

Advertising Laws of the World



Introduction

This guide, prepared by the DLA Piper's Global Advertising and Marketing Law team, gives clients a practical introduction to the laws governing advertising in 13 key jurisdictions around the world, and includes a section explaining the role of EU-wide laws on advertising. It covers topics such as what the main sources of advertising law are, what hot-topics local regulators are focusing on, and what the penalties are for breaching advertising laws. It is a useful tool for in-house lawyers and marketing teams alike, at brands, ad agencies, broadcasters and publishers.

The guide also includes an overview of specific advertising rules in each jurisdiction for sectors such as Pharma, Financial Services, Gambling and Food and Beverage.

Should clients have further questions relating to any advertising or marketing law issue, please reach out to the contacts indicated in the relevant country chapter. Use the map on the next page to go straight to the country section you wish to access.

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*This guide is designed to be viewed on a desktop in order to access all interactive elements.



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Australia



Australia

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

In Australia, advertising and marketing is primarily regulated by the misleading and deceptive conduct provisions of the Australian Consumer Law ("ACL") contained in Schedule 2 to the [*Competition and Consumer Act 2010 \(Cth\)*](#). The ACL is a national law that protects consumers and ensures fair trading across Australia.

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

In addition to the ACL, parallel legislation exists in each Australian State and Territory that provides additional consumer protections. These state-based acts include:

- [Fair Trading Act 1987 \(NSW\)](#)
- [Consumer Affairs and Fair Trading Act 1990 \(NT\)](#)
- [Fair Trading Act 1989 \(Qld\)](#)
- [Fair Trading Act 1987 \(SA\)](#)
- [Australian Consumer Law Act 2010 \(Tas\)](#)
- [Australian Consumer Law and Fair Trading Act 2012 \(Vic\)](#);
- [Fair Trading Act 2010 \(WA\)](#);
- [Fair Trading \(Australian Consumer Law\) Act 1992 \(ACT\)](#).

The ACL harmonised the consumer protection provisions of these state and territory fair trading laws.

HOW ARE ADVERTISING LAWS ENFORCED?

The legislations referenced above are both principally enforced by regulators often pursuant to consumer complaints, as well as legal action by individuals and businesses (often competitors).

WHO ARE THE RELEVANT REGULATORS?

At the national level, the key relevant regulator is the Australian Competition and Consumer Commission (ACCC). At the state and territory level, the relevant regulators are the state and territory based fair trading bodies. For example, in New South Wales, the regulator is NSW Fair Trading.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes, private companies can lodge a report of a breach of the ACL with the ACCC and are in fact encouraged to identify breaches of the ACL to the ACCC. Similarly, private businesses can and are encouraged to bring complaints to state based regulators as well.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

For body corporates, the maximum penalty per breach of the ACL (including unconscionable conduct, making false or misleading representations and supplying consumer goods or certain services that do not comply with safety standards or which are banned) will be the greater of AUD10 million three times the value of the benefit received or 10% of annual turnover in the preceding 12 months if the court cannot determine the benefit from the offence. Notwithstanding this, a number of factors are considered by the courts when taking into account the appropriate penalty or fine.



The ACCC may itself also issue infringement notices where it has reasonable grounds to believe that a person has breached the ACL. The penalty amount of each infringement notice may vary depending on the contravention. But generally it's AUD13,320 per breach for a corporation or AUD133,200 if a corporation is publicly listed or AUD2,664 for an individual.

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

Each year, the ACCC releases its annual enforcement and compliance priorities. For 2021, the areas the regulator focused on include:

- promoting and selling products in the context of the COVID-19 pandemic (e.g. travel and event cancellations);
- COVID-19 related competition issues (e.g. in relation to domestic air travel);
- issues in the funeral services sector;
- issues relating to digital platforms;
- issues arising from pricing and selling essential services, in particular – energy and telecommunications;
- promoting competition and investigating anti-competitive conduct in the financial services industry;
- investigating conduct affecting competition in the commercial construction industry;
- ensuring protection of small businesses through legislation, including franchises;
- ensuring compliance with mandatory codes of conduct in the agricultural sector – namely the Dairy Code of Conduct and Horticulture Code of Conduct;

