phone text and image-based messaging.

The Department of Internal Affairs' ('DIA') Digital Messaging and Systems Team directly enforces the Unsolicited Electronic Messages Act by investigating complaints about spam. Upon receiving a complaint, the DIA may take enforcement action. Possible enforcement options include formal warnings, infringement notices and court actions. An organization found in breach of the Act can be penalized with a fine of up to NZ \$500,000 or, in the case of an individual, NZ \$200,000.

In limited cases, direct marketing calls can trigger the Telecommunications Act 2001, which prohibits the use of a telephone 'for the purpose of disturbing, annoying or irritating any persons, whether by calling up without speech or by wantonly or maliciously transmitting communication or sound, with the intention of offending the recipient'.

The Marketing Association of New Zealand (in conjunction with the ASA) has issued a Code of Practice for Direct Marketing in New Zealand which is currently under review. All marketers are expected to comply with the Code. Principle 4 of the Code provides that marketers must carry out their business in a way that is socially responsible. Additionally, the Marketing Association has issued a Telemarketing Code of Practice which applies to all persons engaged in telemarketing. Principle 3 of the Code repeats that telemarketers must carry out their business in a way that is socially responsible. Do Not Mail ('DNM') and Do Not Call ('DNC') registers, containing details of consumers who have requested to not receive unasked-for mail and/or telephone calls, are also maintained by the Marketing Association.

1.5 **Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?**

Various industries have their advertising specifically regulated. These include, but are not limited to:

- (a) **Food:** The Food Act 2014 provides for certain restrictions on advertising food. For example, the Act prohibits advertising that is likely to deceive a purchaser regarding the nature, quality, strength, purity, composition or origin of a product. The Act also prescribes information to be included in food advertisements, and subjects non-compliant advertisements to fines of up to NZ \$250,000. The ASA's Children and Young People's Advertising Code restricts the advertisement of unhealthy food. Additionally, the ASA has recently released a draft Food and Beverage Code which, if published, will specifically apply to food and beverage products.
- (b) **Alcohol:** The Sale and Supply of Alcohol Act 2012 regulates the advertisement of alcohol generally and prohibits certain advertising of alcohol, including advertising alcohol that is free of charge or advertising likely to have special appeal to minors. The ASA's Code for Advertising and Promotion of Alcohol includes requirements that advertisements must not encourage excessive consumption of alcohol or underage drinking.
- (c) **Tobacco:** The Smoke-free Environments Act 1990 prohibits advertising of tobacco products. Moreover, the use of all brand imagery or other marketing devices on tobacco products is prohibited. See also question 5.1 below.
- (d) **Gambling:** The Gambling Act 2003 regulates advertisements in relation to gambling, including certain prize competitions. Advertising gambling that is illegal under the Act may result in fines of up to NZ \$50,000 per offence. Advertising in relation to gambling is also regulated by the ASA's Gambling Advertising Code. The Code includes requirements that advertisements must not be directed at children and must not encourage or condone activity that might result in harm.

- (e) **Therapeutic Products:** The Medicines Act 1981, the Medicines Regulations 1984 and the Misuse of Drugs Regulations 1977 contain provisions relating to advertisements for therapeutic products. The ASA's Therapeutic and Health Advertising Code contains a requirement to include certain information in advertising products or services captured by This Code.
- (f) **Hazardous Substances:** The Hazardous Substances and New Organisms Act 1996 allows for controls to be put in place regarding the advertisement of hazardous substances. Controls may include requirements for identification, labeling and packaging.
- (g) **Securities:** The Financial Markets Conduct Act 2013 regulates the advertisement of offers of financial products to the public. The ASA's Financial Advertising Code is intended to promote social responsibility and truthful presentation in all financial advertisements.
- (h) **Consumer Contracts:** The Credit Contracts and Consumer Finance Act 2003 requires all lenders to comply, at all times, with the lender responsibility principles and exercise care, diligence and skill in in any advertisement for credit finance under an agreement.

1.6 Are any government pre-approvals required?

In general, government pre-approvals are not required. However, advertisers may obtain certain self-regulatory approvals. The Association of New Zealand Advertisers provides voluntary pre-vetting systems to assist advertisers, advertising agencies, and the media in complying with the ASA's Advertising Codes of Practice. For example, there is a voluntary pre-vetting system for all liquor advertising and therapeutic advertising. The Association of New Zealand Advertisers is responsible for administering the advertising industry's voluntary systems.

1.7 Does the media pre-clear advertising?

All television commercials require Commercial Approval Bureau ('CAB') approval before they will be accepted for screening by television stations or digital media outlets in New Zealand. Scripts and finished commercials are assessed against the ASA's current advertising Codes of Practice, precedents set by previous Advertising Standards Complaints Boards' decisions, and the broadcaster's own house rules. Once an advertisement is approved by CAB, it is given a classification which determines the times of day at which it may be broadcast. CAB is a self-regulatory body.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Commerce Commission ('CC'), an independent government entity, enforces the FTA. Where a breach has occurred, the CC has various powers to investigate. For example, the CC may make voluntary information requests, issue statutory notices and apply for search warrants. The CC may also take criminal or civil action under the FTA. Civil action may include the CC seeking interim injunctions during the course of an investigation to stop an unlawful activity, or permanent injunctions at the conclusion of an investigation. A breach of specified provisions under the FTA may constituted a criminal offence under the FTA (such as false or misleading representations), and may result in a fine, not exceeding NZ \$200,000 (in the case of an individual) or NZ \$600,000 (in the case of a body corporate). A lesser offence (such as a breach of information standards) may result in a fine not exceeding NZ \$10,000 (in the case of an individual) or NZ \$30,000 (in the case of a body corporate). The CC also has the right to apply to the courts for an order requiring the business to disclose information to the public generally, or publish a corrective advertisement or statement.

1.9 When does a competitor have a right of action? What are the potential remedies?

The FTA is focused on consumer protection, and allows certain remedies to be granted, such as an injunction, on the application of a person who has not suffered harm from the relevant conduct. Such persons would include competitors.

Generally, the CC would be the informant in criminal proceedings taken under the FTA.

Competitors can also raise complaints with the ASA if they feel an advertisement has breached an ASA Code, or with the CC, if they feel that an advertisement has breached one of the consumer protection laws that the CC enforces (such as the FTA).

The CC is not obliged to action all complaints it receives. If an investigation proceeds, the competitor making the complaint may have limited involvement with the matter.

The ASA has a separate process for competitor complaints. If both parties agree to a complaint being heard by the ASA complaints board, they will be required to forgo their right to take the matter through the courts. Notably, the ASA complaints process does not provide for the award of damages.

A complaints board decision will be based solely on the ASA's Codes of Practice, and the ASA will request advertisers to withdraw offending advertisements. Although compliance is voluntary, the ASA recorded a voluntary compliance rate of 96% in its most recent annual report. The decision of the Adjudication Panel is final and there is no appeal procedure for competitor complaints.

The fee to lodge a complaint by a competitor is between NZ \$3,000 and NZ \$15,000. Additional fees may be payable. If the complaint is successful, the advertiser will be requested to pay (voluntarily) the hearing fee, which is refunded to the complainant on receipt.

1.10 When do consumers have a right of action? What are the potential remedies?

A consumer may bring an action under the FTA even if they have not suffered harm from the conduct in question. It is sufficient that there may be harm to members of the public. In such a case, the primary remedy available is an injunction. If a consumer has suffered harm due to a breach of the FTA, damages may be available.

Consumers may also bring a complaint to the ASA, or file a complaint with the CC in accordance with the procedures referred to in question 1.9 above.

If a consumer files a complaint with the ASA, the primary remedy, if successful, is that the ASA requests the advertiser to remove the offending advertising. This is a voluntary remedy; however, such requests are generally followed. Consumers are required to waive their right to take any other proceedings in relation to the matter if the complaint is judged within the ASA's jurisdiction.

If a consumer files a complaint with the CC and the matter is investigated, the remedies available will depend on the action taken by the CC. If the CC settles a matter, this may include redress for persons affected by the conduct.

2 SELF-REGULATORY FRAMEWORK

2.1 Does New Zealand have a primary advertising self-regulation system?

New Zealand has a primary advertising self-regulation system governed by the ASA. The ASA is comprised of representatives from various stakeholders in the advertising industry, including marketing agencies, magazine and newspaper publishers' associations, broadcasters, and marketing associations. The ASA is funded by the media and other participants in the advertising industry.

The ASA's Codes of Practice cover various areas, including the advertising of particular types of products (such as alcohol), and particular audiences (such as children and young people). New Codes are commonly developed, and existing Codes are reviewed every five years.

The ASA also provides Guidance Notes in relation to certain types of advertising. These include, for example, the current guidance notes on advertising health services and the application of ASA Codes to advocacy advertising.

The ASA has a Complaints Board and a Complaints Appeal Board which administer the Codes of Practice and adjudicate appeals. If a complaint is upheld, the ASA will generally request that the advertisement is removed.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The ASA currently has 6 Codes of Practice in place. The five sector-specific Codes (see question 1.3 above) are comprised of principles and rules that relate to the particular topic covered by that Code. The Advertising Standards Code is an overarching Code that generally applies to all advertisements. This Code contains several principles, including that advertisements must be socially responsible and truthful.

The rules of the Advertising Standards Code include that advertisements should:

- (a) only refer to publicly available information;
- (b) only be personalised with a consumer's permission;
- (c) not contain anything that would be likely to cause widespread offence;
- (d) not portray persons under 18 years old in a degrading or exploitative manner;
- (e) not encourage or condone conduct which is illegal or unsafe;
- (f) not, without justifiable reason, play on fear;
- (g) not contain anything which supports violent or anti-social behavior;
- (h) not undermine health and well-being;
- (i) not encourage environmental damage;
- (j) be identified as advertisements;
- (k) not mislead, deceive, or confuse audiences;
- (l) rely on data in a misleading way;
- (m) ensure that comparative advertisements are factual and accurate;
- (n) not use endorsements unless they are verifiable and consented to;
- (o) be able to be substantiated if relating to food or beverage products; and
- (p) not make environmental claims unless they are accurate and able to be substantiated.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The ASA's Advertising Standards Complaints Board ('ASCB') considers complaints about advertising in all media. The ASCB has three main functions:

- (a) to adjudicate on complaints received about advertisements which may breach the Codes of Practice;
- (b) to advise the ASA on the interpretation of the Codes, and where possible, improvements to the Codes; and
- (c) to report to the ASA on any aspect of advertising which is causing concern.

The ASCB is made up of a mix of public and industry representatives.

The ASA complaints process requires that complainants waive their right to take or continue proceedings against the advertiser concerned if the complaint is judged to be within the ASCB's jurisdiction.

The ASA also has an Advertising Standards Complaints Appeal Board ('ASCAB') which adjudicates on appeals from decisions of the ASCB. In general, reasons for a right of appeal include:

- that the proper procedures were not followed,
- the introduction of new evidence,
- that evidence provided to the Complaints Board had been misinterpreted,
- that the rules of natural justice were not followed, or
- that the decision was against the weight of evidence.

The ASCAB is made up of two public representatives and one industry representative.

2.4 Is the self-regulation system effective? Is it widely used and followed?

In general, the ASA is regarded as relatively effective and is widely used and followed. If a complaint is upheld, the advertiser is requested to withdraw the advertisement immediately and media members of the ASA are also requested not to broadcast or publish an advertisement which has been held to breach the Codes. The ASA's 2022 annual report recorded that 96% of advertisers complied with requests for advertisements to be removed.

2.5 Are the self-regulatory system's decisions reported?

Decisions of the ASA are reported, regardless of whether the complaint is upheld or not. All decisions of the ASCB are circulated to the parties in the first instance. This is followed by the decision being sent to all ASA members and then released to the media by being published on the ASA's website, which is publicly available.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The key areas of focus in relation to the regulation of advertising generally in New Zealand are that all advertisements must comply with the laws of New Zealand. In particular, advertisers should ensure that the content of advertisements do not, whether by inclusion or omission, mislead or deceive consumers in any way.

In respect of the ASA Codes, particular focus is often placed on compliance with the general Advertising Standards Code.

2.7 Are there any other self-regulatory systems that govern advertising practices in New Zealand?

There are complementary self-regulatory systems that work alongside the ASA, particularly relating to the pre-vetting of certain advertisements. One example of this is the Association of New Zealand Advertisers, which has a pre-vetting service for advertisements of alcohol and therapeutic products. Also, the CAB reviews advertisements before they are submitted to television stations or digital media outlets in New Zealand. Approval from CAB will not, however, guarantee that the advertisement does not breach the ASA Codes or the FTA.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in New Zealand (eg, consumer protection laws; IP laws; unfair competition laws)?

Intellectual property, contract law, passing-off and defamation are all areas of law that are relevant to advertising. In addition, several industry-specific laws place more stringent restrictions on advertising specific products and services, such as those relating to gambling, financial products, or tobacco.

The FTA is the primary source of law governing marketing and advertising in New Zealand.

The FTA includes a general prohibition on conduct in trade that is misleading, deceptive, or likely to mislead or deceive. This general provision captures advertising in any form that may mislead or deceive consumers.

The FTA also provides for more specific prohibitions on representations in trade. For example, advertisers are prohibited from making false or misleading statements regarding the need for any goods and services, or that goods and services are of a particular kind, standard, quality or grade. Additionally, the FTA prohibits the offer of prizes which a promoter does not intend to provide.

3.2 Is substantiation required for advertising claims?

New Zealand's consumer protection legislation includes an offence relating to unsubstantiated representations in trade. A representation is 'unsubstantiated' if the person making the representation does not have reasonable grounds for making the representation at the time it is made, irrespective of whether the representation is false or misleading. Substantiation may require verification, confirmation and evidence or proof that a representation is correct. However, this requirement does not apply to a representation that a reasonable person would not expect to be substantiated. Failure to comply could result in criminal liability, with fines of up to NZ \$600,000 (for a company) or up to NZ \$200,000 (for an individual). There are several defenses available to non-compliant advertisers, including that a statement was a reasonable mistake.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The requirement to substantiate a claim specifically does not apply to a representation that a reasonable person would not expect to be substantiated. Accordingly, 'puffery' may generally be permissible under the FTA.

At common law, in general, the use of 'puffery' or 'mere puff' is not treated by the law as a misrepresentation.

However, ‘puffery’ can still, in certain circumstances, fall within the provisions of the FTA. If the use of language is intended to influence decision making and is inaccurate, it may breach the FTA. Consideration will also be given as to whether a particular statement conveys a definite element of fact. The CC has suggested that businesses still need to ensure that consumers are not misled by exaggerations or ‘puffery’.

3.4 What are the rules governing the use of disclosures in advertising?

Disclosures or disclaimers are often used in advertising. They can be used to prevent or neutralize a representation or conduct from being misleading or deceptive if it would otherwise have been so without the disclosure. Disclosures may also be required if it is not otherwise obvious that an advertisement is an advertisement.

However, disclosures cannot work to lessen liability that has already occurred; eg, fine print cannot correct a misleading headline statement.

To be effective, disclaimers must be sufficiently prominent. Some products require specific disclosures to be included in advertising. For example, advertisements for prescription medicines must include, inter alia:

- (a) the words ‘prescription medicine’ (or similar),
- (b) the name and appropriate quantitative particulars of each active ingredient,
- (c) a statement of the purpose for which the medicine is intended to be used,
- (d) a statement that the medicine has risks and benefits, and
- (e) a statement about how to find further information on those risks and benefits.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The FTA prohibits false or misleading representations that a good, service, or person has any endorsement. Endorsements must be genuine to not be misleading. Claiming that a celebrity uses a certain product, for example, when they do not, or they are paid to do so, may be a breach of the FTA.

Advertisements should not contain a personal endorsement unless it is genuine, current, and relates to a personal experience of the endorser.

3.6 What are the rules governing the use of product demonstrations in advertising?

The general provisions of the FTA apply to product demonstrations.

As such, advertisers must ensure that product demonstrations are not misleading or deceptive, and that they do not include unsubstantiated representations.

The ASA’s Advertising Standards Code also provides that advertisements should not mislead, deceive, or confuse consumers. Advertisers should ensure that product demonstrations display their product accurately.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is generally permitted in New Zealand. However, like all advertisements, comparative advertisements must not be misleading or deceptive under the FTA. Advertisers who engage in comparative advertising should expect close scrutiny from competitors, who have various

powers to make complaints and take direct action. Comparative advertisements should represent a true and fair comparison. Notably, even if a claim about a competing product or service is true, it could still be misleading if it is only a half-truth.

The ASA's Advertising Standards Code specifically restricts comparative advertising by, amongst other things, requiring comparative advertisements to:

- (a) be factual and accurate;
- (b) make clear the nature of the comparison;
- (c) not denigrate competitors; and
- (d) only compare 'like' products or services which are available in the same market.

Notably, a specific competitor does not need to be named for an advertisement to be considered comparative advertising.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There are specific rules in New Zealand that may impact comparative advertising, including those in the Trade Marks Act 2002. The Act provides for the honest use of competitor trademarks in advertising. A comparative advertisement may constitute trademark infringement when use of a registered trademark 'takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark'. In interpreting this provision, the courts may consider whether a reasonable reader would be likely to say upon the full facts that the advertisement is not honest.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Under the Geographical Indications (Wine and Spirits) Registration Act 2006, advertisers are restricted from making specific geographical indications ('GI') on wines and spirits where a quality, reputation, or other characteristic is linked to that location. To use a registered GI in relation to a wine or spirit, an advertiser must ensure that the wine or spirit originated from the place of geographical origin to which the GI relates, and that the GI is used according to its registration in New Zealand. Failure to comply with the restrictions on GIs is considered to be misleading and deceptive conduct under the FTA.

The Consumer Information Standards (Origin of Food) Regulations 2021 require origin information of certain regulated food items (including fruits, vegetables, fish/seafood, and meat) to be disclosed.

Further, false or misleading representations concerning the place of origin of goods are prohibited under the FTA. For example, a 'made in France' claim will not breach the FTA if the entire product is produced in France. If the product's important components are imported from elsewhere, or there are offshore manufacturing processes, such a claim may risk breaching the FTA. Given the growing trend of sourcing components and placing manufacturing processes offshore, there will be many cases where a 'made in France' claim will be at risk of breach. The CC recommends the use of more specific terms to avoid breaching the FTA. For example, 'packaged in France', or 'designed or assembled in France from imported components'.

3.10 Are there any special rules governing product packaging?

The ASA's Codes generally do not apply to content on product labels or packaging. However, specific rules apply to packaging for particular kinds of goods. These include:

- (a) **Food packaging:** Food packaging must comply with the labeling and composition requirements set out in the Australia New Zealand Food Standards Code;
- (b) **Hazardous substances:** The Environmental Protection Agency's Hazardous Substances (Packaging) Notice 2017 sets the rules for the packaging of hazardous substances, including the rules for child-resistant packaging; and
- (c) **Tobacco products:** All tobacco products must follow the prescribed standardised packaging requirements as set out in the Smoke-free Environments Regulations 2017. See question 5.1 below.

Additionally, the Waste Minimization (Plastic and Related Products) Regulations 2022 prohibits certain uses of plastics and polystyrenes in packaging.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Although not explicitly, dark practices are generally prohibited by the ASA's Codes, the FTA, and the Privacy Act 2020. To the extent that dark practices may include exploiting personal information, the Privacy Act prohibits collecting personal information unfairly, or in a manner that intrudes on an individual's personal affairs.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

While New Zealand may have seen a recent increase in the use of artificial intelligence in the creation and targeting of advertising, there does not, at the time of writing, appear to be any specific regulation of, or guidance regarding the use of, artificial intelligence in advertising in New Zealand. As with all kinds of advertising, advertising that exploits artificial intelligence will be subject to the FTA and ASA Codes.

4 PRICE ADVERTISING

4.1 What are New Zealand's rules regarding price advertising?

The FTA prohibits false or misleading representations in respect of the price of any goods or services. It also prohibits goods or services being advertised at a specified price, where there is no intention to sell the goods at that price.

Certain ASA Codes, such as the Children and Young People's Advertising Code, provide for particular requirements in relation to price. This provides that, where price is mentioned, the complete price of a product should be made clear as well as the price of any additional items required to be bought separately.

A reference to a Recommended Retail Price of a product is permitted. However, it is illegal, under the Commerce Act 1986, for a supplier to specify or enforce a minimum price at which goods may be sold.

4.2 What are New Zealand's rules regarding advertising 'free' products?

The FTA's prohibition on any misleading or deceptive conduct extends to the advertisement of any 'free' products. As do the general principles in ASA Codes for advertisements to be truthful and not misleading.

If a product or service is advertised as free, it must be truly 'free'. There cannot be any, direct or indirect, additional cost to the customer.

A product will not be regarded as 'free' if, for example, a product is linked to a 'free' gift, and, if the 'free' gift is not taken by the customer, this results in the price of the product being reduced.

If there are any limitations on the offer of a free product, such as it being offered only with orders over a certain price, then these should be clearly stated.

4.3 What are New Zealand's rules regarding sales and special offers?

Sales and special offers must not be misleading or deceiving.

Any goods that are advertised as part of a sale must be priced lower than they otherwise would be, for a limited time. Sales that last for extended periods may not be sales at all, and may, therefore, be misleading. For example, the CC fined a retailer NZ \$780,000 for routinely advertising products at a discount, when they had been on sale for so long the price was no longer 'special'.

If an advertisement is comparing the sale price of the product to its normal selling price, the 'normal' price will be regarded as the price at which the product has been sold for a reasonable time immediately before the offer.

Advertising 'special offers' must be offering something genuinely different. This can include offering products at lower prices than normal or with additional features. A special offer to a wide audience risks misleading consumers if only a limited number of people are able to take it up. An advertisement must clearly state any limitations or qualifications that apply to the offer.

4.4 What are New Zealand's rules regarding rebates?

Rebates are generally permissible in New Zealand. Advertising of rebates is covered by the general provisions in the FTA. When advertising any rebate system, it must be clear and unambiguous to the consumer as to how, when, in what circumstances, and under what conditions any rebate will be advanced.

The CC has, in the past, commented that cash-back schemes can risk breaching the FTA. In particular, considering the number and type of qualifications that can apply to a rebate scheme, it is important that any promotion of a rebate is consistent with how it will work in practice.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Advertising of sales must be kept up to date, to ensure that it refers to the currently available discounts.

Terminology such as '50% off' can be misleading if only a small portion of the products available are actually reduced in price by 50%. Limitations on the application of a sale should be clearly identified.

The advertised duration of a sale should be upheld; ending a sale prematurely to its advertised date may constitute a breach of the FTA.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Certain products or services may not be advertised in New Zealand at all:

- (a) The advertising of tobacco in all media, including point of sale advertising, is banned by the Smoke-free Environments Act 1990. Further, the Smoke-free Environments Regulations 2017 standardized the packaging of tobacco by requiring the brand name and variant of a product to be printed with a prescribed color, placement, type face and font size.
- (b) The advertisement of overseas gambling is prohibited under the Gambling Act 2003. It is an offence to publicize or promote gambling, or a gambling operator outside New Zealand. It is also an offence to publish an advertisement likely to induce people to gamble outside New Zealand.
- (c) The advertisement of ‘controlled drugs’ is prohibited by the Misuse of Drugs Regulations 1977, with some limited exceptions for advertisements distributed solely to or mainly for medical practitioners and pharmacists.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Certain advertising practices are prohibited in New Zealand. For example, the Unsolicited Electronic Messages Act 2007 prohibits the sending of unsolicited electronic commercial messages to or from New Zealand, without the consent of the receiver. ‘Electronic messages’, for the purposes of the Act, are messages sent using a telecommunications service to an electronic address (this does not include voice calls using a standard telephone service or a voice-over internet protocol).

Ambush marketing is prohibited by the Major Events Management Act 2007. The Act prohibits businesses attempting, through advertising, to create an association with major events where they have no formal association with the event or sponsors. The Act also provides for the establishment of ‘clean zones’ around the venues of major events, within which any advertising must be authorized by the organizers of the event.

Telemarketing is also regulated by the Marketing Association, which has issued a Code of Practice for Direct Marketing, and a Telemarketing Code of Practice. Amongst other things, these Codes require telemarketers to present products and services truthfully, maintain social responsibility and uphold high standards of business practices.

The Marketing Association also maintains ‘do not call’ and ‘do not mail’ registers which contain the details of individuals who do not wish to receive unsolicited calls and mail.

The FTA sets out certain information requirements that telemarketers must provide to consumers, within 5 working days of making a sale via telephone.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The publication of any objectionable material is banned by the Films, Videos, and Publications Classification Act 1993. Whether material is ‘objectionable’ is determined by considering whether the content of a publication describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

Additionally, the ASA's Advertising Standards Code provides that advertisements should not contain any offensive, degrading or indecent material that would be likely to cause harm or widespread offence.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The advertiser or sponsor may need to be identified in an advertisement, depending on the medium of the advertisement and the subject matter of such an advertisement.

The ASA's Advertising Standards Code requires advocacy advertisements to clearly identify the advertiser and their position. The Code also requires that advertisements are identified as such. Where content is controlled directly or indirectly by an advertiser, and it is unclear whether it is an advertisement, the ASA has suggested that prominent labels, identifying the content as an advertisement, should be used.

The FTA prohibits false or misleading representations that goods, services or a person has any sponsorship, approval or endorsement. Silence as to whether any such sponsorship, approval or endorsement exists may breach this requirement where, in the context, such silence would mislead consumers.

The Unsolicited Electronic Messages Act 2007 requires that a commercial electronic message (ie, an electronic message, such as an email or text, that markets or promotes goods or services) must clearly and accurately identify the person who authorized the sending of it, including details of how to contact them.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Under the Advertising Standards Code, advertising is generally required to be identifiable as such. Accordingly, advertising must be identifiable as separate from entertainment or editorial content.

When an advertisement is incorporated into news or editorial matter, it must be presented in such a way that it is clearly recognizable as an advertisement.

Commercial product placement in entertainment programs, while very common in New Zealand, could breach this requirement if not 'clearly distinguishable'. If the product placement is clear to the viewers, this may be sufficient to determine the advertisement to be 'clearly distinguishable'.

The ASA's Children and Young People's Advertising Code requires that advertisements are clearly recognizable as such by children, separate from any non-commercial communication. The Code also prohibits the advertisement of unhealthy food in any form where children may constitute most of the audience.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no particular special disclosures that are required when integrating advertising content with other content. However, it will need to be clear from the content that the advertisement is an advertisement and is distinguishable from such other content. What is required to make an advertisement distinguishable will be considered in the context of its use. The ASA has commented in the past that obvious product placement in entertainment shows, for example, may make it sufficiently distinguishable.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

New Zealand does not currently have any legislation that specifically governs the use of social media for advertising purposes. The increase in marketing via social media has focused attention on how the legal controls, which, to a large extent, were created in the context of more traditional marketing (eg, print/television), apply to different concepts in the use of social media.

The ASA has suggested, in its Identification of Advertisements Guidance Note in 2020, that it will have jurisdiction over representations made on social media platforms used by an advertiser to promote its brand or product, over which the advertiser has control, directly or indirectly. ASA Codes will, generally, apply to most kinds of advertisements, including those on social media.

The FTA includes a prohibition on making false or misleading representations that goods or services have any sponsorship, approval or endorsement. When social media influencers endorse a product, influencers and advertisers must ensure that they are acting consistently with the standards required by the FTA.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The ASA's jurisdiction extends not only to those representations made by the advertiser itself, but also where user generated content ('UGC') is regarded as advertising. The ASA has commented that its jurisdiction will be considered on a case-by-case basis. The ASA has, however, stated that matters to be considered include:

- (a) whether the advertiser solicited the submission of UGC and adopted it and used it in its advertising;
- (b) whether the advertiser received unsolicited content which it then incorporated in its advertising; and
- (c) whether the advertiser solicited the UGC (including, eg, through a competition entry) that was then posted on the advertiser's site.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

The ASA has considered various complaints concerning advertising on social media platforms. For example, in 2021, the ASA Complaints Board upheld a complaint against Lion NZ for advertising ‘100 days, 100 ways’ to drink Smirnoff vodka. The advertisement aired during a COVID lockdown, and was held to promote excessive consumption of alcohol in breach of the Alcohol Advertising and Promotion Code.

In 2022, the ASA Complaints Board upheld a complaint against Gold Rock for making claims in a Facebook advertisement that their mask spray had therapeutic benefits which were not adequately substantiated. This was held to breach the Therapeutic and Health Advertising Code, and the advertisement was ordered to be withdrawn.

SIP Abacus were also ordered to take down their advertisements from Facebook and Instagram in 2022. Abacus, a children’s development program, made unsubstantiated claims in social media that their training would ‘make your child 5x better’ and that their programs would ‘help your child develop superhuman abilities’. The advertisements were held to be misleading, in breach of the Advertising Standards Code.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual’s name, picture, likeness, voice and identity in advertising?

Information about an identifiable individual is regarded as ‘personal information’ and its collection, storage and use is governed by the Privacy Act 2020.

Personal information must, in general, be collected from the person to whom it relates. There are limited circumstances where this does not apply: see question 9.2.

When collecting personal information, the person whose information it is must be informed of certain matters relating to the information, including that the information is being collected, the reason why it is being collected and the intended recipients of the information.

Personal information collected for one purpose cannot, in general, be used or disclosed for any other purpose. There are limited circumstances where information can be used for a different purpose, including, eg, if the information is used in a form in which the individual concerned is not identified.

Personal information may only be held for the duration required for the purposes for which it may lawfully be used; and persons must be given the ability to access, review and correct any personal information held about them.

The ASA’s Advertising Standards Code also provides that an advertisement should not portray any person, whether in a private or public capacity, in a way that is likely to convey the impression of genuine endorsement, without that person’s consent. Certain common law protections also exist, including by the common law torts: public disclosure of private facts and passing-off.

9.2 Are there situations when permission is not required?

There are certain exceptions where personal information can be collected in ways other than from the individual concerned. These include where:

- (a) the information is publicly available;
- (b) the person concerned authorizes collection of the information from someone else;
- (c) non-compliance would not prejudice the interests of the person;
- (d) the information will be used in a form in which the person will not be identified.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Certain materials require a form of clearance before being used in an advertisement. This includes, eg, the use of the New Zealand Coat of Arms, or the name and emblem of the United Nations, both which require clearance from the Ministry of Culture and Heritage before they can be used.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Other companies' recognizable products can be used in advertising in certain circumstances. However, such use can breach intellectual property laws or the FTA if the use is not in accordance with the exceptions provided, or, eg, the use falsely suggests a connection with the advertised product.

The Trade Marks Act 2002 provides for certain exceptions, including an 'honest practice' exception from trademark infringement where a trademark is used where necessary to indicate the intended purposes of particular goods or services. There is also an exception for 'honest use' in the case of comparative advertising.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of New Zealand which affect advertising (eg, Swedish gender equality law)?

In general, there are no specific rules particular to New Zealand culture that affects advertising. The Flags, Emblems, and Names Protection Act 1981 prohibits the use of the word 'Anzac' in trade or business. This is to prevent the phrase from being commercialized and to ensure that the word is not used in a way that is offensive to public sentiment.

Further, the Haka Ka Mate Attribution Act 2014 applies to the use of the traditional All Blacks' Haka in New Zealand. Pursuant to the Act, Ngati Toa Rangatira have the right to be identified as creator of the Haka when the Haka is used in circumstances including the communication of the Haka to the public (eg, a television/website/radio advertisement). A statement that is clearly and reasonably prominent; and likely to bring Te Rauparaha's identity, as a composer of Ka Mate and chief of Ngati Toa Rangatira, to the attention of the viewer/listener must be included.

Although, there are other Hakas which are not covered by the Act, the use of the Haka generally is culturally sensitive, and past promotions that have used the Haka inappropriately have attracted negative press following criticism from both politicians and prominent Maori figures in New Zealand. Accordingly, we would generally suggest that the Haka is not used in advertisements, or that great care is taken if an advertiser decides to include any reference to the Haka in an advertisement.

The ASA's Advertising Standards Code prohibits advertisements that might cause widespread offence. Offence may be caused by advertisements that conflict with New Zealand's race, gender, ethnic, and cultural ideologies.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

New Zealand cultural norms are generally similar other western countries. New Zealand culture places importance on treating everyone equally. Honesty and fairness are also highly regarded.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in New Zealand?

Advertisements in New Zealand are monitored by consumers, competitors and government authorities. Misleading conduct or representations, either overtly or by omission are in general, highly regulated and enforced in New Zealand.



NICARAGUA



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Nicaragua?

In Nicaragua, there is no special law governing advertising. There are, however, areas of law that provide regulations for consumer protection, including intellectual property and specific laws for particular goods (such as alcoholic beverages, tobacco, and pharmaceutical products) and forms of advertising (such as broadcast and non-broadcast). There is also a self-regulation code that comprises the entire alcohol industry.

There is no unique regulating entity; however, the main regulator for consumer protection is the General Department of Protection of Rights of Consumers and Users. The regulation of advertising for pharmaceutical products is given specifically to the Ministry of Health.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The Law of Protection of Rights of Consumers and Users (Law No 842) broadly defines ‘advertising’ as: ‘all form of public communication made by a provider for promoting directly or indirectly the acquisition of goods and/or services is considered advertising’.

1.3 What is the basic regulatory framework for advertising regulation?

In Nicaragua, the basic regulatory framework for advertising regulation is contained in laws and norms that regulate:

- (a) advertising conducted by suppliers of goods and services;
- (b) advertising addressed to/involving minors;
- (c) abusive, false or misleading advertising;
- (d) advertising of specific goods;
- (e) unfair competition;
- (f) protection of personal data used in advertising;
- (g) social impact of advertising;
- (h) public display;
- (i) use of national symbols in commercial advertising; protection of trademark rights;
- (j) currency to use in price advertising; and
- (k) promotion of gender equality in communications activities, which includes advertising.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

No, there are no types of advertising practices that are specifically regulated.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) **Medicines:** Advertising in mass telecommunications media, such as television, radio, press, public places, etc, is limited to over-the-counter or popular medicines. The advertising of medicines sold under medical prescription through any mass communication media is totally forbidden. In such cases, advertising (or literary material) may only be aimed to medical doctors and health professionals.
- (b) **Tobacco:** Advertising through any mass communication media is totally forbidden.

- (c) **Alcohol:** There is a self-regulation code which specifically regulates advertising in the alcohol industry, in which there is an emphasis on regulating the advertising of alcoholic beverages so that it does not encourage drinking in minors or associate any type of behavior with the consumption of alcoholic beverages.

1.6 Are any government pre-approvals required?

In the case of medicines, either over-the-counter or popular medicines, or medicines sold under medical prescription, the advertising must be approved by the Ministry of Health of Nicaragua.

1.7 Does the media pre-clear advertising?

In general, the media does not pre-clear advertising. There is no law or regulation to enforce this.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The government enforces advertising laws through administrative departments such as:

- (a) the Department of Pharmacy of the Ministry of Health, which regulates advertising related to the pharmaceutical industry for human consumption. This department is in charge of approving and controlling said advertising throughout the national territory, as well as being in charge of issuing resolutions on controversies and violations to the laws;
- (b) the General Department of Protection of Rights of Consumers and Users, which regulates abusive, comparative, false or misleading advertising that may affect consumers; and
- (c) the National Institute for the Promotion of Competition ('PROCOMPETENCIA'), which is the authority in charge of knowing and prosecuting complaints filed by competitors for abusive, false or misleading advertising.

In cases involving the violation of the laws related to the protection of consumers, the relevant authorities will apply any of the following sanctions, notwithstanding to the corresponding civil actions that might be applicable:

- fines according to the severity of the violation;
- temporary closure of activities throughout the country;
- prohibition of the continuity of the act of violation;
- order to rectify, at the expense of the offender, the content of the advertisement with the same means used for the original dissemination;
- removal and destruction of advertising material; and
- temporary or permanent closure of the facilities.

Potential administrative remedies against a decision issued by the pertinent authority are: clarification, revision, and appeal.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor has a right of action when identifying unfair competition practices (eg, a case of comparative advertising when the alleged facts cannot be objectively proven, or that, on being checked by the corresponding authority, are found to contain false or inaccurate affirmations or information).

Any natural person or entity that considers that its economic activity is being affected by any action that limits, restricts or obstructs the competition, or has knowledge of any anti-competitive practice implemented by an economic agent, can file a complaint with PROCOMPETENCIA to begin an investigation.

The Law on the Promotion of Competition (Law No 601) prohibits all acts of unfair competition between economic agents that cause and carry out damage or a threat in the following cases:

- acts of falsehood;
- acts of degradation;
- comparative acts;
- malicious machination acts;
- confusion;
- fraud;
- instigation; and
- imitation.

In case of acts of unfair competition, PROCOMPETENCIA might apply any of the following sanctions, notwithstanding to the corresponding civil actions that might be applicable:

- (a) fines according to the severity of the violation;
- (b) temporary closure of activities throughout the country;
- (c) prohibition of the continuity of the act of violation;
- (d) order to rectify, at the expense of the offender, the content of the advertisement with the same means used for the original dissemination; and
- (e) removal and destruction of advertising material.

Administrative remedies against a decision issued by PROCOMPETENCIA are: clarification, revision, and appeal.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers have a right of action when goods or service providers fail to fulfill all the conditions established for their advertised promotions or commercial offers, and when there exists misleading or abusive advertising. Consumers may file an administrative complaint following the procedure provided by the Law of Protection of Rights of Consumers and Users to demand the restoration of their rights and compensation for damages caused, notwithstanding to filing a judicial complaint.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Nicaragua have a primary advertising self-regulation system?

In Nicaragua, there is no primary advertising self-regulation system to cover all industries. There exists, however, the Unique Code of Self-Regulation of Advertising and Commercial Communication of Alcoholic Beverages and Products of Alcoholic Content ('Alcohol Code') that comprises the entire alcohol industry, whose main actors are the producers, advertisers, distributors, and importers that legally operate within the country's borders and to whom these conditions apply. This Code is binding on all the signatories and establishes advertising parameters that promote responsible consumption through the Nicaraguan Institute for the Promotion of Responsible Consumption ('INPROCRES'). The initiative to implement a self-regulation system that not only works in parallel with the law, but that also deepens ethical principles regarding this matter, began as a response to the global strategy to reduce harmful alcohol consumption, approved by the 63rd World Health Assembly in 2010.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes, the Alcohol Code is binding on all of its signatories. It deals only with the alcohol industry. This code sets out three main principles that it seeks to protect:

- (a) Respect towards those who have decided not to consume alcohol.
- (b) That those who are of legal drinking age and freely decide to do so, drink with moderation.
- (c) That the sensitive population (minors, people with a medical condition that makes it advisable for them not to drink, pregnant women, drivers or other individuals engaging in similar tasks) do not consume at all.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

An independent administrative procedure exists for disputes provided by the Alcohol Code, which does not involve any governmental entity and is adopted and followed by all of its signatories, who are bound to the Code.

When one of the signatories infringes any of the provisions of the Code, it is possible to file a complaint directly to INPROCRES through their website (<https://inprocres.org/>), by email, or by mail. INPROCRES processes the complaint and forwards it to the Court of Dispute Resolution (a separate organ created by this Code that handles these issues), which opens a period to present allegations. Once this period ends, the Court deliberates and issues a definitive resolution. There is no provision for appeal in this procedure.

The decision of the Court of Dispute Resolution may order:

- (a) the content of the advert to be amended; or
- (b) the advert to be withdrawn.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system for the alcohol industry came into effect on 9 April 2014, and appears to be effective and widely used and followed.

2.5 Are the self-regulatory system's decisions reported?

The Court of Dispute Resolution's decisions will be duly informed through INPROCRES to the plaintiff and the defendant. Upon issuance of the decision, INPROCRES proceeds to publish the decision on their website and any other media they deem appropriate for the knowledge of the general public. Also, each year, the Court of Dispute Resolution provides an assessment of their activities for that year, which INPROCRES will make public if deemed necessary.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

According to the Alcohol Code, any marketing, communication, advertising, or promotional material related to alcoholic beverages consumption must be intended for a public legally able to consume the same. Additionally, it is important to note that all advertised products must contain a label, as provided by INPROCRES to comply with the parameters established in the Code, warning that alcohol can be harmful to health when consumed irresponsibly, and that it is a product intended for those who are 18 years of age or older.

2.7 Are there any other self-regulatory systems that govern advertising practices in Nicaragua?

There are no other self-regulatory systems in Nicaragua other than the one explained above.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Nicaragua (eg, consumer protection laws, IP laws, unfair competition laws)?

Advertising claims in Nicaragua will be governed by one or many of the following laws, depending on each case:

- (a) Law of Protection of Rights of Consumers and Users (Law No 842);
- (b) Penal Code (Law No 641);
- (c) Childhood and Adolescence Code (Law No 287);
- (d) Law of Medicines and Pharmacies (Law No 292);
- (e) Procedural Norms to Regulate Promotional and Advertising Material of Pharmaceutical Products (Ministry of Health, Norm 044);
- (f) Law of Tobacco Control (Law No 727);
- (g) Law of Promotion of Competition (Law No 601);
- (h) Law of Protection of Personal Data (Law No 787);
- (i) General Law on Media and Social Communication (Law No 57);
- (j) Tax Plan of the Municipality of Managua;
- (k) Law of Characteristics and Use of National Symbols (Decree No 1908);
- (l) Law of Trademarks and Other Distinctive Signs (Law No 380);
- (m) Law of Currency (Decree No 1-92); and
- (n) Law of Equal Rights and Opportunities (Law No 648).

3.2 Is substantiation required for advertising claims?

With the exception of drug (medicine) advertising, substantiation is not required for advertising claims. In other words, prior to launching an ad campaign, there is no need to substantiate the advertising claims in order to obtain approval.

Of course, if a consumer or a competitor files a complaint alleging that there is a case of false or misleading advertising, then it will be necessary to substantiate the claims in the advertisement. Therefore, it is always advisable to review the ads—preferably with a lawyer with expertise—in order to make sure that the claims can be substantiated (in case it becomes necessary later to do so).

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

As noted earlier, with the exception of drug (medicine) advertising, substantiation is not required for advertising claims. Therefore, puffery may be tolerated to a certain extent.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific rules governing the use of disclosures in advertising.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There is no specific regulation on the use of endorsements and testimonials in advertising.

It is worth noting that the Law of Protection of Personal Data establishes that personal information, whether it be a claim made by an individual or a picture posted in social media, cannot be used without the individual's consent.

3.6 What are the rules governing the use of product demonstrations in advertising?

There is no specific regulation on this matter.

In general, though, consumer advertising should be free from deception and unfair practices.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

In Nicaragua comparative advertisement is permitted under the following conditions:

- (a) that the comparison refers to facts that are objectively comparable (this applies for cases in which a competitor alleges that its product has a technical advantage over another, etc); and
- (b) that no false or inaccurate information is included.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

As long as the comparative advertising is not likely to cause confusion or association regarding the corporate origin of the products or services of the third party and the advertising complies with the conditions underlined in question 3.7 above, the use of a competitor's trademark or products may be used.

The Law of Trademarks and Other Distinctive Signs establishes limitations on the right to a registered trademark. For example, a third party may not be blocked from using it commercially in connection with:

- (a) instructions or information pertaining to the characteristics of the products or services they produce or market; inter alia, those relating to its quantity, quality, use, geographical origin or price; or
- (b) instructions or information regarding the availability, use, application or compatibility of the products or services they produce or distribute; in particular, with respect to parts, spare parts or accessories.

The above exceptions would apply as long as such use is made in good faith in the exercise of lawful industrial or commercial activities; and is not likely to cause confusion or association regarding the corporate origin of the products or services of the third party.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

No—There is no specific regulation on this matter. However, geographic origin included in advertising must be true.

3.10 Are there any special rules governing product packaging?

Yes—There are special rules governing product packaging depending on the type of product. The packaging of products is regulated by the labeling standards:

- (a) **Products used in animal feeding and establishments, sanitary registration and control requirements** (RTCA 65.05.52:11): The advertising of products used in animal feed should not contain ambiguities, omissions or exaggerations that induce error in the user, in particular, regarding the safety of the use, handling, nature and composition of the product. Advertising of such products may not contain information other than that which is approved through the product's health registration. Advertising of unregistered products is prohibited.

- (b) **Veterinary medicines and related products, sanitary registry and control requirements** (RTCA 65.05.51:08): Any advertising of veterinary drugs and related products of restricted use and exclusive sale in establishments approved by the regulatory authority by retained prescription is prohibited. The advertising of over-the-counter products or products for sale in a veterinary store in any communication medium must not contain ambiguities, omissions or exaggerations that entail the possibility of misleading the user, particularly with regard to safety in the use, handling, nature and composition of the product for veterinary use. Advertising of such products may not contain information other than that which is approved through the product's health registration. Advertising of unregistered products is prohibited.
- (c) **Cosmetic products, labeling of cosmetic products** (RTCA 71.03.63: 07): The use of the following is prohibited:
 - (i) deceptive claims; or
 - (ii) therapeutic properties claim for the product in relation to a specific disease or for the treatment of skin problems and related issues.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

There are no special rules or guidance.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules or guidance.

4 PRICE ADVERTISING

4.1 What are Nicaragua's rules regarding price advertising?

The Law of Protection of Rights of Consumers and Users provides that it is unlawful to print or mark more than one sale price on any product. If more than one sale price is found on a product, the consumer will have the right to purchase the product by paying the lowest amount found thereon.

In general, deceptive pricing practices will be considered to be misleading or false advertising, and could result in a consumer complaint.

The prices of the products as shown on the commercial shelves must include the applicable tax.

4.2 What are Nicaragua's rules regarding advertising 'free' products?

In Nicaragua there are no specific rules regarding advertising 'free' products. However, regulations for this commercial practice are provided by the Law of Protection of Rights of Consumers and Users in order to force providers to fulfil all the conditions advertised.

In general, advertising of 'free' products or services is acceptable as long as the advertising is not false or misleading.

4.3 What are Nicaragua's rules regarding sales and special offers?

The Law of Protection of Rights of Consumers and Users establishes that providers must fulfill all the conditions of their promotions or commercial offers as advertised.

In general, advertising in the form of sales and special offers should be free from false or misleading information.

4.4 What are Nicaragua's rules regarding rebates?

The Law of Protection of Rights of Consumers and Users establishes that providers must fulfill all the conditions of their promotions or commercial offers as advertised.

In general, advertising in the form of offering rebates should be free from false or misleading information.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no other key restrictions which advertisers should be aware of regarding retail advertising practices in Nicaragua.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The Law of Medicines and Pharmacies prohibits any kind of advertising for prescription, psychoactive, and narcotic drugs. However, it is permitted to provide medical doctors and health professionals with all scientific literature in connection with these drugs. This scientific literature must be first submitted for approval and registration before the Department of Pharmacy of the Ministry of Health and may later be provided to medical doctors and health professionals by authorized medical representatives.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

As a general provision regarding personal data protection, all advertising that requires the use of personal data, such as cell phone numbers, addresses or any other personal information, requires the previous authorization of the consumer to receive such information.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Childhood and Adolescence Code prohibits use of children and teenagers in any kind of advertising that includes indecency, obscenity, or any disrespect to their integrity.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There is no specific regulation on this matter.

7 **BRANDED CONTENT**

7.1 **Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?**

There are no special rules that govern the integration of advertising content and entertainment (or editorial) content.

7.2 **Are there any special disclosure or other obligations when integrating advertising content with other content?**

There are no special rules in connection with this topic.

8 **SOCIAL MEDIA**

8.1 **Are there any special rules governing the use of social media for advertising purposes?**

While there are no rules that specifically govern the use of advertising in social media, regulation exists for advertising content in mass media, including social media. As for content, legal dispositions outlaw any form of advertising that proves to be prejudicial against, inter alia, the state, moral values, Nicaraguan culture, or women's rights, and instead call for the inclusion of values that promote peace, education, and culture. According to national laws, content must be clear and accurate. The promotion of certain products, like tobacco and ethical drugs, through mass media is strictly prohibited.

The current regulation for the content of advertising in the mass media, including social media, comprises:

- (a) Law of Medicines and Pharmacies, which regulates the advertising of pharmaceutical products for human consumption; and
- (b) Law on Characteristics and Use of National Symbols, which prohibits the use of national symbols in advertising.

8.2 **Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?**

Advertising claims made in user generated content do not imply the advertiser's approval or consent, or that the advertiser complies with statements made in such form. Consequently, an advertiser is not immediately responsible for any comments—whether positive or negative—made by users. It is an accepted practice that advertisers include disclaimers on users' statements.

8.3 **Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?**

At present, there have not been any decisions regarding this topic.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Law of Protection of Personal Data provides protection for an individual's identity and personal information. This information, whether it be a claim made by an individual, or a picture posted in social media, cannot be used without the individual's consent. If an individual expressly demands that their information be removed, it must be removed in a timely manner. In case the unwanted publicity is not taken down, or if the information was acquired through an unlawful source, the individual may take legal action against whoever has wrongfully acted.

9.2 Are there situations when permission is not required?

In general, permission is required. However, permission may not be required when the information circulates in public sources accessible to the general public and the use of the information does not negatively affect an individual's integrity.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Specific regulations exist for:

- (a) the use of national symbols; and
- (b) all material related to the advertising of pharmaceutical products for human consumption.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

There is no specific regulation on this matter.

Nevertheless, such use may be permissible if it is not likely to cause confusion or association regarding the corporate origin of the products or services of the third party.

Whenever possible, in order to eliminate any risks, it would be advisable to obtain express authorization from the other company in respect of its recognizable products.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Nicaragua which affect advertising (eg, Swedish gender equality law)?

In Nicaragua, the Law of Equal Rights and Opportunities (Law No 648) provides regulation for the promotion of gender equality in all communication activities, which may include advertising. Based on this, advertisements must not portray any kind of message, image, information, etc that discriminates or negatively affects women's integrity and distorts their role in society.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

There are no other specific cultural norms that should be considered in advertising; however, it is important to note that discrimination of any kind is prohibited by the Constitution of the Republic of Nicaragua.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Nicaragua?

Whilst there is no specific legislation related to ambush marketing, some of the common forms of this practice (eg, using tickets of an event as prizes for sweepstakes) may potentially infringe laws regulating trademarks, copyrights, unfair competition, and consumer protection.

With regard to political speech ads in social media platforms, it is worth noting that the government is very keen on taking action when it is deemed that such content includes false or inaccurate information. As such, the entity or person that generated the content could face certain penalties. This does not apply to the social media platform or its employees.

Generally speaking, commercial advertising aimed at the promotion of goods and services (unregulated) by any media (television, radio, billboards, etc) must comply with the applicable laws, moral and good customs.

 NIGERIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Nigeria?

In Nigeria, advertising is regulated by the Advertising Regulatory Council of Nigeria ('ARCON'), established in the ARCON Act 2022 (which repealed the old APCON Act).

However, certain products and services are regulated by other regulatory bodies alongside the ARCON. For example, the Nigerian Communications Commission ('NCC') regulates advertising and sales promotion by NCC license holders; whilst advertising for consumables such as food and beverages (alcoholic and non-alcoholic) is regulated by the National Agency for Food and Drug Administration and Control ('NAFDAC') under its various Guidelines.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

'Advertising' is defined in the Nigerian Code of Advertising Practice and Sales Promotion (the 'Advertising Code') as any form of communication to the public or a target audience through the media, which aims to impart information about, or promote products and services and which is paid for by an identified sponsor.

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework for advertising in Nigeria includes the ARCON Act 2022 and the Advertising Code. As a result of the powers conferred on the ARCON under the ARCON Act, it enacted the Advertising Code to control all aspects of advertising.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The practice of advertising generally is regulated by the ARCON Act and the Advertising Code, which regulate the registration and practice of advertising practitioners.

In addition, the Telephone Consumer Bill, which is currently before the National Assembly, seeks to regulate telemarketing in Nigeria. The Bill includes the following provisions:

- (a) the NCC will be the administrator of the Act;
- (b) all forms of telemarketing communication are only allowed if the contacted party has consented to such contact;
- (c) telephone solicitation using an artificial or pre-recorded voice to deliver messages or text messages calls cannot be made to any residential telephone line prior to 8 am or after 9pm; and
- (d) consumers who register their residential telephone line(s) in a 'do-not-call' register list may not be solicited without their prior express consent.

However, the Bill is yet to be passed into law and it is not yet known if and when this will occur.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

The following industries' advertising practices are specifically regulated:

- (a) **Food and drug industry:** The National Agency for Food and Drug Administration and Control ('NAFDAC'), pursuant to the NAFDAC Act, regulates the advertising of regulated products such as processed food, bottled water, drugs, alcohol, bio-fertilizer and bio-pesticide. All materials used to create the advertisement, including scripts, story-boards, art work, and the audio and video itself must be approved by NAFDAC.
- (b) **Financial industry:** The Central Bank of Nigeria ('CBN') (pursuant to the CBN Act, and the Banking and other Financial Institutions Act ('BOFIA')), is responsible for the supervision and examination of banks and other financial institutions in Nigeria. The CBN ensures that banks and other financial institutions comply with the banking laws and other operational directives in relation to advertisements by these bodies. These laws provide, amongst other things, that only a bank or a person authorized by the CBN may publish or broadcast advertisements inviting the public to deposit money. Under BOFIA, banks must submit any advertisement to the CBN for approval.
- (c) **Insurance industry:** The National Insurance Commission ('NAICOM') is the body responsible for regulating the insurance sector in Nigeria. Pursuant to the National Insurance Commission Act and the NAICOM Operational Guidelines (Insurers and Re-insurers) 2011, advertisements in relation to insurance must be approved by NAICOM.
- (d) **Telecommunications industry:** Pursuant to the NCC Consumer Code of Practice Regulations and NCC's Guidelines on Advertisement and Promotions, all advertisements are required to meet certain requirements, such as proper disclosure of prices and financial implications on promotions, restrictions on comparative advertising, and restrictions placed on unsolicited telemarketing.

The above sectoral regulations run concurrently with ARCON's regulation.

1.6 Are any government pre-approvals required?

Generally, all advertisements, before they are published, are required to comply with the Advertising Code. ARCON, through its Advertising Standards Panel, reviews advertisement materials and approves those that comply with the Advertising Code. In addition, there are specific regulations in certain industries: see question 1.5 above.

1.7 Does the media pre-clear advertising?

No, they do not. However, media owners are required, under the Advertising Code, to ensure that no advertisement in the media offends any part of the Advertising Code, the Oath of Advertising Practice or any law of the Federal Republic of Nigeria. This is enforced by ensuring that all advertisements published by them have the Advertising Standards Panel Certificate Approval. Any media house that publishes or exposes an advertisement without an Advertising Standards Panel Certificate Approval will be liable to pay a fine of not less than ₦500,000.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Advertising laws are enforced through ARCON and the regulatory agencies responsible for sectors with specific advertising regulations. Various penalties are prescribed in the relevant laws, regulations and guidelines, which regulate advertising practice.

For instance, ARCON, through its Disciplinary Committee, may take the following actions against guilty practitioners:

- (a) order the Registrar to strike their names off the relevant part of the register;
- (b) suspend them from practice for a specified period;
- (c) reprimand them;
- (d) order them to pay to the council any costs of proceedings or any other sums of money whatsoever incurred by the council; or
- (e) caution them and postpone for a period not exceeding one year any further action against them on one or more conditions as to their conduct during that period.

In addition to the imposition of fines on offenders, the ARCON Act empowers ARCON to prosecute any person or organization that violates or infringes any provision of the Act, the Code of Advertising, Proclamations or any other enactments relating to advertising and marketing communications.

Aggrieved practitioners have a right of appeal to the Court of Appeal in cases where the Advertising Offences Tribunal has issued a decision as to whether a person is guilty of contravening the provisions of the Act. The Court of Appeal may, on an appeal:

- confirm, vary or set aside any finding of fact, penalty imposed or direction given by the Disciplinary Committee;
- confirm the rejection by the Disciplinary Committee of the application for restoration or direct the restoration of the name to the register;
- remit the matter to the Disciplinary Committee for further consideration; or
- make such other order as to costs or otherwise as may seem just to it.

There is also the right of appeal to the Federal High Court in cases where the Advertising Practitioners Disciplinary Committee has reached a decision.

The other sectoral agencies also enforce advertisement laws through the exercise of prosecution powers granted to them under relevant sector-specific advertisement laws and regulations. Offenders are usually liable, upon conviction, to pay a fine and/or serve a term of imprisonment. For instance:

- the NAFDAC Act imposes a fine of ₦50,000 or a term of imprisonment of up to one year or, in some cases, both, on anyone who breaches its regulations on advertising.
- the NCC Act imposes a fine or a term of imprisonment of up to one year (or both) for first time offenders, and a fine or imprisonment for a term of three years (or both) for second time offenders.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may have a right of action under the tort of slander of goods or malicious falsehood, where they can establish that a false statement was published about their goods and/or services with the intention to injure them. However, such action will only succeed if the aggrieved party can show that they suffered injury as a direct result of the false statement. Statements which aim to draw away a rival's customers or make comparisons between products of rival traders, even when proven to be false, are not actionable *per se* under the tort of slander of goods (but may constitute a breach of the rule against comparative advertisement under the Advertising Code). Such statements must be proven to have been made with malicious intention before they can be actionable.

Potential remedies will typically include damages to the extent of the wrong suffered and injunctive orders preventing further publication of such injurious falsehood. Thus, claimants must establish to the satisfaction of the court the amount of damages suffered by them as a result of the publication of the malicious false statement.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumer rights are protected under the Federal Competition and Consumer Protection Act 2018 ('FCCPA').

A right of action will arise when a consumer suffers loss, injury or damage as a result of the use or impact of any goods, product or services. Specifically, a consumer has a right of action for remedies under the FCCPA as well as a right of civil action for compensation or restitution in any competent court.

An injured party may make a complaint in writing or seek redress through the Consumer Protection Council (the 'Council') or a State Committee which is established under the FCCPA in each State of the Federation to assist the Council.

Remedies will include compensation for damages. In addition, the FCCPC may impose the following penalties on manufacturers who have been convicted of relevant offences under the Act:

- (a) Where the offender is a natural person, imprisonment for a term of 3 to 5 years, and/or a fine of ₦5 million to ₦50 million.
- (b) Where the offender is a body corporate, a fine not exceeding 10% of its turnover in the preceding year. Each director of the company is also liable to be prosecuted, and on conviction, is subject to the penalties applicable to a natural person.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Nigeria have a primary advertising self-regulation system?

Yes, a self-regulation system does exist in Nigeria in relation to advertising. As explained above, the regulatory body charged with the responsibility of regulating and controlling advertising practice in Nigeria is ARCON. ARCON has enacted the Advertising Code to control all aspects of advertising.

ARCON carries out its responsibilities through its statutory committees as follows:

- (a) The Advertising Standards Panel ('ASP') vets and approves advertisements before exposure in the media and defines acceptable standards for advertisements broadcast or published in Nigeria, in line with the Advertising Code.
- (b) The Advertising Practitioners Investigating Panel investigates complaints of professional misconduct brought against practitioners and determines whether the relevant offence has been committed. This forms the basis for disciplinary procedures.
- (c) The Advertising Practitioners Disciplinary Committee adjudicates cases of professional misconduct and sanctions practitioners who have behaved improperly.
- (d) The Advertising Offences Tribunal exercises jurisdiction over criminal cases, and offenses created under the Act, the Code of Advertising Practice, Standard of Practice, Proclamation, and other relevant laws.

2.2 Is there a self-regulatory Advertising Code? What are the key principles?

Yes. The Advertising Code serves as the self-regulatory Advertising Code in Nigeria.

Some of the key principles of in the Advertising Code include that:

- (a) advertisements must not contain misleading information nor fall foul of the relevant legal obligations. Visual illustrations, words or sounds that offend public decency are expressly prohibited;
- (b) advertisements must not exploit, depict or suggest sexual behavior;
- (c) advertisements should be prepared with a high sense of social responsibility, avoid providing misinformation and be mindful of Nigeria's culture; and
- (d) all advertisements should conform to the principles of fair competition.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Disputes which relate to professional misconduct are investigated and adjudicated by the Advertising Offences Tribunal and the Advertising Practitioners Disciplinary Committee. Their decisions are enforced by ARCON.

All other disputes are subject to legal action or alternative dispute resolution processes, such as mediation, conciliation and arbitration.

Enforcement of court decisions and/or arbitral awards is by recourse to the powers of the court.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system is effective, widely used and followed. All advertising practitioners are compelled by the ARCON ACT to register with ARCON and comply with its rules and regulations. Accordingly, ARCON is able to compel compliance amongst advertising practitioners with the standards for advertisements in the industry.

2.5 Are the self-regulatory system's decisions reported?

The decisions of the disciplinary council are not reported.

An interested person may write to ARCON for the Disciplinary Committee's past decisions.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Some of the key areas of focus are:

- (a) All advertisements must be legal, decent, honest and must avoid references to gender discrimination, sexual behavior, superstition and exploitation of fear and distress.
- (b) Special care must be taken with all advertisements directed at minors. These advertisements must not promote negative social behavior, lifestyle or attitude. Products not suitable for minors are not to be advertised in media targeted at them.
- (c) Advertisement of products and services should not unfairly discredit, disparage or attack other products, services, advertisements or companies, and neither should they exaggerate the nature or importance of competitive differences.
- (d) Advertising claims, testimonials and endorsements must be subject to proof and substantiation.

- (e) There are restrictions as regards the time of day at which certain products, such as alcoholic products and condoms, can be advertised.
- (f) There are restrictions as to the use of foreign models and voiceover artists in local advertising.
- (g) Companies have to be mindful of the guidelines of regulatory agencies (ie ARCON, the NAFDAC and the NCC on advertisements and promotions).

2.7 Are there any other self-regulatory systems that govern advertising practices in Nigeria?

There are no other self-regulatory systems that govern advertising practices in Nigeria.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Nigeria (eg, consumer protection laws, IP laws, unfair competition laws)?

Other than the provisions of the ARCON ACT and the Advertising Code, together with the principles detailed therein, the basic laws governing advertising claims include the law of contract, intellectual property laws and tort. Criminal law will also be applicable in relation to any contravention of applicable statutes, regulations and guidelines. The primary applicable laws include:

- (a) the Nigerian Code of Advertising Practice, Sales Promotion and Other Rights/Restrictions on Practice (5th Edition);
- (b) the Federal Competition and Consumer Protection Act 2018 ('FCCPA');
- (c) the Copyright Act 2022;
- (d) the Patents and Designs Act, Cap P2; and
- (e) the Trade Marks Act, Cap T13.

3.2 Is substantiation required for advertising claims?

Substantiation is required for all advertising claims, testimonials and endorsements. The Advertising Code provides that any description, claim or illustration made in any advertisement shall either be subject to empirical proof or must be capable of substantiation.

The Advertising Code does not specify any rules for the substantiation of advertising claims. Therefore, the general rule of evidence under the Nigerian law, that credible and verifiable facts must be adduced in support of claims, will apply.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

All claims, descriptions and/or illustrations in advertising messages require substantiation. Advertisers are prohibited from engaging in product hype or any form of product promotion which employs the use of the superlative or unsubstantiated or misleading claims, testimonials or descriptions.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific rules governing the use of disclosures in advertising. However, the Advertising Code directs that all relevant factors that are likely to affect consumers' decisions must be communicated in such way and at such time that consumers can take them into account.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Under the Advertising Code, all testimonials and endorsements in advertisements must be genuine and the models used shall be alive and suitable for the products, services and ideas they endorse in the advertisements.

Models must be individuals who understand the implication of what they are doing and able to give their consent to being used as a model.

Also, as stated above, advertisers are prohibited from engaging in any form of product promotion which employs the use of the superlative or any unsubstantiated or misleading claims, testimonials or descriptions.

3.6 What are the rules governing the use of product demonstrations in advertising?

Advertisers must be capable of providing a demonstration or sample of the advertised product if requested to do so by the ASP. Claims made by such demonstrations must be capable of being empirically proven.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is not permitted. Specifically, two or more advertisements for competing or similar products or services must not be placed adjacent to each other in print, outdoor or electronic media. Also, advertisements of products and services shall not imitate the slogans or illustrations of another advertisement in such a manner as to mislead the consumer. Neither should advertisements of products and services unfairly discredit, disparage or attack other products, services, advertisements or companies. They must also not denigrate any person or group of persons, professions or product or seek to bring them to public ridicule or contempt.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

As stated above, comparative advertising is not permitted. Advertisements must not contain any item which breaches any Nigerian or international copyright law or omit anything which the laws on intellectual property require.

Generally, all advertisements must conform to the principles of fair competition generally accepted in business, and fair comments expected in free human communication. It is necessary that permission is obtained from the trademark owner before any competitor's trademark or products are used.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Nigeria is a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPs'), but there is currently no domestication of this law nationally.

3.10 Are there any special rules governing product packaging?

There are rules governing product packaging in Nigeria, such as the NAFDAC Regulations contained in the NAFDAC Act. These state that food and drug producers must take adequate steps to inform consumers of their products about the ingredients contained in bottled water and other beverages, pre-packaged foods, herbal medicines, cosmetics and other health care products.

Some of the NAFDAC's subsidiary regulations and guidelines that touch on product packaging and labeling include:

- (a) Bottled Water (Labeling) Regulations;
- (b) Drug Labelling Regulations 2005;
- (c) Food Fortification with Vitamin A Regulations 2005;
- (d) Food Products (Advertisement) Regulations;
- (e) Guidelines for Registration of Imported Cosmetics;
- (f) Herbal Medicine and Related Products (Labeling) Regulations 2005;
- (g) Guidelines for Change of Product Package Label Design of all Regulated Products in Nigeria; and
- (h) Pre-packaged Food (Labeling) Regulations 2005.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

There are currently no advertising rules or guidelines concerning dark practices in Nigeria.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are currently no advertising rules or guidelines concerning artificial intelligence in Nigeria.

4 PRICE ADVERTISING

4.1 What are Nigeria's rules regarding price advertising?

Pricing information must be disclosed in such a manner that consumers will not be required to incur hidden or extra cost for products and services, in addition to the advertised cost/price.

Hidden or disguised adjustments, unrealistic price comparisons or exaggerated claims that relate to the worth or value of a product or service are also prohibited.

4.2 What are Nigeria's rules regarding advertising 'free' products?

The following rules apply to advertising 'free' products:

- (a) free products, eg, give-away items for alcoholic beverages, should not be directed, in terms of their appeal, at children, sportsmen/women and pregnant women;
- (b) advertisements must not, as a means to attract consumers to such products or services, offer any product or service as 'free' if it is intended for sale;
- (c) promoters/brand owners/organizers of an advertising campaign should not try to recover their costs by reducing the quality, or by inflating the price, of any product that must be bought in order to obtain the free item;
- (d) an offer will only be deemed to be 'free' if consumers will not pay more than the minimum possible cost for responding to the promotion, for the delivery of the product/service, or for the cost of any travel involved for the consumer to receive the free product/service; and
- (e) an individual element of a product should not be described as 'free' if the cost of that element is included in the overall package price.

4.3 What are Nigeria's rules regarding sales and special offers?

The following rules apply to sales promotions and special offers:

- (a) Promotions must cause no harm to consumers or their property and must not be offensive to the audience. Literature accompanying promotional items must provide any necessary safety advice.
- (b) Advertisers must ensure they have adequate stock of the advertised products to satisfy demand.
- (c) Promoters should take reasonable steps to avoid disappointing participants.
- (d) Promoters must not encourage consumers to make a purchase as a precondition to applying for promotional items if the number of items is limited.
- (e) If the promoters cannot supply demand, they should offer a refund or substitute products in accordance with directions prescribed by ARCON.
- (f) Promotions are to be conducted under supervision of persons who are aware of applicable rules and ensure conformance, and adequate resources must be made available to administer them.
- (g) Promoters must obtain legal advice before embarking on any prize promotion to ensure that they are lawful.

4.4 What are Nigeria's rules regarding rebates?

Nigerian law does not have any provisions for rebates. All prices specified in advertisements must be the same as the market value for the goods and services.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no other key restrictions which advertisers should be aware of.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) Advertisements of tobacco products are strictly prohibited.
- (b) Advertisements for alcoholic beverages are not to be scheduled in children's, sports and religious programs.
- (c) Advertisements for condoms are not to be aired during children's programs or aired between 6.00 am and 8.00 pm on the radio and 6.00 am and 10.00 pm on the television.
- (d) Prescription-only medicines may not be advertised to the public. Also, advertising communications for medicines should not be addressed at children.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are currently no specific prohibitions placed on any type of advertising practice.

However, the Telephone Consumer Protection Bill, which is currently before the National Assembly, seeks to protect telephone consumers from the activities of telemarketers, and also provides for sanctions against telemarketers who contravene the provisions of the Bill. This Bill has not yet been passed into law.

Further to the above, the NCC Legal Guidelines for Internet Service Providers provides that persons transmitting unsolicited commercial communications must take account of any written requests from recipients to be removed from mailing lists, including by means of public ‘opt-out registers’ in which people who wish to avoid unsolicited commercial communications are identified.

The Advertising Code also provides that unsolicited messages should not be sent, except where there are reasonable grounds to believe that consumers who receive such communications are interested in the subject matter or offer; also, all marketing communications sent via electronic media should include a clear and transparent mechanism enabling consumers to expressly opt out from future solicitations.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Advertising Code contains provisions which regulate indecency and obscenity in advertisements. Specifically, all advertisements must not use illustrations, words or sounds that offend public decency and must not be offensive or obscene. In addition, advertisements should not exploit, depict or suggest sexual behavior, either in an obvious or implied context.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

With the exception of teaser advertisements, media organizations must not allow advertisements that do not indicate the proper identity of the sponsor to be broadcast or published.

Additionally, advertisements are not to bear a sign-off that uses broad terms such as ‘committee of friends’, or ‘concerned citizens’, or ‘supporters’ without verifiable names and addresses. Persons constituting such groups on whose behalf advertisements are placed should, as far as is practicable, be listed.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules governing the integration of advertising content and entertainment (or editorial) content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special disclosures or other obligations when integrating advertising content with other content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules governing the use of social media. However, the Advertising Code contains general guidelines on the internet and other electronic media marketing as follows:

- (a) the commercial nature of the communication must not be concealed;
- (b) there must be clarity as to the terms of any offer and clarity as to the procedure of concluding a contract;
- (c) before posting marketing communications via electronic media to public groups, due consideration must be given to the standards of acceptable commercial behavior held by such groups;
- (d) unsolicited messages must not be sent unless there is reasonable belief that the consumer in question will be interested in the subject matter of the offer;
- (e) all advertisements using electronic media must include clear and transparent mechanisms enabling the consumer to opt out of future communications; and
- (f) any applications used to enable consumers to open marketing or advertising messages must not interfere with the consumer's normal use of electronic media.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There is no law regulating a product manufacturer's liability for claims in user generated content. Ordinarily, a product manufacturer will not be liable for claims in user generated content, unless the manufacturer sponsored such statement.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

We are not aware of any key court or self-regulatory decisions in relation to the use of social media and user generated content.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Advertising Code requires that an individual's right to privacy must be protected. Additionally, pictures, names, likenesses or other attributes of an individual must not be used in a manner that suggests their personal endorsement without their prior consent. It further requires agencies, advertisers and individuals to negotiate and execute proper advertising agreements.

9.2 Are there situations when permission is not required?

Permission is always required to use an individual's name, picture, likeness, voice and identity in advertising.

The permission of an individual or their estate must be sought, even where the individual is deceased, is a historical figure, or simply appears in the background.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

The Advertising Code prescribes the following rules in relation to the types of materials that have to be cleared before they can be used in advertisements:

- (a) Nigerian locations and ambience must be correctly depicted, and respect must be shown for Nigeria's national institutions and culture;
- (b) Nigerian languages must be used in such a way that depict their original meaning; and
- (c) The majority of the content of advertisements (ie, the equipment, footage, production, models and voiceover artists) must, as far as possible, be Nigerian.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The general rule is that all advertisements must conform to the principles of fair competition generally accepted in business and fair comment expected in free human communication. Therefore, provided that this rule is obeyed, use of other companies' recognizable products may be used in advertisements, particularly where the product/services advertised are not in the same sector as, or in competition with, the other companies' brand, goods or services.

Where a person's or company's recognizable product is to be used in a manner that is likely to contravene generally acceptable principles of fair competition accepted in business and fair comment expected in free human communication, it may be necessary to obtain the permission of the owner of brand, goods or services.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Nigeria which affect advertising (eg, Swedish gender equality law)?

The following rules apply:

- (a) females appearing in advertisements must be decently clothed in a manner that does not suggest sexual immorality or offend public morality;
- (b) African women must not be depicted as a caricature; and
- (c) advertisements must not detract from the sanctity of marriage or family values.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Consideration for other cultural norms (such as religious concerns) should be guided by the following rules:

- (a) advertisements are not to disparage or exploit religious belief, mislead people or use 'miracles' as bait to elicit patronage; and
- (b) advertisements promoting a particular belief must not offend the right of people to hold a contrary belief.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Nigeria?

All advertisers in Nigeria must strictly comply with the Advertising Code and other guidelines and regulations made by regulatory bodies in special sectors of the economy. Sanctions will be applied for failure to comply.

 NORWAY 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Norway?

The main law governing advertising is Act No 2 of 9 January 2009 ('Marketing Control Act'). The Marketing Control Act is the Norwegian implementation of the EU's Unfair Commercial Practices Directive (2005/29).

Since this Directive is based on so-called 'full/maximum harmonization', there is an obligation on Norway (and on all Member States of the EU) that the implementation of the Directive is in line with the rules of the Directive. Thus, the wording of the Directive, as interpreted by the Court of Justice of the European Union, is important for the interpretation of Norwegian law.

The Marketing Control Act applies to advertising in all media. For advertising on broadcast media and on-demand services, there are additional requirements set out in the Broadcasting Act and Regulations.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The regulatory framework does not offer one specific definition of what constitutes advertising. The general rule is that the majority of communication by a trader in any media, for the purpose of promoting itself, constitutes advertising. There is no requirement that the communication is a direct message encouraging consumers to purchase the products or services.

1.3 What is the basic regulatory framework for advertising regulation?

The Marketing Control Act and the Broadcasting Act constitute the basic regulatory framework for regulating advertising.

The Broadcasting Act and related Regulations regulate advertisements on broadcasting and on-demand services. Both the Act and Regulations are implementations of EU Directive 2010/13 on Audiovisual Media Services.

Although the Marketing Control Act and Broadcasting Act are based on EU law, they go further than the EU Directives in areas such as advertisements targeted directly at children, which are strictly regulated.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Certain types of advertising practices are specifically regulated in the Marketing Control Act, such as telemarketing, the distribution of free newspapers and advertisements delivered direct to a consumer's doorstep or mailbox.

The Broadcasting Act contains detailed regulations regarding the time of day and length of broadcast advertising, as well as the disclosure of sponsors. Product placement is allowed, but must also follow certain disclosure requirements.

Advertising directed towards children is specifically regulated both in the Marketing Control Act and in the Broadcasting Act and Regulations. One key regulation is the prohibition of advertisements directly targeting children and encouraging them to purchase the advertised products or to persuade

their parents or other adults to buy the products for them. This prohibition applies across all media. In broadcasting, all advertising directed towards children is prohibited, even if the advertisement does not contain a direct encouragement to purchase a product. In addition to business-to-consumer regulations, the Marketing Control Act regulates advertising practices between businesses. This includes provisions on good business practices among traders and provisions on unfair competition in an advertising perspective. Regulations on comparable advertising are particularly important.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There is a general ban in all media of the advertisement of products such as alcohol, tobacco, unlicensed gambling, prescription medicines and guns. The provisions relating to the advertisement of these products are included in the general regulations on the trade of such products. See further question 5 regarding prohibited practices.

1.6 Are any government pre-approvals required?

There are no government pre-approvals required. It is not possible to receive a binding preliminary statement from the government regarding the lawfulness of an advertisement.

1.7 Does the media pre-clear advertising?

There is no regulatory requirement for media to pre-clear advertising. The practice of advertising pre-clearance among the different media is varied, but most broadcasters prefer to pre-clear advertisements. Printed and online media usually assess their advertisements to a certain degree before publishing, but there is no regulatory pre-clearance routine. Both the advertiser and the publisher may be held responsible for any unlawful advertisements. The Consumer Authority (see question 1.8 below) will, however, normally bring cases regarding unlawful advertisements against the advertiser directly and not the organization that has published or broadcast the advertisement.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Norwegian Consumer Authority ('CA') (formerly Consumer Ombudsman) is an independent supervisory authority that prevents and stops illegal marketing and unfair contract terms and other forms of illegal commercial practices targeted to consumers.

The CA is a public enforcement authority. It works to make markets easier and safer for consumers. It also provides guidance to businesses on consumer law. This is achieved by offering guidance, and entering into dialogue with traders, by effective use of economic sanctions and thorough information. It also works to protect the rights of the consumers and to ensure that consumers may take informed decisions.

The Marketing Control Act regulates how the CA operates and is the most important law it enforces. In addition to this, it ensures that traders comply with other parts of consumer protection legislation, such as the Cancellation Act, the Financial Services Act, the Digital Services Act, the Transparency Act and several other laws.

When traders infringe the Marketing Control Act, the Cancellation Act, the Financial Agreements Act or other pieces of legislation that the CA enforces, the CA may prohibit this conduct and impose administrative fines. Natural or legal persons that are accessories to infringements may also be the subject of decisions by the CA. The CA's decisions may be appealed to the Market Council. The CA

considers cases following complaints from consumers and traders, but will also look at marketing measures on its own initiative. Through negotiation with traders, it can seek to reach voluntary arrangements, which may include an agreement that the advertisement being pulled without any further sanctions. Following failure to reach such a solution, the CA may submit the case to the Market Council which is the first instance administrative court for marketing cases. The CA may also take matters of principle to the Market Council, even when there is no dispute with the trader concerned. The CA also enforces certain parts of the regulatory framework governing broadcast advertising. The CA and the Market Council have the authority to issue decisions banning unlawful advertising. They also have the authority to impose prohibitions, enforcement penalties and infringement penalties.

As of 1 October 2023, the CA is entitled to impose fines up to (the higher of):

- NOK 25,000,000, or
- 4% of the breaching party's revenue.

The CA has not yet (at the time of writing) imposed fines under the new regulations. But breaches of the Marketing Act may hereafter trigger higher fines than before.

Decisions from the Market Council may not be appealed by any of the parties. Traders who disagree with the decisions against them may bring their case before the ordinary courts. However, the CA cannot bring decisions that have gone against them in the Market Council before the ordinary courts. Decisions in favor of the trader are therefore final.

The CA devotes considerable efforts to internet access, mobile telephony and TV. It works with digital services and marketing in digital channels, including content marketing, advertising in social media, hidden marketing and user reviews.

The CA also participates in a broad range of international co-operation forums, to contribute to strong consumer protection across national borders.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors have a right of action if a trader's advertisement contravenes good business practice or constitutes unfair competition. Cases between traders may not be brought before the Market Council. In order to take action against a competitor's advertising, a trader may either bring the case before the ordinary courts or before the self-regulatory body, the Business Competition Committee ('NKU'). The NKU does not issue binding decisions or award compensation, but its decisions are usually respected by traders. See question 2 for further information. Ordinary courts may give preliminary rulings to stop a competitor's infringing advertisement if the requirements for such a ruling are met.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers, as individuals or groups, are not party to the cases that the CA brings against a trader, even though a case may be initiated by a complaint from a consumer. The CA does not have authority to represent consumers in civil matters. Cases in the Market Council are therefore between the CA and the trader. Consumers cannot gain any remedies before the Market Council.

Consumers may, in addition to bringing a complaint against an advertiser to the CA, bring a case before the ordinary courts. This must be done in accordance with ordinary civil law. Civil remedies available for a consumer to claim in a court case include, amongst other remedies, damages. It would,

however, normally be difficult for a consumer to document a financial loss caused by an advertisement that met all the requirements for a claim for damages. Norwegian civil law does not provide for the awarding of punitive damages.

Individual and class action consumer suits against advertisers relating to unlawful advertisements are very rare in Norway.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Norway have a primary advertising self-regulation system?

There are multiple self-regulatory advertising systems in Norway. This framework complements the regulatory framework for advertisers. Regulations relating to self-regulation govern different areas of trade and ensure that the same ethical standards in advertising are upheld by all parties within the same trade.

- (a) One set of regulations governs editorial advertising by the Norwegian Press Association. The Editorial Advertising Regulations apply to all members of the Norwegian Press Association, regardless of whether the advertising is produced for the printed media, online publications or television.
- (b) Another major system of self-regulation underpins the advertising of unhealthy food and drinks that are directed towards children. The Food and Drink Industry Professional Practices Committee governs this system. The Committee is a collaboration of the major industry players, the Confederation of Norwegian Enterprises ('NHO'), Hovedorganisasjonen Virke ('Virke'), and ANFO Advertisers Association ('ANFO').
- (c) The NKU is responsible for self-regulation, in collaboration with the NHO, the Virke, the Coop Norway SA, the Kreativt Forum, ANFO, the Media Businesses' Association ('MBL'), TV2 AS and Posten. NKU provides non-binding statements in disputes between traders regarding compliance with the Marketing Control Act.
- (d) A special committee from various organizations has agreed to a code of conduct for influencers as a way to self-regulate influencer marketing. The code applies to influencers, as well as networks and advertisers. Influencers, networks, or advertisers who are members of some of the large organizations are bound by the code. Influencers who are not bound through their networks can commit to follow the code. Companies that have committed themselves to follow the code are permitted to use the organization's name and logo, thereby indicating that they adhere to the code for influencer marketing.

2.2 Is there a self-regulatory advertising code? What are the key principles?

- (a) The Editorial Advertising Regulations outline the well-established principles of:
 - the division between editorial material and advertising and
 - the disclosure of advertising and sponsors in the media.
- (b) Self-regulation in the food and drink industry takes place under the Food and Drink Industry Practices code. This consists of guidance for businesses active in this sector. In addition, there is a list detailing which products are considered unhealthy and therefore governed by the code and guidance. The key principle of the code is that the advertising of unhealthy food and drinks that are targeted at children under the age of 13 is not acceptable and that

caution and consideration must be exercised in marketing to young people in general. However, the product itself, including packaging and display of the product, is not considered marketing.

- (c) The NKU derives its mandate from the Marketing Control Act. The NKU's key focus is on marketing practices that constitute unfair competition between traders.
- (d) The guidelines for influencer marketing apply to the marketing of cosmetic procedures and the like, as well as supplements and similar products. The goal is to reduce appearance and body pressure. The main principle is that influencer marketing of certain goods and services with messages that may lead to dissatisfaction with the body or appearance of children and young adults should be avoided.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

All four self-regulation systems have dispute resolution mechanisms:

- (a) Any party may bring a complaint concerning non-compliance with the Editorial Advertising Regulations before the Press Complaints Commission ('PCC'). The PCC is authorized to give reasoned opinions on the practices of media organizations who are members of the Norwegian Press Association. Such opinions are directed towards the media organization that has published the advertisements and not the advertiser itself. However, these cases do tend to attract negative publicity for the advertiser as well. There have been several recent examples of the PCC using its jurisdiction to rule on questions relating to regulatory compliance. The PCC does not award damages, fines or injunctions. Parties seeking these remedies must bring such claims to the ordinary courts in accordance with the relevant civil law.
- (b) Compliance with the Food and Drink Industry Practices code is supervised by the Food and Drink Industry Professional Practices Committee ('MFU'). Both traders and consumers may bring complaints before the MFU regarding marketing activities that infringe the code. The trader defending the complaint is entitled to respond to the complaint before a decision is taken. The complainant will be notified of any decision taken and the decision will also be published on the MFU website. The MFU does not issue fines or other financial penalties.
- (c) The NKU provides its opinion on disputes between traders about whether a form of marketing is in violation of the Marketing Control Act. The NKU does not award damages, fines or injunctions. Claims for these remedies must be brought before the ordinary civil courts. Regardless of any statement from the NKU, parties may bring the same case before the civil courts.
- (d) The special committee for influencer marketing ('FIM') will consider the complaint to assess whether a campaign may create body and/or appearance pressure for children, adolescents or young adults under the age of 24, with reference to the code of conduct for influencers that has been established.

2.4 Is the self-regulation system effective? Is it widely used and followed?

- (a) The principle of disclosing advertising, as set out in the Editorial Advertising Regulations, is generally accepted in Norwegian media. Practical solutions on how to disclose advertisements and sponsorship varies, however, and is often challenged.

- (b) A united food and drink industry has backed the self-regulation system for advertisements that target children, and it is widely used and followed.
- (c) Statements from the NKU express the opinion of the representatives from the business community concerning marketing practices. The statements therefore carry significant weight in business and court practice. Although the NKU's statements, in formal terms at least, are only considered advisory and not legally binding, serious businesses will take statements from the NKU into account.
- (d) The special committee (FIM) and code of conduct for influencer marketing is used, and seem to work well in the sense that violations of the code are enforced by the industry itself, through a professional committee. FIM's decisions are public. In addition to addressing complaints of violations of the code, the committee provides advance statements on whether influencer campaigns violate the guidelines.

2.5 Are the self-regulatory system's decisions reported?

All decisions from the self-regulatory systems are reported and available to the public:

- (a) Decisions from the PCC regarding editorial advertising are published on its website www.pfu.no.
- (b) Decisions from MFU regarding food and drink advertising directed towards children are published on the MFU website www.mfu.as.
- (c) Statements from the NKU are sent to the parties concerned and published on the NKU's website www.konkurrenseutvalget.no, and on www.lovdata.no.
- (d) FIM's decisions are public and are published on the website <https://fim.as>

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Not applicable.

2.7 Are there any other self-regulatory systems that govern advertising practices in Norway?

Not applicable.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Norway (eg, consumer protection laws; IP laws; unfair competition laws)?

The Marketing Control Act has a broad scope of application and relates to the control of marketing, commercial practices and contract terms and conditions in consumer relations. It also requires traders to follow good business practice in their transactions with one another; eg, advertising can be deemed unfair if a trader has taken undue advantage of a competitor's IP rights. The law, in general terms, prohibits unfair commercial practices; eg, misleading or untruthful marketing or the use of certain aggressive marketing techniques. The CA and the Marketing Council seek to influence traders to comply with the provisions of the Marketing Control Act and can, if necessary, impose penalties.

Advertising claims made in certain specific market sectors are regulated by special laws or regulations. For instance, Act No 46 of 25 June 1999 on Financial Contracts and Financial Assignments in the areas of marketing of financial services, Act No 124 of 19 December 2003 on

Foodstuffs in marketing foodstuffs or Act No 126 of 21 December 2005 on Cosmetics in the area of marketing cosmetics. There are special enforcement authorities supervising these laws; eg, the Financial Supervisory Authority of Norway and the Norwegian Food Safety Authority.

It is prohibited to direct electronic communication to private persons without their prior consent. Consent is interpreted to mean an active consent (opt-in) The prohibition does not apply to existing customers. As a general rule, a one-off purchase will not be enough for a customer relationship to be said to exist. The key consideration is whether the trade makes it natural to have further contact between the trader and the customer. If this is not the case, it cannot be said that there is an 'existing customer relationship'.

Telemarketing is strictly regulated in Norway. Consumers can opt out of unsolicited phone calls from telemarketers by registering with the Brønnøysund Register Center. Traders operating in the market are obliged to respect this and regularly update their lists of consumers appearing on the register.

Written confirmation is needed after telephone sales are made. The trader must send a letter, email or SMS to the consumer who must then actively confirm the deal. Agreements are only binding once the consumer has returned written confirmation to the trader.

Consumers have the right to avoid receiving free editions of newspapers and advertisements delivered at their doorstep or mailbox by clearly marking the mailbox with a 'No, thanks!' notice.

3.2 Is substantiation required for advertising claims?

The Marketing Control Act requires that documentation must be available to substantiate factual claims made in marketing, including as to the properties or effect of products. The documentation must be in the possession of the advertiser at the time that the marketing takes place. The CA has the authority to issue a prohibition order or penalty if a trader does not, within 48 hours of receiving a request for documentation relating to an allegation of a specific effect used in marketing, send it such documentation. The same applies if an allegation of a specific effect clearly cannot be documented.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There is no special exemption for messages that do not need substantiation. However, case law and practice from the enforcement of the Marketing Control Act show that clearly exaggerated statements or statements which are not meant to be taken literally are not enforced; eg, 'Red Bull gives you wings'.

3.4 What are the rules governing the use of disclosures in advertising?

The Market Council and the CA may conduct such investigations and inspections, including requests for the delivery of documents, objects and samples of goods, as they consider necessary in order to perform their statutory duties. If necessary, assistance may be requested from the police. All persons are obliged to provide the Market Council or the CA with the information that these authorities require in order to be able to perform their statutory duties, including information required to determine whether a commercial practice is unfair. The Market Council and the CA may request that the information be submitted in writing or orally within a time limit (see question 3.2 above regarding the 48-hour rule).

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsements and testimonials are treated like other claims in marketing, and have to comply with the same requirements. Accordingly, the use of endorsements and testimonials in advertising cannot be misleading, untruthful, or be contrary to good business practice, and must not take undue advantage of a competitor's or other person's IP rights.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no special provisions targeting product demonstrations. As a general rule, product demonstrations have to be true and cannot be misleading. The product demonstration must avoid presenting information in an unclear, unintelligible, ambiguous or unsuitable manner. A product demonstration should not, therefore, omit or hide material information that consumers normally would require to be able to make an informed economic decision. In assessing whether information has been omitted/is misleading, limitations of space or time on the medium used to communicate the commercial practice shall be taken into account, as well as any measures implemented by the trader to make the information available to consumers by other means. The practice can only be regarded as misleading if it is likely to cause consumers to make an economic decision that they would not otherwise have made.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is allowed. There is a special regulation of 19 December 2000 on comparative advertising which regulates in detail the extent that comparative advertising is allowed. The main rule of comparative advertising is that it is allowed, provided that it is not misleading, untruthful or is contrary to good business practice in traders' transactions with one another. The comparative advertising must ensure that:

- (a) it compares goods or services meeting the same needs or that are intended for the same purpose, and
- (b) it objectively compares verifiable and representative features of those goods and services (which may include price).

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Comparative advertising must not:

- discredit the trademarks or trade names of a competitor;
- confuse products of designated origin;
- take unfair advantage of the reputation of another trader;
- present imitations or replicas bearing a protected trademark or trade name; or
- create confusion as to the origin of the goods or services.

The use of a competitor's logo can easily confuse the recipient of the advertising into believing that the advertiser has approved or is affiliated with the logo's owner. Such cases have, in practice, been considered to be in conflict with good business practice and so breach the Marketing Control Act. A reference to a competitor's word mark or trade name is allowed to identify the goods or services which are under comparison. However, reference must not be made in such a way that it takes unfair advantage of the good reputation of the competitor.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

Yes. Under Section 31 of the Marketing Control Act—Application of incorrect geographical descriptions to wines and spirits: ‘It shall be prohibited in the course of trade to apply a geographical description to a wine or spirit which does not originate from the geographical location designated by the description. This shall apply even if the actual place of origin is also stated, or if the geographical description has been translated or is followed by an expression like ‘kind’, ‘type’, ‘imitation’ or something similar’.

3.10 Are there any special rules governing product packaging?

Yes. Under Section 26 of The Marketing Control Act—Misleading business methods: ‘It shall be prohibited in the course of trade to use an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other products. ... ‘representation’ shall mean any form of announcement or statement made orally, in writing or otherwise, thus including descriptions, pictures, demonstrations, the form, size or type of packaging, etc...’.

Under Section 30 of The Marketing Control Act—Copying the products of another person: ‘It shall be prohibited in the course of trade to use copies of distinguishing marks, products, catalogues, advertising materials or other produced items in such a manner and under such circumstances that the use must be considered an unfair exploitation of the efforts or results of another person, and to present a risk of confusion’.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

‘Dark practices’ or ‘dark patterns’ are understood to be use of unfair commercial practices online, with a particular focus on deceptive design.

Norway is part of the EEA and has implemented the GDPR. Thus, the legal provisions of the GDPR apply. The Marketing Control Act may also apply to dark practices/dark patterns, and the provisions that may apply are spread out within this Act and the Personal Data Act (implementing the GDPR).

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

As of now, there are no rules or guidance regarding artificial intelligence (‘AI’). The CA has over some time reviewed whether or not the guideline on labeling retouched advertising (see question 12.1 below) will apply to advertising content developed using AI, or whether new legislation is needed. In January 2024, the CA concluded that new legislation is needed to address this issue.

The issue came to a head in Spring 2023, when Sats, one of the largest fitness center chains in Norway, placed an advertising billboard in front of the Norwegian Parliament, created by AI, asking for necessary legislation to ban advertising content created by AI.

In June 2023, the Consumer Council issued a report entitled ‘Ghost in the Machine: Addressing the consumer harms of generative AI’. In connection with the report, the Council, together with 14 other consumer organizations across the EU and US, demanded policymakers to act.

Although the EU Parliament and Council have reached a political decision on the EU AI Act, the member states are still waiting for the final text. Once officially adopted, it will still take time for implementation in Norway.

4 PRICE ADVERTISING

4.1 What are Norway's rules regarding price advertising?

The main rule for price advertising is that it is allowed, insofar as it is not misleading or untruthful. There is extensive practice from the enforcement authorities regarding this issue. Against this background, the CA has also drawn up its own guidelines concerning price advertising.

4.2 What are Norway's rules regarding advertising 'free' products?

It is prohibited to describe a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item. The CA has a strong tradition of firm enforcement regarding such types of advertising.

4.3 What are Norway's rules regarding sales and special offers?

In the marketing of sales, prices must be reduced in relation to a real former price. The price advantage must be displayed and specified. Therefore, the trader is normally obliged to indicate in the marketing the former price or the reduction in percentage terms. Documentation must be available to substantiate that the same product has been sold in a certain quantity at the indicated former price in the period directly prior to the sale. Normally the CA asks for documentation of actual sales (at the former price) in the six weeks prior to a campaign. Rebates are treated as a form of marketing of a sale/discount and, therefore, the same rules apply.

4.4 What are Norway's rules regarding rebates?

Rebates are treated as a form of marketing of a sale/discount. Please see question 4.3.

Norway recently enacted a provision on claims of pre-price in an amendment to the Regulations relating to price information, etc for goods and services, issued pursuant to the Marketing Control Act. The regulation states that 'Where the price of goods is marketed as discounted, the trader shall provide information about the pre-price of the goods. The pre-sale price is the lowest price that the trader has applied for a minimum of 30 days before the marketing started. By 'lowest price' is meant the price that has been applied for the product to the general public, or other large groups of consumers belonging to different loyalty programs or customer clubs. Where the price reduction increases gradually, the pre-price is the lowest price before the first price reduction.'

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The CA has strict practice regarding 'lowest price' claims and price guarantees. Documentation must be available to substantiate a lowest price claim and a trader must regularly research market prices and immediately lower its prices if lower prices are found elsewhere. Regarding price guarantees, all important limitations or conditions must be indicated in the marketing. 'Price guarantee' or equivalent terms must not be used if the limitations render the real price reduction practically null.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) The Act on the Prevention of the Harmful Effects of Tobacco ('Tobacco Act') includes a prohibition against tobacco advertising, which prohibits all forms of advertising of tobacco products. The same applies to smoking accessories, imitation tobacco products and tobacco substitutes, including e-cigarettes. Tobacco products may also not be included in the advertising of other products or services. Further, a brand name or trademark that is mainly familiar as a brand or mark for tobacco products may not be used in the advertising of other goods or services, so long as the name or mark in question is used in connection with a tobacco product. Tobacco products may not be launched with the aid of brand names or trademarks which are familiar as, or used as, brands or marks for other goods or services.
- (b) Pursuant to the Alcohol Act, it is prohibited to promote alcoholic beverages, advertise goods with the same brand or characteristics as alcoholic beverages, let alcoholic beverages be included in the marketing of other goods or services.
- (c) Norwegian laws are also very strict regarding gambling and marketing for gambling. A new Norwegian Gambling Law and Regulation were introduced in 2023, replacing several old Acts. The Norwegian Gambling and Foundation Authority ('NGFA') regulates and supervise gambling activities in Norway. The basic premise under Norwegian law is that all forms of gambling are prohibited, except where permission to operate such activities is granted under the authority of a legal statute (Norway has a state-owned gambling institution). Two state owned companies, Norsk Tipping and Norsk Rikstoto, have a monopoly on a large part of the market, including gambling and horse racing respectively. In addition, there is a private lottery market, including traditional lotteries and bingo. Only a few charitable organizations are granted licenses to run such lotteries. It follows from the Gaming Act that all marketing of unlicensed lotteries and gambling schemes (hereinafter also referred to as 'gambling') is illegal.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) All forms of tobacco sponsorship are prohibited. The term 'tobacco sponsorship' means any form of public or private contribution to any event, activity or individual with the intent or the direct or indirect effect of promoting the sale of tobacco products. Visible displays of tobacco products and smoking accessories are also prohibited.
- (b) The Alcohol Act states that all advertising of beverages containing alcohol is prohibited. The term 'advertising' is broadly defined as any form of mass communication for marketing purposes, including advertising in print, film, radio, television, internet, illuminated advertising, posters, signs, images, exhibitions and distribution of printed matter and samples. In addition to the ban on direct advertising for alcoholic beverages, the Alcohol Act also contains a ban on advertising for other goods with the same trademark or characteristics as alcoholic beverages. It is also prohibited to include alcoholic beverages in the marketing of other goods or services.

- (c) Prescription drugs may not be advertised to consumers, but advertising aimed at health personnel, such as doctors and nurses, is allowed. Non-prescription drugs may be advertised to consumers.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

There are no laws or regulations governing what is considered indecent or obscene in Norway. The general provision in the Marketing Control Act on 'good marketing practice', however, applies to all advertising. An advertisement may contravene good marketing if the marketing offends against general ethical and moral views and if it employs offensive means. Advertisements that are considered indecent or obscene in Norway may be prohibited by the CA on the grounds that they contravene 'good marketing practice'. In marketing that is directed towards children, the use of violence, sexuality or drugs in advertisements will contravene the provision on good marketing practice.

Moreover, the Marketing Control Act states that the marketer and the designer of the marketing shall ensure that the marketing does not conflict with the equality of the sexes and that it does not exploit the body of one of the sexes or convey an offensive or derogatory appraisal of women or men.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The Broadcasting Act and Regulations require that sponsors of programs are disclosed. In this context 'sponsorship' means any direct or indirect contribution made to the production or transmission of one or more programs by a natural or legal person not personally engaged in the production or broadcasting of such programs.

Where a program is sponsored, information to this effect shall be given prior to and/or after the program. Information about the sponsor may be given in the form of the name, trademark or logo of the sponsor. The content and form of presentation of a sponsored program must be such as to maintain the full editorial integrity of the broadcaster.

According to the guidelines issued by the Media Authority for video-sharing platforms, if the product is the main focus of the video, it is considered to be an advertisement, but if the product is not the main focus, then it is considered to be product placement; eg, if the video is mainly consisting of editorial content.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The principle of identification of advertising and the separation between advertising and editorial material is a basic principle in the Norwegian advertising legislation and is strictly enforced. This is expressed both in the Marketing Control Act, the Broadcasting Act and Regulations, as well as in the self-regulation system of the Norwegian Press Association.

Under the Marketing Control Act, all marketing shall be designed and presented in such a way that it clearly appears as marketing. Hidden advertising is also considered an unfair commercial practice and is therefore prohibited. An advertisement must clearly appear as advertising. It should be made clear to the reader that they are subject to advertising. It must also be clear who the advertisement is intended for.

For it to be clear that it is advertising, the marking must have a prominent position, be in clear writing, and have a large enough font size. 'Prominent placement' means a placement that makes one see the marking immediately. The reader should not have to look or scroll in a post to discover that it is advertising. One rule of thumb is that the advertising tag should be eye-catching when viewing the post.

It is important to use clear wording that everyone can understand. These words are sufficiently clear: 'commercial', 'advertising', and 'advertisement'. Other words and phrases, such as: 'in collaboration with', 'competition', 'recommendation', and 'affiliate links' do not make it sufficiently clear that the post is advertising.

Sponsor identification in broadcasting and disclosure of commercial connections with influencers are examples of regulations on branded contents.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Traders are obliged to disclose advertising content as such when integrating it with other content. The disclosure obligations will vary depending on the media and the form of advertisement, and must be assessed on a case-by-case basis.

For social media, the disclosure regulations are very specific. See question 8 below.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

- (a) The CA monitors compliance with the Marketing Control Act in social media. In order to ensure that advertising in social media complies with the general provisions in the Marketing Control Act, the CA has provided specific guidelines which explain the more general provision in the Marketing Control Act on the disclosure of advertisements and the application of these provisions in social media. The main purpose of the guidelines is to explain to advertisers and social media users how to comply with the ban on hidden advertisements and how, in practice, advertisers should disclose advertising when integrating advertising with user generated content.
- (b) In addition, the Broadcasting Act applies to marketing on video blogs, such as videos on YouTube.
- (c) Furthermore, the E-Commerce Act has some special rules on electronic marketing, including rules for information society services, which include social media platforms. The Act also includes special rules on price offers, advertising offers, such as discounts, gifts and prizes, and sales promotion competitions.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The key rule is that users who have received payment or other advantages, such as free products, in return for the promotion of products or services from a trader, must sufficiently disclose such relationships. Failure to comply with this rule may lead to administrative sanctions from the CA or Market Council against the social media user who has published the content and, in certain cases, against the advertiser, as complicit in the unlawful practice.

Disclosure must be conducted by users of all social media, including blogs, Facebook and Instagram. In blogs, disclosure must be conducted by adding the text 'Advertisement' at the beginning of each blog post that constitutes an advertisement. User generated posts with advertisements on Facebook must also include the text 'Advertisement' at the beginning of the post. On Instagram, users must disclose advertisements in user generated content by including #advertisement in the first #.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

The Guidelines for advertising in social media have been in effect since 2011; however, they are regularly updated to include new social media. The CA is monitoring social media profiles in order to see whether their promotions of products and services sufficiently disclose their relationship with the advertiser. In earlier years, a soft approach was taken by the CA; informing the social media profiles about the regulations and seeking to reach a voluntary agreement on compliance. However, in recent years, CA has shifted to issuing fines for more serious failure to follow the Guidelines. The CA is especially following influencer marketing that could be directed towards children.

Advertisers are the primary persons responsible for content uploaded by influencers on behalf of the advertiser. It is therefore the advertiser's responsibility to ensure that the influencer complies with the rules in the Marketing Control Act. However, the CA recently issued two fines in connection with content posted by an influencer where the content was not marked as being an advertisement, one fine was imposed on the influencer (NOK 200,000) and one fine on the advertiser (NOK 300,000).

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Copyright Act regulates the use of an individual's picture in general. The main rule is that photos depicting a person cannot be reproduced or shown publicly without that person's consent. These rules are supplemented by case law and also by Norway's obligation to respect article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, using an individual's picture for commercial purposes in advertising would normally require that person's consent in order to avoid the advertiser being liable to pay compensation, especially if that person's identity has commercial value in itself and the person is identifiable or 'in focus'.

The regulation is somewhat of an anomaly since the right to one's image/picture is not a copyright issue, but rather a question of personal rights and 'right of publicity'. Separate privacy rules and regulations are not covered here.

In addition to the above, a few older court cases have developed a non-statutory right to one's own 'personal distinctiveness', which includes voice and likeness. The court cases were all based on the use of certain personal distinctive features of well-known figures in advertising. For example, one case involved the imitation of a person's distinctive character and voice in a commercial, which the court concluded was an unauthorized exploitation of the person's persona.

Advertising practices where an individual's name, likeness, voice and identity are used without prior consent can, depending on the situation, be a breach of the Personal Data Act, the General Civil Penal Code and case law regarding the protection of the individual's privacy. Normally, the person's consent would be needed, but there can be certain exceptions.

If the person's picture, name or identity has a commercial value in itself, it can also be considered in conflict with good business practice and, therefore, a breach of the Marketing Control Act if the person has not given their prior consent for this to be used in advertising.

9.2 Are there situations when permission is not required?

There are certain exceptions to the rule regarding the depiction of a person's image, as regulated in the Copyright Act. For instance, the person's consent is not necessary if:

- the picture is of current or general interest;
- the picture of the person is less important than the main contents of the picture; or
- the subject of the picture is a group assembled for a meeting, an outdoor procession or situation or event of general interest.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no specific rules in the Marketing Control Act governing types of materials that must be cleared before they may be used in advertising; but see further question 10.2 below.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Marketing communications must not portray or refer to any persons, unless prior permission has been obtained (see questions 9.1 and 9.2 above). It is also prohibited to use the Norwegian coat of arms in any way in advertising. As a general rule, marketing should not make unjustifiable use of names, initials, logos and/or trademarks of another business or in any way take undue advantage of a business or of their goodwill. The same applies to all other intellectual property rights. If the use of rights, logos or products is of secondary importance in an advertising campaign this may still be permissible, but this has to be closely assessed on a case-by-case basis.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Norway which affect advertising (eg, Swedish gender equality law)?

Marketing shall, according to the Marketing Control Act, not conflict with good marketing practice. The enforcement authorities in Norway put emphasis on whether the marketing offends against general ethical and moral views and whether it employs offensive means. The marketing material should not conflict with sexual equality, exploit the body of one of the sexes or convey an offensive or derogatory appraisal of women or men.

Furthermore, special attention should be paid when commercial practices are targeted towards children. Particular care needs to be exercised with regard to the impressionability, lack of experience and natural credulity of children. In assessing a contravention, the enforcement authorities will take into account age, development and other factors that make children particularly vulnerable.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertisers should be aware of the strict regulations with respect to alcohol and tobacco set out in question 5 above.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Norway?

- (a) Advertisers should be aware of a new and unique Norwegian regulation relating to the labeling of retouched advertising ('the Regulation'), which took effect on 1 July 2022.

The Regulation affects domestic and foreign brands that advertise in the Norwegian market. If a Norwegian advertiser receives and uses advertisement material from foreign advertisers, the Norwegian advertiser is responsible for assessing whether the advertisement needs to be labeled. If the advertisement is targeting Norwegian consumers, foreign advertisers and creators are required to follow the Regulation.

The labeling requirement applies to all advertisements which include retouching and other forms of manipulation of 'body shape, size, or skin'; that is, whenever alterations have been made to the body or face shape, body or face size, or the skin of the body of the person in the advertisement.

The Regulation was enacted with the purpose to counteract the body pressure created as a result of unrealistic and unhealthy ideals of beauty. As a result, the Marketing Control Act was revised to require that all advertising where a body's shape, size, or skin has been altered by retouching or other manipulation, must be marked with a standardized brand, which should make up approximately 7% of the advertising space. As a general rule, the mark must be placed in the upper left corner of the advertising surface. The label can be downloaded from the CA's website in white or black.

The CA has issued guidelines to help advertisers and those designing the ads, including explanations on the meaning of 'retouching or other manipulation'. All forms of advertising must be labeled, including social media. The Regulation does not have retroactive effect; however, it is worth noting that it will apply to any relaunch of old advertisement material.

- (b) In addition, it is worth noting that the CA has sustainability claims in marketing as a high priority area. A number of provisions of the Marketing Control Act may apply. Sustainability claims in marketing will be misleading if they contain incorrect and untruthful information. The claim must also give consumers a precise picture of the product's properties. Furthermore, it must be clearly stated whether the marketing claims in question relate to the trader's business as such, or to one or more products offered by the trader.

It is also important not to exaggerate or oversell the ethical or environmental qualities highlighted in marketing. This means that marketing must not point out insignificant aspects of the product's environmental impact, or ethical factors that relate to an insignificant part of the product or the product's production chain.

 OMAN 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the Sultanate of Oman?

Advertising in Oman is regulated by various laws and regulations. It is common in Oman for specific laws to regulate advertising in a specific sector or a specific form of advertising. Most forms of advertising in Oman require a license or approval from the relevant municipality or the relevant regulatory authority which regulates a business or company.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Minister of Regional Municipalities and Environment Resolution No 143 of 2000 issuing the Regulation for the Organization of Commercial Signs and Advertisements (‘ROCSA’) defines ‘advertising’ as ‘any written text, painting or picture intended for advertising, promotion or directing attention to the name of a commercial, industrial or professional business, product, service or any other activity, whether fixed, mobile, illuminated, non-illuminated, hung up, or to be published or distributed to the public’.

1.3 What is the basic regulatory framework for advertising regulation?

The following is a general overview of the legal framework for advertising in Oman. It is not specific to a specific sector or form of advertising:

- (a) **Commercial signs and advertisements:** ROCSA regulates the organization and control of commercial signs and advertisements in Oman. Its provisions include:
 - (i) No advertising can be placed or conducted without a license from the relevant municipality. A municipality may issue a license once it has satisfied itself of the integrity of advertising, conformity with any requirements and payment of prescribed fees.
 - (ii) The following forms of advertising do not require a license to be issued by the municipality, only coordination with the relevant municipality and the competent authorities:
 - advertising displayed in cinemas or inside shops, provided that it is not placed outdoors;
 - advertising placed on devices, packages or covers and means therefor;
 - sale or lease advertising located on property to be sold or leased;
 - advertising, announcements and circulars issued by the official authorities of Oman and conducted by religious, charitable or health entities; and
 - advertising and installations mounted in public events, such as religious or national holidays or sports, cultural or social festivals.
 - (iii) It is prohibited to install or post advertising in the following places:
 - mosques, places of worship, ancient buildings, cemeteries and their fences;
 - property and government buildings, including poles and other public utility installations;
 - memorials, public gardens, pavements and their fences;

- buildings or parts of buildings in which the government performs public services, even if such buildings are private property, except for billboards bearing the commercial name of companies or institutions which occupy part of such buildings; and
- any other places designated by the relevant municipality.

(iv) The following requirements must be satisfied to obtain an advertising license in Oman:

- Advertising must be in Arabic. Any other language may be used, provided that such language is displayed to the left of or under the Arabic text and provided that the space occupied by the Arabic text is no less than the space occupied by the other language.
- The translation from the Arabic language into any other language must be accurate.
- Advertising and any drawings or pictures accompanied by such advertising must not be contrary to the religious values or traditions and customs or prejudicial to public order, morals or security.
- Billboards must be the appropriate size to contain the name and type of the activity and must be fully consistent with the facade of the building and its general appearance.
- The advertising must not obstruct traffic or pedestrian paths or prejudice the operation of traffic lights, cause damage to any type of plumbing, services or plants, hinder any emergency rescue services or cause damage to third parties.
- The license application must contain the number and date of approval issued by the competent authority, if applicable.
- The written consent of the usufructuary or owner of the property on which the advertising will be displayed must be obtained or, if the advertiser is the owner of the property, the property deed must be provided.

Licenses for fixed billboards are valid for one year, renewable yearly. Licenses for temporary billboards are determined by way of an agreement with the relevant municipality.

(v) The use of speakers for advertising is prohibited unless a license is obtained from the relevant municipality that allows such use and stipulates the places and times in which the advertising can be conducted, and phrases which can be stated.

(b) **Consumer Protection law:** Royal Decree No 66 of 2014 Promulgating the Consumer's Protection law (Consumer Protection Law) contains the following regulations:

- (i) Companies registered in Oman must indicate their commercial registration number in all of their correspondence, including commercial advertisements when dealing with consumers.
- (ii) Advertisers are required to provide correct information about a good or service and should refrain from sending false or misleading advertisements. Advertising of any adulterated, cheated, imitated or unauthorized goods is also prohibited.
- (iii) A supplier may not apply any promotions or discounts to the prices of goods and services unless with the licenses and approvals of the concerned authority after coordination with the General Authority for Consumer Protection to verify the

prices in the manner stated in the regulation. The regulation requires suppliers to obtain the aforementioned authority and provide details relating to the methods, prizes gifts and benefits, and pricing before and after an offer.

- (c) **Advertising messages:** Telecommunications Regulatory Authority Resolution No 1152-2 Issuing the Regulations on Beneficiaries' Rights from Telecommunication Services ('RBRTS') regulates the sending of SPAM and commercial or advertising messages in Oman:

- (i) The recipient's prior approval must be obtained before sending promotional messages. The approval is in the form specified by the licensee (which is commonly the internet service provider) and approved by the telecommunications regulatory authority.