- improving industry compliance with consumer guarantees – especially in relation to high value goods such as motor vehicles and caravans;
- implementing new safety standards for button batteries;
- enforcing compliance with the new quad bike safety standard.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Yes, private companies and individual consumers can commence proceedings before the courts for breaches of the ACL. Certain pre-litigation steps need to be undertaken before commencing proceedings.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

Where the court finds that a party has breached provisions of the ACL, the remedies ordered by the court may include:

- issuing an adverse publicity order requiring publication of an advertisement in a specified form (s.247);
- disqualifying a person from managing a corporation (s.248);
- issuing an order to redress loss or damage suffered by non-party consumers (s.239);
- issuing an injunction against the infringing conduct (s.232);
- ordering compensation for damages (s.237); and
- where applicable, ordering the rescission of a contract (s.243).



IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

Yes, for ads aired on television. FreeTV Australia is the industry body that represents advertisements broadcast on television. All advertisements intended for commercial television stations throughout Australia must be classified before airing. Its 'ClearAds' service is the relevant clearance agency. ClearAds will review advertisements to ensure adherence under the Commercial Television Industry Code of Practice 2018 and other relevant legislation.¹

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes. In addition to the ACL, a number of voluntary, self-regulatory industry codes apply. These codes represent the industry's commitment to responsible advertising and marketing communications, but they are not legally binding.

The Australian Association of National Advertisers (AANA) is the predominant general advertising industry self-regulatory body that regulates advertisers. Complaints regarding advertising are managed by Ad Standards (formerly known as the Advertising Standards Bureau). Ad Standards is the secretariat for the Ad Standards Community Panel and Ad Standards Industry Jury which are two independent bodies responsible for hearing and resolving complaints made against advertising self-regulatory Codes in Australia.

There are also several more specific self-regulatory bodies in the advertising industry in Australia, some of which have implemented their own codes of ethics or guidelines.

These bodies and their codes include:²

- Commercial Radio Australia's Commercial Code of Radio Practice;
- The Interactive Advertising Bureau's online advertising policies and guidelines;
- The Association for Data-Driven Marketing and Advertising's (ADMA) Code of Practice;
- The Outdoor Media Association's Code of Ethics.

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

Together, the above regulators regulate commercial radio, television, online advertising, and outdoor advertising (such as billboards). There are no specific bodies that regulate print advertising nor cinema advertising. Despite this, organizations should be aware that Ad Standards may hear complaints about cinema or print advertisements.³ In addition, there are a number of industry-specific advertising codes for certain products that are discussed later in this chapter.

¹ Lexis Nexis Practical Guidance, 'Television' (November 2021).

² LexisNexis, 'Regulation for different forms of advertising media' (July 2018).

³ LexisNexs Practical Guidance, 'Self Regulation of the advertising industry' (November 2021).



HOW IS IT ENFORCED?

The AANA is a voluntary self-regulatory body which means that it does not have the ability to impose fines or sanctions. But the relevant Ad Standards Industry Jury or Community Panel may require the advertiser in breach to withdraw or modify an advertisement so that it is not broadcasted in the same form. Additionally, Ad Standards decisions are published online which may inflict a reputational penalty.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The relevant regulators are:

- Commercial Radio Australia's Commercial Code of Radio Practice;
- The Interactive Advertising Bureau's online advertising policies and guidelines;
- The Association for Data-Driven Marketing and Advertising's (ADMA) Code of Practice;
- The Outdoor Media Association's Code of Ethics.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

The Ad Standards Community Standards Panel accepts complaints about advertising from consumers. Complaints must be submitted in writing either via post or through the AANA's online [complaints form](#) along with details of the advertisement which is the subject of complaint.

Competitor advertising complaints are also accepted; however, they must be directed to the [AANA Industry Jury](#).

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The main sanction in practice are the costs of withdrawing or modifying an advertisement, and the adverse publicity that results from publication of an adverse ruling by the AANA. The AANA is a voluntary self-regulatory body, which means that it does not have the ability to impose fines or sanctions.

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

The ACL contains two key sections regarding conduct that must not be engaged in and representations that must not be made in the course of advertising and selling goods or services.

Specifically, individuals and businesses must not, in trade or commerce:

engage in conduct that is misleading or deceptive, or is likely to mislead or deceive consumers (s.18); and

make false or misleading representations, 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, that (s.29):

- goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
- services are of a particular standard, quality, value or grade;
- goods are new;
- a particular person has agreed to acquire goods or services;
- purports to be a testimonial by any person relating to goods or services;



- concerns a testimonial by any person, or representation that purports to be such a testimonial; relating to goods or services;
- goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits;
- the person making the representation has a sponsorship, approval or affiliation;
- is with respect to the price of goods or services;
- concerns the availability of facilities for the repair of goods or of spare parts for goods;
- concerns the place of origin of goods;
- concerns the need for any goods or service;
- concerns the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2 of the ACL); or
- concerns a requirement to pay for a contractual right that i) wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2), or ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

In practice, there is overlap between the two rules – e.g. a particular statement could breach both sections 18 and 29 of the ACL. When deciding if conduct is misleading or deceptive, or likely to mislead or deceive, the most important question is whether the overall impression created by the conduct is false or inaccurate.

Similarly, whether conduct or a claim or statement is false or misleading will depend on the factors surrounding the conduct. As such, all relevant circumstances will be taken into consideration, such as the entire advertisement as well as fine print and any qualifying statements.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

The ACL does not specifically require substantiation documentation prior to publication; however, as a matter of practice before making marketing claims, particularly comparative claims (those in which a product is compared to another trader's product), it's prudent to have complete substantiating information to hand in the event the claim is challenged.

We also note that the ACCC may issue substantiation notices requiring a person to give information or produce documents to substantiate an advertising claim. It is an offence to fail to comply with a substantiation notice.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

The AANA's code of ethics contains several prohibitions with respect to advertising. Generally, the AANA prohibits advertising which:

- vilifies or discriminates against a person on the account of their characteristics such as their race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness or political belief;
- employs sexual appeal using images of minors or in a manner which is exploitative or degrading;
- contains overtly sexual depictions where the depiction is irrelevant to the product;
- uses unjustified portrayals of violence;
- uses strong or obscene language; or
- depicts material contrary to prevailing community standards on health and safety.



WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

The AANA's Guidelines for Advertising to Children stipulate that advertising addressed to or targeted at children should not, in particular:

- be placed in media close to content not suitable for children according to prevailing community standards;
- employ sexual appeal or include sexual imagery or state that children are sexual beings, and that ownership or enjoyment of a product will enhance their sexuality;
- portray images or events that depict unsafe uses of a product or unsafe situations which may encourage children to engage in dangerous activities or create an unrealistic impression in the mind of children or their parents or carers about safety; or
- portray images or events in a way that is unduly frightening or distressing to children.

Comparative advertising

IS IT GENERALLY ALLOWED?

Yes.

WHAT ARE THE KEY RESTRICTIONS?

Comparative advertising must not mislead or deceive or be likely to mislead or deceive consumers under sections 18 and 29 of the ACL. To avoid engaging in misleading and deceptive conduct, brand owners should (at a minimum):

- identify the products being compared;
- only compare products that are reasonably similar;⁴
- compare “inferior” products to superior products with complete accuracy. (ie comparisons must identify the specific differences between the products);⁵ and
- ensure accuracy on price differences claimed.⁶

⁴ *Energizer Australia Pty Ltd v Remington Products Australia Pty Ltd* (2008) FCA 58 established that a comparison of two products should only be made if the products being compared are reasonably similar. In this case the Federal Court found that an advertisement claiming that Varta High Energy batteries lasted as long as Energizer batteries was “plainly misleading” as it failed to make an obvious distinction between grades of Energizer batteries.

⁵ *Gillette Australia Pty Ltd v Energizer Australia Pty Ltd* (2002) 56 IPR held that where businesses chose to compare a “superior” product to a competitor’s “inferior” product, they must do so with complete accuracy. In this case the Court found that Duracell did not engage in misleading or deceptive conduct when favourably comparing their product to an inferior product of Energizer as they clearly identified the differences between the products and that although the Energizer product did not last as long, it was cheaper.

⁶ In *Luxottica Retail Australia Pty Ltd v Specsavers Pty Ltd* 86 IPR 247 Specsavers were found to have engaged in misleading and deceptive conduct as they did not accurately disclose the extent of savings a customer would make when purchasing their product over an OPSM product.



What are the key requirements for sustainability/ESG claims?