Promotional messages must be in the form set out in the RBRTS and must include a title indicating the content, the letters 'AD', the name of the sender and a free method to stop or request to stop receiving the messages. Messages should not be sent during times commonly known as rest times (not defined in the regulations) and the sender is required to stop sending messages within one day of such request.

SPAM is defined in the RBRTS as a message that is continuously sent from the sender to the recipient, despite the recipient's request to stop sending same, or a commercial or promotional message that is sent before obtaining the consent or previous request of the addressee.

- (ii) The sending of, or assisting or inducing others to send SPAM, whether by SMS, MMS, email or other communications services and systems is prohibited. Licensees are prohibited from using programs to aid in sending SPAM.
- (iii) The senders of commercial or advertising messages must maintain the confidentiality and privacy of the data obtained from the recipient and not dispose of such data by selling, publishing, distributing, exchanging, misusing or using the data for data other than for which it was collected.

The RBRTS applies to messages from or to Oman.

- (d) **Radio and Television Advertising:** Entities with a presence in Oman must ensure that their advertisements comply with Royal Decree No 45 of 1976 Promulgating the Law of Censorship on Artistic Works and Royal Decree No 95 of 2004 Promulgating the Radio and Television Private Establishments Law. Accordingly, advertisements through radio and television must not go against the public order and morals (which are not defined or codified in Oman but is understood to mean Shari'ah principles and Islamic culture/beliefs). Additionally, the following are prohibited from being advertised:

- Pyramid schemes;
- Any material that, expressly or by suggestion, discredits his Majesty the Sultan of Oman or a member of the Royal Family;
- Any material posing a risk to the safety and national security of the government;
- Any material detrimental to public order, or instigating crime, arousing hatred, spreading obscenity or causing social discord;
- Any material offensive to Islamic values;
- Any material jeopardizing the national currency or the Securities Market; and
- Any material relating to the news, pictures, and comments related to individuals, family, or private lives.

(e) **Other relevant laws pertaining to advertising in Oman**

- (i) Under Royal Decree No 35 of 2015 Promulgating the Practice of Pharmacy Profession and Pharmaceutical Establishments, no person may advertise a medicine unless a license is obtained from the Directorate of Pharmacy and Medicine Control.
- (ii) Minister of Health Resolution No 179 of 2018 Issuing the Human Organ and Tissue Donation and Transplantation Regulations prohibits the advertising or promotion of the purchase or sale of a human organ or tissue.
- (iii) Under the Minister of Information Resolution No 25 of 1984 Issuing the Executive Regulations of the Printing and Publishing Law (as amended in 2020), it is prohibited to publish advertisements of tobacco products and its derivatives in any printed, audio, video and electronic media or billboards.
- (iv) Ministry of Commerce, Industry and Investment Promotion Decree No 499 of 2023 Promulgating the E-Commerce Regulation ('E-Commerce Regulation') requires persons undertaking e-commerce in Oman to obtain a license. 'E-commerce' includes any economic activity carried out between a licensee and a consumer through electronic means or through an electronic store, to display, market or promote goods or services.
- (v) Under Royal Decree No 7 of 2018 Promulgating the Penal Code of Oman ('Penal Code') it is prohibited to:
 - market or promote goods adulterated or corrupt foodstuff intended for human or animal consumption;
 - store or transfer soiled or counterfeit goods for the purpose of marketing;
 - deceive a purchaser as to the quality, basic characteristics, or constitution of goods or services, quantity, expiry date, type or origin;
 - increase or decrease the price of goods or foodstuff through deceit.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Text message advertising is regulated by RBRTS. See question 1.3 above for further details.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Advertising relating to medicine may only be undertaken with a license from the Directorate of Pharmacy and Medicine Control.

Displaying, marketing or promoting goods or services through electronic means requires a license for such activities to be undertaken in Oman.

1.6 Are any government pre-approvals required?

Pre-approvals are required under ROCSA. Under the E-Commerce Regulation of Oman, licenses are required to advertise medicine and to display, market or promote goods or services through electronic means.

1.7 Does the media pre-clear advertising?

Yes. As set out in question 1.3 above, the application for a municipality license to advertise under ROCSA requires certain criteria to be met before the license is approved and granted to the advertiser. This includes the appearance, placement and wording of the advertising.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Anyone who violates the provisions of ROCSA may be subject to a fine of between OMR 5 and OMR 25 (approx US \$13–US \$65).

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may submit a complaint to the relevant regulator. There are no remedies which are specifically available to competitors.

1.10 When do consumers have a right of action? What are the potential remedies?

A consumer may make a complaint to the relevant authority. Under the Consumer Protection Law of Oman, a person who violates the advertising provisions contained in this Law may be liable for fines between OMR 100 and OMR 5,000 (approx US\$260–US \$13,000) and/or imprisonment of up to 3 months. The period of imprisonment is increased to 5 years or more if the violation leads to the death of one or more persons.

2 SELF-REGULATORY FRAMEWORK

2.1 Does the Sultanate of Oman have a primary advertising self-regulation system?

There is no advertising self-regulation system in Oman.

2.2 Is there a self-regulatory advertising code? What are the key principles?

There is no self-regulation advertising code in Oman.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

There is no advertising self-regulation system in Oman.

2.4 Is the self-regulation system effective? Is it widely used and followed?

There is no advertising self-regulation system in Oman.

2.5 Are the self-regulatory system's decisions reported?

There is no advertising self-regulation system in Oman.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

There is no advertising self-regulation system in Oman.

2.7 Are there any other self-regulatory systems that govern advertising practices in the Sultanate of Oman?

There is no advertising self-regulation system in Oman.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in the Sultanate of Oman (eg, consumer protection laws, IP laws, unfair competition laws)?

The Consumer Protection Law of Oman is the key law governing advertising claims in Oman. Complaints may be made to the General Authority for Consumer Protection.

3.2 Is substantiation required for advertising claims?

There are no express rules in Oman for advertising claims.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Misleading or deceitful advertising is prohibited in Oman. Advertising messages must include a title indicating:

- the content;
- the letters 'AD';
- the name of the sender;
- a free method to stop or request to stop sending the messages; and
- (if the message is sent from the company) the registration number of the company.

3.4 What are the rules governing the use of disclosures in advertising?

There are no rules governing disclosures in Oman.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no specific rules regarding endorsements and testimonials in advertising in Oman.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules regarding product demonstrations in advertising in Oman.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

There are no Omani laws which prohibit comparative advertising.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The use of copyright, trademarks or products of others in advertising is permitted, provided that consent of the author or owner is obtained prior to doing so.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Under the Consumer Protection Law of Oman, an advertiser must provide consumers with correct information regarding the country of origin of a good or service. Deceitful advertising is prohibited under Omani law.

3.10 Are there any special rules governing product packaging?

Under the Public Authority for Consumer Protection Resolution No 77 of 2017, Issuing the Executive Regulations of the Consumer Protection Law ('Consumer Protection Regulations'):

- (a) The use of bags, containers, packets or labels which do not conform to standard specifications, are defective, or harmful to health and safety, in the processing or preparation of commodities intended for sale is prohibited. A price label must be affixed to the product or its wrapper and the price must be clearly visible; and
- (b) The package of a good must display the following information in Arabic and in a clear manner:
 - origin, nature, type, essential characteristics, ingredients, components and description elements; and
 - method of use and precautions.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Deceptive advertising is prohibited under Omani law. Advertising of products which are contrary to Islamic religious values, or traditions and customs or prejudicial to public order, morals or security is also prohibited.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no specific rules on artificial intelligence relating to advertising in Oman.

4 PRICE ADVERTISING

4.1 What are the Omani rules regarding price advertising?

Under the Consumer Protection Regulations of Oman, a sale price label must be affixed to the product or its wrapper or package and the price must be clearly visible.

The pricing of products in residential accommodation, restaurants and cafes must be displayed in a prominent place, and must include the amount of tax payable, if any. Prices must be displayed in Arabic.

4.2 What are the Omani rules regarding advertising 'free' products?

There are no specific rules regarding the advertising of free products. The rules applicable to advertising of paid products are applicable.

4.3 What are the Omani rules regarding sales and special offers?

Under the Consumer Protection law of Oman, a supplier may not apply any promotions or discounts to the prices of goods and services unless with the licenses and approvals of the concerned authority after coordination with the General Authority for Consumer Protection to verify the prices in the manner stated in the Consumer Protection Regulation of Oman. The Consumer Protection Regulation requires suppliers to obtain the aforementioned authority and provide details relating to the methods, prizes, gifts and benefits, and pricing before and after an offer.

4.4 What are the Omani rules regarding rebates?

There are no specific rules in Oman regarding rebates. In the case of defective goods, the supplier is required to refund the cost of the good or replace, or repair same. In the case of improper services, the supplier shall refund the cost of the service or perform the service in a proper manner.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no other key restrictions which advertisers should be aware of.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

It is prohibited to advertise:

- pyramid schemes;
- any material that, expressly or by suggestion, discredits his Majesty the Sultan of Oman or a member of the Royal Family;
- any material posing a risk to the safety and national security of the government;
- any material detrimental to public order, or instigating crime, arousing hatred, spreading obscenity or causing social discord;
- any material offensive to Islamic values;
- any material jeopardizing the national currency or the securities market;
- any material relating to the news, pictures, and comments related to individuals, family, or private lives;
- the purchase or sale of a human organ or tissue;
- tobacco products and their derivatives in any printed, audio, video and electronic media or on billboards.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) It is prohibited under ROCSA to install or post advertising in certain places such as mosques, places of worship, ancient buildings, cemeteries and their fences, memorials, government buildings and other places designated by the relevant municipality.
- (b) Advertising through sending SPAM by SMS, MMS, email or other communications services and systems is prohibited under the RBRTS.

See full details under question 1.3 above.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Advertising of products which are contrary to Islamic religious values, traditions and customs, or prejudicial to public order, morals or security is prohibited. Drawings or pictures which accompany the advertising must also not be contrary to the religious values, traditions and customs or prejudicial to public order, morals or security.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Promotional messages must be in the form set out in the RBRTS, and must include a title indicating the content, the letters 'AD', and the name of the sender. The Consumer Protection Law of Oman requires companies registered in Oman to indicate their commercial registration number in all correspondence, including commercial advertisements when dealing with consumers.

There are no specific laws requiring identification of a sponsor.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules governing the integration of advertising content and entertainment or editorial content. Entertainment or editorial content may constitute works under Royal Decree 65 of 2008 Promulgating the law of Copyrights and Neighboring Rights; if this is the case, then the consent of the author of the work will be required before such works can be used in advertising content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special disclosure obligations when integrating advertising content with other content in Oman.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Minister of Commerce, Industry and Investment Promotion Resolution No 619 of 2022, Promulgating the Regulations on the Practice of the Activity of Marketing and Promotion on Websites and Social Media regulates marketing and promotion on websites and social media in Oman. Under this Law, a license from the Commercial Affairs and Electronic Commerce department of the Ministry of Commerce, Industry and Investment Promotion is required to market or promote any commodity or service by display or publication in writing, drawing, image, symbol, sound or any other means on websites or social media.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There are no specific laws which deal with user generated content on advertisers' webpages. However, it would be prudent for the advertiser to moderate and remove any statements that are contrary to any of the advertising laws of Oman.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no key court or self-regulatory decisions that advertisers should be aware of.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The use of an individual's name, picture, likeness, voice and identity requires the individual's consent.

9.2 Are there situations when permission is not required?

There are no situations when permission is not required.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Special clearance must be obtained for material in connection with defense, the Royal Family, the Government of Oman and Omani ports.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The use of other companies' recognizable products can be used, subject to obtaining consent from the other company.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the Sultanate of Oman which affect advertising (eg, Swedish gender equality law)?

There are no rules that are particular to the Omani culture which affect advertising in Oman.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertising of products which are contrary to Islamic religious values, traditions and customs, or prejudicial to public order, morals or security is prohibited. Drawings or pictures which accompany the advertising must also not be contrary to the religious values or traditions and customs or prejudicial to public order, morals or security.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the Sultanate of Oman?

There is no other general advice for advertisers in Oman.



PANAMA



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Panama?

There are four principal areas of law and regulation regarding advertising in Panama:

- (a) Consumer protection laws, particularly the Consumer Protection Law (No 45 of 2007);
- (b) Intellectual Property Laws, particularly copyright and trade mark law, which impact upon creative treatments and the use of third-party trade marks in comparative advertising;
- (c) Sector-specific laws that impinge upon advertising for particular goods or services, such as medicines, gambling, breastfeeding, tobacco and alcohol; and
- (d) There is a particularly significant role in our system for self-regulation. The Public Services Authority ('ASEP') has issued several resolutions regarding self-regulation in radio and television.

There are other laws regarding specific areas of advertising, such as designated areas in which to install advertisement, lighting in electric ads, etc.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Law No 45 of 2007 and Executive Decree No 46 of 2006, both regarding consumer protection, define advertising as 'information broadcast by any mean or communication form, in order to promote or offer goods or services for the final consumer'.

Additionally, Law No 35 of 1996, modified through Law No 61 of 2012, defines an advertising expression or sign as 'any caption, slogan, phrase, combination of words, design, engraving or any other similar means, that is original, identifies and it is used in order to attract the attention of consumers or users on a given product, merchandise, service, business or property'.

1.3 What is the basic regulatory framework for advertising regulation?

In general terms, the main legislation regulating advertising is Law No 45 of 2007, in which it is established that the supplier has the obligation to advertise its products or services truthfully, without misleading information of qualities or prices.

The content of Law No 45 of 2007 is enforced by the Authority for Consumer Protection and Competition Defense ('ACODECO'), ASEP and the Judicial System.

In addition, there are several consumer associations, formally constituted through the territory of the Republic of Panama and recognized by ACODECO, that also contribute to the enforcement of Law No 45 of 2007.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) **TV and Radio:** Executive Decree No 189 of 1999 establishes that advertising in local radio and TV must comply with Panamanian laws regarding alcohol, health products and drug addiction. This Law also prohibits local TV and radio from broadcasting advertisements:
 - regarding health activities or services without pre-approval;
 - with subliminal stimuli; or
 - narrated by unauthorized broadcasters.

- (b) **Email and other equivalent electronic communication media:** Law No 51 of 2008 regarding e-commerce states that email advertisements must be identified with the term 'advertising' in such a way that the email account owner realizes it is advertising before opening the correspondence; additionally, email advertisements must contain an option to block future communication of that nature and from that sender.
- (c) **Text Messages:** Resolution AN No 3887-Telco of 2010, forbids telephone service-providers from sending promotional text messages to users other than those who are subscribed to their company and active in their data base as receivers of SMS/MM for commercial and/or promotional broadcasting. Moreover, any pre-paid or post-payment customer may file a request to stop receiving commercial or promotional messages in writing, by telephone, or in person. The company is obliged to carry this out within a period of 8 hours and at no cost. Additionally, this resolution also provides that the allowed timeframe to send promotional text messages is from 8.00 am to 8.00 pm.
- (d) **Foreign advertisements:** Executive Decree No 273 of 1999 determines that advertisements produced abroad can only be displayed on local TV and in cinemas if an authorized Panamanian broadcaster has dubbed the voices in them.
- (e) **Billboards:** Each district of Panama has a Municipality Office which must enact the rules regarding billboard installation in their respective territories; because of this there is extensive legislation in this area. However, the general rules are that:
 - billboards require pre-approval;
 - billboards require payment;
 - billboards must be of certain size; and
 - the content of billboards must be in accordance to the rules of morality and good morals.
- (f) **Audiovisual advertisement:** According to Executive Decree No 1 of 1978, modified by Executive Decree No 109 of 1980, audiovisual advertisements for Panamanian radio, TV and cinema, must be in Spanish and produced in Panama and performed by national artists.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are several industries that are subject to specific laws which govern their advertising, and/or have particular, specific provisions in legislation that apply to them. These are some of the main ones, but the list is not exhaustive:

- (a) **Alcohol:** Law No 299 of 1992 details that alcohol advertising shall not, among other prohibitions:
 - stimulate abuse in consumption;
 - use models or testimonials from persons under 21 years old;
 - be directed to minors;
 - be placed in programs where the audience is mostly children and adolescents or in psycho-pedagogical orientation programs;
 - use obscene elements;
 - encourage illegal activities; or
 - display models ingesting alcoholic drinks.

In addition, alcohol advertisements must display messages such as: ‘do not drink when driving, driving under the effect of alcohol increases the risk of accidents’ and ‘alcohol can produce brain, fetus and liver damage’.

- (b) **Tobacco:** All forms of advertising, promotion and sponsorship of tobacco and its products, whether through indirect or subliminal means, aimed at minors or adults are prohibited by Law No 13 of 2008.
- (c) **Medicines:** Prescription-Only-Medicines are heavily regulated, and can only be advertised in advertising directed at medical professionals. Over-the-Counter medicines can be advertised to consumers, subject to pre-approval.
- (d) **Cosmetics, food supplements and pharmaceutical products:** Advertising for cosmetics, food supplements and pharmaceutical products can encounter problems if they make claims alleging to prevent, treat or diagnose a disease, illness, or adverse condition. They are also subject to pre-approval.
- (e) **Drug-Addiction Prevention:** Law No 48 of 1996 orders local TV networks to display anti-drug-addiction messages in between documentaries or series with drug content. Radio stations and newspapers must include at least one anti-drug message a day.
- (f) **Breastfeeding:** Law No 50 of 1995 that promotes the importance of breastfeeding, heavily regulates the advertisement of growth formulas directed to children from one year old. Additionally, advertisement of formulas directed to children under the age of one is forbidden.
- (g) **Gambling:** Promotions and raffles can only be advertised after approval has been given by the Game Control Board.

1.6 Are any government pre-approvals required?

- (a) Advertisements regarding health-related products (including medicines, cosmetics, alcohol, and food supplements) must be pre-approved by the Advertisement Commission of the Ministry of Health.
- (b) The Panamanian Game Control Board is in charge of approving gambling games or promotions.
- (c) The Municipality Office must give its consent prior to the installation of a billboard.

1.7 Does the media pre-clear advertising?

No, there is no private entity of such nature, although there are self-regulation agreements that have been adopted by local TV networks and radio stations.

1.8 How does the government enforce advertising laws? What are the potential remedies?

In Panama, the main entity supervising advertisement compliance is ACODECO, which is entitled to do so according to Law No 45 of 2007. It establishes the link between advertising and supplier, highlighting the importance of truthful information. ACODECO's Complaints Department has the power to enforce advertisements in cases up to US \$2,500. ACODECO can impose fines for up to US \$25,000 per offence. ACODECO can act *ex officio* or based on a complaint lodged by a consumer.

Advertisements regarding health products must be pre-approved by the Advertisement Commission of the Ministry of Health. If an advertisement is not pre-approved or does not comply with regulations, the Commission can impose fines from US \$5,000. These fines are notwithstanding the health consequences for costumers.

The Panamanian Game Control Board is in charge of approving gambling games or promotions, and has the power to impose fines on those who advertise gambling games that have not been pre-approved, or do not show the approval resolution number. The fines can go up to US \$100,000.

The Municipality Office approves the installation of billboards; however, it does not regulate their content. Fines for illegally installed billboards can go up to US \$10,000.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor has the right of action in cases of:

- (a) **Unlawful use:** Where their trademark is used to compare it to a similar or identical one, with the purpose of destroying its distinctiveness or commercial value, causing harm to the owner;
- (b) **Unfair competition:** Where false information is used against a certain establishment, its products or services, with the purpose of diverting the client to another establishment; and
- (c) **Advertisement expression/trademark registration:** If a third party tries to register or effectively registers a trademark or advertisement expression identical or very similar to one of the competitor's property.

In the case of unlawful use and unfair competition, the affected party has a right of civil action (in the Unfair Competition and Consumer Protection Civil Courts or the regular Civil Courts) to request the suspension of the prejudicial acts and reparation or damages. The plaintiff is required to prove that:

- it was identified by the relevant statement or claim;
- the claim was not merely misleading, but actually false; and
- the claim has caused them damage.

In the case of advertisement expression/trademark registration, the affected party can file an opposition action against the registration of the trademark. If the trademark is already registered, a nullity/cancellation action can be initiated. Both opposition processes and nullity/cancellation actions can be initiated in the Unfair Competition and Consumer Protection Civil Courts. The affected party must prove:

- the previous use or registration of the original advertisement sign or trademark; and
- that the application or registration is similar or identical in such a way that can confuse consumers.

1.10 When do consumers have a right of action? What are the potential remedies?

- (a) Consumers can file a complaint in ACODECO in cases for:
 - lack of sufficient information in advertisements,
 - misleading advertising,
 - non-compliance of an agreement,
 - abusive practices, and
 - in general, any situation where they feel their rights are being compromised.

ACODECO's Complaints Department can act in cases up to \$2,500. ACODECO can impose fines for up to \$25,000 per offence.

- (b) When the claim exceeds US \$2,500, the consumer may file a lawsuit at the Unfair Competition and Consumer Protection Civil Courts. These specialized courts have competence over any controversy resulting from an individual or collective claim born out of a consumer relationship.
- (c) Criminal actions can be initiated in cases when the offer or advertisement of products or services includes false information or characteristics that lead to serious injuries or harm. This is punishable with one to three years of prison.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Panama have a primary advertising self-regulation system?

There are self-regulation agreements that have been adopted by local TV networks and radio stations.

2.2 Is there a self-regulatory advertising code? What are the key principles?

There is no specific law or code of advertising self-regulation; however, there are two documents (i) between local TV companies and (ii) between radio stations, agreeing to self-regulate their content. The ASEP adopted the TV agreement by means of Resolution No JD-1556 of 1999, and the Radio agreement through Resolution No 3285 of 2002.

The principles for both radio and TV are that advertising must not:

- praise intentional violence and cruelty towards people;
- attack the dignity or discriminate people based on their race, color, gender, religion and ideology;
- praise the use of illegal drugs, alcohol and cigarettes;
- show scenes or messages of explicit sexual content lacking educational substance; or
- use obscene language.

Whilst the agreement between TV networks stipulates the content with those characteristics may be broadcast from 8.00 pm, radio stations agreed on 10.00 pm.

These agreements specifically address content, not advertising; however, it is customary to also self-regulate advertising based on these principles during these specified time frame.

In addition, ASEP's Executive Decree No 189 of 1999 establishes that advertising broadcast by local TV and radio stations is not subject to pre-approval by any authority (except when law requires it).

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

There is no mechanism of such nature.

Government agencies will enforce advertising laws when the self-regulatory system has failed to work and there is a serious issue of consumer detriment, or if advertising is broadcast without the proper pre-approval.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Generally speaking, the self-regulation system is effective: local TV networks and radio stations will, in most cases, broadcast appropriate content in the specified time frame. A report approved by representatives of the Panamanian television industry is delivered to ASEP's Advisory Board, which includes the following criteria that are currently in use:

- Category A will be a program aimed at children;
- Category B can be viewed under the guidance of an adult;
- Category C for people that fulfill further criteria (adult audience); and
- Category D is exclusively for adults.

2.5 Are the self-regulatory system's decisions reported?

No, these self-regulated system decisions are not reported.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

In Panama, there have been occasions on which billboards with controversial content have been installed and the government has refused to order their removal on the grounds of free speech. On occasion, the advertising agency, its client or the media are contacted by the Catholic Church or civil society representatives in general, and end up removing or modifying the content.

2.7 Are there any other self-regulatory systems that govern advertising practices in Panama?

Advertising agencies will rarely refer to international standards of advertising ethics in order to know if their content is according to certain principles.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Panama (eg, consumer protection laws; IP laws; unfair competition laws)?

Advertising claims are closely monitored by ACODECO. Law No 45 of 2007 indicates that any type of publicity, whether promotions of products and services, advertisements or publicity campaigns, must be true, authentic, visible, legible, truthful and without ambiguity. Also, the advertising must clearly indicate the terms of the promotions, sales, discounts and special conditions of the goods and services that are being offered. Audio and multimedia advertisements are also monitored by ACODECO.

Law No 5 of 2007 establishes the definition of unfair competition, stating: 'Unfair competition is where false information is used against a certain establishment, its products or services, with the purpose of diverting the client to another establishment.

3.2 Is substantiation required for advertising claims?

According to Law No 45 of 2007, manufacturers, importers and distributors are responsible for the suitability, quality and truth of commercial advertising and the qualities attributed to products and services.

Likewise, the company authorizing, paying or requesting the broadcast of such advertisement is linked to all claims, information or offers made public through any media, which become part of the sales contract between buyer and seller.

Generally, substantiation must show that there was a ‘reasonable basis’ for making the claim.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Panamanian law does not regulate ‘puffery’, nor does it state criteria for its acceptance; however, the law does state that any advertisement will be considered deceptive or misleading when it causes consumer error or confusion as a result of an exaggerated portrayal of the characteristics and information of a product or service.

As a guiding principle, the law does not make exceptions for any advertising practice from the general requirement to be truthful.

In view of the above, a conservative approach to mitigate a potential risk would be to take measures to ensure that the advertising sticks closely to the truth, and to avoid puffery, as it could be considered misleading advertising or lacking sufficient information; both practices are considered an offense against the consumer.

3.4 What are the rules governing the use of disclosures in advertising?

All disclaimers to advertising claims should be disclosed in a clear and conspicuous manner. A disclaimer cannot ‘cure’ an otherwise false or misleading advertisement, it can only enhance or clarify the language.

Panamanian Law states that footnotes, disclaimers, disclosures or legends which clarify, constrain, restrict or limit the use of any product or service must be visible, legible, clear, true and without ambiguity. In any kind of disclaimer, the font size, phrase or duration must be proportionate to the rest of the ad. Thus:

- (a) in TV advertising, the disclosure message should last at least half the duration of the television advertisement;
- (b) with respect to radio, messages to clarify, constrain, restrict or limit the use of goods or services must be announced at the end of the ad at the same speed as the announcement, so that they can easily be heard and analyzed; and
- (c) as to announcements made by means of written or printed communication, messages must be displayed using a contrasting, legible and clear color.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Advertising based on testimonials must be true and authentic. ACODECO is empowered to request providers of the advertised product or service for the identification, address, and general data of the people offering testimonials, with the purpose of proving their statements. The provider must have the appropriate information available for ACODECO for a six-month period in case it is necessary to prove the claim.

Even though endorsements are not specifically addressed in Law No 45 of 2007, it is understood that this rule applies to them too.

3.6 What are the rules governing the use of product demonstrations in advertising?

Demonstrations must accurately reflect how the product works without any ‘embellishment’ or ‘artificial enhancements’.

A notary public must be present when the demonstration is made in order to make it valid.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is allowed, to the extent that it is not intended to:

- cause any damage or dilution to the distinctiveness of a third-party trademark, or
- cause any disparagement, or discredit with false statements, the trademark owner’s products and services.

3.8 Are there any special copyright or trade mark rules that may impact comparative advertising (eg, whether a competitor’s trade mark or products may be used)?

Use of third-party trademarks in comparative ads is not expressly prohibited by Panamanian Law, if it complies with the points made in question 3.7. However, a competitor that feels that its trademark is being affected by such comparative advertisement may file a complaint for unlawful use or unfair competition, as explained in question 1.9.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

Claims related to geographical indications, indications of origin and appellations of origin were effectively introduced into the Panamanian Trademark Law by Law No 61 of 5 October 2012:

- (a) **Geographical indication:** This identifies a product as originating in the territory of a country, or a region or locality of that territory, when a certain quality, reputation or other characteristic of the product is attributable fundamentally to its geographical origin.
- (b) **Indication of provenance:** This is the expression or sign used to indicate that a product or service comes from a country or a group of countries, a region or a specific place.
- (c) **Appellation of origin:** This is the name of a country, a region or a locality, which serves to distinguish a product originating from there and whose quality or characteristics are due exclusively or essentially to the geographical environment, including natural factors and human factors. The denomination of a product that, without being a geographical name, denotes a geographical origin when applied to that product whose quality, reputation or other characteristic is essentially attributable to its geographical origin, will also be considered as denomination of origin.

In addition, the law includes the procedures and requirements requested by the Trademark Office when making a claim for a geographical indication, indication of origin or appellation of origin.

The Law also provides that claims relating to geographic origin can be challenged through a cancellation or nullity action through Unfair Competition Civil Courts.

3.10 Are there any special rules governing product packaging?

Effectively, under Law No 45 of 2007, there are general rules for product packaging. In addition, there are other regulations for packaging of particular goods, such as food products, medicines, and goods that require special treatment due to their dangerous composition.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

‘Dark patterns’ is a relatively new term and does not appear in Panamanian laws. Nevertheless, dark patterns will affect consumers, since these practices encompass a range of misleading advertising practices that have long been regulated under Panamanian consumer protection laws, particularly Law No 45 of 2007.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

AI-generated advertising is a relatively new concept and is not expressly regulated by the Panamanian laws. Nevertheless, AI-generated advertisements that reach consumers in Panama must comply with the general principles of our Panamanian consumer protection laws, particularly Law No 45 of 2007 and our Intellectual Property Laws.

4 PRICE ADVERTISING

4.1 What are Panama’s rules regarding price advertising?

The price on products or services must be clear and accurate, and in no way may it deceive consumers or induce them into error or confusion. Any product which is sold below its regular price or at a discounted price must have a tag that indicates the lowest price at which it was sold in the last 3 months. Suppliers or retailers must inform consumers of the duration of the special offer and/or the minimum number of products available under the offer.

If a product is mistakenly tagged at the wrong price, the lowest price will prevail.

4.2 What are Panama’s rules regarding advertising ‘free’ products?

Panamanian legislation does not regulate the use of the term ‘free’ on products or services; however, it does state that the price on products or services must be clear and accurate, and may in no way deceive consumers or induce them to error or confusion.

Please be aware that a ‘free’ product may create a tax obligation (VAT), and it is advisable to include this provision in any advertising of such nature.

4.3 What are Panama’s rules regarding sales and special offers?

In any kind of special sale, offer or discount, a tag must be visible showing the lowest price of the product in the last three months and the new discounted price.

The establishment must clearly show whether products throughout the whole store are in the sale or if the sale applies only to a few particular items.

It is forbidden to show marked-up prices to deceive consumers into believing that there is a sale or special offer, when there is not.

Suppliers or retailers must always inform customers as to the duration and/or the minimum number of products available under the special offer.

4.4 What are Panama’s rules regarding rebates?

There are no rules specifically regarding rebates. The general rules of advertising law will apply.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The main thing that ACODECO seeks is truthful information.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) All forms of tobacco advertising are prohibited by Law No 13 of 2008.
- (b) Advertising of prescription drugs through packaging, labels, inserts, etc is prohibited.
- (c) Advertising of prescription drugs may only be directed at professionals.
- (d) Unauthorized persons are forbidden to advertise therapeutic treatments, cures and medications.
- (e) Local TV and radio are forbidden to broadcast advertisements:
 - regarding health activities or services without pre-approval;
 - with subliminal stimuli; or
 - narrated by an unauthorized broadcaster.
- (f) Law No 57 of 2011 establishes that importers and merchants that distribute firearms, their accessories and ammunition are forbidden to promote and advertise these products without warning the public about the dangers of irresponsible use of firearms.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

By Resolution No JD-018-93, it is forbidden to place advertising on any kind of tree on streets, highways, trails and public parks, by means of nails, wires, glue, or other methods that compromise the life of the tree.

For regulation (not prohibition) of advertising practices, see question 1.4 above.

On a side note, telemarketing is allowed under Panamanian legislation.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) The Panamanian Constitution provides that ‘Social communication media are instruments of information, education, recreation and cultural and scientific diffusion. When used for publicity or propaganda, those should not be contrary to the health, morals, education, and cultural formation of society and national conscience. Its operation will be regulated by law’.
- (b) In addition, self-regulation agreements between local TV networks and radio stations stipulate certain timeframes in which obscenity will not be broadcast. See question 2.2 above.
- (c) The Criminal Code also contains some provisions in connection with the content of publicly available material. It penalizes the action of offending the dignity, honor or decency of another person through any means of communication.

- (d) The Family Code (Law No 3 of 1994) clearly states that mass media entities must respect the moral values, and the physical and mental health, of minors.
- (e) Law No 35 of 1996 prohibits the registration of trademarks contrary to morality, public order and good customs.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Executive Decree No 45 of 2009 establishes that offers of goods and services made through telephonic sales, catalogs, mail, or by any means of communication must display the name and address of the company.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules of this kind. For general advertising rules see section 3 above.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no obligations of this kind that we are aware of. For general advertising rules see section 3 above

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules of this kind. General rules of advertising apply to social media.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Where a consumer makes a statement on an advertiser's Facebook page, both the consumer and the advertiser will be responsible for the content; the first for being the intellectual author of the content and the second for allowing the information to be displayed on the platform.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no key court decisions regarding social media that we are aware of.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

There are several provisions governing an individual's identity and personal data:

- (a) establishes that the State guarantees respect for intimacy, personal freedom, security and family honor. It also provides that every person has the exclusive right over their image, which cannot be reproduced publicly in any way without the owner's consent, even in cases when it has been captured on public places.
- (b) Law No 64 of 2012 states that someone's portrait cannot be commercialized without their consent.
- (c) Law No 35 of 1995 forbids the use of names, pseudonyms, signatures and portraits of third parties without the consent of the owner.

Furthermore, please note that the name of a person and their picture constitute personal data that can enable a person to be identified. Consequently, according to the Political Constitution of Panama, this kind of data is protected in the Panamanian territory. Bearing this in mind, in order to use such information, it is a requirement to have the authorization or consent of the owner of the data.

9.2 Are there situations when permission is not required?

- (a) According to Law No 3 of 1994, consent is not required when the images constitute information of public interest; however, such use must take into consideration human dignity.
- (b) In addition, Law No 64 of 2012 has a similar exemption: the publication of someone's portrait will not require the owner's consent when it relates to scientific or cultural matters, or where it constitutes public interest.
- (c) Law 6 provides an exception to the prohibition against the use of names, pseudonyms, signatures and portraits of third parties without the consent of the owner in the case of historic characters.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

The Panamanian State, according to Law No 34 of 1949, is the owner of the national symbols' intellectual property rights (flag, coat of arms and national anthem); therefore, it is necessary to request permission to use such rights for commercial purposes. The State can also reserve the right to ask for royalties.

Advertisers wishing to use historic places in advertising have to obtain prior approval from the Historic Heritage Department of the National Institute for Culture to use the location.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

See answer to question 3.8 above.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Panama which affect advertising (eg, Swedish gender equality law)?

Law No 4 of 1999 regarding equal opportunities for women establishes that the media should avoid messages and images that imply the superiority or inferiority of men or women.

Law No 3 of 1994 states that mass media entities must respect the morals, physical and mental health of minors. This Code establishes that selling, lending or in any other way providing minors with publications, movies or cassettes (although not expressly mentioned, advertising could be considered as one of these) that offend the morality or disturb the integral development of minors and youth may be punished with imprisonment from 1 to 12 months and a fine of up to US \$25,000. The same sanction applies to those who, through publicly available material, encourage crimes, corruption or bad habits.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Panamanian Law No 20 of 2000 establishes a special intellectual property regulation for the collective rights of the indigenous population, in order to protect their cultural identity and traditional knowledge. It provides that the indigenous population has exclusive rights over their creations. The norm implies that any use of their creations by a third party has to obtain prior permission; although the norm does not expressly mention advertising, it could be considered as one of the cases when pre-approval is required.

Additionally, is important to have in mind when advertising sensitive issues that Panamanian society is mostly Catholic and fairly conventional; the Church plays an important role in shaping the views of the general population. Therefore, a conservative approach might be to take measures for the content to be relatively traditional in order to avoid controversy.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Panama?

As a general advice, it is strongly recommended that companies regularly advertising in Panama, to obtain legal assistance, before advertising content that includes regulated information.

 PARAGUAY 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Paraguay?

In Paraguay, there are several norms, rules and laws that regulate advertising and propaganda through the mass media, including, inter alia:

- the Law on Consumer Protection;
- the Trademark Law; and
- the Law on Advertising and Promotion of Tobacco and Alcoholic Beverages.

In addition, there is an Advertising Self-Regulation Code, established by the Centre for Regulation, Standards and Studies of Communication ('CERNECO') (see question 2.2 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

In general, the different laws applicable to advertising/publicity do not give a definition of 'advertising'. However, the Law on Advertising and Promotion of Tobacco and Alcoholic Beverages defines commercial advertising or publicity to include 'information that aims to guide, induce or stimulate the purchase or consumption of certain products or brands'.

1.3 What is the basic regulatory framework for advertising regulation?

There is no specific legal framework in Paraguay that exclusively concerns advertising as an independent topic, with the exception of advertising relating to certain products (such as tobacco or alcoholic beverages). On the contrary, its regulation is disseminated amongst several rules and laws, such as the Law on Consumer Protection and the Trademark Law, among others, as discussed in question 1.1 above.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

No—in Paraguay there is no specific legislation regarding advertising; and so advertisements can be disseminated freely, without major restrictions, except for certain exceptions:

- (a) **Cable television and radio broadcasts:** providers of such services require a prior license from the competent government authority (although this is actually a requirement for service providers (television channels and radio stations) rather than the advertising agencies themselves.
- (b) **Outdoor advertising:**
 - The Law on Road Safety and Traffic, together with its Regulatory Decree, imposes a series of delimitations regarding commercial advertising to be carried out on public roads. In this sense, signs, demarcations or elements that resemble road signs that affect the driver's range or scope of view cannot be placed or maintained on public roads. Also, commercial advertisements or other elements that may affect the driver's range or scope of view or the proper perception of traffic signals cannot be placed on the public highway and domain strip.
 - Signs and other types of advertising should be placed outside the safety zone (in the case of rural areas), and should not be placed on sidewalks, in areas of prolongation

of pedestrian paths, on the edges of the road, or on public transport stops (in the case of urban areas), nor in places that could impede normal pedestrian traffic or interrupt or confuse visibility from the road.

- Ads relating to alcoholic beverages cannot be placed on public roads.
- In addition, under a Resolution issued by the Municipality of Asunción, advertisements located in the public domain, including plazas, parks, sidewalks, etc, must comply with a series of requirements in terms of size, material to be used, among others.

- (c) **Mobile phones:** In 2017, Law No 5830 was issued, establishing a National Registry within the Office of Consumer Protection, whereby consumers and users of mobile phone services may register their names and phone numbers in order to ban corporations and individuals from remitting to such numbers any unsolicited/unwanted advertising.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes—the advertising practices of industries that manufacture and market certain products, such as alcoholic beverages, tobacco, pharmaceutical products, among others, are specifically regulated as follows:

- (a) **Alcoholic Beverages:** The Law of Advertising and Promotion of Tobacco and Alcoholic Beverages establishes a series of norms regarding the diffusion and promotion of these products, including:
- the hours during which alcoholic beverages can be advertised on television (8.00 pm to 6.00 am);
 - health warnings to be included in the advertising of such products in the written press, or on public roads or spaces of public access, which shall include the legend: ‘excessive consumption damages health’ and ‘sale is forbidden to children under 18 years of age’;
 - formats that cannot be adopted or included in advertising of alcoholic beverages; eg, the incorporation of images of minors or images related to familiar environments, which could induce abuse or excessive consumption, among others;
 - the requirement that the content of the publication should be informative and not persuasive; and
 - other prohibitions, such as the prohibition on using images of athletes, or on the installation of posters, murals, etc near educational institutions, health establishments and public administration premises.
- (b) **Tobacco:** In December 2015, Law No 5,538 was sanctioned regulating different aspects of the consumption and advertisement of tobacco and tobacco products, by which the publicity, advertisement, sponsorship and promotion of tobacco products by all means of communication (including TV, radio, newspapers, magazines, mobile phone, internet, mailing propaganda and advertising signs) is strictly prohibited, with the exception of publicity carried out within the store, shop or sales point where the products themselves are offered. With regards to the labeling of such products, the Law further stipulates that that health messages and warnings describing the harmful effects caused by tobacco must be written on every box, package, parcel or container of tobacco products. Such warnings must

be placed on the external sides or main areas displayed, and must contain the warning message to be approved by the Ministry of Health in clear, visible and colored letters, among other requirements.

- (c) **Dietary Supplements:** The advertising of dietary supplements is regulated by Decree 3586/15, according to which, inter alia:
- the advertisement of a dietary supplement must be limited to a description of the actual benefits attributed to each of the supplement's ingredients and the features of the product's composition, and must not expand on any alleged benefits nor present information that could confuse or deceive the consumer regarding the composition, origin, properties, etc of the product;
 - the advertising must be truthful and, inter alia, must state the full characteristics of the product and must not induce consumers to acquire any particular eating habits in order to allegedly improve or preserve their health. The same must be in line with a healthy lifestyle; and
 - advertising for dietary supplements must not attribute a higher nutritional value to the product than it actually has, nor must it affirm that, in itself, it fulfills a person's nutritional requirements.
- (d) **Food:** Advertising in relation to food is regulated by the Health Code, which provides that any advertising that falsely attributes therapeutic properties to food, or that misleads or deceives the public in terms of its nature, quality or origin, is prohibited. There are also special rules relating to labeling of pre-packaged foodstuffs. See question 3.10 below.
- (d) **Medicines and pharmaceutical products:** The Law on Health and Other Products provides that only medicines and pharmaceutical products. that:
- do not require medical prescription,
 - are intended for the relief or treatment of minor symptoms, and
 - have a wide margin of safety,
- may be publicized directly to the public. Advertising messages must comply with the conditions and requirements for which the product was registered and should not induce self-medication, abuse or indiscriminate use, nor include expressions that claim special healing guarantees for medicines. The Office of Health Surveillance has the power to limit or prohibit the advertising and promotion of medicines, and the advertising of medicines not registered in the country is prohibited.

1.6 Are any government pre-approvals required?

Government pre-approvals are required only in relation to advertisements to be displayed in places considered public or in the private municipal domain of the City of Asunción (eg, squares, parks), which require prior authorization from the municipal authorities.

1.7 Does the media pre-clear advertising?

Not generally, although those who carry out commercial advertising for medicines must ensure that they are duly registered in the country and that they do not circulate illegally.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The State executes or enforces the laws related to advertising through various administrative bodies and judicial authorities appropriate to the rule that has been infringed.

Thus, for example, the Office of Health Surveillance is the body in charge of applying the rules related to advertising of medicines marketed in national territory and of applying the appropriate sanctions, which include reprimand, fines, confiscation and suspension or cancellation of the corresponding health registration. In addition, this authority has the power to order, as a precautionary measure, the suspension of all advertisement of unregistered drugs or those illegally traded. It also has the power to prohibit certain types of advertisements that are against the public interest. The sanctions are imposed following an administrative trial before the corresponding body.

Likewise, infringement of the norms that regulate advertising contained in the Law on Consumer Protection are surveilled by the Office of Consumer Protection, which is in charge of imposing and determining the applicable sanctions following an administrative trial.

1.9 When does a competitor have a right of action? What are the potential remedies?

- (a) **Unfair competition:** Competitors, or individuals or corporations who consider themselves injured by the conduct or practices of firms whose activities are similar to their own, are entitled to pursue their rights under the rules that regulate unfair competition under the Trademark Law and the Merchant Code.

The Trademark Law establishes the acts and practices considered ‘unfair competition practices’, which include:

- acts likely to cause confusion or a risk of association with respect to the products or services of a third party; and
- the use of false indications or allegations capable of denigrating or discrediting the products or services of third parties.

The Merchant Code establishes a prohibition on acts of ‘unfair competition’, namely:

- the use of names or distinctive signs that could cause confusion with those legitimately used by third parties;
- the imitation of a competitor’s products or the performance of other acts likely to create confusion with the products or activity of that competitor;
- the dissemination of news or plaudits about the products or activity of a competitor when the same could cause its discredit or the appropriation of the merits of the product; and
- the use of any means contrary to the principles of professional ethics that could cause damage to the competitor.

In the event of any of the aforementioned acts, the injured party has the right to file a lawsuit before the Civil and Commercial Courts of First Instance for the purpose of stopping the commission of the harmful acts or preventing their repetition, and obtaining reparation for damages and losses caused. A claim should be brought within the period of two years after the party has gained knowledge of the harmful acts, or, at any rate, four years from the last date on which the act/practice was committed.

- (b) **Trademark infringement:** Additionally, under the Trademark Law, the owner of a trademark has the right to initiate a civil action for infringement of its rights against those who apply or place the same or a similar sign on products or services identical or linked to those protected by the trademark in question. Action may be brought even where the actions of third parties may generate a risk of association with the trademark of the owner, or where there is a risk of dilution of the distinctive force of the trademark. Such action has, as its

object, the cessation of illegitimate acts and the payment of the costs of the trial, as well as the seizure or confiscation of the products in violation, including printed or advertising material.

Also, under the Trademark Law, in accordance with the Criminal Code, the fraudulent imitation of a trademark, the placing in trade of counterfeit trademarks and the illegitimate promotion of a protected trademark, constitute a punishable act, subject to prosecution by the criminal authorities, which can lead to sanctions such as imprisonment and fines.

Simultaneously with action for infringement, the owner of a trademark can request the cessation of acts that constitute infringement, or seizure of the products and advertising media as precautionary measures.

1.10 When do consumers have a right of action? What are the potential remedies?

- (a) Consumers have the right to act when third parties violate any of the rules contained in the Law on Consumer Protection related to advertising. In this sense, when suppliers or advertisers:
- provide false or incomplete information to consumers,
 - do not meet the specific requirements for the advertising of certain products, or
 - make an advertisement that may be considered deceptive, inter alia,
- the consumer has the right to present a complaint to the Office of Consumer Protection (SEDECO), a department the Ministry of Industry and Commerce, which will then ask the company to answer the complaint or claim within five days. After that, the parties are summoned to a conciliation hearing and, usually, the process ends at this stage with an agreement between the parties. If there is no agreement, SEDECO will instruct an administrative trial and impose the corresponding sanctions.
- (b) Also, consumers can also resort to the civil and commercial courts for the purpose of obtaining compensation for damages in cases where they can reliably prove damage caused by illicit advertising.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Paraguay have a primary advertising self-regulation system?

Yes—through the Centre for Regulation, Standards and Studies of Communication (‘CERNECO’), a non-profit association whose objective is the dissemination, study and correct application of legal norms related to advertising and communication. CERNECO is an advertising self-regulation entity that has issued a Code that must be respected/observed by its partners and members. It is made up of representatives of most sectors of the communication and advertising industries in Paraguay, including advertisers, advertising agencies, media, and government agencies, among others. Currently, it has approximately 70 associates.

The body surveilling the Self-Regulation Code is the Self-Regulation Council (‘CONAR’), an internal body responsible for the verification of complaints submitted, the performance of the investigative process, and the imposition the corresponding sanctions where applicable.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes, CERNECO has issued a Self-Regulation Code, the main objective of which is to establish the rules to be respected and abided by advertisers, advertising agencies, media, and associated companies in the creation and dissemination of advertising messages to consumers. The Code gives definitions for certain terms such as ‘advertising’ (which includes not only communication to the public made through the media, but also in the packing and packaging of the products), ‘advertising agency’, ‘media’, among others. CERNECO’s members commit to comply with the ethical principles established throughout the various norms that constitute the Code.

Some of its principles are:

- the precedence of the consumer’s interest over the advertiser’s interest;
- ‘case by case’ analysis of advertising messages;
- social responsibility;
- free competition;
- respect for the dignity, privacy, family nucleus and social interest of individuals and public and private institutions as well as national symbols;
- respect for morality, good customs and public order—advertising should not incite the commission of crimes or dangerous practices; and
- the subjection of advertising to principles such as veracity, loyalty, decency, honesty, legality, fair competition and reliability.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Yes, the system has such a mechanism through the CONAR. It works in the following way:

- (a) Submission of a complaint (verbal or written), addressed to the President of the CONAR, alleging violation of one of the norms contained in the Code, with presentation of the corresponding evidence;
- (b) Board meeting and analysis of the complaint;
- (c) Notification to the defendant to answer the complaint within four days, and submit the corresponding evidence for acquittal, if any;
- (d) Conciliation hearing;
- (e) If there is no conciliation, CONAR continues the process, issuing a decision within ten business days. Such decision may be appealed through the Review Resource;
- (f) Sanctions which may be imposed are:
 - exhortation to the party to correct or withdraw the relevant advertisement or advertising campaign;
 - public warning;
 - suspension of CERNECO member status; and
 - expulsion from CERNECO.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system works quite well and is quite effective. In general, during the conciliation hearing, the parties reach an agreement and the imposition of any subsequent sanction is dispensed with.

The system is generally used by companies, but is rarely used by consumers, due to lack of knowledge of this mechanism amongst the general public.

2.5 Are the self-regulatory system's decisions reported?

In general, they are not, although they can be published if CONAR so provides in its decision.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Key principles include:

- (a) Advertising must be truthful, adequate and complete and must respect people's dignity, privacy and honor, as well as national symbols and public and private institutions; it must not incite the commission of crimes or dangerous activities.
- (b) Advertising should not promote racial, social, political, religious discrimination, etc.
- (c) Advertising must not deceive or mislead consumers as regards the information and statements contained therein, and must provide certain mandatory information regarding the characteristics of the product or service, including, inter alia:
 - value,
 - price,
 - terms of guarantee,
 - quality, and
 - origin.
- (d) Advertising that refers to research or scientific information must be supported by an identifiable, verifiable, and available source.
- (e) Advertising must respect the intellectual and industrial property rights enshrined in national legislation. No trademarks, slogans, themes, visual presentation, musical or sound effects or concepts of third parties may be used unless authorization has been obtained. This prohibition also applies to advertising campaigns that have been made in other countries, and so advertising, media or advertising agencies should refrain from reproducing ads, totally or partially, without proper authorization.
- (f) Comparative advertising should be objective and have the purpose of informing the consumer about the proven advantages of the product against the competition, but should not denigrate any competing product. It is acceptable as long as:
 - the comparison is only made with products that are subject to comparison, association or that may bear a similarity or refer to similar products/services;
 - it highlights the advantages of the advertised product rather than the disadvantages of the product used in the comparison; and
 - the rights of third parties are respected.

These are some of the fundamental principles contained in the Code, although there are others related to respect for people, the environment, the advertising of consumer loans, insurance and investments.

2.7 Are there any other self-regulatory systems that govern advertising practices in Paraguay?

No—there are no other self-regulatory systems other than CERNECO.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Paraguay (eg, consumer protection laws, IP laws, unfair competition laws)?

The main rules that regulate advertisements are:

- the Trademark Law, which includes a chapter related to unfair competition; and
- the Law on Consumer Protection.

There are also rules related to advertising disseminated throughout different legal rules and laws, namely:

- the National Constitution, regarding the protection of dignity, privacy and respect for the origin and ideology of the people, as well as free competition in the market; and constitutional remedies, such as habeas data (which is an individual complaint that may be filed by any person who considers their private data has been violated by a third party with the purpose of obtaining an immediate order from the Court compelling such third party to cease the infringement and aiming at the 'restoration or amendment of the damages caused by such infringement');
- the Criminal Code, with regard to the protection of intellectual rights, privacy and confidentiality of individuals, their honor and reputation, the protection of personal data and property in general;
- the Code of Childhood and Adolescence, which contains certain rules in relation to advertising aimed at minors or features children;
- the Health Code and the Law on Health and other Products etc, regarding the advertising of medicines, foods and dietary supplements;
- Law No 7092, which makes it mandatory to display front of pack warning labels on processed and pre-packaged food, marketed in the national territory, which exceeds thresholds for sugar, saturated fat and sodium content (see question 3.10 below);
- the Electronic Commerce Law on internet advertising;
- decrees and resolutions of the Office of Health Surveillance (regarding food advertising and dietary supplements); and
- MERCOSUR technical standards (incl food labeling etc).

This list is not exhaustive and there are laws, decrees and administrative resolutions applicable to specific cases, products and services.

3.2 Is substantiation required for advertising claims?

Yes. Pursuant to the CERNECO Self-Regulation Code, all advertising must be clearly identifiable as such and must identify the advertising firm; anonymous advertising is prohibited. In addition, advertising that refers to research or scientific information must be supported by an identifiable, verifiable, and available source. The same must be presented in clear and understandable terms. Additionally, advertising that uses statistical data or surveys must be carried out in a serious and methodical manner, not manipulating the results to the detriment of competitors. In cases where the testimony or recommendations of people about the quality of products is used, they must be authentic, and based on the experience of the people who give them.

It should also be noted that the truthfulness of all descriptions, allegations and comparisons made in advertisements must be objectively verifiable, with advertisers and agencies offering proofs when required.

Additionally, the Law on Consumer Protection establishes that advertising considered deceptive is prohibited, ‘deceptive advertising’ being any form of information or communication of an advertising nature that is false, or susceptible of misleading the consumer regarding the features, nature, origin, etc, of the products or services offered, and thus, *a contrario sensu*, all advertising must be truthful, clear, precise and complete.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Yes—in general, mere statements and exaggerations regarding products and services, as long as they are not false or likely to induce the consumer to error, do not require any kind of justification or prior justification, and are usually accepted.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific rules in this regard. However, the CERNECO Self-Regulation Code contains some rules related to statements and affirmations in advertisements, namely:

- the total prohibition of anonymous advertising; the advertiser must be identified;
- news or reports that are actually paid-for, with advertising elements, must be clearly identifiable as advertising;
- advertising that refers to research must be supported by an identifiable source, which must be available; and
- affirmations and expressions in advertisements must be verifiable.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no rules in this regard. However, the Self-Regulation Code of CERNECO provides that when testimonies or recommendations about the quality of the products are used, they must be authentic and based on the experience of the people giving them. In addition, outdated or obsolete testimonials or recommendations cannot be used.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstrations as means of advertising are not specifically regulated in Paraguay; however, the general rules contained in the Law on Consumer Protection and the Self-Regulation Code of CERNECO are applicable to them.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Yes—in general, comparative advertising is allowed in Paraguay, subject to the general regulation in the Trademark Law on unfair competition (ie, it does not discredit or devalue the products or services of the competition) and respects the intellectual property rights of third parties.

However, the Law on Consumer Protection prohibits comparative advertising if it induces, by means of fraudulent actions or general and indiscriminate statements, the consumer to consider one product or service superior to another.

The Code of Self-Regulation of CERNECO has a special chapter in relation to comparative advertising. The Code defines ‘comparative advertising’, and provides how it should be carried out; in particular:

- it must always be objective and not denigrate the competitor’s products, and
- it must be made between comparable products.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

Yes—those contained in the chapter of the Trademark Law that refers to unfair competition. Acts which may be considered unfair competition include the use or propagation of indications or false allegations, capable of denigrating or discrediting the products or services of third parties, including third-party companies.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

Yes. In 2013, the Law on Geographical Indications and Designations of Origin was sanctioned in Paraguay, establishing a series of rules with respect to the use and registration of products and their geographical indications and designations of origin.

This Law makes a distinction between:

- geographical indications (ie, name of the country, region, Department, district or locality, or a determined place), which serve to designate a product which originates from such place, when a certain feature, reputation or other characteristic of the product concerned is only attributable or assignable fundamentally to its geographical origin; and
- designations or appellations of origin, which serve to designate a product which originates from a particular country, region, district etc, and where the quality or features of the product are essentially due to the geographical environment where it is produced; these include natural factors as well as those which are the result of human activity.

The Law creates a registry for products that contain such characteristics, and determines the persons entitled to have their products use a certain geographical indication.

Registration of a geographical indication or appellation of origin grants its owners and authorized users the right to utilize such geographical indication or appellation of origin in relation to their products, and to prevent third parties from doing so. Therefore, it is understood that only those persons or entities that have been recognized as being entitled to geographical indication or appellation of origin may utilize and endorse their products in advertisements and diffusion of the products as bearing certain characteristics/features and use the geographical indication concerned.

3.10 Are there any special rules governing product packaging?

- (a) There are several Technical Resolutions issued by the MERCOSUR regarding the packaging of products, which have been adopted by Paraguay; therefore, in most cases, product packaging is harmonized within the countries that comprise the MERCOSUR.
- (b) One rule common to all products in Paraguay is that all labels must be in Spanish or contain a translation of the product name, instructions etc, into Spanish.

- (c) There are also regulations specifically regarding foodstuffs, namely:
 - containers, and packages of foods must be registered before the National Institution of Food and Nutrition ('INAN') and approved by the same; and
 - such products must contain a list of their ingredients.
- (d) Moreover, in 2023, Law No 7092 was adopted, making it mandatory to display front of pack warning labels on processed and pre-packaged food, marketed in the national territory, exceeding thresholds for sugar, saturated fat and sodium content. Where applicable, the main surface of the product packaging, and the multiple or collective packaging, must be marked with indelible warning stamps for each critical nutrient, as applicable: 'high in sugars'; 'high in saturated fat'; 'high in sodium'. The authority in charge of the application of the Law is the Ministry of Health and Welfare. Certain foods shall be exempted, depending on the regulations to be issued by the Ministry. Non-compliance may lead to sanctions, including monetary fines, and the temporary/permanent closure of the manufacturer's facilities/factories.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

The use of dark practices is not regulated specifically in Paraguay. The Law on Consumer Protection shall be applicable, in so far as it relates to such practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules nor guidance regarding AI as it relates to advertisement in Paraguay. The Law on Consumer Protection, the Law on Electronic Commerce and other legislation may be applicable (particularly, with respect to the use of personal data/privacy), but the extent to which AI may collect information on users is not provided for or foreseen in the law.

4 PRICE ADVERTISING

4.1 What are Paraguay rules regarding price advertising?

Under the Law on Consumer Protection, the prices of products or services, including taxes, must be accurately shown, in the country's currency, in the offer.

As far as services are concerned, advertising must show:

- the price, including taxes,
- a breakdown of price, where appropriate,
- the means of payment,
- the term of validity of the quotation remitted and
- the term of the service.

Where the need for additional services arises, which were not included in the original quotation, this must be notified to the consumer before such additional services are carried out, except when the service rendered may not be interrupted without causing damage to the consumer or affecting the quality of the service.

In addition, there exist special norms related to the offer and prices of certain services such as, eg, credit operations, which, according to the Law on Consumer Protection, must indicate:

- the price for payment in cash,
- the amount of interest payable,
- the annual or monthly interest rate,
- the late interest rate, and
- any other amount charged over the price as commission, expenses, fees, etc,
- the number of instalments to be paid,
- the frequency of instalments, and
- the total amount to be paid for the service, which shall not exceed the price to be paid in cash together with the interest.

4.2 What are Paraguay rules regarding advertising ‘free’ products?

There are no specific rules regarding the offer of ‘free’ products in Paraguay; therefore, this is subject to the general rules contained in the Law on Consumer Protection, which are that:

- the offer shall be clear and accurate and shall not be misleading for the consumer; and
- if the offer is for a limited time only, the offer must mention its term of validity, otherwise, the offer shall be considered permanent.

Similar provisions are also contained in the Self-Regulation Code of CERNECO.

4.3 What are Paraguay’s rules regarding sales and special offers?

There are no specific rules regarding the offer or advertising of discounts, seasonal sales or other special offers. Therefore, these are subject to the general principles contained in the Law on Consumer Protection and the Self-Regulation Code of CERNECO, namely, an offer must:

- be clear and precise,
- indicate the price and sale conditions accurately; and
- not be misleading for the consumer nor take advantage of the consumer’s ignorance and/or lack of knowledge.

The term of the offer and its conditions must also be mentioned accurately.

4.4 What are Paraguay’s rules regarding rebates?

There are no special norms related to rebates.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

- (a) Generally, advertisers and corporations must take into consideration the general principles contained in the various norms that regulate or refer to advertising. In other words, they must:
- ensure that the advertisement is true, clear, accurate and not misleading for the consumer;
 - respect the rights of consumers as far as their privacy and intimacy is concerned;
 - not discriminate, on religious, racial and/or sexual grounds;
 - not do anything against morality and good customs, nor induce consumers to commit crimes or undertake hazardous activities.

- (b) It is also worth noting that the Self-Regulation Code of CERNECO advises that special care must be taken with respect to advertisements that feature children or which are directed to them.
- (c) There are also provisions concerning advertisements in public places and/or which are owned by the government or the municipality.
- (d) In addition, the current rules concerning specific products and services must be taken into account, namely, those concerning the advertising of pharmaceutical products, alcoholic beverages, among others.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Yes. For example:

- children and teenagers cannot be featured in advertisements related to alcoholic beverages and tobacco products;
- pharmaceutical products, foodstuffs and dietary supplements must be registered in the country in order for them to be advertised; and
- advertisements related to pharmaceutical products sold under medical prescription are prohibited.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- There are several advertising practices that are prohibited under the Paraguayan legislation. With regards to telemarketing and mobile phone services, the Law on Telecommunications states that companies that offer/render mobile phone services must publish or broadcast their lists of users, although any user has the right to request to have their name removed from such guides.
- Also, with respect to communications via electronic means, the Law on Electronic Commerce states that ‘providers of goods and services over the internet’ must offer consumers the chance to oppose the use of their data for marketing purposes, by means of a simple and expense-free mechanism, at the time such data is collected, as well as in all commercial communications directed to them. In all unsolicited commercial electronic communications, the provider must include in the message an easy method to opt out from the lists of recipients of such communications; moreover, the recipient’s data must not have been obtained by infringing their privacy rights.
- Moreover, in 2017, Law No 5830 established a National Registry within the Office of Consumer Protection, whereby consumers and users of mobile phone services may register their names and phone numbers in order to ban corporations and individuals from remitting to such numbers any unsolicited/unwanted advertising.
- Other prohibited practices include misleading advertising and abusive advertising, which constitutes, under the Law on Consumer Protection, any advertising that has a discriminatory character, or exploits the fear of consumers, takes advantage of the lack of maturity of children, infringes environmental values or induces consumers to behave in a manner detrimental to their health or safety.

- In accordance with the Self-Regulation Code of CERNECO, advertising must be truthful, honest, etc, so it must not deceive or intimidate the consumer, contain comparisons based on unfair facts, or denigrate products, services, professional activity of third-party companies.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Law on Consumer Protection prohibits ‘abusive’ advertising, namely, advertising that is discriminatory or that violates environmental values.

Additionally, the Self-Regulation Code of CERNECO prohibits any advertising that violates morals and good customs, induces people to commit punishable acts or dangerous practices, encourages the commission of environmentally dangerous practices, among others.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Under the Self-Regulation Code of CERNECO, advertising cannot be anonymous; the advertiser must always identify itself.

Additionally, the Law on Consumer Protection determines that service providers must provide consumers with their identification data (ie, name and address).

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The Self-Regulation Code of CERNECO requires that all advertising must be clearly identifiable as such, and also establishes that advertising in the form of news, report, article, note, text, legend or other form, that is disseminated through payment, must be clearly identified so that it is distinguished from the news material and does not confuse the consumer.

Additionally, and as far as the contents of advertising notices and their integration into the contents of entertainment programs are concerned, the Code of Ethics of the Syndicate of Journalists in Paraguay determines that its members must work independently and avoid performing advertising or propaganda, except when such are related to public interest institutional advertisements. Also, this Code considers that certain activities, namely, those carried out by public relations people, spokespersons and press advisors within the same sector to which the coverage is performed or directed, are incompatible with journalism.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Yes—The obligations mentioned previously, namely:

- identification of the advertiser;
- identification of the advertisement as such; and
- identification of news and reports as paid-for advertisements when they have commercial purposes.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

No, there are no special rules governing the use of social media for advertising purposes; therefore, the general rules of advertising are applicable.

In addition, some provisions contained in the Electronic Commerce Law regarding the responsibility of providers/suppliers of goods and services via the internet and respect for intellectual property rights and privacy may be applicable.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Although there are no specific norms regarding advertisers, the Electronic Commerce Law sets out a series of responsibilities in electronic communications. The Law stipulates that publications which violate the intellectual property rights of third parties must be removed by internet network providers, which must provide an easy mechanism for removal of such publications. Such providers are responsible for the content where there is a presumption, as stated by an administrative or judicial body/entity, that they have acquired effective knowledge of the infringement and that the material violates the law.

On acquiring knowledge of the illicit material or that the material infringes third parties' rights, the publisher/advertiser must contact the person responsible for the social network in order for such material to be removed or suspended.

Nevertheless, the advertiser is not the only person responsible for the material, given that the provider of internet services is also held responsible once notified of the illicit act.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

No, there is no jurisprudence or decisions issued by the Paraguayan Courts or any self-regulatory decisions that address the issue of advertising in social media and privacy/people's rights in Paraguay.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

- (a) In Paraguay, there are several norms that make reference to the use of one's name, portrait, image, voice, etc, namely:
 - (i) the National Constitution, which guarantees respect of a person's intimacy, dignity and private image, as well as the protection of the person's documents of identification and private communications;
 - (ii) the Copyright Law, which establishes that the portrait of a person cannot be placed in commerce without the consent of the person concerned or their successors-in-law. There is an exception to this restriction where the publication is for scientific, educational or cultural purposes;

- (iii) the Trademark Law, which stipulates that names, nicknames, pseudonyms and/or photographs that may relate to living persons, or any sign that will affect the personality right of a third party may not be registered as trademarks without the consent of such persons, or, if dead, the consent of their heirs, up to the fourth degree of consanguinity; and
- (iv) the Civil Code, which protects the name of a person (individual or corporation), and establishes that whoever is damaged by the improper use of their name has an action to compel the infringer to cease in the infringement and to pay compensatory damages.

The contravention of any of these could lead to, in case of violation of what is established by the National Constitution, a remedy of *amparo*, a specific remedy for the protection of constitutional rights in order for the cessation of the illegitimate act; and an action for damages as per the provisions of the Civil Code.

- (b) Additionally, the Paraguayan Criminal Code makes the following criminal offences:
 - offenses against a person's privacy, and
 - the recording, storage, transmission and broadcast of a person's image without their consent.

Generally, these crimes depend upon the victim coming forward, reporting them, and requesting that they be investigated, although there are some exceptions, eg, where there is a public interest in the prosecution and resolution of the offense.

- (c) the Criminal Code characterizes three main types of criminal offenses that affect the image and reputation of people: slander, libel and defamation. Such offenses are regulated under what is known as 'private criminal action', which has a different procedure than that applicable to public criminal actions and/or public offenses, and these claims are filed and prosecuted by the victim (ie, the public prosecutor etc does not intervene) before a specialized criminal court.

9.2 Are there situations when permission is not required?

Yes—where there is a public interest involved or when the publication has scientific, cultural and/or teaching or information purposes.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no specific rules regarding the utilization of historical places in advertising. However, the National Constitution, together with the National Cultural Law and the decrees and resolutions of the National Office of Culture, strongly protects Paraguayan culture and Paraguay's monuments and historical places. It is therefore always very important that advertisers check the type of product/service to be advertised and do not include such monuments and places in advertising campaigns related to certain types of products, such as alcoholic beverages.

Also, advertisers must take into consideration the contents of any advertising aimed at or produced for children and teenagers and, as far as television is concerned, the time of broadcast. The daytime hours up to 8.00 pm are considered as ‘of protection of children and teenagers’, and therefore the use of certain types of materials and products in advertising to be broadcast during such hours should be avoided.

10.2 Is it permissible to use other companies’ recognizable products in advertising (eg, an actor wearing branded training shoes)?

There are no specific rules regarding such use, although the utilization of a third party’s products will not be illegitimate, so long as such use is aleatory and not for the purpose of promoting or denigrating the product, and no reference to or mention of the product is made. On the other hand, if reference to or mention of the product and/or brand is made throughout the advertisement, and/or the product/brand plays an important role or has a great exposure throughout or within the advertisement, such use may be considered a violation of the product/brand’s owner rights, and shall constitute a cause of action against the advertiser or the publishing agency, as applicable.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Paraguay which affect advertising (eg, Swedish gender equality law)?

Yes, in Paraguay there are several rules in that respect:

- (a) Firstly, the National Constitution sets out that all citizens/inhabitants are equal in dignity and rights and no discrimination is acceptable; the State/Government has the obligation to remove any obstacles and impeding factors that maintain or favor discrimination. Likewise, special emphasis is given to equality between men and women. Therefore, any advertising that incites discrimination between men and women will infringe the guarantee established by the National Constitution.
- (b) Secondly, the Law on Consumer Protection prohibits ‘abusive’ advertisements, which term includes all sorts of advertisements that are discriminatory or induce discrimination.
- (c) The Self-Regulatory Code of CERNCO states that in no case shall publicity that stimulates or promotes racial, social, political, religious discrimination or that based on nationality, age or sex, be admissible.
- (d) In addition, the National Constitution sets out special protection for indigenous groups, regarding their identity, and rejecting any form of discrimination against them.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Yes, advertisements must respect morality, good customs, public order and national symbols. In this sense, Paraguay is a country with a long-standing religious tradition, whose population is principally Catholic, and thus respect towards the Catholic religion, its principles and main symbols and/or representatives is of the utmost importance.

In addition, the Paraguayan culture and customs should be taken into account, which include the National language, Guaraní, the use of which in advertising may provoke either a very favorable or, on the contrary, an extremely unfavorable reaction from the public. In this sense, respect towards traditions and the language is very important.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Paraguay?

In general, advertising/publicity and respect for third parties' rights is an area in expansion in Paraguay—there is still considerable ignorance amongst consumers and corporations as far as consumers' rights are concerned, although this has been changing rapidly during the past five years, especially with the promotion of the Office of Consumer Protection. In many cases, the persons in charge of marketing have no idea of the norms that regulate the marketing of certain types of products and utilize expressions in advertisements that could violate the rights of consumers or the interests of consumers.

Therefore, it is our recommendation to always take into consideration the complete set of norms that constitute Paraguay's advertising/publicity legal framework, which would be:

- the National Constitution,
- the Code of Children and Teenager's Rights,
- the Law on Consumer Protection,
- the Trademark Law,
- the Merchant Code,
- the Civil Code, and
- the Criminal Code;

and those related to particular products, such as:

- the Health Code and the decrees and resolutions issued by the Office of Health Surveillance with respect to pharmaceutical and household cleaning products;
- the Health Code and the decrees and resolutions of the Office of Health Surveillance and the INAN;
- decrees and resolutions issued by the Technical Institute for Standardization and Metrology with respect to certain types of products (eg, shoes);
- the Law on Electronic Commerce for the providers of Internet Services; and
- Law No 7092/23 on front-of-pack labeling on packaged foods.

 PERU 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Peru?

- The main legal framework on advertising is Legislative Decree No 1044 (Law for the Repression of Unfair Competition), which seeks to prohibit and punish acts of unfair competition (such as deceptive practices, confusion, disparagement and undue comparison), as well as specific violations of commercial advertising.
- The Consumer Protection Code (approved by Law No 29571) includes a sub chapter to the protection of consumers against advertising abuses.
- In the context of the Andean Community, Decision No 486 establishes the common intellectual property regime, regulating the use of trademarks in advertising.
- The National Institute for the Defense of Competition and Protection of Intellectual Property ('INDECOPI') is the Peruvian administrative agency responsible of the fulfillment of the regulations before mentioned.
- Finally, self-regulation advertising norms are contained in the Code of Advertising Ethics, which is applied by the Advertising Self-Regulation Council ('CONAR').

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The Law for the Repression of Unfair Competition defines 'advertising' as 'any form of communication, disseminated by any means or carrier, and objectively suited or designed to promote, either directly or indirectly, the image, trademarks, products or services of a person, firm or entity in the exercise of its commercial activity'.

The Law is applicable only to communications which may have a commercial purpose or effect. It is not applicable for institutional advertising, political propaganda or any other form of communication.

1.3 What is the basic regulatory framework for advertising regulation?

Advertising must respect the following principles:

- Truthfulness and accuracy:** advertising must be truthful, not misleading and, when appropriate, backed by evidence. It must not omit relevant information;
- Authenticity:** the recipient of advertising should be able clearly to distinguish it as such: advertising should not be disguised as news or journalistic opinions;
- Legality:** advertising must comply with the mandatory provisions of law that apply to advertising activity;
- Social appropriateness:** advertising may not encourage or promote any kind of discrimination, or antisocial, criminal, or illegal activities; and
- Lawfulness:** advertising must respect the free and fair competition in the market, avoiding confusion of consumers and denigration of competitors.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

According to Directive No 005-2009-COD-INDECOPI, providers may not disseminate any kind of commercial advertising through phone calls, text messages or emails to people whose telephone numbers or emails are recorded in the Register named 'Gracias ... no insista' administered by INDECOPI.

This nationwide registration is free of any charge. Consumers may withdraw from the Register 'Gracias ... no insista' at any time. There are exceptions to the application of this Directive (eg, in case of the recipient's consent to receive certain advertising even though it is registered).

In addition, Peruvian Law No 28493 and Supreme Decree No 005-2009/MTC regulate the use of unsolicited commercial emails (spam). They provide that:

- (a) all unsolicited commercial, promotional, or advertising emails must contain the word 'advertising' in the subject field of the message;
- (b) the sender must be identified; and
- (c) the email must indicate a valid and activated email address, so the recipient can notify their desire to be removed from the sender's list.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are several industries that are subject to specific regulation which govern their advertising:

- (a) **Alcohol:** Alcohol advertising is allowed, but subject to the following restrictions:
 - (i) Advertising must include the claim 'DRINKING ALCOHOLIC BEVERAGES IN EXCESS IS HARMFUL', under certain specifications, depending on the medium used; and
 - (ii) it must not induce the consumption of alcoholic beverage to minors.
- (b) **Tobacco:** Advertising involving tobacco products cannot be made on TV, radio, open or closed means of communication, including the Internet. The prohibition includes names, logos, or brands of tobacco products. The dissemination of tobacco advertising is allowed only for adults, under certain restrictions.
- (c) **Medicines:**
 - (i) The advertising of prescription-only medicines must be directed and disseminated only to medical professionals.
 - (ii) Over-the-counter medicines can be advertised to consumers, subject to certain controls (if the advertising refers to the therapeutic properties of the medicine, it must include the product's main warnings and precautions).
- (d) **Food and non-alcoholic beverages:** Law No 30021 and its regulation seeks to reduce children's exposure to marketing of foods and non-alcoholic beverages high in saturated fat, sugar or salt. The goal is to minimize risks to children's health, particularly to control obesity.

Advertising of such products directed to children under 16 years old, must not:

- (i) encourage excessive consumption of the products;
- (ii) show inadequate portions of such products, considering the context and/or the age of the audience to which the advertising is directed;

- (iii) generate expectations regarding its intake;
- (iv) create a sense of urgency or dependence;
- (v) use endorsements or testimonials to induce the consumption of such products; or
- (vi) show images of natural products if they are not.

Labels must include the claim 'High in (sodium/sugar/saturated fat): Avoid excessive consumption' or 'Contains trans fats: Avoid consumption', as the case may be.

1.6 Are any government pre-approvals required?

No government pre-approvals are required. Supervision of the enforcement of the Law is carried out only for advertising which has been disseminated in the market.

1.7 Does the media pre-clear advertising?

Local regulation does not establish that media may pre-clear advertising. However, media could be responsible for infringing dissemination rules for advertising. Thus, internal decisions may be adopted prior to disseminating advertising.

1.8 How does the government enforce advertising laws? What are the potential remedies?

INDECOPI is the administrative authority that monitors and punishes any act or conduct of unfair competition, including where it has been performed by means of advertising. The Commission for Supervision of Unfair Competition ('CCD') considers cases at first instance at INDECOPI, and the Tribunal for Defense of Competition and Protection of Intellectual Property ('TDC') considers claims on appeal.

The CCD has exclusive jurisdiction at the national level to apply the Law for the Repression of Unfair Competition. It is empowered to issue precautionary measures and to initiate proceedings *ex officio*.

The authority may apply corrective measures which include, inter alia:

- (a) the cessation or rectification of the misleading or false advertisement;
- (b) the removal of the effects produced by the advertising; the confiscation and/or destruction of the products, labels, packaging, infringing material and other elements of false identification; and
- (c) the publication of the decision.

In addition, the performance of acts of unfair competition may be sanctioned with a warning or fines of up to 700 Tax Units (in 2024, each tax unit is equivalent to PEN 5,150, which is approx US\$ 1,388) as follows:

- for a slight infringement without real effect on the market: a warning may be issued;
- for a slight infringement: a fine of up to 50 Tax Units;
- for a serious infringement: a fine of up to 250 Tax Units; and
- for a very serious infringement: a fine of up to 700 Tax Units.

The fine must not exceed 10% of the offender's gross income during the fiscal year preceding the proceeding.

INDECOPI is not competent to order civil penalties.

1.9 When does a competitor have a right of action? What are the potential remedies?

The Law for the Repression of Unfair Competition establishes that any person (including a competitor or any participant in the market) has the right to file a claim before the CCD.

To file a claim there is no need to prove that the illegal act or conduct caused harm or detriment. It is sufficient that harm may occur (real or potential harm or detriment).

As mentioned in question 1.8 above, the CCD may issue precautionary measures, order corrective measures, and impose fines of up to 700 Tax Units.

Infringements of the Law shall be subject to statute of limitation of 5 years.

Finally, it is possible to recover all legal expenses related to the proceeding, including administrative fees and attorneys' fees.

1.10 When do consumers have a right of action? What are the potential remedies?

(a) Consumers have the right to file a claim before the CCD when the information provided in the advertising is called into question and no claim has been lodged by them with regard to the non-fulfilment of their expectations in a specific consumer relationship. As to such claims, see questions 1.8 and 1.9 above.

(b) On the other hand, if a consumer has entered into a contract with a supplier (or is about to enter one) and specifically argues that their expectations have not been fulfilled, based on the information provided in the advertising, then they should instead file a claim before the Consumer Protection Commission ('CPC') of INDECOPI.

The CPC and its offices nationwide are the primary enforcement authority for the Consumer Protection Code. They are empowered to issue precautionary measures and to initiate proceedings *ex officio*.

In addition, the CPC may order corrective measures, such as:

- (i) repair or replacement of the product,
- (ii) refunds,
- (iii) confiscation and destruction of the infringing goods, and
- (iv) temporary closure of the establishment that has infringed the regulation.

The CPC may also impose fines of up to 450 Tax Units (in 2024, each tax unit is equivalent to PEN 5,150, which is approx US\$ 1,388) as follows:

- for a slight infringement: a warning or a fine of up to 50 Tax Units;
- for a serious infringement: a fine of up to 150 Tax Units; and
- for a very serious infringement: a fine of up to 450 Tax Units.

The fine must not exceed 10% of the offender's gross income during the fiscal year preceding the proceeding.

INDECOPI administrates a Public Register where providers sanctioned for infringing the Consumer Protection Code are recorded for a period of 4 years. Infringements of the Consumer Protection Code shall be subject to statute of limitation of 2 years.

In either case, consumers can recover all legal expenses related with the proceedings, including administrative fees and attorneys' fees.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Peru have a primary advertising self-regulation system?

In Peru, self-regulation of advertising is promoted by the Advertising Self-Regulation Council ('CONAR'), a non-governmental organization made up of representatives of three associations: the National Association of Advertisers, the Peruvian Association of Advertising Agencies, and the National Society of Radio and Television. The self-regulation system has as its objective to promote fairness between competitors and to protect consumers.

CONAR has issued a Code of Advertising Ethics, which contains the main ethical principles applicable to commercial advertising; and a Code of Proceedings, which regulates the ethical procedure to be followed before the technical entities, the Permanent Ethics Committee and the Tribunal (which considers claims on appeal).

A proceeding before CONAR can be initiated by a party or can be commenced *ex officio*.

The Code of Proceedings establishes that CONAR may process a claim even though a claim is being brought before INDECOPI against the same advertiser for the same offense. Rather, the law does not prohibit an advertising claim from being brought simultaneously before INDECOPI and before CONAR.

2.2 Is there a self-regulatory advertising code? What are the key principles?

In Peru there is a self-regulatory advertising code named the Code of Advertising Ethics which contains the ethical principles applicable to commercial advertising.

The key principles underlying the Code of Advertising Ethics are:

- (a) **Lawfulness:** advertising must respect the free and fair competition in the market, avoiding confusing consumers and denigrating competitors;
- (b) **Decency and social appropriateness:** advertising must respect the dignity and privacy of the human being, the family unit, and the interests of society. And it must respect national institutions and symbols;
- (c) **Legality:** advertising must comply with the mandatory provisions of law that apply to advertising activity;
- (d) **Truthfulness:** advertising should make a truthful presentation of the products and/or services that are being offered. Before dissemination of advertising, the advertiser must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation. When the advertising contains a clearly highlighted message, the advertiser must take the necessary measures to ensure that the remaining parts of the advertising are understandable and do not introduce relevant limitations or modifications to the main message; and
- (e) **Authenticity:** the recipient of advertising should be able to clearly distinguish it as such.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Code of Proceedings of CONAR contains the procedure to be followed before the Permanent Ethics Committee at first instance, and before the Tribunal in case of appeal.

The procedure is simple, with short deadlines, and respects the parties' right of defense.

When a claim is filed, CONAR promotes conciliation between the parties in order to conclude the proceeding. However, if this does not succeed, once the parties have filed all relevant arguments for the judgment of the case, an oral hearing may be requested by the authority. The decision issued by the Permanent Ethics Committee is notified to the parties involved and, if necessary, to the media. The parties may appeal the decision before the Tribunal.

CONAR may impose as sanctions:

- written warnings addressed to the advertiser, to the Board of Directors, to the National, Regional or World Headquarters, when applicable; and
- Public warning through the media and through the members of CONAR.

CONAR may also order complementary measures, such as:

- the modification of the claim questioned in the advertising;
- the removal or cessation of the dissemination of the illegal advertising; and
- rectification of the misleading information.

The media must ensure the enforcement of CONAR's decisions.

The Technical Secretary of the Permanent Ethics Committee supervises the implementation of all the decisions, including precautionary measures, sanctions and corrective measures.

In case of failure to carry out one of these decisions, the delegate or representative of the offender could be suspended from the right to speak, and even to vote, in the General Assembly of the Association to which it belongs. CONAR may publish the non-compliance of the measure in CONAR's newsletter; ANDA's magazine and/or the media. In addition, it is empowered to expel the offender from the CONAR, when appropriate.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system has, as its main strength, the speed of processing cases and the fact that CONAR works closely with three powerful entities: the National Association of Advertisers, the Peruvian Association of Advertising Agencies, and the National Society of Radio and Television. Since they are united by the desire to promote fairness between competitors and to protect consumers, they have signed agreements to effectuate CONAR decisions. Therefore, advertising contracts often include clauses obliging both advertisers and media to abide by all these pronouncements.

Nevertheless, since CONAR is a private entity, it does not have any law enforcement or prosecution power. Also, it is not empowered to impose fines. Moreover, if someone outside CONAR breaches the Code of Advertising Ethics, there is nothing that an affected competitor can do through this self-regulation system. Because of these weaknesses, the majority of claimants opt to initiate proceedings before INDECOPI, which reviews approximately 100 claims every year, in comparison with 15 brought before CONAR.

2.5 Are the self-regulatory system's decisions reported?

According to the Code of Proceedings, CONAR may report its decisions through any medium or other mechanism.

All resolutions (and even pending cases) are available to the public in the CONAR offices and on its website (www.conarperu.org). Anyone may request copies of these documents on payment of the shipping or mailing costs.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

There are some key areas of focus in the Code of Advertising Ethics that companies should be aware of:

- (a) **Promotions:** Promotions must not mislead consumers. If they are limited, advertising should include their period of duration and the minimum stock available.
- (b) **Undue comparison:** Comparisons must be truthful, accurate and must not denigrate competitors. They should not contain subjective claims.
- (c) **Advertising directed to minors:** Advertisers must be aware of the targeted audience and must respect the naivety, credulity and inexperience of children. Advertising directed to minors, or in which they participate, should respect their physical, mental and moral integrity.

2.7 Are there any other self-regulatory systems that govern advertising practices in Peru?

The National Association of Advertisers promotes 'Advertising Compromises' between its members.

To date, only one 'Advertising Compromise' has been adopted by the majority of its members. It consists in following the 'Internal Directive on Advertising of Foods and Non-Alcoholic Beverages aimed at children under 12 years old' subscribed on 15 February 2012. The objective of this Internal Directive is to promote healthy balanced diets and an active lifestyle in children. The Internal Directive states that, through images, sounds, text and/or representations, advertising must include the following references:

- (a) the importance of achieving energy balance;
- (b) encourage daily physical activity;
- (c) maintenance of a balanced and healthy diet;
- (d) encourage active lifestyles;
- (e) encourage the intake of fruits and vegetables; and
- (f) highlight the importance of prevention in health from a healthy diet, daily exercise, or some other similar.

Compliance with the Internal Directive will be monitored and evaluated periodically by CONAR.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Peru (eg, consumer protection laws, IP laws, unfair competition laws)?

- (a) The use of advertising claims is regulated mainly in the Law for the Repression of Unfair Competition. This Law establishes that advertising shall be assessed on the basis that it is an instrument for promoting, directly or indirectly, the contracting or consumption of products and services. Evaluation is carried out on the content of an advertisement as a whole, including words and numbers, spoken and written, visual and musical presentations and sound effects, on the basis that the recipient of the advertising will carry out a full and superficial analysis of each advertising slot which they view.
- (b) In addition, the Consumer Protection Code contains some complementary dispositions, establishing that advertising should not contain information or images that could directly or

indirectly mislead consumers, especially concerning the characteristics of the product, the price or the sales conditions. It also establishes that advertising claims are legally binding for providers, so they will be considered incorporated in the contracts with consumers.

- (c) Finally, Decision No 486 establishes the common intellectual property regime, regulating the use of trademarks in advertising.

3.2 Is substantiation required for advertising claims?

Substantiation is required for objective claims in advertising.

Before the dissemination of any message referring to characteristics of an announced product or service that may be verified, the advertiser must have proof to support the claim. The kind of evidence required depends on the type of claim and the type of product or service advertised. At a minimum, an advertiser must have the level of evidence that the advertising says or implies it has. In most cases, it is expected by the authority that advertising claims regarding health or safety must be supported by competent and reliable scientific evidence (tests, studies or other) following generally accepted methods and procedures. Such scientific evidence may be conducted by the advertiser or by an outside researcher.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

In contrast to verifiable claims, subjective claims cannot be proved true or false by any generally accepted criteria and, thus, do not require substantiation. Subjective claims often express opinions, preferences, values, feelings, and judgments. Even though they may involve facts, they do not make factual claims.

The Law allows the use of humor, fantasy and exaggeration in advertising, as it is considered an advertising technique.

Nevertheless, subjective claims must not be used in comparisons. INDECOPI has issued a mandatory precedent saying that subjective comparative claims are essentially illegal per se.

3.4 What are the rules governing the use of disclosures in advertising?

- (a) There are special rules governing the disclosures used in advertising of certain products. For example, advertising of alcoholic beverages and over-the-counter medicines must include disclosures following the required specifications, depending on the medium used.
- (b) Also, INDECOPI has issued a mandatory precedent regarding the use of disclosures in advertising (not applicable for advertising of products governed by specific rules). According to this, if a product or service advertised has particular conditions (warnings, restrictions or purchase requirements), and such information has not been fully included in the advertising, then:
- the advertiser must make available to consumers alternative sources of information where the particular conditions of the product or service are detailed;
 - these alternative sources of information may be call centers or web pages, and should be easily available at the time of the dissemination of the advertising; and
 - the advertising must clearly and expressly indicate the existence of the alternative sources of information.

The information included in an alternative source must complement (not contradict) the principal message of the advertising.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Testimonials in advertising have specific regulations:

- (a) The dissemination of testimonial advertising must be supported by authentic, recent experience of the person. If the message is objective, the advertiser should have the proof in advance which supports in fact that the content of the testimonial advertising is true.
- (b) The person must give their written consent for the dissemination of testimonial advertising.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no special rules governing the use of product demonstrations in advertising. Nevertheless, they must comply with the general principles of the Law for the Repression of Unfair Competition (ie, truthfulness, accuracy, legality and authenticity).

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is advertising that compares alternative brands, which may be identified by name or other distinctive information. It is permitted by Peruvian legislation, as long as it satisfies the following provisions:

- (a) The information must be true in terms of its objective and verifiable condition. Such information is subject to substantiation by the advertiser. Subjective claims must not be used in comparative advertising;
- (b) The information must be accurate in terms of its clear and current condition, and presented in a way such that ambiguity or lack of precision is avoided;
- (c) It should avoid unjustified irony, satire, humor or sarcasm, in view of the circumstances; and
- (d) It should avoid allusions to strictly personal circumstances of the owners or representatives of the company whose goods are subject to comparison.

In summary, comparative advertising must confront objective characteristics of the goods or services compared. It must not mislead or confuse consumers, nor denigrate competitors.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There are special trademark rules that may impact comparative advertising. Decision No 486 establishes that anyone may use a registered trademark in comparative advertising, without the consent of its owner, as long as the use:

- (a) is in good faith;
- (b) does not constitute use as a trademark;
- (c) is confined to identification or information purposes only; and
- (d) is not likely to create confusion over the origin of the goods or services.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

There are no special rules governing claims relating to geographic origin in advertising. Nevertheless, advertising must comply with the general principles of the Law for the Repression of Unfair Competition (ie truthfulness, accuracy, legality and authenticity).

3.10 Are there any special rules governing product packaging?

There are no special rules governing product packaging in advertising. Nevertheless, the packages are themselves considered advertisements, so they must comply with the general principles of the Law for the Repression of Unfair Competition (ie truthfulness, accuracy, legality and authenticity) and with all the Law.

The Law on Labeling of Manufactured Industrial Products regulates the relevant information that must be included in the packages of industrial goods in order for consumers to know what they are buying. The CPC is the entity that will enforce any claim regarding this matter.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

No, there are no special rules or guidance on the use of ‘dark practices’. All advertising must comply with general rules of truthfulness, accuracy, authenticity and legality. Exaggerations, superlative adjectives or expressions, as well as fanciful expressions are allowed in advertisement, but always within the realm of legality and authenticity, where the consumer will clearly know that it is a subjective expression within an advertising context.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No, there are no special rules or guidance on artificial intelligence as it relates to advertising yet. However, all advertising must have a solid foundation in ethical and moral standards.

4 PRICE ADVERTISING

4.1 What are Peru’s rules regarding price advertising?

The rules regarding price advertising are the following:

- (a) the amount announced as price of a product or service in advertising must include applicable taxes and any additional charge essential for its acquisition;
- (b) when the price of a product or service is announced in foreign currency, the advertising must include the equivalent price in national currency, in identical characters and equivalent size; and
- (c) when the advertising offers products with prices for credit sale, it must include:
 - (i) the amount of the initial quota (if applicable),
 - (ii) the total amount of interest,
 - (iii) the actual annual interest rate, and
 - (iv) the amount and detail of any additional applicable charge.

4.2 What are Peru's rules regarding advertising 'free' products?

The rules regarding advertising 'free' products are the following:

- (a) The advertising of 'free' products must include the period of duration of the offer and the minimum stock of products available.
- (b) If the total amount of the free products exceeds 15% of a Tax Unit (in 2024, each tax unit is equivalent to PEN 5,150, which is approx US\$ 1,388), it is necessary to request an authorization from the government authority (the Ministry of Internal Affairs). The number of the authorization must be included in the advertising.

4.3 What are Peru's rules regarding sales and special offers?

The rules regarding sales and special offers are the following:

- (a) Advertising must include clearly the period of duration of the offer and the minimum stock of available units of the products on offer. If not, the advertiser will be obliged to provide consumers with the products or services on the conditions indicated in the advertising.
- (b) In cases where a sales promotion has special conditions or restrictions, providers may use an alternative information source (such as websites or call centers) to give consumers more detailed information. This source should be free and easily accessible for consumers and must be referred to in the advertising.

4.4 What are Peru's rules regarding rebates?

There are no special rules regarding rebates.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no other key restrictions which advertisers should be aware of regarding retail advertising.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines, etc)?

There are products that may not be advertised in certain media.

- (a) **Alcohol:** Alcohol advertising cannot be exhibited during cultural or social events that are targeted to minors.
- (b) **Tobacco:** Advertising involving tobacco products cannot be made on television, radio, open or closed means of communication, including the Internet. The dissemination of tobacco advertising is allowed only for adults, under certain restrictions.
- (c) **Medicines:** The advertising of prescription-only medicines must be directed and disseminated only to medical professionals. It cannot be launched through media accessible to the general public.
- (d) **Adult content:** Advertising of erotic or adult content services must be targeted to adults. The advertising of these services is permitted in written press of restricted circulation for adults, and on radio and television only between the hours of 1.00 am to 5.00 am.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are no advertising practices that are specifically prohibited.

Nevertheless, as we mentioned, according to Directive No 005-2009-COD-INDECOPI, providers may not disseminate any kind of commercial advertising through phone calls, text messages or emails to people whose telephone numbers or emails are recorded in the Register named 'Gracias ... no insista' administered by INDECOPI. This nationwide registration is free of any charge and is valid for two years, after which it may be renewed. People may withdraw from the Register 'Gracias ... no insista' at any time.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) According to the Law for the Repression of Unfair Competition, advertising of erotic or adult content services must be targeted only to the adult public. The dissemination of advertising of this kind of service is permitted only in written press of restricted circulation for adults and, in the case of radio and/or television, between the hours of 1.00 am and 5.00 am.
- (b) The Code of Advertising Ethics of CONAR rules that advertising should not contain presentations or statements that might be offensive to the decency standards of the audience it intends to reach. Again, the advertising of erotic or adult content services is allowed, but must be targeted only to the adult public.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Peruvian legislation does not establish the obligation to identify who is the advertiser or the sponsor of the advertising.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are special rules governing 'disguised advertising'.

The dissemination of advertising under the cover of alleged news, journalistic opinion or recreational material, without a clear warning of its advertising nature, constitutes an infringement of the principle of Authenticity. 'Disguised advertising' must include visible and clear claims such as 'paid advertising' or 'infomercial'.

A mandatory precedent issued by INDECOPI describes when this conduct is contrary to the law:

- (a) 'Disguised advertising' or 'infomercials' are located and designed to look like an objective article, news, interview, program or similar, depending on the medium used.
- (b) Consumers are not able to identify easily their true character (ie, ascertain that they are advertisements) and may be influenced by the persuasive effect of this misapprehension.

- (c) A payment or compensation may be offered to the media in order to disguise the advertising under the appearance of news, features or interviews. (However, this element is not considered decisive.)

Both the advertiser and the media are responsible for any infringement of the principle of Authenticity.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special disclosures or other obligations when integrating advertising content with other content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules governing the use of social media for advertising purposes.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

According to the general law, an advertiser will not be responsible for advertising claims made in user generated content, unless it has directly participated in the execution and/or dissemination of the advertising claims.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no key court or self-regulatory decisions of which advertisers should be aware regarding the use of social media and user generated content.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Peruvian Civil Code regulates the use of an individual's name, picture, likeness, voice and identity, under the term 'image'. It establishes that the use of an individual's image requires prior and express consent.

In addition, it states that in cases where the individual has died, permission may be given by the individual's spouse, children, parents or siblings, in that order.

9.2 Are there situations when permission is not required?

Yes, there are situations when permission is not required. The Peruvian Civil Code establishes that permission will not be required when the use of the image is justified by reason of:

- (a) the renown of the person;
- (b) the position that the person holds;

- (c) relevant facts and public interest; or
- (d) scientific, didactical, or cultural purposes, as long as these are related to public events or ceremonies.

However, these exceptions are not applicable when the use of the image impacts on the honor, decorum and reputation of the individual involved.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no specific rules governing the types of materials that must be cleared before they may be used in advertising.

Nevertheless, we suggest a respectful use of images and statements when referring to:

- patriotic symbols (such as the national seal, the flag, among others);
- national institutions;
- cultural assets;
- the Church; or
- other relevant institutions in Peru.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Decision 486, which establishes the common intellectual property regime, states that a registered trademarks may be used without the consent of its owner, as long as use:

- (a) is in good faith.
- (b) does not constitute use as a trademark.
- (c) is confined to identification or information purposes only; and
- (d) is not likely to create confusion over the origin of the goods or services.

11 CULTURAL CONCERNS

11.1 Are there any rules particular to the culture of Peru which affect advertising (eg, Swedish gender equality law)?

There are no specific rules that are particular to the culture of Peru which affect advertising.

Nevertheless, according to the principle of social appropriateness, it is prohibited that advertising induce the recipients of the message to commit an illegal act or an act of discrimination or offense based on origin, race, sex, language, religion, opinion, economic condition or of any other kind. This restriction is especially sensitive considering the wide variety of ethnic groups and races that exist in Peru.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

There are no other cultural norms that should be considered.

Nevertheless, we suggest a respectful use of images and statements when referring to:

- patriotic symbols (such as the national seal, the flag, among others);
- national institutions;
- cultural assets;
- the Church; or
- other relevant institutions in Peru.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Peru?

Bearing in mind that advertising regulation in Peru is quite complex, and that INDECOPI is empowered to impose significant fines against illegal advertising as well as important corrective measures, our recommendation would be to request legal advice prior to the dissemination of any advertisement.

 POLAND 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Poland?

Advertising is regulated on a general level by a number of legal acts, in particular the Act on combating unfair competition ('Unfair Competition Act'). The Unfair Competition Act aims to protect fair competition amongst competitors. Certain advertising-type behaviors are also regulated under the Act on combating unfair commercial practices ('Unfair Commercial Practices Act')—an Act aimed at protecting consumers' interests. Additionally, some products or industry sectors are specifically regulated (eg, alcohol, pharmaceuticals, certain types of claims used in relation to foodstuffs).

There is also a self-regulation system organized by the Advertising Council, as well as self-regulation of particular industry sectors (particularly in the pharmaceutical and medical devices sector).

Self-regulation is not binding. However, infringement of the relevant rules may in some cases be considered infringement of good market practice and, therefore, be considered unfair competition or unfair market practice.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

There is no general legal definition of advertising. However, there are some definitions applicable to particular industry sectors. For instance, the term 'advertising' is defined for alcoholic beverages as 'Public dissemination of alcoholic beverage trademarks or graphic symbols associated with them, as well as the names and graphic symbols of alcoholic beverage entrepreneurs, not different from the names and graphic symbols of alcoholic beverages, serving to popularize alcoholic beverage trademarks; information used for commercial purposes between entrepreneurs engaged in the production, wholesale and trade of alcoholic beverages is not considered advertising'.

Any communication aimed at promoting a product and, directly or indirectly, encouraging demand for products or services may be considered advertising. Whether any particular activity falls within the definition of advertising is made on a case-by-case basis, but is generally quite broad.

1.3 What is the basic regulatory framework for advertising regulation?

- (a) The basic framework for advertising activity is provided under the Unfair Competition Act. Advertising activities contrary to the Unfair Competition Act are considered an act of unfair competition and may result in civil action instigated, as a rule, by the advertiser's competitors.

The Unfair Competition Act, in addition to setting out the tort of unfair competition (also applicable to advertising), specifically prohibits:

- (i) any advertising contrary to law or good commercial practices;
- (ii) misleading advertising;
- (iii) advertising referring to emotions and causing fear;
- (iv) the exploitation of superstitions or the trust of children; and
- (v) hidden and intrusive advertising.

Arguably, the broadest category is ‘misleading advertising’, where ‘misleading character’ is evaluated in view of all relevant aspects covering the information given in advertisements in respect to quantity; quality; components; method of manufacturing; usefulness; possible use and the means of repair or maintenance, as well as consumer behaviors.

Additionally, the Unfair Competition Act specifically provides that an advertising agency and/or other party who prepared the advertisement can be held liable for the tort of unfair advertising (as well as the advertiser).

- (b) Some advertising activities, such as hidden advertising and bait advertising, are regulated under the Unfair Commercial Practices Act.
- (c) In some cases, where unfair advertising may infringe the collective interests of consumers, the Act of 16 February 2007 on Competition and Consumer Protection (‘Consumer Protection Act’) may apply. Action under this Act is undertaken in the public interest by the consumer and the appropriate competition authority.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

There are specific provisions regulating certain media:

- (a) **TV and radio:** Advertising on TV and radio is regulated under the Broadcasting Act of 29 December 1992 (‘RTV Act’). The RTV Act sets out specific requirements regarding the length of advertising and teleshopping breaks; overall content of advertising; rules regarding types of broadcasts which may or may not be interrupted by adverts; additional restrictions regarding advertising directed to minors (including ban on advertising of unhealthy foods in proximity to the children broadcasts); and rules regarding sponsorship. Additionally, the RTV Act prohibits hidden advertising, theme placement and only allows product placement when specific conditions are met.
- (b) **Press:** Press advertising is regulated very generally by the Press Law of 26 January 1984 (‘Press Law’). Under this Act, advertisements must be clearly identified to prevent confusion with editorial content. Additionally, the press is expressly allowed to reject advertising which is contrary to its policy or nature of publication. The Press Law may, in certain cases, apply to activity conducted on the internet (especially on news portals).
- (c) **Electronic communications:** Sending unsolicited marketing to a specified individual by means of electronic communications (such as email) is prohibited unless the recipient has given prior consent to receive such communications, eg, by making their email address available.
- (d) **Automated call systems:** Poland’s Telecommunications Law bans the use of automated calling systems for direct marketing unless the subscriber or end user has given their prior consent to such use. The marketer must obtain consent for automated calls before making first contact with the consumer. General consent to use personal data for marketing purposes is insufficient.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Advertising is specifically regulated for a number of industries. These include:

- (a) **Alcohol:** Advertising and promotion of alcoholic beverages is generally prohibited, except in the case of beer, which may be advertised subject to specific restrictions (eg, mandatory disclosures and warnings). The general prohibition on advertising does not apply to non-public advertisements (ie, directed to a closed circle of people) as well as advertisement at the point of sale (though not all points of sale are covered by this exception) wholesale premises and bars, nightclubs, etc. Additionally, in some cases, manufacturers or distributors of alcoholic beverages may publicly communicate their sponsorship of public events. This is often used as a way to circumvent the general prohibition.
- (b) **Medicinal products etc:** Advertising of medicinal products is harmonized within the EU. However, some additional national restrictions apply. The advertising of medicinal products may only be conducted by either the marketing authorization holder or a parallel importer (or upon their request). Advertising of prescription-only drugs, medicines containing psychotropic or narcotic substances as well as any medicinal products reimbursed from public funds cannot be directed to the general public (but may be targeted at healthcare professionals). Advertising of medicinal products not authorized for use in Poland is strictly prohibited. Advertising cannot refer to product characteristics which are not covered by the relevant authorization, ie, so-called 'off-label use'. There are a variety of restrictions regarding the content and mode of advertising of medicinal products addressed to the general public, as well as obligations regarding necessary disclosures and warnings.

The advertising of pharmacies (both conventional and online) is forbidden; however, publishing information on the location and working hours of pharmacies is permissible. The advertising of healthcare services is also prohibited, although health care providers may describe the scope and type of health services rendered.
- (c) **Gambling:** The advertising of the majority of forms of 'hard' gambling, such as cylindrical games (eg, roulette); card games; dice games; betting and games on automated machines is prohibited (unless conducted within the premises of a casino, a betting outlet, or on a website registered as an online betting outlet). Mutual betting services (pools betting), which have obtained an official permit, may be advertised, subject to specific restrictions (eg, mandatory disclosures and warnings). Operators of mutual betting services are also allowed to publicize their sponsorship of certain events (subject to certain restrictions). It is also possible to advertise promotional games of chance.
- (d) **Tobacco:** Advertising of tobacco products is completely prohibited. The ban on tobacco advertising covers any advertisement or promotion of tobacco products; tobacco props or imitations of tobacco products or props; and of symbols relating to the use of tobacco. Imitations of packages for tobacco products cannot be displayed in stores. Moreover, tobacco manufacturers are prohibited from sponsoring sporting, cultural, educational, health, and socio-political activities.
- (e) **Financial Products:** There are various rules affecting the sale of financial products under, eg, the Banking Law and the Act on Consumer Credit.

1.6 Are any government pre-approvals required?

There are no government pre-approvals required and it is not possible to request pre-approval from the relevant bodies.

Please note, games of chance (eg, promotional lotteries) require an official permit, official approval of their terms and conditions, and compliance with other requirements (eg, presentation of a bank guarantee covering prizes offered) before they are actually organized. If a promoter is unsure whether a promotion falls within the strictly regulated category of ‘games of chance’, they may apply for an official interpretation (usually issued within 30 days).

1.7 Does the media pre-clear advertising?

Broadcasters are liable for the content of broadcasts. Additionally, the media are obliged to ensure compliance with the law. In Poland, various advertising restrictions apply, which are also reflected in the RTV Act and the Press Law. Additionally, media may be liable for assisting unfair competition or be directly liable under industry-specific regulations. The majority of media, therefore, have some internal clearance procedures.

Please note that the self-regulatory bodies, eg, the Advertising Council may, upon request, issue an opinion on advertising copy submitted to it. This advice is provided as a service and is not binding on the advertiser.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The government enforces advertising rules through its agencies, particularly the Office of Competition and Consumer Protection (‘OCCP’), the National Broadcasting Council (‘NBC’), and (in respect of medicinal products) the Chief Pharmaceutical Inspector (‘CPI’).

The OCCP supervises advertising activities to ensure that they do not infringe the collective interests of consumers, eg, by ensuring that advertisements are not misleading in any way. In the past, the OCCP has focused mainly on the advertisements disseminated by the telecoms and cable TV operators, banks, and insurance companies, since they had the greatest potential to mislead to consumers due to the scale of their activity. There were also cases from other industry sectors, eg, the fast-moving consumer goods sector.

The President of the OCCP may decide that a practice violates collective consumer interests and order the advertiser to discontinue those activities and eliminate their results, eg, by issuing a statement in a form decided by the OCCP. The OCCP may also impose fines of up to 10% of annual revenue. However, in practice, fines are not usually that high.

The NBC monitors compliance of radio and television advertising. If a broadcaster is in breach of TV or radio advertising regulations, the NBC may impose fines.

The CPI enforces rules relating to pharmaceutical advertising. If an advertisement fails to comply with such rules, the CPI may:

- (a) prohibit the further publishing of the advertisement;
- (b) publish the CPI’s decision or order the advertiser to issue a correction; and/or
- (c) order the elimination of the results of the violation (eg, destruction of advertising materials).

The Chief Veterinarian enjoys the same powers in respect to advertising of veterinary medicinal products.

Furthermore, violation of certain provisions regarding advertising may result in criminal liability (eg, in case of alcoholic beverages and pharmaceutical products). In such a case, criminal law enforcement authorities are engaged. In some cases, specialized bodies may also participate in criminal proceedings (eg, the State Agency for the Prevention of Alcohol-Related Problems ('PARPA'), which may act as the prosecutor in cases involving alcohol advertising).

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may bring a civil action, particularly under the Unfair Competition Act, where its interests are infringed or threatened due to an act of unfair competition. See question 0 above as to the types of activities considered to be acts of unfair competition in relation to advertising. Infringement of any industry-specific limitations or prohibitions (see question 0 above), including administrative or criminal laws, may also constitute grounds for civil action by a competitor.

If the activity is a recognized act of unfair competition, the following remedies can be sought:

- (a) cessation of the prohibited activity;
- (b) eliminating the effects of the prohibited activity (eg, destruction of advertising materials);
- (c) publishing one or more corrective statements;
- (d) damages and accounting of profits; and/or
- (e) payment of a specified amount to a social cause in support of Polish culture or national heritage.

The above remedies (except for point 0) may also be sought by regional or national organizations protecting the interests of businesses (eg, associations of businesses or trade bodies established with the statutory purpose of protecting certain industry sectors) against individual advertisers. The Courts may rule as to products, packaging, advertising materials and other objects directly related with committing a tort of unfair competition, eg, copycat advertising. In particular, the court may order the destruction of materials.

Furthermore, entities which help, induce or benefit from the illegal act may also be held liable.

A competitor may also notify regulatory bodies about observed breaches and rely on enforcement by such authorities.

1.10 When do consumers have a right of action? What are the potential remedies?

As a principle, consumers have a direct right of action when their interests are threatened or infringed as a result of an unfair commercial practice. A consumer may seek:

- (a) cessation of the prohibited activity;
- (b) elimination of the continuing effects of the prohibited activity (eg, destruction of advertising materials);
- (c) publication of one or more corrective statements;
- (d) damages and accounting of profits; and/or
- (e) payment of a specified amount to a social cause in support of Polish culture or national heritage or consumer protection.

Claims indicated in points (a), (c) and (e) above may also be brought in court proceedings by the National Ombudsman, Insurance Ombudsman, Consumer Ombudsman, and consumer protection organizations.

A consumer may also rely on the statutory warranty for conformity of a product/service with agreement. This may apply in particular when untrue or misleading claims in respect of the properties of a purchased product were made in the course of advertising.

Finally, a consumer may make a complaint to the Advertising Council to have the advertisement declared as contrary to the Code (see question 0 below).

2 SELF-REGULATORY FRAMEWORK

2.1 Does Poland have a primary advertising self-regulation system?

Yes. The Polish advertising industry has adopted a system of self-regulation. The advertising industry created *Rada Reklamy* ('Advertising Council'), which is a member of European Advertising Standards Alliance. The Advertising Council is a union of associations of advertisers, advertising agencies, as well as media associations. These associations, acting as members, elect the Advertising Council's governance bodies and create its policies. The Council is funded by the advertising industry: mostly from the membership fees and license fees for the use of ethical advertising certifications.

The Council's body—the Advertising Ethics Committee—issues decisions on conformity of particular advertisements with the Council's Code of Ethics in Advertising ('Code'). The Council also monitors advertising by periodically conducting market studies to verify compliance with rules of ethical advertising.

Decisions of the adjudicative panel of the Advertising Ethics Committee have persuasive effect, but are not strictly binding. However, since the Advertising Council considers whether a trader has engaged in honest trade practices, non-compliance with a decision may demonstrate a breach of fair market practice standards. If so, such behavior may, arguably, constitute unfair competition.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes. The Polish self-regulation system provides for two types of codes of conduct:

- general rules for advertising under the Code; and
- industry sector-focused rules (eg, Beer Advertising Standards and codes of ethics in pharmaceutical advertising and marketing).

Generally, codes constitute sets of principles that are more restrictive than legal frameworks for advertising. Such obligations are accepted by advertisers on a voluntary basis. The Code applies to all entities related to the Polish advertising industry. While not legally binding, advertisers that agree to comply with the Code are permitted to display a mark certifying ethical advertising. The English version of the Code may be accessed at: <http://www.radareklamy.pl/dokumenty.html>.

The Code regulates basic principles of advertising, as well as specific rules regarding:

- advertising to children;
- advertising containing ecological information;
- sponsorship;
- direct marketing; and
- sales promotion.

The key principles are:

- (a) advertisements should not contain any form of discrimination or any elements encouraging acts of violence;
- (b) advertisements should not take advantage of misfortune or cause anxiety or fear;
- (c) advertisements should not mislead consumers;
- (d) advertisements cannot exploit the lack of knowledge of consumers;
- (e) sponsorship and sponsorship-related agreements must clearly indicate all interested parties and obligations vis-à-vis the sponsor; and
- (f) direct marketing (especially offers) should be easily identifiable.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Yes. Under the Code, a complaint may be submitted by a consumer (free of charge) or other entities, in particular by competitors (for a fee). The board of the Advertising Council may also file a complaint. After pre-evaluation by a speaker-arbiter (a member of the Advertising Ethics Committee appointed as a reporter for a particular case), the case is decided by the Advertising Ethics Committee, consisting of representatives of advertisers, media and advertising agencies. The advertiser whose practice is being challenged may respond to the claim in writing. Afterwards, a hearing is scheduled where both parties are heard. In consumer complaints, the consumer does not (and cannot) attend but is represented instead by the speaker-arbiter. The consumer is informed afterwards about the outcome of the proceedings.

The Adjudicating Panel may:

- (a) reject the complaint entirely;
- (b) dismiss the complaint if there are no facts or evidence suggesting infringement of the Code;
- (c) decide that the advertisement infringes the Code;
- (d) identify modifications that should be made to the advertisement in order to remedy the infringement of the Code; and/or
- (e) decide that the advertisement should be withdrawn.

Appeals based on new facts or pieces of evidence may be submitted to the Board of Appeal within 10 days of the decision being delivered to the parties. The Adjudicating Panel may also publish decisions in selected industry publications.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system is strongly endorsed by the advertising industry in Poland. Voluntary, collaborative rulemaking (eg, the Code of Pharmaceutical Marketing Ethics) is an additional stimulant for the development of fair advertising in Poland. The Advertising Council improves transparency of the monitoring and enforcement of advertising rules in Poland. More than 300 complaints, for nearly 250 advertisements, were filed with the Advertising Council in 2017 (the last year for which reports have been published). The vast majority of complaints are filed by consumers.