The ACCC has provided guidance based on previous court decisions and accepted enforceable undertakings that, environmental claims must be honest, accurate and able to be substantiated. Where such a claim is made, it must clearly explain in simple language, the significant of benefit to the environment. The AANA's ['Environmental claims in Advertising and Marketing'](#) code also sets out further requirements.

Is there sector-specific regulation in each of the following areas?

ALCOHOL

Complaints about alcohol advertisements are independently assessed by the ABAC Adjudication Panel and Ad Standards.

The [key standards](#) in the ABAC:

- prohibit promotion of irresponsible or excessive consumption of alcohol beverages;
- prohibit marketing communications targeted to minors;
- require marketing communications to responsibly depict the effects of alcohol; and
- prohibit showing the consumption of an alcohol beverage before or during any activity that requires a high degree of alertness or physical coordination such as driving a car, boat, or operating machinery

Where the ABAC is breached, the ABAC Adjudication Panel and/or Ad Standards may:

- order the removal of the marketing campaign within five business days of a decision;

- order the advertiser to cease further orders to produce product names, packaging, or marketing collateral; and/or
- publish the breach on its website thereby imposing a reputational penalty.

Due to these penalties, companies generally comply with the ABAC Adjudication Panel's and/or Ad Standards' decisions.

FINANCIAL SERVICES

The [National Consumer Credit Protection Act 2009 \(Cth\)](#), the [Corporations 2001 \(Cth\) Act](#) and the [Australian Securities and Investment Commission Act 2001 \(Cth\)](#) established a number of obligations for the advertising of credit or financial products.

The Australian Securities and Investments Commission ASIC also sets out practical guidelines under its regulatory guidelines (specifically [RG-234](#)) for advertisements of financial products.

Key guidance includes that:

- financial and credit product advertisements should give a balanced message about the returns features, benefits and risks associated with the products;
- if an advertisement refers to a fee or cost, it should give a realistic impression of the overall level of fees and costs a consumer is likely to pay including any indirect fees, or costs;
- advertisements should be able to be clearly understood by the audience that might be reasonably expected to see the advertisements;



- advertisements should not state or imply that a product is suitable for a particular type of consumer unless the promoter has assessed that the product is suitable for that class of consumer;
- warnings, disclaimers and qualifications should be consistent with other content in an advertisement, including any headline claims. They should also be prominent enough to effectively convey key information to a reasonable member of the audience on first viewing the advertisement.

FOOD AND BEVERAGE

Food advertisement in Australia is regulated by Food Standards Australia New Zealand FSANZ. FSANZ is an independent statutory agency established by the [Food Standards Australia New Zealand Act 1991](#). FSANZ governs food and beverage advertising through the FSANZ code. Compliance with the [FSANZ Code](#) is mandatory.

The FSANZ code set out [requirements](#) for health and nutrition claims. Nutrition content claims must meet certain criteria. For example, food with a 'good source of calcium claim' is required to contain a minimum amount of calcium as specified in the standard. Health claims are also required to be supported by scientific evidence.

The [AANA Code of Ethics](#) also sets out certain requirements for food advertising such as that food advertising must not undermine the importance of health lifestyles, nor encourage excessive consumption.

GAMBLING

Advertising of gambling is regulated at both a federal and state level by a number of industry codes of conduct such as the Commercial Radio Australia Code of Practice.

Additionally, the [Interactive Gambling Act 2001 \(Cth\)](#) also sets out statutory restrictions on advertising particular interactive gambling services, and unlicensed regulated interactive gambling services.

The AANA has also released the [AANA Wagering Advertising and Marketing Communication Code](#). The code requires that gambling advertising must not:

- target minors;
- depict minors or people aged 18-24 engaged in wagering activities;
- encourage wagering while consuming alcohol;
- state or imply a promise of winning;
- portray, condone, or encourage participation in wagering as a means of relieving a person's financial or personal difficulties;
- imply a link between wagering and sexual success or enhanced attractiveness;
- portray, condone, or encourage excessive participation in wagering activities; or
- encourage or depict peer pressure to wager.

Gambling is also regulated at both the state and territory level with each state/territory regulator being responsible for compliance and enforcement.

PHARMACEUTICAL/MEDICAL DEVICES

The advertisement of therapeutic goods such as medicines and medical devices directly to consumers is highly regulated in Australia, and prohibited for certain therapeutic goods such as medical devices. Where, however, advertisements for therapeutic goods are allowed, they must comply with the [Therapeutic Goods Advertising Code](#) under the *Therapeutic Goods Act 1989* (Cth), as well as applicable industry codes of conduct.



Key requirements under the Therapeutic Goods Advertising Code include that advertising for therapeutic goods must:

- ensure any claims made in the advertising are valid and accurate;
- not encourage inappropriate or excessive use of the therapeutic goods; and
- be truthful, balanced and not misleading or likely to mislead.

In addition, there are industry codes of conduct that apply to the promotion of certain therapeutic goods, such as prescription medicines and medical devices. For example, the Medicines Australia Code of Conduct sets the standards for the ethical marketing of prescription pharmaceuticals in Australia. Similarly, the Medical Technology Association of Australia Code of Practice sets out the ethical standards for the marketing of medical technology (including medical devices). These codes complement the legislation, regulations and Therapeutic Goods Advertising Code.

The Health Practitioner Regulation National Law is the key legislation that regulates the promotion and advertising of health services. Key restrictions under the National Law under section 133 of the law include that advertisements for services must not:

- be misleading or deceptive;
- use testimonials about the service;
- encourage indiscriminate or unnecessary use of the advertised health services.

⁷ TGA, *Advertising Nicotine Vaping Products to the Australian Public* (1 October 2021).

TOBACCO AND E-CIGARETTES

The Tobacco Advertising Prohibition Act 1992 (Cth) contains wide bans on advertising tobacco products to the public through broadcast or publication. States and territories additionally have enacted further legislation which regulate advertisement at the point of sale. For example, in New South Wales, point of sale advertising is regulated by the Public Health (Tobacco) Act 2008 (NSW) and the associated Public Health (Tobacco) Regulations 2016.

In Australia, nicotine vaping products such as nicotine e-cigarettes, nicotine pods and liquid nicotine are regulated as prescription medicines under the *Therapeutic Goods Act 1989 (Cth)*. The advertising of prescription medicines to consumers is prohibited in Australia.⁷ Therefore, the advertising of nicotine vaping products is also prohibited.

OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

Other sectors with specific advertising regulation includes:

- Election marketing
- Lotteries
- Sweepstakes and promotional contests
- Motor vehicles
- Telecommunications



Influencer marketing

We have published a dedicated guide that examines the legal frameworks governing influencer marketing in 28 key global jurisdictions. It addresses the following questions from each jurisdictions' perspective:

- What qualifies as advertising under local law?
- What are the typical influencer practices and in which cases are they considered advertising?
- What legal obligations apply?
- What are the applicable laws, regulations or guidance?
- What are the consequences for influencers if advertising content is not clearly labelled?
- What legal risks apply when cooperating with influencers?

Download that guide [here](#).

Prize promotions

Similarly, we have published a dedicated Prize Promotions guide designed to introduce you to some of the key requirements surrounding prize promotions, from the management of the early development stages of a promotion, to the outline of potentially problematic issues.

Download our Prize Promotions guide [here](#).

Key contacts



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Brazil

Brazil

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

- Consumer Defense Code (Federal Law No. 8.078/1990) (CDC)
- Code of Criminal Proceedings (Decree No 3.689/1941), which is applied to crimes related to advertising
- Advertising Law (Federal Law 4.680/1965) regulated by Decree No. 57.690/1966
- Federal Law No. 5.768/1971 that regulates promotions and sweepstakes
- Brazilian Antitrust Law (Federal Law No. 12,529/2011) which determines that any practice aiming and/or with potential effect of jeopardizing competition (article 36) constitutes an antitrust infringement subject to penalties

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

According to the Brazilian Federal Constitution, only the federal government is allowed to enact laws regarding advertising. Regarding criminal matters, the same principle applies.

The Brazilian Antitrust Law (No. 12,529/2011) determines that any practice aiming and/or with potential effect of jeopardizing competition (article 36) constitutes an antitrust infringement subject to penalties.

HOW ARE ADVERTISING LAWS ENFORCED?

For consumers, the applicable laws can be enforced by the State Departments for Consumer Protection and Defense (PROCON), by means of administrative procedures, or by private parties filing lawsuits before state courts.