The self-regulation system runs in parallel to the statutory regulations. The advantages with bringing claims under the self-regulation system are that they are processed quickly (usually within a few weeks, which is much faster than in the courts) and that they are less expensive. This, in theory, allows quick and efficient resolution of complaints.

On the other hand, the only sanctions for non-compliance with the Code, repeated offences and/or consistently ignoring the Code or decisions, are suspension or termination of the license to use certificates showing fair advertising and compliance with the Code by the infringer (see also comments in question 0 above). Advertisers who have had the right to display the ethical advertising mark withdrawn must wait twelve months from the date they ceased violating the Code before they may be permitted to display the mark again. Additionally, the standard of protection, in particular in respect to offensive, discriminatory advertising is, in our assessment, rather low.

2.5 Are the self-regulatory system's decisions reported?

All decisions of the Advertising Council are published on its website (<http://www.radareklamy.org>). When complaints are upheld, the advertising agency and publisher who distributed the advertisement (if they participate in self-regulation system) are notified by the Council. The Adjudicating Panel may also decide to publish its decision in industry specific media.

If the Advertising Council considers the advertisement to be misleading or otherwise non-compliant with the Code, it may forward the decision to other entities (such as governmental bodies supervising advertising).

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Regulators of the advertising market have traditionally focused on advertisements in the telecoms, cable TV, banking, para-medical (particularly food supplements), and insurance sectors, as these sectors have the greatest potential to mislead consumers due to the scale of their activity. Thus, entities operating within such industries, in particular, should consider the additional guidance provided by the self-regulation.

As a general rule, the self-regulation system allows the quick implementation of rules to reflect the approach of the market regulators, ie, before such rules are officially codified. Therefore, the rules on advertising contained in the self-regulation system may be more stringent than those contained in the law. The self-regulation codes may shed some additional light on industry practice and accepted behaviors, which may be particularly important for new entrants to the local markets.

2.7 Are there any other self-regulatory systems that govern advertising practices in Poland?

The Polish Marketing Association ('SMB') has implemented the 'Robinson List' which is an opt-out system for direct marketing that consumers may sign up to. The Robinson List is binding for SMB members only.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Poland (eg, consumer protection laws, IP laws, unfair competition laws)?

Disputes between advertisers and their competitors as to the honesty and accuracy of claims made in advertisements are regulated primarily under the Unfair Competition Act. However, the Unfair Competition Act regulates only general principles (ie, that claims within the advertisements must be compliant with the law and honest trade practices—see also question 0 above). Specific restrictions on advertising are set out in the industry-specific Acts which may determine whether an advertisement is compliant with the Unfair Competition Act.

Disputes between advertisers and consumers as to the honesty and accuracy of claims made in advertisements are regulated under consumer protection laws (in particular, the Unfair Commercial Practices Act). This Act forms the basis for direct consumer actions. Again, the Unfair Commercial Practices Act must, in some instances, be read alongside the industry-specific advertising restrictions. However, in principle, it encompasses a number of self-explanatory and generally applicable rules regarding advertising.

There is a degree of overlap between the Unfair Commercial Practices Act, the Unfair Competition Act and many industry-specific rules, which, when taken together, create a general framework for what is acceptable in advertising.

As a principle, under the applicable regulations, advertising claims must be true, verifiable and cannot be misleading. A special regime for comparative advertising applies. Specific industry-focused regulations apply for 'sensitive' products (eg, alcohol; medicinal products; and tobacco). In some cases, advertisements for certain products are completely banned (eg, medicines not authorized for use in Poland). Also, certain types of claims may be specifically regulated (eg, those made regarding the financial terms of consumer loans).

Additionally, rules regulating sales to consumers provide that warranties and assurances made by the manufacturer regarding the products or services, including assurances made in advertisements, are binding upon the seller and may constitute grounds for a claim regarding non-conformity of goods with the sales contract/statutory warranty. These rules may be enforced by consumers in the course of the civil court proceedings.

In specific cases, untruthful or misleading advertising may be subject to the consumer protection laws protecting collective consumers' interests. General consumer (public) interest in the field of advertising is supervised by the OCCP, which may enforce relevant rules following a complaint or on its own volition.

3.2 Is substantiation required for advertising claims?

As a rule, all claims made in advertising must be substantiated in case they are challenged. There are no detailed, national regulations regarding substantiation of claims common for all industries (although there are more detailed EU-wide rules specific to particular sectors, such as medicines or foodstuffs). In practice, evidence of the truthfulness of claims is required when advertisements are challenged before the courts or by the supervising authorities (eg, pharmaceutical regulatory bodies). Under the Unfair Competition Act the burden of proof is reversed: the advertiser is obliged to demonstrate the truthfulness of the information.

Additionally, the Code requires advertisers to have underlying materials available determining the consistency of advertisements. The advertiser must be able to present such materials on demand by the Advertising Council.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

In some cases, where it is customary and obvious that claims are used in an exaggerated way and so perceived by the public, the above obligation does not apply.

In Polish practice, it is generally accepted that advertising is aimed at presenting a product in the best light possible. Therefore, some qualities may be exaggerated. Recipients of advertising communications are expected to view advertising critically. So-called 'superlative advertising', using

slogans such as ‘The best prices’ or ‘Incomparable quality’, is allowed without substantiation. In general, as long as the advertising merely aims to create a vague and general positive association with a product or a brand and does not include ‘hard claims’ (eg ‘No 1 in Poland’) referring to particular features of products, it is usually allowed.

3.4 What are the rules governing the use of disclosures in advertising?

Under Polish law, advertising may be considered misleading when correct, verifiable information is presented in a way that may create a false impression, in particular when material information is omitted (known as a ‘misleading omission’). Therefore, disclosures should always be provided when failure to include such disclosure could impact a consumer’s purchasing decision or their decision on whether to enter into an agreement.

Disclosures must be presented in a way that enables consumers to understand them. If disclaimers are included in the ad, they must be easy to read (ie, sufficiently prominent) and must be communicated (ie, displayed on screen) for the time necessary for them to be read.

Some disclosures are specifically required by law (eg, disclosures regarding fuel consumption and CO2 emissions in car advertisements; in advertising of medicinal products; and detailed disclosures in advertisements of consumer credit). Many of these obligations are derived from European law.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no specific provisions in law regarding the use of endorsements and testimonials. In some industries, there are limitations regarding endorsements by particular professionals (eg, pharmaceuticals cannot be endorsed by medical professionals, and advertisements for foodstuffs using health claims may not exploit endorsements by physicians and health care professionals). Additional rules regarding the use of personal images apply (see question 0).

Moreover, suggesting the endorsement of a person without such person’s consent may be deemed to infringe their personal rights, may be misleading, and may infringe personal image rights.

3.6 What are the rules governing the use of product demonstrations in advertising?

Product demonstrations are not specifically regulated under Polish law. General provisions on advertising and product communication nevertheless apply. As a rule, the products shown must be identified in such a way as to enable consumers to clearly recognize the product shown amongst the available versions of the product. This is particularly important in car ads, where usually the best equipped models are shown.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted, subject to the rules under the Unfair Competition Act. A comparative advertisement must meet eight criteria in order to be considered compliant with honest trade practices (and therefore allowed), namely, it must:

- (a) not be misleading;
- (b) compare (objectively and in a verifiable manner) only products and services fulfilling the same needs or intended for the same purpose;
- (c) compare one or more material, characteristic, verifiable and typical features;
- (d) not create confusion in the market (as far as the compared products, trader or trademarks are concerned);

- (e) not disparage a competitor's products, distinguishing marks, trademarks, names or competitor's business;
- (f) in respect of products protected by a geographical name of origin, relate to products bearing the same distinguishing marks;
- (g) not exploit the reputation of distinguishing marks of the competitor in an unjustified manner; and
- (h) not present a product as an imitation or replica of products bearing a protected trademark or trade name.

If a comparative advertisement relates to a special offer, the terms of such special offer must be clearly communicated (including applicable dates).

Comparative advertising may also constitute an unfair commercial practice within the meaning of the Unfair Commercial Practices Act if it is misleading as to the product or its labeling, trademarks, trade names, or other distinguishing marks of the entrepreneur or its products.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Use of trademarks in comparative advertising is allowed under the EU Comparative Advertising Directive, which is implemented in Poland. Therefore, provided that the use of a trademark is indispensable in order to make comparative advertising effective, or to identify the goods or services of a competitor, making reference to a trademark or trade name does not constitute a breach of an exclusive right, if the requirements for fair comparative advertising (see question 3.7 above) are met. However, when it comes to copyright, the approach towards comparative advertising is not unequivocally settled.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

There are no specific provisions of law regarding indications of geographic origin except one—that such information must be truthful. Under the Unfair Competition Act, labelling goods or services with a false or fraudulent geographical indication indicating, directly or indirectly, a country, a region or a locality of origin, or using such indication in commercial activity, advertising, commercial correspondence, invoices or other documents shall be deemed a tort of unfair competition. Also, the designation of goods or services or absence thereof which might mislead customers as to their origin shall be deemed an act of unfair competition.

A claim as to geographic origin made in advertising must be substantiated in case it is challenged. If the advertised product has no features relating to its declared origin, it may be misleading. As a consequence, legal actions may be brought against such producer (see questions 1.8–1.10 above).

Regardless of the above, please note that for particular categories of products (eg, food) there may be specific legal provisions regarding indications of geographic origin.

3.10 Are there any special rules governing product packaging?

The packaging of the product is one of the criteria used to assess a product's safety. The packaging should ensure the product's safety, and should be safe in itself. The packaging for each product must contain such information as:

- (a) producer's name,
- (b) producer's address,

- (c) state where the seat of producer is located (if its registered seat is outside the territory of EU Member States and states within the European Free Trade Association), and
- (d) information identifying the product (unless the purpose of the product is obvious).

Please note that, for a number of industries, there may be specific regulations regarding their packaging (eg, toys, medicinal products, food). Many of these specific legal provisions originate from European law.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no specific rules or guidance on the use of ‘dark practices’. The practices that may be considered as ‘dark’, fall within the general rules and regulations mentioned above, especially the Unfair Commercial Practices Act and the so-called abusive clauses, resulting from the EU Unfair Terms in Consumer Contracts Directive, which is implemented in the Polish Civil Code.

The general rule is that any contractual provisions which were not individually agreed with the consumer (eg, online platforms’ Terms and Conditions) and which shape the consumer’s rights and obligations in a manner contrary to good practice, grossly infringing their interests, are considered as an abusive (forbidden) clause. In the Polish Civil Code there is a list of such clauses; however, it is an open catalogue.

The use of such clauses may be considered as a violation of the collective consumers’ interests and result in an administrative fine.

Recently, the President of the OCCP initiated an investigation towards companies which, eg:

- (a) suggested to consumers that a special offer was available on the platform only for a limited time, when in fact it was a continuous promotion;
- (b) presented a list of cheapest offers without indicating additional platform fees, so that the cheapest offer in some cases was not the cheapest offer overall; or
- (c) did not provide the customers with the information that, in order to receive money earned via the platform, the consumers need to verify themselves with ID or other official documents.

Moreover, in the EU Digital Services Act, which will come into force from January 2024, there are some specific requirements regarding online platforms with respect to so-called ‘dark patterns’. Its provisions concern, in particular, the general transparency of advertisements as to their origin, the platform interface design and platform organization—which should not be misleading or using manipulative techniques, and the transparency of the recommendation systems. The obligations vary depending on the given platform category. The most stringent regulations are provided with regard to the biggest online platforms such as Google, Facebook or Amazon.

Furthermore, the EU is currently working on the so-called ‘Green Claims’ Directive, which is aimed in particular to the issues of advertisements based on ecological claims.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

The special rules on artificial intelligence with regard to advertising are provided in the EU Digital Services Act, but apply only to the providers of very large online platforms and of very large online search engines. The use of algorithmic systems, which is a category broader than artificial intelligence, should be included in the obligatory risk assessment conducted by such providers, especially as to the recommendation systems. The providers shall be able to explain the logic of such systems, at the request of the relevant authority.

The EU is currently working on the Act on Artificial Intelligence, which is aimed at regulating artificial intelligence systems in general as to the rules and requirements for making such systems available to the public. This regulation will come into force no sooner than 2026. At this draft stage, the EU intends to qualify as 'high-risk' AI systems (which means that such systems have to meet strict requirements) those intended to be used by social media platforms that have been designated as 'very large online platforms' within the meaning of the EU Digital Services Act. The strict requirements apply to AI systems intended to be used by such platforms in their recommendation systems to recommend, to the recipient of the service, user-generated content available on the platform.

4 PRICE ADVERTISING

4.1 What are Poland's rules regarding price advertising?

When advertising includes a product's price, and is specific enough to be considered as a proposal to sell the product, all essential information regarding price should be included. In particular, the following information should be provided:

- (a) the price inclusive of taxes; or, where due to the nature of the product the price cannot reasonably be calculated in advance, the manner in which the price is calculated; as well as
- (b) all the additional freight, delivery or postal charges; or where these charges cannot reasonably be calculated in advance, the information that such additional charges may be payable.

Failure to provide such information may be considered unfair market practice.

When the price is advertised, eg, in the press, periodicals, catalogues, posters, on TV, or online, the price per unit of the product or service should be indicated, as well as the date or time frame when this price applies.

4.2 What are Poland's rules regarding advertising 'free' products?

Under the Unfair Commercial Practices Act, a product may be presented as 'gratis', 'free', 'without charge' or similar only if the consumer does not have to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

However, it is prohibited for advertisers to offer free products (known as 'bonus sales') different to, or unassociated with, the main product being purchased, unless one of the following conditions is met:

- (a) the bonus is of small value or a sample of product; or
- (b) the bonus constitutes a prize in a lottery (game of chance) or competition (game of skill).

However, it is uncertain whether such a general prohibition of bonus sales is in line with EU laws.

4.3 What are Poland's rules regarding sales and special offers?

Large shops and retail outlets are subject to certain limitations on products sold without a profit margin. This restriction applies to stores with a sales floor larger than 400 m². The purpose of this regulation is to stop large stores from unfairly competing against small businesses by offering products without a profit margin, with the aim of eliminating small competitors from the market. However, this restriction does not apply during end-of-season sales lasting no more than one month (organized twice a year), to products close to the end of their shelf life, or in the case of liquidation sales.

Additionally, since January 2023, as the result of the implementation of the EU Omnibus Directive, there have been special requirements regarding the communication of promotional prices with regard to products and services. The seller or service provider, when communicating that a product or service has a promotional price, is required to indicate this product's or service's lowest price within the last 30 days before the promotion. This refers to the lowest possible price within that timeframe, and so any promotional prices within that period should also be taken into account.

4.4 What are Poland's rules regarding rebates?

There are no regulations on rebates in Polish law, except for anti-monopoly rules.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

When a price reduction or discount is communicated, information on the original price and new price (with applicable rebate) should be indicated. Products introduced to the market for the first time cannot be presented as being on sale or discounted. When the discount is for reason of the product's properties (eg, close expiration date, defects), the reason for the discount should be clearly indicated, alongside the 'before' and 'after' prices.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Some products cannot be advertised under Polish law. These include:

- (a) alcoholic beverages (with the exception of beer);
- (b) some forms of gambling ('hard' gambling, such as card or dice games, roulette, gambling machines);
- (c) tobacco products;
- (d) prescription-only medicines;
- (e) medicines not authorized in the Polish market;
- (f) state-reimbursed medicines;
- (g) drugs containing narcotic and psychotropic substances; and
- (h) healthcare services.

However, some of these prohibitions are not absolute (eg, alcoholic beverages may be advertised non-publicly; and state-reimbursed medicinal products, prescription-only drugs and drugs containing narcotic and psychotropic substances may be advertised to professionals). See question 0 above.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The Broadcasting Act prohibits 'theme placement', which is defined as commercial communications consisting of reference to a product, service or their trademarks in broadcast scripts or dialogues in return for payment or similar remuneration. However, product placement featuring an image of a product is permissible under certain conditions.

For additional restrictions, please see question 0 above.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Polish law does not provide for specific regulations governing indecency or obscenity in advertising, but such practices may infringe honest commercial practices under the Unfair Competition Act. Some product-specific rules apply. For example, beer advertisements cannot associate the product with sexual attraction.

General criminal law prohibits the broadcasting of any pornographic content, including in advertising, to minors below the age of 15.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There are no specific rules regarding disclosing the identity of advertisers or sponsors. Anonymous advertisements (eg, anonymous teaser campaigns) do appear in Poland. However, when an infringement occurs, governmental and judicial bodies may demand that an advertiser's identity is disclosed.

Certain advertisers engaging in some specific forms of promotion may be required to disclose their identity. For example, a producer or a distributor of alcoholic beverages sponsoring a mass event may only present its name or its trademark. Advertisers must also disclose their identity in TV or radio programs where they are engaging in product placement.

Generally speaking, when a publication is paid for or other benefits are provided to its publisher, it is sufficient to indicate that the publication is sponsored (without the need to identify the sponsor). Recipients must know that the publication/broadcast is not objective editorial material, but is actually paid-for commercial content.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Misleading advertisements are prohibited. The Unfair Competition Act and the Unfair Commercial Practices Act oblige advertisers to provide audiences with clear information on the nature of the communication.

Specific regulations apply to product placement (and similar activities) in TV and radio broadcasting. The Broadcasting Law provides that, where product placement occurs, the audience must be informed. Product placement of products which cannot be advertised legally on TV is also prohibited. Product placement is permitted exclusively in cinematographic works, films or series made for audiovisual media services, sports programs and light entertainment programs (with the exception of programs for children). Product placement must not prejudice the autonomy and editorial independence of the broadcaster, and the broadcaster cannot give undue prominence or directly encourage persons to buy the product/service. Direct reference to products or services in dialogue is forbidden under Broadcasting Law.

There are also certain restrictions in the RTV Act regarding length of commercial breaks. The commercial breaks must be clearly announced in the broadcast.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Yes. Product placement in programs has to be identified with a graphic sign (in television) or with an acoustic symbol (in radio) at the beginning and at the end of the program, as well as after each advertising break. The neutral information identifying the provider of the product or service placed as well as the product/service itself should be given at the end of the programs.

Under the Press Law, commercials must be clearly indicated in order to prevent confusion with editorial content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

In Poland, there are no specific provisions regarding advertising and marketing via social media. Therefore, general rules on advertising and marketing apply. Public profiles of products, brands or manufacturers are treated as any other public advertising.

The regulations regarding ‘undercover’ marketing (stealth marketing) are of particular importance. Polish law proscribes any advertising which purports to be independent and neutral, in particular when making references to the quality of products. This law effectively prohibits advertisers from using fictitious social media profiles to endorse or market products or services. Generally, Polish law forbids misleading omissions, such as non-disclosure of the commercial nature of an activity undertaken by a business towards a consumer. Additionally, the regulations on spam may be relevant to marketing via social media. Under the Electronic Services Act, it is forbidden to send unsolicited commercial information to a specified individual recipient via means of electronic communication, in particular via email. This provision is applicable to commercial messages sent, for example, via Facebook. The consent of the recipient is necessary to avoid violation.

In practice, social media in Poland is used to circumvent the most restrictive regulations banning advertising of products of certain kind, eg, alcoholic beverages. It is very common for alcohol producers to have fan pages. The Polish regulator of alcoholic beverages market (‘PARPA’) claims that certain social media constitute public means of dissemination of information, and are therefore subject to all restrictions related to public advertising of alcohol.

In 2022, the President of the OCCP issued the Recommendations on Labeling of Content Advertising by Influencers on Social Media. Although it is not binding at law, all of these recommendations have been implemented in practice, since the President of the OCCP in Poland is really active in that field and the administrative fines applied can be severe.

The general approach is that the content should be labeled on two levels:

- (i) with the use of the given social media platform features; and
- (ii) within the post description or tags. The description or tags should be provided in the official country language and should be clear and simple (eg, #advertising_cooperation, #advertisement, #paid_cooperation, #sponsored_post). The description or tags cannot use abbreviations, be ambiguous or use different language (eg, #ad, #cooperation, #spons, #promo).

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The Polish law does not provide for special rules concerning advertising made involving user generated content. Moreover, to our knowledge, there is no case law or relevant decisions of regulatory bodies. The self-regulatory advertising organization, ie, the Council for Advertising, has not made any clear statements confirming the potential liability of advertisers. However, according to general rules of civil liability, if an advertiser does not participate in the creation of user generated content and does not contribute to the publication of illicit claims (in particular, does not mandate the user to post such content and does not reward such actions or encourage people to undertake them), there are no grounds to hold the advertiser liable for actions of others.

The assessment would be different if the user generated content was triggered by a hidden commercial relationship with the sponsor/advertised brand owner.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

We are not aware of any key judgments regarding the use of social media or user generated content. As mentioned above, the Polish regulator of the alcoholic beverages market, PARPA, claims that certain social media constitute a public means of dissemination of information, and are, therefore, subject to all restrictions regarding the public advertising of alcoholic beverages. Despite this view, there are very few successful cases prosecuting illegal advertising of alcoholic beverages, including advertisements run in social media.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

In Poland, an individual's name, picture, likeness, voice, and identity are protected under general rules of civil law concerning personal rights and under copyright law (as regards the use of an individual's image). In general, third parties cannot use these without the consent of the person depicted. Polish law does not set out special rules related to the manner in which consent should be granted. However, it is recommended that consent is in writing for evidential purposes and is given 'consciously' (ie, an individual is aware of any circumstances in relation to the dissemination of their image). The case law in this respect is not developed, although in recent years there have been more cases decided, particularly addressing the appropriation of celebrities' or sports personalities' names and images. If there are doubts in relation to the scope of the consent, these will be decided in favor of the individual whose image is exploited.

Use of an individual's image is also regulated by the Code. Advertisements should not portray or refer to any natural person without such person's consent, irrespective of whether a person is generally known in connection with performing public or social functions or is a private individual. In particular, advertisements should not describe or refer to property of a specific person in a way likely to convey, clearly and obviously, the impression of a personal endorsement.

9.2 Are there situations when permission is not required?

Copyright law states that, in the absence of an express restriction to the contrary, permission is not required to use an image when the person depicted received payment. Additionally, consent is not required when a public person's image was taken during performance of a public function and when the depicted person is only an element of larger picture of a gathering, landscape or public event. However, in such a case, the person's depiction must not be prominent or central to the picture. In the case of advertising, these general rules on the use of images are likely to be interpreted restrictively. For example, a person who agreed to pose for a picture and received payment should be informed beforehand that the picture will be used in advertising. While use of images does not require express consent, use may still infringe a person's moral rights when used in a defamatory context or in connection with controversial products or services. Therefore, as a principle, it is always recommended to obtain an individual's consent before using their image in an advertisement.

Even when permission is not required under copyright law (and, therefore, there is no infringement), use of person's image is restricted by soft law (see the description of the Code's regulation of use of an individual's image in question 0 above). Therefore, advertisers adhering to the self-regulation system undertake to acquire express permission even when it is not strictly required by law.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are specific rules regarding clearance of advertising materials in Polish law. They concern historical buildings (the Palace of Culture in Warsaw) or historical persons (Frederic Chopin). Special rules concerning the use of their image or name in advertising are contained in specific legal acts (ie, the law on the protection of the name and heritage of Frederic Chopin).

Specific rules apply to the organization of games of chance (see question 0 above).

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

There are no specific regulations regarding use of other companies' recognizable products in advertising. General provisions of intellectual property law and unfair competition law will apply. Therefore, in specific cases, a license to use particular intellectual property rights may be required to feature such protected products. In some cases, use may be misleading; in particular, it may create the impression that there is a connection between the advertiser and the other company. Depending on the specific circumstances, this may be caught under the tort of passing off (an attempt to promote one's product 'in the glitter' of another's renowned products/services).

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Poland which affect advertising (eg, Swedish gender equality law)?

We are not aware of any particular cultural rules that would apply to Poland specifically.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

We advise advertisers to avoid use of religious symbols or imagery in advertisements directed to the Polish market, since these matters may prove rather sensitive and meet with public opposition. Poland is a strongly Catholic country, and any religious connotations may cause controversy.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Poland?

No.

 PORTUGAL 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Portugal?

In Portugal, advertising is regulated in general terms by the law contained in the Advertising Code (Decree-Law 330/90 of October 23). The Advertising Code contains generic references as to how advertising should be regulated. It is a principle-based regime and refers to key principles such as:

- (a) lawfulness;
- (b) identification;
- (c) truthfulness;
- (d) respect for consumer rights;
- (e) health and safety; and
- (f) the use of Portuguese language.

Advertising is also regulated according to the medium of advertising, for example, radio, television, press, text messages etc. There are industry-specific regulations for certain types of products such as medicines; financial products; gambling and tobacco.

Additionally, there is a Code of Conduct issued by the Advertising Self-Regulatory Body ('ARP'). ARP's Code of Conduct is based on the International Chamber of Commerce Code of Conduct (see question 2.1 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The Advertising Code defines 'advertising' as any form of communication made by public or private entities, in connection with a commercial activity, business, craft or liberal activity, with the direct or indirect purpose to promote, for commercialization, any goods or services, or to promote ideas, principles, initiatives or institutions. Communications from any Public Administration with the purpose, whether directly or indirectly, of promoting the supply of goods or services, are also considered 'advertising'.

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework for advertising regulation is the Advertising Code and ARP's Code of Conduct.

The Unfair Commercial Practices Law (Decree-Law 57/2008 of March 26) and the Consumers' Protection Law (Law 24/96 of July 31) also contain some provisions in relation to advertising.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

There are specific regulations for the following types of advertising:

- (a) **Text message:** The Law on Personal Data and the Protection of Privacy in Electronic Communications (Law 41/2004 of August 18) applies to advertising via text message. For this type of advertising, it is necessary to obtain prior and explicit consent from the addressee at the time the data (ie, phone number etc) is collected (opt-in consent).

- (b) **Post:** The Law on Advertising by Post, Direct Distribution, Telephone and Fax (Law 6/99 of January 27) states that recipients of postal advertising must be informed at the time their data is collected (ie, before the first communication of their personal data to third parties) that their postal address will be used for marketing purposes. Recipients must be given the opportunity to oppose such usage, free of charge (opt-out consent).
- (c) **TV:** Television advertising is regulated by the Television and On-Demand Audiovisual Services Law (Law 27/2007 of July 30). Advertising on television should be easily identifiable as such, and generally cannot exceed more than 10% to 20% of each one-hour period. Advertising should be clearly separated from program content.
- (d) **Radio:** Radio advertising is governed by the Law of Radio (Law 54/2010 of December 24). Radio advertising must not affect the integrity of radio programs, taking into account their breaks, duration and nature. The airing of advertised material should not occupy, on a daily basis, more than 20% of the total time of the transmission of licensed program services.
- (e) **Press:** By the Press Law (Law 2/99 of January 13), graphic advertising, meaning any text or image that is used and the inclusion of which has been paid for, should be immediately identified with the word '*Publicidade*' or the letters 'PUB', at the beginning of the advertisement. The name of the advertiser, whenever this is not evident, should also be provided.

ARP's Code of Conduct contains specific rules for internet advertising, eg, in relation to online behavioral advertising.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

The Advertising Code regulates the advertising practices of some specific products and industries. These include alcohol, medical treatments, medicines and medical devices, tobacco, gambling, vehicles, and education courses.

These industries are also regulated by some sector-specific regulations. For example:

- (a) **Medicines:** Decree-Law 176/2006 of August 30, which establishes the legal framework applicable to medicines for human use, prohibits the advertising of prescription medicines. The law also regulates the terms under which non-prescription medicines may be advertised.
- (b) **Financial products/services:** The advertising of financial products/services is supervised by the Bank of Portugal ('BoP') and regulated by the Legal Regime for Financial and Credit Institutions (Decree-Law 298/92 of December 31) and BoP's Regulation 10/2008. The regime prescribes that the bank/credit institution responsible for the advertised product must be unequivocally disclosed and that advertising must be true, updated regarding the market conditions and not omit any mandatory information as per the advertised financial product/service. Any advertising that does not comply with BoP's Regulation must be approved by the BoP.
- (c) **Gambling:** The advertising of gambling is regulated by the Gambling Law (Decree-Law 422/89 of December 2). Generally, it is prohibited, with the exception of advertising in connection with contests/promotions based on chance/luck or skill and chance combined.

- (d) **Tobacco:** The Legal Regime of Tobacco (Law 37/2007 of August 14) prohibits the advertising of tobacco-related products to the general public. However, advertising tobacco-related products is authorized in publications specifically directed to professionals of the tobacco industry.

1.6 Are any government pre-approvals required?

- When using advertising materials such as billboards, vending machines and other similar media, it is necessary to obtain prior authorization from the respective municipality under Law 97/88 of August 17.
- For financial products/services it is necessary to notify the BoP. This involves sending samples of all advertising materials that are intended for use to the Bank.
- In the case of contests or promotions based on chance or luck, prior authorization from the respective municipality is required under Decree-Law 98/2018 of November 27.

Therefore, not only is it necessary to comply with the specific rules for each type of advertising but also to take into consideration how said advertising will be made available.

1.7 Does the media pre-clear advertising?

Under Portuguese legislation, pre-clearance of advertising is not mandatory.

However, members of alcohol associations (ie, ANEBE, ACIBEV and AEVP) must submit advertisements for alcohol beverages for pre-clearance, as must those advertising food and beverages to children, under the agreements entered into between ARP and the associations representative of this industry.

Moreover, any type of media can be submitted to ARP for prior approval. The benefit of this is that it is possible to obtain confirmation that the advertising complies with the applicable rules (as per the type, industry, and general advertising legislation described above).

1.8 How does the government enforce advertising laws? What are the potential remedies?

Advertising laws are often enforced when there are claims made by consumers or competitors. These typically are claims of non-compliance with the applicable laws. The Portuguese General Directorate for the Consumer is the entity responsible for supervising and applying the respective penalties, if necessary.

Penalties that may be applicable for a breach of the rules contained in the Advertising Code include:

- (a) a fine ranging from approx €1,500 to approx €45,000 (for legal persons).
- (b) the seizure of all advertising materials used;

and, in serious infringements:

- (c) a ban on advertising activities up to a maximum of 2 years;
- (d) the prohibition on the use of any benefit given by any public entity; and, finally,
- (e) the possibility of temporary closure of facilities or establishments where the advertising activity is being executed.

Additionally, ARP can also enforce its Code of Conduct. ARP can receive claims from its members or from non-members and can also investigate advertising on its own initiative to check compliance with the Code. ARP can also decide on the application of some penalties (only for members) or other additional sanctions, such as the removal of commercial communications or advertising that infringes ARP's Code of Conduct.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may file a complaint before the Portuguese General Directorate for the Consumer (which is the responsible entity for the supervision of advertising) and/or before ARP. It is possible to file before both the Portuguese Consumer General Directory and ARP at the same time, for the same cause of action. For complaints to ARP see question 1.8 above.

The Portuguese General Directorate for the Consumer may seize any advertising material that infringes the Advertising Code. It may also apply sanctions and penalties for the infringement, with or without the presentation of any claim by individual members of the public or from competitors. In contrast, ARP may only act judicially in cases where a claim has been brought to its attention, and it does not have the power to apply any statutory sanctions.

Competitors may only file an action before the Courts in cases where they can show they have suffered damage as a result of the infringement or when the granting of what is petitioned directly benefits them. These cases are normally ones of unfair competition or cases of implicit advertising that may denigrate or infringe the competitor's image/product/service/trademarks.

1.10 When do consumers have a right of action? What are the potential remedies?

A consumer may bring a claim before the Portuguese General Directorate for the Consumer (which is the responsible entity for the supervision of advertising) and/or before ARP. See questions 1.8 and 1.9 above.

In cases where the advertising in question consisted of expressly forbidden commercial practices that somehow infringed consumers' rights, consumers may file a judicial claim, in accordance with Consumer Protection Law.

Additionally, consumers have a right to be fully compensated for any damage that they have suffered.

A right of action may be exercised by:

- (a) consumers that were directly affected; or
- (b) consumers and consumer's associations even if they are not affected by the advertising in question.

Advertisers; professionals; advertising agencies and other entities which are in the advertising business, as well as holders of the advertising media used or their commissioners, may be civilly and jointly liable in general terms for any damage caused to third parties as a result of the dissemination of unlawful advertisements.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Portugal have a primary advertising self-regulation system?

Portugal has a self-regulatory advertising system which is organized by ARP. ARP is a self-regulatory institution that verifies that advertising complies with the Advertising Code through ARP's Code of Conduct.

Additionally, ARP receives claims from members and non-members in connection with advertising that violates their rights or any other advertising rule. See question 2.3 below.

2.2 Is there a self-regulatory advertising code? What are the key principles?

As previously mentioned, there is a Code of Conduct issued by ARP. The Code of Conduct establishes the key principle that all advertising should be legal, decent, honest and truthful. In addition:

- (a) Advertising should comply with the values, rights and principles recognized in the Portuguese Constitution and other legislation;
- (b) All commercial communications should avoid any advertising that contains declarations, video or audio presentations that may offend the standards of decency that exist in the Portuguese culture;
- (c) Advertising should be executed in a manner and form that does not abuse consumers' trust; and should not exploit their lack of information or experience. Moreover, advertising should be truthful and should not mislead consumers;
- (d) In terms of social responsibility, advertising should respect human dignity and should not incite or refer to any kind of discriminatory, violent, illicit or anti-social behavior;
- (e) Advertising should be conceived with a sense of social and professional responsibility and should respect the principles of fair competition; and
- (f) The use of information and scientific quotes cannot be made unlawfully. Statistics should not be presented in a manner that exaggerates their validity.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

ARP may receive complaints from competitors, members and non-members, consumers, consumer associations and other interested parties. Those complaints may be in relation to the infringement of an individual's specific rights, a breach of the Code of Conduct, a breach of the Advertising Code or an infringement of the law.

After receiving a complaint, the advertiser is invited to respond to the complaint within five working days, by presenting any evidence and/or arguments as a defense to the complaint.

When a claim or petition is received by ARP, it is delivered to the Ethics Jury. The Ethics Jury is the entity responsible for the decisions regarding ARP's Code of Conduct rules. The Ethics Jury will analyze the complaint, as well as any defense from the advertiser. Both the petition and the defense should be delivered in writing and refer to the specific advertised materials that supposedly infringe ARP's Code of Conduct and/or other general rules of advertising.

It is necessary to provide evidence to prove the infringement; however, the Ethics Jury may request additional evidence from the parties, from third parties or from ARP's technical assistants.

The process, assuming there is no appeal, normally takes around 10–12 working days. There is an appeal body, called the Appeal Committee.

All decisions of the Ethics Jury are binding on the parties.

For consumers and consumer associations, there is no cost to bring a complaint to ARP. It is possible to submit the complaint through an on-line form (in Portuguese), which is available on ARP's website or by post.

For competitor complaints, there is a fee for bringing a complaint. If the complainant is a member of ARP the fee is, at the time of writing, €850. For non-members, the fee is variable, ranging from €1,670 to €3,470.

ARP also provides a mediation service, in order for the parties in dispute to meet and reach agreement about a contested advertisement. Either party may initiate the mediation. When a request is received, the other party is notified and, if both are willing, a meeting is arranged as soon as possible. If an agreement is reached, it is put in writing, signed by both parties and then, if both parties agree, published on ARP's website. If the parties fail to reach an agreement, the case is then assessed by the Ethics Jury under the normal complaints procedure.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system is effective. It is used and followed by advertisers (individuals and legal entities).

Decisions are published on ARP's website. The purpose of publishing these decisions is to inform interested parties on how advertising should be made, how the Code of Conduct should be interpreted and the views of ARP on certain matters.

The three major TV stations in Portugal are members of ARP. This keeps them informed of its decisions for advertising purposes.

The self-regulatory system is applicable to all advertising, but it has been used most actively in several economic sectors, mainly for alcoholic drinks; sports; cleaning products; digital marketing; environmental benefits and telecommunication services advertising.

2.5 Are the self-regulatory system's decisions reported?

As mentioned above, these decisions are reported and disclosed to the public on ARP's website. The purpose of this is to inform all interested parties on the decisions made. These decisions are often used by third parties as guidance for similar cases and circumstances.

The decisions are only available in Portuguese.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

According to the Code of Conduct, companies and advertisers in general should be aware of specific areas such as:

- (a) sales promotion (which applies to commercial communications for marketing proceedings and techniques used to make the products more attractive);
- (b) sponsorship;
- (c) direct marketing; and
- (d) other forms of advertising (commercial communications) that use interactive or digital means.

In terms of advertising that uses interactive or digital means, it is necessary to consider the Good

Practice Guide of Digital Marketing Communications and Online Behavioral Advertising issued by ARP.

Companies using alcoholic products in advertising should be aware of the Self-Regulation Code for Commercial Communications on Alcoholic Beverages–Wines and Spirits, also issued by ARP.

2.7 Are there any other self-regulatory systems that govern advertising practices in Portugal?

There are no other self-regulatory systems that govern advertising practices in Portugal.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Portugal (eg, consumer protection laws, IP laws, unfair competition laws)?

The basic laws governing advertising claims in Portugal are:

- Advertising Code (Decree-Law 330/90 of October 23);
- Consumer Protection Law (Law 24/96 of July 31);
- Electronic Communications Law (Law 16/2022 of August 16);
- Law on Personal Data and the Protection of Privacy in Electronic Communications (Law 41/2004 of August 18);
- Law on Advertising by Post, Direct Distribution, Telephone and Fax (Law 6/99 of January 27);
- Audio-text Advertising Law (Decree-Law 175/99 of May 21);
- Unfair Commercial Practices Law (Decree-Law 57/2008 of March 26);
- Industrial Property Code (Decree-Law 36/2003 of March 5);
- Competition Law (Law 19/2012 of May 8);
- Legal Regime for Distance Selling Contracts (Decree-Law 24/2014 of February 14);
- Legal Regime for General Contractual Clauses (Decree-Law 446/85 of October 25);
- Legal Regime for Individual Restrictive Practices of Commerce (Decree-Law 166/2013 of December 27);
- Legal Regime for the Sale and Warranties of Consumer Goods (Decree-Law 84/2021 of October 18);
- Legal Regime for the Right to Compensation for Competition Law Infringements (Law 23/2018 of June 5);
- Personal Data and the Protection of Privacy in Electronic Communications Law (Law 41/2004 of August 18);
- Television and On-Demand Audiovisual Services Law (Law 27/2007 of July 30);
- Radio Law (Law 54/2010 of December 24);
- Press Law (Law 2/99 of January 13);
- Law on Prescription Medicine (Decree-Law 176/2006 of August 30);
- Legal Regime for Financial and Credit Institutions (Decree-Law 298/92 of December 31);
- Gambling Law (Decree-Law 422/89 of December 02);
- Tobacco Law (Law 37/2007 of August 14);
- Law implementing the E-Commerce Directive (Decree-Law 7/2004 of January 7);
- EU GDPR (Regulation 2016/679/EU).

3.2 Is substantiation required for advertising claims?

According to the Advertising Code, any statement relating to the origin, nature, composition, propriety, and acquisition or condition of the goods or services advertised must be accurate, and susceptible to proof at any time before the competent authorities. In practice, this means any advertising claim requires substantiation.

Additionally, ARP's Code of Conduct determines that any advertising allegation, illustration and/or description must be capable of being proved by the advertiser.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Advertising should be honest, truthful, and should not mislead consumers regarding the product that is being advertised.

Objective claims regarding the product or service that is being advertised will always require substantiation. However, in the case of subjective statements (eg, puffery) where a subjective claim is made, it may be deemed admissible not to have substantiation.

A statement that someone has 'the best product' may be considered legal. However, to compare that product with another from a competitor may render such statement illegal. Comparative advertising, however, follows its own requirements (see question 3.8 below).

3.4 What are the rules governing the use of disclosures in advertising?

Under the Advertising Code, any disclosures in advertising should be true, legal, and should not mislead consumers. Also, any disclosure should be clearly visible and preferably written in the same orientation as the main message of the advertisement in a readable size.

There are specific rules for some types of products and services (see questions 5.1 and 5.2 below).

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

According to the Advertising Code, testimonial advertising should be made of personalized, genuine and provable statements. The use of non-personal statements is permitted when those statements are not made by a specially qualified person.

ARP's Code of Conduct states that advertising should not represent any person, or refer to them, without prior authorization from that person.

For television purposes, it is mandatory that endorsements are identifiable as such, at the beginning, restart (if any) and at the end of any program.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules governing the use of product demonstrations in advertising.

However, according to the Unfair Commercial Practices Law, an insufficient demonstration of a product may be considered misleading and subject to monetary fines.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted under the terms of the Advertising Code, yet subject to specific requirements. Namely, it is only admitted when it:

- (a) is not misleading;
- (b) compares goods or services that are for the same purpose or that apply to the same needs;
- (c) objectively compares one or more essential characteristics of goods or services;
- (d) does not induce confusion in the market between professionals and competitors;
- (e) does not discredit or denigrate trademarks of competitors;
- (f) does not unlawfully use the name of a competitor trademark; and
- (g) does not present a product or service as being an imitation or reproduction of a product or service whose trademark is duly registered.

ARP's Code of Conduct also establishes rules and guidelines for comparative advertising which are similar to those in the Advertising Code.

Pursuant to the Unfair Commercial Practices Law, any commercial practice that creates confusion with any product or service; trademarks; commercial names; and other signs of a competitor is prohibited.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

According to the Advertising Code, comparative advertising can only be made using a competitor's trade mark or product if the advertising does not discredit or denigrate the competitor's trademarks (comparison of objective facts). The advertiser cannot take unfair advantage from the name of a trademark or any other distinct signs from a competitor.

It is not possible to present a good or service as being an imitation or reproduction of a good or service whose trademark or commercial name is protected.

Finally, it is not possible to make comparative advertising that may generate confusion in the market:

- (a) between professionals,
- (b) between the advertiser and a competitor, or
- (c) between other trademarks, commercial names or other distinct signs, goods or services of the advertiser and those of a competitor.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Pursuant to the Advertising Code, any references or claims to geographic origins of goods and services advertised must be accurate and susceptible to proof, at any time, before the competent authorities.

Every commercial practice that contains information that is false or in any way misleading (including its general presentation) regarding the product or service's origin is considered to be an unfair commercial practice, in accordance with the Unfair Commercial Practices Law, and subject to fines up to approx €24,000 for a company and approx €1,500 for an individual.

The Industrial Property Code regulates the protection for designations of origin and geographical indications, and the national and international registry process. This registry grants an exclusive right to oppose any third parties that suggest their product has that origin and to authorize or deny to third parties the use in any public claims of the designation of origin or geographical indication.

3.10 Are there any special rules governing product packaging?

The Portuguese Advertising Code does not have special rules governing product packaging; the general rules apply.

However, there are some additional rules that apply to product packaging, namely those regarding price advertising (see answer 4.1 below) and labeling.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

The Advertising Code does not have special rules prohibiting or governing dark practices. However, it does require advertising to respect human autonomy and to respect consumer protection standards and rules, which, in turn, seeks ensure protection of consumers’ economic interests against practices ‘at their expense’, and to avoid manipulative advertising practices through a prohibition of aggressive commercial practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

The Portuguese Advertising Code does not have special rules governing AI as relates to advertising.

However, its general rules, such as those requiring veracity, identifiability, and respect for consumers’ rights, apply, as do the general rules governing the use of AI (legal instruments are currently underway) and the creation and enforcement of IP rights (set out in the Copyright Code (Decree-Law 63/85 of March 14)).

4 PRICE ADVERTISING

4.1 What are Portugal’s rules regarding price advertising?

The Legal Regime for the Indication of Retail Prices (Decree-Law 138/90 of April 26) and the Legal Regime for the Commercial Practices with Price Reduction (Decree-Law 10/2015 of January 16) contain provisions in connection with price advertising.

Prices should be indicated in digits, through a visible, easy and perfectly legible means, using signs, labels or lists in order to adequately inform consumers.

‘Signs’ are to be used to indicate the price of a single good or service. ‘Lists’ are to be used to indicate the price of several goods or services. A ‘label’ should be used on the product packaging. Lists can only be used when the nature of the goods and services makes the use of signs and labels materially impossible or as complementary means of price marking.

The price should be located near the product to avoid misleading consumers. The total price of the products should be made in a clear and visible manner, expressed in Portuguese currency (euro), including all applicable taxes and fees. Joint selling should indicate the total price, the number of pieces and, when possible, the acquisition of isolated pieces and the respective price of each one. Batch sales should also indicate the total price, the composition of the batch, and the price of each one of the units.

4.2 What are Portugal's rules regarding advertising 'free' products?

ARP's Code of Conduct advises that the term 'free' can only be used when the consumer does not have to pay more than the indispensable cost to respond to the commercial practice. It is possible to obtain a free product (premiums and gifts) when acquired with the purchase of another product if the cost of the product that was not free was not increased for the purpose of covering the total or part of the offer cost.

Additionally, advertising cannot mislead consumers. For example, when an advertiser refers to a certain product as 'free', if the consumer has to pay more than the indispensable cost to obtain the product, or if the consumer has to pay for its delivery, packing, packaging, handling or administration charges, then the description of the item as 'free' would be misleading to consumers and not permitted.

To comply with the Consumer Protection Law, it is necessary to provide and disclose, by any means, to the consumer all information before the contract is entered into, including whether the product is considered to be a 'free' product.

4.3 What are Portugal's rules regarding sales and special offers?

According to the Legal Regime for Commercial Practices with Price Reductions (Decree-Law 70/2007 of March 26):

- Sales can take place at any time of the year so long as the sale period, taken over the year as a whole, does not exceed four months.
- It is forbidden to sell products specifically acquired for sale in a sales period. It is assumed that products acquired or received in the commercial establishment for the first time, or in the month preceding the reduction period, have been so acquired.
- Sales are subject to a trader's statement, addressed to the Portuguese Authority for Economic and Food Safety ('ASAE').
- Sales with price reduction (rebates) must clearly indicate:
 - (a) the sale category;
 - (b) the type of products;
 - (c) the respective percentages of reduction; and
 - (d) the starting date and respective duration.
- It is forbidden to sell with price reduction products which are acquired after the starting date of the sale with reduction, even if the price at which they will be sold is the same as that which is being practiced during the reduction period.
- As regards benchmark prices, the price reduction must be real, by reference to the price previously charged for the same product, or by reference to the price to be charged after the price reduction period. The setting of the reduced price must be in accordance with the 'selling at a loss' prohibition framework.
- Other regulations concerning price display in commercial establishments, traders' obligations, product substitution and defective products must be complied with.
- The legislation also discusses 'promotions' and 'liquidation'. Promotions can occur at any time but cannot coincide with a sales period. 'Liquidation' activity can only take place in situations where there has been a judicial decision, termination of commercial activity, change of commercial sector, transfer of the commercial establishment, execution of works, or damage caused by force majeure.

4.4 What are Portugal's rules regarding rebates?

The Legal Regime for Commercial Practices with Price Reductions also applies to rebates (sales with price reductions). It is necessary to clearly indicate:

- (a) the sale category,
- (b) the type of products,
- (c) the respective percentages of reduction, and
- (d) the starting date and respective duration.

It is forbidden to sell with price reduction products acquired after the starting date of the sale with reduction, even if that price will be the same as that practiced during the reduction period.

Pursuant to the Legal Regime for Individual Restrictive Practices of Commerce, it is forbidden to offer for sale or to sell certain goods to a company or consumer at a price lower than their effective purchase price ('sale at loss' framework), which is defined to include any applicable taxes and, where appropriate, the transportation-related fees and charges.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no other key restrictions which advertisers should be aware of regarding retail advertising practices.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Under the Advertising Code, ARP's Code of Conduct and the other codes and guides to key practice drafted by the ARP (eg, the Self-Regulation Code for Commercial Communications on Food and Beverages directed at Children and the Self-Regulation Code for Commercial Communications on Alcoholic Beverages—Wines and Spirits), there are specific rules for alcohol, medicines, weapons, vehicles, gambling, educational courses and tobacco. The rules relate not only to the means by which these products/services are advertised, but also the public to which they may be advertised. For example:

- (a) For alcoholic products, there are specific periods when advertising may occur.
- (b) It is forbidden to advertise prescribed medical treatments and prescription medicine.
- (c) Advertising containing situations or suggesting the use of vehicles that may threaten the personal safety of the user or third parties is not permitted.
- (d) It is not permissible to advertise weapons or any other objects that can be used as a weapon.

Additionally, there are restrictions in relation to advertising in schools or advertising directed at minors. The advertising of alcohol, tobacco, or pornographic material in any school, or in any publication, program or activity specially directed to minors, is forbidden.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The Unfair Commercial Practices Law states that any type of commercial conduct that may mislead consumers is forbidden. Some examples of misleading conduct include:

- (a) giving false information about the product or service being advertised;
- (b) giving incorrect information on the nature or characteristics of the product;
- (c) giving a specific advantage regarding price;
- (d) giving false promises of a prize; and
- (e) advertising a product or service as being ‘free’ when the delivery of said good or service is subject to the purchase of another product.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Pursuant to the rules of the Advertising Code, any obscene language or pornographic content is prohibited in advertising addressed to any school establishment, as well as any publication, program or activities specially directed to minors.

Additionally, Decree-Law 254/76 of April 7 on the publication and commercialization of pornographic content determines that:

- (a) pornographic material can only be sold in dedicated commercial establishments; and
- (b) such establishments cannot:
 - display obscene products in their shop windows or in public places, or
 - use names, expressions or figures that may be considered as offensive to public morality,
 - be installed within 300 meters of schools, playgrounds and other places intended for use by children.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

According to ARP’s Code of Conduct, the advertiser’s and the sponsor’s identities should be evident in any advertising. This is in order to allow consumers to easily identify them and to contact them if necessary.

Additionally, under the Consumer Protection Law, consumers have a right to be duly informed about suppliers or service providers, in order to enable the identification of the advertiser/sponsor of the advertising. Such information should include their name, firm, head office and telephone number.

An exception to the obligation to identify the advertiser is when the sole purpose of the advertising message is to obtain attention for future commercial communications/advertising (eg, ‘teaser advertisements’). However, it is necessary to identify the advertiser/sponsor in the subsequent communication.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Under the Television and On-Demand Audiovisual Services Law, product placement is only allowed in movie theaters, home movies, TV series, audiovisual on-demand services, sports programs and light entertainment programs. It is not permitted to have product placement in children's programs, nor in religious or political programs, for example.

Programs' content and alignment must not be influenced by product placement to such an extent that channel or the service operator is liable, or their editorial independence is questioned.

All programs with product placement produced or ordered by the operator should identify such product placement at the beginning and end of the program, and whenever they restart after ad breaks.

The product placement cannot give unjustifiable importance to products, services or trademarks. For example, product placement should not be made where it is not justified for editorial reasons or purposes. Product placement should not be done in a way that misleads consumers as to the nature of that product or product placement.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

As explained above, for product placement purposes it is necessary that all programs with product placement produced or ordered by the operator should be identified as such in the beginning and in the end of the program, and whenever they restart after ad breaks.

The Television and Audiovisual On-Demand Services Law states that for product placement purposes there are no limitations as to the transmission time.

Furthermore, for interactive purposes, it is possible to include advertising spots in television programs which allow users to transition to an interactive environment with advertising content. However, users should be duly informed of this possibility.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Portuguese legislation does not have any additional special rules governing the use of social media for advertising purposes.

The general rules and principles on advertising explained above, including those stated in the Advertising Code, are applicable to advertising in social media. For example, the principles on:

- (a) lawfulness;
- (b) identification;
- (c) truthfulness;
- (d) respect for consumer rights;
- (e) health and safety; and
- (f) the use of Portuguese language.

It is necessary to take into consideration ARP's Code of Conduct and ARP's Good Practice Guide on Digital Marketing and Online Behavioral Advertising. When an electronic communication is directed at a consumer with a commercial purpose, all the information on the advertised product should be made explicitly.

Also, advertisers should take appropriate measures to ensure that the commercial nature of the social media website is duly and clearly identified as such, and that the rules and acceptable commercial behavior (under the general rules for advertising) are respected.

Moreover, it is important to refer to some of the provisions of the Portuguese Civil, Criminal and Authorship Rights Codes, which contain some important rights and limitations to some marketing practices used in social media, eg regarding:

- defamation/libel; or
- the use of a person's image;
- the use of third-party content or of user generated content, etc.

In certain situations, privacy laws and personal data protection laws should also be taken into consideration, especially those regarding privacy in the electronic communications sector that may apply to online marketing activities.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

As per the Portuguese E-Commerce Law, the intermediary provider of a server storage service shall only be liable, under the common rules of civil liability, for the information stored where it has knowledge of an obviously illegal activity or has information of such an activity and does not act expeditiously to remove or to disable access to such information.

The service provider shall be civilly liable when it is or should have been aware of the illegal nature of the information stored on the server. The advertiser is essentially considered to be a service provider that 'hosts' or 'stores' user generated content. Therefore, the advertiser may be held responsible for advertising claims made by user generated content if it falls under one of these situations.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

We are not aware of any key court or self-regulatory decisions regarding the use of social media and user generated content. However, there is a decision which, whilst it does not specifically refer to the use of social media or user generated content, does involve social media sites. In 2012, ARP's predecessor, ICAP, gave a decision which related to the use of several media, including social media (Facebook) for the advertising of a perfume, under a 'teaser advertisement' form. It was considered that the advertiser allowed the teaser to prevail for a long time. Consumers were potentially confused as to whether it really was an advertising campaign or if it was a real situation. ICAP's Ethics Jury considered that the advertiser infringed the applicable principles for teasers, especially regarding the trust that consumers have in advertising.

This decision confirms that the normal rules of advertising apply equally to social media.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

According to the Advertising Code, any kind of advertising that uses any image or words of any person without their prior consent is forbidden.

Additionally, under ARP's Code of Conduct, a commercial communication should not, unless prior authorization has been obtained, describe or refer to the personal goods of any person in order to insinuate that that person has made some kind of recommendation as to the use of the product that is being advertised.

The Portuguese Civil Code defines an individual's name, picture, likeness, voice and identity as personality rights. Personality rights are subject to restrictive protection under Portuguese legislation. Thus, a person's image cannot be exposed, reproduced or used commercially without that person's prior consent. Any commercialization that affects a person's honor or reputation, without their consent, is prohibited.

To use the image of a deceased person, it is necessary to require prior authorization from the living heirs of that person.

9.2 Are there situations when permission is not required?

There are no situations at present where permission is not required to use a person's image.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Under Portuguese legislation, filming and taking footage of historic places is subject to prior authorization from the General Directory of Cultural Patrimony.

Taking footage of or at historical places, for advertising purposes, is subject to a payment of a fee to the General Directory of Cultural Patrimony. The footage must be used for the specific purpose communicated to and authorized by the General Directory.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

It is permissible to use other companies' recognizable products in advertising when previously authorized to do so by such other company, or when the advertiser does not give the other company's product relevant importance.

ARP's Code of Conduct determines that it is not permitted to make an unjustified use of names, logos or trademarks of any other entity or institution. Additionally, the advertiser should not, in any case, take unfair advantage of the reputation of a name, trademark or any other element of intellectual property related to another entity, person or institution—not even to take advantage of the notoriety obtained through other marketing campaigns—without obtaining their prior authorization to do so.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Portugal which affect advertising (eg, Swedish gender equality law)?

Under Portuguese culture and legislation, advertising is forbidden if it:

- (a) affects values, principles and fundamental institutions;
- (b) negatively uses institutions, national or religious symbols or historical characters;
- (c) incites violence, or any other illegal or criminal activity;
- (d) includes any discriminatory content related to race, language, territory of origin, religion or sex, or content that may be offensive to human dignity;
- (e) uses any image or words of any person without their prior consent;
- (f) encourages behavior which is harmful for the environment or nature;
- (g) contains union, political or religious content;
- (h) uses foreign language, even if in conjunction with the Portuguese language, if the recipients are not exclusively or predominantly speakers of that foreign language;
- (i) encourages any behavior that is harmful to the health and safety of consumers;
- (j) is specifically directed to minors and does not consider their psychological vulnerability; or
- (k) has minors as the main participants of the advertisement, when there is no direct connection between minors and the advertised product or service.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Although Portugal is a secular State, the population is mainly Catholic, and it is advisable to take into consideration Catholic principles.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Portugal?

There is no other advice or cautions we would give to advertisers in Portugal beyond those mentioned above.

 PUERTO RICO 

1. ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Puerto Rico?

Advertising in Puerto Rico is mainly regulated by statute under the Annotated Laws of Puerto Rico and by the Regulation against Deceptive Practices and Advertisements ('RADPA') of the Department of Consumer Affairs ('DACO').

Furthermore, due to its status as a Commonwealth of the United States, federal law also applies in Puerto Rico, as it does in the mainland. Federal law regulates commerce and trade (including advertising) through the Federal Trade Commission ('FTC'). The federal trademarks law, also known as the Lanham Act, imposes additional restrictions on advertising as well.

Certain specific advertising practices are also regulated through federal and state law, as further explained below.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

RADPA defines advertisement as any oral, written, graphic, pictorial, electronic, or other manifestation, made with the purpose of offering, describing, or in any other way representing a good or service or some aspect of a good or service.

Under federal regulation 27 on Alcohol, Tobacco Products and Firearms, the term 'advertisement' 'includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media.'

1.3 What is the basic regulatory framework for advertising regulation?

- (a) RADPA sets the basic regulatory framework in Puerto Rico. It delimits the concept of 'advertisement,' imposes requirements to the advertising practice in Puerto Rico, and provides the corresponding remedies and/or fines for its violation. DACO's administrative determinations under RADPA are subject to judicial review.
- (b) Federal law is broader. Various sections of the Code of Federal Regulations regulate advertising of alcohol, over-the-counter drugs, tobacco, supplements, food, energy savings, internet, leasing and credit facilities, pricing, sales, and telemarketing. More regulations are added periodically to account for technological developments.
- (c) The Alcohol and Tobacco Trade and Tax Bureau specifically regulates the advertisement and labeling of alcohol and tobacco products.
- (d) The Lanham Act regulates the use of trademarks in commerce, including advertisements, for possible violations of false claims, dilution and/or false comparative claims. Claims challenging registration of a trademark may be brought before the United States Patent and Trademark Office, and claims for infringement may be brought in federal district courts.

- (e) In credit or leasing advertisements, the Truth in Lending Act also imposes mandatory rules of disclaimers in loan advertisements.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Yes, Puerto Rico law specifically regulates certain types of advertisement practices. For instance, the Uniform Signs and Advertisements Act of Puerto Rico of 1999 imposes restrictions on the placement of billboards and/or signs on public roads, including the prior procurement of permits in some cases.

Under federal law, telemarketing practices are specifically regulated by the FTC under the Telemarketing Sales Rule, and no unsolicited or unauthorized automated voice calls ('robocalls') may be made under the Telephone Consumer Protection Act. The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 prohibits unauthorized and unsolicited email and text message spam. See also question 1.3 above.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) Yes: Puerto Rico law regulates the advertising of:

- (i) **Games of chance:** Puerto Rico law imposes upon all government agencies, public corporations, instrumentalities, advertising agencies, television stations, radio stations, newspapers, movie theaters and filmmaking companies that advertise and promote any game of chance, including the Traditional Lottery, Additional Lottery and any other games of chance, the duty of including a message to urge gamblers to do so responsibly and warn them of the risks of compulsive gambling;
- (ii) **Lease contracts:** a lease contract with purchase option may not declare nor imply that a specific item is available in specific quantities or terms;
- (iii) **Coffee:** accuracy and veracity when claiming and/or labeling a coffee brand as 'pure local Puerto Rican coffee' is required and strictly overseen;
- (iv) **Video games:** disclosing Electronic Safety Standards Board ratings is required; and
- (v) **New vehicles:** advertising must use a certain minimum size font for displaying information on the mileage performance per gallon yield, in the city as well as on the highway.

- (b) Similarly, under federal law:

- (i) **Tobacco:**
 - Advertising in print: tobacco advertising is limited in publications to which children and adolescents are exposed to a black-on-white, text-only format;
 - Advertising in audio format (eg on radio): tobacco advertising is limited to words only with no music or sound effects;
 - Advertising in video format (eg on TV): video formats shall be limited to static black text only on a white background. Any audio with the video shall be limited to words only with no music or sound effects;
 - Cigarette advertisements in all formats: in addition to the above requirements, one of several warnings must appear in the advertising, such as: 'Cigarettes are addictive', 'Tobacco smoke can harm your children', 'Cigarettes cause fatal lung disease' or 'Cigarettes cause cancer';

- Tobacco brand-identified promotional items such as caps and T-shirts are prohibited;
 - Brand-name sponsorship of sporting and other cultural events is also prohibited; and
 - Manufacturers, distributors or retailers of tobacco products cannot offer any gift or item (other than cigarettes or smokeless tobacco) to anyone who purchases tobacco products in consideration of the purchase, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.
- (ii) **Alcohol:** there are special labeling and advertising requirements for alcohol, which is mainly controlled by the Alcohol and Tobacco Trade and Tax Bureau. These products require the use of at least one of a series of warning labels on the product packaging and/or on any advertisement.
- (iii) **Credit services:** under the Truth in Lending Act, the advertisement of credit services requires the following to be set out:
- the expected down payment, if any;
 - the terms of repayment;
 - the rate of the finance charge expressed as an annual percentage rate; and
 - the use of the appropriate disclaimers.
- (iv) **Prescription drugs:** the Food and Drug Administration ('FDA') extensively regulates the advertising of prescription drug. Advertisements must not include any misleading information, and must state any side-effect the drug may cause.

1.6 Are any government pre-approvals required?

Under state law, there are pre-approvals and permits required for the placement of some signs and billboards on public roads and on historic buildings or locations. Also, during election year (every four years), the government may not disseminate advertisements without prior approval from the electoral commission under the Electoral Law.

Under federal law, some drug advertisements may be subject to pre-approval from the FDA.

1.7 Does the media pre-clear advertising?

No, the media does not pre-clear advertising.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The main enforcement tool of the Puerto Rico government is DACO. RADPA grants DACO's Secretary the power to send out official interpretations as to what facts, acts, or situations constitute deceptive practices in advertisements. The Secretary may issue notices, orders of do's and don'ts, cease and desist opinions, and impose sanctions and administrative fines up to the maximum amount allowed by law for any breach of RADPA. The Secretary may also refer the offender to the Secretary of Justice for possible criminal sanctions.

The FTC enforces the advertising regulatory scheme in the federal sphere, with the exception of prescription drugs which are primarily controlled by the FDA. Remedies include the filing of lawsuits against the violators, the issuance of injunctions, and the imposition of fines.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors have a cause of action for trademark infringement against a person or entity who, in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of their or another person's goods, services, or commercial activities. Puerto Rico's trademark law mirrors its federal counterpart. As such, parties can seek judicial redress under either or both statutes.

A competitor also has a right of action to sue when a competitor alleges false claims about its or an industry-related product under the Commerce and Trade Act.

A competitor may also bring an action for false advertising under both state and federal anti-monopoly and unfair competition laws.

1.10 When do consumers have a right of action? What are the potential remedies?

If a consumer is harmed in any way by false claims and/or advertisements, they will have a right of action against the advertiser. One course of action available is to file an administrative complaint with DACO. If upheld, this will typically result in a sanction to the advertiser and entitle the consumer to monetary relief.

Under federal law, individuals and other consumers may file complaints with the FTC that may result in a refund should a case against a deceptive company be successful.

Additional remedies under both federal and state law are available for a disgruntled customer, including lawsuits for physical or psychological tort damages, as well as other causes of action under special laws. See also question 9.1 below for the right to take action under Puerto Rico's Right of Publicity Act.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Puerto Rico have a primary advertising self-regulation system?

Puerto Rico has advertising industry associations, such as the *Asociación de Agencias Publicitarias de Puerto Rico* ('AAPPR'), and statutory regulations governing the Public Relations industry. However, a detailed, industry-specific self-regulation system does not currently exist.

At federal level, the Advertising Self-Regulation Council ('ASRC'), administered by the Council for Better Business Bureau ('CBBB'), has the backing of major industry associations like the Association of National Advertisers ('ANA'), the American Association of Advertising Agencies ('AAAA'), and the American Advertising Federation ('AAF'), as well as the Direct Marketing Association ('DMA'), the Electronic Retailing Association ('ERA') and the Interactive Advertising Bureau ('IAB'). The ASRC runs several programs and initiatives relating to self-regulation in the advertising industry. Some specific areas have their own dedicated program, such as the Electronic Self-Regulation Program ('ESRP'), the Children's Advertising Review Unit ('CARU'), the Children's Food and Beverage Advertising Initiative ('CFBAI'), and the Online Interest-based Accountability Program ('Accountability Program').

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes. Although Puerto Rico's main industry association, the AAPPR, does not currently have an openly accessible code for advertising, there are various national industry associations that have codes of practice or ethics:

- (a) The CBBB maintains a Code of Advertising which is binding upon its members. Its Basic Principles prohibit the use of deceptive or misleading advertisements and misrepresentations. An advertiser 'should always be prepared to substantiate any claims or offers made before publication or broadcast' and is required to present such evidence to the CBBB upon request.
- (b) Additionally, other programs operated under the CBBB have their own priorities and values. For example, CARU has its own guidelines, emphasizing the special attention advertisers must give to protecting children in light of their limited knowledge, experience, sophistication and maturity. Particularly, it encourages advertisers to adopt the view of advertising as a social tool for fostering healthy social behaviors and rejecting those that make use of social stereotypes. The ESRP has its own procedures, tailored to its particular aims, such as enhancing consumer confidence in advertising and marketing by electronic retailing, discouraging advertising and marketing in the electronic retailing industry that contain unsubstantiated claims. And so does the Accountability Program, which focuses on, among other things, transparency, safeguarding consumer data and other sensitive data, and enforcing accountability.
- (c) The AAAA has its Standards of Practice, which includes a Creative Code. The document rejects unethical competitive practices that lead to 'financial waste,' 'dilution of service' and 'diversion of manpower,' among other things.
- (d) The AAF, through its Institute for Advertising Ethics, has established its 'Principles and Practices for Advertising Ethics,' which are based on the maxim that advertising should work toward what is best for the customer, which in turn is best for business. The eight principles can be summed up as promoting high ethical standards of honesty and transparency in advertising, as well as fairness and accountability.
- (e) Finally, the DMA publishes the 'Direct Marketing Association Guidelines for Ethical Business Practices,' that sets standards of ethical conduct and best industry practices. This comprehensive guide covers all forms of direct marketing, ranging from general approaches for offering products to the public, to the relatively novel, and very specific, field of mobile marketing. In addition to providing general guidance to the industry, this guideline is used by the DMA's Committee on Ethical Business Practice, and the industry peer review committee, as the standard to which direct marketing promotions that are the subject of complaint to the DMA are compared.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

- (a) The Puerto Rico Chamber of Commerce has a private, independent arbitration system open to disputes of a commercial nature between members or between a member and a non-member.
- (b) At federal level, the ASRC provides mechanisms for individuals and legal entities to submit complaints or questions from any source involving the truth or accuracy of national advertising, or consistency with the Council's regulations for children's advertising in a

quasi-judicial settings. The process consists of an adversary proceeding, beginning with the filing of a complaint against a national advertiser. A panel made up of members from the CBBB's National Advertising Division ('NAD') or from CARU, as appropriate, determines the merits of the complaint and either finds no objection to the advertisement in question, or requests the advertiser to withdraw or modify it. Generally, a decision by either NAD or CARU should be made a maximum of 90 days after the initial complaint. The process can be expedited.

A panel's decision is appealable to the National Advertising Review Board ('NARB'). The NARB's appeal process involves the appointment of a panel of five NARB members, which will review based solely on the information presented during the NAD/CARU proceedings and meetings.

Compliance with decisions is voluntary, and they are not legally binding. However, cases and decisions can be referred to federal or state authorities and released to the media and public.

The ESRP and the Accountability Program have their own review processes, operated under the umbrella of the CBBB's NAD.

2.4 Is the self-regulation system effective? Is it widely used and followed?

No data is publicly available for Puerto Rico Chamber of Commerce arbitral system. However, the ASRC system is well known and has a history of dealings with the FTC. Renowned corporations have been involved in the use of the system too, which has resulted, in some cases, in the modification of language in an advertisement after an adverse ruling from the NAD.

2.5 Are the self-regulatory system's decisions reported?

Puerto Rico Chamber of Commerce's arbitral decisions are not published.

Final decisions made by NAD, CARU and NARB are published at least ten times each year in ASRC's Case Reports, which include the decisions and summaries of other matters pertaining to the cases that were concluded since the previous issue. These Case Reports are available to Members of the ASRC. Additionally, the ASRC issues press releases regarding new decisions, which are available on its website.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

One of the most sensitive areas in which self-regulation exists is advertising to children, which is regulated by CARU. More specifically, the advertising of food products to children has become an area of special attention. CFBAI was created as a voluntary initiative to regulate what type of foods can be advertised to children. Also, online direct response advertising (regulated by the ESRP) focuses on some key issues, including disease treatment and prevention, weight loss, and product safety.

2.7 Are there any other self-regulatory systems that govern advertising practices in Puerto Rico?

None as comprehensive and well-known as the ASRC.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Puerto Rico (eg, consumer protection laws, IP laws, unfair competition laws)?

In Puerto Rico, advertising claims are governed by an amalgamation of consumer protection, intellectual property, unfair competition laws, and land use law that stem from both federal and state law. For this reason, advertising claims are governed by a varied and complex combination of administrative law and civil liability.

Puerto Rico has a long history of consumer protection laws. The government of Puerto Rico has, through DACO, issued a number of administrative regulations on advertising claims, such as RADPA. The Puerto Rico Planning Board also regulates construction and land use with respect to billboards.

More recently, intellectual property laws have evolved to regulate advertising claims. For example, Puerto Rico trademark law imposes civil liability on anyone who employs false or fraudulent descriptions, or false designations of origin in advertisements. Similarly, the Puerto Rico statute for right of self-publicity imposes civil liability upon anyone who uses the likeness of another for commercial purposes without first obtaining his or her consent.

Similarly, FTC's regulations protect consumers from deceptive practices, including deceptive comparative advertising, and unfair competition. The Lanham Act also imposes civil liability on anyone who incurs in false and/or misleading advertisements. Notably, this civil liability goes beyond the usual protection of trademark and constitutes a protection for a trademark holder against his competitors. The Federal Food, Drug, and Cosmetic Act also regulates the content of food, drugs, and cosmetics, imposing criminal liability on anyone who, inter alia, adulterates or misbrands a product in interstate commerce.

3.2 Is substantiation required for advertising claims?

In Puerto Rico, DACO requires advertisers to be in a position to substantiate and prove all claims and offers before the publication of the advertising.

Similarly, the FTC requires that advertising claims, express or implied, are substantiated on a reasonable basis. FTC may obtain substantiation from advertisers by performing industry-wide research, or on a case-by-case basis by requesting information directly from individual companies.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

As discussed above, both DACO and the FTC require that all claims in an advertisement be substantiated. Further, the Lanham Act's and the Puerto Rico Trademark Act's provisions on false and/or misleading statements are broad and generally applicable to all advertisements. Thus, although general exaggerated statements regarding products are tolerated, the standards of substantiation still apply to all kinds of advertisements.

3.4 What are the rules governing the use of disclosures in advertising?

DACO requires, inter alia, that all advertisements should be written, expressed and presented in such a form as to convey the relevant information about a product free from any ambiguity that is likely to confuse consumers. Other advertisements, such as those relating to games of chance and smoking, require disclosures as to the health issues or disorders they may cause (eg, cancer, addiction to gambling, addiction to tobacco or nicotine, etc).

The FTC requires disclosures in order to prevent advertisements from being misleading. Thus, disclosures should be clear and conspicuous. In general, an advertisement is clear and conspicuous when consumers understand the disclosure in connection with the advertised product or service. Further, the FDA requires that drug advertisements contain a ‘fair balance’ of the benefits and risks of using the drug.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

DACO requires that all endorsements in advertisements are made truthfully and in the manner alleged in the advertisement. Advertisers may not take the declarations or representations made by the endorser out of context. Advertisers may utilize spontaneous statements made by endorsers but when they use non-spontaneous statements, advertisers are required to clearly and adequately disclose that the alleged spontaneous statement were recreated in a simulated environment. Further, for the purposes of finding advertisements to be deceptive or fraudulent, any statement made by a third party shall be regarded as being made by the advertiser.

The Federal Trade Commission Act (‘FTC Act’) also requires that endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. The endorsement does not need to be phrased in the same words as the endorser unless expressly represented as such. Advertisers are subject to liability for false or unsubstantiated statements made through endorsements and endorsers may likewise be liable for statements they made.

3.6 What are the rules governing the use of product demonstrations in advertising?

Although Puerto Rico law does not have any specific provisions on product demonstrations, standards such as advertising substantiation require advertisers to be truthful when purportedly doing product demonstrations in advertisements.

Furthermore, the FTC Act prohibits advertisers from making misrepresentations or misleading the consumer with regard to any material quality or feature of a product. Product demonstrations are subject to the same standards as other forms of advertising and require, inter alia, that the claims in the advertisement be substantiated. For those claims that do not purport to represent qualities or features of a product, the FTC Act requires that the advertisement includes disclosures to that effect.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Yes, comparative advertising is permitted in Puerto Rico. There is no explicit statutory prohibition of such practices in this jurisdiction. However, trademark infringement and false advertising are actionable under both federal and state law.

Under the RADPA, a merchant may advertise that it offers discounts on the sale of goods and services through price comparisons or that the product that it is selling is cheaper than the one its competitor is selling, provided that the products compared are of the same brand and that the basis for

comparison is clearly indicated. Disclosures must be free of ambiguity, with expression of any information necessary and essential for the quality, guarantee, security, price, size, use or any other characteristic of the good or service so the consumers clearly understand the comparison of prices.

At the federal level, the FTC has explicitly endorsed the use of truthful comparative advertising. The important caveat is the term ‘truthful.’ Willful or not, creating confusion among consumers through deceitful or inaccurate advertising is one of the principal evils against which the law protects.

Comparative advertising is subject to false advertising claims by disparaged competitors. The applicable statutes for claims are thus the Lanham Act, the FTC Act and the Puerto Rico Trademark Act. In particular, trademark laws protect consumers from comparative advertisements that could cause confusion among consumers as to the nature of the goods and services offered. The important factor under both the Lanham Act and the Puerto Rico Trademark Act is the potential likelihood of confusion among consumers that might arise from the way a competitor’s name, brand, or trademark is used.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

As previously mentioned, comparative advertising that involves the use of a competitor’s trademark is subject to possible claims under Puerto Rico and federal trademark laws. Comparative advertising that involves the use of a competitor’s copyrighted material is similarly actionable in certain circumstances. Fair use has not been a very effective defense against copyright infringement in advertisements. However, comparative advertising can also function as a defense in copyright infringement cases. The issue is thus whether the copyrighted material in a comparative advertisement fits under the recognized fair use exception.

Note: Federal law exerts exclusive jurisdiction over copyrights. As such, it pre-empts and precludes legislation at state level (including Puerto Rico) in this particular field of law.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

As of yet, there are no special rules governing general claims relating to the denomination of geographic origin in Puerto Rico. There are, however, special provisions regarding the denomination of origin in the exportation of coffee. Act No 232-2015 provides the scope for designating a coffee as ‘made in Puerto Rico’. The Regulations Against Misleading Practices and Advertisement also expressly state that a misleading practice includes stating, selling or offering products as if they are from the geographic origin of Puerto Rico, when they are not. There are, however, certain benefits pertaining to the geographic origin of products produced and/or manufactured in Puerto Rico. Act No 14-2004 not only defines products manufactured and produced in Puerto Rico but provides incentives for them.

DACO prohibits any advertiser from displaying, selling, or offering for sale imported products as if they were produced in Puerto Rico.

3.10 Are there any special rules governing product packaging?

Puerto Rico recognizes and abides by the labeling rules and guidelines under the Code of Federal Regulations. Notwithstanding this, the Regulations Against Misleading Practices and Advertisement also apply to any product imported or marketed through Puerto Rico. Act No 72-1940 also contains provisions concerning fraudulent labeling which are within the scope of provisions provided by the Code of Federal Regulations.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Although Puerto Rico law has no specific provisions on ‘dark practices,’ DACO requires advertisers to comply with a clear and conspicuous message. For instance:

- (a) When a particular good or service is advertised on ‘sale,’ it should be marked with the regular price, and the sale price shall be clearly and adequately stated. No other item or sale price in smaller print should be included in the same message, causing the misleading impression to consumers that the larger sale price is the one that applies to the other items.
- (b) It is prohibited to advertise sales when the items are not available in Puerto Rico unless the image published in the advertisement is covered with a legend that indicates language such as ‘not available in Puerto Rico’ in those cases in which the advertisements are prepared (print or digital) for more than one market.
- (c) If an advertiser conducts a ‘sale,’ the date of commencement and termination of said sale have to be placed in a clear and conspicuous manner.
- (d) The duration of the ‘sale’ shall not be less than four hours.
- (e) Any advertisement stating that a good or service is warranted shall specify the terms and conditions of the warranty, inter alia.

Furthermore, the FTC Act prohibits advertisers from making misrepresentations or misleading the consumer with regard to any material quality or feature of a product. Specifically, the FTC’s Guides Against Deceptive Pricing explicitly addresses the issue of dark practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Puerto Rico law has no specific provisions on artificial intelligence in connection with advertising. Nonetheless, as with any other advertising created by humans, the rules of DACO and the FTC will apply.

4 PRICE ADVERTISING

4.1 What are Puerto Rico’s rules regarding price advertising?

In Puerto Rico, price advertising is regulated by the Monopolies and Restraint of Trade Act and by RADPA, which aim to:

- (a) control price discrimination;
- (b) promote competition;
- (c) prevent the creation of monopolies; and
- (d) protect consumers from advertisements or practices that create or tend to create a false or deceptive appearance of goods and services offered in trade.

DACO requires that goods and services price announcements be clearly and adequately advertised. The advertisement shall state the price of the good or service without additional calculations being necessary. The merchant shall place discount charts, or any electronic price checkers, that are visible and labeled in an area near the location of the goods, especially the cash register, in a manner that will allow the consumer to know the price of the good or service.

At the federal level, price advertising is regulated by the FTC under the FTC Act and through the Monopolies and Combinations in Restraint of Trade Act, which have similar goals to their Puerto Rican counterparts.

4.2 What are Puerto Rico's rules regarding advertising 'free' products?

At both the state and federal level, the advertising and sale of 'free' products must be made with extreme care in order to avoid the possibility of consumers being misled.

With regards to the advertisement of 'free' products, RADPA provides that prizes and gifts may be advertised with the purchase of any good or service or if certain conditions are met, as long as:

- (a) the price of the good or service is not increased;
- (b) the merchant clearly and adequately identifies the prize or gift and discloses all the conditions and limitations imposed for purchase;
- (c) the merchant clearly and adequately discloses the value of the prize or gift; and
- (d) the prize or gift is handed to the consumer as soon as the advertised conditions are met.

The FTC's Guides and Trade Practice Rules regulate the use of the word 'free' and similar representations to advertise products. When making 'free', or similar offers, all the terms, conditions and obligations upon which receipt and retention of the 'free' item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.

4.3 What are Puerto Rico's rules regarding sales and special offers?

Any sale advertisement in Puerto Rico shall contain the following information:

- (a) the identification of the article being sold;
- (b) the location of the establishment(s) where the items will be available, providing that it is prohibited to advertise sales when the items are not available in Puerto Rico unless the image published in the advertisement is covered with a legend that indicates language such as 'not available in Puerto Rico' in those cases in which the advertisements are prepared (print or digital) for more than one market;
- (c) the date of commencement and termination of the sale shall not be less than four hours. In the case of sale advertisements in newspapers of general circulation, including supplements, flyers, or shoppers, where the duration of the sale has not been included, or the date of termination has not been specified, the store shall honor the sale to the consumer as of the date of the presentation of the flyer, supplement, or shopper.

Where an advertisement for a sale is not published in a newspaper of general circulation and is only announced or displayed in a sign in or near the store, the sale shall last for the term that the sign remains displayed unless the sign establishes a period for the commencement and termination of the sale.

The FTC's Guides and Trades Practice Rules also provide Guides against Deceptive Pricing, when comparing the new reduced prices with:

- former prices;
- retail prices;
- prices suggested by manufacturers; and
- other miscellaneous price comparisons.

For additional restrictions under Puerto Rico state law, please refer to question 3.7 above.

4.4 What are Puerto Rico's rules regarding rebates?

RADPA provides that the final price of the item may not be advertised with the rebate if the rebate is not instantly applied to the price when the payment is made. This particular issue is primarily regulated at state level.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

- (a) **Bait Advertising:** RADPA provides that to advertise or offer a given good or service as bait, consciously knowing that it is not available, to attract the consumer and then attempting to sell them another good or service, or discouraging the purchase of an advertised good or service and offering another in substitution, are considered deceptive practices and are prohibited.

The FTC's Guides and Trade Practice Rules also contain Guides Against Bait Advertising. These guidelines characterize bait advertising as offering to sell a product or service that the advertiser does not intend to sell. Its purpose is to switch consumers from buying the advertised merchandise in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. No advertisement of this kind should be published.

- (b) **Price Discrimination:** As noted above, both Puerto Rico and federal law regulate price discrimination in order to promote competition and prevent the creation of monopolies. Any person engaged in commerce cannot directly or indirectly discriminate in price between different purchasers of commodities of the same quality if the effect of this price discrimination may be to lessen the competition, create a monopoly, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.
- (c) **Warranty:** Any advertisement stating that a good or service is warranted shall specify the terms and conditions of the warranty. Before the sale, the consumer may inspect the text of the warranty, which shall be available where the good or service is sold. Any advertisement using the phrase 'Lifetime Warranty' or other similar phrases must state its terms and conditions and may not limit its transfer of title to another consumer. Any advertisement claiming that a benefit will be obtained through the purchase of a good or service shall clearly and adequately state the merchant will be liable if the consumer does not obtain such a benefit. If in default, the merchant shall be personally liable to the consumer for the benefit not received. A merchant shall deliver the warranty certificate to the consumer simultaneously with the delivery of the good or service provision.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Both federal and Puerto Rico law provide limitations regarding the advertising of firearms, medicines, alcohol, tobacco, and child pornography, among other products and services. At federal level, agencies such as the FTC, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Federal Communications Commission ('FCC') regulate these affairs. In Puerto Rico, the Legislature and DACO address these issues:

- (a) **Tobacco:** The distribution of samples of cigarettes or tobacco to minors, or in places where minors are allowed to be, is prohibited. Packages of cigarettes must contain a warning of tobacco's effects. Commercial promotion is prohibited in theaters, public parks, cinemas, and schools.
- (b) **Alcohol:** Advertisements of alcohol should not intend to attract underage consumers, nor be false, misleading, or inconsistent with the approved product labels.
- (c) **Pharmaceuticals and cosmetics:** Advertisements of medicines, pills, cosmetics and drugs in any media requires prior authorization from the relevant federal agencies. Limitations regarding medicine prescriptions and labeling must be fulfilled.
- (d) **Gambling:** Advertisements of games of chance need to include a warning notifying the players about the risks of addiction.
- (e) **Firearms:** Advertisements of firearms should not be unfair or deceptive. Only individuals with a license to possess them should advertise firearms, and possible buyers should have a license.
- (f) **Pornography etc:** The advertisement of child pornography is illegal. Indecency, child pornography and violence in videogames, computer games, radio, television and the movies are prohibited.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) **Telemarketing calls:** Federal law prohibits deceptive practices in telemarketing. To avoid engaging in deceptive practices, telemarketers making advertisements must disclose certain information regarding the company's name, the fact that it is a sales call and the total cost of the goods and services that are being offered. The 'pattern of calls' is also relevant, as it is an abusive telemarketing practice and a violation of the Telemarketing Sales Rule to cause a telephone to ring repeatedly. In addition, the use of pre-recorded telemarketing sales calls—also known as 'robocalls'—is illegal.
- (b) **SMS:** There is also case law finding that initiating unauthorized or unsolicited automated SMS text messages to mobile telephones or other devices constitutes a prohibited business practice.
- (c) **Spam**—unwanted commercial email—and internet hackers are also regulated.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Obscenity and prostitution are illegal under both Puerto Rico and federal law.

In Puerto Rico, the Penal Code of 2012 bans the possession, exhibition, distribution and advertising of any obscene material and the advertising of pornography as well. The exhibition of obscene pictures in public spaces is also prohibited. The agencies that regulate publicity and communications in different media retain the faculty to enact additional limitations to the transmission of advertisements containing certain obscene material.

Federal law also prohibits the advertising of any material involving sexual exploitation of minors or containing child pornography. It also prohibits any transaction involving obscene matters.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Yes, although some have been declared unconstitutional.

Under Puerto Rico statutory law, printed publications must show the name of the person or corporation that published or edited it. However, both the Puerto Rico Supreme Court and the United States Supreme Court have declared this kind of broad restrictions unconstitutional, to the extent that they limit free speech. Therefore, under RADPA, DACO's Secretary can request that advertising agencies provide the name and address of the person that induced it to transmit the advertisement, but he cannot request that such information appear in the advertisement.

Federal law further requires that advertisements specifically intended to promote wine, distillates, and malt beverages must include the name and address of the person responsible for the advertisement.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Yes. From the outset, it must be noted that constitutional issues may arise against prohibitions of certain types of advertisements that contain editorial content. The Supreme Court of the United States has established that prohibiting the distribution of circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free or sold, is unconstitutional unless the prohibition is limited or applicable to certain situations.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Yes. Although product placement is not prohibited in Puerto Rico, there are different disclosure obligations that must be complied with by advertisers. For instance, FCC regulations require networks and television stations to disclose paid placements and list all sponsors. The exceptions to this rule include donated products, nominal consideration in return for product placement, or

promotion of realism as the purpose of the product's placement. Motion pictures (even when aired on television), cable programs, and first-run syndication programs are exempt from FCC's sponsorship disclosure rules.

Broadcast media, including radio, television, print, and electronic media, must clearly distinguish claims made in their informative or entertainment function from those made as an advertisement when the advertisement is in the form of a program or news segment. Advertisers, in such cases, should also unambiguously disclose the advertising nature of their advertisements, with a disclaimer stating that the program, segment, or publication is a paid advertisement for the product or service being advertised.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

RADPA grants DACO's Secretary the power to issue written requests to every communication media, advertising agency, or its equivalents for the name, and residential and postal address of the producer, distributor, seller, or person that induced, transmitted, or published an advertisement. In case of non-compliance, the social media platform can be held liable.

Furthermore, because the FTC's role in protecting consumers from unfair or deceptive practices extends to all types of sales, the provisions of the FTC Act apply to advertising made through the internet, and wireless devices, such as cell phones, and pagers. Any rule or guideline promulgated by the FTC that does not limit its scope to a specific medium is relevant to online activities as well.

Moreover, the FTC guidelines on online advertising disclosure provide that advertising in social media should not be misleading or unfair, and advertisers should have evidence to support their claims. In other words, online advertising disclosures should be 'clear and conspicuous.'

Similarly, the FTC has published some guidelines regarding mobile applications, with the intention of assisting developers in complying with truth-in-advertising standards and basic privacy principles. Generally speaking, these tell of the need for mobile application developers to tell the truth about their products, disclose key information and keep user data secure.

Illegal products or services, such as child pornography, should not be advertised through any social media.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Mere computer service providers are not considered publishers of the information they distribute; a principle that arguably extends to advertisers. The Communications Decency Act of 1996 ('CDA') provides immunity from liability to a wire service provider that passively publishes information supplied by third parties. The immunity extends insofar as the computer service provider does not participate in the creation or development of the published information.

The FTC Bureau of Consumer Protection has determined that any seller is responsible for the claims made about the goods or services they advertise. Third parties could also be liable if they knowingly participate in the distribution of a deceptive or misleading advertisement. Advertising agencies or websites designers are urged to review the information used in the preparation of the advertisement.

The FTC evaluates the agency's participation in the preparation of the advertisement, and whether the agency knew or should have known that the advertisement included false or deceptive claims.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

No key court or self-regulatory decision regarding the use of social media or user-generated content has been issued under Puerto Rico law to date.

Under federal law, the CDA grants immunity to interactive computer service providers for information originated by third-party users of service. Interpreting the CDA's provisions, courts have held that immunity afforded by the CDA is not absolute, as it may be forfeited if the site owner participates in the publication of illegal materials or invites third parties to do so.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Until 2011, the use of an individual's name, picture, likeness, and identity in advertising was governed by case law from the Puerto Rico Supreme Court. The Court's doctrine establishes that the right of self-image emanates from the constitutional right of privacy, which is enforceable among private parties, and that it is 'a limit to the right of freedom of speech of the citizenship'. In 2011, the Puerto Rico Legislature enacted the Right of Publicity Act, which codified the prevailing doctrine. The statute provides that any person who uses, for commercial purposes, the image of another person without that person's consent is liable for damages. This means that any person or entity that uses in any way the name, voice, signature, picture, or identity of a third person without authorization shall be held responsible. Given this, no advertisement shall be made depicting someone's image without their written authorization. In Puerto Rico, the self-publicity right emanates from the civil law, while in the United States, the doctrine arises from the common law.

Federal law recognizes both the rights of privacy and publicity. The right of privacy, although developed jurisprudentially, is considered a constitutional one, and has to be balanced against other compelling interests. The right of publicity grants the exclusive right to use one's identity in commerce and promotions. The Supreme Court of the United States has recognized the right of publicity to prevent third parties from unjust enrichment stemming from the unauthorized use of a person's image and identity.

9.2 Are there situations when permission is not required?

Under the Puerto Rico's Right of Publicity Act, there are four situations in which the permission of a person is not required in order to use their identity in an advertisement:

- (a) when the image of a person is used without commercial purposes, as in a sports event, a political expression or a in a news report;
- (b) when the individual's permission is not required (eg, when the image is used as a parody);
- (c) when the image is used for educational purposes; and
- (d) when the image used is associated to an accessory person.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Yes. Any political party, candidate, or group that wishes to establish a propaganda facility, or start reusing one that is no longer in use, must solicit a permit from the Local Commission, through the Permanent Inscription Board.

In terms of commercials, any government agency that wishes to publish propaganda through public diffusion media during electoral years, must obtain prior authorization from the State Electoral Commission.

Similarly, under Puerto Rico law, any person or entity must obtain permission if they intend to use someone else's image for publicity, marketing or commercial purposes.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The use of other company's products in advertising is not prohibited either by Puerto Rico or federal law. Such use, however, is bound by the legal constraints (eg, trademark infringement, dilution, tarnishment, unfair competition) already discussed above.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Puerto Rico which affect advertising (eg, Swedish gender equality law)?

There are certain rules, particular to the local culture, that affect advertising from a legal perspective. Both the Constitution of Puerto Rico and the Constitution of the United States prohibit discrimination based on sex, color, race, birth, social origin or condition, or political or religious ideas. They also provide for a complete separation of church and state. As such, Government publications are limited by these restrictions.

Additional laws that apply to private parties have also been enacted in adherence to these constitutional mandates. For instance, the Puerto Rico Act against Employment Discrimination of 1959 prohibits the publication of any advertisement with discriminatory content. The US Equal Employment Opportunity Commission laws prohibit job advertisements that discourage people from applying for a job because of their sex, national origin, race, religion, disability or color.

The DACO Act provides that no agency, department, bureau, office, or any subdivision of the Government of Puerto Rico should promote itself in any television program recommended for adults only, such as those portraying sexually explicit material, profane language, or violence. This prohibition extends to radio programs as well. Also, under Puerto Rico law, the Government and its agencies are prohibited from publicizing their political campaign plans in any media during election years.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

No.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Puerto Rico?

Consult a local counsel to ensure compliance with local law.

 QATAR 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Qatar?

In general, advertising is regulated under the Advertising Law (Law No 1 of 2012) and the Publications Law (Law No 18 of 1979). In particular, the Advertising Law applies to advertising through billboards or other physical advertising. The Publications Law applies to advertising through newspapers, flyers or other publications etc.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

There are no clear guidelines in this regard. It would be determined on a case-by-case basis.

1.3 What is the basic regulatory framework for advertising regulation?

The Publications Law defines ‘publications’ widely as ‘writings, images, compact discs, cassettes, photographs and other means of expression intended for dissemination to the general public’.

The Publications Law prohibits certain material from being published. This includes:

- (a) any criticism of the Emir of Qatar;
- (b) any ridicule of, or contempt towards, any religion or its doctrines, including any motivation of sectarian, racial or religious trends;
- (c) all material prejudicial to ethics, individual dignity or personal freedom; and
- (d) all material that motivates the commission of crimes or encourages hatred or sows discord among individuals of the society.

These legal provisions apply to published content generally. There is no distinction between different modes of distribution.

There are a variety of cultural, religious or other sensitivities that restrict what can be depicted in the content. As such, content that gratuitously disparages Qatar is unlikely to be welcomed, and the same can be said for content that is anti-Islam. Content that seems to promote un-Islamic concepts or lifestyles (eg, proselytizing for religions other than Islam, or trying to dissuade Muslims away from their faith; or promoting homosexuality) would be unwelcome from a local cultural perspective.

Moreover, the Advertising Law states that an advertisement may not contain any defamation of Islam, or other religions, and may not be contrary to the public order, public morals, traditions, or customs.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Please refer to question 1.1 above in relation to advertising regulated in the Advertising Law and the Publications Law.

In terms of advertising by text message, there are provisions in the Data Protection Law (Law No 13 of 2016) obliging senders to obtain an individual’s consent prior sending such marketing material. Moreover, the Communications Regulatory Authority (‘CRA’) has also issued Anti-Spam guidelines on this matter.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are no specific regulations. However, the Ministry of Public Health has issued guidelines on advertising pharmaceutical products.

1.6 Are any government pre-approvals required?

Yes. In the case of advertising through post or billboards, a license from the relevant municipality would need to be obtained. In such instances, advertisement material will have to be pre-approved. There are no particular pre-clearance requirements for online advertising. It should be further noted that such permit may only be issued to entities with a legal presence in Qatar.

1.7 Does the media pre-clear advertising?

There are no clear industry standards for media outlets to follow. In practice, media outlets tend to self-regulate in line with the restrictions set out in question 1.3 above.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Legal action would ordinarily be taken by the relevant authority, depending on the type of advertising. Note that ministries in Qatar are reactive authorities rather than proactive; and tend to take action only after receipt of a complaint.

Content that is carried on social media or online may give rise to a right for the CRA to block the content, or take down the website or social media account. There is a content review department at the Ministry of Culture (<https://www.moc.gov.qa/en/>).

1.9 When does a competitor have a right of action? What are the potential remedies?

This would have to be considered on a case-by-case basis. However, if the matter was reported to the relevant ministry, then they may levy fines on the advertiser, or the media outlet that carries the advertising.

1.10 When do consumers have a right of action? What are the potential remedies?

Please refer to our response to question 1.9 above.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Qatar have a primary advertising self-regulation system?

We are not aware of any self-regulation bodies in Qatar, although media outlets may self-regulate as mentioned in question 1.7 above.

2.2 Is the self-regulation system effective? Is it widely used and followed?

N/A

2.3 Are the self-regulatory system's decisions reported?

N/A

2.4 Are there any key areas of focus, or key principles, that companies should be aware of?

N/A

2.5 Are there any other self-regulatory systems that govern advertising practices in Qatar?

N/A

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Qatar (eg, consumer protection laws, IP laws, unfair competition laws)?

In addition to our response to question 1.3 above, please see below provisions relating to advertising under various laws in Qatar:

- (a) Article 6 of the Consumer Protection Law (Law No 8 of 2008) states that fake or deteriorated products may not be promoted or advertised.
- (b) Article 7 of the Consumer Protection Law provides that products may not be advertised by using false or deceiving information.
- (c) Article 20 of Law No 2 of 1983 concerning the Practice of the Professions of Human Medicine and Medical and Dental Surgery prohibits doctors from advertising themselves if such advertising is not consistent with the dignity of the profession.
- (d) Resolution No 312 of 2018 for the Regulation of the Advertising of Goods and Services through Advertisements, Prizes, Raffles, or the Distribution of Gifts states that advertising for any products and services that are going to be promoted must be free from any exaggeration, allegations, or any other methods that are misleading, false, or deceptive, or not in conformity with the nature, features, and benefits of the products or services.
- (e) Article 6 of Resolution No 311 of 2018 on Sale at Discounted Prices states that advertisements on discounted prices must not include any exaggerations, allegations or methods misleading or deceiving clients.

3.2 Is substantiation required for advertising claims?

No, although it may be required as evidence if a contrary claim or complaint is made.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Not relevant.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific rules in this regard.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no specific rules in this regard.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules in this regard.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is not regulated in Qatar. Only the laws and regulations cited above apply.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There is no specific law regulating comparative advertising, but Law No 9 of 2002 concerning Trademarks, Trade Indications, Trade Names, Geographic Indications and Industrial Designs and Templates prohibits any use of a registered trademark by third parties. As a result, it may be argued that using a competitor's trademark with the aim of comparing products could be interpreted as unlawful use.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

There are none.

3.10 Are there any special rules governing product packaging?

There are extensive regulations that apply to particular classes of products (pharmaceutical products, food, etc) and these should be addressed on a case-by-case basis.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

There are no specific rules in this regard.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no specific rules in this regard.

4 PRICE ADVERTISING

4.1 What are Qatar rules regarding price advertising?

According to the Consumer Protection Law, businesses must ensure that advertising or labeling is not misleading, and items offered for sale must be priced accurately. The consumer should be offered an item at the advertised price, and any entity that contravenes these laws can be reported to the relevant department in Qatar.

4.2 What are Qatar's rules regarding advertising 'free' products?

Please see question 4.3 below regarding giveaways and sales.

4.3 What are Qatar’s rules regarding sales and special offers?

Pursuant to Resolution No 312 of 2018 for the Regulation of the Advertising of Goods and Services through Advertisements, Prizes, Raffles, or the Distribution of Gifts, in order to launch any campaign in Qatar promoting the sale of merchandise or services through prize draws or distribution of gifts, a permit is required from the Ministry of Commerce and Industry (‘MoCI’).

In addition, Ministerial Resolution No 311 of 2018 on Sale at Reduced Prices provides that any retail or industrial store (or a branch of the same) must apply for a license from the Quality License and Market Control Department at MoCI in order to carry out sales.

The process for obtaining above-mentioned permits is by submitting an application to the MoCI with the following information:

- the general nature of the proposed promotion,
- the nature, quantity and value of any prizes, and
- the period over which the promotion will be run etc.

4.4 What are Qatar’s rules regarding rebates?

In Qatar, care must be taken in creating rebate schemes, as there is a robust regulatory environment surrounding fraud, bribery and money laundering. Any matters relating to rebates would need to be addressed on a case-by-case basis.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are none.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc.)?

Please refer to our responses to question 1.3 above.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are none.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Content of this nature would not be tolerated. The laws and regulations forbid it, and the social mores of the region would mean that there would likely be an inability to find a publisher willing to carry the material.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There are no specific regulations in this regard.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no specific regulations in this regard. The content would be regulated in accordance with the principles and restrictions set out in the answer to question 1.3 above.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no specific regulations in this regard. The content would be regulated in accordance with the principles and restrictions set out in the answer to question 1.3 above.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no specific regulations in this regard. The content would be regulated in accordance with the principles and restrictions set out in the answer to question 1.3 above.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Yes, technically an advertiser could be exposed to liability related to any third-party advertisement.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

We are not aware of any decisions in this regard. Apart from certain decisions of the Court of Cassation, judicial decisions generally are not published in Qatar.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

It is imperative that individuals have approved such usage (ie, all rights clearance) and that this is evidenced in writing. There are no specific provisions in relation to the type of consent; however, the consent must be clear and unambiguous and, as mentioned, preferably be in writing.

9.2 Are there situations when permission is not required?

We are not aware of any such situations and would not recommend using such information without prior permission.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are no specific rules, but a prior permit must be issued for every type of physical advertising. It should be further noted that filming in public places in Qatar requires prior approval from the authorities (while certain locations are strictly off-limits; eg, military/defense areas, certain government buildings, embassies etc).

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

This would be acceptable, as long as the products were not held in contempt or otherwise used in contravention of other laws.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Qatar which affect advertising (eg, Swedish gender equality law)?

There are a variety of cultural, religious or other sensitivities that restrict what can be depicted in the content. Content that gratuitously disparages Qatar is unlikely to be welcomed, and the same can be said for content that is anti-Islam or contrary to local customs and culture. Content that seems to promote un-Islamic concepts or lifestyles would be unwelcome from a local cultural perspective. See further question 1.3 above.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Please see our response above.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Qatar?

It should be noted that only entities with a local presence may apply for a permit for advertising. Moreover, an entity which does not have a local presence and advertises its products and services in Qatar may be construed as doing business in Qatar without a proper license. In respect of online advertising only—ie, where the advertiser has no on-the-ground presence in Qatar—the more likely risk is simply that the local authorities may take action to block the content or platform to users in Qatar.

 ROMANIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Romania?

Advertising in Romania is regulated by the laws, norms, decisions of the self-regulatory bodies and codes of conduct.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Pursuant to the Law on misleading and comparative advertising, 'advertising' is defined as 'any form of presentation of a commercial, industrial, crafting or liberal activity meant to promote the sale of goods or services, including immovable property, rights and liabilities'.

The Code of Advertising Practice issued by the Romanian Advertising Council defines 'advertising' as 'a form of commercial communication which is made known to consumers by the advertiser through mass-media, usually in exchange for payments'.

1.3 What is the basic regulatory framework for advertising regulation?

Advertising in Romania is regulated by the following main provisions:

- Law No 148/2000 on advertising ('Advertising Law');
- Law No 158/2008 on misleading and comparative advertising ('Misleading and Comparative Advertising Law');
- Law No 185/2013 on locating and authorizing offline advertising mechanisms and methods ('Offline Advertising Law');
- Audiovisual Law No 504/2002 ('Audiovisual Law');
- Decision No 220/2011 regarding the Regulatory Code of the Audiovisual Content;
- Law No 365/2002 regarding electronic commerce ('E-Commerce Law') and its implementing regulation of 20 November 2002; and
- Law No 506/2004 regarding personal data processing and the protection of private life in the electronic communication sector ('E-Privacy Law').

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) **Electronic communications:** The E-Privacy Law regulates the communications sent through the public electronic communication networks and through the electronic communication services. In addition, article 6 of the EU General Data Protection Regulation ('GDPR'), which has direct applicability in Romania, states that a natural person shall receive electronic communications (or any other types of communications) only with their consent. Additional provisions on commercial communications are regulated by the E-Commerce Law. This law regulates, alongside the GDPR, that electronic communications are forbidden if a natural person did not give their prior consent.
- (b) **Television:** Advertising through television is regulated by the Audiovisual Law, and also by decisions issued by the National Audiovisual Council of Romania.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

The following areas are specifically regulated by the Romanian advertising legislation:

- (a) Advertising of alcoholic beverages;
- (b) Advertising of prescription medication;
- (c) Advertising of narcotic and psychotropic substances;
- (d) Advertising of tobacco products;
- (e) Advertising for goods and products for minors; and
- (f) Advertising for guns, ammunition, explosives, pyrotechnical methods and means.

1.6 Are any government pre-approvals required?

Yes, advertising materials for medication given without prescription require prior approval from the National Agency for Medicines and Medical Devices, pursuant to the Advertising Law.

1.7 Does the media pre-clear advertising?

Pre-clearance of advertising by the media is not a common practice in Romania. Pursuant to the Audiovisual Law, the National Audiovisual Council of Romania exercises its right to control the content of programs offered by audiovisual media service providers only after the public communication of these programs.

As good practice, some advertisers submit campaign materials to the Romanian Advertising Council to obtain a prior opinion with regard to specific content. For example, the Romanian Advertising Council may flag certain marketing slogans that could trigger requests from competent bodies to substantiate the advertising claims. Nonetheless, such consultation procedure is not mandatory, thus opinions issued by the Romanian Advertising Council are not binding for advertisers.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Depending on the specifics of the legal provisions that have been breached, the following public institutions have power to enforce the advertising provisions:

- National Authority for Consumer Protection;
- National Audiovisual Council of Romania;
- Ministry of Finance;
- Competition Council;
- local government authorities;
- National Authority for Management and Regulation in Communications of Romania;
- Ministry of Health;
- Romanian Advertising Council (but only for its members); and
- National Agency for Medicines and Medical Devices.

1.9 When does a competitor have a right of action? What are the potential remedies?

The applicable legislation grants a right of action to either a legal or a natural person when advertising activities performed by a competitor cause loss/damages. The potential remedies are as follows:

- (a) Banning of the advertising, if it has already been advertised or will be advertised;
- (b) Stopping the advertising until it is corrected;
- (c) Publishing the decision of the public authority, in whole or in part, and determining how the measures imposed by this decision are to be accomplished;
- (d) Publishing, at the expense of the offender, one or more rectification notices; the content of the notice having been determined, along with the manner in which it should be distributed.

The competitor affected also has the right of rebuttal.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers also have a right of action when they suffer damages. The potential remedies are those stated in question 1.9 above.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Romania have a primary advertising self-regulation system?

Yes, in Romania has a primary advertising self-regulation system, the Romanian Advertising Council (RAC).

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes, in Romania, there is a general self-regulatory advertising code ('RAC Code'), the key principles of which are the following:

- (a) Communication must be honest, true, clear and decent. Communication must avoid any element which might diminish consumers' confidence in communication in general.
- (b) Communication must not exploit the credulity, lack of experience or knowledge of consumers.
- (c) Communication must avoid any statement or representation which may mislead consumers, including by omission, suggestion, ambiguity or exaggeration, especially in terms of:
 - (i) the characteristics or effects of a product, such as its nature, composition, method and date of fabrication, method of execution, field of use, efficiency and performance, quantity, geographical or commercial origin, availability, destination, technical-functional parameters, expected results due to its use or the results and the essential characteristics of tests or examinations carried on it, whether the product meets its purpose etc;
 - (ii) the value of the product and the total price paid by the consumer, as well as the method of calculating the price;
 - (iii) the terms and conditions of delivery, change, return, repair and maintenance of the product;
 - (iv) the warranty conditions;
 - (v) the advertiser's identity;
 - (vi) the industrial and intellectual property rights, such as patents, trademarks, designs and models, brand names etc;
 - (vii) compliance with the standards;

- (viii) the environmental aspects and benefits of the product or in terms of actions undertaken by the advertiser in favor of the environment;
- (ix) official recognition or approval, or awards such as medals, prizes and diplomas;
- (x) its contribution in supporting a charitable, social, cultural action etc.
- (d) The design and presentation of the communication must allow it to be easily perceived visually and auditorily by the consumer. When footnotes are used, they must be of a sufficient size to be easily readable and be shown long enough to allow them to be read.
- (e) The communication must avoid any message that may be considered indecent, vulgar or repugnant in terms of the common sense and sensitivity of consumers.
- (f) The communication must not be hidden or subliminal.
- (g) The communication for a product must not suggest or incite the consumer to give up on similar products, on the grounds that they become unnecessary or improper for use.

Alongside the general Code are several industry specific self-regulatory advertising codes, as follows:

- Rules on Responsible Commercial Communication for Beer ('BR Code');
- Spirits Romania Code of Conduct ('Spirits Code');
- Rules for Commercial Communication for Telecom Services and Products ('Telecom Code');
- Principles on Responsible Advertising and Marketing Communication on Cosmetic Products ('Cosmetics Code');
- Best Practices in Labeling and Advertising for Food Supplements ('Food Supplements Code');
- Ethical code for food product advertising targeting children ('Ethical food code'); and
- Code of best practices in influencer marketing in Romania ('Influencer Marketing Code').

The advertisers, the advertising agencies and media entities must ensure that advertisements are designed and presented so that they can be recognized as such.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Yes, the system is mandatory for RAC members, although it merely represents guidance and good practice for non-members.

The correct assessment of the application and compliance with the RAC Code comes under the responsibility of the Ethics Committee. The Ethics Committee takes decisions by majority vote. The procedure is as follows:

- (a) Any person or legal entity or any State authority can file a complaint with RAC. Complaints submitted to RAC must be in writing and can be sent by fax, post or email. The RAC Office files complaints when received, and within 24 hours:
 - informs the Board;
 - contacts the party concerned with the text of the complaint and the respective documentation and asks them to state their official position regarding that complaint within 48 hours of notification of being given notice of the complaint;
 - recommends that the case be solved amicably.
- (b) The Board will decide, by vote, if the Ethics Committee will be convened to consider that communication. If so, the RAC Office will schedule a meeting of the Ethics Committee, to be held no later than four days after the filing of the complaint. If, within 24 hours from sending the convocation message, the Ethics Committee members do not express their availability to

participate in the meeting, the RAC Office will draw lots for the five members who will complete the Ethics Committee, ensuring that there is no conflict of interest. Once it has been constituted, the parties are informed as to its structure and are invited (though not obliged) to participate at the meeting.

- (c) The RAC Office forwards the complaint and all documentation available to the members of the Ethics Committee. The members of the Ethics Committee have the obligation to maintain the confidentiality of the materials, debates and individual vote. If additional evidence is necessary, the Ethics Committee shall contact the RAC Office, which shall act immediately and without formalities to obtain such additional evidence and documents. Once this has been done, the RAC Office shall make the material available to the Ethics Committee.
- (d) At any time, the Ethics Committee can require the advertiser to provide documents to support the veracity of the data, descriptions, statements, illustrations and testimonials made in the advertisement. The advertiser must provide the information and documents requested within the time limit set by the Ethics Committee.
- (e) The Ethics Committee can resort to independent experts to evaluate the documents or hearing of the parties. Experts may be proposed by the RAC Office, the parties or members of the Ethics Committee and must be agreed/validated by both parties involved; if the parties fail to agree on an expert, then an expert will be appointed and approved by the Ethics Committee, avoiding any conflict of interest. An expert who has been requested to evaluate the documentation can be invited to the meeting of the Ethics Committee to present their report. However, they do not participate in the debates of the Ethics Committee.
- (f) If the parties are heard by the Ethics Committee, their representatives are invited in turn to present their arguments. They don't participate in the debates and the vote of the Ethics Committee.
- (g) In addition, other people, at the request of the Ethics Committee, can attend the meeting, on condition that they respect the confidentiality of the meeting and do not participate in the voting/decision making.
- (h) If the Ethics Committee considers that certain matters, others than those which arose in the complaint, may have violated the Code, the Committee may, at the request of the party concerned and only if necessary, grant that party 24 hours to support with technical documents the truthfulness of the statements which have been made over and beyond those in the original complaint. This additional technical documentation will be submitted to the RAC Office, which will immediately make it available to the Ethics Committee. The Ethics Committee will review the additional documentation and vote by email. In the case of a complaint regarding a commercial communication modified by a decision of the RAC, it is preferable that this be decided by the same Ethics Committee, which may vote by email.
- (i) The decision of the Ethics Committee will be transmitted by the RAC Office in writing within 24 hours to the parties involved.
- (j) When the Ethics Committee decides that the communication violates the rules of the Code, the Ethics Committee will invite the party concerned to take measures so that that communication will comply with the provisions of this Code. The period of implementation of the decision is five days. However, the Ethics Committee can require an emergency implementation of its decision (ie, in less than 5 days) where the damaging effect of that advertising on consumers is major. The Ethics Committee can extend, for logistical reasons only, the deadline for implementation at the request of the party concerned.

- (k) If the matter is amicably settled, the initiator of the complaint must inform the RAC in writing that the matter is settled.
- (l) The parties concerned cannot use the decisions of the Ethics Committee for advertising purposes. Press releases relating to cases examined by the Ethics Committee are delivered by the RAC Office on request and with Board approval.
- (m) The RAC Office will draw up and archive the decisions of the Ethics Committee at RAC headquarters, together with all existing documentation.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The system is effective and is followed by RAC members. Although non-binding, the decisions of RAC's Ethics Committee serve in most cases as a basis or guidance for the decisions of the local branches of the National Fiscal Administration Agency in dealing with complaints alleging breaches of advertising legislation.

2.5 Are the self-regulatory system's decisions reported?

Yes, but they are not available to the public.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

No, the self-regulatory system covers all three aspects of the industry:

- the Marketers, who invest in advertising;
- the Agencies, responsible for advertising's form and content; and
- the Media, transporting advertising to the audience.

The three parties collaborate directly, establish standards of activity and put in place a mechanism that ensures removal or correction of those advertising communications that do not meet these standards.

2.7 Are there any other self-regulatory systems that govern advertising practices in Romania?

At this moment, no.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Romania (eg, consumer protection laws, IP laws, unfair competition laws)?

The following main laws govern advertising claims:

- Government Ordinance No 99/2000 on the marketing of products and services on the market;
- Law No 8/1996 on copyright and neighboring rights (Copyright Law);
- Law No 84/1998 on trademarks and geographical indications (Trademarks Law);
- Law No 11/1991 on the repression of unfair competition (Unfair Competition Law);
- Law No 193/2000 on unfair terms in contracts concluded between traders and consumers (Consumer Protection Act);
- Audiovisual Law;
- Advertising Law;

- Misleading and Comparative Advertising Law;
- Offline Advertising Law ;
- Government Emergency Ordinance No 140/2021 on certain aspects of contracts for the sale of goods;
- Government Emergency Ordinance No 141/2021 on certain aspects of contracts for the provision of digital content and digital services.

3.2 Is substantiation required for advertising claims?

There are no express provisions regulating substantiation in advertising claims; however, if claims are brought before the judicial courts, certain requirements are provided by the Romanian Code of Civil Procedure. These requirements mainly refer to the description of the application's object and the reasoning of the application.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The Misleading and Comparative Advertising Law regulates that, in case of misleading or comparative advertising, the Ministry of Finance or the National Audiovisual Council of Romania, when notified or *ex officio*, can request the trader which has carried out the advertising activities to provide all the necessary evidence in order to prove the accuracy of the indications or the presentations contained in the advertising messages, without substantiation having been requested from the complainant. The Advertising Law provides that the trader that performs advertising needs to be able to prove the accuracy of its statements, indications or presentations contained in the advertising messages and is bound to provide such evidence when requested by the appropriate authorities or institutions.

3.4 What are the rules governing the use of disclosures in advertising?

Disclosures are usually regulated in connection with prescription medication. Pursuant to the Norms for the evaluation and authorization of advertising for medicine for human use, any advertising material must contain at least the following information:

- (a) the recommended dose/administration schedule/specific administration instructions, if any;
- (b) the exact indications of the medicinal product according to the essential information in the summary of product characteristics;
- (c) any special warnings and precautions according to the essential information in the summary of product characteristics; and
- (d) medication contra-indications, according to the essential information in the summary of product characteristics.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The National Audiovisual Council's Audiovisual Code provides for a general prohibition on celebrity endorsements for medicines and medical treatments. The professional categories that qualify as 'celebrities' pursuant to the Code are:

- public figures;
- cultural, scientific, and sports personalities; and
- socialites.

Moreover, some practices are established in Romania with respect to concluding endorsement agreements.

3.6 What are the rules governing the use of product demonstrations in advertising?

Law No 296/2004 on the Consumer Code states that, when placing on the market products that have an extended life cycle, the companies selling them may undertake promotional demonstrations of their use, either in public or in media.

The Consumer Code also requires companies to demonstrate the use and functioning of a product to the consumer, upon the consumer's request at the time of purchase.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Pursuant to the Misleading and Comparative Advertising Law, comparative advertising is considered legal only if it:

- is not misleading;
- compares goods and services that meet the same needs or are intended for the same purposes;
- objectively compares one or more essential, relevant, verifiable and representative features of those goods or services, including the price;
- does not discredit or denigrate trademarks, trade names, other distinctive signs, goods, services, activities or the situation of a competitor;
- (in the case of products with a designation of origin) refers, in each case, to products of the same name;
- does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or designation of origin of the competing products;
- does not present goods or services as imitations or reproductions of goods or services bearing a protected trademark or trade name; and
- does not create confusion between traders, between the advertiser and a competitor, or between trademarks, trade names, other distinctive signs, goods or services of the advertiser and those of a competitor.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Pursuant to the Trademarks Law, a competitor can use another's trademark only where there is a prior, written agreement that grants such competitor the right to use the trademark with the trademark owner's approval.

The Copyright Law also states that a prior written agreement is required in order to legally use works subject to copyright.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Pursuant to the Misleading and Comparative Advertising Law, the characteristics which are most closely considered in deciding whether advertising is considered to be misleading are:

- (a) the characteristics of the goods or services, such as:
 - availability, nature, mode of execution, composition, method and date of manufacture of goods or services,
 - whether they correspond to their purpose, destination, quantity, technical-functional parameters, geographical or commercial origin,
 as a result of their use or the results and essential characteristics of tests or controls on goods or services;
- (b) the price or price calculation method and the conditions under which the goods are distributed or the services are provided;
- (c) the nature, attributions and rights of the advertiser, such as its identity and assets, the qualifications and the possession of industrial, commercial or intellectual property rights, or its prizes and distinctions.

3.10 Are there any special rules governing product packaging?

The following products are governed by special packaging and labeling rules:

- meat, meat products, fish, eggs;
- milk, butter;
- wine and alcoholic drinks/spirits;
- flour, cocoa products and chocolate;
- vegetable and olive oil, mayonnaise;
- honey and sugar;
- fresh vegetables and fruits;
- canned fruits and vegetables;
- frozen fruits and vegetables;
- dehydrated fruits and vegetables;
- natural mineral waters, bottled water, fruit juices;
- salt and vinegar;
- supplements;
- genetically modified organism;
- eco products;
- traditional food products;
- geographical indications and protected designation of origin; and
- food services.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Although 'dark practices' represent a hot topic in advertising, there is no specific legislation regulating these particular practices. However, 'dark practices' fall under the scope of general applicable legislation on misleading and subliminal advertising, as well as unfair and deceptive commercial practices, thus such practices are sanctioned accordingly. Moreover, Romania is observing EU guidelines on unfair business-to-consumer commercial practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

In Romania, while there are no specific statutes governing artificial intelligence in advertising, several overarching principles and guidelines are applicable. In general, while utilizing any AI-powered technology, all rules pertaining to advertising in general must be followed.

The EU General Data Protection Regulation ('GDPR') and the E-Privacy Law are particularly influential, setting strict requirements for AI systems that process personal data to ensure lawful processing and transparency.

Romania's advertising practices are regulated, in principle, by the Advertising Law and the Misleading and Comparative Advertising Law, which, in combination, establish a strong legal framework. Moreover, the industry's self-regulatory body, the Romanian Advertising Council, has upheld the standards provided by such legal framework, by offering direction to guarantee adherence to these values.

Lastly, while not legally enforceable, the EU's Ethics Guidelines for Trustworthy AI, which promote transparency and fairness, are considered in policy decisions within EU member states, including Romania. Also, other sector-specific regulations may be applicable given the specifics of the AI model used.

4 PRICE ADVERTISING

4.1 What are Romania's rules regarding price advertising?

(a) Romanian rules regarding price advertising are included within several pieces of legislation, as follows:

- Law No 363/2007 on combating unfair traders' practices in relation to consumers and harmonizing regulations with European consumer law;
- Government Ordinance (GO) No 99/2000 on the trading of products and market services;
- Government Decision (GD) No 947/2000 setting the methodology for prices indication for the products sold to consumers; and
- Order No 194/2015 approving the Norms for publicity of medicines for human use assessment and approval.

(b) Also, the RAC Code includes some guidelines to price advertising as follows:

- If price is mentioned in a communication, it must refer only to the product described or promoted by that communication;
- If the period of a price offer isn't specified, then the price must be maintained throughout the length of the ad campaign.
- Whether the payment for an offer is made in full or in by instalments, the price and the payment terms must be clearly specified in the offer, together with the mention of any additional charges (such as postage, delivery taxes, etc) and, when possible, the amount of these charges.

4.2 What are Romania's rules regarding advertising 'free' products?

Under Romanian law, it is prohibited, and therefore sanctioned, to describe a product as 'free', or 'without costs' if the consumer has to bear some costs, other than the cost of participation in the promotion and transport.

The RAC Code rules that within an advertisement:

- (a) an offering may be described as 'free' solely if the consumer pays no more than:
 - (i) the cost of participation in the promotion (eg, the current postage, the tax of a normal rate telephone call, the normal cost of sending an email (if necessary), or the normal cost of an SMS); or
 - (ii) the cost, including the incidental expenses of any trip by the consumer, if they collect the free product.
- (b) The terms 'gratis'/'free', 'gift', 'no cost' or other similar terms can be used only if:
 - (i) the offer doesn't imply any obligations; or
 - (ii) the only payments are the costs mentioned above; or
 - (iii) (where in conjunction with the purchase of another product) the price of that other product is not increased in order to fully or partially include the cost of the offer.
- (c) The costs incumbent on the consumer, others than those expressly indicated above for a 'free' offer, must be clearly specified and include any additional delivery, packing and handling charges.
- (d) If a product is on offer but, in order to benefit from the offer, a certain number of products must be purchased, this information must be clearly indicated.
- (e) If an offer refers to two or more products, of which only one is free, it must be clearly indicated to the consumer which is free and which must be paid for.
- (f) A 'sample testing' mustn't be described as free if the consumer has to pay the cost of returning the goods, unless this information is clearly specified in the offer made to the consumer.
- (g) If samples or gifts are distributed without being requested during a promotion, consumers must be clearly informed that they have no obligation to pay for or return them.

4.3 What are Romania's rules regarding sales and special offers?

- (a) Any sale, regardless of its form, means of advertising and motivation must be addressed to all consumers and show, in figures, the difference between the new price and the reference price, with the exception of:
 - price comparison advertising;
 - ads that do not contain figures;
 - price announcements for the launch of a new product; and
 - oral announcements made exclusively in-store, for price reductions for a particular stand/aisle, for a short period of a sales day.
- (b) Price comparisons which refer to a special offer have to indicate, clearly and without doubt:
 - the offer end date or,
 - (if relevant) that the special offer applies only to available goods and services stocks, or
 - (if the special offer has not yet begun) the starting date of the special offer period, or
 - other special conditions.
- (c) In addition to the above, Emergency Government Ordinance No 58/2022 implementing the Omnibus Directive regulates acceptable methods for displaying price reductions on tags.

These include:

- showing the new reduced price next to a crossed-out previous price for a clear comparison,
- using descriptive labels like ‘new price’ and ‘old price’ with corresponding monetary amounts, and
- presenting the percentage reduction next to the new price alongside the crossed-out previous price, offering consumers a percentage-based understanding of the discount.

4.4 What are Romania’s rules regarding rebates?

GO No 99/2000 is the only enactment that deals directly with the issue of advertisements of rebates. The enactment defines several types of sales at reduced prices such as liquidations, sales, and promotions. Advertisements of such sales need to specify:

- the start date of the sale;
- the duration of the sale; and
- the sort of merchandise up for sale under the advertised conditions (this latter condition being applicable if the liquidation is not carried out in relation to the entire merchandise stock).

In addition, there are special rules particularly for the advertising of rebates:

- the advertisement must indicate (in figures) the rebate as compared to the reference price (price comparison advertisements, advertisements that do not contain figures, but solely letters, advertisements concerning the launch of a new product, and oral advertisements broadcast in the shop are exempt from this obligation);
- the advertisement may be valid only until the stocks are exhausted;
- the advertisement must be legible and unequivocal;
- all documents attesting to the validity of the rebate as compared to the reference price must be available for verification; and
- any advertisement that is not in accordance with the price effectively charged amounts to a form of misleading advertising.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Retailers selling over-the-counter medicines for human use are prohibited from including ads for promotional offers, discounts, price reductions, rebates or special prices within such medicines.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) Narcotic products (banned for public health reasons);
- (b) Occult services such as voodoo and card-reading, fortune telling and the like (banned for public order reasons);

- (c) Firearms, weapons, and ammunition (banned for social security reasons), except for ads in the places where they are offered for sale. However, there is an exception to this strict ban with regards to weapons for hunting, sport and display, in relation to which advertising is allowed;
- (d) Prescription only (Rx) medicines, medicines without marketing authorization, and medicines which are prescribed and released within the public healthcare system (banned for public health reasons);
- (e) The advertising of over-the-counter medicines to the general public through social media and mobile apps is prohibited;
- (f) Under the Advertising Law, the advertising of alcoholic beverages and tobacco is prohibited if it:
 - is targeting minors;
 - depicts minors drinking or smoking;
 - suggests that alcoholic beverages or tobacco products have therapeutic properties or a stimulating or sedative effect or can solve personal issues;
 - gives a negative image of abstinence;
 - points out the alcohol content of alcoholic beverages, as a means to stimulate consumption, or creates a link between alcohol and driving;
 - (tobacco advertisements only) is not in the Romanian language;
 - is placed on public transport tickets;
 - is placed within educational units and healthcare units or within 200m from their entrances (measured from the public road); or
 - is placed in publications targeting minors, or in theaters/opera/concert halls before, during and after shows targeting minors.

Explicit advertising for alcoholic beverages is allowed only in newspapers (excepting the first and the last page of the newspaper), radio and television broadcasting, not online; and

Explicit tobacco advertising it is prohibited during programs broadcast on radio and television.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

- (a) Romanian legislation provides that misleading advertising is prohibited. In determining whether any advertising is misleading, account will be taken of all its features, and any information it contains concerning:
 - (i) the characteristic of goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographical or commercial origin or the results envisaged and the main features of tests or controls performed upon the goods or services;
 - (ii) the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided; and
 - (iii) the nature, attributes and rights of the advertiser, such as their identity and assets, qualifications and ownership of industrial, commercial or intellectual property, and awards and honors.

- (b) Comparative advertising is permitted only as expressly provided (please see question 3.7 above).
- (c) Advertising must be decent, correct and be elaborated in the spirit of social responsibility, therefore it is prohibited for advertising to:
 - (i) be subliminal;
 - (ii) prejudice respect for human dignity and public morals;
 - (iii) include discrimination based on race, gender, language, origin, social origin, ethnicity or nationality;
 - (iv) attack religious or political beliefs;
 - (v) harm the image, honor, dignity and private life of individuals;
 - (vi) exploit superstitions, credulity or fear of individuals;
 - (vii) harm people's security or incite to violence;
 - (viii) encourage behavior that damages the environment; or
 - (ix) promote the sale of goods or services that are produced or distributed contrary to legal provisions.
- (d) The advertising of products and services targeting minors is prohibited if it:
 - (i) contains elements that harm them physically, morally, intellectually or mentally;
 - (ii) indirectly encourages children to buy products or services, taking advantage of their lack of experience or their credulity;
 - (iii) affects the special relationships between minors and their parents or teachers; or
 - (iv) unjustifiably presents minors in dangerous situations.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Yes, lawmakers are very strict in terms of advertising regarding sexual services, prohibiting any kind of pornographic commercial communication. Under the Audiovisual Code, advertisements destined for sex-oriented publications and movies or erotic shows may be communicated under the same regime as so-called 18+ programs. A total ban on advertising is in place regarding erotic hotline services.

The Audiovisual Code defines an 'obscene audiovisual production' as 'an ensemble of images, sounds, words, gestures, or behavior that are immoral, indecent, trivial, or explicitly or implicitly sexual and which, by their significance, offend morals. Such obscene productions may be broadcast solely between 11.00 pm and 6.00 am'. The Code further provides that commercial communications for erotic telephone conversations as well as for sexual products/services are prohibited.

However, commercial communications for erotic publications, movies, or shows may be broadcast following the conditions established for '18+ programs; ie, within the 1.00 am–6.00 am timeframe and will be duly marked with the '18' emblem.

Moreover, the Audiovisual Code provides that advertisements and teleshopping for products and treatments for sexual afflictions may be broadcast only in the 10.00 pm–6.00 am timeframe and that advertisement and teleshopping spots are prohibited from mentioning therapeutic indications for STDs.

Lastly, it is worth mentioning that both the Audiovisual Law and the Code on the Practice of Advertising stipulate that drinks advertisements are prohibited from implying that alcohol consumption improves sexual performance.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Yes, there are. Under the Romanian legislation, it is mandatory to identify the name of the advertiser/sponsor.

With regard to online content, we note the Influencer Marketing Code provides that advertising posts must be flagged accordingly, using easily understandable terms to emphasize the commercial nature of the advertisement, such as ‘#AD’, ‘#sponsored’, ‘#partnership’, ‘AD’, ‘Advertisement’/‘Advertising’.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The Audiovisual Code used to provide that product placement should be identified by specific mention that the respective program contains product placement, as well as by the symbol ‘PP’ (product placement) appearing on screen at the respective time. This legal obligation lapsed six months after the Code came into force, but has been maintained in established advertising practice, regardless of the content of the program and the distribution channel.

Also, in Romania it is common practice (although there is no legal provision imposing this) that advertising placement in editorial/entertainment content should be identified as such by using a mention of ‘Advertisement’ or ‘Sponsored by’ or ‘Presented by’.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

No, there are not.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

- (a) The law that regulates the advertising and marketing via social media and other marketing channels is the Advertising Law.
- (b) The Misleading and Comparative Advertising Law is also applicable, having a focus on consumer protection and the avoidance of unfair commercial practices and the legal indicators to be considered by the Romanian authorities in qualifying a commercial marketing practice as misleading or comparative advertising.
- (c) With a strong focus on EU provisions, Romania has adopted the E-commerce Law. This law regulates the free movement of the information society services, commercial communications, the mechanism of concluding an e-commerce agreement and the liability of the service providers in the e-commerce agreements.

- (d) Regarding the content of advertising on social media, the following legal provisions are also applicable:
 - the Copyright Law;
 - the Trademark Law; and
 - the Unfair Competition Law.
- (e) The EU General Data Protection Regulation ('GDPR') regulates the protection of personal data of natural persons when advertising and performing marketing strategies, including, but not limited to, social media advertising. Government Emergency Ordinance No 34/2014 on Consumer Rights in Contracts Concluded between Consumers and Professionals regulates the consumers' withdrawal right from distance agreements.
- (f) Government Ordinance No 21/1992 on Consumers' Protection regulates consumers' rights in relation to the advertising and marketing methods developed by advertisers.
- (g) The E-Privacy Law should also be considered of interest.
- (h) In addition to the above, the Influencer Marketing Code promoted by the Romanian Advertising Council is widely implemented and complied with by advertisers.

8.2 **Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?**

Pursuant to the Advertising Law, the author of the content and legal representative of the broadcast media are jointly and severally liable with the advertiser if they infringe the provisions on advertising.

8.3 **Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?**

In Romania, numerous complaints regarding data protection legislation infringements have been submitted to the Romanian Data Protection Supervisory Authority. Most of the complaints concern unwanted and unsolicited marketing communications received via social media.

In one high-profile cases, a Belgian court banned Facebook from collecting personal data without prior consent and sentenced Facebook to a fine of €250,000/day of infringement.

Since 2018, the Romanian Data Protection Supervisory Authority has issued 169 fines for breaching data protection legislation. The highest fine (€150,000) was issued against Raiffeisen Bank for insufficient technical and organizational measures to ensure information security.

Over the past few years, several Romanian influencers have been involved in scandals related to advertising content. For example, the Romanian cosmetics brand Plush Bio has been heavily promoted by various influencers as a wonder skincare solution, claiming frequent usage. After numerous complaints of side effects, the Plush Bio brand, as well as the promoting influencers have been exposed for false claims and misleading advertising.

As tensions related to gambling addiction intensify in Romania, sponsored content promoted by influencers tends to create public outrage as more and more influencers associate their image with gambling operators, although their follower base is mostly underage.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The following rules govern the individual's name, picture, likeness, voice and identity in advertising:

- the Romanian Civil Code (which regulates the individual's right to good name); and
- the Copyright Law.

In addition to the above, GDPR requirements must also be observed.

9.2 Are there situations when permission is not required?

Pursuant to the Copyright Law, the use of a work containing a person's image or portrait requires the consent of the person represented. Moreover, neither the author nor the owner of such an image/portrait is entitled to reproduce or use it without the consent of the represented person or their successors, for 20 years after such person's death, in compliance with the provisions of the Romanian Civil Code. However, unless otherwise stipulated, consent is not necessary if the person represented in the image/portrait is a model by profession, or has received remuneration for posing for the portrait.

In addition, the existence of consent is presumed under the Romanian Civil Code, when a person discloses personal information or material relating to themselves to a natural or legal person, and the disclosing party is aware that the recipient is active in the public information industry. In this case, no written agreement is required.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Advertising materials for over-the-counter medication require prior approval from the National Agency for Medicines and Medical Devices, pursuant to the Advertising Law.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Pursuant to the provisions of the Audiovisual Law, product placement is forbidden. However, by way of exception to this, product placement is permitted:

- (a) in cinematographic works, films and TV shows made for presentation in audiovisual media services, sports and entertainment programs;
- (b) if no payment is made, but only certain goods or services are provided free of charge, such as the production of props or prizes, for inclusion in the program.

The exemption does not apply to children's programs.

The placement of:

- cigarettes or other tobacco products or products of economic operators whose main object of manufacture or sale is such products; and
- the placing of medicinal products or medical treatments available on prescription only, is prohibited.

Conditions regarding the implementation of this type of advertising are provided in Decision No 220/2011 on the Audiovisual Content Regulatory Code rendered by the National Audiovisual Council of Romania.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the Romania which affect advertising (eg, Swedish gender equality law)?

Advertising that damages respect for human dignity or public morals, includes discrimination based on race, gender, language, origin, social origin, ethnicity or nationality, attacks on religious or political beliefs is strictly forbidden pursuant to the Advertising Law.

In a study on Romanian advertising, some preferences of Romanian consumers were identified which can influence advertising:

- (a) Advertisements targeting the elderly that evoke pleasant memories under the communist system;
- (b) Ads referring to specific Romanian foods related to religious events, celebrations and preserving recipes in the family: Such commercials can be used to promote not only food categories, but also wine, beer and mobile phones, because cooking relates to many contexts and consumer profiles. Tradition is essential for building local advertising identity;
- (c) Ads that appeal to tradition, such as the taste of childhood, the smell of fresh vegetables and the time spent with grandparents in the countryside, to highlight the connection between brand history and past consumer experience; and
- (d) Ads related to space and architecture reflecting cultural or historical criteria, displaying representative Romanian buildings, especially in Bucharest (Ceaurescu's house, the Revolution Market, the tall Intercontinental Hotel, old aristocratic palaces on Victoria Street, the National Bank, the History Museum, or the Arch of Triumph).

11.2 Are there any other cultural norms that should be considered (eg religious concerns)?

As a general rule, the Advertising Law prohibits any kind of advertising which might go against the religious convictions of some people.

Moreover, under Law No 489/2006 on religious liberty and general regime of cults, in relation to content of any advertisements containing the use of religious imagery/content, advertisers should be aware that any form, means, acts or actions of defamation and religious appropriation, as well as the public offense to religious symbols, are prohibited.

In the audiovisual media, the Audiovisual Council is endowed with powers to act against persons infringing this rule. For example, in a case involving the use of adapted Christmas carols in a commercial related to mobile telecommunication, the Audiovisual Council ordered the company concerned to stop the communication of the commercial on the grounds that it offended religious views.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Romania?

In consideration of a rather complex legal framework, advertisers should be particularly cautious in ensuring compliance with all applicable legal provisions, depending on the nature, case and specifics of the advertisement.

Also, the practice of the RAC should be observed, preferably from the earliest stages of development of the advertising strategy.



SAUDI ARABIA



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the Kingdom of Saudi Arabia?

Advertising in Saudi Arabia is regulated by a variety of laws, although it is understood that a draft law aimed at consolidating the regulation of the media, including advertising, is currently under consideration. Against that background, the current landscape is as follows:

- (a) The Printed Materials and Publication Law 2000 ('Publication Law') provides that advertising activities cannot be undertaken in Saudi Arabia without obtaining a license from the Ministry of Media.
- (b) The Audiovisual Media Law 2017 and its implementing Audiovisual Regulations set out a variety of requirements relating to business activities in the media sector, including content-related restrictions relating to audiovisual media content, including advertising. With respect to advertising in particular, these restrictions include:
 - Any publicity or advertisement must not involve any misleading representations or any confusion about the advertised product or service of the competitor;
 - An advertisement must not violate the laws and provisions relating to public order and morals;
 - Any product, person, establishment or trademark must not be defamed or abused; and
 - Persons shall not be depicted, caricatured, or referred to in an advertisement without their permission.
- (c) The E-Commerce Law 2019 includes references to electronic advertisements, and prohibits them from including false offers, statements, or claims; or a misrepresentation that directly or indirectly deceives or misleads a consumer; or a logo or trademark that is either counterfeit or which the service provider does not hold the right to use.
- (d) Billboard advertising is regulated in accordance with the Rules of Regulating Advertisements and Publicity Boards 1991.

There are also industry sector-specific considerations (see question 1.5 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

There is no definitive list of communications that are considered to be 'advertising'. However, advertising is defined in the following laws/regulations as follows:

- (a) **Audiovisual Regulations:** Display of audiovisual content, by any means, for the public with a view to the marketing of a product or service, whether or not in return for payment.
- (b) **E-Commerce Law:** Any advertisement carried out by a service provider via electronic means to directly or indirectly promote the sale of a product or the provision of a service.

1.3 What is the basic regulatory framework for advertising regulation?

The General Authority for Media Regulation ('GAMR') is primarily responsible for advertising regulation. The GAMR (formerly GCAM) has various responsibilities in the media sector, and advertising is part of this. Ultimately, the GAMR falls under the Ministry of Media.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The Regulation for Curbing SPAM Messages & Calls, issued by the Communications, Space & Technology Commission (the Saudi telecommunications regulator), regulates marketing/promotional messages sent by SMS and telephone advertising (both automated and live calls).

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes. The Saudi Food & Drug Authority ('SFDA') has specific regulatory oversight over advertising for the following industries: non-prescription medications, medical devices, herbal and health products, cosmetic products and infant formula.

The advertising of financial products and services is also regulated, as are professional services, such as healthcare services and legal services.

1.6 Are any government pre-approvals required?

For regulated goods or services, such as those regulated by the SFDA, there is a requirement to obtain approval before advertising the product or service. More generally, there is no requirement to obtain government pre-approval before goods or services are advertised.

1.7 Does the media pre-clear advertising?

At a practical (rather than formal) level, the media pre-clears advertising content. Essentially, local advertising platforms (such as print media, television, billboards, online, etc) will decline to accept content that they think may fall foul of local decency rules or other such content restrictions, or that is not accompanied (in the case of regulated goods or services) by proof of the necessary authorization.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The remedies available depend on the legislation under which the violation is prosecuted:

- (a) As per the Publication Law, any content in an advertisement that violates the provisions of the Publication Law shall be subject to one or more of the following:
 - A fine not exceeding SAR 500,000 (approx US \$135,000) (the fine may be doubled for repeat violations);
 - Suspension of the violator from writing in all newspapers and printed materials, or media branding through satellite channels, or from both;
 - Permanent or temporary closure or blocking of the printed material in which the violation occurred. If a newspaper, the implementation of the closure decision shall be subject to the approval of the President of the Council of Ministers. If it is an electronic newspaper, website, or the like, the decision shall be vested with the Minister; and
 - Publication of the violator's apology, if the violation involves the publication of false information or accusations against persons, in accordance with the form approved by the committee. The publication of such apology shall be at the expense of the violator and at the same place where the violation was published.

- (b) As per the Audiovisual Media Law, any content in an advertisement that violates the provisions of the Publication Law shall be subject to one or more of the following:
- A fine not exceeding SAR 10M (about US \$2.7M) (the fine may be doubled for repeat violations);
 - Suspension from practicing the profession for not more than six months; and
 - Revocation of the license.

1.9 When does a competitor have a right of action? What are the potential remedies?

- (a) Under the Publication Law, each case is evaluated independently. The Ministry of Media's preliminary committee, whose decisions are determined by majority or unanimous vote, is the venue for complaints from competitors. A competitor may appeal a decision to the Appellate Committee, comprising of a chairman with judicial experience, a legal advisor and a media specialist. Decisions of the Appellate Committee are final.
- (b) The Audiovisual Media Law contemplates the GAMR ensuring the protection of consumers, and its associated Regulation goes into more detail in this regard. The GAMR is empowered to settle disputes between licensed entities and consumers, as well as disputes between licensed entities. There is scope for an aggrieved party to make a claim before the Minister and then appeal to the Board of Grievances (administrative court) in the event that it was not satisfied with the outcome.

Remedies available to competitors are as provided in question 1.8 above.

1.10 When do consumers have a right of action? What are the potential remedies?

Aggrieved consumers may make a complaint to the responsible authorities in respect of violations; and the relevant authorities may direct the violator to remedy the situation (eg, by compensation or corrective advertising). If the consumer is not satisfied with the outcome of such complaint, they may be able to file a claim in the local courts.

In terms of remedies, consumers would need to establish damage as a direct result of the violation in order to be eligible for compensation under Saudi law.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Saudi Arabia have a primary advertising self-regulation system?

No, there is no self-regulation system in Saudi Arabia in the sense of an industry-driven regulatory regime.

2.2 Is there a self-regulatory advertising code? What are the key principles?

N/A

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

N/A

2.4 Is the self-regulation system effective? Is it widely used and followed?

N/A

2.5 Are the self-regulatory system's decisions reported?

N/A

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

N/A

2.7 Are there any other self-regulatory systems that govern advertising practices in Saudi Arabia?

N/A

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Saudi Arabia (eg, consumer protection laws, IP laws, unfair competition laws)?

(a) Audiovisual Media Law 2017; and

(b) E-Commerce Law 2019.

3.2 Is substantiation required for advertising claims?

The need to substantiate advertising claims is not set out in any great detail; however, the Audiovisual Media Law includes a prohibition on the broadcasting of any media content containing false statements that are not based on documented facts and information. Its associated Regulations preclude any publicity or advertisement involving any misleading representations.

The E-Commerce Law prohibits electronic advertisements that include any false display, statement, allegation, or misrepresentation that may lead, directly or indirectly, to deceiving or misleading the consumer.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There are no prescribed requirements in this regard.

3.4 What are the rules governing the use of disclosures in advertising?

There are no prescribed requirements in this regard.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no specific rules governing the use of endorsements or testimonials, although these would be subject to considerations around false information not supported with well-proven facts, etc, as to which see question 3.7 below.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no prescribed requirements in this regard.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

There is no specific prohibition on ‘comparative advertising’ as such, but there are potential legal risks related to advertising based on false information (and trademark-related considerations, as discussed in question 3.8 below).

The Audiovisual Media Law prohibits the broadcasting of any content that contains false information that is not supported with well-proven facts. Its associated Regulations preclude any publicity or advertisement involving any misleading representations or any confusion about the advertised product or service of the competitor, as well as the defamation or abuse of any product, person, establishment or trademark.

The manner of proposed advertising could be relevant, as the focus of the Audiovisual Media Law is on broadcast media. Accordingly, advertising via billboard or via online or direct marketing (eg, email) would not be explicitly captured by this prohibition. (However, the regulation that applies to billboard-type advertising contains general restrictions on unlawful content, so there may still be a barrier.)

At a practical level, rather than receiving a penalty, our expectation is that advertising platforms subject to these laws (eg, broadcasters or billboard operators) would be reluctant to take on advertising that could expose them to penalties. Advertising that is solely ‘on-line’, via a foreign platform, would be more difficult to take action against from a Saudi law perspective.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

Under Saudi Arabia’s Trademark Law, the owner of a trademark may, if they sustain damage resulting from the unauthorized use of their registered trademark, claim compensation in relation to such infringement. Anyone who puts or uses, in bad faith, a trademark owned by another on their products or services is liable to criminal prosecution and potentially subject to imprisonment for a period not exceeding one year and/or a fine of between SAR 50,000 and SAR 1M (approx US \$13,500–267,000). Whether this covers comparative advertising involving the use of another’s registered trademark is not entirely clear, although the potential risk is probably one reason why—anecdotally—we do not think it is particularly common in Saudi Arabia to promote products with specific reference to the name or trademark of a competitor.

The E-Commerce Law also prohibits electronic advertisements that use a logo or trademark without authorization.

As noted above, if the proposed advertising is online only, and not run through a Saudi platform, our expectation is that it would be difficult for an aggrieved competitor to take action in Saudi Arabia based on Saudi law considerations.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

There are no special rules governing claims relating to geographic origin. (False or inaccurate geographic origin claims would potentially be subject to the general prohibitions on misleading/deceptive advertisements.)

3.10 Are there any special rules governing product packaging?

Yes. For example, food labeling rules provide that food packaging must contain a list of all the raw materials and additives that formulate the food, and there is a requirement for labels to be in Arabic. (For products imported from outside the region, this is typically addressed via stickers added post-production.)

Similarly, sectors regulated by the SFDA have specific packaging requirements that should be addressed on a case-by-case basis.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

N/A

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No, although Artificial Intelligence is very high profile in the Kingdom. The Saudi Data and Artificial Intelligence Authority recently issued revised AI Ethics Principles, which are of general application—and which seem to be optional at this stage.

4 PRICE ADVERTISING

4.1 What are Saudi Arabia’s rules regarding price advertising?

As per the Audiovisual Media Law:

- the main advantages of a product or service;
- the identity of the seller or trader;
- tax-inclusive price; and
- delivery fees,

shall be determined in all advertisements that contain the products’ prices.

4.2 What are Saudi Arabia’s rules regarding advertising ‘free’ products?

Offering free products, and related aspects such as discounts, may fall under promotional activities that are subject to the approval Ministry of Commerce. Please see question 4.3 below.

4.3 What are Saudi Arabia’s rules regarding sales and special offers?

Any on-the-ground/in-store activations in Saudi Arabia involving discounts, prize draws, etc, require a permit. The authority responsible for the permit can vary, but it is either the Ministry of Commerce or the Chamber of Commerce. Processes vary; fees are modest.

The permit regime contemplates the organizer holding a local ‘Commercial Registration’ in Saudi Arabia (ie, being a Saudi-registered company); and the regime is designed with in-country, on-the-ground promotional contests in mind—although a local (Saudi) entity running an online only contest would also be expected to obtain a permit.

In terms of sales and special offers, the application would generally require the following information:

- (a) The reason for offering a discount;
- (b) The period of discounting, as well as the beginning and ending dates;
- (c) A list of commodities subject to discounts, showing the actual price of each commodity at the time of the application, as well as the price after discount and the rate of discount.

The advertiser must attach an invoice proving the sale at the actual price specified in the commodities list at different times, or a pledge certified by the advertiser that the prices written on the commodities labels are the prices at which the advertiser has sold its commodities during different times before submitting the application of discounts.

An off-shore promotional competition organizer would not be able to apply for a permit, nor would Saudi authorities responsible for commercial promotions consider the activities of such an off-shore organizer to be within the realm of their responsibility. There would be no expectation that an online promotion (including things like prize draws, discounts, etc), run from abroad (eg, via social media), would require a permit from Saudi authorities.

4.4 What are Saudi Arabia's rules regarding rebates?

Rebate schemes may fall under promotional activities that are subject to the approval of Ministry of Commerce. Please see question 4.3 above.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

We have not been able to identify any other key restrictions relating to retail advertising practices.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Obviously, it is not permitted to advertise products or activities that are illegal in Saudi Arabia, such as narcotics, alcohol and gambling. (However, despite alcohol and gambling being illegal in the Kingdom, there have been some instances—notably high-profile international sporting events—where alcohol or gambling sponsors appeared on players' kit. For this type of thing, on-the-ground advice is essential to appreciate the context and manage the risk.)

The Audiovisual Media Law prohibits advertising of pharmaceuticals, food supplements and investment materials not licensed by the competent authorities, and tobacco products. Similarly, the advertisement of regulated activities is subject to the advertiser holding the relevant licenses/approvals to undertake the regulated activities. There are also specific restrictions (issued by responsible sectoral authorities) in respect of products such as infant milk formula and energy drinks.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Telemarketing is regulated, and there are also judicial decisions likely to impact on multilevel marketing schemes.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Saudi Arabia is known as a conservative, Islamic country. The Audiovisual Media Law contains requirements for media content to:

- Preserve the general rules of etiquette, general taste and courtesy;
- Preserve values and virtues among the youth and promote social values through highlighting the role of family as the cornerstone of building society.

Assessing what might fall foul of local indecency or obscenity standards requires local insight. It is not uncommon to find international advertisers seeking to ‘self-edit’ based on their own assumptions, rather than checking locally, and finding that the expectations of the market are not quite what had been assumed.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There are no specific requirements that advertising identifies who the advertiser/sponsor of advertising is. It is possible that failure to provide details could be considered to fall within prohibitions on misleading or deceptive advertising—although we have not heard of that happening.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There is a requirement to distinguish editorial content from promotional content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no prescribed requirements as to how advertising content must be distinguished from other content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Yes. Social media influencers operating in Saudi Arabia that wish to advertise goods/services of others on social media are required to register with the GAMR. Registered social media influencers are required:

- to publish advertisements through accounts that are registered with GAMR;
- to disclose whether a social media post is an advertisement and whether paid or unpaid (although the manner of such disclosure is not prescribed); and
- to ensure that the products/services they are promoting are duly licensed in Saudi Arabia.

Failing to register may lead to penalties and fines. The violator may be imposed on one or more penalties which are stipulated in the Audiovisual Media Law, the penalties are:

- A fine not exceeding SAR 10M (approx US \$2.67M);
- Suspension from practicing the activity for up to six months; and/or
- Revocation of their authorization.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There are no specific rules in this regard, although we would not expect an advertiser to be responsible for user generated content in this context.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

N/A

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

To the extent that use of name, picture, likeness, voice or identity, without specific authorization, could provide a basis for a claim from the aggrieved individual, then it would be prudent to seek to obtain any necessary authorizations.

The Copyright Law basically provides that where a person's image is the subject of a copyright work (such as a photograph), that person shall have the right to control the use of the image, and such right shall be superior to that of the author (photographer). Unless otherwise agreed:

- (a) the photographer is not entitled to publish the image without the permission of the subject of the photo (with limited exceptions where:
 - (i) the appearance of the person is incidental, or
 - (ii) the person is a public official or famous, subject to such publication not negatively impacting on the reputation of the person); and
- (b) the person pictured may publish the image without needing the permission of the photographer.

It is important that the rights granted are clearly documented, and presented as being 'irrevocable' (to the fullest extent permitted by law). There are provisions in other laws that impose criminal penalties on taking/distributing photos of people without their consent, so it is important that the permission aspect is properly addressed.

9.2 Are there situations when permission is not required?

No. Exceptions do not apply to commercial use of works. (There are 'fair use'-type provisions in the Copyright Law, although it is unlikely that these would apply in the context of commercial use in an advertisement.)

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

- (a) The Saudi Copyright Law and its Regulations provide for protection of Saudi folklore and expressions of traditional heritage. This includes things like folk songs, folk dances, traditional designs on traditional handiwork, etc. The permission of the Ministry of Culture was previously required to use this type of material, although it would be prudent to re-confirm with the authority responsible if such permission is required. Additionally, we note that the Audiovisual Media Law and its Regulations restrict the display of media content featuring any events related to folk heritage or tribes without having first obtained the required approvals.
- (b) There are some specific locations in Saudi Arabia, access to, and the use of, which in advertising is likely to be restricted. One example is the AlUla/Hegra area, a UNESCO world heritage site; another is the holy site of Mecca. The potential concerns are more likely to be at a production level, rather than in terms of subsequent use, but it would be sensible to seek specific advice if Saudi content of this nature were to be a feature of advertisements.
- (c) The Law of Antiquities, Museums and Urban Heritage contains a restriction on the replication of ‘antiquities’, which could include historical and heritage sites. This law is not particularly clear, and this restriction seems more designed to prevent the replication of souvenirs and models of artefacts/objects without authorization from the Saudi Commission for Tourism and Antiquities.

10.2 Is it permissible to use other companies’ recognizable products in advertising (eg, an actor wearing branded training shoes)?

If this is ‘incidental’, then it is unlikely that any issue would arise from a Saudi law perspective. Despite this, the observations made above in respect of the Audiovisual Media Law in response to question 3.6 above may be relevant; publicity or advertisement involving any misleading representations or any confusion about the advertised product or service of the competitor, as well as the defamation or abuse of any product, person, establishment or trademark, is not permitted.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Saudi Arabia which affect advertising (eg, Swedish gender equality law)?

See question 10.1(a) above.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

According to the Basic Law of Governance, the Kingdom of Saudi Arabia is a fully sovereign Arab Islamic state. Its religion is Islam and its constitution is the Holy Qur’an and the Sunnah (traditions) of the Prophet Muhammad (PBUH). The Qur’an and the Sunnah form the Islamic Shari’ah, which is the primary foundation of all Saudi laws. This provides context to the interpretation of local media regulatory requirements that call for:

- Preservation of the general rules of etiquette, general taste and courtesy;
- Preservation of values and virtues among the youth, and promoting social values through highlighting the role of family as the cornerstone of building society;
- Promotion and enhancement of the unique and distinguished identity of the Kingdom, together with its values and cultural heritage; and
- Protecting public order, enhancing national cohesion, and preserving the social fabric.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Saudi Arabia?

Essentially, Saudi Arabia is a socially conservative Islamic country. Advertisers should be mindful of this, whilst also ensuring that the perception from abroad (which often leans towards an overly-conservative approach) needs to be tempered with local insight to find the right balance.

 SERBIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Serbia?

Advertising rules are prescribed by number of laws and regulations. In addition, there are a couple of self-regulatory documents.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The Law on Advertising defines advertising as ‘any communication in any form that is related to business and/or professional activity and intended to encourage the sale of goods and services, sale of immovable property, as well as the transfer of rights and obligations’. Therefore, there are two elements to determine whether a particular communication is advertising:

- is it related to business or professional activity and
- is there a promotional element (intention to encourage the selling of products/services)?

In addition, the same law recognizes that the rules on advertising are *mutatis mutandis* applicable to other forms of communication that do not fit the above definition, such as:

- (a) the publishing of personal messages or other announcements by individuals unrelated to their business and/or professional activity;
- (b) the publishing information by government bodies and/or other public authorities within the scope of their activities (such as public invitations, announcements, public campaigns, etc);
- (c) election campaigns and other promotional activities of political organizations;
- (d) the publishing of information by associations, trade unions and other legal entities in the scope of activities that do not relate to sale of goods and services; and
- (e) the provision of information to the general public about activities related to social responsibility campaigns.

1.3 What is the basic regulatory framework for advertising regulation?

The Law on Advertising is the framework law that regulates all the important aspects of advertising, regardless of the type of advertising message or platform for the distribution of the advertisement.

However, there are a number of other laws and regulations that prescribe the advertising of particular goods/services, including:

- Law on Game of Chance (which regulates certain aspects of game of chance advertising);
- Law on Medicines and Medical Devices (which regulates the advertising of medicines, including the approval procedure of promotional material for medicines and medical devices);
- Law on Medical Devices (which regulates the advertising of medical devices);
- Law on Protection of the Financial Services Consumer (which regulates the advertising of particular financial services provided by banks and other financial institutions);
- Law on Health Protection (which regulates the advertising of health services, specialized medical treatments and methods of health care);

- Law on Electronic Communications (which regulates certain aspects of the advertising of telecommunication services);
- Rulebook concerning the Nutrition and Health Claims on the Food Declarations (a bylaw which regulates in detail the health and nutrition claims that can be used on the food declarations).

In addition, some aspects that are important for advertising are regulated by:

- Law on Consumer Protection (in particular in relation to unfair business practices, advertising of sell incentives etc);
- Law on Commerce (in particular when it comes to the general rules related to the sell incentives and unfair business practices);
- Law on E-Commerce (when it comes to the definition of the information society service provider and its responsibility for the content of the advertisement);
- Law on the Protection of Competition (in relation to the anti-competitive behavior), and laws that regulate copyright and trademark protection (especially in relation to the comparative advertising);
- Law on Inspection, Law on Misdemeanors, Law on Commercial Offense and Law on Electronic Media (in relation to the proceedings and measures that could be imposed in cases of violation of the rules of advertising/marketing communication); and
- Law on Geographical Designation.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Specific rules are determined depending on the following criteria:

- (a) the type of advertising platform (print, electronic media, outdoor and online advertising);
- (b) the type of goods and services that are advertised (tobacco and similar products, alcohol, game of chance, medicines and medical products, medical services, attorney services, guns and other fire arms, pornography, food for babies, diet supplements, financial services etc); and
- (c) the manner of advertising (in particular, rules relating to direct advertising).

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are special regulations (or sets of rules) relating to the advertising of, inter alia:

- tobacco and similar products (eg, electronic cigarettes),
- alcohol,
- games of chance,
- medicines and medical products,
- medical services,
- attorney services,
- guns and other fire arms,
- pornography,
- food for babies,
- diet supplements,
- financial services.

1.6 Are any government pre-approvals required?

Approval of the Serbian Agency for Medicines and Medical Devices is needed when it comes to advertising materials concerning medicines and medical devices.

Pre-approval from the Games of Chance Administration, an administrative body within the Ministry of Finance of the Republic of Serbia, is required to organize and advertise a promotional game of chance.

1.7 Does the media pre-clear advertising?

In practice, some media perform pre-clearance, and some not. Usually, media agencies (advertising or communication) perform such activity on behalf of their clients.

On the other hand, there are efforts within the industry to organize the self-regulatory body so that it will also perform pre-clearance services (pursuant to the industry guidelines—the Code of Marketing Communications—adopted within the Serbian branch of the International Advertising Association), which will hopefully become mandatory for members of the self-regulatory body.

Therefore, at the moment, control relating to compliance of the advertising message is mostly ex-post control performed by the controlling bodies (such as Trade Inspection, Health Inspection and Regulatory Body for Electronic Media ('REM')).

The exception is in relation to medicines and medical devices, where the Agency for Medicines and Medical Devices pre-approves promotional material concerning the advertising of medicines and medical devices, which also means that, to some extent, it performs pre-clearance (in relation to compliance with the laws that regulate medicines and medical devices).

See also question 10.1 below in relation to clearance concerning the usage of national symbols and cultural goods.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Supervision is granted to:

- Trade Inspection;
- other inspection bodies for the advertising of particular products/services (eg Health Inspection or Sanitary Inspection);
- REM (in relation to audio-visual commercial communications distributed via audio-visual media service providers—ie, TV and radio); and
- the courts (special civil litigation and misdemeanor/commercial offense proceedings).

The controlling bodies can impose:

- (a) Inspection measures (the most important of which is the order for temporary removal of the non-compliant advertisement). Appeal can be submitted to the second instance body (competent ministry);
- (b) Measures of warning, temporary prohibition on the publication of the advertisement, revocation of license (more of a theoretical possibility): These are measures imposed by REM on the audio-visual media service providers (TV and Radio). The decisions of REM can be challenged before the Administrative Court;
- (c) Court order imposed in special civil litigation in relation to misleading and prohibited comparative advertising: The courts may order a respondent to cease misleading and/or prohibited comparative advertising, or may prohibit the respondent from publishing still

unpublished misleading and/or prohibited comparative advertising. Appeal can be submitted to the second instance court pursuant to the general rules governing the proceedings in civil litigation;

- (d) Fine for misdemeanor/commercial offense: The Misdemeanor Court/Commercial Court (pursuant to the Law on Advertising and other laws that regulates the special categories of products and services) may levy such level of fine as is determined by the law/s. In addition to a fine, protective measures such as prohibition on carrying out business activity for certain period can be imposed. Appeal can be submitted to the second instance Misdemeanor/Commercial Court pursuant to the general rules governing the misdemeanor/commercial offense procedure;
- (e) Special procedures for protection of consumers pursuant to the Law on Consumer Protection—so-called ‘consumer protection disputes’: These can be resolved in out-of-court proceedings (similar to arbitration and mediation) or before the court (pursuant to the general rules of civil litigation), as well as out-of-court proceedings initiated by the registered consumer protection associations.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor, as any other entity, has the right to file a complaint to the REM or the relevant inspection body, asking the body concerned to impose the measures listed in question 1.8. However, it is for the controlling body to decide whether proceedings will be initiated, and whether measures will be imposed.

The special litigation procedure concerning misleading or prohibited comparative advertising (see question 1.8(c) above) can be initiated by a competitor if its right or interest is threatened or injured by misleading or prohibited comparative advertising. In such cases, the competitor may ask the court to order cessation of the misleading/prohibited comparative advertising or to prohibit the publishing of misleading and/prohibited comparative advertising if it is yet to be published. In these proceedings the plaintiff cannot ask for compensation for damage caused by the misleading/prohibited comparative advertising. Claims for damages can instead be submitted in separate proceedings pursuant to the general rules of civil litigation.

When it comes to misdemeanors, a competitor can file a request for the initiation of misdemeanor proceedings before a court only if it has the status of ‘injured party’, ie, if its property rights have been violated or threatened to be violated by misdemeanor. In other cases, only the authorized bodies (REM, the relevant inspection body etc) can initiate misdemeanor proceedings. In such situations, the competitor can only file a complaint to the authorized body, but the authorized body is not obligated to initiate the proceedings.

Commercial offense proceedings can be initiated exclusively by the Public Prosecutor, except in cases where the Public Prosecutor fails to initiate such proceedings or abandons the prosecution. In such cases, the injured party is authorized to initiate or continue with the proceedings.

1.10 When do consumers have a right of action? What are the potential remedies?

Registered consumer protection associations, associations whose objectives relate to the protection and promotion of a certain occupation or profession, and chambers of commerce are also entitled to bring legal action against the advertiser concerning the misleading/prohibited advertising (special litigation).

A consumer could bring legal action in the same circumstances as those described for competitors (see question 1.9 above) (with a slight difference being that a consumer can also be an ‘injured party’ if their personal rights are violated by misdemeanor, not only property rights).

Finally, a consumer is authorized to initiate the consumer protection dispute mechanisms in cases where their rights under the Law on Consumer Protection have been violated (see question 1.8(e) above).

2 SELF-REGULATORY FRAMEWORK

2.1 Does Serbia have a primary advertising self-regulation system?

The Law on Advertising recognizes the importance of self regulation in the field of advertising. Pursuant to this Law, ‘self regulation’ implies a set of rules that define procedures in commercial communication and which includes advertising relating to one or more business procedures or industries, and/or professional rules, the formulation, acceptance, implementation, monitoring of implementation, and review of which are in the competence of all participants in advertising, ie, associations of advertisers, producers and advertising platforms and which are laid down in accordance with this law and special regulations.

However, there is still no fully implanted self-regulatory system in Serbia.

The Law on Chambers of Commerce has established so-called ‘courts of honor’ (that are operating within the Serbian Chamber of Commerce and Industry, as well as within other chambers that exist in Serbia). The court of honor has responsibility to decide on violation of good business practices and business ethics (set out in the Code of Business Ethics—a set of self-regulatory rules adopted within the Serbian Chamber of Commerce). However, it is not a true self-regulatory body in the field of advertising, given that:

- it is founded by the law (not by the initiative of the industry),
- the scope of its work is related not only to the violation of the good business practices in the field of advertising (it is related to the unfair business practice in general), and
- it doesn’t provide pre-clearance services (which are usually offered by advertising self-regulatory bodies).

In addition, the Association for Market Communications (‘UEPS’) that comprises media agencies (advertising and communication agencies), media outlets, advertisers (companies) and marketing professionals provides a similar protection mechanism—also known as a court of honor. This court monitors the violation of the good business practices and business ethics prescribed by Code of Business Ethics (mentioned above) and Code of Good Governance (also adopted by Serbian Chamber of Commerce). The role of the court is very similar to the court of honor within the chambers of commerce, and therefore it has similar shortcomings (ie, extensive remit—not only advertising, and the non-existence of pre-clearance). Actually, the Chamber’s mechanisms and mechanisms of UEPS overlap (with the same Codes, similar procedure and remedies etc). The difference from the Chamber-established system is that this system is not organized by the state—it is the initiative of the industry itself, and therefore it is closer to being self-regulatory.

There is an ongoing initiative of the Serbian branch of the International Advertising Association (‘IAA’) relating the founding of a self-regulatory body to provide the full range of services (including the pre-clearance of advertising) that are usual for self-regulatory systems, and that will monitor compliance with the Code of Marketing Communication (see question 2.2 below).

2.2 Is there a self-regulatory advertising code? What are the key principles?

The most comprehensive code is the Code of Marketing Communications of the Serbian Branch of the IAA, which was drawn up in 2013, is harmonized with the International Chamber of Commerce ('ICC') Code concerning marketing and advertising communication practice, and has been accepted by most of the major stake-holders (including the Chamber of Commerce, UEPS and other associations).

The Code of Marketing Communications regulates the key principles related to advertising and marketing communications such as:

- (a) **Legality:** compliance of the communication with the applicable law;
- (b) **Decency:** communication should not offend standards of decency;
- (c) **Honesty:** the communication should be framed so as not to abuse the trust of consumers or exploit their lack of experience or knowledge;
- (d) **Social responsibility;** and
- (e) **Truthfulness:** mostly in relation to the prohibition of misleading advertising.

Besides these basic principles, the Code of Marketing Communications regulates:

- the rules related to the usage of scientific or technical terms;
- usage of words such as 'free' and 'guaranteed';
- proof concerning claims;
- identification of the marketing/advertising communication (in the context of prohibition of surreptitious commercial communications);
- identification of the advertiser;
- comparison;
- usage of testimonials;
- portrayal or imitation of persons and references to personal property;
- exploitation of the goodwill;
- usage of imitation;
- protection of safety and health;
- special rules related to the children and minors;
- personal data protection;
- transparency of cost communications;
- unsolicited products;
- undisclosed costs; and
- environmental behavior.

The Code also contains special rules for certain types of marketing/advertising communications (such as sales promotions, sponsorship, direct marketing, digital marketing, environmental claims etc), as well as rules related to enforcement of the Code. Although the Code prescribes the founding of a self-regulatory body which should monitor violations of the Code, such a body has not yet been formed.

Ultimately, the Code should be amended, taking into account that, since it was drawn up, the new Law on Advertising has been adopted, and the intention of the IAA is that the Code should be harmonized with the law.

Additionally, the National Association for Ethical Standards in Advertising also has an advertising code that defines and enables the enforcement of ethical standards in advertising and marketing communications, promotes and supports the use of ethical principles in market communications, and adherence to the above-mentioned Code of Marketing Communications, as well as to other self-regulatory standards prescribed by the ICC and European Advertising Standards Alliance.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

When it comes to the Court of Honor of the Serbian Chamber of Commerce, the Prosecutor of the Court of Honor receives complaints from interested parties and initiates proceedings before the Court of Honor. The Court is authorized to impose the following sanctions on the defendant (ie, the company in violation of the Code): Warning, Public Warning and other measures prescribed by the law. The parties can appeal such decision of the Court of Honor.

Proceedings in the UEPS Court of Honor and the measures imposed by it are similar.

2.4 Is the self-regulation system effective? Is it widely used and followed?

No. The self regulation system is still to be fully implemented.

2.5 Are the self-regulatory system's decisions reported?

No.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

See question 2.2 above.

2.7 Are there any other self-regulatory systems that govern advertising practices in Serbia?

- The Serbian branch of International Advertising Bureau ('IAB') has developed the Code of Good Professional Practice in the Digital Publishing that regulates the rules in relation to various aspects of business activities, including some aspects of advertising. The Code introduces a so-called 'badge system' that guarantees compliance with the Code. Each IAB member that is a badge-holder has to publish the Council of Online Publishers' ('SOIS') email address for potential complaints concerning compliance with the Code. SOIS will decide on potential violation, and can impose measures (such as a warning, revocation of the badge, and exclusion from IAB membership).
- In addition, the Association for Public Communication ('DSOJ') also has developed a code, but it mainly covers issues concerning unfair business practices.
- Finally, there is the Press Council (which comprises the major print media outlets and online portals), the self-regulatory body that monitors the implementation of the Journalists Code of Ethics, and also makes decisions on violations of the code in relation to some aspects of advertising—eg, surreptitious (unmarked native) advertising.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Serbia (eg, consumer protection laws, IP laws, unfair competition laws)?

See question 1.3 above.

3.2 Is substantiation required for advertising claims?

In general, the advertiser should be able to prove its claims, based on ‘verifiable facts’.

The Law on Advertising prescribes that, if an advertising message refers to opinions of certain scientists, experts or consumers, they must be confirmed, documented, updated and verifiable. In addition, advertisements containing claims about the health, therapeutic or nutritive characteristics of advertised goods or service (health or nutritive statement) must be based on relevant scientific or professional findings, or such characteristics or the statement has to be confirmed and approved in accordance with specific regulations.

The Code of Marketing Communications prescribes that descriptions, claims or illustrations relating to verifiable facts in marketing communications should be capable of substantiation. Such substantiation should be readily available so that evidence can be produced upon request without delay to the self-regulatory organizations responsible for the implementation of the Code.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The usage of exaggerated or extravagant claims in advertising messages is something that should be avoided, in the context of the general rules related to the truthfulness of the advertising message and the prohibition on misleading advertising (which is one of the most important principles of the law and self-regulation). ‘Puffery’ is not strictly forbidden, but the majority of such statements are verifiable, and if they cannot be substantiated, the enforcing bodies may easily find them to be misleading advertising.

3.4 What are the rules governing the use of disclosures in advertising?

See question 3.2 above as regards substantiation. Every advertisement that contains a statement that is verifiable should be able to be substantiated with adequate information. The manner of publication and details of such information are not prescribed.

The Rulebook concerning the nutritive and health claims on food declarations prescribes a list of approved nutrition and health claims. However, it does not relate to the advertising of such products (rather, it is more concerned with the information given on the food declaration, with the goal of protecting consumers).

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The Law on Advertising does not regulate in detail the usage of testimonials and endorsements in advertising, except as part of the general rules concerning social responsibility—if an advertising message refers to the opinions of certain scientists, experts or consumers, they must be confirmed, documented, updated and verifiable.

The Code of Marketing Communications regulates the matter in more detail, and prescribes that marketing communications should not contain or refer to any testimonial, endorsement or supportive documentation unless it is genuine, verifiable and relevant, and that, as testimonials or endorsement become obsolete or misleading through the passage of time, they should not be used.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no special rules limiting the use of product demonstrations in advertising. Therefore, the general rules of advertising are applicable (especially those related to truthfulness and misleading advertising).

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

The Law on Advertising allows comparative advertising under certain conditions (conditions are harmonized with EU Directive 2006/114, concerning comparative and misleading advertising), namely that comparative advertising:

- cannot be misleading toward consumers;
- has to compare goods or services meeting the same needs or intended for the same purpose;
- has to objectively compare one or more material, relevant, verifiable and representative features of those goods and services, which may be the price;
- cannot discredit or denigrate the trademarks, trade names, designation of geographical origin or other distinguishing marks, goods, services, activities or circumstances of a competitor;
- has to be related to products with the same designation of origin;
- cannot take unfair advantage of the reputation of a competitor, trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- cannot present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name; and
- cannot create confusion between the advertiser and a competitor or between the advertiser's goods or services, trademarks, trade names or other distinguishing marks and those of a competitor).

Comparative advertising which is contrary to the rules set above is treated as misdemeanor.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

In general, the Serbian Law on Trademarks prohibits the unauthorized usage of the trademarks of other entities, ie, it prevents third parties from using a trademark in the course of trade without the authorization of the holder of the trademark.

However, given that the rules on comparative advertising are taken from EU Directive 2006/114, concerning comparative and misleading advertising, the usage of other entity's trademark should be interpreted within the meaning of the Directive; in other words, it should be allowed under the conditions prescribed by the Law on Advertising, and should not be treated as unauthorized usage of other entity's trademark. The Directive explicitly states that the use of another's trademark, trade name or other distinguishing marks 'does not breach this exclusive right in cases where it complies with the conditions laid down by this Directive, the intended target being solely to distinguish between them and thus to highlight differences objectively'.

Unfortunately, comparative advertising is not a common advertising technique in Serbian practice, and, as far as we know, there is no official position of the controlling bodies of the usage of trademarks for the purposes of comparative advertising, ie, whether such usage is unauthorized or not.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

- (a) Yes—there are special rules for protected geographical designations pursuant to the Law on Geographical Designation (protected designation of origin and protected geographical indication). These relate to the situation where the significant feature of the advertised product is linked with a particular geographical designation. For such products, only authorized users (who have acquired the appropriate approval) are allowed to use geographical designation in advertising. However, where the geographical origin is not important to the certain product (ie, the geographical designation is not protected pursuant to the Law on Geographical Designation), it may be used in advertising, provided that the rules of Law on Advertising are met (especially in relation to the misleading advertising).
- (b) When it comes to the usage of the Serbian national flag, coat of arms or national anthem, the advertising should be in line with the Law on Appearance and Usage of the Coat of Arms, State Flag and National Anthem, namely that:
 - the national flag or coat of arms should not be changed. Exceptionally these symbols can be used as the part of other emblems, or the date or name can be written if it is prescribed by the law;
 - the national flag or coat of arms should not be used as a trademark, sample, model or any other sign that is used for marking of the goods and services.

In practice, the media agencies ask the competent bodies for pre-clearance of the usage of Serbian national symbols, although such obligation is not clearly prescribed (see also question 10.1).

On the other hand, the usage of the symbols of other countries or international organizations must not be unworthy, and, in particular, it must not be such as to mock those symbols or to offend the dignity of a foreign state or its citizens or an international organization.

3.10 Are there any special rules governing product packaging?

Yes—there are consumer protection rules related to the appearance of mandatory information about the product on the product packaging, especially when it comes to food and diet supplement products. The rules are mostly concerned with informing consumers as to all relevant information in connection with the product itself.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no special rules or guidance on the use of ‘dark practices’ in advertising. Therefore, the general rules of advertising are applicable, especially the prohibition on misleading and surreptitious advertising under the Law on Advertising, as well as the Law on Consumer Protection which prohibits unfair business practices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules or guidance on artificial intelligence in advertising. The Serbian Government has produced a Strategy for the development of artificial intelligence in the Republic of Serbia for the period 2020–2025, as well as Ethical Guidelines for the development, application, and use of reliable and responsible artificial intelligence, but these contain no explicit provisions on advertising. However, the Ethical Guidelines do insist on principles of explainability and verifiability, respect for human dignity, safety, and fairness when it comes to the development, application, and use of artificial intelligence.

4 PRICE ADVERTISING**4.1 What are Serbia's rules regarding price advertising?**

The most important pieces of legislation are:

- Law on Advertising (misleading advertising rules, etc);
- Law on Commerce (general rules on sell incentives and advertising of sell incentives); and
- Law on Consumer Protection (in relation to unfair business practices).

In addition, the Code of Marketing Communications prescribes a detailed set of rules concerning special promotions.

4.2 What are Serbia's rules regarding advertising 'free' products?

The Law on Commerce regulates the advertising of so-called 'sell incentives', and, in that context, recognizes the use of certain phrases such as 'free', 'gratis', 'pay for one, get two', 'two for the price of one' in relation to the 'promise of the gift'. The use of such phrases is allowed only if the goods or services are already offered at a regular (current) price.

The Code of Marketing Communications prescribes more comprehensive rules related to the usage of word 'free', 'free gift' or 'free offer'. It prescribes that such phrases should be used only:

- where the offer involves no obligation whatsoever; or
- where the only obligation is to pay shipping and handling charges, which should not exceed the cost estimated to be incurred by the marketer; or
- where in conjunction with the purchase of another product, the price of that product has not been increased to cover all or part of the cost of the offer.

4.3 What are Serbia's rules regarding sales and special offers?

So-called 'sell incentives' are regulated by the Law on Commerce:

- (a) The offer of the sell incentives should have at least following elements (for services):
 - (i) determination of the type of the incentive (discount, present, participation in the prize contest or other incentive);
 - (ii) precise and clear determination of the service which is related to the incentive;
 - (iii) period of validity of the incentive;
 - (iv) special conditions related to the exercising the right on incentive (if any);
 - (v) the costs that should be prevail on the user;
 - (vi) comparison between the regular price of the service and the price after discount (If the incentive is related to the discount);

- (b) The Law on Commerce also regulates the advertising of the sell incentives, and provides the following:
- (i) it is prohibited to advertise sell incentives for goods that are available in such a small quantity that it is obvious that the intention of the advertiser is to attract customers in order to induce them to buy other goods, unless the available quantity is clearly indicated on the day of the start of the sell incentive;
 - (ii) when advertising a discount percentage, the highest discount percentage can be stated only if it applies to at least one-fifth of the merchandise in the retailer's assortment at each point of sale to which the sell incentive applies;
 - (iii) it is prohibited to advertise an alleged sale or apparent price discount on goods or services, volume of discount and similar if the previous price has not been truthfully indicated or if the goods have been offered at the previous price over a negligibly short period;
 - (iv) when advertising a preferential prices for certain categories of persons, for a certain area and a certain period of time, the category of persons, area and period for which the preferential price applies must be precisely indicated;
 - (v) promise of gifts using the words 'free', 'gratis', 'pay one, get two', 'two for the price of one', etc shall be allowed only if the goods or services are already offered at a regular (current) price;
 - (vi) in cases where the prices of goods or services of different quality, or prices of goods with and without defects are compared in an advertising message, the advertising must contain an indication that the lower price is the result of lower quality and/or defect.
- (c) In addition, the Code of Marketing Communications dedicates a whole chapter to advertising in relation to sell incentives. It contains a detailed set of rules relating to 'sales promotions', including general principles, namely that:
- promotions should be fair and honorable toward consumers,
 - promotions should be designed in a way to meet reasonable consumer promotions expectations,
 - should be transparent,
 - promotions should be fair to other market participants (competitors),
 - fulfilment of the conditions from the promotion should be prompt and efficient,
 - participants in promotion should not disrepute the promotion;
- together with rules related to:
- terms of offer;
 - manner of presentation of promotion;
 - administration of promotions;
 - safety and suitability;
 - presentation to the consumers;
 - presentation to the intermediaries;
 - particular obligations of promoters;
 - particular obligations of intermediaries; and
 - responsibility of all participants in promotion.

4.4 What are Serbia's rules regarding rebates?

The same rules apply as for other types of 'sell incentives'. Also, the advertising of discounts should be in line with the rules on misleading advertising.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are none other than the rules concerning sell incentives, misleading advertising and unfair business practice.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (guns, medicines etc)?

There are numerous products/services that are prohibited from being advertised:

- (a) tobacco and tobacco products, as well as the electronic cigarettes;
- (b) alcoholic beverages (with few exceptions, depending on the percentage of alcohol (below/above 20% and advertising platform);
- (c) prescription drugs (medicines), medicines that are issued at the expense of health insurance, medicines containing opiates or psychotropic substances, medicines for tuberculosis, medicines for sexually transmitted diseases, medicines for infectious diseases, medicines for chronic insomnia, medicines for diabetes and other metabolic diseases, and medicines without prescription, for which approval from the Medicines and Medical Devices Agency (ALIMS) is not granted;
- (d) medical services, with the exception of services for which the Ministry of Health has issued a license and confirmed that the provider fulfills the conditions required to provide them;
- (e) games of chance, without prior approval for their organizing, but never in print and electronic media intended for minors;
- (f) law services;
- (g) fire arms and military equipment, with the exception of:
 - (i) advertising for authorized traders and authorized buyers in specialized magazines and by direct marketing and
 - (ii) hunting weapons, as well as parts and ammunition for such weapons;
- (h) pornography (with few exceptions in pornographic magazines and in relation to pornographic media services); and
- (i) milk and other food for babies up to the age of 6 months, as well as equipment for the usage of such food.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There is no prohibition on any type of advertising techniques (except direct marketing without prior consent of the recipient of the advertising message and native marketing which is not marked as advertisement).

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

By the Law on Advertising, an advertising message must not contain statements or visual representations that might be considered offensive. The offensive nature of advertisements is assessed on case-by-case (ad hoc) basis, depending on the content of the particular ad.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There are two set of rules regarding the identification of the sponsor/advertiser:

- (a) **Rules related to the identification that is needed for the purposes of monitoring by control bodies, and in relation to determining responsibility.** Each advertiser and advertising platform (transmitter of the advertising message) is obliged to keep a so-called 'Advertising Declaration', a document containing data that identify the advertiser and the transmitter of an advertising message, the contents of the advertising message and the planned period and advertising method, which the advertiser provides to the transmitter of an advertising message. The only exception to the need to keep an advertising declaration is in relation to an advertising message transmitter which falls within the category of 'information society service provider' related to the online advertising. Such entity is not obliged to have the advertising declaration. However, it is obliged to provide a 'clear identification' of the advertiser, and so, even in that case, the advertiser has to identified.

In addition, the Law on Consumer Protection prescribes the disclosure of the certain information related to the identity of the advertiser/trader.

- (b) **Rules related to the presentation of the advertiser's identity to consumers (recipients of the advertising message).** The Code on Marketing Communications prescribes rules concerning the identification of the advertiser. The Code clearly states that the identity of the marketer should be apparent, as well as that marketing communications, where appropriate, should include the contact information that will enable the consumer to get in touch with the marketer without difficulty. This does not apply to communications with the sole purpose of attracting attention to communication activities to follow (eg, so-called 'teaser advertisements').

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Yes—native advertising has to be marked as 'advertisement'. Otherwise, it will be treated as 'surreptitious marketing', which is prohibited under the Law on Advertising.

On the other hand, product placement as an advertising technique is allowed via electronic media (radio and TV), under certain conditions that are harmonized with the EU Audio-visual Media Services Directive (EU Directive 2010/13).

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Native advertising must be marked as advertising. The marking of native advertising should be graphic, visual and/or audio that, depending on the advertising method, designates the character of a certain message as advertising (eg 'paid space', 'advertising message', 'promo' etc).

The following rules apply regarding product placement:

- (a) Product placement is allowed only in certain types of program, such as in cinematographic works, films and series made for audio-visual media services, sports programs and light entertainment programs (except children programs). This applies even where there is no payment for the product placement, but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a program.
- (b) Neither the content of product placement (in the case of television broadcasting), nor scheduling may in any circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider.
- (c) Product placement may not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services.
- (d) Product placement must not give undue prominence to the product in question.
- (e) Viewers must be clearly informed of the existence of product placement (programs containing product placement must be identified appropriately at the start and the end of the program, and when a program resumes after an advertising break, in order to avoid any confusion on the part of the viewer).

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

All types of advertising (print, radio, TV, online, direct marketing etc) are regulated by the general Law on Advertising. The Law doesn't contain rules designed particularly for social networks. Such advertising technique is a type of 'online' advertising, and all the general rules apply to social media advertising as well.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There are no specific rules on this particular issue, and there is no available practice concerning user generated content on advertiser pages on social networks.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are some user generated content-related decisions concerning the responsibility of media outlets for hate speech comments made by users. However, these cases were not related to advertising. However, by analogy, it could be concluded that media outlets should be responsible for any (unlawful) UGC content, including advertising-related content, regardless of the communication channel used (website, Facebook page of the media outlet, twitter account of media or other channel of the communication, etc).

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Pursuant to the Law on Advertising, any advertising message that contains personally identifiable information by which the identity of a person can be determined or recognized cannot be published without the prior consent of the person to which such information relates. Similar rules are also prescribed by the Code of Marketing Communications.

9.2 Are there situations when permission is not required?

If advertising contains personally identifiable information, prior consent is always needed.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

When it comes to the usage of monuments, historic places, and other similar cultural buildings or works, the advertiser or media agencies should acquire prior clearance (and approval) from the institutions that protect such buildings or works (eg, the Institute for the Protection of Monuments on a national or local level, the Ministry Responsible for Culture etc).

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Such use is permissible only in relation to comparative advertising (see questions 3.7 and 3.8 above).

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Serbia which affect advertising (eg, Swedish gender equality law)?

The Law on Prohibition of Discrimination prevents hate speech and any acts of discrimination, including the portrayal of discrimination by any means. The Law on Advertising clearly prescribes that advertising shall not, directly or indirectly, encourage discrimination on any grounds, particularly on the grounds of nationality, ethnic, religious or racial affiliation, sex, political or other belief, social background, economic status, culture, language, age or mental or physical disability.

In addition, the encouragement of harmful behavior in advertising messages is prohibited, particularly the presentation of:

- scenes of violence and destruction of property and nature, except with the aim of preventing such behavior;
- scenes that may cause fear or aggression;
- sexual harassment as acceptable, desirable or usual social behavior;
- minors in a sexual way, and men and women as boys or girls with the sexual attributes of adults;

- encouragement or approval of actions that are prohibited by regulations on environmental protection, as well as false claims (eg, by use of words such as ‘environmentally safe’, ‘environmentally harmless’, ‘eco food’, ‘organic product’ and similar words or symbols with the same meaning) that the goods or services have positive influence or are harmless regarding health or the environment.

Also, Serbia has a separate Law on Gender Equality, which, inter alia, prohibits the publication of any information that encourages the discrimination based on gender, which is also related to the advertising and promo material.

The Code of Marketing Communications also contains provisions that prevent discrimination in advertising.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

In addition to the rules relating to use of the state symbols and to cultural items, there are certain provisions relating to the use of language in the electronic media. The Law on Electronic Media prescribes that the provider of a media service (radio and TV) is obliged to provide that the program content is broadcast in the Serbian language. Although it is not clear whether such obligation also applies to audio-visual commercial communications (advertising) *mutatis mutandis*, there is a high possibility that advertisements should also be dubbed or subtitled in the Serbian language, ie, be understandable to consumers (taking into account that advertisements also fall under the editorial responsibility of electronic media).

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Serbia?

There are particular protective measures with regard to children (those under the age of 12) and minors (those above the age of 12 but under the age of 18) when it comes to advertising; and advertisers should be very cautious when it comes to advertisements intended for this particular group of consumers. In particular:

- (a) an advertising message aimed at children and minors must not abuse their inexperience, ignorance and naïveté;
- (b) an advertising message that encourages or incites behavior which threatens minors’ and children health, physical or mental development is prohibited;
- (c) an advertising message aimed at children and minors should not present minors in hazardous situation;
- (d) an advertising message must not:
 - (i) contain a depiction of violence, which includes scenes of violence between animated characters, puppets and similar,
 - (ii) abuse their trust in certain persons, particularly parents, teachers, doctors, etc by undermining their authority and attitude, nor
 - (iii) suggest that by using the goods or the service they will gain physical, intellectual or other social advantages over other minors or that the opposite effect would result if they do not use those goods or services; and

- (e) advertising in a school, kindergarten or other institution intended for minors is not allowed, unless it serves for the protection of general interests and the interests of minors, such as child rearing, educational and sports activities.

In addition, there are special rules for the protection of children and minors in relation to the scheduling of the advertisement, in connection with the content of advertising that promotes alcohol or game of chances (especially in relation to the warning notice) etc.

The Code of Marketing Communications also contains a detailed set of rules in relation to advertising intended for children and minors.

 SINGAPORE 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Singapore?

The advertising sector in Singapore is a self-regulating system. The Advertising Standards Authority of Singapore ('ASAS') oversees and regulates advertising activities in Singapore by relying on a system of guidance and voluntary compliance. There are numerous advertising guidelines which need to be adhered to, including the Singapore Code of Advertising Practice ('SCAP'), which is administered by the ASAS. In addition, there are specific statutes regulating the advertising of certain products and services, such as the sale of tobacco, pharmaceuticals, etc. While the ASAS oversees, regulates and provides guidance to stakeholders, it stops short of being the 'clearing house' for approval of advertisements.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

According to the SCAP, an advertisement means 'any form of commercial communication for any goods or services, regardless of medium used, including advertising claims on packs, labels and point of sales material'.

The SCAP applies to all advertisements appearing in any form or media, including, but not limited to newspapers, television, radio, video commercials, electronic bulletin boards, digital communications in all formats, design and context, as well as non-broadcast electronic media such as computer games.

1.3 What is the basic regulatory framework for advertising regulation?

Please see question 1.1 above.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

The SCAP applies to all advertisements appearing in any form or media. Please see question 1.2 above.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Yes. Refer to the table below, which provides a non-exhaustive list of products and services which are specifically regulated in Singapore:

Products/Services	Legislation
Gambling, lotteries, betting (other than casinos); lucky draws	Gambling Control Act 2022; Gambling Regulatory Authority of Singapore Act 2022
Financial services to members of the public through the mass media	Co-Operative Societies Act 1979
Endangered species	Endangered Species (Import and Export) Act 2006

Sale of organs and blood	Human Organ Transplant Act 1987
Advertisements relating to medical skill or service	Medicines (Advertisement and Sale) Act 1955
Advertisements relating to abortion	Medicines (Advertisement and Sale) Act 1955
False or misleading advertisements relating to medicinal products	Medicines Act 1975
Advertisements which claim, indicate or suggest that the article advertised will prevent alleviate, or cure blindness, cancer, cataract, drug addiction, deafness, diabetes, epilepsy or fits, hypertension, insanity, kidney diseases, leprosy, menstrual disorders, paralysis, tuberculosis, sexual function, infertility, impotency, frigidity, conception and pregnancy	Medicines Act 1975 (subject to exceptions)
Advertisements which refer to any skill or service relating to the treatment of any disease or condition affecting the human body	Medicines Act 1975
Chewing Gum, bubble gum and dental chewing gum (unless a product license under the Medicines Act has been obtained)	Sale of Food (Prohibition of Chewing Gum) Regulations (Cap 283)

1.6 Are any government pre-approvals required?

While pre-approval of the ASAS is not mandatory, any dealings with certain controlled items entail obtaining prior approval/authorization from appropriate authorities. Below is a non-exhaustive list of such items and the relevant controlling authority:

Items	Controlling Authority
Arms and explosives; bullet-proof clothing; toy guns, pistols and revolvers; weapons, spears and swords	Licensing Division, Singapore Police Force
Pre-recorded cartridges and cassettes; newspapers, books and magazines; films, video tapes/discs, laser discs; CD-ROM and video games	Infocomm Media Development Authority
Medicines; pharmaceuticals; poisons	Health Sciences Authority
Animals, birds and their by-products; plants; endangered species of wildlife; ornamental fish; meat and meat products; fish and seafood products; fruits and vegetables	Agri-food and Veterinary Authority
Telecommunication and radio communication equipment including toy walkie-talkies	Infocomm Media Development Authority
Drones above 250g in weight	Civil Aviation Authority of Singapore

1.7 Does the media pre-clear advertising?

It is not mandatory to obtain clearance from the ASAS prior to publishing/airing advertisements. Be that as it may, the ASAS does have a mechanism through which advertisers can consult the ASAS regarding compliance with the SCAP.

However, for content disseminated through certain media (eg, film screenings), advertisers will need to obtain requisite clearance from the appropriate authority (for film screenings, this is the Infocomm Media Development Authority).

1.8 How does the government enforce advertising laws? What are the potential remedies?

The public can file complaints to ASAS that an advert doesn't comply with the SCAP. The ASAS is responsible for considering complaints, and may publicize their rulings, meaning that the most likely 'sanctions' include:

- (a) a direction to withdraw/amend an offending advertisement;
- (b) withdrawal of facilities, rights or services from the parties concerned, subject to legal constraints;
- (c) trading sanctions; and
- (d) negative PR arising from an adverse ruling being published.

The ASAS' rulings are not legally binding but, where the advertiser fails to amend its advertising, ASAS can contact media/publishers to request that they do not carry those, or similar, advertisements.

1.9 When does a competitor have a right of action? What are the potential remedies?

See question 1.8 above.

1.10 When do consumers have a right of action? What are the potential remedies?

Please see question 1.8 above.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Singapore have a primary advertising self-regulation system?

Yes. Please see question 1.1 above.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes—the SCAP. Some of the general principles enunciated in SCAP are as follows:

- (a) Advertisements should not contain anything that is illegal or might incite anyone to break the law. Nor should they appear to condone or lighten the gravity of illegal activities.
- (b) Advertisements should not contain anything that contravenes the ethical code of recognized professional bodies in Singapore.
- (c) Advertisements should not contain anything that is offensive to the standards of decency prevailing among those who are likely to be exposed to them.
- (d) Advertisements should not abuse the trust of consumers or exploit their lack of experience, expertise or knowledge.
- (e) Advertisements should not, without justifiable reason, play on fear.

- (f) Advertisements should not mislead in any way by inaccuracy, ambiguity, exaggeration, omission or otherwise.
- (g) Advertisements should not show a disregard for safety.
- (h) All persons should be portrayed in a manner respectful of their dignity.
- (i) Advertisements should not exploit the natural credulity of children or the lack of experience of young people.
- (j) Advertisements should not unfairly attack or discredit other products, organizations or professions, directly or by implication.
- (k) Advertisements should not make unjustifiable use of the name, initials, logo and/or trade and service marks of any firm, company or institution.
- (l) Advertisements should not take unfair advantage of another firm, person or institution's goodwill in its name, trade name or other intellectual property, or the goodwill earned by other's advertising and promotional campaigns.
- (m) Advertisements should not be so similar in general layout, copy, slogans, visual presentation, music or sound effects to other advertisements or promotions as to be likely to mislead or confuse.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

There is no dispute resolution mechanism available in relation to advertising complaints. The ASAP internally reviews complaints and decides on the appropriate sanctions.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Yes, the self-regulation system has been fairly effective in Singapore, thus far. It is widely used and followed.

2.5 Are the self-regulatory system's decisions reported?

The ASAS's decisions will be notified in writing only to the parties concerned.

In addition, the ASAS reserves the right to publish details of the outcome of investigations that it undertakes and decisions which it issues, if other sanctions imposed by it do not turn out to be sufficiently effective.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Please see question 2.2 above.

2.7 Are there any other self-regulatory systems that govern advertising practices in Singapore?

In addition to the SCAP, there are a number of other sector-specific Codes which need to be adhered to. These include:

- (a) TV Advertising Code;
- (b) Radio Advertising and Sponsorship Code; and
- (c) Television Program Sponsorship Code (administered by Infocomm Media Development Authority).

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Singapore (eg, consumer protection laws, IP laws, unfair competition laws)?

Some of the sector-specific laws and regulations which contain provisions relating to advertising claims in Singapore include:

- Singapore Code of Advertising Practice,
- Accountants Act 2004,
- Architects Act 1991,
- Banking Act 1970,
- Broadcasting Act 1994,
- Building Control Act 1989,
- Casino Control Act 2006,
- Charities Act 1994,
- Chit Funds Act 1971,
- Co-operative Societies Act 1979,
- Companies Act 1967,
- Consumer Protection (Fair Trading) Act 2003,
- Consumer Protection (Trade Descriptions and Safety Requirements) Act 1975,
- Copyright Act 2021,
- Currency Act 1967,
- Customs Act 1960,
- Defamation Act 1957,
- Dental Registration Act 1999,
- Electricity Act 2001,
- Employment Agencies Act 1958,
- Endangered Species (Import and Export) Act 2006,
- Films Act 1981,
- Finance Companies Act 1967,
- Financial Advisers Act 2001,
- Gambling Control Act 2022
- Gas Act 2001,
- Goods and Services Tax Act 1993,
- Health Products Act 2007,
- Housing Developers (Control and Licensing) Act 1965,
- Human Organ Transplant Act 1987,
- Innkeepers Act 1970,
- Info-communications Media Development Authority Act 2016,
- Insurance Act 1966,
- Internal Security Act 1960,

- Land Surveyors Act 1991,
- Legal Profession Act 1966,
- Massage Establishments Act 2017,
- Medical Registration Act 1997,
- Medicines (Advertisement and Sale) Act 1955,
- Medicines Act 1975,
- Miscellaneous Offences (Public Order and Nuisance) Act 1906,
- Moneylenders Act 2008,
- National Symbols Act 2022
- National Registration Act 1965,
- Parliamentary Elections Act 1954,
- Penal Code 1871,
- Pharmacists Registration Act 2007,
- Police Force Act 2004,
- Presidential Elections Act 1991,
- Private Hospitals and Medical Clinics Act 1980,
- Private Security Industry Act 2007,
- Professional Engineers Act 1991,
- Public Utilities Act 2001,
- Rapid Transit Systems Act 1995,
- Road Traffic Act 1961,
- Sale of Drugs Act 1914,
- Sale of Food Act 1973,
- Sale of Food (Prohibition of Chewing Gum) Regulations,
- Securities and Futures Act 2001,
- Singapore Totalisator Board Act 1987,
- Street Works Act 1995,
- Telecommunications Act 1999,
- Trade Marks Act 1998,
- Traditional Chinese Medicine Practitioners Act 2000,
- Travel Agents Act 1975,
- Undesirable Publications Act 1967,
- Vandalism Act 1966, and
- Weights and Measures Act 1975.

3.2 Is substantiation required for advertising claims?

Yes, substantiation is required for all advertising claims. The SCAP, as well as the sector-specific legislation (see question 3.1 above), set out the requirements in this regard.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

No.

3.4 What are the rules governing the use of disclosures in advertising?

Some of the general principles set out in SCAP regarding disclosures are as follows:

- (a) Advertisements should not misuse research results or quotations from technical and scientific publications;
- (b) Statistics should not be so presented as to imply a greater validity than they really have;
- (c) Scientific terms should not be misused; and
- (d) Scientific jargon and irrelevancies should not be used to make claims which appear to have any scientific basis which they do not possess.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Some of the general principles set out in the SCAP regarding the use of endorsements and testimonials are as follows:

- (a) Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience of the party who provided the testimonial or endorsement;
- (b) Testimonials or endorsements that are obsolete or otherwise no longer applicable should not be used;
- (c) Particular care ought to be taken to ensure that testimonials based on fictitious characters are not framed so as to give the impression that real people are involved; and
- (d) Testimonials or endorsements that are exceptional experiences ought not to be used.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific requirements set out in the SCAP that apply universally to product demonstrations.

However, when demonstrating the capabilities of vehicles, they must not be depicted in dangerous or unwise situations in a way that encourages irresponsible driving, but rather, on a track or circuit, provided that it is clearly not in use on a public highway.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Yes, comparative advertising is permitted. However, the following principles need to be borne in mind:

- (a) Advertisements containing comparisons ought not to violate the principles of fair competition.
- (b) Where a comparison is made between the respective cash values or prices of goods that are not identical, the advertiser should clearly indicate that this is the case.

- (c) All comparative advertisements should be so designed that they are clear and fair, and there is no likelihood of the consumer being misled as a result of the comparison. The basis of comparison should be the same for the products being compared; and the list of items used in the comparison should not be so chosen so as to provide an unfair advantage to the product advertised.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Under the Trade Marks Act, a person infringes a registered trademark if, without the consent of the proprietor of the trademark, they use, in the course of trade, a sign which is similar/identical with the trademark in relation to goods/services which are similar/identical with those for which it is registered, and there exists a likelihood of confusion. Further, a person is deemed to have 'used' a sign if they use the sign in advertising. However, a person who applies a sign in advertising is not deemed to have used the sign if, at the time of such application or use, they do not know nor have reason to believe that the proprietor or a licensee of the registered trademark did not consent to such application or use of the sign. Similar provisions are also set out in the Copyright Act, although use of a trademark in an advertisement may fall within the ambit of 'fair dealing'.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Yes—the Geographical Indications Act 2014 provides for the protection of geographical indications in relation to goods, and for matters connected therewith, including, but not limited to, the use of appellations of origin.

3.10 Are there any special rules governing product packaging?

Yes—there are:

- (a) administrative labeling/product packaging requirements, eg, those issued by the Health Sciences Authority; and
- (b) statutory requirements, like those stipulated in sector-specific legislation, eg, the Medicines Act and the Food Regulations.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

No. There are no specific rules or guidance that specifically target the use of 'dark practice' such as manipulative, exploitative or disguised advertising.

That said, the SCAP does curtail certain exploitative practices, eg, by imposing additional restrictions on advertising that is targeted towards children.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No, the framework presently does not provide any special rules or guidance concerning the use of artificial intelligence in advertising.

4 PRICE ADVERTISING

4.1 What are Singapore's rules regarding price advertising?

Some of the general principles set out in the SCAP regarding the quotation of prices are as follows:

- (a) If reference is made in an advertisement to more than one product, it should be clear to which product or version any quoted price relates.
- (b) If a product is illustrated, and a price quoted in conjunction with the illustration, advertisers ought to ensure that what is illustrated can be purchased for the price shown.
- (c) If the price quoted does not encompass the product in its entirety, this fact and the additional price should be stated with no less prominence than the price itself.

4.2 What are Singapore's rules regarding advertising 'free' products?

Some of the general principles set out in the SCAP regarding the advertisements of 'free' products are as follows:

- (a) Incidental costs, which will necessarily be incurred by the consumer in acquiring the product, ought to be clearly set out.
- (b) Advertisers should not seek to recover the cost of the product that they describe as free.
- (c) The term 'free of interest' ought not to be used if payment for a product is only deferred by the merchant.

4.3 What are Singapore's rules regarding sales and special offers?

The SCAP sets out several requirements pertaining to sales and special offers. As an illustration, the term 'clearance sale' or similar expressions are not acceptable in advertisements except for an established trader.

4.4 What are Singapore's rules regarding rebates?

There are specific requirements pertaining to rebates. As an illustration, advertisements pertaining to medicinal products ought not to contain any offer to refund money to dissatisfied users.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The SCAP sets out specific requirements regarding retail advertising in the form of direct marketing. Some of the key requirements include:

- (a) Advertisements should clearly state the full name and address of the advertisers so that such information can be retained by the consumer.
- (b) The name of the advertiser, as stated within the advertisement, should be prominently displayed at the address given in the advertisement.
- (c) Advertisements should include:
 - (i) the main characteristics of the product or service;
 - (ii) the amount and quantity of any transportation charges;
 - (iii) any Goods & Services Tax payable;
 - (iv) a statement that goods can be returned (if applicable); and
 - (v) any limitation to the offer and any conditions that affect its validity.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

There are several products which are banned from being sold in Singapore. It follows that advertisements enticing members of the target audience to purchase such products are also not permitted. These banned products include:

- (a) cigarette lighters of pistol or revolver shape;
- (b) controlled drugs and psychotropic substances; and
- (c) firecrackers.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The Personal Data Protection Act 2012 sets out detailed 'Do-not-call' requirements and obligations which need to be adhered to. This affects telemarketing activities as well.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Undesirable Publications Act 1967 seeks to prevent the importation, distribution or reproduction of undesirable publications.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The SCAP stipulates that the identity of the advertisers should always be clearly set out. Further, mail orders, direct response, exhibition, trade promotion and advertisements disseminated through online media should clearly state the permanent address of the advertiser.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The SCAP contains special requirements which need to be adhered to with respect to the integration of advertising content and editorial content. As an illustration, it is obligatory on the part of all advertisers to ensure that anyone who looks at such content is able to clearly identify that it is an advertisement and not editorial matter.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

The general principles stipulated in the SCAP will apply to such content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

The general principles set out in the SCAP will apply to advertising through social media channels as well. In addition, stakeholders will need to ensure compliance with the provisions contained in the Electronic Transactions Act 2010 ('ETA'). The ETA stipulates that a network service provider shall not be subject to any civil or criminal liability under any rule of law in respect of third-party material in the form of electronic records to which it merely provides access if such liability is founded on the making, publication, dissemination or distribution of such materials or any statement made in such material; or on the infringement of any rights subsisting in or in relation to such material.

However, the network service provider shall remain liable for or pertaining to:

- (a) any obligation founded on contract;
- (b) any obligation imposed under any written law to remove, block or deny access to any material; or
- (c) any liability under the Copyright Act 2021 in respect to infringement or unauthorized use of any performance.

In addition to the penalties or sanctions imposed by the applicable statute, any person found guilty of any offence stipulated under the ETA shall be liable on conviction to a fine not exceeding S\$20,000 and/or to imprisonment for a term not exceeding 6 months.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The responsibility for ensuring compliance with the SCAP rests primarily with the advertiser. In addition, it also applies to any advertising agency or medium involved in the publication of the advertiser's message to the public.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Most matters of this nature thus far in Singapore appear to have been settled out of court, and matters seldom go to full trial. Accordingly, comprehensive decisions are also not issued/put in the public domain.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The SCAP stipulates that advertisements ought not to make unjustifiable use of the name, picture, likeness, voice, identity and/or any other intellectual property of any person/entity.

9.2 Are there situations when permission is not required?

It is advisable to obtain express consent from the concerned person/entity.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

In Singapore, the Preservation of Monuments Act governs the preservation and protection of national monuments. The Act, however, does not impose any bar with respect to photography of the monuments. However, some places of interest are subject to certain restrictions. One such example is the 'Singapore Flyer', for which the management has imposed certain restrictions with respect to photography for commercial use, and has made it mandatory to obtain prior permission.

In addition, there are special rules governing certain other monuments/symbols of national heritage. As an illustration, the 'Merlion' is a symbol protected under Singapore Tourism Board Act. The Act stipulates that it shall be an offence to use the 'Merlion' symbol (or make a representation which resembles it so as to cause confusion), if requisite permission for the same is not obtained from the Singapore Tourism Board.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The SCAP stipulates that advertisements should not take unfair advantage of another firm, person, or institution's goodwill in its name, trade name or other intellectual property, or goodwill earned by other's advertising and promotion campaigns.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Singapore which affect advertising (eg, Swedish gender equality law)?

Singapore is a cultural melting pot, with its population comprising of an incredibly diverse range of cultures, races and religions. Hence, the laws, rules and regulations attempt to foster an amiable environment which integrates all the cultures, traditions and persons of different nationalities.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Please see question 11.1 above.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Singapore?

Although the advertising sector in Singapore is self-regulating, advertisers ought to pay keen attention to the requirements stipulated in the SCAP, and also ensure compliance with the plethora of laws, rules and regulations governing specific sectors/spheres of activity. Advertisers ought to co-ordinate with their in-house counsel and/or lawyers specializing in advertising laws, right from the time of conceptualization of the advertisement, to ensure that they do not fall foul of the law.

 SLOVAKIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Slovakia?

Advertising in Slovakia is regulated primarily by the Advertising Act, which contains the basic regulatory framework for all forms of advertising. Other advertising rules are scattered between various laws including, in particular:

- (a) Commercial Code (unfair competition rules including misleading advertising);
- (b) Civil Code (personality and privacy protection);
- (c) Consumer Protection Act (consumer protection, unfair commercial practices);
- (d) Copyright Act (copyrights);
- (e) Trademark Act (trademarks);
- (f) Designs Act (designs);
- (g) General Data Protection Regulation (GDPR) (personal data protection);
- (h) Electronic Communications Act (direct marketing);
- (i) E-commerce Act (e-commerce);
- (j) Media Services Act (audiovisual services);
- (k) Publishers of Publications Act (advertising in publications);
- (l) Foods Act (misleading labeling of food); and
- (m) State Language Act.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The definition of advertising contained in the Advertising Act is relatively wide, and comprises all forms of commercial communication aiming to support the purchase and sale of goods and services. The Advertising Act defines advertising as ‘a notification, demonstration or other presentation in any form relating to a commercial, business or other gainful activity having the objective to support placement of products on the market’.

1.3 What is the basic regulatory framework for advertising regulation?

Basic regulatory framework for advertising in general is contained in the Advertising Act, which lays out the general principles of advertising, as well as basic requirements for the content and form of advertising. These principles and requirements are applicable to all forms of advertising. A specific basic regulatory framework for advertising on TV, radio and audiovisual digital platforms is contained in the Media Services Act.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Slovak laws specifically regulate direct marketing. The fundamental issue with direct marketing is to whom it is addressed. There are essentially three main groups of recipients:

- (a) existing customers, whether they are individuals or businesses;
- (b) potential customers who are entrepreneurs and have made their contact details public; and
- (c) potential customers who are regular consumers.

Different rules apply to each of these recipient categories.

The strictest regulations are naturally applied to potential customers who are regular consumers. To send them any direct offers, advertisers must first obtain clear and proactive consent from these consumers (opt-in principle). Once the necessary consents are secured, the advertiser must ensure that the consumer has an easy way to opt out.

Under the new Electronic Communications Act, a list of telephone numbers that cannot be used for telemarketing has been established. Individuals who do not want to be contacted by any or specific businesses can add their number to this list. While this won't automatically block their telephone number from telemarketing, anyone trying to contact them with an offer will face the risk of a fine amounting to up to 5% of their turnover.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Advertising practices of several industries are regulated specifically in Slovakia. In particular, specific rules apply to advertising of:

- (a) alcoholic beverages;
- (b) tobacco products;
- (c) firearms and ammunition;
- (d) pharmaceuticals;
- (e) food and baby food; and
- (f) 'energy-significant' products.

Moreover, self-regulatory rules also contain specific requirements or restrictions for advertising of:

- (g) food supplements;
- (h) gambling games; and
- (i) erotic products and services.

1.6 Are any government pre-approvals required?

There are no government pre-approvals required for any kind of advertising in Slovakia. Public control of advertising is generally exercised retrospectively. However, pre-approvals may be required for the sale of certain products. For instance, it is prohibited to advertise pharmaceuticals which are not registered in the Slovak Republic. Therefore, the medication must be registered first, and only afterwards promoted by advertisement. In addition, each advertisement of pharmaceuticals must be notified to a relevant state authority, together with the information about the target audience and the date of release of the advertising.

1.7 Does the media pre-clear advertising?

There are no official pre-clearance mechanisms set for the media. However, as media operators are generally responsible for the dissemination of advertising, and are bound by specific restrictions, such as product placement rules, they use pre-clearance of advertisements in order to avoid breach of advertising rules. In consequence, clearance of advertising before it is released has become a standard step in the advertising creation process.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Compliance with advertising laws is enforced in different ways. Primarily, compliance is monitored and enforced by public authorities, such as:

- (a) regional Trade Licensing Offices (compliance with general advertising and consumer protection rules, advertising of alcohol, advertising of tobacco products, etc);
- (b) Ministry of Health and other national or regional public health authorities (advertising of food and non-alcoholic beverages, cosmetics, food supplements);
- (c) State Institute for Drug Control and Institute for State Control of Veterinary Biologicals and Medicaments (advertising of drugs and veterinary medicaments);
- (d) Slovak National Bank (advertising of financial services); or
- (e) Council for Media Services (advertising on TV, radio and online audiovisual services platforms).

Apart from government authorities, compliance with advertising laws is enforced by the general courts, especially with respect to unfair competition rules, including misleading advertising and with respect to privacy protection and copyright.

Sanctions and remedies in administrative proceedings include:

- financial penalties;
- the obligation to withdraw the illegal advertisement from the market; and
- the obligation to publish the relevant decision of the supervising body in mass media.

Remedies in court proceedings include:

- the obligation to refrain from unlawful conduct;
- the obligation to remedy the negative consequences of unlawful conduct;
- compensatory damages; and/or
- refund of the unjustified enrichment.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor has a right of action if advertising breaches unfair competition rules set forth by the Commercial Code. Unfair competition is defined as ‘conduct in the market that conflicts with good morals of competition and is capable of being detrimental to other competitors or customers’. ‘Unfair competition’ comprises, inter alia:

- misleading advertising;
- misleading description of goods and services; and
- benefiting from the exploitation of a competitor’s reputation.

A competitor can file a civil action and require the violator to:

- (a) refrain from unlawful conduct,
- (b) remedy the negative consequences of unlawful conduct,
- (c) pay compensatory damages and/or
- (d) refund the unjustified enrichment acquired by reason of the unlawful conduct.

Moreover, a competitor has a right of action in case of breach of its copyrights, trademarks, designs or other reserved rights. Apart from that, the competitor may initiate administrative proceedings, eg, in cases of unfair comparative advertising.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers have a similar right of action to competitors where advertising breaches the unfair competition rules set out in the Commercial Code, provided that the alleged conduct is capable of being detrimental to the consumer. Consumers may file an action (either individually or through a consumer association) and require the violator to:

- (a) refrain from unlawful conduct;
- (b) remedy the negative consequences of unlawful conduct;
- (c) pay compensatory damages; and/or
- (d) refund the unjustified enrichment acquired by reason of the unlawful conduct.

Apart from that, consumers have a right of action in the case of breach of obligations arising from the Consumer Protection Act by the entrepreneur. Under this Act they may claim adequate financial redress as well as compensation for damage.

The recently-enacted Act on Representative Actions for Consumer Collective Interests gives consumers the ability to participate in collective actions to safeguard their interests. They can do so simply by registering and paying a small administrative fee. This allows them to join other consumers in seeking remedies, such as price discounts or even compensation for damages.

Notwithstanding the foregoing, consumers are, in practice, mainly protected by public authorities. Consumers who suspect that advertising is in contravention of laws, can initiate administrative proceedings by filing a motion with the relevant supervisory authority.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Slovakia have a primary advertising self-regulation system?

The primary self-regulation system relating to advertising in Slovakia is formed of rules set out by the Slovak Advertising Standards Council ('ASC'), the association which brings together organizations actively involved in the marketing communication process; from advertiser associations, advertising agencies and media to businesses, utilizing promotion through advertising. The main aim of the ASC is to secure and promote the dissemination of honest, appropriate, decent, legal and truthful advertising. The members of the ASC are committed to comply with rules of advertising set forth in its Code of Ethics.

2.2 Is there a self-regulatory advertising code? What are the key principles?

As mentioned above, the primary self-regulation rules of advertising are contained in the Code of Ethics issued by the ASC. The Code of Ethics is a general regulation applicable to all forms of advertising, and contains general principles and standards of advertising, as well as requirements for the advertising of specific goods and services. Although the Code of Ethics does not replace legal regulation, its principles are generally respected by advertisers in Slovakia. Key principles of the Code of Ethics comprise legality, truthfulness, decency and transparency. The rules contained therein are more detailed than the rules contained in the Advertising Act, thus they can often serve as an interpretation tool for legal regulation and, generally, as a source of good practice for the whole advertising industry.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Compliance with the Code of Ethics is monitored and enforced by the Arbitration Committee of the ASC, composed of advertising experts from different areas of advertising industry. If the Committee finds, following a complaint from any person, that a provision of the Code of Ethics has been violated by advertising, it can impose an obligation on the violator to change or to completely withdraw the infringing advertisement. All decisions of the Arbitration Committee are published on a database available online. Though the decisions of the Committee are not directly enforceable in civil proceedings, they are widely respected. In practice, the main sanction for breach of the Code of Ethics is damage to the good reputation of the advertiser and/or the advertising agency.

The recently-adopted Media Services Act has brought in the idea of co-regulation; allowing self-regulatory organizations to act as the first-instance authorities in administrative processes. As a result, the significance of self-regulatory bodies within the existing legal framework is anticipated to grow even further.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system in Slovakia is generally considered to be very effective. The Code of Ethics issued by the ASC, as well as the decisions of its Arbitration Committee, are widely respected, not only by the members of the ASC, but by advertising professionals and advertisers in general. Unlike some of the public authorities responsible for enforcement of mandatory advertising laws, the bodies of the Council are very flexible and provide for continuous developments in the area of advertising regulation. Members of the Arbitration Committee meet on a monthly basis and discuss all motions and complaints of third parties (most frequently individual consumers). Decisions of the Arbitration Committee are published online and are easily accessible to the public.

2.5 Are the self-regulatory system's decisions reported?

The decisions of the Arbitration Committee are first delivered to the parties and then published online on the website of the ASC, with the aim of ensuring predictability of future decisions and preventing repetition of the same infringements by other advertisers. It can be said that the decisions of the Arbitration Committee, together with the rules contained in the Code of Ethics, contribute significantly to the development of advertising best practices in Slovakia.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Most of the complaints addressed to the Arbitration Committee relate to traditional issues of advertising content, such as:

- the misleading nature of advertising claims (missing or untrue information in advertising claims);
- offensive claims or images (in particular claims and images with sexist or vulgar content);
- insufficient protection of minors, etc.

Key principles of advertising therefore include truthfulness, transparency, decency and protection of minors and minorities.

2.7 Are there any other self-regulatory systems that govern advertising practices in the Slovakia?

Apart from the rules contained in the Code of Ethics, which is the main source of self-regulatory rules of advertising in Slovakia, there are the Rules for Online Advertising issued by Interactive Advertising Bureau ('IAB') Slovakia, the biggest association in the Slovak digital market, representing leading Slovak publishers, media agencies and other important players active in online advertising in Slovakia. These rules contain basic principles and rules for online advertising.

In addition, since 2022, there have been specific guidelines for influencers and marketers to follow. The newly-introduced Influencer Marketing Code is designed to rectify improper behaviors among influencers and to promote ethical and responsible influencer marketing. One key rule is that any paid partnerships must be clearly disclosed to prevent any confusion between an influencer's original content and promotional posts. Moreover, the Code also highlights undesirable advertising practices, such as fake reviews, unsupported health claims, or exploiting children's trust.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Slovakia (eg, consumer protection laws, IP laws, unfair competition laws)?

Advertising claims must primarily comply with the general principles and rules of advertising contained in the Advertising Act. Apart from the rules contained in the Advertising Act, there are numerous other rules scattered between various laws, some of which are applicable generally to all advertising whilst others apply specifically to certain types or forms of advertising.

One of the main issues in advertising is deceptive or misleading advertising claims. Protection against such practices is contained primarily in the Commercial Code, which sets out unfair competition rules and restrictions, and in the Consumer Protection Act, which is based on EU consumer protection legislation and defines and prohibits unfair commercial practices.

Advertising claims cannot infringe third parties' IP rights; thus, the rules set out in the Trademark Act, Copyright Act and Design Act must be always complied with. As far as personal rights and privacy are concerned, the relevant legislation is contained in the Civil Code. After the introduction of the GDPR in 2018, the protection of personal data is more crucial than ever before, so advertising must be compliant with the GDPR.

3.2 Is substantiation required for advertising claims?

Substantiation is not specifically required by law for making advertising claims, meaning that there is no regulatory entity in charge of pre-clearing the veracity of advertising. However, consumers generally have the right to receive truthful and accurate information regarding advertised products. Even if there is no specific substantiation requirement, if a competitor or a consumer challenges the accuracy of a given claim, the advertiser must be ready to prove its accuracy by substantiation of the alleged facts. Substantiation is crucial, especially for comparative advertising claims, and for the advertising of specific products, such as pharmaceuticals or food supplements.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

'Puffery' advertising, or so called 'apparent exaggeration' is generally permitted in advertising. Based on this principle, 'puffery' or an otherwise clearly fanciful advertising message that is clearly obvious and understood as such by the average consumer is acceptable without substantiation, provided there is no specific claim or factual statement relating to the properties and characteristics of the advertised product or service. For instance, the advertising claim 'best in the universe' would represent an apparent exaggeration and would be compliant with laws. On the other hand, in the case of a specific claim in a puffery advertising such as 'best for stain removal on the market', the advertiser would have to be ready to substantiate such claim, if somebody challenged the truthfulness of the claim.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific codified rules governing the use of disclosures as to the content and the format of a disclosure. Nevertheless, general principles of advertising require advertising to be truthful and transparent. One of the means to achieve truthfulness and transparency of advertising is use of a fair disclosure. Such disclosure must be appropriate and sufficient to correct any false impression raised, or likely to be raised, by the advertising.

Moreover, the advertising of specific products, such as pharmaceuticals or baby foods, has its own rules as to the information that must be disclosed in the ad. For example, the advertising of pharmaceuticals must contain information on correct use and an explicit instruction to read the written instructions contained in the product package; and the advertising of baby foods must contain a recommendation that breastfeeding is preferable.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsements and testimonials must, primarily, comply with general principles, such as truthfulness and transparency. They may not be used in any manner which would likely mislead consumers. Testimonials should be presented truthfully without distorting their meaning to benefit the seller. Offering rewards for positive testimonials is acceptable only if the advertiser transparently reveals any ties between the brand and the person giving the testimonial.

In some cases, testimonials are restricted by law. For example, the advertising of pharmaceuticals cannot contain recommendations from scientists, healthcare professionals or even well-known public figures, the popularity of whom could stimulate drug consumption.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules regarding product demonstrations in advertising; therefore, any demonstrations must, primarily, comply with general principles, including truthfulness and transparency. In light of this, the product as shown in the advertising must not appear to have qualities that it does not possess, unless such advertising is accompanied with a fair and easily visible disclosure.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted, provided that it meets the requirements specified in the Advertising Act, which is generally based on EU legislation.

In particular, comparative advertising is permitted if it:

- (a) compares goods, services or immovables (products) satisfying the same needs or determined for the same purpose;
- (b) objectively compares one or more specific, representative, material and verifiable feature of the products, including their price;
- (c) does not discredit or disparage competitors' trademarks, trade names, other distinguishing features, goods, services, activities or standing;
- (d) does not misuse the advantage of the trademark, trade name or other distinguishing features of the competitor or the designation of the origin of the competing products;
- (e) does not represent goods or services as imitations or copies of goods or services bearing a protected trademark or trade name;
- (f) does not create confusion between entrepreneurs, between the advertiser and the competitor, or between the trademarks, trade names, other distinguishing features, goods or services of the advertiser and the competitor; and
- (g) is not misleading.

Comparative advertising which does not comply with the above legal requirements is prohibited.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The Slovak Trademarks Act stipulates that a trademark owner is not entitled to prevent a third party from using indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, time of production or other characteristics of the product, nor indications necessary for specifying the purpose of a product or service, especially in the case of accessories or spare parts, provided that such use is in accordance with honest practices in industrial or commercial matters.

In general, it may be concluded that if an advertising claim complies with the comparative advertising requirements (contained in particular in the Advertising Act) and unfair competition rules (contained, in particular, in the Commercial Code), it is permitted to use a competitor's trademark and show a competitor's products for the purposes of comparative advertising.

For completeness sake, it should be noted that the Commercial Code expressly prohibits offering goods or services as imitations or reproductions of third parties' products, their packaging or performances, except where they would be imitation in elements which are already functionally, technically or aesthetically predetermined for such products, and the imitator has taken all measures which may be reasonably required to eliminate or at least substantially mitigate the risk of confusion.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

There is a difference between registered and non-registered designations of origin.

For products without a registered origin designation, advertisers must follow basic advertising rules and unfair competition rules.

However, once a designation of origin is officially registered for a product, the rules become much stricter. Advertisers must adhere to several additional restrictions and in particular must refrain from:

- (a) using the origin designation for products that are not covered by it, especially if they are similar to or benefit from the reputation of the registered product;
- (b) misusing, imitating, or creating a false impression about the product's origin, even if the true origin is mentioned or if the designation is translated or modified with words like 'kind,' 'type,' 'style,' 'made in the manner of,' 'imitation,' 'similar,' or the like;
- (c) misleading about the product's origin, nature, or key characteristics on packaging, advertising materials, or related documents; and
- (d) taking actions that could lead the public to wrongly assume the product's origin.

Moreover, there is a specific rule relating to geographic origin in the context of comparative advertising. Under the Advertising Act, the comparative advertising of products with an indication of geographic origin is acceptable only if it compares products with the same indication of geographic origin.

3.10 Are there any special rules governing product packaging?

There are specific rules for the labeling of certain types of products, such as foodstuffs, medicaments or textile products. These rules specify which kind of information must be contained on the product package. Most of them are based on or arise directly from EU legislation.

Apart from the content requirements for certain types of products, there is a general requirement regarding the appearance of the package applicable to all kinds of products. In particular, the Commercial Code considers misleading labeling of goods and services to be unfair competition conduct. 'Misleading labeling' is any labeling of goods and services which is capable of causing the erroneous presumption that the goods or services:

- (a) are from a particular country or region;
- (b) are produced by a particular manufacturer; or
- (c) have specific characteristics or special qualities;
- (d) which they in fact don't have.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Dark practices are not specifically regulated in Slovakia. Instead, many of them, such as deceptive limited offers, 'free products' offers and similar aggressive commercial techniques intended to convince the consumer to make an unwise or unwanted choice, could be qualified as unfair commercial practices, which are generally prohibited.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Slovakia does not have any special rules or guidance for artificial intelligence used for the purposes of advertising. Some of the aspects, eg, use of big data and automated means of data processing, are already uniformly regulated on EU level. It is expected that some other aspects of use of artificial intelligence in advertising will be also addressed on an EU, and not only national, level.

4 PRICE ADVERTISING

4.1 What are Slovakia's rules regarding price advertising?

The rules regarding advertising involving price are contained mainly in the Consumer Protection Act, which requires a fair disclosure of the price in advertising. If the price is presented in a manner that could mislead consumers, such presentation will be considered to be a misleading unfair commercial practice. In practice, the disclosure of the price must not give the impression that the price is lower than it actually is. Apart from the price itself, or the manner to calculate the price, consumers must be informed about other related costs, or at least about the fact that there may be other related costs.