Regarding criminal claims, the applicable laws can be enforced by the Judiciary Police (federal and state) and the Public Prosecutor's Service which are the law enforcement agencies responsible for conducting investigations in the country. The Police have the power to conduct criminal investigations, while the Public Prosecutor's Service has the power to: (i) request the start of an investigation by the Police; (ii) conduct criminal investigations on their own; and (iii) press criminal charges.

There are several state police units in Brazil specialized in the repression of crimes against the economic order and consumer relations. The standard path of criminal law enforcement in such cases is: (i) the Police becomes aware of a criminal activity and starts a criminal investigation; (ii) the Public Prosecution Service presses charges based on the investigation; (iii) a criminal judge rules on the case; and (iv) the defendant is entitled to specific appeals and judicial remedies.

Regarding antitrust claims, the Administrative Council for Economic Defense (CADE) is the agency responsible for handling and enforcing the Brazilian Antitrust Law (No. 12,529/2011). Dominant position abuse cases are reviewed by CADE under an administrative procedure.





WHO ARE THE RELEVANT REGULATORS?

Regarding costumer defense, the relevant regulator is PROCON, whose offices can be found throughout the Brazilian states.

Regarding criminal conduct, the regulators are the Judiciary Police, the Public Prosecutor's Service and State Criminal Courts.

Regarding antitrust matters, CADE is the ruling regulator, which is divided into three departments: the General Superintendence (investigative body); the Department of Economic Studies (DEE) (technical body); and the Tribunal (the ruling body). CADE's powers to conduct investigations on antitrust infringements are extensive.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes.

Regarding civil and consumer complaints, anyone can file before PROCON with an online form or by phone. PROCON will analyze the complaint and, if it deems appropriate, begin an administrative procedure to decide whether a penalty should be applied.

In relation to criminal complaints, private companies are considered consumers and, therefore, can be victims of crimes and can report the criminal activity to the Police. The report can be filed by means of: (i) an in person police report; (ii) a virtual police report, in police stations which accept such reports; or (iii) a formal request for the launching of a police investigation filed by a lawyer representing the interests of the victim.

Before CADE, an investigation can be opened by CADE's own initiative (ex officio) or through a third-party claimant. A claimant can be presented by individuals and/or companies by filing a hard copy before CADE's Office located in Brasilia-DF, Brazil or through CADE's [*electronic filing system*](#).

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

CDC Article 56 provides a list of possible sanctions to be applied by the regulator, including, but not limited to, fines, product seizure, temporary suspension of company activity, cancellation of business license, and interdiction of doing business.

The criminal sanctions are set forth in Sections 63 to 74 of the CDC. The sanctions are detention of up to two years and a fine. There's no corporate criminal liability in Brazil except for environmental crimes, but shareholders, managers and employees can face criminal liability due to illicit corporate activities.

Fines are the most common penalty imposed by CADE and their amount varies in accordance with the infringer and infringement. The Brazilian Antitrust Law (No. 12,529/2011) permits CADE to impose on (i) companies a fine from 0.1% to 20% of the gross sales of the company in the last fiscal year before the establishment of the administrative proceeding; and (ii) to Individuals, public or private legal entities, association of persons or de facto or *de jure* entities, trade unions and other legal entities, a fine from BRL50,000 to BRL2 billion. Administrators, managers, and employees in managerial positions: a fine of 1% to 20% of that applied to companies.

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

PROCON is currently focusing on protecting consumers from abusive practices, including fraudulent offers to the consumers.

CONAR aims to promote the freedom of expression of advertising and defend the constitutional prerogatives of commercial advertising, created and maintained under its CONAR Code industry self-regulatory standards of best practices for advertising and marketing displayed on all communication platforms, for the different economic sectors.





CADE is currently focusing mainly on issues arising from the COVID-19 global crisis (sudden price increases and refusal to deal), as well as issues connected to new technologies, such as digital platforms' and fintech's attempts to abuse their dominant positions.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Yes, the interested party may bring civil or criminal claims before the competent State Court against violations of the CDC.

This is not applicable to antitrust claims, as all antitrust claims presented to CADE will follow an administrative rather than a judicial procedure. As mentioned above, any company and/or individual – including consumers and the Federal and/or State Public Prosecutors can bring claims for breach of advertising legislation before CADE, if such conduct is capable of jeopardizing competition.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

Usual civil remedies include orders to cease the wrongful conduct and compensation for damages.