As far as special discounted prices are concerned, although it is permitted to show a regular price and a lower special discounted price in advertising, such advertising will not be acceptable if the 'normal' price is not representative, the goods having never actually been sold and/or offered for sale at that price. It should be noted that sellers have a legal obligation to keep a register of prices, which can be used as evidence in cases of dispute regarding the truthfulness of discounted price offers.

The rules regarding discounted prices should change soon. In particular, according to the draft of the new Consumer Protection Act, a trader is obliged to announce the 'previous price' whenever the price is reduced. 'Previous price' means the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction (or from the beginning of the sale in case of newly-introduced products). An exception to this rule applies where the price is reduced in stages, in which case the trader can only announce the original price. However, according to the draft explanatory notes, this exception may not be applied in the case of a too long period of gradual price reduction (to avoid abuse of this exception). These cases will be assessed individually.

4.2 What are Slovakia's rules regarding advertising 'free' products?

Describing a product as 'gratis', 'free', 'free of charge' or in similar terms, if the consumer, in fact, must pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the product, is considered an unfair commercial practice, which is prohibited under Slovak laws. In simple words, it is possible to advertise that a product or service is 'for free' only if the consumer indeed does not have to pay anything, except for necessary response and delivery costs.

4.3 What are Slovakia's rules regarding sales and special offers?

The general legal framework applicable to sales of products, including discount sales and special offers, is contained in the Consumer Protection Act, which basically mirrors the EU legislation on consumer protection. The Consumer Protection Act contains a definition of unfair commercial practices and an indicative list of banned misleading and aggressive commercial practices, based on the EC Unfair Commercial Practices Directive.

Generally, a commercial practice as to the disclosure of the price is regarded as misleading if such disclosure of price, or the manner in which the price is calculated, or the existence of a specific price advantage, causes or is likely to cause a consumer to take a transactional decision that they would not have taken otherwise. After the full transposition of the EU Omnibus Directive into Slovak law (in the new Consumer Protection Act), there will be a specific disclosure regime with respect to the discounted prices.

As far as limited offers are concerned, making a false statement that a product or service will be offered only for a limited time, or that it will be offered for a limited time under certain conditions, in order to encourage the consumer to make a decision immediately, without adequate time to make an informed decision, is considered an unfair commercial practice.

4.4 What are Slovakia's rules regarding rebates?

Beside the general rules contained in the Advertising Act and the Consumer Protection Act, no specific provisions are dedicated to rebates. If a rebate is mentioned in advertising, the information must not be false or misleading. The advertisement announcing the rebate needs to be clear about all conditions under which the rebate is valid, including the period for which it will run and any extra obligations that must be fulfilled.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Apart from general advertising laws, consumer protection laws represent the main source of regulation for retail advertising.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Advertising of certain kinds of products is either banned (generally, or in certain media) or very restricted. For instance:

- (a) **Tobacco:** Advertising of tobacco products is prohibited, except for:
 - (i) labeling of specialized shops selling tobacco products and needs for smokers with the mark 'TABAK';
 - (ii) labeling of cars and trucks of tobacco manufacturers with their trademark;
 - (iii) providing information on a specific tobacco product intended for the consumer, placed in a tobacco shop, provided that it contains a warning about the harmfulness of smoking; and
 - (iv) distributing tobacco products in trade negotiations relating to tobacco products.
- (b) **E-cigarettes:** It is prohibited to advertise e-cigarettes in audiovisual media.
- (c) **Guns and ammunition:** Advertising of guns and ammunition is prohibited, except where the advertising is:
 - (i) intended solely for the professional public in manufacturing and business with guns and ammunition;
 - (ii) located in shops or exhibitions specializing in sale of guns and ammunition; or
 - (ii) contained in professional literature and professional periodicals.
- (d) **Pharmaceuticals:** Advertising of prescription pharmaceuticals, pharmaceuticals which are reimbursed from the public health insurance system and pharmaceuticals which are not registered in Slovakia is prohibited, except where the advertising is addressed to health-care professionals and drug stores.

- (e) **Human organs etc:** It is completely prohibited to advertise availability of human organs, tissues and cells with aim to offer or acquire financial gain or comparable benefits.
- (f) **Illegal lotteries:** Of course, it is generally prohibited to advertise any illegal products, including unlicensed lotteries.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are several types of advertising practices that are specifically prohibited in Slovakia. These practices include, in particular:

- (a) dissemination of unsolicited advertising and spamming (advertising, in most cases, may not be disseminated by automatic telephone call system, telefax, and email without the prior consent of its receiving user); and
- (b) broadcasting of hidden advertising or advertising based on subliminal perception.

Prohibited practices, in fact, also include any advertising that constitutes an unfair commercial practice, an aggressive commercial practice or represents misleading advertising.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Advertising Act stipulates that advertisements must not contain anything that detracts from human dignity, offends national sentiments or religious convictions or any discrimination based on gender, race and social origin. Moreover, the advertisement must not encourage users to, or defend, violence, vandalism or vulgarity.

The Advertising Act further requires that nudity in advertising is always portrayed in a decent way, meaning that depiction of nudity cannot be profane, sexist or without a relevant context. Depending on the context, an image of a man/woman in a sexually suggestive pose, or an image alluding to sexual activity could be regarded as unacceptable. Any visual display of nudity defaming a woman/man in any way would be regarded as unacceptable.

Decency is further specifically mentioned in other laws, eg, in the Media Services Act. Decency is also one of the main principles of the self-regulatory rules contained in the Code of Ethics.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There is no general obligation to identify who the advertiser is. In some cases, however, the advertisers/sponsors must be clearly identified. Most importantly, the Media Services Act requires the broadcaster to clearly identify the sponsor of each fully or partially sponsored program at the beginning and at the end of such program. This requirement applies not only to traditional TV and radio broadcasters, but to all providers of audiovisual media services. The broadcaster/provider of the service must ensure that the sponsor is clearly and properly identified. At the same time the broadcaster/provider of the service is required to ensure that a sponsored program does not directly support the sale, purchase or lease of goods or services from a sponsor or a third party, in particular by special promotional references to those goods or services in these programs.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are specific provisions in different laws which require a clear distinction between editorial content and advertising. For instance:

- (a) The Consumer Protection Act classifies the use of editorial content for advertising purposes without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial) as an unfair commercial practice, which is prohibited.
- (b) The Media Services Act prohibits any kind of hidden media commercial communication, and requires that each commercial communication is clearly distinguishable from other components of the program service.
- (c) The Publishers of Publications Act provides that advertising must be easily distinguishable from editorial content.
- (d) The Code of Ethics requires that, in cases where an advertisement is placed on a platform with editorial content, such advertisement must be distinguished in such a way that it is recognizable as an advertisement by the average consumer. The average consumer should also be able to identify hybrid forms of advertising, including advertorials.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no specific rules governing the means of integrating advertising content and entertainment (or editorial) content. In order to avoid such content being considered a prohibited hidden advertisement or a breach of general principle of transparency, it is recommended to clearly identify the advertisement as such, eg, by the words 'advertising' or 'sponsored content' or 'advertorial' in a visible place; if possible at the beginning of the advertising content.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

With some exemptions, Slovak laws do not distinguish social media advertising from other forms of advertising. Therefore, the general rules of advertising, which are scattered between various laws, including those covering advertising in general, unfair competition, consumer protection and personal data protection accordingly apply to social media advertising. Similarly, the self-regulatory rules contained in the Code of Ethics issued by the Slovak ASC, and the rules contained in the Code of Influencer Marketing issued by IAB Slovakia and the Association of Digital Marketing Agencies (ADMA), are applicable to advertising and marketing via social media as well.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

In theory, an advertiser could be responsible for advertising claims made in user generated content, if such content was on advertiser's own website or its own social media account. In particular, the advertiser could be responsible for user generated content violating laws or infringing third party's rights if it had knowledge or should have had knowledge of the defective content and if it had had the opportunity to delete or moderate the user generated content but failed to do so.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

The Arbitration Committee of the Slovak ASC has issued many interesting decisions in the past few years, but the decisions of the Committee mostly relate to the content of advertisements, rather than the type of media by which they are distributed. This being the case, relevant EU jurisprudence, in particular decisions regarding the liability of social media platforms for third-party content, remains a primary source of case law in the area of advertising on social media platforms.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Under the Civil Code, the use of an individual's name, picture, likeness, voice and identity in advertising is permitted only with the consent of such individual. Moreover, if an individual does agree to the use of their name, picture, likeness, voice and identity in advertising, they may revoke their permission at any time. Similarly, under the Code of Ethics, advertising may not display any living person, nor refer to any living person, unless such person has given their consent to such display or reference.

9.2 Are there situations when permission is not required?

Permission for use of an individual's name, picture, likeness, voice and identity is not necessary only where such use is reasonable, intended for administrative, scientific, artistic or news-reporting purposes and does not conflict with legitimate interests of the individual. There are, however, no exemptions for use of an individual's name, picture, likeness, voice and identity for advertising purposes without that individual's permission. That said, there have been advertisements using the identity of historical personalities. After death, unauthorized use of an individual's identity can only be challenged by their spouse, child or parent.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There is one special case where notification of advertising is required, and it concerns the advertising of pharmaceuticals. In this case, the seller is obliged to provide the regulatory authority with a sample of every advertisement, along with details such as the target audience, how the advertising is being spread, and when it was first released.

As far as historic places, well-known buildings, or significant landscapes are concerned, there are no specific regulatory restrictions as to their display in advertising.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Except for cases specified by law or by case law (eg, use of third parties' products in comparative advertising), use of other companies' recognizable products without their consent could cause infringement of third-party trademarks or copyrights. Pre-clearance of rights to recognizable products is therefore highly recommended.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Slovakia which affect advertising (eg, Swedish gender equality law)?

There are no specific rules that are particular to the culture of Slovakia which would affect advertising.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Apart from the fact that Slovakia is still a relatively conservative and traditionally religious country, there are no specific cultural norms that should be considered by advertisers before launching an advertising campaign in Slovakia.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Slovakia

A typical issue in advertising and marketing practice in Slovakia is the misleading nature of an advert.

Under the Commercial Code, 'misleading advertising' is advertising which misleads or could mislead a person to whom it is addressed, and which may affect the economic behavior of such person, or which harms, or may harm, another competitor or consumer.

According to the Code of Ethics, 'misleading advertising' is advertising which, in particular:

- (a) misleads the average consumer or significantly influences or is likely to significantly influence the economic behavior of the average consumer in relation to the product, in a manner which prevents the consumer from making a qualified decision; or
- (b) transmits in unclear, incomprehensible, multi-meaning or inappropriate manner, information essential to the average consumer for making a qualified decision; or
- (c) uses another misleading business practice.

Both definitions of misleading advertising are quite broad. A simple potential to mislead a consumer and affect their economic behavior is enough to constitute a breach of the law/self-regulatory rules.

General advice to advertisers operating in the Slovakia would therefore be:

- Be clear; and
- Don't try to mislead consumers!



SOUTH AFRICA



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in South Africa?

There are numerous pieces of legislation and areas of the common law that regulate and affect advertising in South Africa. Of particular relevance are the Trade Marks Act of 1993 and Consumer Protection Act of 2008, as well as the common law remedies of passing-off and unfair competition. Self-regulation is also in place, in the form of the Advertising Regulatory Board of South Africa ('ARB'), and plays a significant role. The ARB's predecessor, the Advertising Standards Authority of South Africa ('ASA') was created in 1969 by the advertising industry itself, and the South African ARB Code of Advertising Practice is largely based on the British and International Codes of Advertising Practice.

It is important to state here that the ASA was liquidated by order of the High Court in October 2018, and the new ARB was formed thereafter. While the jurisdiction of the ARB over non-members has been challenged all the way up to the Constitutional Court of South Africa, that court found that even non-members may be impacted by decisions of the ARB. In practice, the ARB will make rulings, even against non-members, for the benefit of the industry as a whole and for its own members. The Code of Advertising Practice remains the benchmark of the *boni mores* of the community. In the absence of regulation by the ARB, there is legislation that governs the promotion and advertising of products. These are detailed below.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Whether a communication will be considered 'advertising' depends on which legal framework applies. The ARB Code is intended to cover advertising in all its diverse forms. 'Advertisement' is broadly defined in the ARB Code as: 'any visual or oral communication, representation, reference or notification of any kind:

- which is intended to promote the sale, leasing or use of any goods or services; or
- which appeals for or promotes the support of any cause.'

1.3 What is the basic regulatory framework for advertising regulation?

The ARB Code of Advertising Practice is the guiding document of the ARB. It is based upon the International Code of Advertising Practice, but adapted to the particular circumstances of advertising in South Africa. The Code is drawn up, and amended from time to time, by the ARB with the participation of representatives of the marketing communications industry. It is supplemented by individual codes, which are determined by the various member organizations or negotiated with governmental institutions. There is also a separate Sponsorship Code that sets out the guidelines for good practice and fairness in sponsorship.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

A number of types of advertising practices are specifically regulated in South Africa, including:

- (a) **Direct Marketing:** There are specific provisions in the ARB Code that regulate competitions, mail order advertising and direct marketing advertising. In the case of direct marketing, the Code contains a fairly lengthy appendix that sets out guidelines and principles governing all

forms of direct marketing, including marketing practices such as direct mail/catalogue marketing, direct response broadcasting, telephone marketing, cell phone/text message marketing and email marketing.

- (b) **Text messages:** The Wireless Application Service Providers' Association ('WASPA') has a Code of Conduct which entitles consumers receiving unwanted SMS marketing messages (where they have not directly supplied their numbers to the marketer) to report the spammer to WASPA. This regulation is based on consumer protection principles, particularly the consumer's right to privacy. All marketing SMS messages must allow a person who sends a reply SMS back with the word 'STOP' in it, to opt out of further SMS communications. Enforcement of WASPA's Code and its Advertising Rules is achieved by a quasi-judicial system that consists of a procedure for lodging and responding to complaints. Adherence to the Code and the Advertising Rules is mandatory for all providers operating in South Africa.
- (c) **Broadcasting:** The Broadcasting Complaints Commission of South Africa ('BCCSA') provides a forum to object to the content of television and radio broadcasts. The BCCSA is an independent judicial tribunal that adjudicates complaints of non-compliance with the Broadcasting Code. The Independent Communications Authority of South Africa ('ICASA') is tasked with regulating the telecommunications, broadcasting and postal industries in the public interest. ICASA is mandated to receive complaints from the public about services provided by telecommunications, broadcasting and postal licensees.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

A number of particular industries and types of products are specifically regulated, either through specific laws or through specific provisions in the ARB Code. These include, but are not limited to, alcohol, anti-perspirants, antiseptics, germicides, disinfectants, charitable causes, collectibles and commemorative items, competitions, cosmetics, educational courses, financial advertising, franchise schemes, furniture, hair products, imported products, inclusive tours, mail order advertising, motor vehicle advertising, property advertising, food advertising (in particular that aimed at children), pet food, slimming, smoking deterrents, standards and research bodies, agriculture, toothpastes and similar goods, water diviners and mobile phones. Some of these are discussed more fully below:

- (a) **Tobacco:** The Tobacco Products Control Act of 1993 sets out various control laws in respect of tobacco products. For example, the advertising, promotion and sponsorship of tobacco are banned, and warnings must appear on the packaging of tobacco products. The draft Tobacco Products & Electronic Delivery Systems Bill of 2022 proposes amendments to this Act to deal specifically with changes in the industry that relate to nicotine delivery systems, such as vaping devices, and introduces plain packaging for the first time.
- (b) **Medicines:** The SA Code of Practice for the Marketing of Health Products regulates, inter alia, the advertising of prescription medications to the healthcare profession and self-medication to the public.
- (c) **Food, cosmetics and disinfectants:** The Foodstuffs, Cosmetics and Disinfectants Act of 1972 prohibits false or misleading advertisements or descriptions of foodstuffs, cosmetics or disinfectants and has detailed regulations governing the labeling of such products.

- (d) **Alcohol:** The Liquor Act of 2003 and the Liquor Products Act of 1989 restrict false and misleading advertising of liquor, as well as advertising that is meant to target minors. These Acts are also under revision, with future restrictions on advertising of alcohol being proposed. The ARB Code also has an appendix dealing with the advertisement of alcoholic products.
- (e) **Credit:** The National Credit Act of 2005 is applicable to a provider of credit, or a seller of any goods or services that are being advertised for purchase on credit, and sets out how such credit may be advertised. Credit may not be advertised in a misleading manner, nor may an unlawful form of credit (as set out in the Act) be advertised.

1.6 Are any government pre-approvals required?

Pre-approval is generally not required, with the exception of advertisements for certain industries. For example, advertisements for stock remedies must conform to the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act of 1947 and must be submitted to the Department of Agriculture for approval.

1.7 Does the media pre-clear advertising?

There is no mandatory pre-clearance of advertisements by the media, although the South African Broadcasting Association will not accept an infomercial for broadcast unless it has been pre-cleared. As the primary responsibility for compliance with the ARB Code lies with the advertising practitioner, clearance is voluntary and regulated internally. Law firms specializing in advertising law may be approached to give an opinion as to whether the advertising material conforms to the ARB Code and legal principles generally.

The Association for Communication and Advertising ('ACA') also conducts a voluntary advisory service on the ARB Code. It provides independent advice to any ACA member that needs to ensure that its television advertising—particularly problematic advertisements—conforms to the Code.

The ARB may also, as a sanction in an adverse ruling, order the advertiser to submit the amended advertisement, or indeed all of its advertising for a limited period, to the ACA Advisory Service for pre-clearance.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The manner in which government enforces advertising laws depends on the law in question. A government body or department is generally specifically empowered to exercise control over the advertising of particular products, and that would include the ability to issue directives for advertising/packaging to be withdrawn or amended within a specific timeframe. For example, the Foodstuffs, Cosmetics and Disinfectants Act of 1972 empowers the Director-General of the Department of Health to authorize certain of its employees to act as inspectors. The Agricultural Product Standards Act of 1990 has similar provisions.

Certain Acts, such as the Consumer Protection Act, also envisage penalties in the form of fines/imprisonment for those who fall foul of its provisions.

1.9 When does a competitor have a right of action? What are the potential remedies?

In terms of the ARB Code, a competitor complaint may be lodged by or on behalf of a commercial entity or individual with a commercial interest concerning compliance with the ARB Code by a commercial entity (ie, in the event of alleged non-compliance). Competitor complaints are subject to a non-refundable filing fee before the complaint will be considered.

The ARB Directorate, Advertising Industry Tribunal and/or Final Appeal Committee may impose the following sanctions where an advertisement is found to be in breach of the ARB Code:

- (a) withdrawal of an advertisement in its current format;
- (b) directing the advertiser to submit the proposed amendment, original advertisement and relevant ARB ruling to the ACA Advisory Service for pre-publication advice;
- (c) directing the respondent to submit all future advertising to the ACA Advisory Service, at the cost of the respondent, prior to publication (this sanction is only imposed if more than one adverse ruling against the respondent has been made by the ARB in a period of 12 months and if certain additional aggravating factors are present);
- (d) adverse publicity, including the publication of the names of defaulters;
- (e) ordering the respondent to publish a summarized version of the ruling in all or some of the media in which the advertising complained of appeared or media considered appropriate by the ARB, at the cost of the respondent; or
- (f) referral to a disciplinary hearing.

In theory, a competitor could also approach the High Court for an interdict against a competitor if their advertising amounted to unlawful competition. What constitutes ‘unlawful competition’ is determined with reference to the *boni mores*, or good business practices. The ARB Code is, it is submitted, a good reflection of those practices in advertising.

1.10 When do consumers have a right of action? What are the potential remedies?

A consumer complaint may be lodged by a member of the public or by entities or organizations regarding consumer-related matters concerning compliance with the ARB Code by an advertisement or advertiser. The remedies are the same as those set out in question 1.9 above. Consumer complaints are dealt with free of charge.

If the advertising falls foul of the Consumer Protection Act, a consumer may lodge a complaint with the National Consumer Commission.

Consumers may also file complaints with the BCCSA if the matter concerns content on a television or radio broadcasts or the ICASA if the complaint is against any person licensed by ICASA to provide communications services such as broadcasting, telecommunications, Internet or postal services.

2 SELF-REGULATORY FRAMEWORK

2.1 Does South Africa have a primary advertising self-regulation system?

South Africa has a very successful system of advertising self-regulation which manifests itself in the form of the ARB, discussed in detail above. The ARB Code covers virtually all forms of advertising, including traditional radio, television, online and print advertisements, but also ‘point-of-sale’ materials, menus, labels, letterheads, circulars, stickers and product packaging. Particular industries also have self-regulating bodies with codes of conduct that usually include guidelines for advertising.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The key principles of the ARB Code are as follows:

- (a) All advertisements should be legal, decent, honest and truthful.
- (b) All advertisements should be prepared with a sense of responsibility to the consumer.
- (c) All advertisements should conform to the principles of fair competition in business.
- (d) No advertisement should bring advertising into disrepute or reduce confidence in advertising as a service to industry and to the public.

The ARB Code also has provisions relating to various specific topics; eg, advertising to children, fear in advertising, comparative advertising, offensiveness, disparagement, legality, taking advantage of another's advertising goodwill and imitation of advertising.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The ARB Directorate, Advertising Industry Tribunal and/or Final Appeal Committee may impose the following sanctions where an advertisement is found to be in breach of the ARB Code:

- (a) withdrawal of an advertisement in its current format;
- (b) directing the advertiser to submit the proposed amendment, original advertisement and relevant ARB ruling to the ACA Advisory Service for pre-publication advice;
- (c) directing the respondent to submit all future advertising to the ACA Advisory Service, at the cost of the respondent, prior to publication (this sanction is only imposed if more than one adverse ruling against the respondent has been made by the ARB in a period of 12 months and if certain additional aggravating factors are present);
- (d) adverse publicity, including the publication of the names of defaulters;
- (e) ordering the respondent to publish a summarized version of the ruling in all or some of the media in which the advertising complained of appeared or media considered appropriate by the ARB at the cost of the respondent; or
- (f) referral to a disciplinary hearing.

Once a ruling has been given by the ARB, it is the complainant's responsibility to monitor whether or not the ruling has been adhered to. Should the respondent ignore a ruling, the complainant may lodge a breach complaint with the ARB. If the respondent still fails to comply, the ARB will issue an 'Ad Alert' to its members (including newspapers, magazines, radio, television and the Printing Industries Federation) warning them to withdraw the advertisement and not accept future advertising from the advertiser. The ARB is not empowered to enforce its rulings beyond this, but nothing in the Code prevents an aggrieved party from approaching the High Court for relief.

2.4 Is the self-regulation system effective? Is it widely used and followed?

This is an effective system, even though the jurisdiction of the ARB has been challenged, and it is an effective tool for consumers and competitors to ensure fairness in advertising. The ARB Code is generally adhered to by responsible advertisers, and the complaints procedure is used by both competitors and consumers. Respondents who are members, and even some major advertisers who are not members, also tend to comply with orders from the ARB.

2.5 Are the self-regulatory system's decisions reported?

The ARB's decisions can be accessed on its website at www.arb.org.za.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

In addition to the basic regulatory framework of the ARB and relevant legislation discussed above, South Africa being a constitutional democracy, advertising should not be at odds with the provisions of the Constitution and Bill of Rights. Consumer protection principles are also important. The Consumer Protection Act prohibits, for example, misleading trade descriptions and false or misleading representations concerning goods and services.

2.7 Are there any other self-regulatory systems that govern advertising practices in South Africa?

Certain industry bodies have codes of practice which include provisions relating to advertising, such as the Cosmetics, Toiletries and Fragrances Association of South Africa. It is therefore necessary to have regard to the rules and regulations of the relevant industry. The ARB Code is, however, the over-arching code of practice in so far as advertising is concerned.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in South Africa (eg, consumer protection laws, IP laws, unfair competition laws)?

- (a) **ARB Code:** The advertising industry is mainly self-regulated, and advertising content is governed by the provisions of the ARB Code. Only members of the ARB are obliged to adhere to the Code; however, most advertisers, advertising agencies and media sources that carry advertising are members of the ARB.

The definition of an ‘advertisement’ in the ARB Code is very broad and includes the labeling and packaging of products.

The Code of Ethics and Standards of Practice of the Direct Marketing Association (‘DMASA Code’) also forms part of the ARB Code.

- (b) **Consumer Protection Act:** The Consumer Protection Act guarantees the right to fair and responsible marketing. The Act prohibits marketing that is fraudulent, false, misleading or discriminatory. The Consumer Protection Act also strictly regulates certain types of marketing, such as bait marketing, negative option marketing and direct marketing.
- (c) **Labeling Regulations:** The Labeling and Advertising of Foodstuffs Regulations, that were enacted in terms of the Foodstuffs, Cosmetics and Disinfectants Act, set out strict requirements relating to the labeling of foodstuffs in South Africa. These regulations are currently being overhauled, with a potential negative impact on food labeling and advertising.
- (d) **The Copyright Act** prohibits the unauthorized reproduction of a copyright work, including in advertising.
- (e) **The Trade Marks Act** prohibits the unauthorized use, in the course of trade, by a third party, of a mark that is identical or confusingly similar to a registered trademark, in relation to identical or similar goods or services to which the registered trademark extends.
- (f) At common law, **passing-off**, which is a form of unlawful competition, is prohibited. A person may not misrepresent to the public that their product is that of another, or is associated with another, by, eg, using a similar packaging to that of the other person.

3.2 Is substantiation required for advertising claims?

The ARB Code requires that, before advertising is published, advertisers must have documentary evidence to support all claims that are capable of objective substantiation. Such documentary evidence must be up to date, current, and have market relevance.

If survey data is used as documentary evidence, then it is required that:

- the survey must emanate from an entity approved by, or acceptable to, the Southern African Market Research Association; and
- the accuracy of the claims based on the survey must be confirmed by an entity approved by, or acceptable to, the Southern African Market Research Association.

Other types of documentary evidence must emanate from or be evaluated by a person/entity, which is independent, credible, and an expert in the particular field to which the claims relate and be acceptable to the ARB.

Finally, claims based on research conducted by publications must clearly state the source in advertising.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

The ARB Code only requires documentary evidence to support all claims that are capable of objective substantiation.

Certain types of claims, such as puffery and hyperbole, are not capable of objective substantiation and are not, therefore, required to comply with the provisions relating to documentary evidence.

Puffery, value judgments, matters of opinion or subjective assessments are permitted, provided that it is clear that what is being expressed is an opinion and there is no likelihood that the opinion will mislead consumers about any aspect of a product or service which is capable of being objectively assessed in the light of generally accepted standards.

Hyperbole, obvious untruths, harmless parody or exaggerations, intended to catch the eye or to amuse, are permissible, provided that they are clearly seen as humorous or hyperbolic and are not likely to be understood as making literal claims for the advertised product.

3.4 What are the rules governing the use of disclosures in advertising?

Offers to consumers, by way of direct market advertising, must contain all the information that may be necessary for a reasonable consumer or business to make an informed purchase decision.

Generally, the following details must be disclosed:

- the exact nature of the product or service that is offered;
- the price, including all additional charges, such as delivery or handling costs;
- any other order-related charges, eg, handling charges or services charges;
- the terms of payment;
- any obligations on the consumer upon placing an order;
- delivery arrangements, including shipping terms and delivery times;
- penalties for late payment;
- return and cancellation policies and procedures;

- substitution policies;
- guarantees and warranties; and
- the contact details of the advertiser.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The ARB Code states that:

- Advertisements may not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience over a reasonable period of the person giving it.
- Testimonials may not contain any statement or implication contravening the provisions of the ARB Code and should not be misleading.

Testimonials should not contain any claims to efficacy which cannot justifiably be attributed to the use of the product, and any specific or measurable results claimed should be fairly presented. Where 'before' and 'after' claims are made, they should be capable of substantiation, expressed and illustrated in such a way as to permit a fair comparison to be made.

3.6 What are the rules governing the use of product demonstrations in advertising?

The Code of Ethics and Standards of Practice of the Direct Marketing Association provide that product demonstrations must be carried out safely by trained personnel. The information provided directly to consumers by demonstrators may not be misleading and the representatives may not employ unreasonably aggressive sales tactics.

Furthermore, marketers should avoid 'undercover' or 'word-of-mouth' marketing initiatives that encourage a consumer or business to believe, incorrectly, that the representatives of that marketer are acting independently and without compensation.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

The ARB Code provides that comparative advertising is permitted provided that:

- all legal requirements are adhered to (specifically the Trade Marks Act that protects against trademark infringement);
- only facts capable of substantiation are used;
- one or more material, relevant, objectively determinable and verifiable claim must be made;
- the claims are not misleading or confusing;
- it does not infringe the advertising goodwill of another or disparage another;
- the facts or criteria used are fairly chosen;
- products or services compared must have the same or similar characteristics and purposes; and
- the advertiser accepts responsibility for the accuracy of the research and claims.

The guiding principle in all comparisons is that products and/or services should be promoted on their own merits, and not on the demerits of competitive products.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Previously, South African courts have held that comparative advertising constitutes direct trademark infringement. Recent case law, however, has changed this position. Use of a trademark in comparative advertising does not constitute 'trademark use' as required for direct trademark infringement in the Trade Marks Act.

Only in circumstances where comparative advertising causes confusion or deception or otherwise jeopardizes the essential function of a trademark will it constitute trademark infringement.

Comparative advertising may, however, also constitute other forms of trademark infringement, if the use of the mark would be likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the registered trademark.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Yes. The Consumer Protection Act defines a trade description as being, inter alia, the place or country or origin of any goods. As the Act prohibits the application of a false trade description to goods, this implies that claims such as 'made in South Africa' must not be false or misleading. Furthermore, the Foodstuffs, Cosmetics & Disinfectants Act makes it a criminal offence to apply a false or misleading description to goods in relation to their origin.

In terms of the Labeling and Advertising Regulations under the Foodstuffs, Cosmetics & Disinfectants Act, the country of origin of a foodstuff must be indicated on the label of the product. The regulations are strict about the terms that may be used, such as 'Produced in...', 'Processed in...', 'Manufactured in...', 'Made in...' and 'Packed in...'. The Regulations to the Consumer Protection Act provide for similar labeling requirements for textiles, leather goods, clothing, footwear, products that are made with genetically modified organisms or produced using genetic modification, and meat products.

3.10 Are there any special rules governing product packaging?

Yes—the labeling and advertising of food products is regulated by the Foodstuffs, Cosmetics & Disinfectants Act, its Labeling and Advertising Regulations and the Agricultural Products Standards Act and its Regulations. As mentioned above, these regulations are currently facing amendments that, if approved and passed into law, will heavily impact food labeling.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

No, not specifically.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No, not specifically.

4 PRICE ADVERTISING

4.1 What are South Africa's rules regarding price advertising?

In general, a retailer may not advertise any goods for sale without displaying the full price at which those goods are offered for sale. The sale price should include all necessary or incidental costs, eg, VAT. The price must be applied or affixed to the goods, or in physical relation to the goods, and must also be displayed in all advertising material relating to those goods. The currency of the price must be expressed in South African Rand.

A supplier may not require a consumer to pay a price for any goods or service that is higher than the price at which those goods or services are advertised. If more than one price is simultaneously displayed on a product, the supplier may not require a consumer to pay a price higher than the lowest of the prices that are displayed on that product.

4.2 What are South Africa's rules regarding advertising 'free' products?

Advertisements that offer 'free' goods must indicate that such goods are only received subject to purchase.

Products may not be described as 'free' if there are any costs to the consumer in addition to the actual cost of any delivery, freight or postage.

Where it is claimed in an advertisement that, if one product is purchased, another product will be provided 'free', the advertiser must be able to show that it will not be able to recover immediately and directly the cost of supplying the 'free' product, wholly or partially. Furthermore, an advertiser may not recover or attempt to recover the cost of the 'free' product by, eg, increasing the usual price of the product with which the 'free' product is offered, imposing packaging and handling charges, or inflating actual delivery costs.

4.3 What are South Africa's rules regarding sales and special offers?

Retailers may advertise specific discounts or price comparisons in relation to their products, provided that sufficient documentary substantiation of the price reduction is available on request. Furthermore, a specific discount or price reduction may not be advertised for a period longer than three months.

Goods and services may be advertised at special sale prices, provided that sufficient documentary substantiation of the price reduction is available on request. Furthermore, there are limitations on the period that sale advertising that contains price comparisons may run.

4.4 What are South Africa's rules regarding rebates?

The Consumer Protection Act provides that a person may not promote, offer, supply, agree to supply or induce a consumer to accept any goods or services, on the representation that the consumer will receive a rebate, commission or other benefit if:

- the consumer subsequently provides to the supplier the names of consumers or otherwise assists the supplier in supplying goods or services to other consumer; or
- that rebate, commission or other benefit is contingent upon an event occurring after the consumer agrees to the transaction.

Those provisions do not, however, apply to franchise agreements.

4.5 **Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?**

If an advertiser claims that the price of its goods or services is lower than those of competitors, its advertising must comply with the strict requirements in the ARB Code relating to comparative advertising.

The CPA provides that a supplier may not advertise any goods or services at a specified price in a manner that may result in consumers being misled or deceived regarding the availability of those goods or services, at that advertised price.

5 **PROHIBITED PRACTICES**

5.1 **Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?**

- (a) The Tobacco Products Control Act prohibits the advertising and promotion of tobacco products through any direct or indirect means.
- (b) The Code of Commercial Communication of the Association for Responsible Alcohol Use sets out specific requirements for the advertising of alcohol beverages. Alcohol advertising may not be directed at persons under the age of 18 years.
- (c) In terms of the regulations promulgated under the Medicines and Related Substances Act, prescription-only medication may not be advertised to the general public. Prescription medication may be advertised only to medical practitioners, dentists, veterinarians and pharmacists.

5.2 **Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?**

A supplier may not market goods or services to a consumer on the basis that the goods or services will automatically be supplied to the consumer unless the consumer declines such offer. An agreement concluded on that basis will be void. This form of marketing is known as negative option marketing. It follows, therefore, that a consumer must have the option to accept or decline the offer of any goods or services, before such goods or services are supplied.

The ARB Code prohibits advertising that:

- attacks, discredits or disparages other products, services, advertisers or advertisements, either directly or indirectly;
- takes unfair advantage of the advertising goodwill of another advertisement or advertiser; or
- imitates an existing local or international advertisement.

The ARB Code also sets out strict requirements for comparative advertising.

The DMASA Code sets out criteria that deal with direct marketing.

5.3 **Are there any laws or regulations governing indecency or obscenity that apply?**

The ASA Code provides that advertising may not offend against good taste or decency, or be offensive to public or sectoral values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society. Furthermore, advertisements may not contain anything that is likely to cause serious or widespread or sectoral offence.

The following advertisements are deemed to be unacceptable advertising:

- those that, without justifiable reason, play on fear;
- those that contain any material that may lead or lend support to, or which condones, acts of violence, including gender-based violence;
- those that contain any material that may lead or lend support to, or which condones, criminal or illegal activities;
- those that unfairly discriminate; and
- those containing gender stereotyping or negative gender portrayal.

Furthermore, in advertising, children may not be portrayed as sexually appealing, provocative, or in any manner that involves any form of sexual innuendo.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There is no requirement that advertising clearly indicates who the advertiser is. It is a requirement that sponsorship and all related communications be clear and accurate to all persons and organizations involved in a sponsorship covering any rights or privileges granted to a sponsor, but there is no specific requirement that advertising identify the sponsor, or, indeed, the advertiser. Generally, a product or logo that is not directly associated with the sponsor of the event, activity, team, individual or organization may not be visibly used or displayed during the event. A new Appendix K has been introduced into the ARB Code to regulate Influencer Marketing.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

- (a) In terms of the Independent Broadcasting Authority (Advertising, Infomercials and Program Sponsorship) Regulations under the Independent Broadcasting Authority Act of 1993 (which has since been repealed, although the Regulations remain in force), no broadcaster may permit any product placement in any news or current affairs program transmitted by it, and product placement in programming other than news and current affairs must be subordinate to the content of the program material.
- (b) In terms of the Electronic Communications Act of 2005, all broadcasting service licensees must adhere to the ARB Code. Product placement as a means of advertising would, therefore, also be subject to the ARB Code.
- (c) The ARB Code stipulates that advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used. When an advertisement appears in a medium which contains news, editorial or program matter, it should be so designed, produced and presented that it will be readily recognized as an advertisement.
- (d) In print media, wherever there is any possibility of confusion, the material in question should be headed conspicuously with the words 'advertisement' or 'advertisement supplement' and should be boxed in or otherwise distinguished from surrounding or accompanying editorial matter.

- (e) In electronic media, particular care should be taken to clearly distinguish between program content and advertising. Where there is a possibility of confusion, advertising should be clearly identified in a manner acceptable to the ASA.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special requirements or obligations in this regard. In addition, as far as we are aware, there have, to date, been no complaints lodged in South Africa, with the ARB or any other body, on the basis of product placement.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Although currently, South Africa has no legislation that relates specifically to social media, the ARB Code has introduced an Appendix to cover the use of influencers in marketing. As such, the guidelines for advertising and marketing, where influencers are not used, through social media have to be drawn from a variety of peripheral sources. The Consumer Protection Act contains a number of provisions relating to marketing, including a number of general standards for marketing of goods or services.

The Electronic Communications and Transactions Act of 2002 applies to all forms of electronic communication. Given that advertising via social media platforms clearly constitutes a form of electronic communication, advertisers must give due consideration to, and comply with, the relevant provisions of this Act.

Furthermore, the ASA Code and the DMASA Code serve as self-regulatory mechanisms for advertising and marketing practices. These provisions of these codes would also apply to marketing and advertising on social media platforms.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

The Consumer Protection Act, ASA Code and other advertising related legislation currently makes no explicit provision for advertising claims made in user generated content. However, a recent court judgment dealt with malicious statements that were made on an organization's Facebook page. The court held that the owner of the page had to exercise control over its Facebook wall. The judgment implies that the owner of a Facebook page must monitor posts on its wall. As such, if an advertiser is aware of false or malicious statements on its Facebook page, it has to take steps to rectify the situation.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

South African law pertaining to advertising and marketing in a social media and user generated context is currently still quite underdeveloped. Appendix K to the ARB Code is the only piece of regulation for Influencer Marketing in South Africa. There have been no specific judgments or rulings that relate specifically to advertising and marketing through social media platforms. However, in

general, there has been a steady rise in the number of defamation (libel) cases emanating from social media platforms, such as the case of *H v W* which covers a wide range of issues. The South African courts have clearly recognized that defamation can take place via social media and have proved willing to grant orders to restrain persons from using social media to defame others. There have also been a number of social media-related cases in an employment context. In most of those instances, employees were dismissed because they wrote defamatory comments about their employers on social media sites. Those dismissals were held to be lawful.

9 RIGHTS OF PRIVACY/PUBLICITY

9.3 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

A person's right to identity falls under the umbrella of personality rights and, as the name suggests, protects a person's uniqueness or that part of individuality that distinguishes that person from others. In *O'Keeffe v Argus Printing and Publishing Co Ltd* it was held that the unauthorized publication of a person's name and likeness in an advertisement is prohibited. In that case, the use of a person's photograph and name for advertising purposes, without their consent, was deemed to constitute offensive conduct by the user.

In *Julia Basetsana Kumalo v Cycle Lab (Pty) Limited* a photograph was taken of a celebrity (the plaintiff) whilst she was shopping at the defendant's store. The defendant subsequently displayed the photograph in a magazine and in brochure advertisements for its store, without permission from the plaintiff. The court found that the defendant's unauthorized use of the plaintiff's image in the advertisement was wrongful and infringed her right to identity. The court confirmed that a person's right to identity is infringed if an element of that person's identity is used to create the false impression that they support or endorse the advertised product or service.

The Consumer Protection Act's regulations also contain provisions that relate to use of a person's image in the context of promotional competitions (sweepstakes). The regulations state that a rule which requires a winner to permit the use of their image in marketing material, or to participate in any marketing activity, or be present at a prize draw, will be invalid unless the winner is given the opportunity to decline such use or participation.

South Africa recently adopted data protection legislation, the Protection of Personal Information Act of 2013, which took years to come into force. In terms of that legislation, a person's image constitutes personal information—which may only be processed in accordance with the relevant principles.

9.2 Are there situations when permission is not required?

There are certain instances when the use of an individual's identity, without such individual's authorization or consent, may not constitute an infringement of personality rights. For example, if someone attends a public event and is photographed as part of the crowd, one can argue that publication of that photograph will be allowed. However, if the person is featured prominently and the photograph is used for commercial purposes, such use might be unlawful.

The South African courts also allow a degree of criticism of public figures, such as politicians and celebrities. They have also held that the use of an altered image of such figures might not be wrongful in certain circumstances.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

In terms of the Regulations to the National Heritage Resources Act of 1999, any person wishing to make and/or use an image of a national heritage site or part of a national heritage site, either in two- or three-dimensional versions, for the purposes of advertising or promoting must apply for a permit with the South African Heritage Resources Agency.

Pre-clearance must be obtained for infomercials (direct response commercials). An infomercial clearance certificate is required by broadcasters and is issued by an authorized entity such as the ACA or the ASA. The certificate must include details of the infomercial, the relevant broadcaster's flight code, the length of the infomercial and the dates and times on which it will be aired.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The unauthorized use in advertising of another's intellectual property, including trademarks and works of copyright, with the aim of gaining undue benefit by causing confusion in the trade, is not legal and is contrary to the ARB Code.

Advertisements may not take advantage of the advertising goodwill relating to the trade name or symbol of the product or service of another, or the advertising goodwill relating to another party's advertising campaign or advertising property, without that party's prior written permission.

In relation to comparative advertising, the use of another's trademark is acceptable only if it complies with the relevant provisions of the Trade Marks Act; in other words, there is no infringement of trademark rights.

Incidental or background use of another's trademark, in a manner that is unlikely to cause confusion, may be acceptable.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of South Africa which affect advertising (eg, Swedish gender equality law)?

Advertising may not be offensive to public or sectoral values and sensitivities, and no gender stereotyping or negative gender portrayal is permitted, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. These principles are upheld by the Constitution and the Bill of Rights.

Advocacy advertising, where a controversial issue, such as racial or gender inequality is raised, is protected by the ASA Code if it involves issues within the areas of public policy and practice.

Freedom of expression and association is recognized, and the ARB recognizes that the hypothetical, reasonable consumer is not hyper-sensitive nor hyper-critical. Advertisements are 'judged' in the context of an open and democratic society where consideration is given to the context, medium, likely audience, the nature of the product or service, degree of social concern, and public interest.

11.2 Are there any other cultural norms that should be considered (eg religious concerns)?

With its diverse culture, South Africa has varying cultural norms, depending on race, gender and religion. An example of conflicting cultural norms within South Africa is the continued practice of polygamous marriages in a cultural context of mainly monogamous marriages. In light of concerns surrounding the spread of HIV/AIDS, monogamous relationships are positively reflected in advertising, and polygamous relationships are discouraged.

South Africa has legalized gay marriages but despite this, 'gay lifestyles' are not often portrayed in everyday advertising.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in South Africa?

- Marketers must be aware that the ARB Code no longer has an appendix specifically dealing with marketing of health-related products.
- The Code of Marketing Practice, which is deemed to form part of the Medicines and Related Substances Act, sets out the requirements relating to the marketing and promotion of health products.

 SPAIN 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Spain?

Advertising in Spain is regulated by a number of different laws. The General Advertising Act and the Unfair Competition Act govern general advertising law. In addition, there are specific laws regulating certain industry sectors, for example, the consumer sector is governed by the Consumer Protection Act, or the Data Protection Act. The advertisement, among others, of tobacco, alcohol, food, gambling, therapeutic goods and some categories of services also have specific regulation.

Minors are specifically protected by advertising law.

In Spain, there is no legally-backed advertising regulator. Instead, there is a private self-regulatory organization called Autocontrol. There are also self-regulatory codes in specific sectors (see question 2.2 below).

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Under the General Advertising Act, ‘advertising is any form of communication made by a natural or legal person, public or private, in the exercise of a trade, business, craft or profession in order to promote directly or indirectly the contracting of real or personal property, services, rights and obligations.’

Under the General Audiovisual Act, ‘audiovisual advertisement’ is any form of audiovisual commercial communication by a natural or legal person, public or private, related to its commercial, industrial, artisanal or professional activity, with the purpose of promoting the supply of goods or services, including real estate, rights and obligations.

1.3 What is the basic regulatory framework for advertising regulation?

The main sources relating to advertising in Spain are:

- the General Advertising Act (Law 34/1988);
- the Unfair Competition Act (Law 3/1991);
- the General Audio-Visual Communication Act (Law 13/2022); and
- the General Law for the Defense of Consumers and Users (Royal Decree 1/2007).

In addition, there are:

- special regulations covering specific requirements for certain products (eg, food, alcoholic beverages, tobacco and drugs), advertising in particular media (eg, television) and advertisements directed at certain target audiences (eg, children or adolescents). See questions 1.4 and 1.5 below;
- Some regional regulations only applicable in the territory of Autonomous Regions (Spain is divided into 17 Autonomous Regions).

Digital advertising is also regulated by the EU Digital Services Act, which has not been developed in Spain yet. The Digital Services Coordinator is the Spanish National Markets and Competition Commission (‘CNMC’).

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

- (a) Television and radio advertising is specifically regulated by the General Audio-Visual Communications Act:
 - (i) Service providers of audiovisual media, whether radio, television or related interactive services, have the right to broadcast advertising. Service providers of television broadcasting can exercise this right by issuing a maximum of 144 minutes of advertising between 6.00 am and 6.00 pm and 72 minutes between 6.00 pm and 6.00 pm;
 - (ii) Advertisements on television and teleshopping must be clearly differentiated from programs by acoustic and optical signs according to the general criteria established by the competent audiovisual authority. The sound level of advertising messages cannot exceed the average level of the previous program;
 - (iii) Television advertisements should respect the integrity of the program in which it is inserted;
 - (iv) The broadcasting of TV films (excluding series, serials and documentaries) and television news programs may be interrupted only once for each scheduled period of 30 minutes;
 - (v) No television advertising or teleshopping should be inserted during religious services; and
 - (vi) Sports broadcasting can be interrupted for advertising purposes only during the breaks of the game.
- (b) Commercial communications by electronic means (eg, email, messaging services apps such as WhatsApp, etc) are regulated by Law 34/2002 on information and e-commerce society services:
 - (i) Emails and any other kind of electronic message with advertising content or a commercial purpose must avoid being sent to any user who has not expressly agreed to receive such information, unless their data was collected due to a previous business relationship;
 - (ii) In any case, companies must provide users an easy and free procedure to get data removed at any time ('Opt-out option'); and
 - (iii) Any commercial communication must comply with the information required by law.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)? If so, please identify them and briefly summarize the laws that apply.

The following industries are specifically regulated:

- (a) **Alcohol:** The General Advertising Law and General Audio-Visual Communication Act prohibit advertising of alcoholic beverages:
 - (i) with an alcohol content exceeding 20% on television except between 01.00 am and 05.00 am;
 - (ii) with an alcohol content exceeding 20% in places where its sale and consumption are prohibited;
 - (iii) with an alcohol content of less than 20% when broadcast on television outside the period 8.30 pm to 5.00 am, unless such advertising forms an indivisible part of the broadcast content; and

- (iv) that promotes irresponsible consumption or consumption associated with enhanced physical performance, vehicles driving, social success or health.

In addition, Spanish alcohol producers in the beer, wine and spirits sectors have established their own self-regulatory codes (see question 2.2 below).

- (b) **Tobacco:** The Tobacco Act (Law 42/2010) and Law 28/2005 on health measures against smoking prohibit sponsorship, advertising and promotion of tobacco products in any media and any medium. The Tobacco Act also prohibits activities that directly or indirectly aim to promote tobacco products. Broadcasting of programs or images featuring people smoking or showing trademarks, trade names or signs associated with tobacco products is prohibited in any media. However, the law provides for exceptions in the case of:

- (i) promotions in specialized tobacco shops;
- (ii) publications addressed to professionals involved in the trade of tobacco;
- (iii) presentations of the products to professionals; and
- (iv) publications published or printed outside the EU that are not principally intended for the European market.

Advertisers should not, under any circumstances, address tobacco promotions to minors.

- (c) **Therapeutic goods and services:** Royal Decree 1907/1996 on advertising and promotion of products, activities and services with intended health purposes establishes a series of restrictions and bans relating to advertising products, materials, substances, energies or methods that are announced and presented as useful for diagnosis, prevention or treatment of diseases, weight loss change or correction of physical or psychological conditions or physiological and other alleged health purposes. Any product, material, substance, energy or method that claims preventive, diagnostic or therapeutic purposes must meet the claims being promised and are subject to authorizations or controls according to the General Health Law and the Medicines Act. Among other things, the following are prohibited:

- (i) claims that promise guaranteed relief or healing;
- (ii) claims relating to permits, approvals and controls of the health authorities in other countries;
- (iii) testimonials from health professionals, celebrities or people well-known to the public, or real or supposed patients as a means of inducing consumption or use;
- (iv) suggestion or indication that use or consumption of the product enhances physical, psychological, sexual or sporting performance;
- (v) use of the term 'natural' as a characteristic related to preventative or therapeutic purposes;
- (vi) claims that the product replaces the use of legally recognized medicines or medical devices;
- (vii) claims that substitute consultation or intervention by health-care professionals; and
- (viii) claims of specific preventive or therapeutic effects that are not supported by sufficient technical or scientific evidence.

- (d) **Food:** Spanish legislation contains a series of regulations on food safety and nutrition as well as on health claims made in advertising. The main regulations are set out in Royal Decree 1487/2009 on food supplements, Royal Decree 1334/1999 on the labeling, presentation and advertising of foodstuffs, and the Law on food safety and nutrition (Law 17/2011).

The presentation and advertising of food must not mislead consumers as to:

- (i) the product's characteristics;
- (ii) the product's properties or effects;
- (iii) any 'special' characteristics (when possessed by all similar products); and
- (iv) products' preventive, therapeutic or healing properties.

The Law on food safety and nutrition sets the legal framework for the adoption of public policies that encourage healthy eating and promote the practice of physical activity. It provides that the advertising of foodstuffs shall also be governed by:

- the Unfair Competition Act;
- the General Advertising Act;
- the General Law for the Defense of Consumers and Users;
- the General Audiovisual Communication Act, and by the special rules that regulate activity in this field and are applicable to it.

It also regulates food advertising aimed at children under 15 years of age on the basis of two principles:

- the promotion of co-regulatory agreements with the aim of establishing codes of conduct regulating commercial communications for food and beverages; and
- the regulatory power of the Government in the absence of such codes.

Finally, a draft Royal Decree establishing minimum criteria for the prohibition of advertising to children of foods and beverages high in certain nutrients that have a negative impact on health is passing through the approval process and may be adopted soon.

- (e) **Gambling:** Game operators must have an authorization certificate. This certificate should authorize the game operator's advertising, sponsorship or promotion. The main regulation is in the Gambling Act (Law 13/2011), which is complemented by regional regulation for activities limited to the territory of one single region (Autonomous Community). Moreover, the Code of Conduct on Advertising of Gambling Activities imposes additional rules on game operators. Under the Code, game operators must meet the principles of veracity, legality and loyalty. The game operator's advertising must also stress the need for social responsibility and ensure the protection of minors.

In addition, Royal Decree 958/2020 on commercial communications for gaming activities was approved in November 2020. This Regulation regulates the commercial communications of gaming activities or their operators through any means or medium. In general:

- (i) The design and dissemination of the commercial communications of the gambling operators must try to balance the promotion of the gambling activity with the necessary protection of consumers against the risks of this activity. Advertisement should include a responsible gambling message;
- (ii) The commercial communications of the gaming operators must respect the principle of social responsibility. They may not be directly or indirectly addressed to minors and must include a message that minors may not participate in gambling activities, such as 'no minors', '18+' or similar;
- (iii) The following are forbidden:
 - sponsorship of sporting events,

- use of the name, trademark or commercial name of a game operator to identify sports facilities or any leisure center,
 - substitute or add to the name of a sports team or competition, the name or company name of a game operator,
 - sponsorship on sports jerseys or equipment;
- (iv) Promotions to attract new customers, regardless of the conditions of the promotion, are prohibited. For these purposes, operators may only offer promotions to customers who have had a gaming account open for at least 30 days and have been verified by documentation;
- (v) The appearance in commercial communications of people or characters of public relevance or notoriety, whether real or fictional, is prohibited;
- (vi) Commercial communications sent by postal mail are prohibited;
- (vii) Commercial communications by gaming operators in audiovisual communication services may only be broadcast between 01.00 am and 05.00 am; and
- (viii) The online dissemination of commercial communications by gambling operators is strictly regulated.
- (f) **Lotteries:** Only the state lottery and betting societies can run national lotteries. However, the Government can authorize the management and marketing of lottery games, provided that the lotteries:
- (i) are conducted by non-profit entities with charitable purposes;
 - (ii) are of sporadic nature; and
 - (iii) comply with the legal requirements.
- The licensing process differs from the proceedings established for other gambling activities.
- (g) **Financial services:** Advertising of financial investments and banking products or services is also regulated by specific legal provisions whose compliance is supervised by the financial market authorities (Banco de España, which is Central Spanish Bank, and the CNMV, the competent body for the financial market and stock exchange). Financial services advertising is regulated in Ministerial Decree 1718/2010 on regulation and control of banking products and services and in Bank of Spain Circular 4/2020 on the advertising of banking products and services. Crypto-asset advertising is strictly regulated in CNMV Circular 1/2022. This Circular does not contain rules related to the products themselves, nor about their suppliers or the services provided in connection with these crypto assets, but exclusively concerns the requirements to be met by the advertising activity aimed at the investment.
- (h) **Medicines:** advertising of medicines is highly regulated and monitored by the Health Administrations (national and regional). Royal Decree 1345/2007 and Royal Decree 1416/1994 are the main pieces of legislation, complemented by the Medicines Act (Royal Decree Law 1/2015). Although it has no legal binding effect, it is also helpful to consider the 2019 Guideline of the Ministry of Health on advertising of medicinal products directed to the general public. Additionally, some regional governments (ie, Cantabria, Madrid, Catalonia) regulate advertising activities limited to their territory.

There are also a number of self-regulatory codes to take into account from sectorial associations (ie, ANEFP, AESEG, FarmaIndustria).

When advertising non-prescription medicines, advertisers should not target children or seek to distribute such products.

1.6 Are any government pre-approvals required?

Generally, there is no requirement for the registration, authorization or licensing for advertising. However, an exception is made for the advertising of:

- (a) **Gambling:** the game operator should obtain a general authorization from the National Gaming Commission empowering them to develop advertising activities, sponsorship or promotion of gambling;
- (b) **Banking and financial services:** authorization will be granted by the banking or finance authorities (CNMV or Bank of Spain); and
- (c) **Medicinal products:** permission is granted by the health authorities of the autonomous region where the advertising should be shown.

1.7 Does the media pre-clear advertising?

In general, there are no legal requirements for clearance of advertising before publication or broadcast, although see question 1.6 above.

Autocontrol (see question 2.1 below) offers a 'copy advice service', which is a tool that offers a technical opinion on the legal and ethical correctness of a specific advertisement before it is launched to the public. However, advertisers are not obliged to follow Autocontrol's advice, and the advice provided is not binding. This means that when a complaint is made against advertising which has been pre-approved, Autocontrol is not bound by the opinion issued in the copy advice and is free to adopt a decision contrary to the one given by the copy advice service.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Government ministries and the ministries of the autonomous regions are entitled to judge commercial acts and behavior identified as infringements under the Consumer Protection Act regime. Penalties for such infringements range from a nominal fine to a fine of €1M.

In addition to legal sanctions, the infringing advertiser may also be obliged to put the party making the claim back to the position they would have been in 'but for' the offending act/behavior, without prejudice to compensation for any damages caused. Where the advertiser does not compensate the claiming consumers for the damages caused, such consumers are entitled to sue the company in the civil courts.

On top of this, advertising relating to goods or services with specific regulation (medicines, food, gambling, finance, digital advertising, etc) is supervised by the competent authorities in the respective areas, which means that special (national and/or regional) administrations may control and make decisions about the contents and continuation of particular advertising activities, including the imposition of penalties on advertisers in some cases.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor could initiate an action regarding illegal advertising in two ways:

- (a) **Civil order:** The most appropriate procedure against illegal advertising is a civil claim by the affected competitor. This claim can be brought before any competent national court. Commercial and mercantile courts will handle claims concerning unfair competition and advertising.

Under the Unfair Competition Act, the courts may impose the following measures against acts of unfair competition and illegal advertising:

- (i) declare the illegality of the act;
 - (ii) stop the unfair conduct or ban its future reiteration and prohibit this conduct;
 - (iii) remove the effects of the unfair act;
 - (iv) rectify misleading, incorrect or false information;
 - (v) award compensation for damages caused by the unfair act, if intent or gross negligence are involved;
 - (vi) award damages/compensation pursuant to a finding of unjust enrichment (only applicable when the unfair act infringes a legal position covered by an exclusive right); and
 - (vii) (in cases (i)–(iv) above) order the publication of the verdict, or even a rectifying statement.
- (b) **Criminal order:** Criminal proceedings are possible when a crime takes place. Advertisers can face up to one year's imprisonment if they make false allegations which may cause serious harm to consumers. However, this is an unlikely option given the alternatives.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers and users, defined by the Consumer Protection Act as 'any natural person who is acting for purposes which are outside their trade business or profession', may exercise legal actions seeking:

- (a) a declaration of disloyalty;
- (b) cessation of unfair conduct;
- (c) prohibition of the implementation or future repetition of conduct;
- (d) removal of its effects; and
- (e) the rectification of misleading, incorrect or false information.

Most regional and municipal governments have services helping consumers to file complaints against companies acting in trade within the Spanish territories and/or start arbitration proceedings regarding disputes arising from commercial relationships.

Any complaint filed or submitted by a consumer must be answered by the trader within one month, regardless of whether the complaint is filed directly with the trader or through the service available for consumers at some public administration. In addition, any person or entity whose economic interests are directly affected or threatened by illegal advertising in the market is entitled to take civil action under the Unfair Competition Act (civil proceeding).

2 SELF-REGULATORY FRAMEWORK

2.1 Does Spain have a primary advertising self-regulation system?

In Spain, the regulator for advertising is not established by statute. There is a private advertising non-profit, self-regulatory organization called Autocontrol (www.autocontrol.es), which is composed of the main advertisers, agencies and media (TV, press, outdoor, radio and internet) and the main advertising industry associations.

Autocontrol manages the advertising self-regulatory system, relying on three key instruments:

- (a) the Codes of Conduct;
- (b) an independent body, Autocontrol's Advertising Jury ('Jury'), that resolves controversies and complaints; and
- (c) a legal and technical team, composed of experts on law and advertising ethics, in charge of:
 - (i) handling legal requests,
 - (ii) answering prior consultations or issuing copy advice reports on advertisements or advertising projects,
 - (iii) answering technical and legal queries from advertisers (members or not) on digital advertising, technology and data protection (the Cookie Advice Service, the Web Advice Service), and
 - (iv) creating reports on legal and ethical issues related to commercial communications.

Autocontrol also handles mediation services relating data protection legal issues.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Autocontrol has two main codes, which cover commercial communications of all products/services in all media:

- (a) **General Code of Advertising Practice:** This was approved in December 1996 and last updated in April 2011. The rules on ethics apply to all advertising communication activities which, directly or indirectly, encourage the trading of goods or services or promote trademarks or trade names, whatever the medium used. The main principles are that advertising must be:
 - (i) legal (advertising must respect current legislation and, especially, all values, rights and principles recognized under the Spanish Constitution);
 - (ii) fair (advertising must never constitute a means to abuse the good faith of the consumer); and
 - (iii) truthful (advertising must not be misleading).
- (b) **Ethical Code of 'Confianza Online':** Confianza Online is an association established in 2003, which acts as a private self-regulation system for the interactive advertising and e-commerce industries. Its primary aim is to build the trust of internet users by providing businesses and organizations with the 'Confianza Online' Trust Mark to be displayed on their websites.

These Codes are based upon the prevailing international codes. They represent an updated interpretation of basic and general principles applicable to commercial communications.

Furthermore, Autocontrol enforces sector-specific codes of advertising ethics, wherein various industries voluntarily establish additional ethical commitments related to the promotion of their specific products or services. Autocontrol currently oversees the adherence to 19 sectoral advertising codes of conduct:

- processing of Personal Data in advertising activity;
- use of influencers;
- wet wipes;
- wine;
- generic medicines;
- bottled water;

- cinemas;
- cosmetics and perfumes;
- infant diet products;
- gambling activities;
- non-prescription medicines;
- enteral nutrition products;
- health care technology companies;
- interactive software products (videogames);
- food and beverages aimed at children, PAOS Code;
- children's toys;
- spirits;
- beer; and
- medicines.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Autocontrol's out-of-court dispute settlement system is the only private Spanish mechanism that has been incorporated by the European Commission into the European Consumer Centers Network. The Jury is the independent out-of-court body in charge of adjudicating on complaints submitted on advertising issues. The Jury is composed of independent lay experts. All the Jury's decisions are clearly reasoned and are published in Autocontrol's monthly newsletter and on its website. The procedural rules governing the Jury's adjudication activity are clearly established in the Jury's rules, which are publicly available on Autocontrol's website.

The Jury's decisions tend to be conservative and are only binding on members of Autocontrol those non-members who expressly accept the competence of the Jury. The civil courts generally adhere to these decisions.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Yes, the system is widely used, and it is increasing its activity and effectiveness. Autocontrol has around 600 direct members and 4,000 indirect members who are linked to approximately 70% of the advertising investment in Spain.

According to the official data published, during 2022:

- 45,281 advertising projects were submitted by advertisers to be reviewed (copy advice),
- more than 6,300 legal and deontological consultations on advertising matters were undertaken.

Regarding the arbitration of disputes, in 2021, the Jury decided around 219 claims, most of them (90%) from consumers against companies. 66% of the complaints received related to commercial communications disseminated on digital channels. The average time to rule on a complaint was around 15–20 calendar days.

2.5 Are the self-regulatory system's decisions reported?

Each decision by the Jury is published in Autocontrol's monthly newsletter, on its website, or through other means of communication by Autocontrol. The advertiser complies with the decision in 95% of the cases.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The most important principle is **truthfulness**. ‘Misleading advertising’ is advertising that in any way induces or may induce erroneous conclusions in users where such advertising relates to:

- the characteristics of goods, activities or services;
- the price, legal and financial conditions of purchase;
- the use and delivery of the products; or
- the performance of the services and after-sales services.

The principle of respect for **legality** means that advertising must respect current legislation and, especially, all values, rights and principles recognized under the Spanish Constitution. Moreover, advertising should not incite violence or illegal behavior. Other important principles include the principle of respect for others and human dignity. For example, at no time should a competitor’s personal or their company’s circumstances be mentioned. Discriminatory advertising based on race, nationality, religion, sex or sexual orientation must be avoided, and comparisons between a product’s own activity, services or establishment and those of others must be based on essential and similar characteristics. Such comparative advertising must always be truthful and must not be expressed in disdainful or denigrating terms.

Commercial messages targeted at **children** must be handled extremely carefully. They must not exploit the natural ingenuity, immaturity, inexperience or credulity of children or adolescents, nor must they take advantage of their sense of loyalty, or contain declarations or visual presentations that might damage them mentally, morally or physically.

2.7 Are there any other self-regulatory systems that govern advertising practices in Spain?

Autocontrol is the only self-regulatory system responsible for governing advertising in Spain. Some sectorial associations have private dispute resolution mechanisms, but these are not limited to advertising practices.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Spain (eg, consumer protection laws, IP laws, unfair competition laws)?

The basic national laws governing advertising claims in Spain are:

- (a) the General Advertising Act (Law 34/1988): Advertising is governed by this Act, by the Unfair Competition Act and by the special rules regulating certain advertising activities;
- (b) the Unfair Competition Act (Law 3/1991): The object of this Act is the protection of competition for the benefit of all those who participate in the market and, to this end it prohibits acts of unfair competition, including unlawful advertising in the terms laid down in the General Advertising Act;
- (c) the General Audio-visual Communication Act (Law 13/2022): This law sets out several rules on content and mode of operation for players in this sector, including influencers, video streaming services and video sharing platforms;
- (d) the Consumer Protection Act (Royal Decree 1/2007): This Act applies to the relationships and contracts entered into between consumers and businessmen or companies;

- (e) the Data Protection Act (Law 3/2018): This law is intended to guarantee and protect the public liberties and fundamental rights of natural persons and, in particular, their personal and family privacy with regard to the processing of personal data. It is complementary to the GDPR which is directly applicable in Spain; and
- (f) the Intellectual Property Act (Law 1/1996): This law governs copyright for authors of literary, artistic or scientific works in Spain.

3.2 Is substantiation required for advertising claims?

Advertisers must be able to substantiate claims if requested to do so or in case of a complaint. The substantiation must be based on objective, true and demonstrable facts.

Where there are objective and verifiable claims, with references to tests, studies or any technical, statistic or scientific data, the advertiser, who bears the burden of proof, must be able to demonstrate the veracity and accuracy of the claims by providing the test, study or data referred to.

In the absence of evidence that weakens or contradicts the test/study/data, there should be no reason, as a general rule, to assume a violation of the veracity principle.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)? If so, please explain.

Generally, in Spain, all types of advertising messages should be substantiated.

Spanish law has no definition of 'puffery'. Nevertheless, the doctrine of puffery defines it as 'praise of concrete and verifiable aspects that has an element of truth and is not taken seriously by the audience'. When the message excludes others' products or services, the exaggeration doctrine does not apply.

There have been some cases where Autocontrol has been asked to decide whether the defense of puffery, as claimed by an advertiser, should be upheld. Rejecting the argument that advertising should be interpreted literally, Autocontrol has established that advertising should be analyzed according to the overall message transmitted to the recipient. If such analysis leads to a conclusion that the overall meaning of the advertisement transmits a credible message about the properties of the product and the consequences of its consumption, the advertisement will not be deemed misleading.

3.4 What are the rules governing the use of disclosures in advertising?

In order to analyze whether an advertising message is misleading or not, the message has to be interpreted from the perspective of an average, normally informed and reasonably observant consumer.

In accordance with the veracity principle, the advertiser has the obligation to make every effort to ensure that all messages included in the advertisement are understandable to the average consumer and to prevent the prominent messages from obscuring the main message to the consumer.

For this purpose, disclaimers and footnotes can be used to disclose any information that is relevant to the advertised offer.

Advertising which references a test, study or any technical, statistic or scientific data must disclose the person who has carried out the study and the state of its completion.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

In Spain, there are no general legal provisions regarding testimonials used in advertising, except in relation to the advertising of health products, gambling and advertising targeted at children. However, Autocontrol's Code of Advertising Practice contains provisions on testimonials.

The basic principle is that recommendations or testimonials included in advertising must be truthful. When advertising includes recommendations and/or testimonials (ie, assertions from parties not connected to the advertiser and who are not acting as spokespersons for the advertiser, whether or not they are paid) these must be truthful.

Testimonials must be used only with the permission in writing of those giving them. The advertiser must be able to prove the truth of the testimonial. Furthermore, if such testimonials include statements on objective and verifiable characteristics of the product (or a competitor's products), the advertiser must be able to prove the veracity and accuracy of the statement included in the testimonial.

According to the latest modification of the Unfair Competition Act (consequent upon the transposition of the EU Omnibus Directive 2019/2161), all companies using testimonials must take, in advance, proportional and reasonable measures to verify the genuine and truthful origin of those testimonials.

It is strictly forbidden to add or commission the inclusion of false or misrepresentative consumer reviews or to misrepresent consumer or user reviews, or social user reviews or social endorsements, for the purpose of promoting goods or services.

3.6 What are the rules governing the use of product demonstrations in advertising?

In general, advertising depicting or demonstrating product performance should not be misleading and must reflect the real-life use and experience the consumer/user would have with the product.

The Medical Devices Act (Royal Decree 1591/2009) establishes that products not complying with its provisions may be demonstrated at fairs and exhibitions but only provided that a sufficiently visible sign is placed on the products themselves (or with them) clearly indicating that the products cannot be on the market or put into service until compliance is established. Such demonstrations can never involve the use of these products on patients.

Commercial communications about products especially aimed at minors, such as toys, should not be misleading about their characteristics (eg, size), their safety, nor about the capacity and aptitudes necessary for the minor to use them without causing harm to themselves. It is forbidden to include in any advertisement a direct exhortation to children to buy advertised products or to persuade their parents or other adults to buy advertised products for them.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted in Spain but is subject to a stringent legal regime to protect both the interests of consumers and the interests of the competitor. Advertisements can explicitly or implicitly allude to and/or identify competitors.

According to the Unfair Competition Act, comparative advertising is allowed if:

- (a) it compares goods or services that meet the same needs or are intended for the same purpose;

- (b) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- (c) (regarding products with protected designation of origin or geographical indication) it relates in each case to products with the same designation;
- (d) it does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name; and
- (e) the comparison does not contravene the provisions on misleading actions, denigration, and exploitation of a reputation or confusion of the consumers.

It is considered as an act of unfair competition to market goods as being identical to goods marketed in other EU Member States, where such goods have a significantly different composition or characteristics, unless justified by legitimate and objective factors.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Advertising must not contain, either explicitly or implicitly, any reference to distinctive signs of another advertiser, other than in legal or conventionally permitted cases or in the case of acceptable comparative advertising.

Advertisements must not imitate the general outline, text, slogan, distinctive signs, visual presentation, music, or sound effects of other national or foreign advertisements, even if these have come to an end, where they have been protected by industrial or intellectual property rights.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

In addition to the specific regulations protecting geographical indications (Law 6/2015), providing wrong information about the origin of goods or services and making false claims can be considered as misleading advertising and/or unfair competition. Also forbidden is the use of elements suggesting or creating some possible link or evocation with a protected geographical indication.

In the case of products covered by a designation of geographical indication, comparative advertising may only be made with other products of the same origin.

The Trademark Act and the Criminal Code have also specific provisions protecting the geographical indications from unauthorized uses.

3.10 Are there any special rules governing product packaging?

Yes—many categories of products (eg, food, tobacco, alcoholic drinks, medicines, toys) have special regulations regarding labeling and packaging.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Dark patterns are prohibited because in general terms, any conduct that contains false information or information that, although truthful, by its content or presentation induces or could induce erroneous conclusions in users, being thus susceptible to alter their economic behavior, is considered unfair because it is misleading.

From the data protection perspective, it is also prohibited to process personal data using dark patterns. The Spanish Data Protection Agency (www.aepd.es) issued its first sanction for this practice in 2023.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

In addition to the rules arising from the European Digital Services Act about transparency and the rules about profiling contain in the Omnibus Directive, there are no additional norms.

4 PRICE ADVERTISING

4.1 What are Spain's rules regarding price advertising?

In general, the prices of goods can be advertised freely, as long as they do not infringe the Unfair Competition Act and the Retail Commerce Act. However, it is forbidden to sell at a loss, except where the product is about to deteriorate, or the business is to be closed.

Any claim relating to the price of the advertised product or service must be true. If the advertising refers to the price of a product or service, this should include the full final price, including taxes, and specifying, where applicable, any charges and discounts that apply to the offer as well as any additional costs passed on to the customer. It is considered unfair to advertise goods at a certain price to attract consumers' attention, when the goods advertised are not available or available in insignificant quantities or only for a very short period of time.

In cases where, due to the nature of the goods or services, no exact price or amount of additional costs can be specified, the advertising should include a basis of calculation or an estimated amount to allow the customer to check the price.

4.2 What are Spain's rules regarding advertising 'free' products?

In Spain, the promotion of sales with accompanying gifts is perfectly legal, but is subject to certain rules.

The Retail Commerce Act regulates these types of sales. Where the purpose is promoting sales, another product, free service, or a specially reduced price can be offered to the consumer, either automatically or by way of entry into a lottery or contest. If the gift consists of entry into a lottery, the applicable regulations have to be observed and the authorization of the Spanish Gaming Board is required.

Unlike liquidation sales or regular sales, the retailer does not need any justification to provide gifts, other than a simple desire to increase sales. The types of gifts and promotional offerings vary widely. For example, 'two for one' offers, bonuses, vouchers offering a future discount, or bonus points that allow the customer to obtain free goods in the future, are all common.

There are some local laws in the Spanish autonomous regions that regulate sales offering gifts, bonuses or discounts, but there are very few material rules that impact upon these types of sales.

Regardless of any regulations made by the autonomous regions, the gift must be provided within three months of the moment when the consumer fulfils the condition of the promotion (usually the purchase). Moreover, any gift that has been offered on the packaging of the product must be available for at least three months from the end of the promotion.

Specific regulations apply to particular types of goods. For example, it is prohibited to offer any kind of promotional gifts in the medicinal and pharmaceutical sectors.

As a consequence of the EU Unfair Commercial Practices Directive 2005/29, it is considered to be a misleading commercial practice and, thus, to be unfair, to describe a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

4.3 What are Spain's rules regarding sales and special offers?

Under the Spanish Retail Act, certain sales activities are distinguished, namely, seasonal sales, end of line sales and liquidation sales:

- (a) **Seasonal sales:** Seasonal sales may take place in 'seasonal periods' of greater commercial interest. The duration of each sales period is decided by each merchant;
- (b) **End of line sales:** Products are considered suitable for end of line sales if their market value appears to be significantly decreased because of deterioration, defect, disuse or obsolescence of the product. It is necessary for 'end of line' sales to be advertised as such or as a 'sale of surplus stock'; and
- (c) **Liquidation sales:** These sales can take place only in exceptional circumstances, with the object being to dispense with stock of certain products that are advertised as being liquidated. They take place either as a result of a judicial or administrative decision, or on the initiative of a retailer. Advertising of liquidation sales must indicate the cause of such sale.

4.4 What are Spain's rules regarding rebates?

After changes due to the EU Omnibus Directive 2019/2161, the Retail Commerce Act requires that any price reduction must indicate the average price that the trader applied over the preceding 30 days, except in the case of new products or services, or reductions due to products close to expiry.

There is no maximum time to offer reduced prices on certain products or services, however, it is mandatory to include an indication about the duration of the offer. This duration can't be indefinite, but it is acceptable to indicate that the offer will last until the termination of the stocked products (if the estimate number of items is revealed).

Under the Spanish Consumer Act, consumers have the right to withdraw from purchases within 14 days. This period expires 14 days after the day the consumer received the goods. However, if this period expires on a non-working day, the deadline is extended until the next working day.

The consumer can choose to withdraw from the order for any reason within this timeframe. To exercise the right of withdrawal, the consumer must unequivocally inform the trader of their decision to withdraw from the purchase. This is possible, eg, by inserting a written statement with the goods that you are returning by post, or by sending a fax or email. It is not enough to just send the goods back.

The trader must give a refund within 14 days from receipt of notification of the withdrawal, but can delay refunding if they have not received the goods back or received evidence that the consumer has sent them back.

As regards purchases in 'bricks and mortar' shops, refunds are only compulsory in case of fault or defect in the purchased goods. However, the practice of offering a refund is widely extended.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

According to the Retail Commerce Act, ‘special sales’ include distance selling, automatic sales, mobile market selling and selling by public auction. ‘Special sales’ are subject to specific regulations. Marketplaces have also very specific obligations regulated by the EI Omnibus Directive.

The reselling of tickets for entertainment activities (music, sports, etc) is forbidden if the tickets were acquired using automated means in order to circumvent any limit imposed on the number of tickets that can be purchased by any one person or any other rules applicable to the purchase of tickets.

Sales that are achieved without the simultaneous physical presence of the purchaser and vendor are considered distance selling. All proposals made in such sales must unequivocally state that they constitute a commercial offer.

As a general rule, products on sale need to be presented separately from non-discounted goods.

If the price of a product or service is fixed according to the individual or personal characteristics of the customer, this profiling practice must be revealed in advance to the person concerned. In application of the EU Digital Services Act, it is forbidden to target advertising on online platforms by profiling children or based on special categories of personal data such as ethnicity, political views or sexual orientation.

It is also banned to use ‘dark patterns’ on the interface of online platforms, referring to misleading tricks that manipulate users into choices they do not intend to make. It is mandatory to state if some content is sponsored or organically posted on a platform. The same duty of transparency is applicable to influencers, who are compelled to reveal clearly if they have been paid or hired when they are promoting commercial messages.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

According to the General Audio-Visual Communication Act, TV advertising of the following products and services is prohibited:

- (a) advertising of cigarettes and other tobacco products as well as advertising of tobacco manufacturers;
- (b) advertising of medicine and health products other than as expressly regulated in the Medicine Laws;
- (c) advertising of finance, banking or investing activities which have not been approved in advance, or which don’t comply with specific regulatory requirements;
- (d) advertising of alcoholic beverages with an alcohol content of over 20% during certain time slots;
- (e) broadcast advertising of alcoholic beverages with an alcohol content below 20% outside the hours of 8.30 pm to 5.00 am, and when such advertising is targeted at children or promotes irresponsible consumption, or where associating consumption with enhanced physical performance, social success and health;
- (f) advertising encouraging behavior prejudicial to the environment or prejudicial to the safety of persons;

- (g) commercial communications of a political nature, except during an election campaign;
- (h) advertising of gambling activities outside of regulated time frames and media limitations; and
- (i) advertising of goods or services prohibited or limited for minors during time frames of specific protection for children.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The Unfair Competition Act establishes rules that deem certain practices to be unfair and thus prohibited. Examples include:

- (a) false and deceptive advertising practices to lure customers;
- (b) deceptive practices as to the characteristics of goods and services, their availability and after-sales services;
- (c) covert advertising practices;
- (d) personal visits to a customer's home ignoring their request to leave the house or not return to it;
- (e) telephone spam and unsolicited commercial communications via email, fax or other remote means of communication (sending such communications disguising or concealing identity of the sender is prohibited);
- (f) creating the false impression that the consumer has already won, will win, or will win provided a particular act is performed, a prize or other equivalent benefit, when, in fact, either there is no prize or other equivalent benefit, or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost; and
- (g) sending commercial communications by any means to consumers registered on an exclusion list (Robinson list: <https://www.listarobinson.es>). The consultation of this list is mandatory for all companies practicing such commercial activities.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

In addition to the provisions of the General Advertising Act regarding unlawful advertising, the General Audio-Visual Communication Act contains further restrictions and prohibitions regarding advertising on TV. It prohibits any commercial communication that violates human dignity or encourages discrimination by reason of sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation as well as any advertising that uses the image of women in a degrading and discriminatory way.

The authorities of the competent autonomous region will judge commercial acts and behavior identified as infringements under the General Audio-Visual Communication Act. Fines are:

- for very serious infringements: fines of up to €1,500,000;
- for serious infringements: fines of up to €750,000;
- for minor infringements: fines of up to €150,000.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

According to the Spanish Act of Information Society Services ‘the advertiser must always be identifiable, so that recipients can recognize and contact it without difficulty. For these purposes, the advertiser/owner shall inform its recipients, in a clear, direct and easily accessible way, its name or company name, address for legal purposes as well as its email address and any other information that allows direct and effective communication.’

Failure to comply with these provisions with regard to commercial communications, promotional offers and contests qualifies as a minor infringement, punishable with a fine of up to €30,000 euro.

In addition to the legal provisions regarding trademarks that may be applicable, it is considered unfair to promote a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by that manufacturer when it is not.

As a consequence of the transposition of the European Omnibus Directive and the newest EU legal regime on audiovisual law, all influencers must make clear if there is a sponsor or company paying for their commercial comments or actions.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Editorial content generated by a company, for example, for its website, is not expressly regulated but is undoubtedly ‘advertising’ under the definition in the General Advertising Act (‘Any form of communication made by natural, legal, public or private person in the exercise of its commercial, business, handicraft or professional activities that aims at direct or indirect promotion of moveable or immoveable goods, services, rights or obligations.’)

In that sense, the law is clear when it states that ‘including communications to promote a good or service as information in the media, ... without making clear in the content or by images or sounds clearly identifiable to the consumer or user that this is advertising content’ is considered to be misleading advertising. Furthermore, the law states that ‘commercial communications by electronic means shall be clearly identifiable as such’.

Consequently, the average consumer or user must be able to easily identify advertising content and distinguish it from other content.

Finally, according to the Unfair Competition Act, it is considered as misleading advertising to use editorial content in the media to promote a product where a trader has paid for the promotion, without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

In the case of TV advertising, the General Audio-Visual Communication Act requires that any type of content that, when broadcast, could confuse the viewer about its actors or characters must permanently include, in a way that is clearly legible, the word ‘advertising’.

In the case of commercial communications sent by electronic means, the communications must include, at the outset of such communication, either ‘advertising’ or ‘advertisement’.

In addition, when the advertisement is included in the form of ‘product placement’, an indication that the content constitutes advertising must be included.

Finally, regarding the phenomenon of bloggers and other sorts of so-called ‘influencers’, the Spanish law requires the term ‘advertising’ or ‘ad’ to be included when it is part of a campaign. However, it is not always easy to discern when a real recommendation is being made by a person who has no personal interest in the product or service, and when it is surreptitious advertising.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

According to the Spanish Act of Information Society Services and Electronic Commerce (‘E-Commerce Act’), the use of social media for advertising must be decent, honest and truthful. It should never be a means to abuse the good faith of its recipients. It must not include content that undermines the dignity of the recipient, or be discriminatory (by reason of nationality, race, sex, sexual orientation, religious or political beliefs, or any other circumstances, personal or social), or incite the commission of unlawful acts.

If a particular service of the information society violates or may violate these principles, the competent authorities may take the necessary measures to ensure that the service is interrupted or to remove the infringing data.

Other specific requirements on transparency are applicable to digital advertising as a consequence of the EU Digital Services Act.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser’s Facebook page)?

According to the E-Commerce Act the service provider is subject to civil, penal and public law.

In general, the service provider is responsible for the content of its websites, unless its participation falls within any of the exemptions set out in the E-Commerce Act (hosting, caching, mere conduit). Following the principles of the EU E-Commerce Directive 2000/31, the exempted provider is obliged, upon obtaining actual knowledge or awareness of illegal activities, to expeditiously remove or disable access to the information concerned. However, these provisions must still be adapted to the new legal regime of the EU Digital Services Act.

Also, there is no exemption from responsibility where the advertisements are placed by contractual partners of the service provider or users of the website. Therefore, Facebook, for example, may not argue successfully that it did not have knowledge of the content of an advertisement.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

The Provincial Court of Madrid (in a judgement of 15 September 2017) declared Groupon Spain to be jointly liable of copyright infringement concerning sales made in its market place by a third party. The Court considered that Groupon's participation was not limited to actions of a technical nature.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

In accordance with the Civil Protection of the Right to Honor, Personal and Family Privacy and Image Act (Law 1/1982), it is illegal to use the name, voice, or image of a person for advertising or commercial purposes (or purposes of a similar nature) without the consent of the individual. In some cases, it is not necessary to obtain consent if the individual is a celebrity and the pictures are taken during a public event.

Consent need not be in writing. It is sufficient to get consent verbally from the individual who will appear in the advertising. Actors may receive a payment for the use of their name, voice, likeness, image or identity.

9.2 Are there situations when permission is not required?

Permission is not required when:

- (a) reproducing or publishing images of persons in public office or of a public reputation where the image is captured during a public event;
- (b) using a caricature of such persons, in accordance with 'social use'; or
- (c) the image of a particular person appears as merely incidental in the context of a public event.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are special rules governing advertising at certain historical places. Such rules are specific to each location and are regulated by municipal ordinances. For example, in the Municipal Ordinance of Advertising for Madrid 2009, which is intended to regulate outdoor advertising activities, the following activities are expressly forbidden:

- (a) advertising through posters, stickers, labels projections and performances;
- (b) placing signs featuring trade names, badges, logos, places, products, promotions on public roads and road signs; and
- (c) distribution or delivery of brochures, advertisements, stickers or any other kind of advertising product.

Copyright Law can be also applicable if there are any copyrighted works filmed.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

No. This advertising would be deemed misleading in Spain on the grounds that it is likely to confuse the consumer. Trading practices deemed to be unfair include comparative advertising, which, in its factual context, and taking into account of all its features and circumstances, creates confusion, including a likelihood of association with any goods or services, trademarks, trade names or other distinguishing marks of a competitor, provided that they are likely to affect the economic behavior of consumers and users.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Spain which affect advertising (eg, Swedish gender equality law)?

The following rules have elements which also affect advertising:

- (a) the Organic Law for Effective Equality between Men and Women Act (Law 03/2007): Advertising that involves discriminatory conduct shall be deemed unlawful, in accordance with the provisions of the General Advertising Act;
- (b) the Animal Protection Act (Law 11/2003): The filming of scenes containing animals involving cruelty, abuse, death or suffering for the purposes of cinema, television or for advertising purposes, must in all cases, without exception, be a simulation; and require authorization, prior to filming, from the competent authority.
- (c) The LGBTI Act (Law 4/2023): The aim of this law is to develop and guarantee the rights of lesbian, gay, bisexual, trans and intersex persons by eradicating situations of discrimination, in order to ensure that they can live in Spain in full freedom as to sexual orientation, sexual identity, gender expression, sexual characteristics and family diversity.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

There are limitations regarding the use of certain religious themes, images, symbols, or figures in a way that may be harmful to reputation. The same rule applies to the protection of the language, culture and famous symbols of Spain.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Spain?

According to the General Advertising Act, all advertising is governed by the General Advertising Law, the Unfair Competition Law and special rules that regulate certain advertising activities.

The advertising of certain materials or products is regulated by special advertising regimes respecting the rights and public freedoms established in the Spanish Constitution. These regulations provide special guarantees for any party affected by illegal advertising. For example:

- Electoral law provides certain limitations on campaign advertising, eg, if the campaign period has ended, it is not possible to perform additional campaign activities or events;
- In relation to extras that appear in advertising, the Statute of Workers' Rights (Royal Decree 1/1995) applies, as well as legislation that applies in each autonomous region,

so it is important to consider other legislation that may apply to advertising.

 SWEDEN 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Sweden?

Advertising is primarily regulated by the Swedish Marketing Practices Act ('MPA') and other marketing legislation such as the Swedish Act on Name and Pictures in Advertising.

The marketing legislation is supplemented by various statutory consumer protection laws. There are also provisions relevant for advertising found in sector specific legislation relating to, among others, pricing, alcohol, tobacco, lotteries, consumer credit and media specific legislation relating to radio and television etc.

In addition, there is intellectual property and data protection legislation.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

'Marketing', which includes 'advertising', is broadly defined as 'any measures in the course of a business commercial message which are intended to promote the sale of and access to products including a trader's actions, omissions or other measures or behavior before, during or after sale or delivery of products to consumers or traders'.

To qualify as a 'commercial message', the communication must have a commercial purpose and a pure commercial subject. Attempts to pass commercial messages as editorial content, such as advertorials or native advertising practices, have been ruled unlawful by the Swedish Patent and Market Court.

1.3 What is the basic regulatory framework for advertising regulation?

The MPA, which implemented the EU Unfair Commercial Practices Directive 2005/29/EC and applies to both business-to-consumer and business-to-business marketing activities, is the primary legislation of interest. Moreover, the MPA explicitly refers to the so-called 'black list' (Annex 1 to the Unfair Commercial Practices Directive), which includes examples of practices that are always considered unfair and in breach of the MPA.

The statutory acts are, in many cases, supplemented by non-binding, but explanatory, guidelines from the European Commission (regarding the Directive), the Swedish Consumer Ombudsman or other governmental bodies. The ICC Marketing Code is also an important source for interpretation of the MPA.

The Swedish Advertising Ombudsman is an organization founded by the Swedish advertising industry. The Advertising Ombudsman receives complaints about advertising, and reviews whether commercial advertising is compliant with the ICC Marketing Code and the MPA. The Advertising Ombudsman's decisions are not sanctioned, but have a self-regulatory impact on the market.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Some advertising practices are subject to specific laws which govern their advertising and/or have particular specific provisions that supplement the MPA. Whilst not exhaustive, the following list sets out the main additional provisions:

- (a) TV advertising targeting children under the age of 12 is banned in commercials broadcast under Swedish licenses;
- (b) As a general rule, unsolicited advertising must not be sent through electronic mail (such as emails and text messages) without a consumer's prior consent; and
- (c) Direct marketing should not be addressed to children under the age of 16. Direct marketing in general should not be sent to anyone who has declined such marketing.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are several industries that are subject to specific laws which govern their advertising and/or have particular specific provisions that supplement the MPA. Below are some of the main ones, but the list is not exhaustive.

- (a) **Alcohol:** The Swedish Alcohol Act states that all marketing of alcoholic beverages (ie, spirits, wines and beers with more than 2.25% alcohol) to consumers must be particularly moderate and is not allowed to encourage the consumption of alcohol or be obtrusive. As a consequence, the opportunities for outdoor marketing (such as billboards) are very limited. Alcoholic beverages as free gifts or prizes are not allowed. Moreover, advertising must not target or portray children or young people under the age of 25. There is also a total ban on the advertising of alcoholic beverages in radio and television commercials broadcast under Swedish licenses. Further, companies mainly occupied with manufacturing or selling alcohol may not sponsor a TV or radio program.
Commercial advertisements in periodical publications are allowed for alcoholic beverages that contain less than 15% alcohol. However, the advertisement must be moderate and include information about the risks that are connected with alcohol consumption.
- (b) **Tobacco:** Tobacco products must include pre-defined warning labels and product information on packages. Advertising of tobacco products is permitted only in certain periodical publications, and at premises where such products may be legally sold, provided that the advertisement is not visible from outside the premises.
When allowed, the advertising of tobacco products to consumers must be carried out with special care. In particular, advertising must not be obtrusive or encourage the use of tobacco products.
Tobacco products may not be advertised in radio or TV commercials broadcast under Swedish licenses. There are also further restrictions on sponsorship activities.
- (c) **Pharmaceuticals:** Advertising of prescription-only pharmaceuticals to consumers is prohibited.
Advertising is subsequently restricted to pharmaceuticals sold without prescription and must mainly relate to illnesses that the consumer is presumed capable of diagnosing themselves. Other indications shall specifically identify that they require medical treatment or other contact with health or medical personnel. A basic requirement is that the information refers to indications and dosages that are authorized by the Swedish Medical Products Agency.
- (d) **Gambling:** The Swedish Gambling Act contains specific provisions regarding games involving money and other prizes with a monetary value. 'Games' includes lotteries, betting, combination games and pyramid schemes. When marketing games to consumers,

advertisers must exercise moderation. To comply with the requirement of moderation, marketing must not convey the impression that gambling is socially attractive, that it is a solution to financial problems or that an offer for gambling is free, risk-free, or similar if it is not the case. Additionally, marketing must not be specifically targeted at individuals under 18 years of age or to a player who has self-excluded from gambling. Marketing for gambling must also include clear information about the minimum age for participating in gambling.

- (e) **Consumer credit:** According to the Swedish Consumer Credits Act, advertising credit to consumers must be moderate. Furthermore, the advertising must include specific information, such as the effective rates, the credit cost, and the amount to be paid in cash. This information must be provided in a clear, concise, and prominent manner, such that consumers typically have no difficulty understanding it. For example, information may not be presented in a reduced text size.

1.6 Are any government pre-approvals required?

Currently, no pre-approvals are required under Swedish law. However, the proposal for an EU Directive on Green Claims introduces verification requirements before claims can be made and put on the market. The trader's green claims will need to be verified by an independent entity against the requirements of the Directive. Subsequently, the verifier will issue a certificate of compliance recognized across the EU.

1.7 Does the media pre-clear advertising?

Not applicable.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Within its supervising powers, the Swedish Consumer Ombudsman may prohibit advertisers from continuing with unfair marketing practices subject to conditional fines. It may also order advertisers to provide material information to consumers.

If an advertiser does not accept the prohibition or order, the Swedish Consumer Ombudsman may bring legal action before the Swedish Patent and Market Court, whose decisions may be appealed to the Patent and Market Court of Appeal. Further sanctions include injunctions subject to conditional fines and, in severe cases, market disruption charges. The market disruption charges shall be fixed at no less than SEK 10,000 and may not exceed 4% of the trader's annual turnover.

1.9 When does a competitor have a right of action? What are the potential remedies?

Any competitor affected by the marketing in question has a right of action under the MPA. The potential remedies are injunctions subject to conditional fines and damages in case of negligent or intentional breaches of the MPA.

1.10 When do consumers have a right of action? What are the potential remedies?

Groups of consumers, but not individuals, have a right of action under the MPA. The potential remedies are injunctions subject to conditional fines and damages in the cases of negligent or intentional breaches of the MPA.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Sweden have a primary advertising self-regulation system?

There are several sector-specific self-regulation systems (such as the Alcohol Suppliers Examiner and the Direct Marketing Body etc), but the primary and general system is the Advertising Ombudsman. The Advertising Ombudsman, amongst other roles, reviews whether advertising is compliant with the ICC Marketing Code. Individuals, companies and other organizations can file complaints to the Advertising Ombudsman. In cases of general public interest, the Advertising Ombudsman may initiate its own investigation without a complaint.

Complaints about purely religious or political (ie non-commercial) content will not be assessed, as these usually are not considered to fall within the definition of ‘marketing’.

2.2 Is there a self-regulatory advertising code? What are the key principles?

As above, the Advertising Ombudsman enforces the ICC Marketing Code, which applies to all media. The objectives of the ICC Marketing Code are to:

- (a) demonstrate responsibility and good practice;
- (b) enhance overall public confidence in marketing communications;
- (c) respect privacy and consumer preferences;
- (d) ensure special responsibility as regards marketing communications and children/young people;
- (e) safeguard the freedom of expression of those engaged in marketing communications; and
- (f) provide effective practical and flexible solutions; to minimize the need for further regulation.

In addition to general provisions on issues such as decency, social responsibility, truthfulness, substantiation, comparisons, safety and health and data protection, the ICC Marketing Code has specific chapters in relation to sales promotions, sponsorship, direct marketing, digital media and environmental claims.

The Advertising Ombudsman supplements the ICC Marketing Code article on social responsibility with additional requirements relating to gender discrimination in advertising.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Advertising Ombudsman cannot impose any sanctions. Decisions by the Advertising Ombudsman can be challenged before the Advertising Ombudsman Jury. The Advertising Ombudsman may also refer unprecedented or complex issues directly to the Jury.

2.4 Is the self-regulation system effective? Is it widely used and followed?

As far as we know, there is no research or accurate data on how effective the system is, but our view is that the system serves its purpose and that major advertisers follow the decisions.

2.5 Are the self-regulatory system’s decisions reported?

The Advertising Ombudsman’s decisions are published on its website and usually reported by media covering business and trade matters.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The Advertising Ombudsman has a general focus and companies should be aware of all aspects of the ICC Marketing Code and the MPA.

2.7 Are there any other self-regulatory systems that govern advertising practices in Sweden?

Yes—The Alcohol Suppliers Examiner, which assesses alcohol advertising in light of the recommendations on advertising for alcoholic and low alcohol beverages issued by the Brewers of Sweden, the Association of Swedish Advertisers and Swedish Spirits & Wine Suppliers.

Moreover, the Direct Marketing Body tries to influence direct marketing in light of the Swedish Direct Marketing Association's Rules.

There are additional self-regulation bodies for, among others, health claims in food advertising and medicinal products.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Sweden (eg, consumer protection laws; IP laws; unfair competition laws)?

The MPA is the most relevant law that governs advertising claim in Sweden, but the Swedish Act on Names and Pictures in Advertising may, in some cases, also be applicable. In addition, the statutory intellectual property laws such as the Swedish Copyright Act and the Swedish Trademarks Act will normally have to be considered.

Moreover, statutory consumer protection laws, such as the Swedish Consumer Sales Act, or the Swedish Consumer Services Act, will apply for the sales of goods or provision of services to consumers. In the case of distance sales or sales outside a trader's normal premises, other legislation on distance selling, as well as e-commerce, could apply.

3.2 Is substantiation required for advertising claims?

Yes. According to the MPA all marketing must, as a general rule, be in accordance with good marketing practices and otherwise be fair to consumers and businesses. Marketing must be trustworthy and not misleading. A trader must be able to prove all claims made in advertising and will also bear the burden of proof. As such, evidence for substantiation must be retained for all claims.

Marketing that is not in accordance with good marketing practices is considered unfair if the practice in question has a material impact on the consumer's or trader's ability to make a transactional decision.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Swedish case law is rather strict on puffery, but obvious and typical overstatements that consumers cannot conceive as a literal statement should not require substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

The MPA provides that all marketing and other commercial messages must be formulated and presented in such a way that it is clear that it is a matter of marketing.

As a general rule, the party responsible for the advertising must also be clearly indicated. In the case of well-known brands, use of a trademark may suffice in this regard. However, in the case of mere teasers, such indication is not necessary.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

You may only refer to an endorsement/testimonial in your own advertising if you can substantiate that the endorsement/testimonial is correct and fair. For instance, misleading or deceiving communications, such as portraying a person as doctor etc, when that person is not an actual doctor, could be challenged under the MPA.

Also, as mentioned above, marketing must be identified as such, and the advertiser must be identified.

3.6 What are the rules governing the use of product demonstrations in advertising?

No specific rules exist, but general rules in the MPA apply.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

EU Directive 2006/114/EC concerning Misleading and Comparative Advertising has been implemented in Sweden. Comparative advertising is permitted provided that the comparison adheres to the eight requirements of that Directive.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Provided that the criteria for permitted use of comparative advertising apply, there are no special restrictions under trademark law. Since the specialized Patent and Market Courts permit cumulation of cases, trademark and copyright rules may be raised in addition to marketing complaints in a matter between businesses. For products, please see question 10.2 below.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

All marketing for commercial purposes must be done in accordance with the MPA and thus cannot be misleading. Hence, in relation to marketing a product with geographical origin, advertising that misleads with regard to the product's geographic origin may breach the MPA. Misleading claims about where a product is manufactured may also breach the MPA. This applies, for example, when 'made in Sweden' is used on a product that is wholly or mainly manufactured abroad.

3.10 Are there any special rules governing product packaging?

According to the MPA, a trader may not, in its marketing of products, use packaging which, by reason of its size or external appearance, is misleading as to the quantity, shape or size of the product.

Furthermore, a trader may not, in its marketing of products, use imitations of packaging that may mislead the consumer into believing that the product has a connection with the known and distinctive product packaging of another trader. However, this does not apply to packaging where the design is primarily used to make the product functional.

Regulation 2018:1462 on Producer Responsibility for Packaging primarily governs the design of packaging in order to limit its use for environmental reasons.

In addition, the statutory intellectual property laws, such as the Swedish Copyright Act, the Swedish Trademarks Act, and the Swedish Design Protection Act, may also have to be considered.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

There are no special rules or guidance, but all marketing for commercial purposes must be done in accordance with the MPA. Annex 1 to the EU Unfair Commercial Practices Directive, which is incorporated into the MPA as the Black List, contains special rules targeting behaviors that could be considered as ‘dark practices’, eg false urgency or false invoices.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No specific rules exist.

4 PRICE ADVERTISING

4.1 What are Sweden’s rules regarding price advertising?

In addition to the requirements of the EU Unfair Commercial Practices Directive, prices must be presented in accordance with the Swedish Price Indication Act. Generally, price indications for goods must include the price, unit price and VAT details. Additionally, when a trader states a price reduction, they must also indicate the previous lowest price of the product within the last 30 days as the reference price.

4.2 What are Sweden’s rules regarding advertising ‘free’ products?

Terms like ‘free’, ‘for free’, ‘SEK 0’ and similar are, according to Swedish case law, not acceptable and considered to be misleading when the consumer is expected to do something in return (for example, purchase something). It should be mentioned that under point 20 of Annex 1 to the EU Unfair Commercial Practices Directive it is unfair to describe a product as ‘gratis’, ‘free’, ‘without charge’ or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

As an exception to the rule described above, use of the term ‘på köpet’, (which roughly means ‘in the bargain’), is permitted when a buyer is offered a larger quantity of goods at the same price as payable for a smaller quantity of goods. For example, the term can be used when two products are offered for the same price that one product would normally cost.

The term ‘without extra cost’ can be used in combined offers when a premium is offered, provided that the premium is really awarded without any extra cost to the consumer.

4.3 What are Sweden's rules regarding sales and special offers?

- (a) **Special offers:** The general rules of the MPA apply, which means that advertisers must present all material information surrounding an offer. Additionally, when a trader states a price reduction, they must also indicate the previous lowest price of the product within the last 30 days as the reference price, in accordance with the Price Indication Act.

The former Swedish Marketing Practices Act of 1995 specified that promotional offers should include clear information on:

- (i) the terms and conditions for participation,
- (ii) the nature and value of the offer, and
- (iii) time limits or other limitations.

It has been confirmed in case law that this information remains relevant and constitutes 'material information'. Therefore, promotional offers must not be misleading; and the marketing must include clear information on all relevant terms and conditions to evaluate the promotion's value.

Moreover, the promotion must take place within a short period of time, not more than a few weeks. The price reduction must be significant and recent, and reduced prices must revert to the regular price immediately after the end of the promotional offer.

- (b) **Sales:** The MPA includes specific provisions on when use of the terms 'sales', 'clearance sales', and 'final clearance sales due to bankruptcy' will be acceptable:

- (i) **Sales:** The term 'sale' can be used when goods from the ordinary stock are sold at a substantially lower price and for a limited period of time, not more than a few weeks. The sale must relate to products that are part of the trader's regular product range and the prices must be significantly lower than the trader's normal prices for similar products. The total duration of a sales campaign may not exceed 2 months per calendar year.

- (ii) **Clearance sales:** In order to prevent the use of clearance sales that last for an extended period of time and where the stock is continuously renewed, the MPA contains a specific prohibition on the use of the term 'clearance sales' and similar. The terms 'clearance sale', 'final clearance sale', 'closing-down sale' and similar may only be used in the marketing of final sales of the whole or a well-defined part of the ordinary stock of a business, and only if the sale lasts for a limited period of time and at considerably lower prices than normally. There are no specific limits related to the time that a clearance sale is allowed to last (this has to be decided on a case-by-case basis depending on the specific sale).

In this context, point 15 of Annex 1 to the Unfair Commercial Practices Directive must also be considered, which deems it unfair to claim that the trader is about to cease trading or move premises when it is not.

- (iii) **Final clearance sales due to bankruptcy:** The right to use the term 'bankruptcy' in connection with sales is reserved for bankruptcy estates. As a final clearance sale by the bankruptcy estate generally lasts only for a limited period of time, it might indicate that the sale is at especially favorable terms. Therefore, use by anyone else of the term 'bankruptcy' in marketing is regarded as misleading and in violation of

the MPA. This means that a business that has purchased a stock of goods from a bankruptcy estate with the intention of later selling it on is not allowed to describe the sale as a 'final clearance sale due to bankruptcy' in its marketing material.

Additionally, in accordance with the Price Indication Act, the previous lowest price of the product in the last 30 days must be indicated as the reference price.

4.4 What are Sweden's rules regarding rebates?

A rebate or discount is a reduction from the price that the advertiser normally charges. Discounts are permitted in Sweden, provided they are presented clearly and are not misleading. For example, the presentation of a discount offer must clearly indicate the value of the discount and present other relevant information. Additionally, in accordance with the Price Indication Act, the previous lowest price of the product in the last 30 days must be indicated as the reference price.

Precedent shows that discounts must be temporary reductions of the price of a product or service. If the discount is applied for a longer period of time there is a risk that the discounted price will be considered to be the normal price, which makes the use of the term 'discount' misleading.

When presenting an offer, the advertiser must be careful not to mix discounts with other premiums in a way that could mislead the consumer as to the value of the various parts of the offer.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

In addition to general marketing regulation, the MPA provides that if a promotion involves an invitation to purchase, then the following information must be given to the consumer:

- (a) the main characteristics of the product, to an extent appropriate to the medium and the product;
- (b) the price as established by the Swedish Price Indication Act. As a general rule, price indications for goods must include details of the price and unit price of the goods, as well as VAT;
- (c) the geographical address and identity of the trader;
- (d) the arrangements for payment, delivery, performance and the complaint handling policy if they depart from what is customary in the relevant branch of business; and
- (e) the rights of withdrawal and cancellation of a purchase as prescribed by law.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The advertising of products that are not consistent with other regulations will be considered a breach of the MPA. Furthermore, it is illegal to state or otherwise create the impression that a product can legally be sold when it cannot. This probably also includes services (point 9 of Annex 1 to the Unfair Commercial Practices Directive).

Moreover, there are further restrictions in relation to specific products, including the following restrictions:

- (a) Tobacco products may only be advertised in certain periodicals;
- (b) Neither alcohol nor tobacco products may be advertised in radio or TV commercials broadcast under Swedish licenses; and
- (c) Pharmaceuticals sold only on prescription must not be advertised to consumers.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

As per the EU Audiovisual Media Service Directive, subliminal techniques are prohibited in audiovisual commercial communications.

Aggressive practices may be considered a breach of the MPA.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Indecency or obscenity issues do not fall under the statutory regulation of the MPA, but the supervision of the Advertising Ombudsman under the ICC Marketing Code applies.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

As already mentioned, save for mere teasers, there must be a clear indication as to who is responsible for the advertising. In the case of well-known brands, use of a trademark may suffice in this regard.

Sponsorship of a radio or TV program is subject to certain limitations. According to the Swedish Radio and Television Act, information that a program is financed by an entity other than the broadcaster must be provided at the beginning as well as at the end of the program.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

General marketing rules apply, meaning that all commercial communications/messages that involve advertising must be identified as marketing, regardless of the way or manner they are presented.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

General marketing rules apply, meaning that all commercial communications/messages that involve advertising must be identified as marketing, regardless of the way or manner they are presented.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

General Swedish marketing rules, such as the MPA, apply in full to social media.

The obligation under the MPA to identify a communication/message that involves advertising as marketing means, among other things, that traders must not falsely create the impression that they are not acting for purposes related to their trade, and it must also be made clear if a private individual (such as an influencer) has received payment or other benefits for promoting a product or service. A trader will be obligated to inform the private individual of the duty to disclose receipt of such payments or benefits.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Responsibility will depend on the circumstances, but advertisers will generally be liable for actions on a social media site managed by the advertiser. For instance, advertisers may have a responsibility under the EU General Data Protection Regulation ('GDPR') to erase personal data, or under the Swedish Bulletin Boards Act to erase offensive statements or references to copyright infringing content.

On the other hand, it is unlikely that advertisers will be held responsible for statements or actions that fall outside of their control or that are not caused, directly or indirectly, by the advertiser. However, if an advertiser invites such statements (eg as part of a contest or similar) or somehow uses or refers to such statements, this would most likely trigger liability under marketing or intellectual property legislation.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

- The Advertising Ombudsman has dealt with so-called 'native advertising'. The Advertising Ombudsman considered that a paid article which, in a positive and uncritical manner, described a company's services and also explained how to use the services constituted advertising. The article had been incorporated with other content on a newspaper's website without being identified as marketing. Therefore, the Advertising Ombudsman found that this violated the ICC Marketing Code's rules on disclosure of advertising.
- On 5 December 2019, the Swedish Patent and Market Court of Appeal held an influencer liable for breaching the MPA by failing to clearly identify one blog post and one Instagram post as marketing as well as the company responsible for the marketing. The court addressed the requirements that must be met for influencer marketing, and provided practical information regarding who can be regarded as an average consumer in the context of social media, and how the average consumer perceives content on social media (*Swedish Consumer Ombudsman v Alexandra Media Sweden AB*, Case PMT 2054-18).
- On 31 January 2020, the Swedish Patent and Market Court issued a judgment that provided clarification on the kinds of activities that constitute marketing in social media and fall within the scope of the marketing rules. The court held that, in order for an influencer's

social media post showcasing or recommending a company's product to be considered marketing, there must be an explicit or at least implied agreement between the company and the influencer regarding the post (*Swedish Consumer Ombudsman v Kenza Zouiten AB*, Case PMT 798-19).

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

In accordance with the Act on Names and Pictures in Advertising, an advertiser is not allowed to use the name, portrait or any other identifiable sign of a living person in advertising or commercial communication unless the advertiser has proper consent from that person. The Act on Names and Pictures in Advertising is designed as a criminal law regulation, meaning that anyone who intentionally or through gross negligence violates the regulation is subject to a fine. Additionally, the violator must pay reasonable compensation to the individual whose identifiable sign has been used.

9.2 Are there situations when permission is not required?

In relation to advertising or other commercial use permission is always mandatory.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are restrictions on the commercial use of State crests, State flags or other State emblems or State guarantee designations in trademarks or other distinguishing marks for products or services without due authorization. Also, use of the insignia from certain organizations (such as the Red Cross) may be prohibited. Moreover, there are restrictions on the use of the Swedish flag.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

According to the MPA, a trader may, in its advertising, directly or indirectly refer to another trader or such trader's products provided that certain requirements are met. For example, the comparison must not be misleading, must refer to products that fulfill the same needs or are intended for the same purpose, and must not discredit or disparage another trader's business, circumstances, products, trademarks, business name, or other distinctive marks. However, it is generally permissible for another company's product to appear in the background of the advertising.

Moreover, this question raises concerns from a copyright, trademark, and product placement perspective.

- (a) **Copyright issues:** Copyright protected products may be used subject to derogations in the Swedish Copyrights Act. For instance, the Swedish Copyrights Act provides that anyone is entitled to use, by means of a film or a television program or picture, works of fine art (such as furniture), if the exploitation made of the work is incidental in relation to the contents of the film or the television program. In practice, this means that, in order for this limitation to copyright to apply, the product must be used in the background or only to a limited extent.

However, such exploitation may only take place if the advertising includes an original sample that has been put on the market by the right holder or with the right holder's consent.

For products other than fine art, the copyright holder's consent may be necessary. This needs to be examined on a case-by-case basis.

- (b) **Trademark issues:** The use of products with other companies' trademarks which appear only as a normal part of the scene or in the background of advertising should normally not be considered as being used within the meaning of the Swedish Trademarks Act, in that permission from the trademark holder is required. However, this needs to be examined on a case-by-case basis. In cases of double identity, the Swedish Supreme Court has stipulated that the impact on the functions of the trademark is a prerequisite for trademark infringement.

According to the Swedish Supreme Court, the use of a trademark by a third party does not automatically imply that the trademark proprietor may exercise their exclusive right to prevent such use. The impact on the functions of the trademark is a prerequisite in Swedish law for trademark infringement to be considered in cases of double identity.

- (c) **Product placement issues:** The Swedish Radio and Television Act includes restrictions on product placement in films and TV programs that are not advertising. For instance, programs that are not commercial advertising may not improperly promote commercial interests, and certain products like alcohol and tobacco cannot be used for product placement.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Sweden which affect advertising (eg, Swedish gender equality law)?

Gender discriminatory, cultural and religious advertising concerns do not fall under the statutory rules of the MPA, but the supervision of the Advertising Ombudsman under the ICC Marketing Code applies, which means commercial communications relating to such content may be assessed.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

No, but please refer to question 11.1 above.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Sweden?

- (a) **Privacy issues:** Advertisers must adhere to the GDPR when personal data is processed in connection with marketing. The GDPR applies to those processors of personal data who are established within the European Union, or who offer services or goods to data subjects situate in the European Union, or who supervise data subjects' behaviors in the European Union. The GDPR is supplemented by the provisions of the Swedish Data Protection Act.

It is advisable to obtain consent for the data processing if the data controller has no legitimate interest in such processing. Such consent must be a freely given, specific, informed and unambiguous indication from the data subject. One way to ensure that the consent is a freely given, specific, informed and unambiguous is to clearly describe the collection of the personal data, ie what data, purpose etc, and then ask the consumer to tick a box confirming that they consent to such processing of the personal data. The data controller must also provide information as to how long the personal data will be retained and about the data subject's rights under the GDPR. The data controller is required to specify the personal data that will be processed, for what purpose and for how long etc.

Moreover, if a website includes cookies, the user must be informed about and accept their use. It may be sufficient to have gained informed consent, meaning that the user is informed of the cookies and continues to use the website without taking steps to stop the storage of cookies.

The data controller cannot transfer personal data to a third country if that country does not have an adequate level of protection for personal data. If a country is recognized as having an adequate level of protection, the transfer may only be conducted in specific situations or, occasionally, if 'appropriate safeguards' are taken. 'Appropriate safeguards' are the following:

- (i) for a business group with companies in several different countries, it is possible to regulate their processing of personal data in Binding Corporate Rules approved by the Swedish Data Protection Authority (or any other EU supervisory authority);
- (ii) the EU Commission has approved certain Standard Contractual Clauses regarding data protection and imposes certain obligations on both the data controller and the data processor;
- (iii) if a business joins an approved Code of Conduct or Approved Certification mechanism, it may be permitted to transfer personal data to countries outside the EU/EEA; or
- (iv) a business may obtain the Swedish Data Protection Authority's permission for transfer to non-EU/EEA countries.

Additionally, it is recommended that a privacy policy is adopted and referred to in the terms and conditions, which should be accessible from the home page of the website as well as the particular page where personal data is entered. The policy should be clear and easy to read, and include, for example, information on cookies, what kind of personal data is collected, what it is used for, how long it is stored, how one may be granted access to collected personal data concerning oneself etc.

- (b) **Advertising to children:** Sweden has a strict view on advertising to minors (ie, people under the age of 18), as is illustrated by the ban on advertising that targets children under the age of 12 during TV programs broadcast under a Swedish license.

Furthermore, the Swedish Consumer Ombudsman has challenged the marketing practices of an online fashion and dress-up games community for girls, where it, inter alia, successfully argued that the practice of sending direct emails to users under the age 16—without securing their guardian's consent—was a breach of the MPA. Certain direct encouragements to purchase (eg 'Buy here', 'Buy now' and similar statements) were also considered aggressive marketing in the context in which they were presented, and therefore illegal.

- (c) **Telemarketing:** A binding agreement between a trader and a consumer pursuant to telemarketing is subject to a written agreement.
- (d) **Customer reviews:** According to the MPA, a trader providing customer reviews of the product in the marketplace must provide information on whether the trader ensures that the reviews come from the consumers who have used or purchased the product and, if so, how this is done.



SWITZERLAND



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Switzerland?

Rules regulating advertising are spread through a number of different statutes. Basic legal and regulatory conditions for advertising are set by laws that regulate commerce in general. Most relevant are laws protecting fair competition, trademarks, works of authorship and privacy. Further, some statutes contain specific rules to address risks associated with the advertising of products and services such as alcohol, tobacco, pharmaceuticals, certain foodstuffs, financial services, lotteries and gambling. Media-specific advertising is regulated by laws related to radio and TV as well as telecommunication, depending on the form of distribution. In addition, advertisers and the press are subject to industry-specific self-regulation (see question 2).

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

Each of the industry-specific statutes, the laws regulating advertising on TV and radio, and self-regulatory codes of conduct provide their own distinct definition of advertising. For example, the Swiss Federal Act on Radio and Television treats as advertising any communication that is publicly broadcast as part of a TV or radio program, the purpose of which is to encourage the conclusion of transactions concerning goods or services. Communications aimed at promoting the brand or image of the advertiser are considered to be sponsorship and are subject to different rules (see question 6).

1.3 What is the basic regulatory framework for advertising regulation?

Advertising is protected by the constitutional rights of the freedom of expression and the freedom to engage in commerce. Several statutes, however, limit these constitutional rights and freedoms. Some of the most important ones are:

- (a) the Swiss Federal Act on Unfair Competition ('Unfair Competition Act');
- (b) the Swiss Federal Act on the Protection of Trademarks and Indications of Source ('Trademark Protection Act');
- (c) the Swiss Federal Act on Copyright and Related Rights ('Copyright Act');
- (d) the Swiss Federal Act on Radio and Television ('Radio and Television Act'); and
- (e) the Swiss Federal Act on Data Protection ('Data Protection Act') which was revised in 2023.

See also the self-regulatory framework discussed at question 2.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Advertising on (linear) TV and radio is specifically regulated; some of the most important rules being the following:

- (a) Generally, advertising must be clearly separated from the actual TV or radio program and must be clearly identifiable as such. Sponsorships and product placements (considered a form of sponsorship), however, may be inserted into programs. The sponsor must be clearly identified; sponsorship and product placements must not encourage the conclusion of transactions concerning goods and services, but must instead be aimed at promoting the image or brand of the sponsor.

- (b) Advertising of tobacco products, certain alcoholic beverages and certain therapeutic products is prohibited.
- (c) Programs for children and church services broadcasts must not be interrupted by advertising. Further, advertising which is aimed at minors, or in which minors appear, must neither exploit their lack of life experience nor harm them in their physical or mental development.
- (d) Swiss broadcasting law distinguishes licensed broadcasters/channels from broadcasters/channels which are merely required to register with the Swiss Federal Office of Communications. Licensed channels benefit from financial contributions (a form of state aid) and preferred access to signal distribution networks. Licensed broadcasters/channels are, however, subject to stricter rules on advertising. For example, licensed broadcasters/channels are subject to restrictions on the amount and duration of advertising. For such broadcasters/channels, as well as for non-licensed channels that can be received abroad, advertising must not occupy more than 15 per cent of the daily programming, or 20 per cent of any particular hour of programming.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are several industries whose advertising practices are specifically regulated:

- (a) **Food:** Advertising for foodstuffs is regulated mainly by the Swiss Federal Act on Foodstuffs and Utility Articles and the related Ordinance setting out implementing regulations for this statute ('Food Act'). The Food Act prohibits deceptive or misleading advertising or presentation of foodstuffs, while goods that are not foodstuffs must not be named or advertised in a manner that leads to confusion with foodstuffs. The rules also provide, eg, that all information relating to a food product, in particular the characteristics that it is claimed to have, must be true and that the advertising, presentation and packaging of foodstuffs must not mislead the consumer. Besides, references that attribute the prevention, treatment, or cure of a human disease to foodstuff and supplements, or that create the impression that such effects exist, are prohibited. In addition to the prohibition of health claims, the Food Act also defines the permitted references to health-related advertising without reference to disease. Permitted are references to the effect of supplements with a nutritional or physiological effect to promote the health of the population and nutritional and health claims. Permitted health claims are regulated by the Swiss Federal Department of Internal Affairs and are subject to a licensing requirement. Any health-related advertisements must be accurate and worded in a manner that consumers can understand.
- (b) **Medicinal products and medical devices:** The Swiss Federal Act on Medicinal Products and Medical Devices ('Therapeutic Products Act') and the Swiss Federal Ordinance on Advertising of Pharmaceuticals regulate advertising practices in the pharmaceuticals industry, as well as in the medical device and supplies industries. The Therapeutic Products Act prohibits, eg:
 - (i) misleading advertising,
 - (ii) advertising that is contrary to public order and morality,
 - (iii) advertising that may encourage consumers to make excessive, abusive or inappropriate use of medicinal products, or
 - (iv) advertising of medicinal products which are not approved for the Swiss market.

The laws also distinguish between advertising to professionals and advertising to the public, with differing rules. For instance, advertising to the public for prescription pharmaceuticals is prohibited. Advertising of over-the-counter drugs is generally permitted, subject to certain restrictions.

- (c) **Alcohol:** The Swiss Federal Alcohol Act, the Ordinance on the Food Act, and the Radio and Television Act and corresponding Ordinance contain specific rules on advertising for alcoholic beverages. For example, the current law prohibits the advertising of spirits on (linear) TV and radio, whilst TV and radio advertisements of beer and wine are allowed but subject, in particular, to the following rules:
 - (i) the advertisement must not be addressed specifically to minors;
 - (ii) no person who is or appears to be a minor must be shown in the advertisement consuming or appearing to consume alcoholic beverages;
 - (iii) no person must be shown in the advertisement consuming alcoholic beverages whilst driving a vehicle;
 - (iv) it must not be claimed that alcohol has any therapeutic qualities or is a means of solving personal problems; and
 - (v) advertising of alcoholic beverages must not encourage excessive consumption of alcohol.
- (d) **Tobacco:** The provisions regarding tobacco advertising in the Swiss Federal Tobacco Ordinance and Food Act which govern this matter are expected to be replaced by a new Swiss Federal Tobacco Products Act ('Tobacco Products Act') mid-2024. According to the Tobacco Products Act, the following tobacco advertising is prohibited:
 - (i) advertising on TV and radio,
 - (ii) advertisements (including national sponsorship engagements) directed at and addressed to minors (such as advertising in free newspapers or online; except on sites where access is charged or reserved for adults),
 - (iii) presentation of free samples,
 - (iv) poster advertising,
 - (v) advertising spots in cinemas,
 - (vi) advertising in public places or
 - (vii) sponsorship engagements of international events taking place in Switzerland.

In addition, the Tobacco Products Act covers all products comparable to classic tobacco products, such as nicotine-containing e-cigarettes (or pouches) and, as far as advertisement is concerned, e-cigarettes without nicotine. Advertising must not contain any false, inaccurate or incorrect information about the health effects of the product.

1.6 Are any government pre-approvals required?

Under the Swiss Federal Ordinance on Advertising of Pharmaceuticals, a pre-approval from the Swiss Agency for Therapeutic Products (Swissmedic) is required for ads for certain categories of pharmaceuticals in certain media. This includes ads in print media, on the internet and through electronic displays, as well as through audiovisual media (TV, radio and movie theatres) for sleeping drugs, sedatives, laxatives and anorectics with a potential for abuse and addiction.

Apart from that, Swiss Federal law generally does not require any government pre-approvals for advertising or promotional activities. Some Cantonal and municipal laws, however, require a pre-approval for some types of outdoor advertising; in particular, for advertising and promotional activities on public property and/or filming and photographing in public spaces for commercial reasons.

The Alcohol Division of the Swiss Federal Office of Customs and Border Security allows advertisements for alcoholic beverages to be voluntarily submitted for clearance. The Alcohol Division's approval or rejection is binding upon the advertiser, but decisions denying clearance can be appealed to the Swiss Federal Administrative Court and, ultimately, to the Swiss Federal Supreme Court.

Some authorities, for example the Swiss Federal Office of Communications (which enforces TV and radio advertising laws), give non-binding, non-prejudicial advice in voluntary, informal consultations if asked to do so by publishers or external lawyers.

1.7 Does the media pre-clear advertising?

Media or media agencies must pre-clear advertising themselves, or through their external lawyers. There is no industry-wide joint pre-clearing body.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The industry-specific laws mentioned above, such as the Food Act and the laws regulating advertising on radio and TV, do not provide for a private cause of action. They are enforced by government agencies on their own initiative, or upon notice by private parties.

Other laws, such as the Data Protection Act and the Unfair Competition Act, provide both for private causes of action and for government (administrative or criminal) enforcement.

In the case of trademark or copyright infringement, only the owner or exclusive licensee of the respective exclusive right has a right of action.

Each applicable statute provides for different remedies. Typical remedies in government enforcement of, eg, advertising on radio and TV, would be:

- the disgorgement of profits stemming from the illegal advertising; or
- the implementation of compliance programs going forward.

Some statutes also provide for criminal sanctions. For example, some violations of the Food Act, the new Tobacco Products Act or the Unfair Competition Act are criminal offences. The competent prosecutors will take criminal enforcement measures if so demanded by the competent regulatory agency, the injured individual or, in some circumstances, on their own initiative. Potential sanctions are:

- monetary fines (in case of violations of the Food Act, for example, up to CHF 40,000);
- disgorgement of profits; or
- imprisonment (in the case of the Unfair Competition Act, for up to three years).

1.9 When does a competitor have a right of action? What are the potential remedies?

Most relevant are the private causes of action provided in the Trademark Protection Act, the Copyright Act, and the Unfair Competition Act.

To the extent that the competitor is the owner or exclusive licensee of the trademark or work of authorship that it asserts is infringed by the advertisement, the competitor has standing in a trademark or copyright infringement action. Further, competitors have standing to claim infringements of the Unfair Competition Act if the advertisement is false or misleading and threatens the business or the economic interests of the competitor.

In actions for trademark or copyright infringement, or for unfair competition, potential remedies are:

- preliminary or permanent injunctions,
- money damages (including the disgorgement of profits), and
- impoundment of infringing articles,

as well as costs and attorney fees. Typical injunctions would prohibit a threatened infringement or order the defendant to cease and desist from an ongoing infringement.

1.10 When do consumers have a right of action? What are the potential remedies?

If the advertisement infringes the Unfair Competition Act, a consumer has a right of action if their economic interests are threatened. Further, a consumer has standing if they are the owner or exclusive licensee of the trademark or work of authorship that the advertisement infringes. The same remedies as those available to competitors are available to consumers, ie:

- preliminary or permanent injunctions,
- money damages (including the disgorgement of profits), and
- impoundment of infringing articles,

as well as costs and attorney fees.

A right of action also exists if advertising practices violate the personality rights of consumers, in particular, in connection with data protection laws. If data processing violates their personality rights, consumers may request that:

- data processing be stopped,
- no data be disclosed to third parties, and/or
- the personal data be corrected or destroyed.

Some statutes grant consumer protection organizations and federal agencies (eg, the Swiss Federal Institute of Intellectual Property) standing in civil proceedings and the right to file a criminal complaint (in cases of deceptive or misleading use of indications of geographic origin).

2 SELF-REGULATORY FRAMEWORK

2.1 Does Switzerland have a primary advertising self-regulation system?

The primary self-regulatory organization for the advertising industry is the Swiss Commission for Fairness in Commercial Communication ('Swiss Fairness Commission'). The Swiss Fairness Commission is a neutral and independent institution of the communication industry, in which consumers, representatives of the media, and advertisers are equally represented.

Anyone (including competitors and consumers) may file a complaint with the Swiss Fairness Commission if they think that a commercial communication is unfair and infringes the Swiss Fairness Commission's Basic Principles on Fairness in Commercial Communication ('Basic Principles') or the ICC Consolidated Code of Advertising and Marketing Communications Practice ('ICC Code'). The only

available remedy, however, is a declaration by the Swiss Fairness Commission that the commercial communication in question infringed the Basic Principles or the ICC Code, and the publication of such decision.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The Basic Principles set out rules regarding:

- the protection of personality rights,
- data protection,
- comparative advertising,
- reproduction of the advertisements of others,
- lotteries,
- guaranteed acceptance of returned products,
- gender discrimination,
- separation of editorial material from ‘commercial communications’, and
- direct marketing.

In addition, the Swiss Fairness Commission applies the ICC Code. Additional self-regulatory advertising rules may apply, depending on the industry, product, service, claim and form of advertising.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Complaints filed with the Swiss Fairness Commission, other than those brought by competitors, are free of charge. The complaint must state the reasons why a certain advertisement is unfair, preferably indicating also which of the Basic Principles or article of the ICC Code the advertisement is claimed to infringe.

The Swiss Fairness Commission will notify the person responsible for the advertisement, and allow that person to respond to the complaint within a period set by the Swiss Fairness Commission. Subsequently, one of the three chambers of the Swiss Fairness Commission will render its decision. Each party may request a rehearing by the Swiss Fairness Commission *en banc*, which will then affirm or reverse the decision.

2.4 Is the self-regulation system effective? Is it widely used and followed?

In 2022, the Swiss Fairness Commission rendered 73 decisions. In around 51% of the cases, it decided in favor of the complainant. Only four complainants requested a rehearing by the Swiss Fairness Commission *en banc*. The Basic Principles and the Swiss Fairness Commission’s work are widely accepted in the industry.

2.5 Are the self-regulatory system’s decisions reported?

In earlier days, the Swiss Fairness Commission only published decisions that it deemed to be of public interest, or where the purpose of publication was to sanction the infringer. Nowadays the Swiss Fairness Commission publishes, on its webpage (www.faire-werbung.ch), after expiration of the period for a request for rehearing *en banc*, all decisions rendered by one of its three chambers. However, the names of the parties are not published, except where the Swiss Fairness Commission’s purpose in publishing the decision is to sanction the infringer.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Most of the complaints in 2022 dealt with the violation of the rules regarding:

- (a) **Gender discrimination:** An advertisement infringes the article of the Basic Principles that prohibits gender discrimination if it builds on gender stereotypes, or otherwise questions the equality of men and women.
- (b) **Aggressive selling methods:** An advertisement is considered aggressive and therefore unfair if it is addressed to consumers who have previously opted out from receiving commercial communications.
- (c) **Meaning of ‘commercial communication’:** ‘Commercial communication’ comprises any measures taken by competitors or third parties, which systematically influence the attitudes of a majority of persons towards certain goods, works, services or business relationships for the purpose of concluding or preventing a legal transaction.
- (d) **Application of self-regulatory rules:** The purpose of the Basic Principles is to respect fair business practices in commercial communication and thus to build public confidence in commercial communication. Commercial communication should be lawful, truthful as well as non-discriminatory, and comply with the principle of good faith in business transactions. In its first decision on native advertising in 2018, the Swiss Fairness Commission found a video posted on a media company’s website to violate the separation principle, which requires a clear distinction between content and advertising. The video dealt with allegedly questionable ingredients in traditional cosmetic products, and was paid for by a cosmetics company. Although the video was marked with the words ‘sponsored’ above the short introductory text, there was no corresponding reference in the video itself. Viewers had to close the respective overlay window in order to watch the video. This was not sufficiently identifying the video as advertising. In addition, the Swiss Fairness Commission found the term ‘sponsored’ to be misleading in this context, since the video qualified as an ad appearing as editorial content rather than an editorial contribution financed by a sponsor. See also question 8.3 below with respect to influencer marketing.

There have also been some decisions in the context of green/environmental marketing and influencer marketing (see question 8.3 below).

2.7 Are there any other self-regulatory systems that govern advertising practices in Switzerland?

Not applicable, besides individual sector-specific industry rules for certain products, services, claims and types of advertising (eg, sponsorship by pharmaceutical companies, advertising in financial industries).

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Switzerland (eg, consumer protection laws; IP laws; unfair competition laws)?

One of the basic statutes governing advertising in Switzerland is the Unfair Competition Act. According to this statute, advertising claims must not be false, misleading or violate by other means the basic principles of good faith in business relationships. The statute specifically prohibits false or misleading statements about the essential characteristics, benefits, risks, composition, method or

date of manufacture, fitness for a particular purpose, quantity, specification or geographical origin of the goods or services in question.

Other relevant basic laws applicable to advertising are the Trademark Protection Act, the Copyright Act and the Data Protection Act.

3.2 Is substantiation required for advertising claims?

The Unfair Competition Act prohibits false, misleading or unnecessarily disparaging statements.

In actions for unfair competition, the claimant will have to prove all necessary elements of the cause of action, in particular showing that the advertisement makes false claims or that it creates an overall impression that misleads the consumer. The court may, however, require the advertiser (defendant) to prove statements of facts contained in the advertisement if it deems such burden-shifting fair and reasonable, considering the legitimate interests of the advertiser (defendant) and the claimant. As an exception to the general rule on the burden of proof, the user of an indication of geographic origin must prove that the claim for such origin is correct.

In the (self-regulatory) complaints procedure before the Swiss Fairness Commission (see question 2 above), the burden to substantiate the advertising claims rests solely on the advertiser (as defendant).

To mitigate the risk of competitor actions advertisers should, where appropriate (depending on the level of the risk) add a disclaimer to an advertising claim.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Only statements of facts can be proved false or true, if challenged. Therefore, non-factual statements and obvious exaggerations (puffery) do not need substantiation.

It should be noted, however, that non-factual statements can still infringe the Unfair Competition Act. Depending on the overall impression created by the advertisement, they may be deemed misleading or unnecessarily degrading (as, indeed, may factual statements).

3.4 What are the rules governing the use of disclosures in advertising?

Disclosures, such as the use of ‘small print’ and on-screen disclaimers, must be true and clear (ie, not misleading). No specific rules apply with regard to the size of such disclosures. However, the principle of clarity, as set out in the Unfair Competition Act, may require that, eg, an on-screen disclaimer is displayed in a manner that allows consumers to read and understand the disclaimer.

Also, size requirements will apply for information about a non-purchase route to participate in competitions. The disclosures must be in such a size and format that make it clear to consumers that a non-purchase route is an equivalent method of participation (ie, offers the same chances of success). Other size requirements may apply for claims and disclaimers in ads for particular products and services (eg, pharmaceuticals).

Further, the existence of sponsorship (including product placements) of TV and radio programs must be disclosed, and specific rules apply to the insertion of the identification of a sponsor (see questions 1.4 above and 7.2 below).

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Endorsements and testimonials must be true and justified by the experience of their authors. Furthermore, a testimonial may only be used if the author agrees with such use. Further restrictions apply, in particular, in the food and pharmaceuticals industries. Testimonials that say, eg, that a pharmaceutical product has a guaranteed effect are prohibited. In addition, health-related information on food packages must not be presented as recommendations from doctors or other medical professionals.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules governing the use of product demonstrations in advertising. It is noteworthy that, for now, any product demonstration, which is part of a teleshopping or similar program and lasts longer than 60 seconds, must be clearly identified throughout the program as an 'Advertisement'.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permitted, but some restrictions apply. The Unfair Competition Act prohibits comparisons of products, works, achievements or prices in an incorrect, misleading, unnecessarily disparaging, or imitating way. The meaning of 'incorrect' and 'misleading' are fairly obvious. The other two concepts require further explanation.

A comparison can be 'disparaging' if it is incorrect or misleading, or if it uses degrading value judgments. The question of whether the advertisement is unnecessarily disparaging can only be decided based on the facts of the particular case.

The purpose of the prohibition on 'imitating' in comparative advertising is to avoid the exploitation of a competitor's reputation, either by creating a likelihood of confusion between products or by creating an image transfer (for the notion of 'image transfer', see question 10.2 below).

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The unauthorized reproduction or distribution of works protected under the Copyright Act (such as pictures) as part of comparative advertisements may provoke copyright litigation, in particular where the owner or exclusive licensee of the asserted copyright is a competitor.

The Trademark Protection Act confers on the trademark owner the exclusive right to use the trademark as a source identifier for their goods or services. It is noteworthy that Swiss trademark law only prohibits confusion as to origin, and not as to sponsorship or endorsement. Confusion as to sponsorship or endorsement, however, may be actionable as unfair trade practices under the Unfair Competition Act.

The use of a competitor's trademark in comparative advertising is generally permitted, as the competitor's mark is not used to identify the source of the advertised products or services. The unfair competition law restrictions described under questions 3.1 and 3.7 above must, however, be respected in any case.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

The Trademark Protection Act sets out the requirements to be fulfilled in order to use geographic claims (whether Swiss or foreign) for products, services and in advertising on the Swiss market or as part of a registered trademark. The law distinguishes between natural products (eg, crops and mineral water), foodstuffs and industrial products (all other products):

- (a) **Natural products:** The geographic origin for natural products is defined by their place of extraction or harvest.
- (b) **Foodstuffs:** To claim a particular origin for foodstuffs, at least 80% of the raw material weight must come from the designated place and the processing providing the essential characteristics must have occurred in the same place.
- (c) **Industrial products:** For industrial goods linked to a certain geographical origin, at least 60% of their manufacturing costs must have occurred in that place. In addition to the core manufacturing, the costs for research and development or standardized quality assurance and certification may be included in the calculation, whereas packaging, marketing and customer service costs are deemed irrelevant. Additionally, the activity giving the product its essential characteristics (eg, the assembly of a watch), as well as at least one essential manufacturing step, must have taken place in the designated place. Services (eg, financial services or medical treatment) can only profit from a geographic claim if the provider has a registered office and an effective administration center in the respective country.

Indications of source in advertising apply to all products and services shown.

Swiss law allows claiming a geographic origin for particular activities rather than the entire product, eg, ‘Swiss design’, ‘US Research’.

Any person whose right to an indication of source is infringed or threatened may file a claim with a civil court under the Trademark Protection Act, and request, eg, an injunction, information on the origin and quantity of items, the recipients of any such items and the extent of distribution. The plaintiff may bring actions for damages, satisfaction and disgorgement of profits. Swiss law grants standing to certain professional and trade associations, consumer protection organizations, the Swiss Federal Institute of Intellectual Property and the Cantons.

Anyone who uses incorrect indications of source also exposes themselves to criminal liability under the Trademark Protection Act.

Particular requirements apply for the use of the Swiss coat of arms, flags and other emblems as well as official signs of the Swiss Federation and of the Cantons, the communes and other public authorities recognized under Swiss law (Swiss Federal Act on the Protection of the Swiss Coat of Arms and Other Public Signs).

3.10 Are there any special rules governing product packaging?

Based on general advertising law (Unfair Competition Act), any commercial information, whether on product packaging or in advertising, must not mislead customers by obscuring the quantity of goods, works or services. Sector-specific regulations provide for particular rules on product information and packaging labels, eg, for pharmaceuticals, foodstuffs and utility articles, tobacco products and e-cigarettes as well as alcoholic beverages. Packaging of foodstuffs must not deceive customers as to the manufacture, composition, condition, method of production, storage life, country of production,

origin of the raw materials or components, particular effects or special value of the product. The new Tobacco Products Act will most likely require health warnings for certain tobacco and other products.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Dark practices or patterns are not explicitly regulated in the legal framework mentioned above. However, depending on their nature and the circumstances, dark practices may be considered misleading and thus unlawful under Swiss law.

Some industry-specific regulations (eg, regarding the advertising of medicines, gambling or alcohol) set certain limits, with the aim of preventing advertising addressees (especially minors) from being tricked or manipulated into a vicious circle of purchasing many other products or services.

Apart from the rules set out in the Unfair Competition Act (which already largely prohibits misleading information in dark patterns), the Data Protection Act and the Telecommunications Act also set out rules to prohibit dark practices. For instance, although consent is not required for the use of cookies (eg, for third-party cookies in the context of dark practices) in Switzerland, accurate information on the scope of the processing of personal data by cookies is required within the framework of a data privacy statement in accordance with the Telecommunications Act. In addition, all data protection regulations must also be complied with (in particular, the information obligations towards advertising addressees, the proportionate and purpose-bound processing of personal data, etc). If the legal or natural persons responsible for an advertising campaign or a system that could exercise dark practices do not comply with these regulations, such persons may be personally liable to prosecution.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

In Switzerland, there is currently neither AI-specific regulation nor general guidance on the use of AI systems in connection with advertising. The regulatory framework of advertising and the rules mentioned above are to be understood and applied in a technology-neutral manner.

To date, there is no explicit or general legal obligation to inform potential customers or advertising addressees about the use of artificial intelligence (eg, in advertising campaigns). However, if advertising does not inform addressees that they are interacting with an AI application while giving the impression that the advertising interaction is with a human being, such lack of transparency could be deemed misleading within the meaning of the Unfair Competition Act. The same is true when advertising in a sector in which it is relevant to interact with a human, from a regulatory or personality law perspective.

It should also be noted that the generated output of an AI system can come very close to a marketable work product of a third party (eg, because content on the third party’s website has been used as training data) without a reasonable effort of its own. This exploitation of another’s performance is prohibited under the Unfair Competition Act, which must be taken into account when using AI systems in advertising.

Moreover, European regulatory developments in connection with AI also have some effects in Switzerland. According to the current draft of the EU AI Regulation, for example, its rules also apply to Swiss providers if they market or deploy AI systems in the EU or use them within the EU (eg, advertising tools on digital platforms).

4 PRICE ADVERTISING

4.1 What are Switzerland's rules regarding price advertising?

If prices or price ranges are used in advertisements, companies have to disclose the prices that effectively have to be paid.

With respect to comparative price advertising, one may refer in advertising to:

- (a) one's own previous or future price if this price has been applied immediately before the ad or will be applied immediately afterwards. Such reference may be made for half the time such price was or will be applied, but at any rate for no longer than two months;
- (b) the price of other suppliers in the relevant market area, provided that this price concerns the majority of the same product or service, and is actually applied by other suppliers.

Price comparison is prohibited if the comparison is incorrect, misleading or unnecessarily disparaging.

4.2 What are Switzerland's rules regarding advertising 'free' products?

Products must not be advertised as 'free' if, in fact, they are not. This follows from the basic principle that advertisements must not be false or misleading (see question 3.1). In addition, the Unfair Competition Act prohibits the use of samples that confuse or deceive costumers as to the real value of an offer; eg, if the overall price of the package has been raised to cover the cost of including the 'free' component.

The use of 'free' products in promotional campaigns is generally permitted. However, it is prohibited to advertise alcoholic beverages and tobacco products by giving free samples to minors. Also, the use of samples of pharmaceutical products in promotional campaigns is subject to specific regulation.

4.3 What are Switzerland's rules regarding sales and special offers?

Sales and special offers must never be misleading, ie, they must clearly and unambiguously state the conditions under which consumers are eligible for price reductions, premiums or gifts. See also question 4.1 above.

The Unfair Competition Act provides that it is prohibited to repeatedly offer products below cost price, or to stress such offers in advertisements and thereby mislead costumers about the productivity of one's own company or that of a competitor.

4.4 What are Switzerland's rules regarding rebates?

The general rules of the Unfair Competition Act and the corresponding Price Disclosure Ordinance apply. In particular, this means that advertising with rebates must not be misleading and that price indications must be clear and comparable. There are specific rules with respect to the permitted disclosure and duration of rebates. See also question 4.1 above.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Online providers domiciled abroad with a registered office or a branch in Switzerland may be subject to Swiss rules on advertising and price claims. The Swiss regulator considers online providers domiciled abroad to fall within the scope of Swiss advertising laws if their internet presence clearly

targets consumers domiciled in Switzerland (eg, with a ‘.ch’ domain name and/or with a visible special focus on Swiss customers)—which is subject to interpretation.

All retail offers on the Swiss market indicating prices need to disclose the actual prices to be paid in Swiss francs, including public levies, copyright fees, early disposal fees and other surcharges of any kind that cannot be freely selected. A foreign currency may be indicated in addition. Shipping costs must either be included in the price or, at least, accessible (eg, through a link for online stores). At least one free payment method customary in Switzerland must be available (eg, credit card).

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Yes, there are products that may not be advertised in certain circumstances. For example:

- (a) **alcohol:** the advertising of alcoholic spirits is prohibited in areas surrounding public buildings, on public transport, at sport events, and at events or in places frequented mainly by minors.
- (b) **tobacco:** advertising of tobacco products is (currently) prohibited at sports events, in places frequented mainly by minors, on teaching materials or other publications addressed to minors, on radio and TV, on toys, and, going forward, also on billboard advertising, in commercials in cinemas, in and on public buildings, on sports grounds and as sponsorship of international events (and national events, if minors are present).
- (c) **On radio and TV** (and, in the future, potentially through other media), advertising of the following products is prohibited:
 - (i) tobacco products;
 - (ii) alcoholic spirits;
 - (iii) certain medicinal products and medical devices; and
 - (iv) sales offerings for all therapeutic products and medical treatments.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Sales methods that are considered particularly aggressive are generally prohibited for all products. Sales promotion trips or door-to-door selling are considered aggressive sales methods if the customer is limited in or deprived of their freedom to choose whether or not to buy; eg, where customers are hassled or insulted.

Furthermore, consumers appearing in a directory are entitled to state clearly therein that they do not wish to receive advertisements from third parties and that their data may not be used for advertising. Companies infringe the Unfair Competition Act if they ignore such opting-out by a consumer.

The Unfair Competition Act also prohibits the unsolicited sending of mass emails and other commercial communication disseminated via electronic communication networks. Generally, prior consent by the consumer is needed in relation to such ‘mass advertising’. Further, a company sending such communications needs to indicate its name and contact information and provide a free-of-charge and simple opt-out (unsubscribe) option in each communication. Consent is deemed given if

the consumer provided their contact information in connection with a prior transaction, did not opt-out from receiving commercial communications from that company, and the commercial communication informs the customer about similar products and services that may also be of interest to the consumer.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

All radio and television programs (including any advertisements broadcast alongside them) must respect fundamental rights. In particular, all broadcast material must respect human dignity and not be discriminatory, contribute to racial hatred, endanger public morals, nor glorify or trivialize violence.

Further, the Radio and Television Act provides that broadcasters must ensure that minors are not confronted with programs which jeopardize their physical, mental, moral or social development. Broadcasters have to take measures to mitigate these risks, in particular, through the choice of the time of the day at which the program is broadcast or by informing the public (eg, by a signal displayed before the program starts or throughout the program) that the program is not suitable for minors.

Advertising of medicinal products and medical devices is unlawful if it is contrary to public order and morality or if it may incite consumers to an excessive, abusive or inappropriate use of those medicinal products.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

If radio or TV programs are sponsored in whole or in part, the sponsors must be named at the beginning or the end of each program. Sponsored programs must be identified as such. In particular, the sponsor's name, company logo or other symbols, products and services may be used for this purpose. Each mention of the sponsor must establish a clear relationship between the sponsor and the program. During the transmission of a television program, the sponsorship may be briefly mentioned again (as an insert). One insert per sponsor is permitted every ten minutes, but inserts are not permitted in children's programs.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Radio and TV advertising must generally be inserted in blocks (commercial breaks) and clearly separated from the editorial part of the program by a special acoustic or optical identification signal. In television, the term 'advertising' in the relevant national language must be used as part of the optical identification signal. Teleshopping and similar programs which last longer than 60 seconds must be clearly and recognizably identified as 'Advertisement'. Unless teleshopping and similar programs on the radio are clearly identifiable as such, they must not last longer than 60 seconds.

Product placements, sponsorships and the integration of branded content are permissible under the rules applying to sponsorship and product placements (see question 7.2 below).

According to the Swiss Fairness Commission, native advertising, whether on linear TV or online, needs to be clearly identified as advertising in order to comply with the general requirement for separation of advertising and content (see question 2.6). Other than the general separation requirements, and the Swiss Fairness Commission's more specific comments in their Basic Principles, Swiss law does not have specific legal requirements for native advertising through online media.

7.2 **Are there any special disclosure or other obligations when integrating advertising content with other content?**

In contrast to advertisements, product placements and sponsorships must not directly encourage the conclusion of transactions relating to products or services. Products and services must be naturally integrated into the program and must not be given undue prominence.

Clear reference must be made to product placements at the start and end of the broadcast and after each commercial break. A single reference suffices for product placements, production aids (prop placement) and prizes of a low value (up to CHF 5000).

Product placement is not permitted in children's programs, documentary films, or religious broadcasts, unless the sponsor merely provides goods or services of low value free of charge, in particular, as production aids (props) or prizes, and does not provide any additional remuneration.

8 **SOCIAL MEDIA**

8.1 **Are there any special rules governing the use of social media for advertising purposes?**

There is no statute that specifically governs advertising in social media. The legal and regulatory conditions for advertising described elsewhere in this chapter also apply to social media advertising. In particular, the barrier of surreptitious advertising should be given special consideration. When a person uses a blog or a user account, a profile, or a similar form of affiliation to a social media platform or to a media portal, in order to carry out or facilitate advertising for itself or for third parties, it may be that such advertising is not clearly recognizable as such for the users. If a post or such other content is not clearly recognizable as 'commercial communication', the relationship with the third party must be disclosed. This especially applies where the third party provides remuneration or benefits in kind.

In addition, since social media advertising typically involves the collection and use of personal data relating to the network's users, privacy laws will apply. Of relevance are the Data Protection Act and the corresponding Ordinance. Personal data (data about an identified or identifiable person) may be collected, stored, or otherwise used or processed only according to certain basic principles. Most relevant are the following:

- (a) **principle of lawfulness:** personal data must not be collected or used in unlawful ways (eg no collection by illegal hacking);
- (b) **principle of purpose specification:** the purpose for which the personal data is collected and used must be specified at the time of collection, evident from the circumstances, or provided for by law;

- (c) **principle of transparency:** the collection and the purpose of the collection and use of the personal data must be recognizable for the person concerned; and
- (d) **principle of fairness and proportionality:** personal data must be processed in good faith and only as long as and to the extent necessary for the specified purpose.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

Advertisers may be responsible and liable for user generated content if they offer a platform for such content and actively control the content. If the advertiser does not or cannot actively control the hosted user generated content, a court can still grant injunctive relief, forcing the advertiser to remove illegal content (see question 8.3.).

Moreover, if companies pay somebody to disseminate—as user generated content—positive or misleading information about the products of the company (eg, payment for a favorable product review), such behavior can constitute an unfair trade practice actionable under the Unfair Competition Act.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

On 14 January 2013, the Swiss Federal Supreme Court rendered a judgment concerning libelous statements made by a blogger. The blog was hosted by a newspaper on a blog platform that allowed third parties to post user generated content. The court held that the author of the blog and the newspaper had to remove the blog article as it infringed personality rights. The court further required the blogger and the newspaper to pay costs and attorneys' fees. Although a hosting provider does not, and typically cannot, actively control the dissemination of user generated content, it is likely that a court will order hosting providers to take down libelous or otherwise illegal user generated content hosted by the provider. At the same time, the Swiss Federal Supreme Court made it clear that this only applies to injunctive relief (takedown) and does not concern the question of whether the hosting provider is in any way responsible or liable for the dissemination of the libelous content.

The decision-making practice on influencer marketing of the Swiss Fairness Commission has undergone a transformation in recent years:

- (1) First, it has ruled in two cases against a snowboarder and a mountain biker, where it was argued that their posts (respectively, a photo of the snowboarder in the shop entrance of his sponsor and a photo showing two of cyclist's sponsor's credit cards) did not contain any reference to paid advertising. The Swiss Fairness Commission rejected the influencers' objections that the posts had been published for purely personal interests, and affirmed the existence of a duty to label advertising.
- (2) Second, in a case related to a post by an influencer about a music video shoot which referred to partners who were involved in the production, but from whom the influencer had not received any remuneration, it ruled in favor of an influencer, considering this to be a mere acknowledgement that was recognizable to the average addressee.

- (3) Third, in a leading decision, the Swiss Fairness Commission for the first time commented in detail on the issue of the commercial character of social media posts and the associated possible labeling obligation, and took a clearly influencer-friendly stance. The complaint was prompted by a post of former professional tennis player Roger Federer in which he could be seen playing tennis, with brief clips showing his headband, T-shirt and watch; throughout which various logos of his sponsors could be seen, but the post was not marked as advertising. The Swiss Fairness Commission came to the conclusion that the post in question was undoubtedly commercial communication. However, it was to be assumed that his followers, as average addressees, were aware that there were commercial reasons for the presentation of the respective brands (eg, due to sponsorship contracts). In other words, in the view of the Swiss Fairness Commission, the commercial character of the post was clearly recognizable to the average addressee. Therefore, there was no labeling obligation in this case.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

All aspects of the personality, such as an individual's name, picture, likeness, voice or identity, are protected by law. As a general rule, people must always be asked for their consent to the use of their name, voice, likeness or other parts of their personality in commercial communication.

It is noteworthy, however, that the personality right is not in any way a property right, but rather protects a person's dignity, honor and right to self-determination. Unlike some common law jurisdictions, Swiss law does not provide a right of publicity.

9.2 Are there situations when permission is not required?

Not every use of an individual's picture is prohibited. As long as a person is not identifiable, permission will not be required. For example, generally no permission is required from persons that are captured as part of the scene or background in pictures taken on the street or on public property and who are therefore not the main focus of the picture (ie, not the most prominent subject matter). But even in such cases advertisers must be careful; in particular, where persons may still be identifiable and are shown in an unfavorable context.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

See question 1.6.

Filming and photographing in public spaces for commercial reasons and using public space for advertising may be subject to permit requirements.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The use of other companies' recognizable products in advertisements is generally permitted. Some restrictions apply.

The use of another company's products must not infringe trademark laws. It is therefore generally not recommended to use protected trademarks of other companies' products. However, not every use of another company's trademark in advertising is prohibited. If a trademark is merely used as a design element and not as a source identifier for the advertised products, such purely decorative use will often be permitted.

The use of another company's product may, furthermore, be prohibited under the Unfair Competition Act. This statute prohibits the exploitation of the reputation of another company's products. Exploitation of reputation takes place when a customer transfers their appreciation for product A of manufacturer A to product B of manufacturer B ('image transfer'). The use of other companies' products in advertisements should therefore always be discreet and not be aimed at transferring an image. If a competitor's product is merely in the background of the advertisement, such a use will normally be permitted.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Switzerland which affect advertising (eg, Swedish gender equality law)?

It is worth mentioning that the Basic Principles of the Swiss Fairness Commission (see question 2 above) state that advertising must not be discriminatory. Advertisers should therefore not use gender stereotypes or claims that discriminate on the basis of race or religion.

Otherwise, no special concerns need to be pointed out.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

No special concerns need to be mentioned.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Switzerland?

Not applicable.



TRINIDAD AND TOBAGO



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Trinidad and Tobago?

Advertising is generally regulated by legislative provisions, voluntary standards and industry codes of practice.

Statutory authorities, including the Trinidad and Tobago Bureau of Standards, the Chemistry, Food and Drugs Division of the Ministry of Health and the Consumer Affairs Division of the Ministry of Trade and Industry ('CAD'), have oversight of legislative provisions and standards.

According to the National Consumer Policy for Trinidad and Tobago, developed by the Ministry of Trade and Industry (which has oversight of consumer affairs), the CAD does not have an active role in the development or enforcement of industry codes of practice. As such, industry organizations are expected to develop and implement compliance activities among their members. The Advertising Agencies Association of Trinidad and Tobago is a private body which assists in the development of advertising best practices for advertisers in Trinidad and Tobago. The Advertising Agencies Association also assists the Bureau of Standards to develop the Advertising Standards which are applicable, though voluntary, to all stakeholders in Trinidad and Tobago. Note also that the Trinidad and Tobago Chamber of Industry and Commerce is another body whose membership consists of manufacturers, retailers, importers and exporters. Through its membership code of conduct, discussed later in this chapter, advertising is regulated.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Under the Advertisements Regulation Act 'advertisement' includes any notice, bill, placard, poster and similar publication. This Act is, however, archaic and its purpose is generally to regulate the exhibition of print advertising (bills, notices, placards, posters) and billboards. A more modern and broad definition of 'advertisement' is found in the (voluntary) Advertising Standards to mean 'any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium to persons in Trinidad and Tobago with the intent to influence choice, opinion or behavior, and includes advocacy, government, political and election advertising'.

1.3 What is the basic regulatory framework for advertising regulation?

The advertising legislation and/or regulatory provisions are as follows:

- Advertising Regulation Act (Chap 35:53);
- Protection Against Unfair Competition Act (Chap 82:36);
- Trade Descriptions Act (Chap 82:04);
- Consumer Protection and Safety Act (Chap 82:34);
- Advertising Standards Part 1: General Requirements (TTS 94-1:2017) ('Advertising Standards'), which are voluntary and apply to goods and services in general but not to food and drinks, drugs, cosmetics and devices (such as medical instruments/apparatus);
- Requirements for Advertising Part 2: Advertising to Children (TTS 94-2:2012), which are voluntary, and apply to all products advertised to children; and

- Advertising Agencies Association Standards of Practice, which are applicable to members of the Advertising Agencies Association but do not have the force of law (see question 2.2 below).

There are also several pieces of legislation which contain advertising provisions including, without limitation:

- Food and Drugs Act (Chap 30:01), which regulates, in principle, the advertisement of food and drink products, drugs, cosmetics and devices;
- Pesticides and Toxic Chemicals Act (Chap 30:03), which regulates the advertising pesticides and toxic chemicals;
- Tobacco Control Act (Chap 30:04), which regulates tobacco advertising; and
- Highways Act (Chap 48:01), which regulates the placement of advertisements, billboards and structures in relation to highways.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Certain types of advertising are specifically regulated including the following:

- (a) **Billboard advertising within close proximity to highways:** A person (advertiser) must first obtain the approval of the relevant Minister for the construction, maintenance and display of any sign or advertising display (for example a billboard) within proximity to a highway.
- (b) **Hoardings (print media) constructed in a public place:** See question 1.6(c) below.
- (c) **Tobacco advertising:** While print media is permissible, with restrictions, television, radio, internet and electronic advertising is not allowed.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are specific industries whose advertising practices are regulated including:

- food and drink;
- drugs;
- pesticides and toxic chemicals;
- cosmetics;
- devices (medical);
- tobacco products;
- competitions, promotions, contests; and
- political advertising.

Specific services are also regulated; eg, professional industries, financial services, travel services and educational services etc. In such cases, legislative provisions and/or voluntary standards are relevant.

1.6 Are any government pre-approvals required?

The necessity for government pre-approval will depend on the product in question. For example:

- (a) Under the Food and Drugs Act, food and drug product labels must be pre-approved by the Chemistry, Food and Drugs Division prior to importation and sale of the product in Trinidad and Tobago.

- (b) A business wishing to promote a contest/competition must first obtain the permission of the National Lotteries Control Board before it promotes a contest or promotion which falls within the definition of 'contest' under the Gambling and Betting Act. A 'contest' is defined to mean any contest, competition, method or device organized on a sales promotion activity whereby prizes are distributed or allotted in any manner depending upon, or to be determined by, chance or lot, but does not include any contest, competition, method or device organized for profit.
- (c) The person responsible for a hoarding (print media) constructed in a public place or a billboard constructed on a highway must first apply to the relevant authority for a permit to construct the same. A 'hoarding' is defined in the Advertisement Act to mean any structure used as an advertisement or used for exhibiting any advertisement. An 'advertisement' includes notices, bills, placards, posters and similar publications. The relevant authority will advise on the various requirements for the hoarding, that is to say, the acceptable height and distance from a highway or public place and maintenance requirements.

1.7 Does the media pre-clear advertising?

There is no system for media pre-clearance of advertising in Trinidad and Tobago.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Enforcement of advertising laws will ultimately depend on the product/service in question. Sanctions include fines and criminal prosecution for non-compliance with statutory obligations. Civil remedies may also be available, including damages and/or account of profits, depending on the circumstances and the legislative provisions infringed.

1.9 When does a competitor have a right of action? What are the potential remedies?

A competitor may have a right of action in a civil claim where the competitor can establish among other things, breaches of the Protection Against Unfair Competition Act. This will include, eg, claims that the third party (advertiser) has, during the course of industrial or commercial activities:

- engaged in dishonest practices;
- caused (or is likely to cause) confusion with respect to the competitor's enterprise or activities, in particular the products or services the competitor offers;
- damaged (or is likely to damage) the competitor's goodwill or reputation;
- misled (or is likely to mislead) the public concerning the competitor's enterprise;
- made false or unjustifiable claims which discredits (or is likely to discredit) the competitor's enterprise; or
- disclosed, acquired or used secret information without the competitor's consent.

Depending on the circumstances, the competitor may also have claims against the third party (advertiser) for, *inter alia*, trademark infringement, copyright infringement and passing-off.

These are the usual causes of action. However, additional causes of action may apply depending on the particular facts.

The potential remedies include damages, account of profits, injunctive relief and declarations (if relevant).

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers may have a right of action in negligence or negligent mis-statement, if the consumer has relied on the advertiser's statements to their disadvantage and has experienced damage or loss. Ultimately, any cause of action will depend on the facts of the case. Consumers may also alert the relevant statutory authorities, such as the CAD, that the advertisements are, *inter alia*, misleading, and, upon investigation, the CAD and the Minister with oversight of trade practices may take action. This may include prohibiting the advertisement or requesting that certain changes be made.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Trinidad and Tobago have a primary advertising self-regulation system?

Yes, the Advertising Agencies Association is a membership of advertising agencies or professionals whose function is, *inter alia*, to develop a code of ethics and policies which is respectful of advertising practice and society and to provide an institutional framework to safeguard advertising professionals and their work.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The Advertising Agencies Association has developed a document entitled 'Standards of Practice', in which members must ensure that the content of all advertisements/materials should, *inter alia*:

- comply with all legal provisions and advertising standards, both voluntary and involuntary;
- not omit material information which the consumer needs to make an informed decision;
- not be offensive to public decency and not contain anything that could prejudice respect for human dignity, particularly on the grounds of race, religion, sex, age, political belief and disability;
- have all stated claims, whether direct or implied, supported by sound scientific research and data, and not contain misleading, exaggerated or distorted statements regarding the true meanings from scientific or professional authorities, and should not contain subjective claims;
- not cause undue excessive fear or distress or encourage violent behavior;
- take into consideration the interests of consumers;
- not contain any statement or visual presentation or create an overall impression which, directly or by implication, omission, ambiguity or exaggerated claim, is misleading or deceptive, is likely to deceive or mislead consumers or makes false or misleading representations;
- not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence;
- not contain anything which lends support to unacceptable behavior;
- not denigrate identifiable products or competitors;
- not contain or refer to any personal testimonial unless it is genuine, current, related to the experience of the person giving it, and representative of typical and not exceptional cases. The claims in any testimonial should be:
 - verifiable; and
 - not, unless justifiable on educational or social grounds, contain any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The Standards of Practice do not have the force of law; however, there are disciplinary procedures in place for breach. A member upon being given notice of breach of the Standards of Practice will be called upon to respond within 14 days. The Disciplinary Committee of the Advertising Agencies Association will assess the matter and determine the appropriate action based on the circumstances.

2.4 Is the self-regulation system effective? Is it widely used and followed?

As far as we are aware, the self-regulation system is effective. The Standards of Practice generally reflect legislative provisions which have the force of law and, to that extent, they are widely used and followed.

2.5 Are the self-regulatory system's decisions reported?

No, they are not reported.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

- The Advertising Agencies Association has issued guidelines on intellectual property issues in advertising. Generally, the provisions advise members of the IP rights created in their advertising content and, the necessity to obtain approval for use of third-party IP rights.
- Comparative advertising and use of competitor's IP (eg, trademarks) is another area of focus. Generally, the Advertising Agencies Association warns against derogatory, defamatory or deceptive comparisons, or comparisons that are likely to cause confusion with a competitor's product. The Advertising Agencies Association states that advertisements should not:
 - use a competitor's trademark in an unfair manner which could affect the reputation or the competitor's image; or
 - prominently feature a competitor's logo which could be deemed a trademark infringement.
- Advertising claims should also be true and accurate and opinions should never be expressed as fact.
- As to confidential information, the advertiser must be careful not to reveal a competitor's trade secrets.

2.7 Are there any other self-regulatory systems that govern advertising practices in Trinidad and Tobago?

In addition to the Standards of Practice, the Advertising Agencies Association encourages its members to comply with the following:

- (a) Advertising standards both voluntary and involuntary. These include the following:
 - (i) The Advertising Standards, which are voluntary and generally govern advertising practices. The Advertising Standards have legislative underpinning so that, while they may be voluntary and represent best practice within the advertising community, several of its provisions are enforceable through various pieces of legislation.
 - (ii) The Requirements for Advertising Part 2: Advertising to Children, which are voluntary, and generally regulate advertising targeted to children, defined under the said requirements to mean a person 16 years and under.

- (b) The Trinidad and Tobago Chamber of Industry and Commerce Members' Code of Conduct ('Chamber Code of Conduct'), which regulates the conduct of members who belong to the Trinidad and Tobago business community, including importers, exporters, manufacturers and retailers. The Advertising Agencies Association specifically references adherence to Principle 3 of the Chamber Code of Conduct, which provides that members have the responsibility to maintain the standards as determined by the Advertising Standards Authority, Committee of Advertising Practice Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing ('CAP') and the Code of Broadcast Advertising ('BCAP').

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Trinidad and Tobago (eg, consumer protection laws, IP laws, unfair competition laws)?

- Advertisers must ensure that claims are not misleading or confusing since the Consumer Protection and Safety Act safeguards consumers against misleading and confusing advertising practices.
- Similarly, the Trade Descriptions Act makes it an offence to apply a false trade description to goods in the course of business, including in advertising. A 'trade description' includes any indication, direct or indirect about, *inter alia*, the fitness for purpose, performance or strength of the goods, testing and results of the goods, composition and physical characteristics of the goods.
- The Protection Against Unfair Competition Act does not specifically regulate advertising claims. However, its provisions are applicable in so far as they prohibit the following conduct during the course of commercial activities:
 - dishonest practices;
 - causing confusion with respect to another's enterprise, products or services;
 - damaging another's goodwill and reputation;
 - misleading the public with respect to another's enterprise, products or services. Misleading may arise out of advertising or promotion; and
 - discrediting another's enterprise, products or services. Discrediting may arise out of advertising or promotion.

3.2 Is substantiation required for advertising claims?

There are no express legal provisions on the substantiation of advertising claims. However, in so far as the Trade Descriptions Act and the Consumer Protection and Safety Act prohibit misleading advertising or false/misleading trade descriptions, an advertiser may be required to substantiate his advertising claims if it is alleged that the advertiser has breached the relevant legislative provisions.

The voluntary Advertising Standards specifically state that an advertiser should provide the advertising professional/agency with substantiation of the claim before the advertisement is broadcast. Advertisers must hold documentary evidence to prove all claims, whether direct or implied that are capable of objective substantiation. The adequacy of this evidence will be judged on whether it supports both detailed claims and the overall impressions created by the advertisement. Note that these provisions are also reflected in the Standards of Practice, which represent best practice among the Trinidad and Tobago advertising community.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There is no legislation on the types of advertising messages that do not require substantiation. However, advertisers must be sure not to engage in misleading or confusing advertising practices which may fall foul of the Trade Descriptions Act and/or the Consumer Protection and Safety Act.

3.4 What are the rules governing the use of disclosures in advertising?

There are no legislative provisions governing the use of disclosures in advertising. However, the voluntary Advertising Standards provide that an advertisement should clearly identify the advertiser on whose behalf it is published.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The Consumer Protection and Safety Act regulates 'consumer trade practices', including advertisements. The Act protects consumers against withholding adequate information or misleading or oppressive conduct. Similarly, the Trade Descriptions Act makes it an offence to apply a false trade description to goods in the course of business, including in advertising. A 'trade description' includes any indication, direct or indirect about, inter alia, the fitness for purpose, performance or strength of the goods, testing and results of the goods, composition and physical characteristics. Accordingly, endorsements or testimonials which fall foul of these legislative provisions will be prohibited.

The voluntary Advertising Standards provide that testimonials should be genuine and should not contain any statement or representation likely to give a misleading or erroneous impression. As for endorsements, they provide that advertisements should not claim or imply any endorsement from an individual or body where none exists. Further, endorsements should not be presented in a manner to give the impression of genuine testimonials.

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no laws relating to product demonstrations in advertising.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is generally permitted in Trinidad and Tobago. However, advertisers should ensure that such comparisons are not, inter alia, misleading or do not unfairly discredit their competitor's products: failing which, the advertiser may be liable under the provisions of the Protection Against Unfair Competition Act.

The voluntary Advertising Standards provide that advertisements should not make unfair comparisons with a competitor's products or services. Similarly, the Advertising Agencies Association warns against derogatory, defamatory or deceptive comparisons or comparisons that are likely to cause confusion with a competitor's product. Advertisements should not:

- use a competitor's trademark in an unfair manner which could affect the reputation or the competitor's image; or
- prominently feature a competitor's logo which could be deemed a trademark infringement.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

The Trade Marks Act provides that a person who uses a registered trademark does not infringe the same if such use constitutes fair use in comparative commercial advertising or promotion.

However, there are no express defenses/exceptions under the Copyright Act, as it concerns comparative advertising. The advertiser could, therefore, potentially be at risk of copyright infringement, depending on the use made of the copyright material.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The Trade Descriptions Act makes it an offence to apply a false trade description to goods in the course of business, including in advertising. A 'trade description' includes any indication, direct or indirect about, inter alia, the place of manufacture, production or processing or other history of the goods. The Trade Descriptions Act also prohibits the use of misleading descriptions. Goods which apply a false indication as to the place of manufacture, processing, production will be prohibited from importation into Trinidad and Tobago.

The Consumer Protection and Safety Act regulates 'consumer trade practices', including advertisements. The Act protects consumers against misleading information in the communication of the goods to the public. Accordingly, no advertisement should contain information which is false/misleading as to its geographic origin.

3.10 Are there any special rules governing product packaging?

There are special rules governing product packaging, depending on the product in question. For example, and without limitation, food products must comply with the various specifications set out in the Food and Drugs Act. Similarly, there are detailed legal provisions governing drugs which are also prescribed by the Food and Drugs Act. Food and drug labels must be submitted to the Chemistry, Food and Drugs Division prior to importation and sale of the product in Trinidad and Tobago. There are also detailed provisions governing the packaging and labeling of tobacco products in the Tobacco Control Act.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

There is no legislation or rules which expressly refer to 'dark practices'. However, the Consumer Protection and Safety Act regulates 'consumer trade practices', which include advertisements and promotion of products, the methods of salesmanship employed in dealing with the consumer and the manner in which terms and conditions are communicated to consumers. The Act protects consumers against misleading or oppressive conduct by the advertiser. Thus, if a complaint is made against a dark practice, the Minister with regulatory oversight of the Consumer Protection and Safety Act may prohibit the same.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules or guidance on artificial intelligence in advertising.

4 PRICE ADVERTISING

4.1 What are Trinidad and Tobago's rules regarding price advertising?

- The Trade Descriptions Acts provides that if any person offering to supply goods of any description gives any false indication concerning the price, the person is guilty of an offence.
- The Consumer Protection and Safety Act regulates among other things, 'consumer trade practices'. This term is defined to mean any practice relating to the supply of goods/services to consumers as it concerns price, advertising and communicating to the public. Any consumer trade practice which appears to be misleading/confusing to customers, subject them to undue pressure or is adverse to consumers will be regulated. Accordingly, price advertising which may be deemed misleading, subjecting consumers to undue pressure or has any adverse effect on a consumer may be prohibited or, at the very least, regulated. Ultimately, however, this will depend on the facts of the matter.
- The Adverse Trade Practices Order requires, for the purpose of commercial advertising, that, if the price is quoted or displayed exclusive of value added tax (VAT), a quotation of the tax applied to the goods must also be included. The quotation of tax must be stated in money terms with the figures/letters being the same size and prominence as the price of the goods.
- The voluntary Advertising Standards also specifically provide for price advertising, stating:
 - all statements of prices or of purchase terms must be clear and complete and relate to the good or service advertised;
 - advertisers must ensure that prices match the corresponding goods or services illustrated in the advertisement;
 - when a goods or service is subject to a tax, levy, fee or other statutory charge payable by the purchaser to an authority at the point of sale, the advertisement must state clearly the amounts of the price and of the tax, levy, fee or charge; and
 - generally, the prices quoted shall also include any Value Added Tax payable and be cited as 'VAT inclusive'.

4.2 What are Trinidad and Tobago's rules regarding advertising 'free' products?

There are no legislative provisions relating to advertising 'free' products. However, the voluntary Advertising Standards provide that goods, services, or samples of products must not be advertised as 'free' unless the goods, services, or samples are supplied at no cost and there is no extra cost other than the actual postage or delivery to the recipient.

Where an article is offered to the consumer on condition of any goods or services purchased, the article should be described as 'free' only if:

- the condition is clearly stated in close proximity to the word 'free';
- the price of the goods or services purchased is not increased over the regular price; and
- the quantity and quality of the goods or services offered are not reduced or changed to the detriment of the consumer.

4.3 What are Trinidad and Tobago's rules regarding sales and special offers?

There are no legislative provisions relating to sales and special offers. However, the voluntary Advertising Standards provide that phrases such as 'reduced price', 'sale price' or 'special price' should not be applied to goods which are classified and sold by the manufacturer or seller as 'used', 'seconds', 'reject', or 'defective' etc, or which are 'old stock', 'shop soiled', 'reconditioned', 'refurbished' or in similar condition, unless the classification clearly appears next to the phrase.

Further when advertising to children, the Requirements for Advertising Part 2: Advertising to Children provide that advertisers should not use words such as 'only', 'no more than', or 'bargain price', which seek to minimize the impression of the price.

4.4 What are Trinidad and Tobago's rules regarding rebates?

There are no legislative provisions regarding rebates. However, the voluntary Advertising Standards provide that any statement concerning percentage, fractional rebate, refund of money or discount shall mean that the stated percentage, fraction, or amount will be deducted from the regular price or cost of the goods or services.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no key restrictions which apply specifically to retail advertising.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc.)?

There are products that may not be advertised or, may not be advertised in certain media including, without limitation:

- Any food, drug, cosmetic or device which is advertised as a general treatment, preventative or cure for, among other things, alcoholism, cancer, obesity, diabetes, sexual impotence, tuberculosis, glaucoma, or epilepsy;
- A drug identified as a Third Schedule drug or controlled drug under the Food and Drugs Act. This is an extremely extensive list of drugs which require a prescription from a physician or dentist;
- Tobacco cannot be displayed in such a way that is visible to the public, but this prohibition does not extend to individuals accidentally displaying tobacco products when carrying or using them. The advertisement of tobacco products in television, radio, internet and electronically is prohibited; and
- Legal and dental services are prohibited from being advertised.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There is no general prohibition on specific forms of advertising, such as telemarketing to mobile phones. However, there are restrictions on certain products being advertised by specific media. For example, the Tobacco Control Act prohibits the advertisement of tobacco products in television, radio, internet and electronically, while print media is permissible, with restrictions.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

It is a criminal offence under the Criminal Offences Act for any person to engage in public selling or exposing for public sale or to public view any obscene print, or indecent exhibition.

The voluntary Advertising Standards also provide that advertisements should not contain material that could prejudice respect for human dignity, or that may offend accepted norms of public decency or cause serious or widespread offence. Similar provisions are found in the Standards of Practice of the Advertising Agencies Association.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

There are no specific laws regarding identifying the advertiser/sponsor. However, the voluntary Advertising Standards provide that an advertisement must clearly identify the advertiser on whose behalf it is published. Where teasers are used for advertisements, other than political advertisements, identification information must be provided at the end of the running series of these advertisements.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no specific laws on the integration of advertising content and entertainment content. However, the voluntary Advertising Standards provide that advertisements should be clearly identified and separated, regardless of the medium used, so that they are easily distinguishable from editorial content. Advertisements should also be presented in such a manner as to make clear the commercial intent.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no laws regulating disclosure when integrating advertisements with other content. However, the voluntary Advertising Standards provide that advertisements should be clearly identified and separated, regardless of the medium used, so that they are easily distinguishable from any other content. Advertisements should also be presented in such a manner as to make clear the commercial intent.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special rules governing the use of social media for advertising purposes.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

If the advertising claims are independently made by the user (consumer), the advertiser will not generally be responsible for them. However, ultimately, it will depend on the particular facts.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no key court or self-regulatory decisions regarding advertising and the use of social media and user generated content.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Generally, Trinidad and Tobago does not protect a person's publicity/image rights. However, the position may be different for celebrities or well-known characters:

- The Protection Against Unfair Competition Act provides that any act in the course of commercial activities which causes confusion and/or damages the goodwill or reputation of a celebrity or well-known character may be deemed an act of unfair competition. Accordingly, if an advertisement employing a celebrity image or well-known character has the effect of causing confusion or damage to the goodwill and reputation of the celebrity, the advertiser may be exposed to a civil claim for breach of the Protection Against Unfair Competition Act.
- The tort of passing-off may also be employed to protect the publicity rights of a person (particularly a celebrity or well-known character) if the elements of the tort can be established.
- The voluntary Advertising Standards state that an advertiser should not:
 - portray a person or their property or refer to them without relevant permission, except where the person or their identifiable property are within the public domain; or
 - use pictorial or other representations of a person without their consent.The Advertising Standards also provide that an advertiser should not portray or refer to deceased persons unless appropriate permission has been obtained from the relevant persons prior to the publication of the advertisement.

9.2 Are there situations when permission is not required?

According to the voluntary Advertising Standards, permission is not required for using a person's image, or other representation of them, or for using a person's identifiable property when:

- they are featured in crowd scenes,
- the person portrayed is the subject of a book, film or event being advertised, or
- the depiction of the property is in an outdoor location.

The use of the image must not, however, be offensive, defamatory or a threat to safety.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Under the Highways Act, a person (advertiser) must first obtain the approval of the relevant Minister for the construction, maintenance and display of any sign or advertising display (for example a billboard) within proximity to a highway. This may also include the materials used to construct the billboard.

Regulations also set out the specifications for the manner in which hoardings (billboards, placards, signposts etc) are constructed, maintained and displayed within proximity to highways or in public spaces. Among other things, advertisers must obtain the relevant Minister's approval for the use of certain types and intensity of illumination on the hoarding. The design of the hoarding must not be painted or constructed to resemble traffic signs.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Whether the use of another companies' recognizable products in advertising is permissible will depend on the particular circumstances of the matter. However, there is exposure for inter alia, trade mark infringement, copyright infringement, unfair competition and passing-off. In the example of an actor wearing branded training shoes, if the advertiser can establish that the use of the trade mark constitutes fair use in comparative commercial advertising or promotion, it may escape liability for trade mark infringement. Similarly, if the advertiser can avail itself of the exceptions under the Copyright Act, can establish on the facts that no acts of unfair competition have been committed or, the elements for passing-off have not been established, then use may be upheld. Ultimately, the facts of the matter will determine whether use is permissible.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Trinidad and Tobago which affect advertising (eg, Swedish gender equality law)?

There are no cultural rules that are particular to Trinidad and Tobago which will affect advertising.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Trinidad and Tobago is a conservative, multi-ethnic society. Christianity, Hinduism and Islam are the largest religious groups. Advertisers should bear this in mind when developing advertisements for a Trinidad and Tobago audience.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Trinidad and Tobago?

Trinidad and Tobago advertising legislation targets, in particular, misleading advertising and advertising causing confusion among consumers. Advertisers should keep this in mind when developing advertising content for a Trinidad and Tobago public.

Note also that the Ministry of Trade and Industry, with oversight of consumer affairs in Trinidad and Tobago proposes to repeal the current Consumer Protection and Safety Act and implement a modern framework of consumer protection legislation.

 TUNISIA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Tunisia?

Advertising in Tunisia is subject to various regulations, including:

- Law No 95-36 of 24 April 1995 on Advertising: This law is the primary legal framework governing advertising in Tunisia.
- Consumer Protection Law: Advertising must comply with consumer protection regulations.
- Trademark Law: Trademark ownership and intellectual property rights are important for advertising approval.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Advertising in Tunisia includes various forms of communication aimed at promoting products, services, or brands. The determination of what constitutes advertising is based on the promotional nature of the communication and its intent to promote a product or service.

1.3 What is the basic regulatory framework for advertising regulation?

Advertising in Tunisia is generally subject to regulations ensuring fairness, transparency, and consumer protection. Advertisers must comply with the specific laws and regulations governing different types of media and advertising practices.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Certain advertising practices, such as comparative advertising, may be subject to specific regulations and restrictions.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Advertising related to certain industries like pharmaceuticals may be subject to specific regulations and restrictions.

1.6 Are any government pre-approvals required?

Some advertising materials may require pre-approval or permits from relevant authorities before being published or aired. For instance, pharmaceutical products often require approval from health authorities.

1.7 Does the media pre-clear advertising?

Media outlets in Tunisia may have their own pre-clearance procedures to ensure compliance with advertising regulations. Proof of trademark ownership and adherence to content guidelines may be necessary.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The government enforces advertising laws through regulatory authorities and bodies. Potential remedies for non-compliance may include fines, warnings, or bans on advertising.

1.9 When does a competitor have a right of action? What are the potential remedies?

Competitors can take legal action if they believe a competitor's advertising is false, misleading, or in violation of competition laws. Remedies may include cease-and-desist orders or damages.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers may take legal action if they are harmed by misleading advertising. Remedies may include refunds, compensation for damages, or other appropriate remedies.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Tunisia have a primary advertising self-regulation system?

Tunisia may have advertising self-regulation bodies, but specific details may vary. It's advisable to check with local industry associations for information on self-regulation.

2.2 Is there a self-regulatory advertising code? What are the key principles?

N/A

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

N/A

2.4 Is the self-regulation system effective? Is it widely used and followed?

N/A

2.5 Are the self-regulatory system's decisions reported?

N/A

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

N/A

2.7 Are there any other self-regulatory systems that govern advertising practices in Tunisia?

No specific self-regulatory system governing advertising in Tunisia has been mentioned.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Tunisia (eg, consumer protection laws, IP laws, unfair competition laws)?

See question 1.1 above.

3.2 Is substantiation required for advertising claims?

Yes, substantiation is typically required for advertising claims in Tunisia.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

N/A

3.4 What are the rules governing the use of disclosures in advertising?

N/A

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

N/A

3.6 What are the rules governing the use of product demonstrations in advertising?

While there may not be specific rules governing product demonstrations, advertising content should adhere to relevant laws and not be misleading.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising may be permitted but should be truthful, non-misleading, and based on accurate and verifiable information.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Comparative advertising should not infringe on the intellectual property rights of others.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Claims related to geographic origin are generally allowed as long as they are accurate and not misleading.

3.10 Are there any special rules governing product packaging?

N/A

3.11 Are there any special rules or guidance on the use of 'dark practices'?

N/A

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

N/A

4 PRICE ADVERTISING

4.1 What are Tunisia's rules regarding price advertising?

Price advertising should be transparent and not misleading. Pricing information must accurately reflect the actual cost to the consumer.

4.2 What are Tunisia's rules regarding advertising 'free' products?

Advertising 'free' products should accurately represent the terms and conditions for obtaining the free item, and any additional costs or requirements should be disclosed.

4.3 What are Tunisia's rules regarding sales and special offers?

Sales and special offers should not mislead consumers, and any conditions or limitations should be clearly communicated.

4.4 What are Tunisia's rules regarding rebates?

N/A

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

N/A

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised or may not be advertised in certain media (eg, guns, medicines, etc)?

Certain products, such as tobacco and alcoholic beverages, may have restrictions on their advertising. There may also be limitations on the time and manner of advertising these products.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

False, misleading, or deceptive advertising is typically prohibited. Additionally, advertising that promotes violence, hatred, or discrimination is not allowed.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) The 2018 Law on Gender-Based Violence, which broadly defines violence against women, including sexual harassment and gender discrimination, indirectly addresses issues of indecency and obscenity.
- (b) Article 46 of Tunisia's Constitution (2014) and the amendment of Article 227 of the Penal Code enhance protections against gender-based violence and sexual offenses, which may encompass indecency and obscenity concerns.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor is?

Advertising in Tunisia should clearly identify the advertiser or sponsor. Transparency in sponsorship and advertising is encouraged.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

N/A

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

N/A

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

While Tunisia may not have specific laws governing social media advertising, general advertising laws apply, and advertisers should ensure that their social media promotions comply with these laws.

8.2 Is an advertiser responsible for advertising claims made in user generated content(eg, statements that a consumer makes on an advertiser's Facebook page)?

There may not be specific regulations governing this matter at present. However, advertisers should ensure that user-generated content used in advertising is truthful and complies with advertising laws.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

N/A

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice, and identity in advertising?

Using an individual's name, picture, likeness, voice, or identity in advertising without their consent may violate their privacy rights.

9.2 Are there situations when permission is not required?

Permission is generally required for using any individual's personal information in advertising, unless it falls under a recognized exception, such as public figures in certain contexts.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There may be specific requirements for using certain types of materials or locations in advertising. Companies should consult relevant authorities or obtain necessary permits when using such materials or locations in advertising.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

Using recognizable products from other companies in advertising may be allowed as long as it does not mislead consumers and complies with intellectual property laws.

11 CULTURAL CONCERNS

11.1 Are there any rules particular to the culture of Tunisia which affect advertising (eg, Swedish gender equality law)?

Adherence to cultural norms and sensitivities is important when creating advertisements in Tunisia. The use of religious or cultural symbols should be approached with sensitivity.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Advertisers should respect local customs and cultural norms when creating advertising content, especially when dealing with sensitive topics or symbols.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Tunisia?

Advertisers should conduct thorough legal reviews by local professionals before publishing any advertisement to ensure compliance with Tunisian advertising laws and regulations. Staying updated on evolving advertising regulations in Tunisia is crucial for successful advertising campaigns in the country.

 TURKEY 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Turkey?

There are two main regulations in Turkey setting out the principles of advertisements. These are:

- (a) the Law on the Protection of the Consumer No 6502 ('Consumer Law'); and
- (b) the Regulation on Commercial Advertisements and Unfair Practices No 29232 ('Advertising Regulation').

In addition, there are special laws and regulations with regards to specific products, such as medicinal products, alcoholic products or tobacco products.

The Law on Principles of Radio and Television Broadcasts No 6112 ('Turkish Broadcasting Law') also regulates the advertisements broadcast via TV, radio and on demand services.

There are also Guidelines offering practical roadmap for implementation of the legislative rules, enacted by the Advertisement Board, which is the sole administrative authority monitoring all advertisements in any media in Turkey. Pursuant to its authority, the Advertisement Board issues guidelines to elaborate on existing rules and principles of advertising legislation.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

The Advertising Regulation defines commercial advertisements as 'announcements published by advertisers in every and any channel, aiming to promote the sale or rent of goods or services, and to inform or convince the target audience, in connection with trade, business, craftsmanship or occupation, by means of commercial communication carried out in written, visual, auditory and other similar media'. Thus, every kind of commercial communication is determined to be an advertisement.

1.3 What is the basic regulatory framework for advertising regulation?

Although there are a variety of regulations by which certain products and services are regulated, the Consumer Law constitutes the general framework of advertising, together with the Turkish Commercial Code and Turkish Broadcasting Law. The details concerning the principles of advertising are set out in the Advertising Regulation and practical points are set out in Guidelines enacted by the Advertisement Board.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

There are some specific types of advertising regulated in the Advertising Regulation and in the implementing Guidelines, including:

- (a) **Direct selling and teleshopping advertisements which propose sales transactions to be conducted at the address of the viewer:** These must clearly and accurately define the advertised product or service, together with its price. Moreover, in such advertisements, a clear return policy should be offered, together with contact information of the advertiser, to the target audience so that consumers know that they have a right of withdrawal in relation to the purchased product or service. The sales price of the product or service and the withdrawal right of the consumer should be mentioned in the advertisement. Direct selling

advertisements should be clear and not misleading to the consumer. Advertisers dealing with direct advertisement practices should not collect and process address information of customers in a manner breaching the Data Protection Law No 6698.

- (b) **Hidden advertising:** A hidden advertisement is an advertisement which is not explicitly identified to the consumer as an advertisement, but there is an advertising purpose in it. Hidden advertisements are prohibited, as the consumer is caught unprepared, without the knowledge that it is an advertisement.
- (c) **Comparative advertising:** See question 3.7 below.
- (d) **Testimonial advertising:** See question 3.5 below.
- (e) **Influencer advertising:** See question 3.5 below.
- (f) **Advertisements containing price information and discount sales advertisements:** See question 4 below.
- (g) **Playing to emotions:** Fear and superstitious beliefs must not be used in an abusive manner and advertisements must not include content about patients, children, older people and disabled people, in a manner aimed at taking advantage of society's common sense of mercy.
- (h) **Before/after visuals** of patients cannot be included in advertisements.
- (i) **Children:** Advertisements intended for children, or potentially having an impact upon children, or featuring child actors should:
 - not involve any expression or image which will negatively affect the physical, mental, moral, psychological or social development skills of children;
 - not involve elements giving rise to unreal expectations among children or make it difficult for children to differentiate between reality and fiction, in consideration of the characteristics of the children included in the target group;
 - not involve messages implying that possession or use of a particular product alone will provide a child with physical, social or psychological advantages in comparison with other children of the same age, or that possession of a product will produce a contrary effect;
 - not involve any expression or image which may put children in a dangerous position, or encourage them to communicate with foreigners or to enter dangerous places;
 - not involve elements of violence which are likely to be imitated by children;
 - not involve images of children playing with tools, equipment or objects which may pose danger to the children themselves or their surrounding social communities;
 - not involve elements aimed at corrupting, changing or disparaging positive social, cultural and moral behaviors;
 - not involve expressions or visual presentations aimed at abusing children's trust in their parents, teachers and such other persons;
 - not involve elements which will weaken or eliminate parents' and teachers' authority, responsibility or judgment abilities;
 - not abuse parents' sensitivities towards their children, such as affection, compassion and emotional attachment;
 - not directly encourage children to persuade their parents or third parties to purchase a particular commodity or service;

- not involve expressions implying that children are required to enter into some kind of agreement so that they can acquire a particular commodity or service;
- not imply that the commodity or service concerned is affordable by any family;
- not involve expressions such as ‘only’ or ‘just’ used with price information in a manner creating the perception that the demanded price is low;
- not understate the skills required to make use of the relevant goods or services;
- in cases where additional materials are needed to use the relevant goods, or some other materials are needed to attain the displayed or defined result, involve elements clearly expressing this situation; and
- involve reminder symbols and warnings enabling the necessary measures to be taken for goods or services which are likely to be harmful to children’s and their surrounding communities’ health if no measure is taken.

In addition, advertisements and practices with regard to distance contracts must not include purchase invitations which are directly aimed at children.

(j) **Environmental advertisements:** These are advertisements which relate to environmental issues and/or contain environmental claims (eg, carbon free). The following rules apply:

- (i) They should not abuse consumers’ lack of knowledge on these matters and, if scientific claims are used, they should be approved by academic institutions.
- (ii) In advertisements regarding products that are subject to energy labeling requirements under an applicable law, if any information regarding energy efficiency or price is included, the energy efficiency class of the product advertised must be indicated.
- (iii) The Guideline on Advertisements Containing Environmental Claims, published by the Advertisement Board in December 2022, sets out various requirements:
 - General expressions such as ‘green’, ‘sustainable’, ‘eco’, ‘nature friendly’, ‘environment friendly’, ‘environmentalist slogans’, ‘zero waste’, ‘recyclable’, ‘safe for environment’, ‘efficient for environment’, ‘carbon neutral’, ‘renewable’, ‘green energy’ should not be used without further explanation or in a manner that cause ambiguity in the part of consumers.
 - Advertisements should contain detailed information pertaining to what the environmental claim is about, for what and how it is used, whether it wholly or partially pertains to the life cycle of the product, and explanatory information regarding measurement and assessment methods of the relevant environmental impacts.
 - Environmental claims related to targeted future environmental impacts of goods or services may be used in advertisements only if such claims are included in a strategy plan that is publicly available and verifiable.
 - The content of the comparison made through comparative environmental claims contained in advertisements, particularly whether the advertiser compare the mentioned product with its own previous products under the same brand or with products of its rivals, must explicitly be communicated.

- Any communication incompatible with sustainable consumption understanding, which underestimates the seriousness of consumer behaviors that cause environment pollution or waste accumulation, encourages for non-recyclable packings, directs consumers to ignore the environmental impact of their behaviors, encourages for or tolerates improper waste disposal, must be avoided.
- (k) **Electronic commercial messages:** Under Law No 6563 on the Regulation of Electronic Commerce, ‘electronic commercial messages’ include short message services with trade purposes, which may only be sent to non-merchant/non-craftsman recipients upon their prior consent that may be obtained in writing or through any means of electronic communication. These commercial communications, the contents of which should be in accordance with the consent obtained, must also provide contact information ensuring the identification of the service provider. Unless it is clearly understood from the message’s content, electronic commercial messages must include an expression indicating that the message is of a promotional or commercial nature. As recipients have the right to opt out from receiving such messages, service providers are held responsible for making sure that the recipients are notified of this right free of charge, and that commercial messages are stopped within three days of the recipient’s opt-out request.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

- (a) **Pharmaceuticals:** Pharmaceutical advertising to consumers is banned. Advertisement of pharmaceuticals may only target health professionals, subject to certain conditions.
- (b) **Medical devices:** The Medical Device Regulation provides that medical devices which serve for personal use can be advertised; however, those medical devices which serve for the use of health care professionals and those the price of which is reimbursed by the Social Security Institute cannot be advertised.
- (c) **Tobacco and e-cigarettes:** Advertising of tobacco products, including e-cigarettes is prohibited under the Law on Prevention and Control of Hazards of Tobacco Products. As of 2020, plain packaging principle for tobacco products has been introduced in Turkey. Since then, tobacco products are sold in standardized Pantone Craft Brown color packaging that only contains the name of the product and health warnings in written and visual demonstration.
- (d) **Alcohol:** Advertising of alcoholic beverages is prohibited under the Tobacco and Alcohol Regulation.
- (e) **Gambling:** Advertising of gambling is strictly prohibited. The Turkish Criminal Code prohibits the procurement of place and opportunities for gambling. Violation may result in imprisonment of up to one year, as well as judicial fines. ‘Procurement of place’ means providing physical places for gambling activities, including on the internet or in any other media.
- (f) **Fortune telling:** Advertisement of fortune telling, medium and astrology services is prohibited.
- (g) **Chat, friendship and matchmaking** lines and services are prohibited.
- (h) **Guns** are strictly prohibited.

- (e) **Health claims in food and dietary supplements:** Advertisements of food and dietary supplements using health claims are not prohibited, but are subject to strict compliance requirements pursuant to Regulation on Use of Health Claims for Food and Food Supplements. Prescribed health claims (or equivalent statements) set forth in the annexes of listed the Guideline on Health Claims for Food and Food Supplements drafted by the Turkish Pharmaceuticals and Medical Devices Authority may be used on food supplements provided that they comply with the provisions of the Health Claims Guideline. Accordingly, health claims may be used in labeling, promoting or advertising of food and food supplements in a manner that the average consumer can comprehend, provided that the claim:
- (i) is not vague, inaccurate or misleading,
 - (ii) does not cast doubt on the adequacy or safety of other products,
 - (iii) does not promote or encourage the excessive consumption of a particular food,
 - (iv) does not to cause fear in the part of consumers by referring to changes in body functions, and
 - (v) complies with the rules set out in the Guideline.
- Health claims are subject to strict monitoring. Turkish Pharmaceuticals and Medical Devices Authority, the Advertisement Board and RTUK are separately vested with power to monitor certain aspects of use and promotion of health claims.
- (f) **Food and beverages:** Pursuant to legislation, food and beverages are divided into the following three categories as provided by the Food and Beverages List, which has been prepared by the Ministry of Health:
- (i) Red category (including chocolate, sugar, dessert, cakes, sweet biscuits): Advertisement during children's programs NOT allowed; allowed for other programs only if the ad is broadcast with written legible warnings in the form of a flowing tape at the bottom of the screen, containing statements encouraging regular and balanced nutrition.
 - (ii) Orange category (including salty snacks, milky drinks, yogurt): Advertisement during children's programs allowed only if certain specific criteria are satisfied and accompanied with warnings containing written or oral statements that incentivize a healthy nutrition habit,
 - (iii) Green category (including fresh fruit, vegetables, meat, fish, eggs): Advertisement is allowed in all cases.
- (g) **Financial products and services:** Advertisements for financial services should be clear and not misleading. Advertisements regarding credit must not mislead the consumer about the type and term of the credit, the required qualifications, the interest payments, repayment terms and other potential fees. Under the Advertising Regulation, in advertisements for financial services:
- (i) the rates of interest and dividends should be stated correctly, including any conditions that may affect maturity value,
 - (ii) if credit services are promoted and an advertisement contains rates of interest and dividends, the monthly and yearly percentage amount of the total cost of credit to the consumer should be stated explicitly,
 - (iii) If credit services are promoted, consumers should not be misguided as to the type and term of the credit or required qualifications and/or collaterals.

1.6 Are any government pre-approvals required?

In Turkey, there is no governmental pre-approval system for advertisements. The only pre-approval mechanism is set out in the Law on Pharmaceuticals and Medical Preparations (Law No 1262), where it is stipulated that advertisements of prescribed medicines can be published only in medical magazines directed to health professionals (not consumers) with the pre-approval of Turkish Ministry of Health.

Similarly, the permission of Ministry of Culture must be sought when using historical places in advertisements.

1.7 Does the media pre-clear advertising?

No—there is no legal obligation for media corporations to pre-clear advertisements; however, in our experience, most media corporations seek a brief pre-clearance through their legal counsels before an advertisement is aired, in order to be compliant with the broadcasting principles issued by the Radio and Television Supreme Council ('RTUK') as well as the Advertisement Board.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The competent authority for the enforcement of advertising laws in Turkey is the Advertisement Board, incorporated under Turkish Ministry of Industry and Trade's General Directorate of Protection of Consumers and Market Surveillance. The Advertisement Board meets periodically to review advertisements that are claimed to violate the laws, and to impose penalties when necessary.

The Advertisement Board may review claims either upon receiving a complaint or *ex officio*. Complaints to the Advertisement Board should be filed in writing. The Advertisement Board may seek additional information, either from the parties, or from other institutions such as RTUK or the relevant ministries.

The potential remedies are:

- temporary or permanent cessation of broadcast of the advertisement; and/or
- correction of the advertisement through the same media; and/or
- administrative monetary fine.

If the same infringement is repeated in the same year, the administrative monetary fine can be multiplied up to ten times.

It is possible to appeal the decisions of the Advertisement Board before the Administrative Courts within 30 days of the date of notification of the decision. However, filing a lawsuit against the decision of the Advertisement Board does not affect the enforceability of the decision.

Similarly, RTUK may also impose a sanction against the media service providers:

- (a) if the advertisement is in breach of the Turkish Broadcasting Law or the Regulation on Procedures and Principles of Media Services (the Broadcasting Regulation):
 - (i) an administrative warning, or (if the violation continues after warning)
 - (ii) a monetary fine corresponding to 1–3% of the gross commercial communication income of the media institution for the previous month.
- (b) if the violation arises from non-compliance with some of the broadcasting principles, ie independence of Turkish Republic and Atatürk's principles, or supporting discrimination, terrorism, violence etc, then RTUK may directly impose a monetary fine on the broadcasting

institution without any preceding warning; this fine corresponds to 2–5% of the gross commercial communication income of the media institution for the previous month.

1.9 When does a competitor have a right of action? What are the potential remedies?

A company has the right to file a court action when a competitor's advertisement constitutes unfair competition or trademark infringement:

- (a) **Unfair competition:** The legal actions which can be brought are:
 - (i) a declaratory action: where the company will request from the Court a determination that the acts of the competitor constitute unfair competition;
 - (ii) a court action to prevent the act which amounts to unfair competition: such court action is preferred when the act is continuing as at the date of the court action; and
 - (iii) a compensation action: with such court action, a company suffering from unfair competition created by the advertisements of a competitor can request compensation to cover all of its material and immaterial damages. This type of court action can be filed together with or separately from the other two mentioned above.
- (b) **Trademark infringement:** Where a company's trademark is used in a third party's advertisement without permission (either by making association with the trademark or defaming the trademark), the injured party is entitled to:
 - (i) file a trademark infringement action and claim cease and elimination of the infringement; as well as
 - (ii) claim compensation for material and moral damages.

For both unfair competition and trademark infringement actions, a preliminary injunction request can be filed either before filing the substantive action or together with the substantive action.

1.10 When do consumers have a right of action? What are the potential remedies?

- (a) In Turkey, there are specialized 'Consumer Courts' constituted under the Consumer Law where consumers can pursue legal remedies in cases of disputes arising from consumer transactions, such as product liability actions. Applying for mediation is a pre-condition for filing a lawsuit before Consumer Courts, subject to limited exceptions listed under the Consumer Protection Law.
- (b) There are also Arbitral Commissions for Consumers in each district, which are authorized to resolve consumer claims with a value under TRY 66,000 (approximately €2,000) for 2023. This amount is updated every year.
- (c) In cases where a consumer is supplied with a defective product or service, or suffers damage because of a product or service as a result of a misleading advertisement, the consumer can apply before the Arbitral Commission or Consumer Court—depending on the monetary amount of the dispute—and claim:
 - (i) a refund of the product or service's amount; or
 - (ii) a replacement of the product or re-provision of the service or free of charge repair, if possible. If the matter goes to the Consumer Court, the consumer is also entitled to claim compensation for damages.
- (d) Although not a very common remedy in practice, a consumer can also file a separate claim for compensatory damages regarding a misleading advertisement before the authorized civil courts.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Turkey have a primary advertising self-regulation system?

The primary advertising self-regulatory body in Turkey is the Advertising Self-Regulatory Board ('ROK'). Since its foundation in 1994, ROK has been requesting the correction of advertisements it finds to be in violation of the International Code of Advertising Practice ('ICC Code'). The advisory decisions of ROK are not legally binding, and there therefore is no obligation for advertisers to comply with them. However, ROK members are committed to comply with ROK's statements, and, moreover, ROK's decisions are made public. In other words, the non-fulfillment of the requirements in ROK decisions will directly affect the credibility and the reputation of the advertiser within society and the sector.

ROK's main aims are:

- (a) to ensure that marketing communications adhere with rules that are based on international standards; to provide for the progression of standards and increase awareness of self regulation; and
- (b) to remove or amend advertisements that breach the rules without the need for recourse to the judicial system.

ROK members consist of advertising agencies, the Turkish Association of Advertising Agencies, advertisers, media members from TV, outdoor media, internet and radio, academics, and lawyers.

2.2 Is there a self-regulatory advertising code? What are the key principles?

ROK has adopted the ICC Code. The key principles of the Code are decency, honesty and truthfulness.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Yes.

- (a) The following parties may file an application before ROK:
 - consumers,
 - consumer and environmental institutions and related vocational organizations,
 - competitors and
 - advertising agencies.

The applications are made to the Head of the Committee. Applications must be made in writing, the violated provision must be explicitly specified with its Article number, and a copy of the advertisement attached to the application. Applications are primarily evaluated by the Chair of the Committee, who will determine the method by which the dispute should be resolved.
- (b) ROK meetings take place monthly. Decisions are adopted by a simple majority of the participants of the meeting, with the Chair having the deciding vote in the case of deadlock. In the event that the parties to the dispute are members of the Advertising Self-Regulatory Board, they are not allowed to participate in the discussions and decision-making process.
- (c) Once the Executive Committee or the Advertising Self-Regulatory Board has reviewed a file and come to a decision, it informs the parties about its opinion and if the advertisement has been found to be misleading, the advertiser or the advertising agency is requested to correct the advertisement or terminate its broadcast within two working days.

- (d) If the advertisement is not corrected or its broadcast is not terminated within two working days, the media institutions concerned will be informed in writing and requested to terminate the broadcast of the advertisement. The authority to determine whether a correction conforms to the decision lies with the Executive Committee. The corrected advertisement may not be broadcast without having obtained the approval of the Executive Committee.
- (e) Objections to the decision shall not stop the implementation of the decision. The parties have to abide by the decision until the objection has been assessed and a decision made.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The system of ROK is effective; it is widely used among advertisers. As the decisions of the Advertisement Board are legally binding and legally enforceable (as opposed to ROK, whose decisions are enforced on a voluntary basis), advertisers may choose to apply to ROK rather than to the Advertisement Board. Corporate and prestigious advertising firms see the importance of self-regulatory systems to create an auto-control in the sector and thus abide with ROK. From a legal point of view, it is in the interests of advertisers to use ROK as a self-controlling agent, as this will decrease the sanctions imposed by the Advertisement Board.

It is important to note that the decisions of ROK are not legally binding, but they are ethically (and professionally) binding in the sector, so they are respected by advertisers.

2.5 Are the self-regulatory system's decisions reported?

The self-regulatory system's decisions are not reported. The decisions can be objected to before the Executive Committee; however, objections are not reviewed by a separate body. Therefore, objections are basically requests for the review of decisions by the decision-making body. The system does not offer any right of appeal against the decisions because they are not binding.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Advertising companies which are members of ROK must abide by its decisions and comply with the principles ROK espouses. In practice, member advertising companies are co-operative and the principles set out are the fundamental principles of the sector. It should also be underlined that ROK gives great importance to misleading advertisements and member companies must be aware of such sensitivity.

2.7 Are there any other self-regulatory systems that govern advertising practices in Turkey?

No, there is no other self-regulatory system in Turkey.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Turkey (eg, consumer protection laws, IP laws, unfair competition laws)?

As explained above, in Turkey there is no specific and complete law devoted only to advertising. There are, however, various provisions in different laws and regulations which govern advertising claims:

- (a) The Consumer Law, being the main law regulating the general principles of the advertisements, states that advertisements must be in compliance with the applicable laws, the general principles determined by the Advertisement Board, general ethics, public order, individual rights and the principle of good faith. Moreover, the same law stipulates that no advertisement, announcement or implied advertisement that is deceptive or misleads the consumer, or abuses the consumer's lack of experience or knowledge shall be allowed. More or less the same rules appear in the Advertising Regulation as well.
- (b) One other main rule regulating advertising claims can be found in the Turkish Commercial Law, where sample cases of unfair competition are set out. Examples of advertising described as unfair competition are:
 - (i) comparing itself, its goods, business products, activities, prices with others, their goods, business products or prices in a misleading way;
 - (ii) defaming its competitors or profiting from its competitor's reputation;
 - (iii) making false statements regarding honors, diplomas or awards or using titles or symbols in a misleading way;
 - (iv) creating confusion with the businesses or business products or activities of others; and
 - (v) misleading customers by hiding the qualifications, benefits and/or dangers of one's products or activities.
- (c) The Industrial Property Law (Law No 6769) stipulates that using a third party's trademark in advertising material without the knowledge and permission of the trademark owner amounts to trademark infringement.

Apart from the above, if the advertisement violates personality rights, including the right to privacy, then, under the Turkish Civil Code, an injured party is entitled to take civil legal action for determination and cessation of the violation, as well as to claim both material and moral compensation if they have suffered damages.

3.2 Is substantiation required for advertising claims?

In principle, all claims in the ads must be substantiated. Advertisers are obliged to prove accuracy of claims in advertisements and are not allowed to make vague claims about their products and services. The Consumer Law and the Advertising Regulation require an advertiser to prove any material claims featured in its advertisements. Advertisements where material claims are not proven are generally evaluated by the Advertisement Board to be 'misleading advertisements'. In particular:

- (a) **Scientific or technical claims:** The Advertising Regulation prohibits advertisements from misrepresenting research findings or quotations from technical scientific publications. By this article, statistics should not be presented in a way to produce results different to the actual ones, and scientific terminology must not be used in a misleading manner. Inappropriate scientific expressions and scientific terminology that present claims as if they have a scientific basis that does not exist in reality must not be used in advertisements.
- (b) **Verifiable facts:** The Advertising Regulation requires definitions, claims or exhibits pertaining to verifiable facts contained in advertisements to be proven with scientifically valid information and documents, and if needed, 'scientific works' or 'test results' taken from certain institutions such as state universities or internationally accredited labs or scientific

centres must be provided. For comparative advertisements, claims must be proven by information and documents such as scientific works or test results taken from institutions such as universities or internationally accredited labs or scientific centres under all circumstances.

- (c) **Environmental claims:** Substantiation requirement for advertisements containing environmental claims is even stricter, as only scientific findings and technical displays based on scientific works recognized by academic institutions can be used to claim environmental impact of the advertised product or service. Advertisements containing environmental claims must not cause ambiguity in the part of consumer regarding the environmental impact and must not constitute unfair competition as if the advertiser is the only green-friendly company in the market in comparison to rivals.

3.3 **Are there certain types of advertising messages that do not require substantiation (ie, puffery)?**

No. There are no specific cases where substantiation is not required for the advertising messages. In other words, it is not possible to say that advertisers are allowed to puff up their products or to make vague claims about their products and services, as the Advertisement Board is very strict on this. For example, the Advertisement Board is very alert to the use of superlative (eg, the 'best', 'newest', 'cleanest', 'freshest') statements, and usually issues fines on the basis that all claims and assertions in ads must be based on 'scientific works' or 'test results' taken from certain institutions such as state universities or internationally accredited labs or scientific centers.

3.4 **What are the rules governing the use of disclosures in advertising?**

Under Turkish Law, disclosure is needed in order to ensure that the advertisement is true and not misleading and to provide enough evidence to back up the claims. Advertisers are obliged to make sure that their advertisements are fully understandable by the average consumer. In this respect, there should not be any potentially misleading implied claims or other misleading information in the advertisements.

In Turkey, disclosures are commonly made via subtitles, footnotes, scrolling texts or links, depending on the nature of the advertisement. No matter what the method of disclosure is, advertisers should make sure that consumers can easily and effectively understand the message and access the disclosed information. For example, if the disclosure is made via subtitles or scrolling text, the Advertising Regulation sets out that the subtitles should be at pre-determined sizes depending on the media, and should flow at a reasonable speed so as to be easily followed by consumers. Footnotes and subtitles should be kept at a minimum, and should not contradict the main message of the advertisement.

There are special disclosure requirements relating to product placement: see question 7.1 below.

The disclosure requirement is stricter for influencer marketing practices. Social media influencers are obliged to clearly disclose their relation to the brand and financial gain and/or benefits they are receiving for their content (such as free or discounted goods/services) by means of pre-determined disclosure expressions, depending on the platform on which the commercial takes place. See question 8.1 below.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

These are advertisements in which the claims made are supported by statements of real or legal persons. Such ads should not include testimonial statements that are not based on the experience, knowledge or research results of the person, institution or organization concerned, and the statements should be true and actual. Testimonials that become invalid due to expiration, or become inapplicable for any other reason, may not be used in advertisements. No visuals, statement or reference uttered by doctors, dentists, vets, pharmacists or health institutions that are likely to create the impression that the testifier is making a health claim can be used in advertisements. Testimonials uttered by social media influencers are subject to strict disclosure requirements (see question 3.4 above and 8.1 below) in order to prevent advertising via testimonials that are not based on social media influencer's own experience.

3.6 What are the rules governing the use of product demonstrations in advertising?

Most importantly, product demonstrations in advertisements must reflect the truth and must not be misleading. If the price is mentioned, it must be in compliance with the rules applicable for advertisements containing price information (see question 4.1 below).

The general rules also apply to product demonstrations in ads.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertisements are advertisements in which the features of the advertised goods or services are compared to the features of goods or services offered by rivals that serve for the same purpose or need.

Comparative advertising is permitted in Turkey under the Consumer Law, but only if:

- it is not misleading;
- it does not give rise to unfair competition;
- the compared goods or services are of the same nature, and they meet the same requests and needs;
- an aspect providing benefits to the consumers is compared;
- there is an objective comparison of one or more tangible, essential, verifiable and characteristic features (including the price) of the relevant goods or services with the compared goods or services;
- objective and measurable arguments based on numeric data can be proved by tests, reports or such other documents;
- it does not disparage, defame or disgrace a rival's goods, services, activities or other properties;
- the goods or services are procured from the same geographical region in cases where the goods or services are of a known origin; and
- such advertisements do not give rise to confusion between the advertiser and a rival of the advertiser, the said rival's trademarks, trade name, company name, other distinctive marks, goods or services.

Explicit comparative advertising, meaning explicit comparison using the name, trademark, logo or other distinct shapes or expressions, as well as commercial and trade names of rivals, is not allowed. It may still be considered to be explicit comparative advertising if the rival brand is easily recognizable through the way that the distinctive features of its products are included in the advertisement in an identifiable manner.

Aggravated burden of proof applies for comparative advertising. Under all circumstances, claims that are included in comparative advertisements must be proven by information and documents issued by relevant departments of universities or accredited or independent research, testing and assessing institutions.

Features of products that are classified as health claims may not be compared in food advertising. Conversely, features of products that are classified as nutrition claims may be compared, provided that they comply with the relevant law. Regardless of their nature, comparative advertisements are not permissible for food supplements.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Comparison using the name, trademark, logo or other distinct shapes or expressions, as well as commercial and trade names of rivals is prohibited under the rules governing comparative advertisement (see question 3.7). It may also constitute trademark infringement under the Industrial Property Code and unfair competition under the Turkish Commercial Code (see questions 3.1 and 3.7 above).

As regards copyright matters, the relevant law is the Law on Intellectual and Artistic Works ('Copyright Law'). If the work of a third party is used without permission in a comparative ad, then this will constitute copyright infringement, regardless of whether the competitor's trademark was used or not. In such cases, the owner of the work is entitled to file a copyright infringement action and claim for:

- (a) prevention and cease of the infringement;
- (b) copyright compensation, which corresponds to up to 3x the royalty amount (if the parties had entered into an agreement and agreed on a current market value as royalty amount); and, in addition,
- (c) compensation for moral damages.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

Under the Turkish Food Codex Regulation on Labeling Food and Informing Consumers, food labels should not be misleading in any way. The 'country of origin' is one of the pieces of mandatory information that should be stated in Turkish on the labeling without any abbreviations. Stating the name or address of the producer is not sufficient to be regarded as a country of origin notification to the consumer.

If the country of origin of the foodstuff is different to the country of origin of the primary ingredient of the foodstuff, then the producer should either disclose the country of origin of the primary ingredient or that the country of origin of the primary ingredient is different than that of the foodstuff.

3.10 Are there any special rules governing product packaging?

Turkish consumer law incorporates extensive legislation with regard to product packaging:

- (a) Under the Advertising Regulation, use of product packaging that creates the false impression that features of a product such as unit, length, weight, size, capacity have not changed, when, in fact, at least one of these has been changed, is deemed to be an unfair competition practice.
- (b) The formal requirements and content of price markings are regulated under the Regulation of Price Marking. Accordingly, packaging of product offered to consumers must contain written, digital or electronic labeling that is easily visible and legible. If labeling is not possible, lists containing information must be hung appropriately in a visible and comprehensible manner. Labels and lists must contain the following elements to be written in Turkish:
 - the place of production of the product (except for labels containing local production logo);
 - distinctive features of the product;
 - total sales price of the product, including all applicable taxes;
 - unit price of the product;
 - the date of application of the unit price and the total sales price of the product;
 - shape, logo or mark determined by the Ministry of Commerce for products manufactured in Turkey; and
 - deposit fee, if applicable, for delivery and return of packaging, if not included in the product's sales price.
- (c) With respect to food labeling, the main legislative instruments are:
 - the Turkish Food Codex Regulation on Food Labeling and Informing Consumers;
 - the Turkish Food Codex Regulation on Nutrition Claims; and
 - the Regulation on Use of Health Claims on Food and Food Supplements.

In addition, there are specific regulations as regards the packaging and labeling requirements of various products, such as cosmetics and human medicinal products.

3.11 Are there any special rules or guidance on the use of 'dark practices'?

Yes. 'Dark practices' or 'dark patterns' are broadly defined as unfair and deceptive commercial practice as per the Advertising Regulation. The 'use of methods that adversely affect consumers' free will to make decision or choice through means such as interface designs directing to a product or service on Internet or that aim to change consumer's decision in favor of seller or provider' is set out as such a deceptive commercial practice.

The Advertisement Board has recently rendered some decisions pertaining to dark practices whereby the Board concluded that the following practices constitute dark patterns:

- (a) Offering customers an easier path for annual subscription than for monthly subscription; by rapidly directing consumers to the page where purchase transaction may be concluded for annual subscription, whilst monthly subscription is available not by not directing consumers to the transaction page but to a page where they can obtain further information. The Board evaluated that such acts force consumers to execute a contract that they would not be a party to otherwise.

- (b) Offering various subscription options to consumers, but pre-selecting the subscription model that is the longest in term and the most favorable to the provider.
- (c) Designing the tools for purchasing an updated version of the product offered by the provider in a more attention-grabbing manner while the tools for keeping the older version of the product are designed to be non-prominent.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

While there are no specific rules to address this issue yet, the Advertisement Board rendered three decisions in September 2023 pertaining to the use of artificial intelligence in advertising practices. These decisions might provide limited guidance for the time being on advertisements created through using artificial intelligence.

In all these cases, the advertisements had included statements from ChatGPT, endorsing the advertisers and their products and naming them as the best and favorite in their respective sectors. The Advertisement Board found that the advertisements did not contain any research findings provided by relevant departments of universities or accredited or independent research, test and evaluation centers that could verify the claims, and noted that the answers were not up to date and not certain. Therefore, the Board concluded that the statements included in the advertisements, claiming superiority over rivals and their products, were misleading, and ordered that the advertisements in question cease. In these specific cases, the Advertisement Board mainly relied on the rules for burden of proof and held that the advertising claims were not properly substantiated.

4 PRICE ADVERTISING

4.1 What are Turkey's rules regarding price advertising?

The main principle regarding price advertising is truthfulness. Under the Advertising Regulation, when mentioning the price of the product in an advertisement, the true and accurate value of the product, inclusive of all taxes, must be included. If a personalized price, ie, a price offered following analysis of a consumer's purchase behavior and other personal data, is offered, the actual price determined by the seller and the personalized price must be communicated to the customer together.

In direct sales, where the sale/purchase transactions take place at the address of the customer, the sale price must be provided within the advertisement, along with an accurate description of the product or service. It is important to note that an advertisement of a product must not mislead customers into believing it to be a free product if it is not. Also, if there is potential for different prices for the product, such differences must be clearly set out in the advertisement.

Major amendments were introduced to the Advertising Regulation in March 2022, and the Guideline on Advertisements Containing Price Information, Discount Sales Advertisements and Commercial Practices was enacted by the Advertisement Board in April 2022. Some of the prominent rules include the following:

- (a) The lowest price applied within the last thirty days prior to the application of the discount should be taken as the basis for determining the price of any good or service before the discount;
- (b) Terms such as 'all', 'everything' cannot be used unless a price or discount advertisement applies to all goods or services in the store or in a specific category;

- (c) In advertisements related to discount sales campaigns, the words ‘up to’, ‘from’, and ‘to’ must be included in legible sizes;
- (d) Untrue claims that a good or service will be offered for a very limited period of time, aimed at influencing consumers to make a sudden decision and depriving them of the necessary opportunity or time to make an informed choice are not allowed;
- (e) Additional care is required in sales advertisements and commercial practices aimed at sensitive consumer groups, such as children, elderly, or disabled people;
- (f) The price presented to consumers in advertisements must be the total selling price of the good or service, including all taxes;
- (g) Sales prices should be denominated with ‘Turkish Lira’, ‘TL’ or ‘₺’ (i.e. the specific symbol for Turkish Lira);
- (h) If there are expenses arising from the delivery of the goods or services which are to be paid by the consumer, then the consumer should be informed of this and the price payable. If the amount is not certain, consumers should be informed of the calculation method;
- (i) In advertisements where instalment amounts are given, the total price of the advertised good or service and the number of instalments should be displayed together, with the number of instalments in a readable size, or audibly indicated; and
- (j) If there is a time or stock limit regarding the validity of the price, this time period, and amount of stock should be clearly stated in the advertisements.

Rules applicable for discounted sales are further explained under question 4.4 below.

4.2 What are Turkey’s rules regarding advertising ‘free’ products?

- (a) Free products are usually regarded as campaigns under Turkish Law. Thus, advertisements of free products must comply with the general advertising rules as mentioned above.
- (b) Under the Advertising Regulation and the decisions given by the Advertisement Board, the commitments offered in advertisements to consumers must be real and true. There should not be any discrepancy between the free product advertised and the free product received. Further, the conditions/details of those commitments must be included in the advertisement in an efficient way for the consumers to become fully aware. Transparency should always be the top priority of advertisers and advertisers should fulfil the commitments they undertake in their advertisements.

4.3 What are Turkey’s rules regarding sales and special offers?

Under the Consumer Law and Advertising Regulation, sales and special offers are also regarded as campaigns and so the law as stated in question 4.2 will also apply.

4.4 What are Turkey’s rules regarding rebates?

The Advertising Regulation sets out the principles regarding rebates:

- (a) In advertisements or announcements made to promote a rebate offered due to a shop opening, closing or moving, or simply due to the end of season, the advertiser should indicate the start and end dates of the rebate period, and, if the discounted goods or services are limited to a certain amount, such amount should be explicitly specified.

- (b) Expressions or images that may mislead consumers by causing confusion about which goods or services are subject to discount, how much of a discount will be applied, or that may create the impression that a larger discount is applied than is, in fact, the case, cannot be included in discount advertisements.
- (c) It is against the law for a seller to offer the same product for sale on the same e-commerce platform with different discount rates when accessed through different channels.

See also question 4.1 as to the Guideline on Advertisements Containing Price Information, Discount Sales Advertisements and Commercial Practices.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The Advertisement Board places the utmost importance on the subtitles used in advertisements. Under the Advertising Regulation, information having a fundamental role in a consumer's decision-making must be provided to customers for a sufficient period of time and in a manner that ensures that the terms and conditions of the advertised offer can be read.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

See question 1.5 above.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

See question 1.4 above.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Advertisements cannot be indecent or contrary to general moral values. Likewise, advertisements must not include immoral statements or visuals, pornographic material and/or sexually abusive content.

In addition to this, the Broadcasting Regulation states that any radio, television or on-demand broadcasts shall not have obscene character; and the Law on Internet Broadcasts (Law No 5651) prohibits broadcasts of an obscene character.

6. SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The Advertising Regulation sets out the rules of sponsorship in radio, TV and on-demand broadcasts.

Besides that, there is no specific rule regarding the inclusion of the name of the advertiser/sponsor in the advertisement. If there is a campaign supported by a sponsor, then its name will be mentioned due to the sponsorship agreement between the parties. However, it is not a legal requirement to mention the name of the advertiser in the advertisement. Rather, advertisements must include all the necessary information regarding the advertised product/service.

On the other hand, the Guideline on Commercial Advertisement and Unfair Commercial Practices Conducted by Social Media Influencers (see question 8.1 below) treats sponsorships in a much stricter manner and requires that social media influencers disclose the relationship between the advertiser and the social media influencer by including an identifying information of advertiser such as its name, trademark, tradename etc, and using, depending on the social media platform concerned, ‘#Advertisement’, ‘#Sponsor’, ‘Collaboration with @[Name of the advertiser]’, ‘Provided by @[Name of the advertiser]’, ‘#Received the products as gift from [Name of the advertiser]’, ‘With support of [Name of the advertiser]’. Social media influencers must comply with the Guideline. Similarly, advertisers/sponsors must inform social media influencers of the provisions of the Guideline and ensure that the social media influencer complies with it.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

Integrating advertising content with editorial content is possible under two options: product placement and banner ads:

- (a) **Product placement:** Under the Broadcasting Regulation, product placement is allowed in cinema films, films made for television, series, sports programs and light entertainment programs. Product placement may also be allowed in radio broadcasts. Consumers must be informed of product placement at the beginning and end of the program in which the product placement takes place, and, when the program resumes after each advertising break, the statement ‘There is a product placement in this program’ must be displayed in Turkish. Within radio broadcasts, this statement is made orally with the same procedure. The product embedded within the program by product placement should be used in such a natural manner as if it is part of the program. In general, product placement should not prejudice the program integrity and there should not be any exaggeration in the placement.
- (b) **Banner ads:** Under the Broadcasting Regulation, during banner advertisements, the banner advertisement logo which can be found in the annexes of the Regulation must be displayed. Banners must not occupy more than 20% of the total screen area during broadcasts. In order to prevent the distortion of the integrity, value, effectiveness and message of the program, spots and mini-spots, band advertisement techniques must not be broadcast with sound. Banners should be displayed for a maximum of 10 seconds for each insertion. It is prohibited to feature banner ads in children’s programs and news programs.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Under the Advertising Regulation, regardless of the manner or the channel of the advertisement, it should be clearly understood by customers that an advertisement is an ‘advertisement’. Hidden advertisements are forbidden.

During product placement and banner ads, consumers must be aware of the fact that such acts constitute an advertisement (see question 7.1).

In addition, advertorials must also include a statement or logo stating that such broadcast is an advertisement. Moreover, all advertorials must comply with the key principles set out above and should not mislead the consumer.

Disclosure obligations particularly applicable to influencer marketing are explained under question 3.4 above and 8.1 below.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Yes. On 4 May 2021, The Advertisement Board published the Guideline on Commercial Advertisement and Unfair Commercial Practices Conducted by Social Media Influencers' (Influencer Marketing Guideline). This Guideline contains the following measures, among others:

- (a) **Definitions:** It defines 'social media' and 'social media influencer', which is the first time that these terms have been legally defined. 'Social media' is defined as a real person or legal entity that allows users to create, view or share contents such as text, images and audio on the internet for social interaction purposes within the scope of the Law on Internet Broadcasts. 'Social media influencer' is defined as a person, engaging in marketing communication via social media account in order to provide sale or rental of goods and services offered by themselves or advertiser, to inform or persuade the target group.
- (b) **Testimonials:** Influencer marketing can be categorized as a particular form of testimonial advertising. If a social media influencer shares an experience that is fictional, pursuant to their advertising agreement with the brand owner, this will be deemed misleading. Under the Guideline, it is prohibited that the social media influencer shares 'a product or service which has not been experienced yet, for the purpose of commercial advertising, in a way that will confirm or create the perception in the eyes of consumers that good or service has been experienced'. This rule follows the general advertising principle requiring the accuracy of verifiable facts claimed in advertisements be proven with scientifically acceptable information and documents. The Guideline expressly states that social media influencers are not allowed to assert any claims regarding scientific research findings and testing conclusions that are not based on objective, measurable and numerical data and not possible to be proven.
- (c) **Advertising:** Advertisements communicated through social media influencers must be clear, understandable, and distinguishable. Accordingly, it is strictly prohibited for the social media influencer to create the impression:
 - (i) that a good or service that is given as a gift by the advertiser was purchased by the influencer;
 - (ii) of being solely a consumer while making financial gain and/or benefits such as free or discounted goods or services regarding the commercial advertisement of a good or service.

Thus, the influencers should refrain from creating the impression of being solely a consumer, despite the presence of an agreement between the advertiser, and the relation with the brand must be clearly disclosed.

It is mandatory to explicitly indicate if advertisement of the product has been edited with effects or filters.

In posts where financial gains and/or benefits such as free or discounted goods or services are provided from the advertiser, it is mandatory for the social media influencer to clearly indicate this with various statements regulated in detail in the Guideline, depending on the platform on which the commercial advertising takes place. To this end, advertisements featured on social media are categorized into four groups according to the platforms as follows:

- (i) advertising on video-sharing platforms (such as YouTube and Instagram TV),
- (ii) advertising on photo and message sharing platforms (such as Instagram, Facebook and Twitter),
- (iii) advertising on podcast platform, and
- (iv) advertising on platforms on which the content is visible for a short time (such as Snapchat and Instagram).

Stating various expressions specified by the Guideline for each platform, the social media influencer should explain to consumers that the relevant post is a promotion. Although the expressions in the Guideline are quite diverse for each platform group, they include hashtags such as #Advertisement, #Sponsor, #Collaboration and/or statements such as 'This video includes [advertiser's] advertisement.'

- (d) **Promotional tags:** These tags and explanations used by social media influencers must be positioned in a manner that is easily distinguishable from colors used in the advertisement or the background and in fonts large enough to be readable. Therefore, consumers should be able to promptly understand with no extra effort that the post is a commercial advertisement. If there are other tags and explanations used in relation to the post, the collaboration tags should be positioned in a manner that can be easily noticed among the others. Interfaces and technical features of the medium where the post is shared should be taken into consideration as well.
- (e) **Comparisons:** Social media influencers often promote goods that are compared with rival products. When the social media influencer is supported or sponsored by a brand, the statements of the influencer incorporating any comparison could be considered as comparative advertising within the meaning of the Advertising Regulation, and the liability for proving the claims in the advertisement could be attributed to the brand owner as the advertiser. If advertisements communicated by social media influencers constitute comparative advertising, such advertisements must comply with the requirements set forth in the Advertising Regulation which regulates that comparative advertising must not be misleading and must not constitute unfair competition, in addition to other requirements. As a principle, the sharing by a social media influencer of their opinion or experience about experienced goods and services does not result in unfair competition. However, such sharing could still constitute unfair competition if it contains statements that are unnecessarily offensive or that breach the principle of good faith or harm the reputation of the company offering the goods.
- (f) **Regulated advertising:** General rules regarding advertisements targeting children, advertisement of certain categories of products for which there is advertising ban, and rules regarding contests and sweepstakes are applicable to social media influencers as well.
- (g) **Advertisers' duties:** Advertisers must inform social media influencers of the provisions of the Guideline and require them to comply with applicable law and take necessary measures against their breach of obligations. Also, in cases where influencers are authorized by the

advertiser to promote goods and services through third parties, advertisers must ensure that the social media influencers convey the importance of obligations set under relevant regulations to third parties and mention that third parties must comply with all obligations regulated thereunder. In such cases, advertisers must also put sincere effort to ensure that social media influencers fulfil their obligations and must take necessary measures regarding any kind of violations.

Advertisers may not avoid obligations on the ground that social media influencer is personally responsible. As mentioned above, advertisers, advertising agencies and social media influencers are separately and jointly responsible for complying with the Guideline. However, if an advertiser proves that it has complied with its obligations, it may be deemed to have made the best effort reasonably expected to ensure that the social media influencers comply with the relevant rules. Accordingly, it could be argued that advertisers which fulfil their respective obligations and manage to prove it could be released from liability in respect of breaches committed by social media influencers. However, this argument should be revisited depending on the circumstances of the particular case.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There is no specific regulation regarding liability for of user generated content. However, under the Law on Internet Broadcasts:

- (a) Service providers are not responsible for controlling the content or investigating whether there has been unlawful activity. However, once they have been notified of illegal content, they are held responsible for removing such content from their broadcast.
- (b) Content providers are fully responsible for their content; however, under the Law on Internet Broadcasts, they are not liable for third parties' content on the website unless it is clearly obvious that the content provider adopts the relevant content and intentionally aims that users access to the relevant content.

Moreover, an individual is entitled to request that the content provider or the service provider remove any infringing content on the internet that violates their rights. If they cannot get a satisfactory response, then they are entitled to apply before the authorized criminal court of peace to ask for the removal of the infringing content from the relevant website and broadcast their response statement against this infringement.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are no court cases with special importance pertaining to the use of social media and user generated content. However, the Advertisement Board has rendered important decisions with respect to use of social media. For example:

- (a) In March 2021, the Board detected that an influencer with over 2 million followers, directed his followers to an e-commerce platform by providing hyperlinks to the website. In his Instagram story, the social media influencer had compared various products' prices and claimed that the prices were lower on the platform he was promoting, without any proper disclosure. The Board deemed the posts to be hidden advertising and ordered that the influencer cease such posts.

- (b) Similarly in April 2021, the Board ordered the suspension of posts of a Turkish social media influencer with over 2 million followers, due to hidden advertising activities conducted by her. The renowned influencer advertised several well-known trademarks without mentioning the advertisement features through her Instagram social media account. Her stories with '@kleoco', '@godivatürkiye' and '@miumiu' hashtags and reels posts on Instagram with the statements about 'Elidor', 'Mercedes-Benz' and 'L'Oréal' trademarks did not contain any disclosure regarding the collaboration between the influencer and the brand.
- (c) In January 2022, the Board rendered a decision regarding the posts shared on the account of a social media influencer, detecting that, although required statements like 'partnership' were included in promotional posts, those were not positioned in fonts large enough to be easily read by consumers and were not presented in a manner to enable consumers to notice them at first sight, taking into account interfaces and technique features of the medium where the post was shared. The Board concluded that the posts constituted hidden advertisements, and suspended the advertisement and imposed monetary sanctions.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

- (a) An individual's name, picture, or voice etc, constitutes personal information, subject to personal rights and protected by both the Turkish Constitution and the Civil Code. As such information is directly linked to the identity of the individual, it can be used only with the explicit prior consent of the individual. Under the Turkish Civil Code, persons whose personal rights are used without just cause or right are entitled to request from the courts that such use is brought to an end and cease, and can also claim for compensation if they have suffered damages.
- (b) Further, with regard to advertisements published via the internet, the Law on Internet Broadcasts also regulates that, should there be a violation of the privacy of an individual via an internet broadcast, then such individual is entitled to apply before the Telecommunications Directorate and request a ban of access to this content.
- (c) Moreover, infringing the right of privacy may also give rise to criminal liability, and infringing parties may be sanctioned with 1–3 years' imprisonment under the Turkish Criminal Code. Such sanctions are increased if the privacy of an individual is infringed by way of video or voice recording.

In order to avoid these liabilities, the consent of the individuals concerned must be obtained if such personal elements will be used.

9.2 Are there situations when permission is not required?

If an individual's personally identifiable information is used solely for advertising purposes, then such information can only be used with that individual's consent. However, there is an exception in the Turkish Civil Law, whereby disclosing personal information without consent does not constitute infringement if such personal information:

- (a) holds considerable importance for the public interest;
- (b) is of the utmost importance because of a superior private interest; or
- (c) is disclosed because of a right or authorization given by the law.

However, it is generally accepted that advertisements do not fall into the scope of these exceptions.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

As mentioned above, advertisers do not have to obtain pre-clearance from any authority. However, there are permissions to be granted in certain circumstances, eg, from the Ministry of Culture when using historic places. If a public domain (such as a park or a public building) is to be used in an advertisement, official permission from the relevant municipality is required.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

It is not permitted to use other companies' branded products in comparative advertising (see question 3.7 above). However, it would be possible to use third parties' products in product placement when broadcasting via TV or radio (see question 7.1 above), provided that the disclosure requirement is fulfilled.

It is also possible to use other companies' recognizable products in advertisements or campaigns, where an exclusive business-related consent has been given by the other company, or there is a special marketing agreement between the two companies. When it comes to influencer marketing, disclosure requirements should be fulfilled.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Turkey which affect advertising (eg, Swedish gender equality law)?

- (a) Although it is not peculiar to the culture of Turkey, the Advertisement Board has particular sensitivity when it comes to advertising containing sexual orientation issues, because the Advertisement Board considers portrayals of same-sex couples as contrary to the protection of family, which is a superior norm in Turkish culture.

In 2020, the Advertisement Board rendered a controversial decision about the promotion and sale of products such as t-shirts, sweatshirts, coffee mugs, phone cases, beach towels offered for sale on various e-commerce sites with expressions such as 'normal', 'LGBT', 'LGBT Power', 'Equality', 'Bisexual', 'Freedom', 'Lesbian', 'Gay', 'Love is Love', 'Homosexual', 'LGBT Relationship', 'Pride', 'Peace', and rainbow themes. By this decision, the Advertisement Board adopted a new principle of marking the promotion and sale of such products with '18+' warnings on websites, while not actually prohibiting the sale of such products. The decision is open to criticism in several aspects, because there is no legal disposition under Turkish law regulating the sale of products containing these themes and expressions with

‘18+’ marking; additionally the products offered were ordinary products such as phone cases, coffee cups, t-shirts, etc, and not products about sexual orientation, as stated in the decision.

The Advertisement Board rendered another highly controversial decision in July 2022, maintaining its heavily criticized approach. In this subsequent decision, the Advertisement Board concluded that the promotions published by a fashion company on the main page of its website under the title of ‘My Chosen Family’, which including the statement: ‘My Chosen Family: A chosen family consists of members who chose to support and love each other. It celebrates who you are no matter whom you love. Meet the LGBTQIA+ family who chose each other’ were against the Constitution and the Advertising Regulation.

- (b) Obscenity is not welcomed in any way in Turkish culture. Furthermore, all broadcasts including advertisements provided via any kind of channel must respect the Turkish family structure and Turkish general customs and moral values.
- (c) Another delicate issue is the use of the Turkish Flag. Under the Turkish Flag Law and Law on Elections and Electoral Rolls, it is prohibited to use the Turkish Flag for advertising and propaganda purposes.
- (d) In addition to the above, religion is a very sensitive issue in Turkey; consequently, advertisements should not abuse any religious elements.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Religion is an important and respected value in Turkey. The use of religious elements (eg, mosques or the visions of Prophet Muhammad) is not welcomed in advertisements, and so it is advisable for advertisers to refrain from using any religious elements in advertisements in Turkey.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Turkey?

We recommend that companies familiarize themselves with the most recent advertising law developments including, but not limited to, developments regarding advertisements containing environmental claims, use of health claims, consumer reviews, dark patterns, and artificial intelligence. We also recommend that companies carefully follow the Advertisement Board’s decisions in order to comprehend the Board’s approach and take its decisions into account in their efforts to fully comply with Turkish advertising law.

 UKRAINE 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Ukraine?

Advertising is mostly regulated by laws and regulations adopted at state level, which cover advertisement placement, timing, content, etc. The Advertising Law is the principal source of regulation of advertising activity in Ukraine, covering both general regulation of advertising and advertising in specific industries (tobacco, alcohol, drugs, financial services, gambling, securities, construction, employment and weapons). Outdoor advertisement placement may be partially regulated at the local level. Moreover, duly ratified advertisement-related international treaties take precedence over local regulations (eg, the European Convention on Transfrontier Television).

A self-regulatory framework is constantly developing, but so far it remains too weak to significantly influence the advertising legal framework. For more information, please see below.

On a larger scale, the advertising regulation in Ukraine is also constantly developing, so this overview summarizes the regulation as of 31 December 2023.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

The Advertising Law was revised with effect from 2 October 2023. ‘Advertising’ remains broadly defined and covers most types of communication. More specifically, it is defined as ‘information about a person, idea, and/or product distributed for monetary or other compensation, or for the purpose of self-promotion, in any form and through any means, with the intent to directly (through direct advertising, infomercials) or indirectly (through sponsorship, product placement) create or maintain awareness among advertisement consumers, as well as their interest in such person, idea, and/or product’.

The revised Advertising Law provides greater lucidity as to which advertisements are distributed and consumed within the territory of Ukraine and therefore fall under Ukrainian jurisdiction. Namely, at least three of the following criteria need to be satisfied:

- (a) the advertisement is predominantly or entirely targeted towards individuals within Ukraine;
- (b) the advertisement is in Ukrainian;
- (c) the seller or the advertiser has a registered address, permanent or temporary representation office (establishment), office, branch, warehouse, or retail space within Ukraine;
- (d) the seller or the advertiser provides delivery of the advertised product to or within Ukraine;
- (e) the seller or the advertiser provides maintenance or related services for the advertised product; and
- (f) additional criteria outlined by the legislation for determining the location of the recipient of electronic services.

The revised Advertising Law also brings in new guidelines pertaining to advertising (including product placement), including its dissemination through user-generated content (posts, bloggers’ ‘stories’), on platforms for shared access to video and to information (social media, online video platforms), and electronic communication channels (messaging, bots, and other digital technologies).

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework for advertising regulation includes both the Advertising Law and general laws related to the promotion and marketing of persons, ideas, and/or products. Unfair advertising is also regulated by the Unfair Competition Law.

There are, in addition, several specific laws that, *inter alia*, are aimed at the regulation of advertising in particular industries (eg, the Tobacco Law, the Gambling Law and the laws on pharmaceuticals).

It is also important to take into account a new Media Law that is in effect as of 31 March 2023. For example, the media advertising quotas are regulated by the Media Law.

Intellectual property laws, the Consumer Protection Law and the Personal Data Protection Law also form part of advertising regulation.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Ukraine has a comprehensive advertising regulatory landscape, where the Advertising Law provides for the specific regulation of various types of advertising:

- (a) **Electronic advertising:** The Advertising Law provides for specific regulation on advertising rendered via electronic means of communication (eg, text message advertising, email, search engines, websites and web pages, chatbots, automated messages, communication using telephone numbers, services employing augmented and virtual reality technologies, other digital information technologies).
- (b) **Outdoor and indoor advertisement placement:** The Advertising Law is also the basic law for the regulation of outdoor and indoor advertisement placement. However, in addition to regulations under the Advertising Law, cities with a population of more than one million and cities attractive to tourists usually adopt local rules for outdoor advertising placement. Moreover, the Ukrainian Government has the authority to approve master rules for the placement of outdoor advertisements.
- (c) **Media advertising:** In addition to the Advertising Law, media advertising (TV, radio, print media, online media, platforms for shared access to information or video, etc.) advertising is also regulated by the Media Law.
- (d) **Tobacco:** Further, the Tobacco Law imposes restrictions on the advertising, sponsorship, and sales promotion of tobacco, devices for consuming tobacco products without combustion, electronic cigarettes, refill containers, liquids used in electronic cigarettes, trademarks, and other intellectual property rights objects under which tobacco products are produced.

Regardless of the medium used, unfair advertising and comparative ads are also regulated by the Unfair Competition Law.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Ukraine is not a completely 'dark' market but there are industries for which advertising is heavily regulated. Notable examples include:

- (a) **Drugs, medical equipment and related activities:** Generally, the only drugs, medical equipment and methods for preventing, diagnosing and curing diseases that are permitted to be advertised are those which:

- (i) are duly licensed by the Ministry of Health, and
- (ii) do not require prescription or are not black-listed or necessitate specialized knowledge and training.

The Advertising Law establishes specific requirements as to the content of advertising of such products, and a long list of prohibited advertisement practices;

- (b) **Alcohol:** The Advertising Law establishes various limitations. However:
 - (i) It is still possible to advertise alcoholic beverages on linear audiovisual and audial media from 11.00 pm to 6.00 am and in specialized printed media (excluding the front and back pages of printed media as well as all printed media intended for children and young people).
 - (ii) Alcohol advertising must refrain from featuring individuals under the age of 18 as photographic models.
 - (iii) Advertising of alcoholic beverage-related trademarks is allowed in connection with sponsorship of television and radio programs, theatre and concerts, sporting and other events (except for events mostly dedicated to persons under 18).
 - (iv) Product placement of alcoholic beverages, trademarks, and other intellectual property rights objects associated with alcoholic beverages in linear audiovisual media programs is permissible, provided that certain exemptions are observed.

Note, however, that both the sponsorship and product placement rules in this area are not particularly clear and must be carefully observed.
- (c) **Tobacco:** Any advertising of tobacco, tobacco-related products, trademarks, and other intellectual property rights objects under which tobacco products are produced, are prohibited, including on the Internet, via sponsorship, product placement, and sales promotion;
- (d) **Financial services:** Advertising of financial services is only permitted if an appropriate financial institution status or the necessary permit or license has been obtained from the state authorities for rendering such services. The advertising of trademarks and names of service providers is an exception to this rule. The Advertising Law provides specific requirements with respect to the content of such advertising;
- (e) **Employment services:** Employment-related advertising must be gender-friendly and not discriminatory;
- (f) **Securities:** The Advertising Law provides for separate lists of what amounts to advertising of securities and stock exchange products and what does not. There are strict regulations on who may advertise certain securities and stock exchange products. The content of such advertisements must comply with the relevant statutory requirements;
- (g) **Residential construction projects:** Advertising of residential and non-residential premises is permissible only when the following conditions are met:
 - (i) the construction owner possesses property rights or land use rights for the land on which the advertised project is being erected,
 - (ii) the right to carry out construction work on the specific project being advertised has been obtained in accordance with the Urban Planning Law,
 - (iii) the necessary construction licenses (when applicable) have been obtained, and

- (iv) where applicable, the funds of individuals and legal entities (including for management purposes) are solicited for the construction of such projects in compliance with the Law of Ukraine on Guaranteeing Proprietary Rights to Real Property Objects to be Constructed in the Future; and
- (h) **Gambling:** The Advertising Law establishes various prohibitions on the advertisement (including product placement and sponsorship) of gambling, gambling-related trademarks, other intellectual property, as well as other designations under which gambling is conducted. However, it is still possible to advertise gambling for licensed operators using linear audiovisual and audial media in certain time intervals, in specialized print media, and on the Internet.

1.6 Are any government pre-approvals required?

No government pre-approvals are required. In practice, optional pre-approval of advertising materials is available from the Anti-monopoly Committee of Ukraine ('AMCU'). In response, the AMCU issues recommendations. In addition:

- (a) **Pensions:** In advance of dissemination, advertising materials concerning a non-governmental pension fund must be submitted for review and decision-making to the National Securities and Stock Market Commission.
- (b) **Social advertising:** Furthermore, if there are doubts about an advertisement's compliance with social advertising regulations, advertisers may seek an assessment from the National Television and Radio Broadcasting Council of Ukraine.
If a government authority, local self-government body, or its officials engage in social advertising, a mandatory assessment of its compliance with legal requirements for social advertising is required by the National Television and Radio Broadcasting Council of Ukraine.

1.7 Does the media pre-clear advertising?

To meet the requirements of the Advertising Law, the media usually pre-clears advertising for those business activities/products that are subject to mandatory state certification, permit or licensing requirements for their production or distribution. Due to the broad extent of this requirement, the media pre-clearance procedure usually involves the review of constituent and other basic corporate documents of the advertiser to check whether any certification/permits/licenses are required and available for the relevant activity or products.

Another important aspect of the pre-clearance procedure is the availability and/or registration status (if necessary) of intellectual property rights (such as trademarks and copyright).

1.8 How does the government enforce advertising laws? What are the potential remedies?

There are several state agencies that enforce advertising laws, depending on the industry/area:

- (a) the State Service of Ukraine for Food Safety and Consumer Protection ('the Service') mostly enforces advertising laws from a consumer rights protection standpoint, including advertising laws relating to the construction of residential houses;
- (b) the AMCU enforces with respect to unfair advertising;
- (c) the National Television and Radio Broadcasting Council of Ukraine also covers enforcement of advertising laws when it comes to media companies;

- (d) the National Bank of Ukraine is involved in the enforcement of advertising of financial services (except for the stock market);
- (e) the National Securities and Stock Market Commission is entitled to enforce advertising laws with respect to financial instruments, capital markets, and organized commodity markets;
- (f) the State Service of Ukraine on Labor Issues is engaged in enforcement of advertising laws related to employment vacancies; and
- (g) the Commission for the Regulation of Gambling and Lotteries is engaged in the enforcement of advertising laws in the field of organizing and conducting gambling.

The Service, the AMCU and the National Television and Radio Broadcasting Council of Ukraine are the main enforcement agencies in the advertising industry.

Generally, the state agencies all have the same set of remedies to enforce advertising laws. In particular, they have the power to:

- demand that advertisers and advertisement producers/distributors eliminate any violation of the advertising laws;
- issue binding orders to the same effect;
- cease advertisement distribution;
- bring lawsuits seeking the retraction of inaccurate advertising; and
- impose fines.

A fine may amount to five times the value of the distributed/produced advertisement for each instance of violation. A violation committed repeatedly during the same year doubles the amount of the fine applicable to such violation.

Imposing such fines is mainly the jurisdiction of the Service. The remaining state agencies listed above can report the fact of violation of advertising laws to the Service which then investigates and decides whether a fine should be imposed.

For unfair and comparative advertising, the fine imposed by the AMCU may amount to up to 5% of the offender's turnover for the year preceding the year when the fine is imposed, for each such violation.

Further sanctions may also be imposed by the National Television and Radio Broadcasting Council of Ukraine, the Commission for the Regulation of Gambling and Lotteries, and the National Bank of Ukraine. For example:

- The Gambling Law stipulates substantial fines for those found in breach of regulations pertaining to the advertising of gambling activities. Thus, advertising clients, ad creators, or ad distributors who violate the rules prohibiting ordering, creating, placing, or disseminating advertising for gambling and/or organizers of gambling, trademarks, and other gambling-related intellectual property rights objects, are subject to fines amounting to around UAH 2 million (equivalent to 300 x minimum wage) imposed by the Commission for the Regulation of Gambling and Lotteries.
- The National Television and Radio Broadcasting Council of Ukraine has the authority, *inter alia*, to:
 - monitor general compliance,
 - carry out inspections of TV, radio broadcasting companies, online media, platforms for shared access to video;

- consider complaints;
- implement responsive measures;
- issue warnings or impose fines; and
- challenge the relevant licenses, and restrict access to information based on agreements and memorandums of cooperation with foreign legal entities who serve as providers of platforms for shared access to information.

Furthermore, the National Television and Radio Broadcasting Council of Ukraine may rescind the registration of foreign linear media when payments for advertisement distribution in Ukraine are not made to a legal entity in Ukraine.

1.9 When does a competitor have a right of action? What are the potential remedies?

Generally, competitors do not have a right of action or specific remedies. Nevertheless, unfair advertising complaints filed with the AMCU are the most widespread course of action for competitors. The AMCU may impose a fine that may be up to 5% of the offender's turnover. Alternatively, or in addition to the fine, the AMCU may oblige the offender (mostly advertisers) to terminate the violating advertisement.

Alleged violations of TV/radio advertising laws are usually reported to the National Television and Radio Broadcasting Council of Ukraine. The scope of potential remedies is outlined above. The given remedies may be implemented against both advertiser and advertisement distributor, depending on the merits.

Alternatively, competitors may bring a lawsuit against a violation of Advertising Law and advertising-related laws and seek the withdrawal of an advertisement.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers are specifically entitled to seek damages, including moral damages, suffered by them due to unfair advertising. However, this remedy is rarely enforced. In the vast majority of cases, consumers complain to the Service, which then decides on the issue in accordance with general procedure stipulated by the Advertising Law and special Procedure on Imposing Fines for Violation of Advertising Laws. Without prejudice to other remedies outlined above in question 1.8, fines and termination of the violating advertisements are the most widespread remedies implemented by the Service. Most often, advertisers are sanctioned by the Service, but the advertisement distributor can be also sanctioned for violation of advertisement distribution and placement requirements.

On 7 July 2024 (but not before the termination or cancellation of the martial law in Ukraine) the new Consumer Rights Protection Law will come into effect. This law sets forth guidelines for the establishment of the Unified State Portal for Consumers in E-Commerce ('e-Consumer Portal') which is to be implemented within three years from the date of the law's enactment. The e-Consumer Portal will streamline the procedure for consumers to submit opt-out requests for commercial electronic messages (advertisements), or to lodge a complaint in case the e-commerce entity fails to cease sending such commercial electronic messages, among its other functionalities.

Additionally, this law stipulates that if the terms outlined in the commercial guarantee offer are less advantageous to the consumer than those advertised, the commercial guarantee is considered to be provided as per the advertisement. If a consumer dispute arises due to non-compliance with the terms of a commercial guarantee, the consumer has the right to file a corresponding complaint through the e-Consumer Portal.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Ukraine have a primary advertising self-regulation system?

As a result of the reform of advertising legislation in 2023, an unprecedented legal framework regarding joint regulation and self-regulation in the field of advertising has been introduced:

- (a) **Joint regulation** applies to various aspects of advertising, including but not limited to:
 - (i) sponsorship of alcoholic beverage producers, the names of alcoholic beverages, trademarks under which they are produced, and product placement using alcoholic beverages and the respective trademarks;
 - (ii) gambling advertising and sponsorship using trademarks under which gambling activities are conducted;
 - (iii) product placement in audiovisual media;
 - (iv) requirements for disseminating information about sponsors;
 - (v) particulars of sponsoring children's, documentary, and religious programs;
 - (vi) criteria for determining programs on current affairs.
- (b) The self-regulation aspects include regulations pertaining to:
 - (i) reducing the impact of alcohol advertising on children;
 - (ii) advertising, accompanying or included in children's programs in audio or audiovisual media and distributed on platforms for shared access to video and information, related to food and beverages containing nutrients and substances with nutritional or physiological effects, such as fats, trans-fatty acids, salt, sodium or sugar, excessive consumption of which in the general diet is not recommended;
 - (iii) advertising, sponsorship, and product placement of medical products, medical devices, and methods of prevention, diagnosis, treatment, and rehabilitation;
 - (iv) placement of all forms of advertising on platforms for shared access to video and information; and
 - (v) other issues.

While joint regulatory bodies and self-regulatory bodies have not been established yet, the introduced framework represents a significant shift in how advertising is overseen and regulated in the country.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Joint regulatory bodies and self-regulatory bodies shall subsequently adopt codes (rules) for the creation and dissemination of advertising.

It is worth mentioning that the All-Ukrainian Advertising Coalition, one of the numerous associations of market players, encourages compliance with the Consolidated ICC Code of Advertising and Marketing. However, this suggestion is rarely followed in practice.

2.3 Does the system have an enforcement? How does it work?

No, this is not yet available in Ukraine.

It is highly advised to vigilantly monitor the developments in the enforcement and dispute resolution mechanisms in the field to ensure conformity and adjust to the changing legal framework.

2.4 Is the self-regulation system effective? Is it widely used and followed?

In certain instances, the existing mechanisms of some of the self-regulatory bodies has proven to be an effective tool for the regulation of advertising in addition to state-imposed laws (eg, the temporary Independent Expert Council on Mass-Media Activity during Elections, or the Agreement on the Self-Regulation System of Commercial Communications of the Companies of the Brewing Industry of Ukraine).

Nevertheless, the Ukrainian advertising industry eagerly anticipates the establishment of five joint regulatory bodies to ensure consistent and uniform legal guidelines for advertising across various media and maintain the integrity of advertising practices. These five regulatory bodies are expected to be in the domains of:

- audiovisual media services (television broadcasting and audiovisual media services on demand);
- audio media services (radio broadcasting and audio media services on demand);
- printed media;
- online media; and
- platforms for shared access to video.

2.5 Are the self-regulatory system's decisions reported?

No, not yet in Ukraine.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

There is a certain trend towards creating a self-regulatory system for each area of business (see question 2.4 above and question 2.7 below). The establishment of a self-regulatory system for each specific area is usually driven by business associations and NGOs.

2.7 Are there any other self-regulatory systems that govern advertising practices in Ukraine?

Until recently (ie, July 2023), there were several self-regulatory bodies that had developed codes governing advertising practices in Ukraine (summarized below). Currently, the activity of such self-regulatory system is minimal. However, on 11 July 2023, changes to the Advertising Law were enacted, introducing a mechanism to determine the requirements for the production and distribution of advertisements based on the principles of voluntariness, self-regulation, and non-interference by the state. Therefore, the development of self-regulation in the advertising sector in Ukraine is expected through the adoption of relevant codes.

Before the advertising law reform in October 2023, the following self-regulatory bodies and codes existed within the advertising market:

- (a) **Outdoor Advertising:** The Outdoor Advertising Association of Ukraine approved a Code of Principles of its Members in 2003. In addition to the requirements of the advertising laws, the Code imposes obligations on the members of the association with respect to outdoor advertising. The Code does not contain an extensive dispute resolution/claims consideration mechanism.
- (b) **Brewing:** At the beginning of 2012, the brewing industry rolled out its self-regulatory system for commercial communications. The system addresses voluntary restrictions pertaining to beer advertising and promotion, the establishment of the Ethics Committee as an independent body of the system and the creation of a claim processing mechanism and sanctions.

- (c) **Confectionery, food-concentrate goods and coffee:** In December 2013, the Union of Producers of Confectionery, Food-Concentrates and Starch Industries of Ukraine approved the Professional Ethics Rules on Competition in the market of confectionery, food-concentrate goods and coffee. The Rules set out the requirements of advertising and promoting the industry-related goods, list prohibited practices and establish a self-regulatory body and a general claims consideration mechanism. The Rules have been approved by the AMCU.

- (d) **Pharmaceuticals and drugs:** The self-regulatory framework in the pharmaceutical industry is currently comprised of:
 - (i) the Code of Marketing Practices for the Pharmaceutical Manufacturers and their Representative Offices developed by the European Business Association ('EBA') and signed by pharmaceutical companies who are members of the EBA (2004);
 - (ii) The Ethics Code of Ukrainian Doctors (2009);
 - (iii) the Ethics Code of Pharmaceutical Professionals of Ukraine (2010); and
 - (iv) the International Federation of Pharmaceutical Manufacturers & Associates Code of Pharmaceutical Marketing Practices (last updated in 2019) (applicable to IFPMA members operating in Ukraine).

- (e) **Mobile marketing:** The Code of Mobile Marketing has been signed by the main mobile operators: an impressive list of market players. The Code describes principles, conditions and procedures for mobile marketing. Specifically, the Code sets out requirements with respect to:
 - (i) consumer choice and registration,
 - (ii) consumer-related communication,
 - (iii) termination of participation in a marketing event, as well as
 - (iv) limitations.

Claims on violation of the Code are considered under a separate special procedure approved by the Ukrainian Direct Marketing Association. Code-breakers can be black-listed or the Association can address the advertising violation to the relevant controlling authorities or make the fact of the violation publicly available.

- (f) **Television:** The Television Industry Committee is a professional association represented by four major TV groups and major media groups. Its strategy on self-regulation includes the development of self-regulatory instruments for TV and advertising markets. So far, the Committee has not elaborated and approved an industry-specific self-regulatory mechanism.

- (g) **Media:** In 2015, five organizations formed the Independent Media Council, that provides recommendations to authorities and other stakeholders to improve their regulation in the field of media, including advertising.

- (h) **Influencers:** In 2021, the Interactive Advertising Bureau ('IAB'), a part of the global IAB network, introduced an Ethical Code designed for Influencers, Advertisers, and other stakeholders within the Influencer Marketing sector. This Code provides recommendations for advertising content disseminated across various social media and platforms, including but not limited to Instagram, Facebook, YouTube, TikTok, X (formerly Twitter) and Twitch. Throughout these recommendations, the overarching theme is the integration of the Ukrainian digital advertising market into the global arena.

- (i) **Gambling:** In 2021, eleven licensed gambling operators who are members of the Ukrainian Gambling Council signed the Memorandum on gambling advertisement. The objective of the Memorandum is to ensure consistent adherence to legal standards regarding the advertising of gambling activities, gambling-related trademarks, and sponsorships. Furthermore, it has contributed to the standardization of regulations concerning outdoor advertising practices, focusing on upholding the principle of responsible gaming.
- (j) **Gender discrimination:** The Standards of Non-Discrimination Because of Gender in Advertising were adopted on the forum of public professional organizations and approved by Ukrainian Marketing Association in 2011. The Standards provide for criteria to distinguish non-discriminatory ads from those which are discriminatory and regulate disciplinary proceedings related to cases involving advertising considered discriminatory because of gender.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Ukraine (eg, consumer protection laws, IP laws, unfair competition laws)?

The basic law governing advertising claims in Ukraine is the Advertising Law. It provides for both general and industry-specific requirements to claims. The Advertising Law provides that the following general principles shall apply in respect of any claims about a product: legitimacy, accuracy, truthfulness and no harm to consumers.

Claims relating to drugs, tobacco, alcohol, food products, weapons, financial services, gambling, employment, securities and construction are regulated in greater detail (see question 3.2 below). In addition to the Advertising Law, claims are generally addressed under the Consumer Protection Law, the Unfair Competition Law, the Basic Principles and Requirements for the Safety and Quality of Food Products Law and various industry specific regulations.

3.2 Is substantiation required for advertising claims?

In general, under the applicable Ukrainian laws, companies do not need to substantiate their claims. However, certain industries are required to substantiate their claims. Examples include:

- (a) **Drugs and medicines:** Every drug or medicine advertisement should contain the following:
 - (i) a reminder that it is necessary to consult a doctor before using the product;
 - (ii) a recommendation to read the drug insert; and
 - (iii) a statement that 'self-treatment may be dangerous for your health';
- (b) **Alcohol:** These adverts must contain the statement: 'Significant consumption of alcohol is dangerous for your health';
- (c) **Financial services:** Advertisements for banking, insurance or investment services must be accompanied with information on the relevant license, its number and date and the state authority that issued the license;
- (d) **Employment:** These adverts must contain the statement: 'Receiving fees, commissions, or any other rewards from citizens for facilitating job search and employment assistance services or related services is prohibited';

- (e) **Securities and stock exchange:** The Advertising Law contains quite an extensive list of substantiation required for this industry. In general, advertisements must specify the license details of the trader or any other person offering the relevant services; and
- (f) **Gambling:** These adverts must contain the statement: ‘Participation in gambling games can lead to gambling addiction. Please adhere to the rules (principles) of responsible gaming’.

In addition to the foregoing requirements of the Advertising Law, other industry-specific rules are found in the applicable regulations.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There is no concept of ‘puffery’ under the Ukrainian advertising laws and regulations. The applicable laws do not, in general, require any substantiation except in regard to specific industries. At the same time, government agencies expect a company to be in a position to prove the accuracy, truthfulness, and non-deceptive nature of any and all advertising claims without exception, including puffery. In the absence of any substantiation, certain agencies may consider such a claim false and, therefore, to be violating the applicable laws.

3.4 What are the rules governing the use of disclosures in advertising?

There are no general rules governing the use of disclosures in Ukraine. Only the general requirements of the Advertising Law and other applicable laws and regulations apply. In particular, advertisements must contain accurate, full and non-deceptive information.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There are no specific rules regulating endorsements and testimonials in advertising in Ukraine. However, the use of endorsements and testimonials in advertising medicine, certain food products, and alcohol is specifically prohibited.

3.6 What are the rules governing the use of product demonstrations in advertising?

The rules governing the use of product placement (ie, the demonstration, for a fee or other compensation, of a product, service, trademark, or other intellectual property under which business activities are conducted, or recommendations regarding them) are now a piece of Advertising Law and have been in effect since 2 October 2023. These rules are applicable to audiovisual media programs and user-generated videos created after 1 January 2024, distributed within audiovisual media, platforms for shared access to video, and platforms for shared access to information.

Notably, product placement in news programs, programs on current affairs, consumer rights protection programs, religious programs, and children’s programs is expressly prohibited.

The new regulations impose restrictions regarding the product placement of:

- tobacco and tobacco-related products;
- prescription medications;
- medical equipment;
- prevention, diagnostic, treatment, and rehabilitation methods;
- gambling; and
- goods whose production or distribution is prohibited by law.

Audiovisual media programs and user-generated videos containing product placements must adhere to specific requirements stipulated by the Advertising Law. In particular, these include refraining from influencing the content and broadcast timing of programs in linear audiovisual media, the content and placement of programs in non-linear audiovisual media catalogues, or the content of user-generated content.

Additionally, such advertisements must:

- avoid directly promoting the purchase or rental of goods; and
- not excessively emphasize the featured product.

Product placement must be clearly separated from programs or user-generated content. Specifically, this must be done through product placement identification at the beginning and at the end of such programs/user-generated content, as well as following the conclusion of advertisements in them. It remains to be seen how this requirement will be implemented in practice.

What is more, product placement must not be deceptive, inaccurate or mislead a consumer as to the actual function and end-use of the advertised product.

Additional requirements for product placement in audiovisual media shall be established by self-regulatory body through the adoption of relevant codes.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is not prohibited in Ukraine.

To put it succinctly, under Ukrainian laws, comparative advertising is allowed if:

- (a) the advertisement does not contain unfair competition, misleading or aggressive activity (actions or inaction);
- (b) the advertisement compares similar goods that satisfy the same needs or have the same purpose, or compares activities within the same field or type of business;
- (c) the advertisement objectively compares one or more substantial, equivalent, and representative characteristics of similar goods, including price;
- (d) the advertisement does not discredit or contain false information about the quality of similar goods from other producers or sellers;
- (e) where the comparison relates to goods with an indication (simple or qualified) of origin, the comparison is made with goods having a similar indication;
- (f) the advertisement does not create confusion with a competitor, including with its goods, trademarks, brand names, and other designations of the competitor's; and
- (g) competitor's goods, protected by a trademark or commercial name, are not depicted in an imitative manner.

Additional rules are established in respect of specific industries. In particular, the Advertising Law prohibits comparisons of drugs and medicines with other drugs and medicines with the view to increasing the advertising effect.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

In addition to the information outlined in question 3.7 above, the Trademark Law imposes supplementary requirements on the use of the trademarks in comparative advertising.

Specifically, the use of a trademark does not necessitate the consent of the trademark owner if the registered trademark is exclusively used for the purpose of distinguishing goods and services, objectively highlighting their distinctions. This is contingent upon the use being conducted in accordance with fair business practices and compliance with legislation on the protection against unfair competition.

There are no special copyright rules that specifically impact comparative advertising.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

There are no special rules governing claims relating to the geographic origin of a product. Only the general requirements of the Advertising Law and the other applicable laws and regulations apply. In particular, the requirement that advertisements must contain accurate, full and non-deceptive information.

Such claims should also comply with the provisions of competition law, in particular, restrictions of unfair competition practice. Distribution of incorrect or false information regarding the origin of a product, its manufacturer, seller, method of manufacturing, etc, may constitute one of the forms of unfair competition practices, namely dissemination of misleading information, under the Unfair Competition Law.

3.10 Are there any special rules governing product packaging?

The Advertising Law has no special rules governing product packaging, except for:

- (a) Information regarding the product or its manufacturer placed on the product or its packaging is not considered to be advertising.
- (b) It prohibits the use of images of:
 - (i) tobacco products,
 - (ii) trademarks and other intellectual property under which the tobacco products are manufactured, or
 - (iii) the process of smoking on the packaging of any other products that are not related to consumption of tobacco products.

The packaging and information on it must correspond to the requirements of the Consumer Protection Law, the Unfair Competition Law, the Information for Consumers Regarding Food Products Law, laws on protection of intellectual property rights, and various industry-specific laws and regulations, including technical regulations applicable to certain types of products. The requirements may include, eg, the following:

- obligatory marking of the food products with Ukrainian language;
- the packaging and/or marking of a medical device must allow for the distinguishing between sterile and non-sterile devices that are similar or identical; and
- use of the product packaging must not violate the provisions of competition legislation, in particular those that prohibit such form of unfair competition as use of names, trade names, trademarks, advertising materials, appearance of the packaging of the goods or periodicals, or other identifiers without the authorization (consent) of the business entity that has started using such or similar designations in its commercial activity earlier, where such unauthorized use causes or may cause confusion with the activities of such business entity.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

The Advertising Law establishes overarching regulations governing prohibited deceptive practices, encompassing advertisements that can potentially mislead consumers and result in harm to individuals, the state, or society due to inaccuracy, lack of veracity, ambiguity, exaggeration, omission, or failure to comply with stipulated guidelines regarding the timing, placement, and method of dissemination. Such misleading practices are explicitly forbidden.

Means and technologies that influence the subconscious of advertising consumers are also prohibited by the Advertising Law.

Nevertheless, we are not aware of specific rules or guidelines that directly regulate the prohibition of dark practices in advertising.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no special rules that uniquely pertain to artificial intelligence concerning advertising.

4 PRICE ADVERTISING

4.1 What are Ukraine’s rules regarding price advertising?

According to the local rules on price advertising, prices must be disclosed in local currency only. However, information regarding prices for goods and rates for services offered outside of Ukraine or its customs territory featured in advertisements may be presented in foreign currency, with the exception of the currency of a state acknowledged by the Ukrainian Parliament as an aggressor state (ie, Russian Federation).

Other rules address information on the price. In particular, the law requires that the information on pricing in advertising materials be accurate and appropriate.

4.2 What are Ukraine’s rules regarding advertising ‘free’ products?

The advertisement of ‘free’ products, which entails distributing free samples of the advertised goods or exchanging the same quantity or type of the advertised goods for another among consumers, must specify dates and venues of such activities, and be accompanied by a reference to the information source for further details.

However, the holding of events involving a free distribution of tobacco products, items related to their use, herbal smoking products, electronic cigarettes, refill containers, liquids used in electronic cigarettes, and devices for the consumption of tobacco products through non-combustion heating, as well as exchanges of these products, items, and devices, is strictly prohibited.

Likewise, advertising of alcoholic beverages, their trademarks, and other intellectual property under which alcoholic beverages are produced through distribution of free samples is prohibited, except for special exhibitions related to alcoholic beverages.

At the same time, certain local tax regulations may have an impact on advertising ‘free’ products. On this basis, ‘free’ products are usually sold for a ‘coin’ (ie 0.01 Hryvnia).

4.3 What are Ukraine's rules regarding sales and special offers?

The concept of sales/discounts is defined in Ukrainian law as the 'temporary decrease in the product price offered to consumers'.

There are specific rules on when and how the terms 'sale', 'discount' and 'clearance' may be used. In a broader sense, their advertisements should invariably incorporate the following details:

- (a) venue where the sales/discount are valid;
- (b) commencement and conclusion dates; and
- (c) ratio of the new price to the former selling price or the magnitude of the discount.

The use of the term 'discount' or 'reduced price' or any similar term with equivalent meanings is allowed only if they are applied to a product sold by the entity offering the promotion. The use of the term 'clearance' or any similar terms with equivalent meanings is allowed only if it involves the clearance of all goods within a specified location or a clearly defined group of products.

4.4 What are Ukraine's rules regarding rebates?

The applicable legislation in Ukraine does not regulate and does not use the concept of 'rebate'. Only some limited elements of this concept may be found in the regulation of sales/discounts.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are no other key restrictions for advertisers to be aware of regarding retail advertising.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

- (a) It is prohibited to advertise:
 - prescription-based medicines and drugs blacklisted by the state authorities;
 - infant formula and follow-on formula, except in specialized publications, scientific and professional journals, and materials (including electronic formats) disseminated at seminars, conferences, and symposiums focused on medical matters;
 - performance enhancing substances and/or methods of their use in sports;
 - healing of large audiences;
 - services related to fortune-telling and divination; and
 - new prophylactic, diagnostic and rehabilitating methods and medicines that are under development and have not yet been permitted for use.
- (b) Furthermore, it is prohibited to:
 - mention prescription-based drugs, as well as medical equipment or prophylactic, diagnostic and healing methods that require special knowledge and training while sponsoring television/radio programs;
 - telemarket drugs, medical equipment, prophylactic, diagnostic, healing, and rehabilitation, as well as medical equipment that require special knowledge and training;

- telemarket services related to fortune-telling, divination, folk or alternative medicine, as well as products associated with such services;
 - disseminate information regarding products, the production, circulation, or importation into the customs territory of Ukraine of which is prohibited by law; and
 - place advertisements on websites included on the WIPO Alert list by the Ukrainian authorized body (national list of websites causing concerns related to intellectual property rights).
- (c) Further, any advertisement (including sponsorship of tobacco goods/trademarks) and promotion of tobacco products is expressly prohibited. This prohibition covers advertising on TV and radio, including new media, outdoor and indoor advertising, printed media, advertising in transport, during mass events and on the Internet. Moreover, advertising of any goods or services should not contain images of tobacco products, items associated with their use, herbal smoking products, electronic cigarettes, etc, promote or encourage their use, or foster a negative attitude towards abstaining from their consumption.
- (d) Advertising alcoholic beverages/trademarks is also subject to prohibition in certain media.
- (e) The advertiser cannot be a resident of a state recognized by the Ukrainian Parliament as an aggressor state (occupying state) (ie, Russian Federation).
- (f) Broadcasting (retransmission) of advertising videos and telemarketing on audiovisual media is expressly prohibited in the event that it is payable to a legal entity other than a legal entity in Ukraine.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Generally, the Ukrainian advertising market is driven by the principle that everything is permitted except what is specifically regulated or prohibited.

This notwithstanding, the Advertising Law expressly prohibits the dissemination of unsolicited advertising, such as spam and bulk calls through various communication means, without obtaining prior written (including in electronic form) consent from the consumer; and any advertising utilizing a consumer's telephone number or other network identifiers may only occur with their explicit prior written consent.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- The Advertising Law is the primary legislation on the issues of indecency and obscenity. One fundamental tenet of advertising stipulated by the Ukrainian Advertising Law is that it must not include content or visuals that contravene ethical, humanistic, or moral standards, and it must strictly observe the principles of propriety and reverence. Advertisements should consider the unique susceptibility of children and refrain from causing them any harm.
- Further, dissemination of advertising (including trailers for movies and TV films) containing elements of cruelty, violence, pornography, cynicism, or any form of degrading human dignity and honor, is unconditionally prohibited. What is more, trailers for movies with audience restrictions are only placed during the time allocated for the screening of such movies.

- The Media Law lists a comprehensive range of forbidden subjects, including those featured in advertisements, across media and platforms for shared access to video within Ukraine's borders. These subjects span from promoting war, hatred, discrimination, the communist totalitarian regime that existed from 1917 to 1991, (neo-)Nazi ideologies, and the armed aggression of the state-terrorist entity against Ukraine, the denigration of human dignity to the propaganda of drug/alcohol consumption, smoking and other unhealthy habits.
- The production and distribution of products of an erotic and sexual nature, as well as products that contain elements of violence and cruelty, including advertising, is subject to statutory restrictions, including those imposed by the Media Law (eg, children-related restrictions).

A number of state bodies are responsible for enforcement of these requirements in different areas pursuant to their competence. For example, the National Television and Radio Broadcasting Council of Ukraine observes compliance of media with the requirements of this Law in media activity, including advertising.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Hidden advertising is strictly prohibited in Ukraine. This notwithstanding, the Ukrainian Advertising Law does not establish specific requirements regarding the identification of an advertiser.

In respect of sponsorship, as a general rule, it must be very evident that a particular person/company is a sponsor. Specifically, the use of words 'sponsored by', 'the sponsor of X is Y', etc, should be used by the sponsored entity and the sponsor. There is a degree of flexibility in the interpretation of the laws, particularly in relation to certain advertising that is not expressly addressed in the laws. This leads to uncertainty and, therefore, local controlling authorities may have a certain degree of discretion in implementing the relevant requirements and identifying specific marketing activities.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

As a result of the revision of the Advertising Law in 2023, special rules governing the integration of advertising content into the entertainment content have been implemented. These specify provisions as to product placement in audiovisual media, on the platforms for shared access to video and on platforms for shared access to information (see question 3.6 above), as well as sponsorship.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

Under the general rule, all advertising should be clearly identified and distinguished from other information, eg, by use of the wording 'advertisement', 'on a commercial basis', 'sponsored content', etc.' In TV and radio advertising this may be by means of auditory, visual, combined means, captions, or host commentaries.

Audiovisual media programs and user-generated videos that contain product placement must meet the following requirements:

- (a) Advertisers must not influence:
 - (i) the content and airing time of a program in linear audiovisual media,
 - (ii) the content and placement of a program in the catalog of non-linear audiovisual media,
 - (iii) the content of user-generated content and videos, as well as
 - (iv) the duties, editorial responsibility, and independence of those participating in the field of audiovisual media;
- (b) Audiovisual programs and user-generated content must not directly encourage the purchase or rental of goods, including by placing special advertising recommendations for these goods;
- (c) Such programs and user-generated content must not overly emphasize the product being advertised or demonstrated;
- (d) Viewers must be clearly informed of the presence of product placement in the program or user-generated content by means of appropriate program or content identification at the beginning and at the end of such programs/user-generated content, as well as following the completion of the advertisements in them, in order to avoid misleading the viewer.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There is no difference between the regulation of offline advertising and advertising on the Internet (including social media), other than some specifications.

According to the Advertising Law, advertising on platforms for shared access to video and information that is demonstrated to individuals within the territory of Ukraine, as well as advertising by means of electronic communication, is subject to regulation under Advertising Law, Unfair Competition Law and other applicable laws.

A person who distributes a program or user-generated content or video containing advertising by uploading it to shared-access platforms must identify it as containing advertising at the time of creation or upload.

The need to clearly identify advertising also applies in social media. See question 7.2 above.

Additionally, the Consumer Protection Law addresses 'remote' entry into an agreement (which, inter alia, covers the information society in general and the internet in particular). Specifically, the Law establishes a number of 'must have' requirements regarding the scope of information delivered to a consumer, including the major characteristics of a product and its price.

While advertising products in social media, the unfair competition laws must also be observed.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

User generated content may fall under the definition of 'advertising' and, therefore, be a part of an advertisement in social media. Therefore, such content must be carefully monitored by the advertiser to ensure compliance with Ukrainian advertising laws (eg, its legality, accuracy, trustworthiness, non-infringements of public ethics or morals, no discriminating statements, etc). In addition, the advertiser may use a photograph or the name of the relevant user only with the user's written (which may be electronic) consent.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Ukrainian court practice on social media advertising has not been developed yet.

However, according to recent changes in advertising law, self-regulatory bodies are entitled to establish requirements for placing all forms of advertising on platforms for shared access to information or video. As an advertising law is dynamically developing part of Ukrainian law, we expect that court practice and self-regulatory practice will be developed in the near future.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The Ukrainian legislation prohibits the use of the image or name of a person in advertising materials without that person's prior written (which may be electronic) consent. The use of likeness, voice and identity are not addressed in the advertising legislation.

9.2 Are there situations when permission is not required?

There are some cases in advertising when the permission is not required for using an individual's name and picture in advertising materials, namely where:

- (a) such person sat for the picture and was paid for doing so and/or participated in the creation (filming) of an audiovisual work, a program, and its image is used in the advertising (announcement) of such an audiovisual work or program, and advertiser has the necessary scope of intellectual property rights for the chosen type of distribution of such advertising;
- (b) the picture/video was openly taken in the street, at a meeting, conference, event or in other public places. Even so, an individual may demand the cessation of that the part of the picture/video showing them personally from public display (such costs being at the expense of that individual); or
- (c) it is used to protect such a person.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

We are not aware of any specific rules. General requirements set by the Advertising Law for advertising content are rather detailed and it is primarily the responsibility of the advertiser (whether a resident of Ukraine or not) to ensure that advertising content complies with the requirements of Ukrainian advertising law, ie, it is virtually cleared before used in advertising.

For example, the prohibition on advertising goods:

- that are subject to mandatory certification, or
- in respect of which a manufacturer and/or seller and/or person carrying out a regulated activity requires a special permit or license for their production and/or sale,

also applies to non-Ukrainian residents. In the latter case, those concerned must obtain proper permits and licenses in the jurisdiction where they carry out a regulated activity and/or manufacture regulated goods in order to be permitted to advertise such activity/goods in Ukraine.

In addition, the use of intellectual property in advertising is subject to the laws on intellectual property (eg, the advertiser must obtain the consent of the intellectual property rights holder to use intellectual property objects in advertising).

Please also see question 1.5 above with regard to drugs, alcohol and tobacco, financial services, gambling and employment services, as well as question 1.7 above with regard to advertising pre-clearing.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

By the Advertising Law, hidden advertising is prohibited. 'Hidden advertising' is defined as information about a person, an idea, and/or a product disseminated for monetary or other compensation in an audio or audiovisual media program, materials in other media, or through other advertising means, where such information serves advertising purposes and may mislead consumers about the true purpose of such program etc. In addition, such information must be marked as 'advertising'.

Save for the comparative advertising (see question 3.7 above), it is not permissible to use other companies' recognizable products in advertising unless it has been permitted by the rights holder. Moreover, such advertising practice may fall under the definition of unfair competition (ie, unlawful use of advertising materials, packaging exterior and other commercial designations, copying the appearance of goods of the other producers/competitors).

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Ukraine which affect advertising (eg, Swedish gender equality law)?

According to the Advertising Law, one of the tenets of advertising is that advertising should do no harm to the consumer of such advertising. At the same time, advertising must not contain information or images that violate ethical, humanistic, or moral standards, or disregard the rules of decency. Moreover, it is prohibited:

- (a) to make statements about and/or depict intellectual, physical, social, or other advantages of one gender over another, and/or to promote stereotypical gender roles that propagate demeaning and derogatory attitudes;
- (b) to demean a person's dignity based on gender;
- (c) to demonstrate gender-based violence;
- (d) to use images of the human body solely as a sexual object to attract consumer attention and/or
- (e) to make references (by words, sounds, or images) to sexual relationships unrelated to the advertised product or its method of consumption.

Additionally, please also see question 5.3 above.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

There are no specific cultural norms that affect advertising in Ukraine. Advertising tactics are entirely discretionary and are not limited by the cultural norms existing in Ukraine.

Still, given the current circumstances in Ukraine (martial law), it is advisable for advertisers to exercise particular caution when using any symbols of war.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Ukraine?

The need for local clearance of advertising products/claims within international advertising campaigns cannot be underestimated, due to the impressive attention of the controlling authorities to unfair advertising and the increasing volume of fines imposed on market players.

Although there are industries where advertising is heavily regulated, Ukrainian laws are generally liberal and Ukrainian consumers are well-disposed to new advertising products.



UNITED ARAB EMIRATES



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the UAE?

All media institutions creating audio, visual, print and digital content in the UAE's mainland must comply with the standards for media content contained in Federal Law No 15 of 1980 Concerning Press and Publications ('1980 Law').

The 1980 Law sets national standards for media content and requires all local mass media institutions operating in the UAE to abide by them. These include:

- The person of the President of the Republic or the rulers of the Emirates may not be criticized;
- Any material which involves instigation against Islam or the system of ruling, is harmful to Islam or the system of Government in the country or harms the country's interests or the systems or values on which its society is founded shall be prohibited;
- Material which violates the public discipline and order or calls for subversive ideas or insult to teenagers shall be prohibited;
- Material containing shameful information on the person of the President of an Arab, Muslim country or a country with friendly ties may not be published. Material which may threaten the ties of the UAE with Arab, Muslim or friendly countries shall also be prohibited;
- Material which defames Arabs or constitutes a misrepresentation of Arab civilization or heritage may not be published;
- News, photographs and comments relating to the secrets of the private or family life of individuals may not be published, if their publication is meant to disgrace such individuals;
- Any 'secret' which may cause harm to someone's reputation, property, or commercial name may not be published. Moreover, any publication which is meant to coerce somebody into paying some money or render a benefit to someone else is prohibited;
- Forged or fabricated documents, or documents which are falsely attributed to others, may not be published, and presenting incorrect news with an evil intent is forbidden;
- Newsletters, or advertisements may not include expressions, photographs, or drawings that are in violation of public morals or which may confuse the public;
- Slandering the work of a public official, a person having a public prosecution function, or a person who is in charge of a public service is not allowed;
- Publishing in bad faith any false news about someone, or forging or tampering documents to relate them to such individuals is prohibited;
- Confidential, official or military communications, or any government conventions or treaties before they are published in the official gazette may not be published; and
- Material that instigates criminal activity or incites hatred or provokes acts of dissent in UAE society is prohibited.

Since 1980, there have been various other laws and resolutions passed that apply to media content (including advertising), although many contain content regulations that are similar in nature to, or expand on the scope of, the 1980 Law.

1.2 What is the basic regulatory framework for advertising regulation?

The federal authority that regulates the media sector in the UAE, formulates media legislation, and ensures its implementation to develop and broaden the media sector in coordination with the concerned ministries is the Media Regulatory Office ('MRO'), established by the Ministry of Culture and Youth (previously known as the National Media Council ('NMC')).

The MRO is divided into two sub-divisions. The first division is the Media Regulation Department which is responsible for preparing research and foresight studies related to the media, formulating legislation, regulations, standards, and foundations for organizing and licensing media and media activities. The second is the Department of Media Licenses and Media Content Follow Up which is responsible for issuing licenses and following up on media content. It also implements legislations, regulations, and standards related to media services and media content.

In addition, the Telecommunications and Digital Regulatory Authority ('TDRA') has strict internet guidelines which serve to limit access to prohibited media content through websites and webpages. As a result, the TDRA has published a list of prohibited content categories which may be blocked by UAE internet service providers. The prohibited content is defined as 'any content that offends against, is objectionable to, or is contrary to the public interest, public morality, public order, public and national security, Islam morality or is otherwise prohibited by any applicable UAE law, regulation, procedure, order or requirement'. The key categories of prohibited content are:

- pornography, nudity and vice;
- bypassing blocked content;
- offences against the UAE and public order;
- insult, slander and defamation;
- invasion of privacy;
- viruses and malicious programs;
- any promotion of, or trading in, prohibited commodities and services;
- supporting criminal acts and skills;
- drugs;
- medical and pharmaceutical practices in violation of the laws;
- infringement of intellectual property rights;
- discrimination, racism and contempt of religion;
- gambling; and
- terrorism.

Local free zone authorities in media free zones contribute to the development of the media scene in the UAE, and each has limited regulatory authority over the entities that are set up under their authority. They include:

- Dubai Creative Clusters Authority—Dubai;
- Media Zone Authority—Abu Dhabi;
- Department of Culture & Information—Sharjah;
- Fujairah Culture and Media Authority;
- Fujairah Creative City; and
- Dubai Production City.

1.3 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

There are not, although the NMC issued guidelines in 2018 that emphasize the way in which digital media should comply with the various media laws. These guidelines are still applicable even though the NMC has been replaced by the MRO.

1.4 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

All specialized advertising, such as that related to medicine, drugs, food, promotional campaigns, special offers, real estate, and universities and educational institutions, must obtain prior approvals from the competent authorities. Advertising alcohol and tobacco products is expressly prohibited.

1.5 What types of communications are considered to be ‘advertising’? How is this determined?

There are no clear guidelines in this regard. It would be determined on a case-by-case basis.

1.6 Are any government pre-approvals required?

Pre-approvals are required for advertising undertaken in the Education and Healthcare sectors, and should be obtained from the relevant authorities in each case. It is always prudent to check current regulations, as advertising for food and cosmetics may also require approvals, although this is not being undertaken at the moment.

1.7 Does the media pre-clear advertising?

There are no clear industry standards for media outlets to follow. Some will require copies of approvals for those sectors that require approval (most particularly healthcare, as this is a well-regulated area). However, some media outlets prefer to rely on the fact that the onus for compliance rests with the advertisers themselves.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Legal action would ordinarily be taken by the MRO. Note that the MRO is a reactive authority rather than a proactive one; and tends to take action after receipt of a complaint.

Content that is carried on social media or online may give rise to a right for the TDRA to block the content, or take down the website or social media account.

For advertising that is carried on digital channels, it is prudent to note that extremely inappropriate content (such as content insulting to Islam, or containing pornographic material) may subject the author, brand and media outlet to prosecution under Federal Decree Law No 34 of 2021 (‘Cyber Crimes Law’). The penalties under this law are severe, and extend to large fines, jail time and deportation.

1.9 When does a competitor have a right of action? What are the potential remedies?

This would have to be considered on a case-by-case basis. However, if the matter was reported to the MRO, they may levy fines on the advertiser, or on the media outlet that carries out the advertising.

1.10 When do consumers have a right of action? What are the potential remedies?

See question 1.9 above.

2 SELF-REGULATORY FRAMEWORK

2.1 Does the UAE have a primary advertising self-regulation system?

In the UAE there is no established self-regulating body. However, the Advertising Business Group ('ABG'), which includes companies such as Mars, P&G, Meta and Google, aims to encourage responsible advertising among advertisers, agencies and the media in the Middle East.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The ABG has implemented a Code, which focuses on correct representations and ethical matters. The ABG has also released its first Ethical Guidelines for Gender Portrayal in Advertising and Marketing Communication to advance gender equality and empowerment of women in the UAE by providing guidance to address unconscious biases and avoid reinforcing harmful stereotypes. To date, we are not aware of any complaints processed by the ABG.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The ABG has a dispute committee—however, as we have not identified any complaints resolved by the ABG, we do not know the manner in which it will operate in practice.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Yes. There are various instances of self-regulation proving to be an effective tool to achieve responsible marketing and advertising practices. For example, the Gulf Cooperation Council branch of the International Food and Beverage Alliance ('IFBA') announced a 100% compliance with its pledge not to undertake marketing to children under the age of 12, which had been endorsed and overseen by the ABG. Such a commitment—made because of growing concerns around the contribution of advertising to rising childhood obesity rates—helps promote healthier lifestyles, thus negating the need for governmental regulation.

2.5 Are the self-regulatory system's decisions reported?

Yes—the rulings by the ABG disputes committee will be reported on the website.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

There are none.

2.7 Are there any other self-regulatory systems that govern advertising practices in the UAE?

There are none.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in the UAE (eg, consumer protection laws; IP laws; unfair competition laws)?

In addition to the 1980 Law and the TDRA's internet guidelines, the following basic laws and their respective applicable provisions can be held to apply to advertising claims:

- (a) The National Media Council Resolution No 35 of 2012 on the Standards of Media Advertisements ('Advertising Resolution') states that advertisements should not contain any incorrect or misleading claims, and should not intend to exaggerate or claim uniqueness, inspire contempt of competitors or do any other thing which may lead to the suspicion of fraud or deception. Advertisements should be real and unexaggerated and should not lead to create any confusion of whatsoever way with other names, products or activities.
- (b) In addition, and by way of clarity, the Advertising Guidelines that were released by the NMC in 2018 state that 'The advertisement should not include or contain false or misleading claims, or is intended to exaggerate, claim exclusiveness, despise competitors and all that involve fraud and deception.'

Article 5 of the Advertising Guidelines requires the language of all advertisements to:

- not be ambiguous, obscure or void of any clear indications;
 - not include any false or misleading claims, resort to exaggeration and/or intimidation, claim to be unique by disrespecting competitors nor resort to fraud or deception;
 - not include images that are falsified or imitated or images that violate intellectual property rights of others;
 - not lead to confusion or ambiguity with other products or activities;
 - include the spoken Emirati dialect or the classic Arabic language; and
 - clearly identify the advertiser.
- (c) Federal Law No 15 of 2020 ('Consumer Protection Law') provides that suppliers may not display, offer, promote or advertise any counterfeit or spoiled goods or services that would harm the interests or health of consumers during normal use. It prohibits the advertising of any commodity or service based on misleading information or by omitting fundamental or core information related to the commodity or service, or by using false data. In addition, it requires any advertising targeted at consumers to be published in Arabic, in addition to any other languages.
 - (d) Cabinet Resolution No 66 of 2023 ('Consumer Protection Regulations') provides that any person shall be prohibited from advertising any commodity or service in a way that may mislead or deceive the consumer. The Consumer Protection Regulations also prohibit companies from charging a higher price than that announced by means of any advertisement, and imposes fines for advertising which incorporates incorrect data or which is misleading in anyway.
 - (e) Federal Decree Law No 50 of 2022 ('Commercial Transactions Law') provides that traders may not resort to fraud and cheating when marketing their goods, nor may they spread or publish false particulars that are prejudicial to the interests of another competitor trader.

3.2 Is substantiation required for advertising claims?

No, although it might be required as evidence if a claim is made.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Not relevant.

3.4 What are the rules governing the use of disclosures in advertising?

There are no specific laws in place.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

These are complex in relation to education and healthcare and should be checked on a case-by-case basis.

3.6 What are the rules governing the use of product demonstrations in advertising?

As with all advertising, it must be fair and accurate.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

The position in the UAE is that comparative advertising is lawful provided that such advertising does not amount to unfair competition, and does not contravene provisions of the advertising regulations (see below) or the relevant legislation related to the protection of consumers or the prevention of fraud or the protection of intellectual property rights.

Under the Advertising Resolution, comparative advertising cannot be done in a manner that 'contempt's' competitors but is otherwise allowed. There is a very subjective element to this provision of the law.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There is no specific law regulating comparative advertising, but the provisions of Federal Law No 36 of 2021 ('Trademark Law') prohibit the use of registered trademarks. As a result, it can be argued that using a competitor's trademark with the aim of comparing products could be interpreted as unlawful use. That being said, this type of action would be uncommon.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

There are none.

3.10 Are there any special rules governing product packaging?

There are extensive regulations that apply to particular classes of products (clothing, cosmetics, electronics and the like), and these should be addressed on a case-by-case basis.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

Dark practices/patterns are understood within the industry to mean deceptive business tactics employing design features to steer, manipulate or deceive users into behavior which is profitable to the online service, but contrary to the user’s intent. For example, in bookings or e-commerce, it could be intentionally making it difficult to opt out of a service, or creating a false sense of urgency before purchase.

As mentioned above, advertising and consumer protection regulations in the UAE prohibit misleading advertising and prevent companies from presenting consumers with any false or misleading data.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

The UAE Government has launched a number of initiatives in relation to AI, including the UAE’s National Program for AI. Smart Dubai’s AI lab, which is a sub-branch of the UAE government, has also published a set of non-binding principles and ethics guidelines which encourage fairness, accountability, explainability and transparency in AI algorithms. Therefore, there may be future legislative developments in relation the use of AI in advertising, although we are not aware of any proposed legislations on this subject at this time.

4 PRICE ADVERTISING

4.1 What are the UAE’s rules regarding price advertising?

According to the Consumer Protection Law, businesses must ensure that advertising or labeling is not misleading, and items offered for sale must be priced accurately. The consumer should be offered an item at the advertised price, and any entity that contravenes these laws can be reported to the relevant department in the Emirate.

4.2 What are the UAE’s rules regarding advertising ‘free’ products?

Please see question 4.3 below regarding giveaways and sales.

4.3 What are the UAE’s rules regarding sales and special offers?

In the UAE, ‘sales promotions’, which include sales, as well as competitions and prize draws (prize campaigns, sweepstakes, raffles, and instant prizes, etc), are regulated on an emirate-by-emirate level in each of the seven emirates that make up the UAE.

In most Emirates, the respective Department of Economy & Tourism in Dubai (‘DETD’) requires entities planning sales promotions or giveaways to first obtain a permit.

The process for obtaining a sales promotion permit from the DETD is straight-forward, and can usually be completed within a week or so. Information on the proposed promotion, such as its general nature, the nature, quantity and value of any prizes, and the period over which the promotion will be run, needs to be submitted to the authority, along with a copy of the organizer’s trade license and premises lease, an application form for the permit, and the official fee.

Official fees are relatively modest, and can vary depending on aspects such as the duration of the promotion, the value of any prizes and the extent of any advertising.

4.4 What are the UAE's rules regarding rebates?

In the UAE, care must be taken in creating rebate schemes, as there is a robust regulatory environment surrounding fraud, bribery and money laundering.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are none.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The content of an advertisement must:

- not include obscene photos or words;
- not promote acts of sorcery or astrological predictions;
- not advertise alcoholic beverages or narcotic substances in any way, whether directly or indirectly; and
- not advertise tobacco or smoking of any kind or method, nor any related goods and services.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are none.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Content of this nature would not be tolerated. The laws and regulations forbid it, and the social norms and public moral of the region would deter prospective publishers from publishing such material.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

N/A

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The MRO has made repeated efforts to ensure clarity on this point—the identity of advertising must be clear, and advertising should be kept separate from editorial content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

The MRO has released guidelines regarding the manner in which the application of the above laws and regulations should be undertaken, particularly in social media. They have determined that #ad or #paid_ad are the appropriate labels.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

Social media influencers who run any online business activities, including e-commerce, publishing and selling of print, video, and audio material, as well as advertising or promoting brands, need to obtain an e-media license from the MRO.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

This is conceivable in some circumstances. Whilst it would have to be addressed on a case-by-case basis in many instances, it is clear under the Cyber Crimes Law that authors, brands and media outlets can all be held liable for content that is considered to be highly undesirable under that law (ie, pornography, obscenity, gambling and the like).

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

There are none.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

It is recommended that the individuals concerned have consented to such usage and that such consent is evidenced in writing. Moreover, UAE Federal Decree Law No 45 of 2021 ('Federal Data Protection Law') imposes specific controls and restrictions on any processing of personal data. As such, any companies incorporated in the UAE, excepting those incorporated in the Abu Dhabi Global Market or Dubai International Financial Centre free zones which have their own specific data protection laws, and any foreign companies processing the personal data of UAE residents, must ensure that they regulate all their data processing activities in accordance with the provisions of the Federal Data Protection Law.

9.2 Are there situations when permission is not required?

Where consent of the individual data subject cannot/is not obtained, then personal data may not be processed, except and unless one of the exceptions to the need for consent laid out in the Federal Data Protection Law applies. Exceptions to the requirement to obtain consent are where, for example, processing is necessary:

- (a) for the performance of a contract to which the data subject is already subject, (but there is no exception from the need for consent for entering a contract);
- (b) to comply with a legal obligation;
- (c) to protect public interest;
- (d) for employer or data subject to exercise their rights in the field of employment or social security;
- (e) to protect the vital interests of the data subject; or
- (f) to fulfil obligations imposed by other laws of the UAE on controllers.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

It is not acceptable to use the name 'Dubai' and related geographical descriptors without consent. An example may be the use of 'Dubai's Best...' or 'Dubai's Favorite...'.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

This would be acceptable, as long as the products were not held in contempt or otherwise in contravention of other laws.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the UAE which affect advertising (eg, Swedish gender equality law)?

Please see previous answers—the importance of respectful dialogue cannot be underestimated. The UAE has a culture that does not condone the denigration of others, and this should be carefully considered in advertising.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Islam is the cultural and religious norm of the UAE—denigration of any of the Abrahamic religions would not be tolerated and any insult to Islam is not acceptable. In addition, the standards of Islam should be respected—nudity, profanity, sexual innuendo, gambling and alcohol are all areas that are not acceptable to consumers, and could lead to prosecution.

It is also important to show respect for the government of the UAE and its friendly nations.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the UAE?

It is easy to be overly cautious when trying to analyze the legal landscape for advertisers in the UAE. Whilst caution is prudent, many entities do tend to over-censor their content.

In addition, content that refers to cultural or religious issues should be checked with local practitioners as it is rare for foreign lawyers to understand the social intricacies.



UNITED KINGDOM



1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the United Kingdom?

There are four principal areas of law and regulation that regulate advertising in the UK:

- (a) Consumer protection laws, particularly the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs'), Consumer Rights Act 2015 and other legislation, such as the Data Protection Act 2018.
- (b) Intellectual property laws, particularly copyright and trademark law, which impact upon creative treatments and the use of third party trademarks in comparative advertising.
- (c) Sector specific laws that impinge upon advertising for particular goods or services, such as financial services, gambling, tobacco and alcohol.
- (d) Finally, there is a particularly significant role in the UK system for self-regulation. The main regulator is the Advertising Standards Authority ('ASA'); but there are also other bodies, such as the Portman Group, which governs naming, packaging and promotion of products, event sponsorship and point of sale materials in the alcohol sector; and the Phone-paid Services Authority, which governs premium rate telephony services.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

There are few definitions of 'advertising', but the Business Protection from Misleading Marketing Regulations 2008 define an advertisement as 'the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations'. When the ASA extended its remit to cover claims on brands' own websites, it distinguished between 'editorial' and 'advertising', as 'editorial' is specifically excluded from the ASA's remit.

1.3 What is the basic regulatory framework for advertising regulation?

There are two main advertising codes:

- (a) The Broadcast Committee of Advertising Practice ('BCAP'), writes the BCAP Code for television and radio advertising.
- (b) The Committee of Advertising Practice ('CAP') writes the CAP Code for other forms of advertising, including:
 - press;
 - posters or Out-of-Home;
 - online advertising and social media;
 - cinema advertising;
 - brand owners' websites; and
 - sales promotions, including competitions and free prize draws.

The Committees are comprised of organizations representing advertisers, agencies, media owners and the clearance bodies. The Codes are enforced by the ASA.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Yes, premium rate services ('PRS'). PRS are goods and services that consumers can buy by charging the cost to their phone bill or pre-pay contract (eg, via telephone or text messages). The Phone-paid Services Authority ('PSA') regulates PRS according to its Code of Practice, which is approved by Ofcom (the statutory regulator). The ASA also requires broadcast advertisers to comply with the PSA Code.

Code 15 is the PSA Code of Practice which sets out Standards and Requirements with which providers of phone-paid services must comply. The PRS has also provided various guidance notes on issues such as vulnerable customers, customer care and transparency. Marketers must register with the PRS if they wish to provide phone-paid services.

During any written, spoken or other form of promotion of a PRS, the cost of the service must be provided before any purchase is made. The cost of the PRS must be prominent, clear, legible, visible and proximate to the phone number, shortcode, button or other means by which a charge may be triggered.

The BCAP Code also requires advertisements for PRS to alert their audience when a call of at least five minutes is normally involved, and provides that advertisements for live PRS must not appeal to people under 18, unless the PSA has given express consent to do so.

The BCAP Code also includes specific rules governing advertisements that include a PRS. These principally mirror the rules set out in the PSA Code, but they specifically state that if a PRS service costs 50p or more per call, it is important that clear pricing information is given to consumers. The BCAP Code also requires the identity of the service provider to be included in the advertisement.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Several industries are subject to specific laws governing their advertising, and/or have specific provisions in the CAP and BCAP Codes. These are the main ones, but the list is not exhaustive:

- (a) **Alcohol:** Both the CAP and BCAP Codes contain detailed provisions, including:
 - requirements as to the age of people appearing in alcohol adverts;
 - prohibiting a link between alcohol and sexual or social success or the success of a social event; or
 - linking alcohol with particular activities such as the work place, operating machinery, driving or water sports.
- (b) **Tobacco:** All forms of tobacco advertising are prohibited. E-cigarettes can be advertised, but there are restrictions.
- (c) **Medicines:** Prescription Only Medicines are heavily regulated, and can only be advertised directly to medical professionals. Over-the-Counter medicines can be advertised to consumers, subject to certain controls. Advertising for cosmetics, food supplements and medical devices that allege to prevent, treat or diagnose a disease, illness or adverse condition risk being caught by the definition of a medicine because of their claims, rather than their ingredients.
- (d) **Food and Drink:** Concern about obesity, particularly in children, has driven scheduling restrictions in the BCAP Code for foods which are high in Fat, Sugar and Salt ('HFSS'). The CAP Code, which regulates non-broadcast advertising, also contains media placement

restrictions for HFSS product advertisements. The retained European Regulation concerning Nutrition and Health Claims Made on Foods prohibits nutrition and health claims in foods unless these appear on a list approved by the Food Safety Authority. From January 2025, there will be further restrictions on advertising HFSS foods on TV and online.

- (e) **Automotive:** As well as the specific provisions of the CAP and BCAP Codes, car manufacturers need to be mindful of the provisions concerning environmental claims.
- (f) **Gambling:** As well as complying with specific provisions of the CAP and BCAP Codes, such as ads not having strong appeal to children, gambling operators must be mindful of their license obligations, failing which their operating licenses could be revoked by the Gambling Commission and they would have to cease operating, or face criminal sanctions.

1.6 Are any government pre-approvals required?

There are no government pre-approvals required for individual advertisements, but there are legal requirements laid down in various statutes and regulations that specific types of advertising must contain certain pre-approved warnings or disclaimers to be lawful, particularly in the financial services sector. Advertisements for consumer credit and for mortgages, for example, must contain specified warnings and information. These deal with issues such as typical interest rates; warnings that investments can go down as well as up; and that consumers may be at risk of losing their homes if mortgage repayments are not maintained. In addition, there are provisions in the CAP and BCAP Codes that must be observed.

Following the introduction of new rules by the Financial Conduct Authority ('FCA'), the ASA will no longer regulate technical claims in ads for cryptoassets in non-broadcast media (although it will still look at complaints about issues such as offence). As of 8 October 2023, the FCA has taken over the regulation of ads for 'qualifying cryptoassets'—ie, cryptoassets that are transferable and fungible, including cryptocurrencies and utility (fan) tokens—and is introducing new rules.

1.7 Does the media pre-clear advertising?

All television commercials are pre-cleared by a central body called 'Clearcast', which is owned and funded by the television stations. The broadcasters have an obligation under their government-granted broadcasting licenses to ensure that all advertising is compliant with the BCAP Code and the applicable legislation. The television stations will therefore not accept a commercial for broadcast without Clearcast's approval. This approval will normally be obtained at script stage, and then again once the final cut is ready for broadcast. Clearcast approval does not affect the ability of the ASA to uphold any subsequent complaint, but the ASA will consult Clearcast to obtain their explanation for approving the commercial.

The Radio Advertising Clearance Centre ('RACC') operates a similar system for radio commercials.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Generally speaking, government agencies will only enforce advertising laws if the self-regulatory system has failed to work, if there is a gap in the self-regulatory system, or if there is a serious issue of consumer detriment. Agencies which may intervene are as follows:

- (a) The Office of Communications ('Ofcom') will intervene if a broadcaster is in breach of the sponsorship or programming codes, eg, by allowing an HFSS food advertiser to sponsor a program of appeal to the under 16s. Ofcom has imposed large fines for breaches of the codes around premium-rate phonenumber competitions.

- (b) The Medicines Healthcare Regulatory Agency ('MHRA') can intervene if medicinal claims are made for products which are not licensed medicines.
- (c) The Competition and Markets Authority ('CMA') may intervene when advertisers make unsubstantiated claims despite adverse adjudications by the ASA, or make misleading price or savings claims to consumers. It will also conduct investigations and enforcement activity on its own initiative, including against marketing that is misleading or aggressive under the CPRs. The CMA will usually seek to negotiate undertakings from advertisers in the first instance, so that court action is not required. If, however, no such undertakings can be obtained, the CMA may bring criminal proceedings and, if successful, these will result in fines and occasionally even imprisonment for the individuals responsible. At the time of writing, the Digital Markets, Competition and Consumers Bill ('DMCC Bill') is passing through parliament, which will provide the CMA with greater enforcement powers and the ability to levy GDPR-style fines without having to get a court order first.
- (d) Local government Trading Standards Departments also play an important role in the enforcement of advertising laws, particularly in relation to price advertising to consumers. They will bring criminal proceedings in the Magistrates Courts, which have the power to impose prison sentences of up to six months (or 12 months if convicted of more than one offence), and/or an unlimited fine.
- (e) The Information Commissioner's Office ('ICO') will take action against organizations who do not comply with data protection requirements. It regularly fines organizations who breach the Privacy and Electronic Communications Regulations 2003 when sending marketing emails or carrying out telephone marketing.

1.9 When does a competitor have a right of action? What are the potential remedies?

Generally speaking, competitors in the UK have tended to rely on complaints to the ASA as their main means of redress. When the Unfair Commercial Practices Directive was implemented in the UK as the Consumer Protection Regulations 2008 ('CPRs'), this was done without a specific right of action for competitors. The CPRs are restated in the DMCC Bill, but there is still no right of action for competitors.

If the competitor is named in an advertisement, it may be able to bring proceedings for trademark infringement. In addition, or sometimes as an alternative, a competitor may be able to bring an action under the tort of 'malicious falsehood'. The claimant will need to be able to show that it was identified by the relevant statement or claim; that the claim was not merely misleading, but actually false; and that the respondent knew the claim was false or was reckless about its falsity. The claimant will also need to show that this has caused them damage.

If a claim succeeds in trademark infringement or malicious falsehood, the claimant may be entitled to damages (or an account of profits) and an order for the respondent to cease and desist from the relevant advertising. Orders for corrective advertising are also now becoming a more common feature of the English legal system, although still relatively unusual.

A competitor may also bring a 'private prosecution' if it believes that its competitor is in breach of the criminal law. If successful, the defendant will face a fine and a costs award. Again, these are relatively unusual, but such cases may become more common as companies try to achieve a level playing field at a time when the regulatory bodies and the ASA are relatively short of funds, and have to prioritize what they see as the most important cases.

1.10 When do consumers have a right of action? What are the potential remedies?

In addition to the right to complain to the various regulators and ombudsmen, consumers may have direct rights of action against traders.

Since 2014, the Consumer Protection (Amendment) Regulations 2014 ('2014 Regulations') have provided consumers with a direct right of redress against traders who have engaged in misleading or aggressive practices, contrary to the CPRs. Remedies include the right to unwind the contract; the right to a discount; and the right to damages. Consumers need to show that the trader engaged in a prohibited practice which caused the consumer to take a decision they would not have otherwise taken, eg, to buy a product or pay a certain amount.

Consumers can also enforce rights under the Data Protection Act 2018 ('DPA 2018'). The DPA 2018 provides for fines of up to €20 million or 4% of the organization's total annual worldwide turnover. However, fines of this level are likely only to be issued where an organization has committed a serious breach of its data protection obligations.

Consumers can also make 'subject access requests', requiring data controllers to provide information about the data held about them. Consumers can also complain to the regulator, the Information Commissioner, who can then bring enforcement action against a data controller.

In certain regulated industries, such as the legal and financial industries, consumers have a right to complain to various ombudsmen, eg, the Financial Ombudsman Service. This includes cases where insufficient or misleading information is given in advertising materials. Many of these ombudsmen have powers to award compensation to consumers.

2 SELF-REGULATORY FRAMEWORK

2.1 Does the United Kingdom have a primary advertising self-regulation system?

The ASA is the UK's independent self-regulatory body. It was set up by the advertising industry in 1962 to police the rules set out in the CAP Code. Compliance with the CAP (non-broadcast) and BCAP (broadcast) Codes is binding on all advertisers, agencies and media owners pursuant to the membership obligations of their respective trade associations, but also applies to any organization that is not a member of one of those bodies.

The ASA is responsible for handling complaints about broadcast and non-broadcast advertising. These complaints may come from any source, including consumers, competitors, charities, trading standards officers or non-governmental organizations. The ASA also monitors compliance based on its own activity and research. The ASA has no legal statutory powers, but does have a legal backstop provided by trading standards bodies, and by Ofcom for broadcast advertising, if an advertiser repeatedly disregards its rulings.

Ofcom is the regulator for all UK broadcast media. Although it has delegated a large proportion of its responsibilities for broadcast advertising regulation to the ASA, Ofcom retains statutory authority and operates in a co-regulatory relationship with the ASA.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The CAP and BCAP Codes stress that all marketing communications be legal, decent, honest and truthful. They should also be prepared with a sense of responsibility to consumers and society as a whole, respecting the principles of fair competition.

The Codes should be applied in spirit, as well as by the letter. Advertisers have a responsibility not bring advertising into disrepute. For example, the online gambling company, Paddy Power, was censured for an advertisement that coincided with both the Oscars' award ceremony and the start of the trial of Oscar Pistorius for the murder of his girlfriend, which featured his face superimposed on an Oscar statuette, and the headline 'It's Oscar time. Money back if he walks.' At the time, this ad attracted more complaints than any other in the history of the self-regulatory system.

The Codes require advertisers to deal fairly with consumers and not mislead them by exaggerating the performance, value and capability of a product, or by omitting material information.

The Codes urge advertisers to have the written permission of members of the public before they portray them in non-broadcast advertising, and require them to do so for broadcast advertising. According to the Codes, members of the Royal Family should not be shown or mentioned in marketing communications without express permission.

Advertisements must not cause harm or widespread offence against generally accepted social, moral or culture standards. They should not contain material that is likely to encourage behavior that prejudices health and safety or encourages violence, crime, anti-social behavior or disrespect to the environment. Advertisements must not cause the audience unjustifiable distress, especially with regard to those under the age of 18, and contain nothing that could cause them social, mental, physical or moral harm.

Both the CAP and BCAP Codes reflect the principle that advertising and editorial content must generally be kept separate and that advertising should be readily recognizable as such, whether by visual or aural representations, or through the use of the appropriate disclosures.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The ASA considers complaints from all sources. Just a single complaint can trigger an investigation. The ASA can also start an investigation itself, thanks to its monitoring and review system.

Some investigations are informally resolved if the advertiser immediately accepts the concern raised by the ASA and agrees to amend its advertising. Otherwise, the ASA Executive will conduct an investigation, sometimes with expert assistance, and produce a Draft Recommendation for complaints that are formally investigated, with a final adjudication being made by the ASA Council.

Advertisers can request an Independent Review of the adjudication if the adjudication itself was significantly flawed or if there was a substantial flaw in the process, but the decision whether to accept the recommendation of the Independent Reviewer ultimately remains with the Council.

The ASA's main sanction is negative publicity, which it achieves by publishing its adjudications on its website every Wednesday. It cannot impose fines, but its other sanctions include the imposition of pre-vetting requirements; referral to the Trading Standards authorities or Ofcom; and issuing 'ad alerts' to media owners warning them not publish certain advertisements in breach of the Code. In the context of online advertising, the ASA can remove a marketer's paid-for search advertisements when those advertisements directly link to a page on the marketer's own website that hosts marketing communications that are in breach of the CAP Code. The ASA can also conduct its own paid search campaign drawing attention to non-compliant advertisers. It also publishes its own list of non-compliant influencers.

Clearcast and the RACC will withdraw clearance for a broadcast advertisement if a complaint is upheld by the ASA. The ASA can also refer a broadcaster to Ofcom if there is a serious failure to comply with the BCAP Code, or if it persistently continues to do so. Ofcom can sanction, reprimand and ultimately revoke a broadcaster's license.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Broadcasters' licenses hold the condition that they must comply with the BCAP Code. Therefore, the ASA and Ofcom between them have significant powers over broadcasting advertisements.

While the ASA does have legal backstop and can refer misleading non-broadcast advertisers to Trading Standards, in practice, based on the sanctions available, this is very rarely necessary.

In the overwhelming majority of cases, advertisers willingly comply with the self-regulatory system and remove offending advertisements.

Increasingly, the ASA will seek to engage positively with advertisers to resolve complaints informally where possible, to avoid a formal investigation.

2.5 Are the self-regulatory system's decisions reported?

The ASA publishes its adjudications on a weekly basis on its website. They remain online for five years, and may be searched easily by the public. The stories are often picked up and reported in the media, providing further adverse publicity for offending marketing communicators.

The ASA also maintains a list of advertisers who continue to make non-compliant claims online, usually on their own websites, despite repeated requests for changes to their communications, as well as a list of non-compliant influencers.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The key principle of advertising regulation across all media is that advertising must not be misleading. The burden of proof is on advertisers to be able to substantiate all claims at the moment of their broadcast or publication. The ability of consumers to identify advertising messages is also critical.

Since March 2011, the CAP Code has also applied to marketing communications by companies and organizations on their own websites and in other non-paid-for online space, such as Facebook and Twitter. To come within this remit, such marketing communications must be directly connected with the supply or transfer of goods, services, opportunities and gifts, or consist of direct solicitations of donations by charities etc as part of their own fund-raising activities.

Those parts of a company's own website or social media that are not marketing communications remain outside the ASA's remit, such as editorial content, news or public relations material, corporate reports, investor reports and heritage advertising.

2.7 Are there any other self-regulatory systems that govern advertising practices in the United Kingdom?

Certain industries/sectors have regulatory bodies and codes applying to advertising practices, including codes for the mobile phone industry (Mobile Marketing Association), premium rate telephone lines (Phone-paid Services Authority), alcohol (Portman Group) and direct marketing (Data & Marketing Association). Other organizations are also involved in the application of the CAP Code, such as the Cinema Advertising Association.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in the United Kingdom (eg, consumer protection laws, IP laws, unfair competition laws)?

The primary piece of consumer protection legislation in the UK is the CPRs. At the time of writing, the plan is to repeal and restate the CPRs in the DMCC Bill, with a few minor changes.

From 1 October 2014, consumers have new private rights of direct redress against traders who commit aggressive or misleading practices pursuant to the Consumer Protection (Amendment) Regulations 2014 ('2014 Regulations'). Now, if a trader carries out a misleading (or aggressive) practice, consumers will be able to unwind the contract (as if it had never existed) and get their money back, or receive a discount on sums paid. The CAP and BCAP Codes, and the ASA in its adjudications, aim to enforce advertising practices that are consistent with the CPRs. In addition, the CMA and Trading Standards Authorities both have power to investigate and enforce against advertisers/traders in breach of the CPRs.

Consumers will have recourse under the 2014 Regulations against the trader with whom they contract, but not others such as manufacturers or advertisers. Nonetheless, if a producer engages in a misleading (or aggressive) commercial practice of which the trader could reasonably have been expected to be aware, a consumer may be able to take action against the trader. For example, if a clothing manufacturer undertakes a high-profile advertising campaign claiming its products are 'pure cashmere' and the retailer knows this to be untrue but continues to sell the clothing, the retailer may be liable to the consumer. The retailer may equally be subject to a consumer claim if it conducts its own campaign based on manufacturer claims that it knows or suspects may be false.

To bring an action against a trader, a consumer has to demonstrate that the misleading act or aggressive practice was a significant factor in their decision, as an 'average' consumer, to enter into the contract or to pay the trader.

As well as consumer protection laws, data protection laws are very important in relation to advertisers dealing with consumers. Trademark law and the law of 'passing off' (similar to continental unfair competition law) is very important in the context of comparative advertising; and it will often be important to consider copyright law during the creation of advertising, particularly for parodies.

3.2 Is substantiation required for advertising claims?

Advertisers must ensure that they hold documentary evidence to prove all claims that are capable of objective substantiation, whether direct or implied, before submitting marketing communications for publication.

In the absence of adequate substantiation, the ASA may regard a claim as being misleading and therefore in breach of the CAP/BCAP Code.

If a comparison or comparative claim is made (eg, 'best selling'), the advertiser must hold evidence that relates to both its own product and that of its competitor.

The ASA is not very clear about the general standard of proof required for substantiation. However, there are detailed rules for claims relating to health, beauty and slimming products. For example, the level of substantiation required for a 'break through' claim for a cosmetics product will be very high, requiring a body of evidence of specific types.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Both the CPRs and the CAP and BCAP Codes state that obvious exaggerations (ie, puffery) are allowed. These are claims that the average consumer who sees the claim is unlikely to take literally. These claims do not require substantiation, but must not materially mislead and must not make any implied claims that are capable of objective substantiation.

For example, in 2017, the ASA considered whether or not a claim that a consumer would receive ‘a few extra quid’ when selling a car privately rather than through a second-hand dealer was ‘puffery’, or whether it needed to be substantiated. The ASA held that this phrase would not be taken literally by the consumer as an expectation of the likely size of the price difference. Instead, it simply indicated that selling a car privately would generally result in a higher sale price, but that this was often more time consuming (*We Buy Any Car Ltd*, 14 June 2017).

However, in another adjudication in 2018, the ASA ruled that a company’s claim to be ‘The Leading Trademark Registration Service’ was misleading and was not mere puffery. The ASA held that customers would understand this to mean that the company had registered more trademarks than any other business, which was not the case (*Trade Mark Eagle Ltd*, 21 February 2018).

Then, in October 2018, the ASA rejected a complaint against a television commercial marking the 250th anniversary of Lloyds Bank, concluding that the phrases ‘Yesterday, today, and tomorrow we have been and always will be by your side’ and ‘by your side for over 250 years’ were mere advertising puffery, and not intended to be taken literally.

In 2021, the ASA ruled again that a claim—‘the perfect network’, featured in Sky UK’s poster ads—was misleading. The company argued that the claim was non comparative and based on their own opinion; it believed consumers would understand the claim to be mere puffery. However, the ASA held that the claim was misleading and said that objective comparative evidence to substantiate the claim was required.

3.4 What are the rules governing the use of disclosures in advertising?

Advertisements must state significant limitations and qualifications. The way this should be done will vary according to the context.

Any qualification, such as a disclaimer or ‘small print’, can clarify or expand upon the main claim, but must not contradict it.

Any disclaimer or other qualification or clarification must be expressed clearly and legibly. The exact requirements will depend on a number of factors, such as the medium in which the main claim appears. There are also timing requirements for on-screen disclaimers during television commercials (ie, minimum timeframes during which the text must be shown on screen).

Footnotes should be clearly visible to a normal-sighted person reading the advertisement once, from a reasonable distance and at reasonable speed.

Disclosures now play a key part of advertising on social media platforms, and this is discussed in more detail in question 8 below.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Testimonials and endorsements must relate to the advertised product or service.

Advertisers must hold documentary evidence that a testimonial or endorsement is genuine (unless obviously fictitious), and hold contact details for the person who gave it. Factual claims within testimonials must not mislead. Advertisements generally should not feature a testimonial without permission, but exceptions may be made for accurate statements taken from published sources.

Marketing communications must not falsely claim that the advertiser, or other entity referred to in the marketing communication, is a signatory to a code of conduct, and must not claim (or imply) that they are endorsed by the ASA or CAP.

Advertisements must not use the Royal Arms, Emblems or Royal Warrants without prior permission from the Lord Chamberlain's office.

Testimonials and endorsements by celebrities using social media must make clear whether they are paid for or part of an overall commercial arrangement with an advertiser (see question 8 for further discussion on this subject).

3.6 What are the rules governing the use of product demonstrations in advertising?

The usual principles about misleading acts and omissions will apply to product demonstrations. Products must normally work as shown and as described.

Advertisements must not mislead consumers by exaggerating the capability or performance of a product; eg, by showing it doing things it cannot actually do.

If additional purchases or equipment will be required to make the product work, or to appear as they are shown in the demonstration, this must be made clear (eg, 'batteries not included').

During a demonstration, it is important to ensure that the advertisement does not present rights given to consumers in law as a distinctive feature of the marketer's offer. Also, advertisers must not suggest that their claims are universally accepted if a significant division of informed (or scientific opinion) exists.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permissible in the UK, subject to certain conditions:

- (a) in particular, comparisons must not mislead, and must compare products meeting the same need or which are intended for the same purpose, but they must not give the advertiser an artificial advantage;
- (b) the advertisement must objectively compare one or more material, relevant, verifiable and representative features of those goods and services, which may include the price; and
- (c) advertisements must not discredit or denigrate or take unfair advantage of the trademarks, goods, services, activities or circumstances etc of the competitor; and must not take unfair advantage of the designation of origin of competing product(s).

Unqualified superlative claims may be treated as comparative claims against all competing products.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

If an advertiser uses a third-party trademark in a comparative advertisement, other than as is permissible in order to fairly and legitimately compare two or more goods or services, the third party may have a claim for trademark infringement against the advertiser. Furthermore, depending on the circumstances, the third party may be able to bring a claim for defamation, trade libel, malicious falsehood, copyright infringement and/or passing off. If any of these claims are made out successfully, this could result in an injunction and/or claim for damages.

The requirements for the legitimate use of a third-party trademark in comparative advertising are derived from the Business Protection from Misleading Marketing Regulations and also reflected in the CAP and BCAP Codes. The key consideration is that the advertisement objectively compares one or more material, relevant, verifiable and representative features of the products. In practice, most disputes center on whether the advertiser can substantiate its claimed advantage.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

Where a product has special protection in the form of a registered ‘designation of origin’ (eg, feta cheese), the CAP Code requires advertisers to compare such products only with other products with the same designation.

Otherwise, the usual rules regarding misleading advertising apply to such ‘made in’ claims. For example, in 2011, the ASA ruled that an advertisement which centered on the French heritage of a particular brand of beer created the misleading impression that it was produced in France (*Heineken UK Ltd*, 13 August 2011).

The ASA has also taken action in relation to advertisements which imply that the trader is based in the UK when in fact they are based elsewhere. For example, in 2017, the ASA held that the claim that certain services were ‘designed by a UK in-house team’ misleadingly implied that the trader was based in the UK, when in fact they were based in the US (*Logo Design Guarantee*, 20 September 2017).

An advert may be deemed misleading if other design elements imply that a product or service is UK-based. In 2022, the ASA ruled against *Buycarparts.co.uk*, which stated ‘all auto parts in one place’ on its website. Although there was not an explicit reference to the UK, the webpage—which had a ‘co.uk’ domain—featured an image of the British flag, the letters ‘GB’, and pricing in pounds sterling. However, the goods were actually sent from Berlin. While the company’s privacy policy and legal notice listed a German address, the ASA considered that customers would not always access those pages, and held that the advertising was misleading.

3.10 Are there any special rules governing product packaging?

Generally speaking, misleading claims on packaging will be dealt with under CPRs. Special considerations apply in particular sectors, eg, alcohol. In the cosmetics sector, care must be taken to avoid claims on packaging that could amount to an unauthorized medicinal claim and therefore breach the criminal law.

Product packaging falls outside the scope of the CAP Code; however, if such packaging is visible in an advertisement, then the CAP Code will apply to the use of that packaging in the advertisement.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

The CAP Code has long applied to online advertising (including companies’ own websites), and many of the common ‘dark patterns’ align with issues that the ASA is well-versed in regulating. Examples include ‘drip pricing’, ad labeling (ie, the failure to label paid-for search results as such), and ‘disguising’ ads as something else to induce consumers to click on them.

The CAP Code requires that marketing communications must be obviously identifiable as such, and that marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession. That includes paid-for or sponsored listings on search engines, which are covered by the Code and should be clearly distinguishable from the natural listings.

Under the Code, ads for promotions must state all significant conditions likely to affect a consumer’s decision to participate in the promotion. Those are likely to include:

- whether a paid subscription starts automatically (after the trial) unless cancelled;
- the extent of the financial commitment if the subscription is not cancelled (during the trial); and
- any other significant conditions (eg, significant costs to participate).

However, the actual business practices used to make it difficult for a consumer to exit a subscription would fall outside the remit of the CAP Code. The CMA is currently investigating the use of ‘dark patterns’ and they may breach consumer protection laws.

Practices that enable the unintended disclosure of data could potentially be assessed under the CAP Code (Use of data for marketing), though others would likely lie within the remit of the Information Commissioner’s Office. The ICO and CMA have published a joint report on dark patterns and the use of personal data.

When it comes to practices involving direct financial detriment to the consumer, material that falls within the ASA’s remit is clearly covered by the Code. CAP and the ASA continue to monitor this, particularly with relation to how dark patterns can be tailored to groups or individuals, including those considered vulnerable.

The UK government recently consulted on further changes to consumer law, including the use of drip pricing. Therefore, more changes to consumer law may be on the horizon in relation to these and other ‘dark patterns’.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

The CAP Code is media neutral. Therefore, if an ad falls within its scope, its rules will apply, regardless of how the ad was created. The ASA regulates ads based on how the consumers will interpret them, which is not affected by the means used to generate that specific piece of content.

However, there are instances where how an ad was created might be relevant to whether it complies with the rules. In August 2023, the ASA stated that it had yet to rule, to its knowledge, on any ads using AI generated images. However, if these were used to make efficacy claims, there is the potential for them to mislead if they do not accurately reflect the efficacy of the product—much in the same way as images that are photoshopped or subjected to social media filters might. Advertisers should consider this if they are thinking about using AI generated images in their ads.

There is also a risk of some AI models amplifying biases already present in the data they are trained on, which could potentially lead to socially irresponsible ads. There have been a few documented examples of specific generative AI tools tending to portray those in higher-paying occupations as men or as individuals with lighter skin tones, or to portray idealized body standards that could be harmful or irresponsible. The ASA advises advertisers that want to use AI generated images in their advertising that they should be mindful of the potential risk of inherent bias and sense-check their ads to ensure that they are socially responsible and do not inadvertently portray harmful stereotypes.

Overall, advertisers should be aware that even if marketing campaigns are entirely generated or distributed using automated methods, they still have the primary responsibility to ensure that their ads are compliant. This is true for all stages of ad creation and distribution.

4 PRICE ADVERTISING

4.1 What are the United Kingdom's rules regarding price advertising?

The CPRs apply to all displays of pricing in communications giving pricing information. They prohibit traders from making misleading acts or omissions that cause or are likely to cause the average consumer to take a 'transactional decision' they would not otherwise have taken. For example, giving misleading information (or misleadingly omitting to give information) about the price or calculation of the price—even if this cannot be calculated in advance). See also the Guidance for Traders on Pricing Practices, issued by the Chartered Trading Standards Institute ('CTSi Guidance'), referenced in question 4.3 below.

There are also 'blacklisted practices' (ie, those which are automatically unfair, even without affecting a transactional decision), namely:

- (a) 'bait' or 'bait and switch' advertising;
- (b) falsely stating that a product will only be available for a very limited time; or
- (c) giving materially inaccurate information about market conditions.

There is also legislation in specific industry areas including: distance selling, consumer credit, estate agents, and package holidays and flights—and specialist advice should be taken on an individual basis. The Price Marking Order 2004 is also relevant and currently under review.

4.2 What are the United Kingdom's rules regarding advertising 'free' products?

It is a blacklisted practice under the CPRs to describe a product as 'free' if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

The CAP and BCAP Codes broadly mirror this rule, and also provide that, where receipt of the free product is conditional on purchasing another product, the price of that product may not be increased above its normal cost (and its quality must not be lower than normal).

If traders offer packages of products, they must not describe any elements of that package as 'free' if the consumer has no choice about the elements included in the package. In limited circumstances, if a feature has recently been added to a package and is not intrinsic to the package, it may be described as 'free'. In all cases, specific legal advice is recommended.

4.3 What are the United Kingdom's rules regarding sales and special offers?

Detailed guidance about the application of the CPRs' rules on price advertising is contained in the CTSi Guidance. This adopts the same principles-based approach that underpins the CPRs.

The CTSi Guidance revamped the rules on the use of 'reference prices' when making a savings claim. Traders must now ensure that the 'average consumer' would not consider the savings claim to be misleading or unfair. Despite this ambiguity, the Guidance provides a useful steer in the form of the following five questions:

- (a) How long was the product on sale at the higher price compared to the period for which the price comparison is made?
- (b) How many, where, and what type of outlets will the price comparison be used in compared to those at which the product was on sale at the higher price?
- (c) How recently was the higher price offered compared to when the price comparison is being made?
- (d) Where products are only in demand for short periods each year, are you making price comparisons with out-of-season reference prices?
- (e) Were significant sales made at the higher price prior to the price comparison being made, or was there any reasonable expectation that consumers would purchase the product at the higher price?

The CTSi Guidance also revisited the previous '10% rule' for general savings claims. Previously, the guidance stated that, if a trader wanted to make a general savings claim such as 'save up to 50%', then that saving needed to apply to at least 10% of the range of products on offer. Under the CTSi Guidance, the maximum saving must apply to a 'significant proportion' of the range of goods on offer and represent the true overall picture of the price promotion. It also states that 'up to' and 'from' claims must be shown clearly and prominently.

When using 'reference prices' to make savings claims, traders must ensure that the 'average consumer' would not consider the savings claim to be misleading or unfair. Traders should apply a 1:1 ratio at most, so if the higher price applied for one month, the comparison should be used for no more than one month.

4.4 What are the United Kingdom's rules regarding rebates?

In the UK, this is known as 'cashback'. There are no specific rules governing the promotion of products by offering cashback, but it will be considered to be a sales promotion and therefore all the usual rules regarding significant conditions being made known etc apply (see Section 8 of the CAP Code and related 'Help Notes'). For example, it should be clear what is needed to qualify to receive the cashback and also what form the cashback takes (eg, cash, or merely a voucher that can only be redeemed in particular stores). All the other usual rules contained in the CPRs and the CAP and BCAP Codes should be followed.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The information set out above is a very brief summary of the CTSi Guidance, which should be referred to in full, as well as the relevant sections and the Help Notes of the CAP and BCAP Codes.

The UK government is currently considering the issue of 'drip pricing' as discussed in question 3.11 above, and the CMA has investigated unit pricing in the grocery market.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

(a) **Broadcast advertisements** for the following goods/services are completely prohibited:

- breath-testing devices;
- guns/offensive weapons or gun clubs;
- prostitution and sexual massage services;
- obscene material (see question 5.3 below);
- products for the treatment of alcohol or illegal-substance dependence;
- some types of religious and faith-based advertising;
- some types of home working schemes;
- escort agencies (TV only);
- political advertising;
- teleshopping for certain medicinal or veterinary products or medical treatment for humans or animals;
- the acquisition or disposal of units in collective investment schemes not authorized or recognized by the FCA, without the prior approval of BCAP; and
- R18-rated materials (as classified by The British Board of Film Classification, which are works featuring consenting sex or strong fetish material involving adults) (radio only).

(b) **Broadcast and non-broadcast media:** all forms of advertising are prohibited for the following:

- betting systems and products that facilitate winning a game of chance;
- pyramid selling schemes;
- infant formula;
- prescription only medicines; and
- tobacco products (and some associated non-tobacco products eg, rolling papers and filters).

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The following are specifically prohibited:

- (a) use of subliminal techniques in audiovisual commercial communications;
- (b) claiming that a product can facilitate winning in a game of chance;
- (c) claiming that the advertiser's job or livelihood is in jeopardy if the consumer does not buy the product;
- (d) presentations in advertisements for medical products by doctors, dentists, veterinary surgeons, pharmaceutical chemists, nurses, midwives and the like, if these imply professional advice or recommendation; and
- (e) there are many restrictions on advertising to children, eg, encouraging children to use pester power.

Other sectors also contain detailed rules that govern particular practices. For example:

- alcohol advertising must not link alcohol to sexual success or show actors who appear to be under 25 years old;
- gambling advertising must not suggest that gambling can be a solution for financial problems;
- automotive advertising must not show cars being driven recklessly or at excessive speed.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Obscene Publications Act 1959 makes it a criminal offence to publish, or possess with the view to publishing for gain, an article which, taken as a whole, has the effect of tending to deprave or corrupt persons who are likely to read, see or hear the matter contained within. Case law has shown that the article must have a morally corrupting effect rather than merely shock or disgust readers. There are two main defenses to the offence: innocent publication/possession; and public interest.

The Indecent Displays (Controls) Act 1981 makes it an offence to display or cause or permit to be displayed any indecent matter in, or so as to be visible from, any public place. The offence does not include matter included in a television program service, in films screened in licensed cinemas or in art galleries or museums visible only from within the gallery or museum.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Broadcasters must adhere to the Ofcom Broadcasting Code ('Ofcom Code') when entering sponsorship arrangements. Sponsorship of TV programs must be clearly identified by means of a sponsorship credit that makes clear the identity of the sponsor.

Broadcasters must also ensure that editorial content is distinct from advertising and surreptitious advertising is prohibited.

Advertisers must comply with the CAP Code, which states that marketing communications must be obviously identifiable as such. The BCAP Code goes further and states that advertisements must be obviously distinguishable from editorial content and that the audience should be able to quickly recognize the message as an advertisement.

The CPRs also require advertisers to disclose whether an advertiser is paying for editorial content or advertorials, and that advertisers must not mislead the public by any act of omission, so identification of the advertiser may be necessary, depending on the context.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The Ofcom Code covers 'linear' broadcast television, in addition to issues concerning sponsorship and product placement. Ofcom is also responsible for the regulation of on-demand program services ('ODPS'). However, it has designated the ASA as its co-regulator to take responsibility for advertising appearing in ODPS.

The Ofcom Code states that, in general, products, services and trademarks must not be promoted in programming and that no undue prominence may be given in programming to such things.

The Ofcom Code also deals with product placement and sponsorship, ensuring that editorial content remains distinct from advertising, preserving the broadcasters' editorial independence and control over programming.

Product placement (including a reference to a product, service or trademark in a program for a commercial purpose and in return for consideration) is prohibited in the UK, except in specific genres, such as films, sports programs and light entertainment programs. Product placement is prohibited in news, religious, current affairs and children's programs.

Product placement is prohibited for:

- cigarettes and other tobacco products;
- prescription only medicines;
- alcoholic drinks;
- HFSS food or drinks;
- gambling;
- infant formula;
- all medicinal products;
- electronic or smokeless cigarettes; and
- any product or service prohibited from television advertising.

Programs that contain product placement and which were produced or commissioned by the provider or the program services, must clearly signal such product placement by means of a universal neutral logo (the product placement 'P' in the UK).

To the extent that a 'blogger' or 'vlogger' is paid to produce content for an advertiser, and that advertiser has any form of editorial control over such content, then the Codes will apply to such content. The CAP Code may also apply if such video content is placed on a channel falling within the ASA's remit.

7.2 **Are there any special disclosure or other obligations when integrating advertising content with other content?**

- (a) Unsolicited email marketing communications must be obviously identifiable as such without the need to open them, eg, from the subject line.
- (b) Marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession; marketing communications must make clear their commercial intent, if that is not obvious from the context. This is a requirement of the CAP Code, but is, in addition, also one of the practices banned under the CPRs as being always unfair.
- (c) Both advertisers and publishers must make clear that advertorials are marketing communications; eg, by heading them 'advertisement feature'. However, 'advertorial' is quite narrowly defined, with two additional elements: an advertorial is:
 - (i) an advertisement feature, announcement or promotion, the content of which is controlled by the marketer, not the publisher;
 - (ii) that is disseminated in exchange for a payment or other reciprocal arrangement.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special legal rules governing advertising via social media, but the CMA has been active in enforcing the CPRs in relation to social media. It is also important to note that the ASA has jurisdiction over marketing communications made in online non-paid-for space, including both advertisers' own websites and social media platforms, such as Twitter and Facebook etc. It will also cover situations where advertisers use consumers or celebrities to promote their products via those consumers'/celebrities' personal social media accounts. The ASA's remit applies if their 2-stage test is satisfied:

- (a) Has there been a payment of money or money's worth to the influencer; and
- (b) Has the advertiser exercised any kind of editorial control over the content or scheduling of a post?

In response to the growth of advertising content on such social media platforms, the ASA has published numerous guidance notes advising brands and celebrities how to comply with the CAP Code. The ASA has also been active in enforcing the CAP Code in relation to these advertisements.

The most pertinent of the 'usual' rules that have particular importance in the social media arena is the requirement that adverts must be clearly identifiable as such. For example, in 2018, the ASA ruled that an Instagram post by an influencer promoting a watch brand was not obviously identifiable as a marketing communication (*Daniel Wellington*, 25 July 2018). A further example was in 2022, when the ASA ruled that Instagram posts and stories by an influencer promoting wedding outfits were not obviously identifiable as a marketing communication (*Never Fully Dressed*, 30 November 2022).

Advertisers also need to ensure that they do not inadvertently breach the CPR blacklisted practice of 'falsely claiming or creating the impression that they are not acting for purposes related to their business' or 'falsely representing oneself as a consumer'. This applies both to the advertiser's own personnel (eg, their social media manager or copywriter) as well as where an advertiser has paid a celebrity, blogger or other person to promote their product via their own personal social media accounts. The ASA's approach to best practice in relation to such advertisements has evolved in recent years. Previously, the safest way to achieve such disclosure was through a hashtag, such as '#ad'. Now, the ASA's approach is to assess the marketing communication as whole. The ASA will consider whether the images and/or wording used in a social media post are in the same style as the celebrity's or influencer's usual posts. Marketing communications that are very similar to their usual posts in terms of tone will likely require a clearer disclaimer that they are marketing communications. In relation to vlogs, advertisers and vloggers should consider the timing of their disclosure. The ASA advises vloggers that they should ensure that consumers are aware they will be watching an advertisement before they watch it.

Special care must also be taken in relation to advertisements targeting minors, especially those under 12. According to the ASA, when a marketing communication is directed at under-12s (through the selection of media and/or the content), highly immersive, or significantly integrated into the surrounding editorial content and unlikely to be identified clearly from the context in which it appears, it will require enhanced disclosure. This means disclosures should be prominent, interruptive, and adequately indicate the commercial intent. In 2022, the ASA ruled against an ad

which was formatted identically to the surrounding editorial content and was significantly visually integrated to the extent that the ASA considered that it would be unlikely that children would be able to identify the content as an ad from the context in which it appeared.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

If an advertiser 'adopts and incorporates' user generated content ('UGC') on its website or into its social media space, then the advertiser will become responsible for that UGC and all the usual advertising rules will apply. The key issues for advertisers to think about if they want to make use of UGC are therefore as follows:

- (a) Is the advertiser soliciting UGC? If so, is the advertiser encouraging promotional-type UGC to be made, such as unqualified praise of a product?
- (b) Is the advertiser moderating UGC? If posts are pre-moderated before being posted, then the UGC will certainly be the advertiser's responsibility. Post-moderation is more of a grey area.
- (c) Is the advertiser editing or making UGC more prominent than it would otherwise be? If so, the UGC will more likely be the advertiser's responsibility.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Although there have not been any prosecutions concerning social media advertising, there has been enforcement activity of a legal nature:

- (a) In 2012, the OFT took action against Groupon, who were found to have run promotions on an unfair basis and to have engaged in 'astroturfing', allowing the posting of comments from an employee posing as a consumer.
- (b) In 2016, the CMA investigated Social Chain, a social media company which had used the social media accounts of high-profile individuals to promote films, games and mobile apps. The CMA concluded that consumers would have found it difficult to distinguish between the usual posts from such individuals and posts which contained marketing content.
- (c) In April 2017, the ASA upheld a complaint that an Instagram post by a beauty blogger was not obviously identifiable as an advertisement. The ASA found that, whilst the image and use of the brand's Instagram handle differentiated the posts from the blogger's usual content, it was not sufficiently clear that these were marketing communications (*Nomad Choice Pty Ltd t/a Flat Tummy Tea*, 5 April 2017).
- (d) In another ruling in October 2017, the ASA ruled against a reality TV star who had promoted on her Snapchat story. Although the individual had been the face of the brand for two years and regularly posted content referring to the brand, the ASA ruled that such posts would not be obviously identifiable as marketing communications to new Snapchat users (*Diamond Whites*, 25 October 2017).
- (e) The ASA has also ruled against a series of influencers who had not adequately disclosed the commercial nature of their posts, such as in a 2020 ruling that an Instagram Story containing the standalone label '*affiliate' was not sufficient for the Story to be recognizable as an ad (*Asos.com Ltd*, 22 April 2020).

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

In the UK, there is no absolute right to protect 'personality rights', ie, the right to commercially exploit an individual's name, picture, likeness or voice. Celebrities may be able to do so, if they can make out a case under the tort of 'passing off', but both celebrities and private individuals may also be able to make a complaint to the ASA by reference to the CAP or BCAP Code.

In non-broadcast advertising, the CAP Code urges advertisers not to refer to living individuals, whether famous or not, subject to the exceptions below. In broadcast advertising, unauthorized depictions of, or references to, living individuals are prohibited; again, subject to the narrow exceptions described below.

The law of passing off was updated in 2002 in a case brought by the racing driver, Eddie Irvine, against the talk radio station, TalkSport. He was able to establish the three elements of the tort.

- (a) First, he showed that he had 'goodwill', because he earned money from product endorsements and advertising.
- (b) Second, he proved that people who saw a piece of marketing that purported to show him listening to TalkSport radio would be understood to be an endorsement by him of that station.
- (c) Third, he has suffered damage by the lost license fees.

This is now the leading case in this area, and will be cited by celebrities who have been referred to in advertising without consent. By way of example, in 2015, pop star Rihanna successfully sued Topshop under the English tort of passing off for using her image on a t-shirt without her permission.

Finally, there is also a role for data protection law, even for the private citizen. In one case, the courts required a local authority to pay compensation to a disabled girl. The Council had permission to use a photograph of the girl to promote their services for the disabled in the borough. However, when the photograph was later used to promote services for people with HIV Aids, the processing of her personal data was then unfair.

9.2 Are there situations when permission is not required?

Use of members of the public in a crowd scene or in a public place may be acceptable without permission. For celebrities and members of the Royal Family, references that accurately reflect the contents of a book, an article or a film may be acceptable without permission; as may references containing nothing inconsistent with the celebrity's views, provided there is no implied endorsement.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are a number of potential areas which may be governed by further rules or which may require third party permission. The following is a non-exhaustive list:

- identifiable possessions or private dwellings;
- uniforms (eg, police and army uniforms);

- coins, bank notes and postage stamps;
- the King's image generally, and images of other members of the Royal Family, and royal warrants, crests and emblems;
- identifiable third parties (including, but not only, celebrities);
- third party quotes;
- some vehicles or parts of vehicles can be protected as a trademark, such a radiator grilles, as well as the more obvious badges etc and therefore should be checked;
- the scouting logos and symbols; and
- the red cross/red crescent symbols.

However, it is generally low risk to use the Union Jack flag, provided such use does not mislead eg, about the origin of the product, and it is not used in a way which is offensive.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

It is often permissible to use other companies' recognizable products in advertising, provided that the third-party product is mass produced (eg, not one-off couture clothing) and the third-party trademark is merely incidental or referential, used as an indication of origin, rather than implying an endorsement, or trying to leverage the reputation of the third-party mark.

The risk is likely to be significantly higher if the third party's product is shown in a way which could create the misleading impression that the third-party brand/trademark featured endorses, has authorized, or is officially associated with the advertiser, advertised product, advertising campaign, etc.

The risk is also likely to be high if the item is shown in a negative or denigratory way, eg, showing a third-party branded vehicle which has broken down.

It is also important to avoid references to third parties that might give rise to an infringement of their copyright or design rights.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the United Kingdom which affect advertising (eg, Swedish gender equality law)?

The CAP Code states that marketing communications must not use the Royal Arms or Emblems without prior permission from the Lord Chamberlain's office. References to a Royal Warrant should be checked with the Royal Warrant Holders' Association.

Members of the Royal Family should not normally be shown or mentioned in a marketing communication. However, Royal images may be used to advertise material such as a book, article or film about a member of the Royal Family.

As in many other countries, there is increasing concern about the portrayal of women in advertising. Sometimes this is focused upon the depiction of women as sexual objects, and sometimes about sexualization of young women, often in advertising for lingerie, etc. Other concerns are raised about the portrayal of women involving unachievable, idealist images through the use of post-production enhancements. There are rules on harmful gender stereotypes. The ASA has also provided guidance about avoiding racist and ethnic stereotypes.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

The CAP and BCAP Codes have very general principles stating that advertising must not cause widespread harm and offence. These principles have been applied widely by the ASA across a range of issues, reflecting the fact that the UK is a modern, liberal, multi-cultural democracy. Non-governmental organizations representing the interests of minority groups will often take the opportunity created by an advertisement to promote their particular aspect of the equality agenda. Their complaints are not always upheld by the ASA, but there will still be a significant amount of negative press coverage.

In recent years, eg, there have been complaints about the portrayal of gypsies in advertising for a television show, 'My Big Fat Gypsy Wedding'; about a kiss between a gay couple in a TV commercial for Heinz mayonnaise; and about the portrayal of transgender people in a commercial for Paddy Power.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the United Kingdom?

Generally speaking, most issues concerning advertising compliance will be dealt with by the ASA. If an advertisement is investigated by the ASA, it is essential to 'front load' the defense. If an informal resolution is not appropriate, advertisers must make the best possible submission, with the requisite substantiation. If the Executive submits a Draft Recommendation to the Council with an upheld recommendation, that will usually be followed. In practice, it is then very difficult to have that decision reviewed.

 UNITED STATES OF AMERICA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the United States of America?

On a national level, advertising in the United States is primarily regulated by the Federal Trade Commission ('FTC'), an independent federal agency created in 1914. The FTC's Divisions of Advertising and Marketing Practices within its Bureau of Consumer Protection are tasked with protecting US consumers from unfair or deceptive advertising and marketing practices. Advertising and labeling claims for particular products may also be subject to oversight from other federal agencies.

Advertising is also regulated at the state level. All fifty states, the District of Columbia, and the territories of Puerto Rico, Guam and the US Virgin Islands have consumer protection bureaus within their State Attorney General Offices, which regulate advertising and marketing practices within the state. Often, state regulation can be more restrictive than at the federal level.

Under various federal and state laws, the competitors of an advertiser, as well as consumers (either individually or as a class), have the right to bring claims based on injury caused by false or deceptive advertising.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Advertising is quite broadly defined in the United States, although what exactly constitutes 'commercial speech' is often unclear. Most communications from an advertiser are likely to be considered by a court, regulator, or self-regulatory body to be advertising, including print, broadcast, out-of-home, telemarketing, direct mail, packaging, online, mobile, as well as certain public relations, branded entertainment, and social media campaigns, including through social media platforms. There is not one simple test for determining whether a communication is 'advertising' or 'commercial speech', but some of the factors to be considered include the source of the communication, the content being disseminated, the intent of the communication and the intended audience.

1.3 What is the basic regulatory framework for advertising regulation?

According to the FTC Act, advertising must be truthful and not deceptive, and advertisers must have proper and sufficient evidence to support claims prior to making them. In addition, advertising cannot be unfair, which is generally understood to mean that it cannot present an unreasonable and unavoidable risk of harm to consumers.

When evaluating advertising, the FTC will view an advertisement from the point of view of the 'reasonable consumer'. The test is whether the advertising is likely to mislead a consumer acting reasonably under the circumstances. Even if advertising misleads only a small number of 'reasonable consumers', it may still be viewed as deceptive. When advertising is targeted to a specific audience, the FTC will determine its effect on reasonable members of that group. The FTC considers the overall context of an advertisement—words, phrases, and pictures, as well as both the implied and express claims made by the advertisement—to determine the common sense 'net impression' it conveys to reasonable consumers.

Advertising must also comply with laws and regulations that apply to the marketing of specialized products and for particular audiences, as well as with state and local consumer protection and advertising laws and regulations.

The FTC works to prevent deceptive advertising practices by conducting its own investigations as well as periodically joining with other law enforcement agencies at the federal and state level to monitor for deceptive advertising claims.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

There are a number of advertising and marketing practices that are specifically regulated. These include, for example:

- (a) **Commercial Emailing:** Emails sent by advertisers to consumers to advertise or promote products or services are regulated by the CAN-SPAM Act, a law that establishes requirements for commercial messages;
- (b) **Text Message Marketing:** Federal law prohibits sending a commercial text message using an automatic telephone dialing system unless the advertiser has received prior 'express written consent' that is signed by the recipient;
- (c) **Telemarketing:** Telephone marketing must comply with the FTC's Telemarketing Sales Rule and the Federal Communications Commission ('FCC')'s Telephone Consumer Protection Act (as well as applicable state law), which help to protect consumers from fraudulent telemarketing calls, as well as the Telephone Order Merchandise Rule and the 900 Number Rule; and
- (d) **Sweepstakes and Contests:** Advertising that includes a call to action to enter a prize promotion must include certain material information about the promotion in the advertisement, such as eligibility restrictions, end dates, prize information, odds, and where to go for the full official rules, and in some cases the promotion must be registered and bonded.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are a number of industries whose advertising practices are specifically regulated. For example:

- (a) **Alcoholic beverages:** The Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau ('TTB') has jurisdiction over alcoholic beverage products that may have deceptive or misleading labeling and advertising. In addition, each state has specific rules relating to the marketing of alcoholic beverages.
- (b) **Clothing and textiles:** The labeling and advertising of textiles and clothing are governed by federal statutes and regulations enforced by the FTC, including the Wool Products Act, the Fur Products Labeling Act, the Textile Fiber Products Identification Act, and the Care Labeling Rule, as well as various state laws and regulations.
- (c) **Consumer financial products:** The Consumer Financial Protection Bureau ('CFPB') has oversight for advertising and marketing for financial products for consumers, including credit card marketing, mortgage, and student loan advertising, etc. In many cases this jurisdiction is shared with the FTC.

- (d) **Dietary supplements, drugs and health products:** The advertising and labeling of dietary supplements and other health products is regulated by Food and Drug Administration ('FDA') and the FTC. The FDA also regulates prescription and over-the-counter drugs, as well as cosmetics and many foods.
- (e) **Pesticides:** Claims for pesticides are subject to rules and review by the Environmental Protection Agency ('EPA').

1.6 Are any government pre-approvals required?

In general, advertising in the United States does not require government pre-approval. There are a few exceptions to this rule, however (eg, certain prescription drug advertising, alcoholic beverage labeling and promotional materials, and promotions involving dairy products).

1.7 Does the media pre-clear advertising?

In the United States, the broadcast television networks (as well as their cable affiliates and certain other cable networks) require that all advertising that will run on their channels be pre-approved by their advertising clearance departments, which use specific and proprietary rules, guidelines, and standards to evaluate the proposed advertising. Certain other media, including major social media platforms, also require pre-clearance of advertising placements.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The FTC is the main regulatory body tasked with enforcing advertising laws in the United States. The FTC does this through a variety of monitoring and enforcement activities that often result in orders of voluntary compliance. The FTC can also bring non-compliant advertisers to court. Remedies in an action brought by the FTC vary depending on the nature of the complaint, but can include cease-and-desist orders regarding the advertising in question, civil penalties, restitution, disgorgement of profits, and orders to run corrective advertising to fix any misinformation stemming from the original advertisement.

In addition, state Attorneys General, local prosecutors, and other authorities enforce state and local laws on advertising.

Congress has given other government agencies the authority to investigate advertising by airlines, banks, insurance companies, common carriers, prescription drug manufacturers, and companies that sell securities and commodities. An example of such an agency is the CFPB, which regulates advertising practices in the consumer financial services marketplace.

1.9 When does a competitor have a right of action? What are the potential remedies?

False advertising claims can be brought in federal or state court by any competitor who has suffered damages from false advertising. Remedies commonly include injunctions to stop the advertisement, monetary damages and corrective advertising.

1.10 When do consumers have a right of action? What are the potential remedies?

State laws vary as to whether, and the extent to which, consumers have rights of action against advertisers. Complaints against advertising at the consumer level can also aggregate into a class action lawsuit. Consumer class actions tend to focus on monetary damages and injunctions as remedies, though corrective advertising can be requested.

2 SELF-REGULATORY FRAMEWORK

2.1 Does the United States of America have a primary advertising self-regulation system?

The primary self-regulatory system for advertising in the United States is housed within BBB National Programs, which establishes the policies and procedures for advertising industry self-regulation. BBB National Programs operates several different self-regulatory programs, including, for example:

- (a) The National Advertising Division ('NAD'), which provides a forum whereby competitors can challenge each other's advertising claims. In addition, NAD on its own or at the urging of a consumer or consumer advocacy group can also review advertising claims;
- (b) The Children's Advertising Review Unit ('CARU'), which monitors advertising directed to children and enforces a set of self-regulatory principles;
- (c) The Direct Selling Self-Regulatory Council, which was founded to monitor and challenge product claims and income representations (including lifestyle claims) disseminated by direct selling companies and their sales force members; and
- (d) The National Advertising Review Board ('NARB'), which is the appellate arm for cases before NAD and CARU, providing an opportunity for advertisers (and sometimes challengers) to question a decision made by a self-regulatory body.

There are various other industry-specific self-regulatory organizations that monitor and enforce their own codes, such as:

- (e) The motion picture (Motion Picture Association), music recording (Record Industry Association of America), and electronic game (Entertainment Software Rating Board) industries, which have each implemented a self-regulatory system that rates or labels products;
- (f) The Distilled Spirits Council of the United States, the Beer Institute, and the Wine Institute, which have promulgated guidelines to address concerns about underage exposure to alcohol marketing and to limit where alcohol advertising and marketing may appear; and
- (g) PhRMA administers a self-regulatory program involving the direct-to-consumer advertising of prescription drugs.

2.2 Is there a self-regulatory advertising code? What are the key principles?

NAD does not have a 'code' in the traditional sense. NAD operates under procedures that govern the way a challenge is handled and general principles of truth in advertising apply.

CARU, on the other hand, has a Code that goes well beyond general principles of deception for advertising primarily directed to children under the age of 13. Key aspects of the CARU Code include:

- guidelines on taking steps to avoid the 'blurring' of advertising and editorial/program content;
- guidelines on the use of premiums, clubs, and sweepstakes and contests;
- guidelines on how to avoid overly pressured sales language and how to handle online solicitations;
- guidelines on avoiding blurring of the line between fantasy and reality;
- guidelines on depictions of unsafe and or inappropriate behavior or situations in advertising; and

- data collection guidelines that correspond generally with the federal law governing the collection and use of personally identifying information from children.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The most important self-regulatory body is NAD. By its very essence, it is a dispute resolution mechanism. Disputes are resolved under one of three ‘tracks’ available at NAD: Standard Track, Fast-Track SWIFT, or Complex Track. The procedure in an NAD challenge depends on which track is selected, but all three involve certain common elements:

- A challenge is filed (and, if filed by a company, there is a filing fee that varies by the size of the challenging company’s annual US revenues and whether it is a member of BBB National Programs);
- NAD determines whether it will take the case (NAD will, for example, reject cases that do not relate to ‘national’ advertising or that relate to a matter currently being litigated), and, once approved, NAD will open the case and send the challenge to the advertiser;
- There is briefing from the parties;
- In most situations, there is a meeting between NAD and each party (though meetings are at NAD’s discretion);
- NAD issues a decision summarizing the issues, the arguments of the parties, and NAD’s findings and recommendations; and
- The advertiser is permitted to provide a statement that will accompany the decision, which is then released publicly.

The procedures for the various tracks generally work as follows:

- (a) For cases opened under the ‘Standard Track,’ there are two rounds of briefing per party. After the challenger submits its filing and NAD opens the case, the advertiser will submit a reply to the challenge. Thereafter, each party has the opportunity for one additional written submission. The challenger may, at its option, elect to ‘expedite’ the challenge after the advertiser’s first reply, thereby reducing the briefing to only one written submission per party. NAD will then generally hold meetings with each party following all briefing. NAD will then issue its decision once it is finalized.
- (b) NAD’s ‘Fast-Track SWIFT’ process is intended to be used only for disputes involving a ‘single well-defined issue.’ If a challenger opens a case under the SWIFT track, NAD will, at the outset, also make an initial determination regarding whether the case is appropriate for SWIFT, and the advertiser will have an opportunity to reject the use of the SWIFT track. If NAD decides the case is not appropriate for SWIFT (either on its own, or in response to an objection from the advertiser), it will be moved over to the Standard Track. If the case proceeds under the SWIFT track, there is only one round of briefing for each party. NAD will generally (though at NAD’s discretion) hold meetings with each party following all briefing. NAD will issue its decision once it is finalized. SWIFT cases are resolved by NAD on an expedited timeline.
- (c) NAD’s ‘Complex Track’ process is intended to be used for disputes involving complex substantiation. For challenges opened under the Standard track, advertisers have the opportunity to request that the case is moved to the Complex track. After the case is opened, NAD will meet with the parties via a joint conference to determine scheduling for the case (whereas deadlines are set by default timeframes on NAD’s other tracks). The advertiser will

then submit a reply to the challenge. Following the first round of briefing from the parties, NAD will hold meetings with each party. Thereafter, each party has the opportunity for one additional written submission. The challenger may, at their option, elect to 'expedite' the challenge after the advertiser's first reply, thereby reducing the briefing to only one written submission per party. NAD will then generally (though at NAD's discretion) hold meetings with each party following all briefing. NAD will issue its decision once it is finalized.

Failure of an advertiser to participate (or agree to abide by NAD's recommendations) may result in referral of the matter to the FTC (or another regulatory body if, due to the subject matter, it is more appropriate at another agency).

If the advertiser is unhappy with the outcome, it can appeal NAD's decision to the NARB. Challengers can appeal decisions in only Standard track and Complex track cases, but this is subject to review and approval by the Chair of the NARB. If a decision is appealed, the NARB will convene a panel of third-party advertising industry representatives. The parties can submit briefs based only on the record as developed at NAD, and there is a meeting at which the advertiser and challenger each makes a short presentation.

The other self-regulatory programs at BBB National Programs have their own procedures.

2.4 Is the self-regulation system effective? Is it widely used and followed?

There is a very high degree of compliance and participation in these self-regulatory programs. Generally, legitimate advertising disputes are resolved in a reasonably quick and efficient manner and, because there is a high degree of compliance, the self-regulatory process is generally considered to be effective.

2.5 Are the self-regulatory system's decisions reported?

Upon completion of an NAD, CARU, or NARB case (as well as cases handled by certain other self-regulatory bodies), the body will publish a written decision. The decision presents the challenger's and the advertiser's arguments comprehensively before presenting the resolution. The cases are archived in electronic form on the BBB National Programs website, and they are accessible by subscription. They also publish press releases about each case, and those can be reviewed without a subscription.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The burden of proof in an NAD case is on the advertiser to demonstrate that the advertising claims at issue are substantiated or that there is a reasonable basis supporting the claims at issue.

Another key aspect of NAD practice is that if an advertiser presents a test that purports to substantiate a claim, especially if it is an industry-standard test, the burden tends to shift to the challenger to prove that there is a better test that disproves the claim.

The advertiser or challenger is free to submit consumer testing to demonstrate the presence or absence of any implied claims. In the absence of any reliable consumer testing, NAD reserves the right to use its own judgment in evaluating whether a particular implied claim is made.

Finally, NAD's mission encompasses a sense of responsibility toward the advertising industry generally. Consequently, one is more likely to see a case that argues that a claim 'disparages' a competitor at NAD than one would in a civil action for false advertising.

2.7 Are there any other self-regulatory systems that govern advertising practices in United States of America?

See above.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in United States of America (eg, consumer protection laws; IP laws; unfair competition laws)?

Advertising and marketing in the United States is heavily regulated by federal, state, and local law, as well as by various self-regulatory organizations. Below are some key examples of the laws governing advertising practices in the United States:

- (a) **Federal Laws:** While there are numerous advertising laws, including statutes prohibiting deceptive practices, as well as statutes governing specific marketing practices, two of the main examples are:
 - (i) The FTC Act: The FTC Act is a federal law prohibiting 'unfair or deceptive acts or practices'; and
 - (ii) The Lanham Act: The Lanham Act is the federal false advertising statute, which provides the key federal cause of action for competitors.
- (b) **State Laws:** Each state also regulates advertising, both with general consumer protection statutes (many modeled after the FTC Act), and with statutes regulating specific practices (such as the administration of sweepstakes and contests or sale pricing); and
- (c) **Local Laws:** Some counties and municipalities also have consumer protection laws. These laws run the spectrum from general prohibitions on deception to specific requirements related to pricing and other retail practices.

Advertising can also implicate many other areas of law, including copyright, trademark, right of publicity, defamation, unfair competition, union issues, idea misappropriation, obscenity and indecency, hate speech, other tort liability, criminal law, and privacy.

3.2 Is substantiation required for advertising claims?

The general rule is that advertisers must have proof for the claims that they make in advertising, before those claims are disseminated.

Further, an advertiser must have a 'reasonable basis' for any claims that it makes in its advertising. In order to determine whether an advertiser has a 'reasonable basis' for its claims, the following factors are considered:

- the type of claim,
- the product,
- the consequences of a false claim,
- the benefits of a truthful claim,
- the cost of developing substantiation, and
- the level of substantiation that experts in the field would agree is reasonable.

An advertiser's claim must closely match its substantiation. When dealing with health and safety claims, environmental marketing claims or certain product performance claims, the FTC typically requires 'competent and reliable scientific evidence'.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Substantiation is not required for puffery. Puffery is generally understood to be an obviously exaggerated representation that is not objectively provable and that ordinary consumers do not take seriously. Factors to be considered when determining whether a statement is puffery include whether:

- the representations concern general matters that cannot be proven or disproved,
- the statements are distinguishable from representations that are measurable, or
- the wording uses expressions of opinion that will be discounted by consumers.

Whether a statement may be puffery may be determined by the context in which the statement is used.

3.4 What are the rules governing the use of disclosures in advertising?

According to the FTC, if a disclosure is required in order to prevent a claim from being misleading, the disclosure should be 'clear and conspicuous,' and disclosures should qualify, but not contradict, the claims being made. Generally, the FTC expects that a disclosure will be 'difficult to miss.' And, for online disclosures, the FTC generally expects those disclosures to be 'unavoidable.' When determining whether a disclosure is 'clear and conspicuous,' the FTC looks at factors such as:

- placement of the disclosure in the advertisement;
- proximity to the claim it is qualifying;
- prominence of the disclosure;
- whether the disclosure is unavoidable;
- whether other elements of the advertising may distract attention;
- whether the disclosure needs to be repeated in order to be effective;
- whether audio is in adequate volume and cadence;
- whether visual disclosures appear for a sufficient duration; and
- whether the language is understandable to the intended audience.

Some state and local laws also give specific more specific requirements for disclosures. Television networks have rules regarding disclosures as well.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising set forth the FTC's views on the use of consumer, celebrity, expert, and organizational endorsements and testimonials in advertising. They do not have the force of federal law, though some states have codified the requirements set forth in the Guides.

An endorsement is 'any advertising, marketing, or promotional message for a product that consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.' Endorsements must be truthful, non-deceptive, and be substantiated by the advertiser. In addition, any connection between the endorser and the advertiser, which might materially affect the weight or credibility of the endorsement (in other words, a relationship not reasonably expected by the audience), should be clearly and conspicuously disclosed.

Note that, in July 2023, the FTC updated its Endorsement Guides. The updated Endorsement Guides make a number of revisions including:

- (a) articulating a new principle regarding procuring, suppressing, boosting, organizing, publishing, upvoting, downvoting, or editing consumer reviews so as to distort what consumers think of a product;
- (b) addressing incentivized reviews, reviews by employees, and fake negative reviews of a competitor;
- (c) adding a definition of ‘clear and conspicuous’ and saying that a platform’s built-in disclosure tool may not be an adequate disclosure;
- (d) changing the definition of ‘endorsements’ to clarify the extent to which it includes fake reviews, virtual influencers, and tags in social media;
- (e) better explaining the potential liability of advertisers, endorsers, and intermediaries; and
- (f) highlighting that child-directed advertising is of special concern.

In particular, the FTC has advised that including a brand name in a disclosure (eg, #Brand_Partner or #Brand_Sweepstakes) is more likely to be understandable to consumers.

Certain industries also have specific rules about the use of endorsements and testimonials in advertising.

3.6 What are the rules governing the use of product demonstrations in advertising?

If a product’s performance is shown in advertising, the general rule is that the demonstration must be real, without any special effects. The advertiser must also be able to substantiate that the performance shown reflects the performance that consumers can typically expect. It is generally deceptive to use an undisclosed mock-up of product performance, and special effects should not generally be used to demonstrate (or misrepresent) product performance. Even if a demonstration is accurate, advertisers are still responsible for implied claims that may be communicated.

Not all depictions of product performance are ‘demonstrations’, however. If the depiction is not understood to communicate product performance or specific product attributes, it may not be necessary for the depiction to be real. A dramatization may also be permissible, when the fact of the dramatization is clearly and conspicuously disclosed, so long as the dramatization accurately reflects generally expected product performance.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

The FTC specifically encourages comparative advertising, when truthful and non-deceptive, since it is a source of important information to consumers and assists them in making rational purchase decisions, and because it encourages product improvement and innovation, and can lead to lower prices in the marketplace. Comparative advertisements must be truthful, not deceptive and not misleading and, if an advertiser chooses to compare dissimilar products, it has the obligation to clearly delineate the nature and limitations of the comparison and disclose material differences between the products.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

Under the Lanham Act, the fair use doctrine protects certain uses of trademarks from infringement claims. This means that, in a truthful comparative advertisement, an advertiser may, in certain instances, use a competitor's name, mark, or logo. Any advertising that contains disparaging, unfair, baseless, incomplete or false comments or comparisons of competitors' products, or any that make false or misleading claims about a competitor or its products or services could put the advertiser at risk of liability under the Lanham Act, however.

Similarly, under US copyright laws, the fair use doctrine should also often allow advertisers to use competitors' packaging in comparative advertising.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

The FTC provides business guidance and a policy statement for domestic origin claims such as 'Made in USA' or similar (including 'Manufactured in US', 'Built in USA', or use of Americana imagery). The FTC requires that a product advertised as 'Made in USA' must be 'all or virtually all' of US origin. This means that all significant parts and processing that go into the product must be of US origin and that the product's final assembly or processing also takes place in the United States. When considering whether a product is 'all or virtually all' of domestic origin, the FTC looks at factors such as how much of the product's total manufacturing costs can be assigned to US parts and processing and how far removed any foreign content is from the finished product. In other words, it is not sufficient simply to have some manufacturing processes in the US to support such a claim, but the analysis must include assessment of the product components' origin and costs as a part of the whole. If a company cannot meet this exacting standard to support an unqualified 'Made in USA' claim, a qualified claim may be considered.

Recently, the FTC adopted a Made in USA Labelling Rule, which codifies the FTC's 'Made in USA' standard. The Rule covers product labeling as well as mail order catalogs and mail order promotional materials.

Various state laws also have laws relating to the origin of products as well.

3.10 Are there any special rules governing product packaging?

There are many laws and regulations regarding specific product packaging, including food, drugs, cosmetics, medical devices, durable infant and toddler products, appliances, automobile parts, batteries, carpets, chemicals, hazardous household chemicals, pesticides, mattresses, jewelry, tobacco products, and electronic goods.

Under the Fair Packaging and Labeling Act, consumer commodities must be labeled to disclose:

- net contents,
- identity of the commodity, and
- name and place of business of the manufacturer, packer or distributor.

There are additional state laws and regulations as well.

Country of origin marking regulations issued by Customs and Border Protection apply to every article of foreign origin imported into the United States.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

The FTC is particularly focused on the use of ‘dark patterns’—ie, the tactic of designing user interfaces to trick or manipulate users into taking actions they would not otherwise approve of, or putting obstacles in place to discourage consumers from exercising certain rights. In a staff report, the FTC identifies certain ‘dark patterns’ as:

- Advertisements deceptively formatted to look like independent, editorial content;
- Purportedly neutral comparison-shopping sites that, in fact, rank companies based on compensation;
- Countdown timers on offers that are not actually time-limited;
- Claims that an item is almost sold out when there is actually ample supply; and
- False claims that other people are also currently looking at or have recently purchased the same product.

Dark patterns, according to the FTC, can also operate by hiding or obscuring material information from consumers, such as key limitations and fees. This type of dark pattern includes, for example:

- Hiding limitations behind obscure buttons that consumers are unlikely to click on;
- Hiding fee disclosures in non-bold text, sandwiched between more prominent, bold paragraphs; and
- ‘Drip pricing,’ where only part of a product’s total price is advertised (to lure in consumers), and other mandatory charges are disclosed late in the buying process.

The report built upon the FTC’s Enforcement Policy Statement Regarding Negative Option Marketing and reiterated that the Commission is targeting negative option programs through the Restore Online Shoppers’ Confidence Act (‘ROSCA’). ROSCA prohibits charging for goods and services sold over the internet using a negative option feature unless the seller:

- (a) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer’s billing information;
- (b) obtains a consumer’s express informed consent before charging the consumer’s account and
- (c) provides simple mechanisms for a consumer to stop recurring charges.

Importantly, dark patterns can result in violations of each of these requirements by:

- Obscuring material terms (eg, the fact that a free trial will convert to a paid subscription absent cancellation);
- Misleading the consumer into providing consent by failing to disclose that the consumer is signing up for recurring charges (common among mobile apps that target children, who may believe that they are playing a game, as opposed to making an actual purchase); and
- Discouraging or preventing the consumer from canceling the subscription (by making it difficult to find the cancellation option or subjecting the consumer to additional promotions and offers prior to permitting cancellation).

The report clarifies that dark patterns that obscure or subvert consumers’ privacy choices render consumers unaware of the privacy choices they have online or what those choices might mean. These techniques discourage or prevent a consumer from refusing to share data, and include tactics like:

- Repeated prompting to share data;
- Confusing privacy settings;
- Obscuring the settings to prevent data sharing; and
- Making sharing data the default setting, or the more prominent choice.

In the wake of the staff report, the FTC is also proposing updates to the federal Negative Option Rule which would impose additional disclosure, consent and cancellation requirements (ie, ‘mirror cancellation’ or ‘click to cancel’ requirements, and would require that sellers first obtain a consumer’s unambiguously affirmative consent to receive additional offers before confirming their cancellation (eg, ‘Would you like to consider a different price or plan that could save you money?’). If consumers do not provide consent, the marketer cannot attempt more ‘saves’ and must cancel the negative option arrangement immediately. If consumers accept, the marketer can pitch the alternative offers.

‘Dark patterns’ are also defined in many state privacy laws. For example, Connecticut’s privacy law defines ‘dark patterns’ as ‘a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making or choice, or any practice the Federal Trade Commission refers to as a ‘dark pattern’.’

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

Due to its status as an emerging technology, there are few current US laws and regulations that directly address artificial intelligence (‘AI’) and machine learning. Companies in the advertising industry have focused their commercial efforts on anticipating future regulations and government guidance which are still in development. For example, some advertisers have developed internal policies which promote transparency on the use of AI tools, to prepare for audits if/when the government begins to investigate or require reporting on AI use. Similarly, some advertising service providers have proactively begun to disclose the use of AI and machine learning algorithms in their products, to prepare for potential legislation which would outright require such disclosure.

According to published guidelines from the US Copyright Office and US Patent and Trademark Office, an AI tool cannot be the ‘author’ or ‘inventor’ of a registered copyright or patent. This means that the materials generated by an AI tool are fundamentally ineligible for important IP protections that would have applied to works developed by a human creator. According to these agencies, the human inputs to the AI platform which result in the generated image, text, audio, etc are insufficient to form the creative step of authorship or invention. Consequently, if advertisers rely entirely on a generative AI platform to develop creative, copy, or other marketing content, they will not receive the full scope of conventional IP ownership rights in those materials.

The FTC has also published several alerts raising concerns about the use of AI tools in a manner that can deceive or otherwise harm consumers.

4 PRICE ADVERTISING

4.1 What are the United States’ rules regarding price advertising?

There is no single federal law regarding price advertising. At the federal level, price advertising must comply with the FTC’s general requirements that advertising be truthful and non-deceptive, and that advertisements cannot be unfair. Additional laws may apply to advertisements for free or discounted goods, specialized products such as consumer leases, credit, 900 telephone numbers, and products sold through mail order or telephone sales.

In addition to the FTC’s general prohibition on unfair and deceptive advertisements, every state has consumer protection laws that govern advertisements running in that state. Specific price advertising rules generally fall under state law, and vary by state.

4.2 What are the United States' rules regarding advertising 'free' products?

FTC guidance regarding the use of the word 'free' says: 'When making 'Free' or similar offers all the terms, conditions and obligations upon which receipt and retention of the 'Free' item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.'

All of the terms, conditions and obligations should appear 'in close conjunction with the offer of 'Free' merchandise or service'. According to the FTC, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, is not regarded as making disclosure at the outset.

In addition, according to the FTC, a single size of a product or a single kind of service should not be advertised with a 'Free' offer in a trade area for more than 6 months in any 12-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such offers should be made in the same area in any 12-month period. In such period, the offeror's sale in that area of the product in the size promoted with a 'Free' offer should not exceed 50% of the total volume of his sales of the product, in the same size, in the area.

In addition to FTC guidance, states have laws and regulations on the use of 'free' offers.

4.3 What are the United States' rules regarding sales and special offers?

There is no single federal law regarding price advertising. At the federal level, price advertising must comply with the FTC's general requirements that advertising be truthful and non-deceptive, and that advertisements cannot be unfair. Additional laws may apply to advertisements for specialized products like consumer leases, credit, 900 telephone numbers, and products sold through mail order or telephone sales.

In addition to the FTC's general prohibition on unfair and deceptive advertisements, states and municipalities have general consumer protection laws, as well as specific requirements, that govern the advertisements running in that state.

4.4 What are the United States' rules regarding rebates?

The United States' rules regarding rebates are generally the same as for sales and special offers (see answer to question 4.3 above). Typically, advertisers must clearly and conspicuously disclose that the rebate is a 'mail-in' rebate, if that is the case, as well as disclosing other material offer terms. Some states also prohibit certain types of statements in connection with rebate offers, such as what the 'cost' of the product is after a mail-in rebate is applied.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

Advertisers are generally required to have a sufficient supply of advertised products in order to meet reasonably anticipated demand. Some states also have rules regarding rain check requirements.

Additional state and federal laws may apply to advertisements for specialized products like consumer leases, credit, 900 telephone numbers, and products sold through mail order or telephone sales.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines, etc)?

There are a number of federal and state regulations that prohibit certain products from being advertised. For example, tobacco advertising is highly regulated by both the FTC and FDA. Federal cigarette labeling and advertising laws prohibit television or radio advertising featuring cigarettes or cigarillos. Under the federal Comprehensive Smokeless Tobacco Health Education Act of 1986, advertising of smokeless tobacco products over any form of electronic communication within the jurisdiction of the FCC is strictly prohibited.

Broadcast and cable television networks' (as well as other media) guidelines prohibit or restrict commercials based on several factors, including taste, safety, and controversial issues. Various state or local jurisdictions have restrictions on out-of-home advertising (including billboards), including advertising for products such as alcohol, marijuana, and tobacco. Some states prohibit such advertising from appearing within a specified distance from certain locations (including schools, playgrounds, churches, and similar locations). Many local government organizations—including public transportation authorities—prohibit advertising of certain products on government property. Some localities are even stricter, prohibiting all out-of-home advertising for these and other products.

Certain highly regulated products—most prominently marijuana and sports betting—are only allowed in certain states. In the remainder of states, advertising such products may be prohibited, and especially in the case of marijuana, may constitute a criminal offense.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

There are no broad types of advertising practices that are prohibited outright; however, medium- and industry-specific laws and regulations impose certain restrictions, limitations, and disclosure requirements on various advertising practices.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Federal law, as enforced by the FCC, prohibits the dissemination of indecent or obscene material over broadcast media, such as broadcast radio and broadcast television. The US Postal Service also prohibits the mailing of any 'obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance.'

Federal law generally prohibits the receipt and transportation of 'obscene' materials. Under the US constitution, governments can ban obscene materials, and the analysis of whether content is 'obscene' entails the following three considerations:

- (a) whether the 'average person applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest;
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Localities within the United States may also have prohibition of obscene materials.

The US federal government, as well as state governments, cannot outright prohibit materials that are indecent, but not obscene, due to constitutional issues. In addition, although certain limitations on indecent material may be allowed, they must be very narrowly tailored.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

In addition to the general requirement that any connection between an endorser and an advertiser that might materially affect the weight or credibility of the endorsement be disclosed, the FCC's laws and rules also require that, when money or other consideration for the airing of program material has been received by or promised to a broadcast station, its employees or others, the station must broadcast full disclosure of that fact at the time of the airing of the material, and identify who provided or promised to provide the consideration. This disclosure requirement also applies to the broadcast of musical selections for consideration (so-called 'payola') and the airing of certain video news releases. In the case of advertisements for commercial products or services, it is generally sufficient for a station to announce the sponsor's corporate or trade name, or the name of the sponsor's product (where it is clear that the mention of the product constitutes a sponsorship identification).

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The term 'branded content' has been applied to a variety of marketing efforts in which a brand uses a film, television show, video game, or other entertainment property as a vehicle to market to consumers. One of the initial questions that must be resolved in connection with a branded content project is whether the content can be considered 'commercial speech' (and thus subject to false advertising laws (and other laws governing advertising)), or whether the content is editorial in nature. As discussed above, drawing the line between commercial and non-commercial speech is not always easy, especially where the speech in question serves multiple purposes, some of them commercial, and others non-commercial.

If the content is, in fact, commercial speech, the implications can be significant. Not only might the FTC say that disclosures are necessary to ensure that the relationship between sponsored content and an advertiser is transparent, but the advertiser might also be required to vet all claims and clear all third-party rights implicated in the content.

The FTC's Native Advertising Guidelines include a number of examples to guide the analysis when marketers pay for or otherwise influence 'editorial' content.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

The FTC is concerned when ‘the line between advertising and programming may be blurred, and consumers would be deceived absent a disclosure clarifying that a communication is an advertisement.’ When evaluating whether an advertisement is deceptive, the FTC considers the overall impression that is conveyed to consumers, including by means of text, images, sounds, etc, and how the foregoing is similar or distinguishable from the surrounding content on a publisher site.

For example, the FTC has said that disclosure is required if consumers would be led to believe that an advertising feature in a newspaper is really part of a newspaper’s editorial content. The FTC has also found that it is potentially a deceptive practice when Internet search engines fail to clearly and conspicuously disclose when search results are ‘paid placements’ or ‘paid inclusions’ rather than objective search results based on relevancy alone. Additionally, ‘advertisers cannot use ‘deceptive door openers’ to induce consumers to view advertising content’; a consumer should be able to identify advertising as such before they arrive at any advertiser’s main page.

Broadly speaking, disclosures for branded content should clearly convey to the consumer that the content is advertising, and appear in a clear and unambiguous manner.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There is no single federal or state law that specifically governs the use of social media generally for advertising purposes. The FTC Endorsement Guides, which were updated in 2023, specifically address the use of endorsements and testimonials in the social media context, including the use of social media influencers. In addition, individual regulatory agencies, such as the Securities and Exchange Commission (‘SEC’), Financial Industry Regulatory Authority (‘FINRA’), and FDA have issued rules and guidance that govern the use of social media for advertising purposes by their respective industries.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser’s Facebook page)?

Whether an advertiser is responsible for advertising claims made in user generated content is going to depend on a number of factors, including the level of responsibility that the advertiser has for the creation of the content. Section 230 of the Communications Decency Act (‘CDA’) provides some protection for advertisers for consumer-provided content online. The NAD generally takes a more restrictive view, and is more likely to hold an advertiser responsible for user generated content.

It is unclear the extent to which the FTC would argue that, under Section 5 of the FTC Act, an advertiser is responsible for claims that consumers independently make on an advertiser’s website. But, as a general matter, the FTC Endorsement Guides provide that: ‘Advertisers are subject to liability for misleading or unsubstantiated statements made through endorsements or for failing to disclose unexpected material connections between themselves and their endorsers.’ Advertisers should:

- (a) provide guidance to their endorsers on the need to ensure that their statements are not misleading and that their material connections to advertisers should be disclosed;

- (b) monitor endorsers' compliance; and
- (c) take sufficient action to remedy non-compliance and prevent future non-compliance.

Endorsers also may be liable for statements made in the course of their endorsements, particularly if a representation is made by an endorser that they know or should know is deceptive.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

- (a) In *Jones v Dirty World Entm't Recordings LLC*, the court reiterated the precedent that CDA immunity can be lost if a site intentionally develops and/or materially contributes to illegal or objectionable content. According to the lawsuit, posts engaging in virtual character assassinations of the plaintiff were uploaded to the defendant's website, and the defendant knew these statements were false or made in reckless disregard for the truth. Additionally, the postings were encouraged by the defendants, with one of the defendants and website operators posting his own comments on the defamatory posts. The court found that the defendants played a significant role in developing and encouraging the proliferation of the offensive materials and therefore were not immune under the CDA.
- (b) In 2020, Teami LLC agreed to settle FTC charges that the company made false and unsubstantiated health claims regarding its tea and skincare products, and further that it hired influencers who failed to adequately disclose that they were being paid to endorse the company's products on social media. The FTC alleged that Teami and two of its owners and officers participated in deceptive acts or practices in violation of the FTC Act by advertising various Teami tea products as being able to treat cancer, reduce serum cholesterol, unclog arteries and cause weight loss. Several of these claims were made through Teami's paid influencers' Instagram posts.
- (c) In October 2021, the FTC issued Notices of Penalty Offenses to 700 companies putting them on notice of their obligations under the FTC Endorsement Guides. While receiving a Notice of Penalty Offense does not indicate fault on the part of a company, it does put the recipient on actual notice of certain rules governing the use of endorsements and testimonials, and may entitle the FTC to seek civil penalties in the event of a violation. The FTC has also proposed a Rule on Consumer Reviews that would impose additional specific requirements when leveraging and featuring consumer reviews in advertising.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

In the United States, the right of publicity protects against unauthorized commercial use of a person's name, likeness, or other elements of a person's persona.

The right of publicity is largely protected by state common or statutory law. Under certain states' laws, a written release is necessary whenever a person's name, picture, likeness or voice is used in advertising or promotion (eg, paid media insertion or speech promoting the sale of goods or

services) or for any purposes of trade (eg, products and merchandise). Not all states recognize the right of publicity specifically. For example, some states enforce the right under their privacy laws and, in others, the right of publicity is enforced through unfair competition statutes. In addition, some states provide protection for a period after death. Protection of an individual's identity may also be provided by under the federal Lanham Act.

9.2 Are there situations when permission is not required?

Use of an individual's identity in connection with truthful advertising may, in certain instances, be protected by the First Amendment. For example, such use is generally permissible when exercised by a media organization to truthfully advertise the content of their media, and when exercised by a retailer to accurately advertise its wares.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are a variety of materials for which an advertiser will generally need to secure permission before using them in advertising, including identifiable individuals and copyrighted works (such as music or artwork). In addition, there are various statutes which provide specific protection, including a prohibition on unauthorized use of Olympic trademarks.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

There is no general prohibition on the use of other companies' products in advertising. Rather, in each case, the advertiser will have to analyze whether the use implicates trademark, copyright, or other concerns. Often, though, advertisers try to use generic products whenever possible, in order to minimize the risk of a claim.

Generally, using a competitor's product in comparative advertising is permissible, so long as the comparison is fair and accurate and the use of the competitor's product does not result in a likelihood of confusion as to source, identity, or sponsorship of the advertiser's product.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the United States which affect advertising (eg, Swedish gender equality law)?

Under US anti-discrimination laws, there are a variety of protected classes (including race, religion, national origin, and gender) that cannot be targeted for discrimination. While these laws do not pertain to advertising content, advertisers typically take great care to ensure that no such class is depicted in a negative or discriminatory light. In addition, advertising directed at children is subject to additional scrutiny and should not depict, or encourage children to engage in, any unhealthy or unsafe activity.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

In the United States, there are a variety of cultural issues that advertisers should take into account. For instance, broadcast and cable networks' guidelines restrict and/or prohibit advertising that contains obscene, lewd, or provocative content. In addition, the insensitive depiction of national symbols or use of religious imagery, while not necessarily illegal, would generally be frowned upon. There is also a federal law and numerous state laws regarding the use of the flag in advertising. However, these laws relating to the use of a flag are typically not enforced.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in United States of America?

The United States is highly litigious, and both federal and state laws often vary considerably as to both their specifics and their application. Given the complexity of these laws, advertisers should proceed carefully, obtaining comprehensive legal advice before engaging in any advertising or promotional activities.

 URUGUAY 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Uruguay?

The main source of advertising regulation is consumer protection regulation, specifically the Consumer Protection Law (Law 17,250) and its Regulatory Decree 244/000. Additionally, the Media Law (Law 19,307) regulates general aspects of advertising done by audiovisual media, excluding the internet. The Media Law does not yet have its Regulatory Decree.

Other statutes also have an impact on advertising. The Data Protection Law (Law 18,331) stipulates the manner in which personal data can be used for marketing, advertising and promotional purposes. Intellectual property laws, such as the Copyright Law (Law 9,739) and trademark law, may also impact upon creative treatments and comparative advertising. In addition, and as explained below, there are sector-specific laws that apply to advertising for particular goods or services, such as tobacco, and advertising with children, among others. Self-regulation also plays an important role.

1.2 What types of communications are considered to be ‘advertising’? How is this determined?

In Uruguay there is no legal definition of advertising. Legal scholars have defined ‘advertising’ as ‘all information directed to the public for the purpose of promoting, directly or indirectly, an economic activity’. Advertising must have three basic aspects:

- information;
- that is widespread; and
- addressed to consumers in order to influence their purchase or use of certain products or services.

The Media Law defines an ‘advertising message’ as ‘any kind of message from institutions, private or public companies or from a natural person in relation with its business, transmitted by a traditional media for a consideration, with the purpose of promoting its business (goods or services), or information about rights and obligations, among others’.

Additionally, the Media Law defines other types of advertising, such as ‘hidden advertising’, ‘non-traditional advertising’ and ‘subliminal advertising’.

The Consumer Protection Law states that advertising must be transmitted and disclosed in such a way that consumers identify it as advertising. Also, the Consumer Protection Law defines ‘misleading advertising’.

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework for advertising is provided by the Consumer Protection Law, its Regulatory Decree 244/000, and the Media Law.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

No, different types or practices of advertising are not regulated specifically, and the general rules apply to all. There are, however, certain aspects, regarding the sources from which personal data used for advertising purposes may be obtained, which are regulated under the Data Protection Law.

The rule is that consent should be ‘opt in’ (ie, granted by the data subject) except certain exceptions, such as public sources, or where contact details were received from customers, to the extent that the advertising is related to the existing relationship between the customer and the supplier.

The Media Law regulates general aspects of advertising through radio, television and other audiovisual communication services.

1.5 **Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?**

There are several industries that are subject to specific laws which govern their advertising. Below we point out some of the main ones, but the list is not exhaustive:

- (a) **Tobacco** (The Smoking Control Law (Law 18,256), its Regulatory Decree 284/008 and Resolution 1079/022 of the Ministry of Public Health): All forms of tobacco advertising are prohibited, even within the premises of the shops where tobacco products are sold;
- (b) **Medicines and associated products, such as modified foods (eg, dietetic products) and medicated feed** (Decree 18/989 as amended by Decrees 568/989, 493/990 and 635/991): Advertising is under the control of the Ministry of Public Health, and subject to certain specifications. Prescription medication advertising can only be aimed at doctors or other health professionals; and
- (c) **Advertising with children** (Code of Childhood and Adolescence): Children and teenagers cannot participate in advertisements promoting alcoholic beverages, or any other product that is damaging to a child’s physical or mental health, or that threaten children’s dignity, or physical, psychological or social integrity.
- (d) **Alcoholic Beverages** (Law 19,855):
 - Advertising of alcoholic beverages is prohibited if aimed at minors. Also, it is prohibited in the sponsorship or the financing of sports, educational, cultural or leisure activities, also if these events are aimed at minors.
 - In addition, there are mandatory preventive messages that must be included in advertisements; and certain restrictions on the content of advertising messages, such as suggesting that alcoholic beverages consumption brings professional or personal success or that abstinence is bad.
 - Endorsement of alcoholic beverages by famous or well-known people is also prohibited.

Furthermore, there are some bills under consideration by the Uruguayan Parliament which, if approved, will have an impact on advertising. For example, the bill on foods with excess sodium, fats and sugars.

1.6 **Are any government pre-approvals required?**

As a general rule, there are no government pre-approvals required for advertisements.

However, there are requirements for specific types of advertising, regarding certain products that are required to contain certain pre-approved warnings or disclaimers in order to be lawful. For example, advertisements regarding prescription medication, which, apart from only being allowed to be aimed at health professionals, require prior authorization from the Ministry of Public Health.

1.7 Does the media pre-clear advertising?

It is not a common practice for the media to pre-clear advertising, nor is there a legal obligation for media to do so; there is no organization (governmental or private) that focuses on clearance issues.

However, it is common to include clauses within agreements that require companies whose products are being advertised to indemnify the media in respect of all possible infringements and violations of advertising regulations and other laws.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Consumers' Defense Unit ('UDECO'), is in charge of advertising aimed at consumers in general. UDECO is in charge of enforcement of all advertising laws, even though other regulators are competent in advertising in specialized industries (ie, the Ministry of Public Health for medicines and other associated products such as modified foods; the Central Bank of Uruguay for advertising related to finance and insurance companies; the Agency for the Regulation of Communication Services for advertising linked to communication services, among others).

As a general rule, UDECO does not initiate procedures for violations of advertising regulation ad hoc, but rather acts upon claims filed either by consumers or by competitors. Once a claim is filed, UDECO informs the alleged infringer, investigates the claim, and if proven, imposes penalties that are generally monetary fines, or remedies in a court of law (such as corrective advertising in the case of misleading advertising).

Additionally, the Media Law has created a centralized body to enforce compliance thereof (the 'Audiovisual Communication Committee'). This body has not yet been integrated, so, in the meantime, its powers have been enforced by the telecoms regulator ('URSEC').

1.9 When does a competitor have a right of action? What are the potential remedies?

A company alleging harm by its competitor's advertising may either:

- file a claim before the UDECO to initiate the procedure explained above;
- initiate actions/complaints before CONARP (see question 2.1 below); or
- seek redress through a court of law.

The first option, to file a claim before UDECO, is applicable whenever a company alleges that its competitor's advertising is deceiving in any way to consumers, regardless of whether the company was actually damaged. The aim of this action is to protect consumers, but UDECO also accepts claims filed by competitors if the basis of the claim is alleged actual damage to consumers.

The second option, to initiate actions/complaints before CONARP, is applicable when a company alleges infringement of the Code of Ethics of the self-regulatory body.

To initiate the third option, filing claims in a court of law, damage must be proven, as well as a causal connection between the damage and the practice of the competitor.

1.10 When do consumers have a right of action? What are the potential remedies?

As explained above, consumers may file claims before UDECO for any type of infringements to the Consumer Protection Law, and specifically for allegations of misleading or deceitful advertising.

In such case, UDECO would initiate the procedures detailed above, but the consumer would also have the option to request that the advertiser complies with the offer advertised. In that case, the claim would be referred to the advertiser who would have the ability to answer in writing. If the claimant is not satisfied by the advertiser's response, they may schedule a mediation hearing before UDECO. If after the hearing, the parties have not come to an agreement, and if the claim is for an amount lower than 100 UR (approximately US \$3,500), the consumer may bring the claim before a court of law in a summary trial and need not have legal representation to do so.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Uruguay have a primary advertising self-regulation system?

Yes. Uruguay has a self-regulation system that governs the relationship between advertisers and agencies.

The ad hoc arbitration center is called CONARP and is a member of CONARED, the Latin American network of self-regulatory entities.

2.2 Is there a self-regulatory advertising code? What are the key principles?

Yes. The current code was enacted in 2013 and its object is to uphold ethics and ensure the responsible use of commercial freedom. Consumer protection and fair competition are its ultimate goals. The main principles established within the Code of Ethics are that advertising materials must be legal, truthful, decent and honest, and there is an emphasis on corporate social responsibility.

Additionally, the Digital Annex to CONARP's Code of Ethics, drawn up in 2017, establishes that advertising in electronic media must respect the Code's rules and legal regulations in force in Uruguay.

The Digital Annex provides specific guidelines regarding digital advertising, such as:

- advertising sent via email or other equivalent individual media of communication;
- advertising in newsgroups, forums, chats and the like;
- influencers;
- brand content;
- advertising on the internet; and
- sponsorship.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Yes, the system does have a dispute resolution mechanism in place.

Disputes are litigated through an expedited process, beginning with the filing of a complaint by one of the legitimate parties before the decision-making body. Legitimate parties are:

- the Government and its institutions;
- consumers associations, and/or associations or unions that have a duly demonstrated direct interest in relation to the claim;
- advertising agencies;
- advertisers; and
- the mass media.

The adjudicatory process takes approximately 10 days, followed by a ruling, and, where appropriate, an appeals process with the same ruling body.

Parties that do not comply with the decisions can be ousted from the system.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Since its creation in 2011, only a few cases have been litigated before CONARP, so it is fair to say that it is not a widely-used and followed system. For those cases that have been adjudicated by CONARP it has proven to be effective (save the exceptions detailed below).

2.5 Are the self-regulatory system's decisions reported?

Yes, both the decisions and claim filling process are publicly reported.

Instructions for filing a claim before CONARP are detailed on its website (<http://www.conarp.com.uy/>), under the Section 'Denuncias'.

All the decisions issued by this self-regulatory body are published in the CONARP's website, in the Section 'Resoluciones'.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Not particularly. However, some experience shows that CONARP has not been particularly good at dealing with cases involving scientific evidence.

2.7 Are there any other self-regulatory systems that govern advertising practices in Uruguay?

No.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Uruguay (eg, consumer protection laws, IP laws, unfair competition laws)?

The Consumer Protection Law and its Regulatory Decree establish general principles, such as the grounds on which advertising must be supported, practices that will be deemed unlawful and are forbidden, and the minimum amount of information that must be included in advertisements. The Law prohibits any advertising or claims that are deceitful or misleading (meaning entirely or partially false, in any way, including by omission of essential information, and capable of inducing an error in the mind of a consumer concerning the product's or service's nature, quantity, origin, or price.)

The Consumer Protection Law also prohibits certain types of comparisons, such as when the point of comparison is based on subjective information of a psychological and/or emotional character rather than objective facts, or when the basis for the comparison cannot be verified.

As mentioned above, the Media Law regulates advertising in radio, television and other audiovisual communication services. The Media Law does not regulate the internet.

In addition, there are legal obligations to include certain disclosures on packaging, labels, and in advertisements for specific products. That is the case for modified food products (such as dietary products), energy efficient products, paints and varnishes containing lead, chemical agents and phyto-sanitary products, among others (see question 3.10 below).

3.2 Is substantiation required for advertising claims?

Yes; however, no direct action is required, but only being able to substantiate the information included in the claim. According to the Consumer Protection Law, the advertiser bears the burden of proof with respect to the accuracy of the material and of the factual information contained in the advertisement. The law establishes a 90-day period after the advertisement is made public, during which the product or service provider must maintain the factual and scientific data that substantiates the advertising message.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There is no particular regulation regarding puffery. In our country, according to the Consumer Protection Law, all kinds of misleading advertising are prohibited. Misleading advertising is considered to be ‘any form of information or communication contained in advertisements that is wholly or partially false, in any way, including by omission of essential information, and capable of inducing an error in the mind of a consumer as to the nature, quantity, origin and price on products and services’. The simple exaggeration of the benefits of a product is not deemed to be misleading, because exaggeration is considered to be detectable by the consumer.

3.4 What are the rules governing the use of disclosures in advertising?

There are no special rules governing disclosures in advertising. However, the main principles in advertising apply.

Uruguayan doctrine has deduced, from the spirit of local regulations, five principles, which are based on the need to protect the consumer:

- (a) **Legality:** All type of advertising and marketing ought to be made according to the applicable and current legislation and regulation;
- (b) **Advertising identification:** Advertising and marketing should be identifiable as such by the consumer. This principle is meant to prevent the usage of subliminal messages or covert advertising;
- (c) **Contractually binding nature of advertising:** Advertisements are considered legally binding business offers according to Uruguayan law;
- (d) **Truthfulness:** Advertising and marketing cannot be misleading by words or by omission; and
- (e) **Advertising and marketing cannot be abusive:** An ad must not harm the dignity of the consumer.

Notwithstanding the foregoing, the Consumer Protection Law establishes that advertising of a product or services must be transmitted and disclosed in such way that consumers can identify it as advertising. Additionally, though, it would be ok to use the words ‘sponsored’ and ‘Ad’ to indicate if material is sponsored by a brand or an advert. Spanish words are preferable. In practice, though, enforcement of the Spanish language requirement is unusual for these kinds of matters.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

There is no specific regulation governing the use of endorsements and testimonials in advertising, but the general principles governing advertising, in particular the principle of truthfulness, are applicable.

3.6 What are the rules governing the use of product demonstrations in advertising?

There is no specific regulation governing the use of product demonstrations in advertising—again, the general principles are applicable.

Also bear in mind that the Consumer Protection Law provides that the consumer has the right to be properly informed about the product or service acquired. The information must be clear, sufficient, easily legible, accurate and in Spanish. Hence, standing alone, a demonstration of how a product works does not fulfill an advertiser's information requirements.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

In general, comparative advertising is permitted, so long as the comparison is based on objective facts rather than subjective information of a psychological and/or emotional character, and the basis for the comparison can be verified.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor's trademark or products may be used)?

There is no specific regulation on the subject, and neither trademark nor copyright rules prohibit comparative advertising. There are two opposing views on this issue, however. One view is that by using the competitor's trademark for the comparison, a trademark infringement takes place. Another view is that using the competitor's trademark for comparison is a non-typical use of the trademark, thus, not an infringement. To date, both positions have been followed by different judges, thus it is difficult to predict the outcome of a given case. Each situation ought to be assessed on a case-by-case basis.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is 'made in France')?

There are no specific rules. However, claims related to geographic origin must comply with the no misleading advertising rule.

3.10 Are there any special rules governing product packaging?

Notwithstanding the absence of a generic regulation regarding product packaging, there are certain specific rules according to the type of product:

- (a) **Foods:** The general rules on food labeling are applicable, especially the Consumer Protection Law and its Regulatory Decree, Decree 315/994, Decree 117/006, Decree 141/992, Decree 36,554 (only for genetically modified food, this Decree is applicable in Montevideo) and Decree 272/018 and its amendments.
- (b) **Dietary products:** In the case of dietary products, in addition to general rules on food labeling mentioned above, in practice the Ministry of Health also applies a draft proposal to regulate dietary supplements. (Whilst the bill has not yet been approved, it follows global guidelines and is used by the Food Department to carry out the relevant controls. It is expected that the draft will be approved as soon as possible, and forms part of current regulations.)
- (c) **Energy efficient products:** There are national technical standards that define and establish energy efficiency criteria for products and installation of products and facilities. Specific rules establish the labeling system to be used for such products in order to provide consumers with information on the energy performance of equipment that use energy.

- (d) **Paints and varnishes containing lead:** Under Decree 69/011, which establishes the regulation regarding labels, the sale of paints and other lead-containing products in Uruguay can only be carried out in compliance with the labeling obligations established in Law No 17,775 on the prevention of lead contamination. This Law states that the packaging of products containing lead should include:
- instructions in Spanish language;
 - indicate that the product contains lead; and
 - include indications regarding safety precautions.
- It is also worth pointing out that imported products that do not comply with this obligation must bear a complementary label for the purpose of marketing.
- (e) **Tobacco:** As mentioned in question 1.5 above, tobacco is regulated under the Smoking Control Law and its Regulatory Decree 284/008. This regulation establishes that all tobacco products' packaging, and all external packaging and labeling, must show health warnings and images or pictograms describing the harmful effects of tobacco or other appropriate messages.
- Additionally, the Law establishes certain prohibitions, such as the prohibition on misleading consumers with respect to the products' characteristics, health effects, risks or emissions, or to use terms, descriptive elements, trademarks, figurative or other signs that have the direct or indirect effect of creating the false impression that a certain tobacco product is less harmful than others.
- (f) **Alcoholic Beverages:** The labeling of alcoholic beverages is regulated by the Law on Alcoholic Beverages (Law 19,855). The law states that the labeling of alcoholic beverages must contain:
- the alcoholic strength of the beverage; and
 - preventive messages established by this law and regulations thereof (for instance 'forbidden to minors').

3.11 Are there any special rules or guidance on the use of 'dark practices'?

There is no specific regulation. Please see question 3.4 above.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no specific rules or guidelines.

4 PRICE ADVERTISING

4.1 What are Uruguay's rules regarding price advertising?

Rules regarding price advertising are provided within the Consumer Protection Law, which permits the price (or recommended price) of a good or service to appear in ads. If the price is mentioned, the ad must state whether price is in cash or credit.

The main requirements are the following:

- (a) the price must include taxes (final price);
- (b) if the provider accepts payment by credit cards, coupons or similar, the ad must inform consumers in cases where there are additional charges in comparison with the price paid in cash; and

- (c) if the provider offers financing plans, in addition to stating the price in cash, the ad must also state the following:
- down payment;
 - the number of installments and the amount payable in each installment;
 - the final financed price;
 - interest and any other additional late payment;
 - any other charge due by the customer; and
 - the place to pay.

It should also be noted that price advertising can be eventually regulated under anti-trust law, which prohibits retail price maintenance, under certain circumstances.

4.2 What are Uruguay rules regarding advertising ‘free’ products?

There are no special rules on advertising of ‘free’ products; however, since the general rules apply, it is important to bear in mind that advertising a product as ‘free’, and subsequently charging a fee for anything related to it may be deemed an abusive practice of misleading advertising which violates the Consumer Protection Law.

4.3 What are Uruguay’s rules regarding sales and special offers?

The general rules apply. Providers must duly inform customers regarding the offer about the following:

- (a) which products are included in the promotion, or, at least, information on whether all products in the store or only some specifically identified products are included;
- (b) the timeframe during which the special offer will be valid;
- (c) if the special offer is applicable only to certain consumers (eg, some type of credit card holders, regular customers or other) or to any and all consumers;
- (d) if a discount is applied to the full price, or the price before taxes; and
- (e) any other relevant information linked to the sale or special offer.

4.4 What are Uruguay’s rules regarding rebates?

The same rules regarding sales and special offers apply. Please refer to question 4.3 above. Also, anti-trust rules may apply.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

No, there are no other key restrictions that advertisers should be aware of regarding retail advertising practices.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

The only products that may not be advertised in any way, not even at point of sale, are tobacco, its derivatives and cannabis products.

Prescription medicines can only be advertised to health professionals, not to consumers, and the Ministry of Public Health must give prior authorization for such advertising.

Moreover, during elections periods, there is a special provision called the electoral ban, according to which it is forbidden to campaign on public roads, in places open to the general public, or in public media during the forty-eight hours before the day of the election, plebiscite or referendum.

In addition to the above, there are other restrictions mentioned above, but none involving complete prohibition.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The Media Law prohibits surreptitious advertising and subliminal advertising.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Code of Childhood and Adolescence establishes that the exhibition or public broadcast of images, objects or messages cannot infringe children or teenagers' rights or the principles recognized in the Uruguayan Constitution and national laws, or encourage violent, criminal, discriminatory or pornographic attitudes or conduct.

Moreover, the Media Law provides that only programming suitable for minors should be broadcast between 6.00 am and 10.00 pm, and that during such timeframe the exhibition of shows that promote violent, morbid, criminal, discriminatory or pornographic attitudes or conduct must be avoided.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Although there is no express rule stating the obligation to identify who the advertiser/sponsor of the advertising is, the Consumer Protection Law does require advertisers to give consumers all relevant information regarding an offer of products and/or services (including the name of the responsible company and its address).

Accordingly, the offeror of the product should be identified, so as to comply with the obligation to inform.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The Media Law prohibits non-traditional advertising during shows aimed at children and/or teenagers (with the exception of product placement and sponsorship).

Surreptitious advertising is prohibited.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special disclosures or other obligations when integrating advertising content and entertainment. However, the Consumer Protection Law requires that all advertisements are clearly identified as such, so that consumers are not misled (see question 3.4 above).

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

In the Uruguayan legal system there are no specific regulations concerning advertising and marketing via social media. General regulation applicable to all types of advertising applies to advertising and marketing activities carried out through social media. Also, the Digital Annex to CONARP's Code of Ethics must be taken into consideration.

It is important to highlight the situation in which products are advertised outside commercial establishments (which certainly applies to social media advertising). The Consumer Protection Law establishes that all offers made outside of a commercial establishment through postal, telephone, television and/or other computerized systems must give the consumer the option to cancel the contract within five days of purchasing the product, though certain exceptions to this right apply. The consumer can notify the seller of such decision to cancel through any reliable means.

From a data protection perspective, advertising through social media may be challenging, since the Data Protection Law provides that for advertising purposes only certain type of information may be used. Such personal information is all data obtained from public sources of information, and information provided by data subjects themselves or with their consent. Given that the internet and social networks are not considered by regulation or law to be 'public sources of information', the collection of personal data from social media sites for advertising and/or marketing activities is not consistent with the Data Protection Law, unless the data is obtained from the data subject with their consent.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

There are no special rules governing this matter, so the analysis should be done on a case-by-case basis.

Claims made in user generated content, such as statements that consumers make on an advertiser's Facebook page, could be considered protected by intellectual property regulation. Thus, in order to use such a statement, the advertiser must obtain the author's authorization.

In addition, from a data privacy standpoint, such statements could be construed as personal data, so advertisers must obtain consent before use.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

No.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

The main laws are the Data Protection Law and the Copyright Law. Basically, according to these laws, people are entitled to protection from unauthorized use of their image, voice and other personal identifying information or features.

From a data privacy standpoint, in order to collect and use personal data, the owner of the data must give their prior consent to such collection and use. Consent is required for use of a person's image, voice and identity as these are all considered personal information.

Also, personal image is protected under the Copyright Law. Consequently, in order to use the image, the person has to give their prior authorization.

Both authorization and consent may be included within the same document, which should be signed by the person whose image, voice and/or identity is being used for advertising purposes.

9.2 Are there situations when permission is not required?

The general rule is that permission is required. The Data Protection Law and the Copyright Law contain certain exceptions to the general rule, but they do not include advertising uses.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

No, there are no specific rules in this regard.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

The answer to this may vary, depending on whether the advertisement uses recognizable products in a denigrating sense (eg, in order to advertise a certain brand of cars, it is not permissible to use the image of a car from another brand which is in a poor state, and claim that is the reason why the main character of the ad is changing car brand). In any case, using companies' recognizable products is not recommended, not only for the reason stated above, but also in order to avoid litigation based on claims related to the linking of one brand to another.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Uruguay which affect advertising (eg, Swedish gender equality law)?

Yes, gender equality is indeed a relevant topic in Uruguay, as well as non-discrimination, and the protection of children, among others.

For example, the Media Law contains certain rules regarding non-discrimination in the media and the content of advertising addressed to children. According to these rules, advertising addressed to children:

- cannot directly encourage children to buy products, taking advantage of their lack of experience;
- must take into account the World Health Organization's recommendations regarding certain nutrition aspects when advertising food products; and
- cannot contain any form of discrimination, including any discrimination based on race, nationality, religion, age, or offend human dignity.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

The Media Law contains certain rules regarding non-discrimination in the media in general. Audiovisual images cannot broadcast contents that promote discrimination or national, racial or religious hate, or violence or any other attack based on race, ethnics, sex, gender, sexual orientation, gender identity, age, disabilities, cultural identity, place of birth, etc.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Uruguay?

No. However, some local courts have shown a restrictive interpretation of freedom of speech when the message contains dark humor and similar types of jokes, parodies, etc.

 VENEZUELA 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Venezuela?

In Venezuela there is no general advertising code and thus, specific laws address special topics.

The most important law governing advertising was repealed, as a result of the creation of the Superintendence for the Protection of Socioeconomic Rights ('SUNDDE'), a new agency that has replaced the Consumer Protection Agency. Unfortunately, legislators responsible for the law on the SUNDDE failed to include the chapters related to the rights and obligations of consumers and advertisers. Thus, most of the aspects covered concerning advertising law, from the perspective of individual rights, were eliminated in the law on the SUNDDE. However, this new agency has ample powers to rule on the subject of advertising, promotions, sweepstakes and other topics related to the advertising industry, and has jurisdiction over misleading, discriminatory and false advertising cases, in addition to civil and/or criminal courts.

Advertising on TV, radio and digital media is governed by the Law on Social Responsibility in Radio, Television and Digital Media.

Finally, there is a self-regulating body and an arbitration procedure, but it applies only to members of the National Advertisers Association ('ANDA').

1.2 What types of communications are considered to be 'advertising'? How is this determined?

Unfortunately, Venezuelan legislators have approved laws with isolated chapters affecting the advertising industry, but have failed to provide a solid group of definitions. A vague definition can be inferred from examples of what constitutes a promotion or sweepstake, both of which require administrative approval.

1.3 What is the basic regulatory framework for advertising regulation?

The National Constitution, the Fair Price Organic Act, the Law on Social Responsibility in Radio, Television and Digital Media, the Pharmaceutical Law, the Traffic Law and the Commercial Advertising Law all contain relevant guidance, in addition to international conventions (such as the Paris Convention on Industrial Property). The Anti-Monopoly Act has a chapter regulating acts of advertising that could be considered unfair competition.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Yes, advertising on TV, radio and digital media is governed by the Law on Social Responsibility in Radio, Television and Digital Media. This covering several practices in industries whose products/services are totally banned (ie, alcohol and tobacco), product placement and teaser campaigns.

The Anti-Monopoly Act has a chapter regulating acts of advertising that could be considered unfair competition practices (ie, misleading advertising that could produce losing clients to one competitor).

Concerning email marketing, Venezuela had an opt-out system, so the advertiser had the right to send a first email inviting the addressee to subscribe to a certain website or to be part of a virtual community, as long as there is a clear procedure to disable the reception of future emails (the advertiser has 24 hours to delete the user from its database) or to simply reject the invitation. Unfortunately, all the legislation formerly contained in the Consumer Protection Act, including that regarding email marketing, which was not expressly included in the Fair Price Act, remains in a legal 'limbo'.

As mentioned before, advertising and promotions such as sweepstakes, or contests, are highly regulated by the SUNDDE, with a mandatory pre-approval administrative procedure.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

According to the Law on Social Responsibility in Radio, Television and Digital Media, advertising services through premium-rate telephone numbers must clearly express the nature of the service provided. The cost per minute of the call must be displayed, with this information taking up at least at 50% as much screen space as given to the phone number, and in audio ads, this information must be given at the same audio volume when the advert is announced.

Alcohol, tobacco, drugs, arms, gambling and lottery advertising is expressly prohibited according to the Law on Social Responsibility in Radio, Television and Digital Media (see question 5.1 below).

1.6 Are any government pre-approvals required?

Since legislation has suffered constant changes in recent years, and considering the power given to regulators to impose sanctions, normally advertisers' lawyers seek advice or assistance from the regulator, especially in the field of promotions or sweepstakes, which needed pre-approval by the regulator (in the repealed Consumer Protection Law), in order to determine if the advertising initiative falls under the definitions of a promotion or sweepstakes.

1.7 Does the media pre-clear advertising?

Historically, the media did not interfere with the content of advertising material to be broadcast/published, other than those industries whose products/services are totally or partially prohibited from being broadcast/published.

However, since the Law on Social Responsibility in Radio, Television and Digital Media was implemented, 85% of the advertising broadcast must qualify as locally produced; normally, the media negotiates with the main advertisers for the correct distribution of foreign advertising spots, to comply with this obligation.

In general, there is close co-operation between the media and the advertising industry, since both could be sanctioned in the event that the regulator detects infringement to the above-mentioned Act.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Depending on the topic, different agencies could be competent to hear and determine a case. For example, SUNDDE could have jurisdiction on misleading advertising cases; but, if monetary damages are sought, a civil court could take over the case. Even criminal courts could eventually be involved:

- (a) If the complaint involves potential damages to the market, the complainant could evaluate the possibility of filing a complaint before the Anti-Monopoly Agency. (This is a body with functional autonomy, administratively under the Ministry of Commerce. Its organization and operation are governed by the Anti-Monopoly Act.) Whether the case will prevail will depend on legal and economic evaluations made by regulators, which means that, even if the advertisement denigrates a competitor's products, damage to the market must be proved. As a result, parties have been reluctant to consider using this alternative.
- (b) The Directorate for Social Responsibility in Radio, Television and Digital Media, a body of the National Telecommunications Agency ('CONATEL'), has jurisdiction over any violation of the Law on Social Responsibility in Radio, Television and Digital Media.
- (c) SUNDDE maintains the power of the former Consumer Protection Agency to impose a wide variety of sanctions, ranging from fines to the temporary closing of the offending business.

1.9 When does a competitor have a right of action? What are the potential remedies?

Based on the fact that there is no advertising law or code, interested parties need to evaluate the interests at stake when considering challenging an advertisement by a competitor. The following alternatives exist:

- (a) **Complaint before the civil courts:**
 - (i) based on the expectation of obtaining damages caused by a strategy of the competitor;
 - (ii) sustained by a general regulation on damages;
 - (iii) rules established by the Civil Code;
 - (iv) the Paris Convention may be relevant.
- (b) **Criminal action:** If the intention is to stop a defamation campaign, this could be the best alternative; however, criminal courts and prosecutors are extremely slow and do not consider these cases high priority.
- (c) **Administrative action:** A non-orthodox alternative could be to file a complaint before the Directorate of Social Responsibility of Media (radio, TV and digital media). Additionally, if the argument of damages to the marketplace (eg, product simulation) can be sustained, a case could be submitted before the Anti-Monopoly Agency.
- (d) **Mediation/Arbitration:** Brought before the Arbitration Court, invoking a breach of the ANDA's Self-Regulation Code. This option has two clear limitations:
 - (i) the powers granted to the Arbitration Court are limited; and
 - (ii) they can only issue recommendations, the process is confidential, and it is only accessible to the ANDA's members.

1.10 When do consumers have a right of action? What are the potential remedies?

In general, there is a lot of opportunity for a consumer to file an action before the SUNDDE, based on one of the many scenarios covered by local regulations, specifically based on possible deceptive, false and/or discriminatory advertising. Unfortunately, it is discretionary for the regulator to accept and then sustain complaints.

In terms of class actions, there have not been many cases brought by consumer associations. However, in recent years there has been a significant increase in the number of actions filed by recognized consumer associations before the SUNDDE. Decisions remain pending.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Venezuela have a primary advertising self-regulation system?

Unfortunately, no.

2.2 Is there a self-regulatory advertising code? What are the key principles?

As mentioned before, there is a self-regulating code known as ANDA'S Code of Ethics which self-regulates commercial communications in Venezuela.

In addition, certain sectors have issued independent codes (ie, the beer industry), although with almost no impact in practical terms, probably due to their lack of presence in the market.

In practical terms, advertisers are more concerned with the *ex officio* procedures of the different public regulatory agencies with jurisdiction on advertising issues than with what their competitors are doing, since their biggest fear is public sanction, rather than a civil suit against a competitor.

The inefficiencies of our judicial system also make most advertisers favor the use of private mediation and, as a last resort, arbitration, to solve conflicts between competitors.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

Yes, ANDA'S Code of Ethics establishes arbitration as a dispute resolution mechanism. This option has a few limitations, namely that the powers granted to the Arbitration Panel are limited, since they can only:

- (a) publish a decision with recommendations,
and, if the infringing party does not comply with the ruling,
- (b) publish the decision in the national media,
and, as a last resort,
- (c) expel the infringing member from the Association.

The process itself is confidential, and it is only accessible to the parties.

Publication of the decision is a prerogative of the Panel appointed based on the importance of the subject matter of the dispute.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Historically speaking, YES. It has worked as the perfect solution for the main advertisers with presence in the country.

However, as explained in questions 2.2 and 2.3, in recent times there has been a significant decrease in the number of cases brought, since advertisers' primary concern is now regulatory action. The lack of updated legislation and unreliability of the judicial system when handling non-traditional matters (as is the case with advertising issues), also contributes to the low number of cases.

2.5 Are the self-regulatory system's decisions reported?

Yes, but only those decisions which, in the Panel's discretion, deserve to be known by the general public, due to the importance of the matter in dispute.

The only other scenario in which decisions are reported on ANDA's website or in the national media are cases where the infringing party ignores the recommendations of the Panel.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Nowadays Venezuela is a highly regulated country, where the Government has the prerogative to intervene in almost all economic activities, establishing strict controls with that idea in mind; advertisers must seek advice prior to developing and launching an advertising campaign.

2.7 Are there any other self-regulatory systems that govern advertising practices in Venezuela?

As previously mentioned, a few sectors of industry have worked on approving self-regulatory systems, but with almost no impact (eg, the beer industry, with only one case to report, which did not produce a decision by the Panel, since the parties settled the dispute).

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Venezuela (eg, consumer protection laws; IP laws; unfair competition laws)?

The Venezuelan system is a classic ‘melting pot’, in terms of legislative rulings on this matter, considering that advertising claims could be regulated by:

- (a) Trademark legislation;
- (b) Consumer protection norms;
- (c) The Anti-Monopoly Act, which has a chapter on unfair competition;
- (d) Legislation to protect minors;
- (e) Constitutional principles, regulated in the Civil and Criminal Codes;
- (f) The Pharmacy Practice Law;
- (g) The Commercial Advertising Law; and
- (h) The Transit Law.

3.2 Is substantiation required for advertising claims?

The Venezuelan system is very conservative in terms of legislation, with a clear tendency to protect consumers, which is why analysis must begin with the principle of veracity set out in the Constitution. A consumer can bring a case for examination to a consumer protection officer, who, if initially convinced on the potential merits of the case, will summon the potential infringer to present defenses against the claims of the consumer, even if they are vague.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Although there is no specific definition of ‘puffery’, it should be treated with special care by advertisers, since regulators do not favor these kinds of messages and consider them potentially misleading from a consumer perspective (at least, the recently-repealed consumer protection law was certainly restrictive, even though very few cases were opened; and there is no reason to think that the new law will not follow the same line).

3.4 What are the rules governing the use of disclosures in advertising?

The SUNDDE law provides that misleading advertising is subject to a penalty that ranges from fines up to the temporary closure of the establishment for a maximum of 90 days, depending on the circumstances of the infringement.

If editorial content has somehow been influenced by an advertiser, a full disclaimer must be announced or printed. ‘Informative’ advertising must also be clearly identified, as well as ‘infomercials’. Also, on TV, radio and online live shows, all commercial messages should be properly announced as advertising before they begin.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

No specific regulations govern the use of endorsements and testimonials, but certain situations may need special treatment (ie, the use of minors demands express consent from parents or legal representatives). The use of testimonials is frequent, and, as long as they are conceived in a positive way, no problem should arise, unless they involve comparative advertising, though this is not commonly used in Venezuela.

3.6 What are the rules governing the use of product demonstrations in advertising?

Advertising claims must be supported by scientific studies that validate the claims made. As such, all products demonstrations must include a legend that explains who was responsible for conducting the test supporting the results of the demonstration.

There are several precedents ruling on misleading advertising that was not supported by the appropriate investigation, which must be locally validated as applicable to Venezuelan consumers to be accepted as evidence.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

There are no restrictions on comparative advertising or identifying a competitor and its product or service by name. However, Venezuela has proven to be a market where competitors are reluctant to use this advertising mechanism, which certainly favors consumers, probably because it is a relatively small market, where many brands control a big portion of the market share in each category.

It must be pointed out, though, that, even in the absence of specific legislation governing this subject, the information or comparison must be ethical, verifiable and fair, since infringement could be punished as a civil violation (giving rise to damages) or a criminal one (defamation and slander, for example).

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

Yes, ‘fair use’ principles must be followed, in order to produce an ethical comparison. The use of a competitor’s trademark or copyright design is legally allowed, as long as the comparison between the products/services is reasonable (real competitors) and does not constitute an act of passing off or, in general, an unfair competition practice, where one actor is trying to position a brand relying on the prestige of the ‘compared’ brand.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

Yes, there are administrative regulations issued by the National Autonomous Standardization, Quality, Metrology and Technical Regulations Service (‘SENCAMER’), which requires the labels of products to be commercialized in the country to include the geographic origin of the product.

3.10 Are there any special rules governing product packaging?

Yes, there are several regulations that governs product packaging, such as:

- (a) the Law related to taxes for cigarettes and tobacco manufacturers, which sets out packaging regulations for cigarettes and other tobacco products;
- (b) the administrative regulations issued by SENCAMER that establish the information required in the labeling of:
 - (i) all types of clothing (textiles) marketed in Venezuela, and
 - (ii) footwear marketed in Venezuela;
- (c) the Law on the Promotion and Protection of Maternal Lactation, which sets out packaging regulations for:
 - (i) baby formula,
 - (ii) labeling of modified milk,
 - (iii) labeling of complementary foods,
 - (iv) requirements that must be met by packaging and labels of pacifiers and similar products, and
 - (v) special prohibitions on advertising materials relating to baby food, bottles, pacifiers etc;
- (d) the administrative regulation issued by SENCAMER that establishes the information required in the labeling of all types of toys;
- (e) the administrative regulation issued by SENCAMER that establishes the information required in the labeling of all types of packaged food; and
- (f) the technical regulation for the energy efficiency labeling of fluorescent lamps and the technical regulation for the energy efficiency labeling of refrigerating and freezing.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

No.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

No.

4 PRICE ADVERTISING

4.1 What are Venezuela’s rules regarding price advertising?

In general, pricing information must be widely disclosed, and cannot be subject to interpretation. There are products and services whose price structure is under total regulation. Hence, no modification or change on the pricing can be made.

For non-regulated industries, any special offer or change on pricing must be submitted to the regulator, since it can be considered a ‘promotion’, and thus subject to a mandatory pre-approval process. All special offers must last no more than three months. If the promotion runs for more than three months, then the ‘promotional’ new price will be permanent.

4.2 What are Venezuela’s rules regarding advertising ‘free’ products?

In this kind of situation, an approval must be obtained from SUNDEE, since this is considered a ‘promotion’.

4.3 What are Venezuela’s rules regarding sales and special offers?

Sales and special offers are considered to be ‘promotions’, and thus subject to a mandatory approval process.

4.4 What are Venezuela’s rules regarding rebates?

Sales and special offers are considered to be ‘promotions’, and thus subject to a mandatory approval process.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

All products/services being offered with a discount must be exhibited or displayed with preference over other products/services of the same category being offered with a higher price.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

Advertising the following products on radio or television is prohibited:

- (a) cigarettes and tobacco products;
- (b) alcoholic beverages; narcotic or psychotropic substances prohibited by law;
- (c) professional services offered by individuals not meeting the skills established in specific laws;
- (d) goods, services or activities (temporarily or definitively) forbidden or not authorized, as the case may be, by law or competent authorities for health reasons or for the purpose of protecting the rights of certain people;
- (e) gambling; though specific exceptions may apply, eg, lotteries or sweepstakes conducted exclusively for charity or humanitarian reasons;
- (f) goods or services addressed to minors that show elements of violence; and
- (g) weapons, explosives or related services.

It is expressly prohibited to advertise a product or service:

- using the same distinguishing phrases, slogans or melody, images, logos, symbols, devices, distinctive signs or images related to a product, service or activity that is forbidden from being broadcast;
- spreading messages using religious faith, cults or beliefs for commercial purposes; or
- promoting practices that constitute a violation of laws governing transportation laws.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Any type of advertising that could be potentially considered deceptive, confusing or misleading, should be used carefully, due to the fact that non-regulated powers have now been given to the SUNDDE.

When advertising services through premium-rate telephone numbers, the nature of the service provided must be clearly expressed. The cost per minute of the call must be displayed at at least 50% of the visual proportion of the phone number and at the same audio volume when announced.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

Yes, the Law on Social Responsibility in Radio, Television and Digital Media specifically regulates content containing texts, images or sounds of sexual acts or nudity, among many other elements, depending on the time when the spot will be aired. For public television, the law establishes a complex definition of elements concerning language, health, sex and violence, which can only be aired in the appropriate time segment, according to the categories set forth in the law.

In general, content considered obscene and/or indecent can only be broadcast by paid-for television, during the appropriate timeframe.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Yes—A full identification of the advertiser should be included in all media where the advertising will be aired/displayed, including the tax identification number of the advertiser, as the responsible entity behind the advertising.

The same rule applies to product placement, which is only acceptable in sporting events, and only as long as the goods or services advertised are not included among those that cannot be broadcast. Commercial sponsorship is acceptable, as long as the product or service is not the object of the same restriction for broadcasting.

Finally, indirect marketing is not acceptable, as advertising must be clearly and conspicuously identified.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

No particular rule applies, as long as the integration of advertising content and editorial content is not misleading.

The only mandatory rule is the pre-eminent disclosure explaining that the content displayed is advertising material.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

See question 7.1 above.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

In theory, and in accordance with several rules, starting with the Constitution, the protection of individual rights is of supreme concern.

In practical terms, and mostly as a result of the tense political climate, the social media environment is a 'space free of regulations' until further notice, despite intense use of it for both commercial and non-commercial purposes.

This tolerance clearly contradicts the concepts included in the amendment to the Law on Social Responsibility in Radio, Television and Digital Media, which named electronic media, including the Internet, wireless services and, consequently, all social media tools as an object of regulation; thus creating barriers to the dissemination of information between individuals, and imposing limitations on constitutional rights to privacy and freedom of expression, information and opinion.

The law prohibits the circulation of messages distributed via electronic means or any other form of information disclosure, which contains the following:

- (a) inciting or promoting hatred and intolerance based on religious, political and gender differences, racism or xenophobia;
- (b) constituting war propaganda;
- (c) promoting distress or disturbing public order;
- (d) disregarding legitimately constituted authorities; or
- (e) inciting murder or promoting the violation of legal order.

'Electronic means' are defined as all forms of audiovisual media, audio and electronic broadcasting services arising from the development of telecommunications through legal instruments that are deemed relevant, which can be interpreted broadly to regulate both the internet and wireless services.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

No—as long as the right disclaimer of responsibility is displayed, and the user has accepted responsibility, the advertiser should not be held responsible for third-party opinions. However, it is advisable that, if a notification of a potential violation is received, the website where the content was generated takes responsibility for taking the appropriate measures to delete the offending content.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

As of today, no. The vast majority of social media cases have been related to political issues (ie, suspension of accounts based on defamation of public officers). To the best of our knowledge, users are following and complying with the mechanisms for dispute resolution established by social media platforms.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Individuals' rights prevail, and consent must be obtained in order to use any element that identifies a person in advertising. Special attention must be given to the use of children, since special regulations apply.

9.2 Are there situations when permission is not required?

Consent must be obtained. Exemptions apply to other forms of communication, such as informative coverage of a live event.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

Access to historical places and national parks for commercial purposes is restricted and permission must be obtained from the relevant agencies.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

No, this could be considered trademark/copyright infringement, due to lack of consent from the IP owner.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Venezuela which affect advertising (eg, Swedish gender equality law)?

Any advertising material that could be considered discriminatory in any possible way (gender, religion or race) should be closely reviewed before launch, mostly because of the social tensions experienced in recent years, due to Venezuela's complex political climate.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

Indigenous rights are a highly sensitive topic. The use of public figures (even as part of a parody, which are not illegal per se), is not advisable.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Venezuela?

ALWAYS seek local advice, both from an advertising agency AND a law firm, before starting a project. Our system is constantly changing, not necessarily for legal reasons, but for the increasing power given to public officers.

 ZIMBABWE 

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in Zimbabwe?

There are no specific advertising laws in Zimbabwe. However, there are general laws relating to intellectual property, unfair trade practices and competition, foods, drugs, alcohol, gambling, tobacco, pornography, environmental, health and safety, and security which advertisers must follow.

However, there has been a recent development by which City Councils and Rural District Councils across Zimbabwe have been passing advertising by-laws that require members of the public to be granted permission by the Council before putting up adverts in public spaces.

Notwithstanding the above, the advertising industry in Zimbabwe is itself largely self-regulated. Accordingly, the acceptability of advertising content is usually determined by advertisers themselves through their various industry associations. These self-regulatory bodies, such as the Advertising Media Association ('ADMA'), the Advertising Standards Authority ('ASAZIM') (which was created by ADMA), the Advertising Standards Association of Zimbabwe, the Zimbabwe Advertising Practitioners Association, the Communication Industry Association, and the Association of Zimbabwe Advertisers, set rules to be followed by their members. The rules are enforced through complaint procedures, investigations and adjudication of disputes. The body responsible for such matters for the advertising industry is the ASAZIM, which has published the Code of Standards (see question 2 below).

1.2 What types of communications are considered to be 'advertising'? How is this determined?

There is no clear definition of what types of communications are considered to be advertising. However, the Code of Standards states that its rules apply to 'all advertising accepted for publication, transmission or broadcast...'. This would appear to include any communication accepted for publication.

Accordingly, a private letter not intended for publication would not be advertising. However, letters, emails, internet content, newspapers, and broadcasts, as well as other media where the communication is for publication, would be advertising.

1.3 What is the basic regulatory framework for advertising regulation?

The basic regulatory framework is the Code of Standards.

The self-regulatory body for the advertising industry in Zimbabwe, the Advertising Standards Authority became dormant during the early 2000s as result of the economic crisis in Zimbabwe. However, In March 2017, it relaunched and rebranded itself as the ASAZIM. As an independent body, the ASAZIM works in conjunction with all entities involved in advertising in Zimbabwe: Zimbabwe Association of Accredited Practitioners in Advertising, Marketers Association Zimbabwe, the ADMA and the Consumer Council of Zimbabwe. The organization is governed by an Executive Committee, which is made up of representatives from the aforementioned organizations. A primary objective of ASAZIM is to provide prompt, accessible and cost-efficient mechanism to ensure advertising is 'legal, decent, honest and truthful'.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

No. There are no special provisions for advertising practices using the internet, mobile (text messaging) or other new electronic technology. They are all regulated under the general laws relating to unfair competition, intellectual property and other Acts. It is important to note that most advertisers are reluctant to use these new technologies for advertising, as they involve higher risks of fraud, are not readily accessible to the majority of the population in high density and rural areas of the country, and transmissions are affected by power cuts and network and telecommunications instability from time to time.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

There are several industries whose advertising practices are regulated. These are some of the main ones, but the list is not exhaustive:

- (a) Food: advertisements/packaging must comply with specific labeling requirements, such as to include a 'Best Before' date, date of manufacturing, and list the fat content, any preservatives, and any fish, types of poultry and mixture of cheeses. There are strict requirements with regards to the importation of genetically modified goods. However, those operators allowed by government to import, produce or sell food or feed containing 1% genetically modified produce, must have the correct labeling put on their products.
- (b) Tobacco products are required to include health warnings on packaging.
- (c) Hazardous substances, pesticides and toxic substances must comply with specific rules on packaging.
- (d) Advertisements offering products or services through payment by instalments must show details of:
 - the full cash price,
 - the deposit,
 - the number of instalments, and
 - any extra costs,
 as well as any other legal requirements pertaining to this type of purchase.

1.6 Are any government pre-approvals required?

The government requires pre-approvals for anyone who desires to take pictures of government buildings or offices to use for adverts.

The government, in particular, various City Councils and Rural District Councils require members of the public to seek permission from the council before putting up 'advertisements' in 'public places'. These two terms are defined very broadly, ie, 'advertisement' means 'any poster, banner, placard, bill board, notice or device employed for the purpose of advertising on or off the wall'; and 'public place' means 'any thoroughfare, building, open space or other place of any description to which the public or any section of the public have access, whether on payment or otherwise and whether or not the right of admission thereto is reserved'.

1.7 Does the media pre-clear advertising?

The Zimbabwe Broadcasting Corporation ('ZBC') is the only locally-operated television station in Zimbabwe. The ZBC, which is owned by the Zimbabwe government as a parastatal, pre-clears commercials. An advertisement for use on TV is delivered to the ZBC Marketing Department. This assesses the advertisement and, if it believes it is acceptable, the advertiser makes a payment. The ZBC charges advertisers based on the time slot and length of the advertisement. If the ZBC does not believe the advertisement to be acceptable, it will either refuse to broadcast the advertisement or ask the advertiser to modify the ad to remove that aspect it has deemed to be unacceptable. A similar system applies to radio advertisements.

In recent years, there has been more advertising on satellite television.

The most popular forms of advertising are roadside billboard signs, email, internet advertisements, including YouTube.

1.8 How does the government enforce advertising laws? What are the potential remedies?

The Government does not have adequate resources to enforce advertising laws and, accordingly, relies on a self-regulatory system. Should it fail, the Government may intervene if safety, health, security or political interests of the State are affected.

The Drugs Control Council of Zimbabwe can intervene if medicinal claims are made for products which are not licensed medicines.

1.9 When does a competitor have a right of action? What are the potential remedies?

- (a) Complaints by competitors are made to the ASAZIM. The Code of Standards sets out rules to which all members should adhere. By agreement of its members, the ASAZIM may arbitrate disputes between members and render decisions which are final. ASAZIM cannot award any damages or injunctive relief. However, ASAZIM can levy a fine, expel a member, order an advertiser to cease and desist and require corrections with or without apology.
- (b) Claims may also be presented to the High Court for injunctive relief (interdict), specific performance (such as corrective advertising) and/or damages. Such claims may be based upon unfair business practices, trademark and copyright infringement, other relevant laws or the common law.
- (c) Competitors may report a violation or criminal offence to the police and seek police assistance in seizure of offending goods. A competitor may also request the State to proceed with criminal prosecution, which may result in a fine and, for some offences, imprisonment. There is no cost award in criminal cases, but there can be in civil matters, and the court has discretion to award on a higher scale of attorney/client.

1.10 When do consumers have a right of action? What are the potential remedies?

Consumers have rights which include, but are not limited to, those set out in the Consumers Contract Act and the Competition Act. These Acts prohibit unfair trade practices. If these unfair trade practices occur as a result of advertising, then an aggrieved consumer may make a complaint to the ASAZIM and, under the Code of Standards, the ASAZIM may take appropriate action. This may include investigations, negotiations with the consumer and the advertiser, holding a hearing, which may or may not result in a fine, or other appropriate action. The ASAZIM is not empowered, however, to make an order for specific performance, injunctive relief, damages or restitution. The latter can only be pursued by a consumer in a court of law.

2 SELF-REGULATORY FRAMEWORK

2.1 Does Zimbabwe have a primary advertising self-regulation system?

There is a primary advertising self-regulation system, the ASAZIM. It is established and operated by companies in the advertising industry through the Code of Standards by which they agree to be bound.

The Code of Standards prohibits certain types of conduct which may be considered unfair, indecent, false or misleading. It also provides guidelines on what content is acceptable in advertisements. Specifically:

- (a) It requires that advertisers make every effort to ensure that no advertisement contains anything which is likely to offend the susceptibilities of any section of the community. The Code of Standards provides that, in the event that any group makes a justifiable complaint, the ASAZIM Committee shall be convened and will make a ruling.
- (b) It prohibits any advertising that contains anything which is considered malicious or scandalous.
- (c) It states that no advertisement shall make undue appeal to fear on the part of the public if the intended objective is to make a profit and or sell a product/service.
- (d) It includes rules dealing with the use of the word 'new'. The word 'new' may be used in all media, packaging, posters, billboards for an entirely new product or service marketed or sold during a given 12-month period. The word 'new' may also be used to advertise any change or improvement to a product.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The Code of Standards is Zimbabwe's self-regulatory advertising code. The key points in the Code of Standards are:

- (a) Principles that advertising must be 'legal, decent, honest and truthful' and must not contain 'material of doubtful propriety or which is obscene, indecent or profane, or contrary in any way to accepted standards of good taste and morality';
- (b) A prohibition on certain conduct in advertising, including, but not limited to:
 - (i) conduct which is false, misleading and/or constitutes misrepresentation (regardless whether such conduct will likely lead to legal action for infringement),
 - (ii) malicious or scandalous content as well as disparaging reference to competitive products or services, or
 - (iii) any content which may be considered as dangerous to children; and
- (c) ASAZIM's power to receive, investigate and make rulings concerning complaints by members and community group.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

There is a system of enforcement whereby complaints are submitted, investigated, parties make representations and a decision is made.

A decision may require specific performance and/or imposition of a penalty. In the event of the offender failing to pay, the ADMA members will be advised to stop accepting any advertising copy from that advertiser. Reports of any criminal conduct may be made available to the relevant authorities.

There are no specific time lines or deadlines for presenting a claim, but, generally, claims must be submitted within a reasonable time after knowledge of publication of the offending advertisement.

2.4 Is the self-regulation system effective? Is it widely used and followed?

The self-regulation system appears to be effective, as ‘offensive’ advertisements are rare. There are cases of complaints, but they are rare and not reported.

2.5 Are the self-regulatory system’s decisions reported?

Since its re-launch in March 2017, ASAZIM has already considered a few disputes, the names of which used to be posted in the Cases and Rulings section of its website. One such case is of *PPC v Lafarge* lodged 25/09/17—this was a complaint against unethical and factually incorrect adverts by Lafarge. The committee found Lafarge to have contravened the ASAZIM Code of Standards, which prohibits disparaging references, and fined it Z\$1,000. Unfortunately, however, it appears that the ASAZIM website is not currently active.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

Zimbabwe is a developing country and, although it has taken positive steps in some areas of personal freedoms, it takes a conservative and less tolerant view on issues related to sex and politics. Accordingly, advertisements in these areas may not be acceptable and thus prohibited by government and/or the Code of Standards. For example:

- (a) The Code of Standards specifically prohibits advertisements containing any reference or claim that an advertised product, medicine or treatment will promote sexual virility, treat sexual weakness, or remedy sexual excess or indulgence. Accordingly, drugs such as Viagra may not be advertised.
- (b) Certain advertisements, including advertisements that suggest Government incompetence or encourage voting for an opposition party, may be deemed to be politically sensitive. For example, an international non-governmental organization for family planning was found to be in breach of these rules when it distributed free condoms, the condom packages featuring an advertisement urging people to vote for the opposition party. The Government objected on the grounds that this was a foreign entity interfering in national politics, and the organization was threatened with revocation of its operating permit and deportation of its foreign employees. However, the organization made representations to the Government and, following further consideration, the Government simply issued a warning.

2.7 Are there any other self-regulatory systems that govern advertising practices in Zimbabwe?

Not applicable.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in Zimbabwe (eg, consumer protection laws; IP laws; unfair competition laws)?

There are no specific laws governing advertising claims per se. A person making a claim would have to rely on the Code of Standards and make a complaint to the ASAZIM, or make a claim in court based upon various statutes which indirectly regulate advertising. The principal statutes which indirectly regulate advertising include:

- (a) **Intellectual property:** Intellectual property laws, such as trademarks and copyright, prohibit advertising unless the registered owner authorizes use. For example, under the Copyright and Neighboring Rights Act, a person is prohibited from copying without permission of the owner. The Act states that remedies for such infringement are ‘damages, interdict, attachment, the rendering of account, the delivery of infringing copies or articles used or intended to be used for making infringing copies or otherwise, as are available in respect of the infringement of any other proprietary right.’ Therefore, any advertisement which produces unauthorized copies is unlawful. Likewise, in the case of trademarks, failure to obtain permission from the proprietor before placing the advertisement may result in products being seized, as well as enforcement remedies similar to those mentioned for copyright, as it may be considered an infringement.
- (b) **Consumer protection:** Consumer protection laws include provisions dealing with purchases made by instalments. Where an advertisement contains a price and reference to specific terms of payment relating to any form of purchase by instalments, advertisers must take care to ensure that the amounts quoted clearly indicate the cash price and the extra costs required for hire purchase.
- (c) **Unfair competition:** Unfair competition laws specifically prohibit unfair business or trade practices, ie, advertising false or misleading representations or false bargains. For example, according to the Competition Act: ‘Any person who enters into, engages in or otherwise gives effect to an unfair trade practice (which includes misleading advertisements, false bargains and distribution of commodities or services above advertised price) will be guilty of an offence under that statute.’

3.2 Is substantiation required for advertising claims?

There are no specific rules governing the substantiation of claims made in advertisements. However, the Code of Standards requires that advertisers stand ready to produce such substantiation if and when called upon to do so.

The Code of Standards states that advertisers failing to substantiate claims can be subject to a fine of Z\$1,000.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

There are no specific rules in this regard. However, if an advertising claim is so ‘over the top’ that there is clearly no intention for it to be literally believed (eg, ‘this car has wings’), it would be permitted and not require substantiation.

3.4 What are the rules governing the use of disclosures in advertising?

The Code of Standards states: ‘No advertisement should contain any reference which is calculated to lead the public to assume that the article, product, medicine or treatment advertised has some special property or quality which is in fact unknown or recognized.’

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

The Code of Standards states: ‘Testimonials must be voluntary, genuine and unpremeditated and must not be used in a manner likely to mislead. Advertisers and their agencies must have evidence in support of any testimonial and of any claims therein. Such evidence must include authority to publish from the source of the testimonial.’

3.6 What are the rules governing the use of product demonstrations in advertising?

There are no specific rules for demonstrations. Accordingly, the ‘General Principle’ of the ASAZIM Code of Standards applies, ie, they must be ‘legal, decent, honest and truthful’ and must not contain ‘material of doubtful propriety or which is obscene, indecent or profane, or contrary in any way to accepted standards of good taste and morality.’

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising in connection with the same advertiser’s goods or services is allowed, but comparative advertising with another competitor is prohibited.

In practice, comparative advertising is rarely, if ever, used in Zimbabwe because of its intellectual property laws, defamation laws and constraints in terms of ethical standards.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

The Copyright and Neighboring Rights Act prohibits unauthorized use of another’s copyright: ‘Copyright is infringed by any person who is not the owner of the copyright and who, without the owner’s authority, does or causes any other person to do an act in Zimbabwe which the owner has the exclusive right to do or to authorize.’

Likewise, the Trademarks Act prohibits unauthorized use of an owner’s trademark: ‘... a registered trademark shall be infringed by any unauthorized use in the course of trade, whether as a trademark or otherwise...’ However, this provision appears to prohibit conduct whereby the mark is used as though it were owned by, or the user was authorized by, the registered owner to use it to make sales, and does not deal with use of another’s trademark for comparative purposes for similar goods or services. Although not specifically stated, the Code of Standards appears to permit such comparative advertising, so long as it is truthful and the advertiser can substantiate the claims.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

The laws related to intellectual property, unfair trade practices and competition govern claims to geographic origin. According to the Geographic Indication Act of Zimbabwe, it is prohibited to use misleading geographic indicators; and the Competition Act states that misleading advertising, which includes ‘containing a statement, warranty or guarantee that any service is or will be of a particular kind, standard, quality or quantity, or that it is supplied by any particular person or by a person of a particular trade, qualification or skill, which statement, warranty or guarantee the publisher knows or ought to know is untrue’ is an offence.

3.10 Are there any special rules governing product packaging?

Yes, there are a number of special rules that govern product packaging. These special rules mainly relate to packaging for tobacco, foods and feeds and genetically modified foods. Operators must ensure that labels are printed in clear, indelible, visible legible letters and indicate all necessary information mandated by law in a footnote of a certain size.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

The term ‘dark practices’ includes a variety of techniques, such as social engineering and false information, used for the purpose of tricking a target into making an action, such as a purchase or revealing information they would not have made otherwise (eg, advertising that only a limited number of items of a product are left), for which there are no special rules in Zimbabwe. However, the Competition Act and Code of Standards apply directly to dark practices. For example, principal statutes, like the Competition Act, make it unlawful to engage in ‘misleading advertising and false bargaining’. Also, the Code of Standards requires that advertisers be ready to produce any substantiation of their adverts if and when called upon to do so.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

There are no specific rules on artificial intelligence as it relates to advertising in Zimbabwe.

4 PRICE ADVERTISING

4.1 What are Zimbabwe’s rules regarding price advertising?

- (a) The Code of Standards sets out rules related to comparative pricing and savings claims. The basic thrust of the rules is that there must not be any false or misleading representations, either express or implied. If merchandise is stated in an advertisement as being ‘wholesale price’ or ‘manufacturer’s cost’ or ‘less than cost’, the advertiser must be able to substantiate the statement as true.
- (b) There are a number of rules on price advertising, including rules on the inclusion of comparative prices. For example, the previous price must be reflected in the advertisement and the old prices must have been offered for at least 28 days prior to the advertisement.
- (c) Also, the Competition Act discourages false advertising of prices and bargains, stating that: ‘Any person who enters into, engages in or otherwise gives effect to an unfair trade practice (which includes misleading advertisements, false bargains and distribution of commodities or services above advertised price) will be guilty of an offence under that statute’.

4.2 What are Zimbabwe’s rules regarding advertising ‘free’ products?

The Code of Standards allows advertising of ‘free’ products, provided that the buyer ‘not be required to pay or perform any other actions which would require payment in some form’ and that the goods or samples are supplied at ‘no cost or no extra cost’ (other than actual postage or carriage) to the recipient. A trial may be described as ‘free’ although the customer is expected to pay the cost of returning the goods, provided that the advertisement makes clear the customer’s obligation to do so. Advertisements offering free goods must indicate that such goods are received free with every purchase or with a specified number of purchases or within a specified time.

As regards printed materials, there are special rules, such that the materials, whether free or not must ‘in all respects conform to the standards of propriety and good taste governing all advertising’.

4.3 What are Zimbabwe’s rules regarding sales and special offers?

Sales and special offers may be permitted, subject to the rules of the Code of Standards. The Code of Standards requires that such offers are true and there are no false or misleading representations.

Special sales are usually conducted by companies who would like to sell excess stock remaining after a holiday or stock approaching a 'sell by' date. The Code of Standards states that merchandise shall not be offered for sale at 'less than cost' unless such claim or representation is true and can be substantiated. It further states that merchandise shall not be offered for sale at a price purported to be reduced from what is a fictitious 'list' price, or when the purported reduction is itself fictitious.

4.4 What are Zimbabwe's rules regarding rebates?

A company or supplier of goods and services may offer or give a rebate so long as it does not involve 'exclusive dealings'; ie, offering the rebate on condition that the buyer will limit/restrict buying from or resupplying to a competitor, which is prohibited by unfair competition law. Accordingly, an advertisement offering such rebate must not have any such conditions attached, and must otherwise comply with the competition law and the Code of Standards.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

There are a number of advertising restrictions for medicines and treatments, medical products and services. Certain terminology may be restricted or prohibited in advertisements, such as, but not limited to 'college', 'clinic', 'institute', 'Doctor' or 'Dr', 'dental' or 'medical opinions'.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

There are strict gun control laws and, therefore, advertising guns for sale is prohibited. Advertising of certain medicines is prohibited. For example, aphrodisiacs, impotence remedies, any product or medical treatment which implies that it could be effective in inducing miscarriage, slimming or weight control. Medicines likely to have harmful effects and any medicine or treatment that is held out to cure certain diseases cannot be advertised.

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

Not applicable.

Whilst the placing of adverts in public places is not prohibited, it is now strictly monitored and regulated by law with governmental pre-approval required.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

- (a) The use of indecent and obscene content and materials in advertisements is regulated by the Code of Standards, which provides that 'all advertising accepted for publication, transmission or broadcast will be governed by the general principle that it will be ... decent ...'. However, the Code of Standards does not provide any guidance in relation to what content is considered 'decent'.
- (b) The Censorship and Entertainment Act deals with indecency and obscenity in advertisements that promote films and public entertainment. The Act sets out rules on the age rating of such advertisements. Publishers of advertisements found to be in breach of these rules are at risk of a fine and/or a maximum of three months' imprisonment.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

The Code of Standards requires disclosure of the full name and full address of advertisers when offering products and/or services in exchange for remittance through the post, or when advertisements are published from friendship clubs, marriage bureaus, health institutes or for massage treatments.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

There are no special rules.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

There are no special disclosure or other obligations.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

No. Whilst the use of social media has grown in Zimbabwe, special rules have yet to be issued. Although there are no specific laws relating to social media, the same general laws which apply to off-line activities will apply to social media online where they affects transactions and/or persons within the borders of Zimbabwe. Such laws include, but are not limited to: unfair competition (related to unfair business practice, which includes false or misleading advertising); intellectual property; contract; and defamation.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser's Facebook page)?

To date, there have been no cases related to this in Zimbabwe.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Not applicable.

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

Since the promulgation of the Cyber and Data Protection Act, there are now special rules relating to protecting data acquired from an individual, including rules as to how it is protected. Data Controllers and Data Processors (which advertisers may be categorized as) now have specific duties concerning the use of personal information.

9.2 Are there situations when permission is not required?

If a person provides information when participating in a promotion or contest, such information may be used for the intended purpose as initially authorized by the individual, without further authorization.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

The taking of photos of Government-owned buildings, as well as information within such buildings, will need prior approval.

This restriction is imposed by the Government for security reasons. An advertiser would need to contact the Ministry of Information, Communication and Technology and Ministry of Home Affairs before taking and using such images in an advertisement.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

It is acceptable so long as the use is passive; ie, the product is not worn in a negative context, suggestive of any negative connotation, and no announcement is made concerning its use without the prior consent of the trademark or copyright owner.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of Zimbabwe which affect advertising (eg, Swedish gender equality law)?

There is cultural sensitivity to advertisements related to sex and medications or products related to the same, as well as homosexuality, race discrimination, intolerance and political criticism.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

The Constitution of Zimbabwe prohibits discrimination on the grounds of race, tribe, place of origin, political opinions, color, creed, sex, gender, marital status or physical disability. The Constitution states 'no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of any functions'.

The ASAZIM espouses the same general principles when it comes to advertising. For example, advertisers cannot advertise for a job that states 'wanted black male', nor could an advertisement state 'wanted Ndebele person'. However, it would be permitted to advertise 'wanted person fluent in Ndebele'.

Cultural norms should also be considered when targeting specific groups. A large group from a certain church were once offered buses by a local bus company. The buses had the logo of a beer company, so they refused to board the buses and opted to walk. Whether material is appropriate or not depends on the particular group the advertiser is targeting. Content that is obscene, includes sex scenes, or inappropriate language, is not allowed.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in Zimbabwe?

Advertisers need to understand social, economic and political conditions, as well as cultural nuances, as many restrictions will not be stated in the Code of Standards or laws but may nevertheless need to be followed.

As a developing country, there are sensitivities with respect to political criticism or affiliation, which would not be an issue in a developed country. For example, an advertising firm refused to provide a bulletin board advertisement using the words 'BANANA REPUBLIC' during election year without additional information and representations showing clearly that the words were related to the well-known trademark for clothing stores, due to concerns that the words would be mistakenly thought to be criticism of the government.

Positive relationships with other members of the advertising industry, as well as with government, are important to succeed in Zimbabwe.



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