The most common criminal remedies are the Habeas Corpus, which has a broad application in Brazil and can be used to remedy procedural nullities and terminate illicit proceedings, as well as the general appeals set forth in the criminal proceeding laws.

In addition to fines, CADE is also permitted to impose other remedies, such as prohibiting companies from publicizing certain types of advertising that might be capable of harming competition.

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

No.

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, the Brazilian advertising self-regulation system is governed by the Brazilian Advertising Self-Regulation Code. The National Council for Advertisement Self-Regulation (CONAR), an association founded in the 1980s, provides for regulation and inspection of advertising in Brazil. The CONAR Code comprises self-regulatory standards of best practices for advertising and marketing, for different economic sectors. Although not legally binding, it is commonly observed and respected.

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

It encompasses all sort of public advertisement.

HOW IS IT ENFORCED?

CONAR receives complaints from consumers, public authorities and/or its associates. The Ethics Board of CONAR is responsible for investigating and ruling on possible violations of the Brazilian Advertising Self-Regulation Code and CONAR's regulations.

Although its rulings are not legally binding, they are generally promptly complied with by the parties involved, since CONAR enjoys prestige and respectability among professionals in the field. CONAR's rulings also serve as an indicator to the courts of what advertising practices might merit regulatory scrutiny. Note that CONAR, after suggesting, notifying and ruling on an advertisement matter, will not directly forward the claim as a lawsuit or impose fines.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

CONAR.





CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes, anyone can bring complaints to CONAR, if not anonymous. Complaints can be filed via CONAR's website, mail, or email.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

According to CONAR regulations, the possible sanctions are: (i) warning; (ii) recommendation to amend or correct the advertisement; (iii) recommendation to the media platforms to refrain from displaying the advertisement; and (iv) publication of CONAR's position regarding the advertiser, the agency, and/or the platform, on media platforms, due to non-compliance with CONAR's recommendations. Historically, the media platforms tend to abide by CONAR's recommendations. However, CONAR does not impose fines.

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

The advertisement must contain an accurate and truthful presentation of the offered product or service and abide by the principles of respectfulness, decency, honesty and truthfulness.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

CONAR's regulation provides for specific provisions and rules for the description of the products, claims, price, and conditions, use of the expression "for free," language, research and statistics, scientific data, and testimonials.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

All ads must respect human dignity, social interest, national symbols and institutions, authorities and the family unit. No ad may promote any sort of offence based on race, social condition, political affiliation, religion, or nationality, and ads also must not promote unlawful nor criminal activities.

Moreover, certain conducts related to abusive advertising are considered crimes in accordance with Section 37, paragraph 2, of the CDC:

- discriminatory conduct;
- conduct that incites violence;
- conduct that exploits fear or superstition;
- conduct that takes advantage of the deficiency of judgment and experience of a child;
- conduct that disrespects environmental values; or
- conduct capable of inducing the consumer to behave in a manner that is harmful or dangerous to their health or safety.





WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

They are as follows:

- the psychological characteristics of the targeted audience must receive special attention;
- the ingenuity, gullibility, inexperience and sense of loyalty of minors must be respected;
- the minor should not be morally offended;
- the ad must not imply the minor to be inferior in the event they do not buy the offered product; and
- the ad should not stimulate the minor to embarrass its guardians or harass third parties or behave in a sociably shameful way.

Moreover, the practice of directing advertising and marketing communication to children, with the intention of persuading them to consume any product or service and use, among others, the following aspects (in accordance with Resolution No. 163 of CONANDA, Brazilian National Council for the Rights of Children and Adolescents), amounts to the crime of abusive advertising:

- childish language, special effects and excess of colors;
- soundtracks of children's music or sung by children's voices;
- representation of children;
- people or celebrities that appeal to a child audience;

- child characters or presenters;
- cartoons or animation;
- dolls or similar;
- promotion with the distribution of prizes or collectible gifts or that appeal to children; and
- promotion with competitions or games appealing to children.

Comparative advertising

IS IT GENERALLY ALLOWED?

Yes, as long as the comparative advertising is concerned with truthful information, and objective criteria.

The use of false, misleading and inappropriate language in any type of advertising (including comparative advertising) might be contested before CONAR or the antitrust authorities in Brazil.

Moreover, CADE is used to start chasing companies when they repeatedly resort to anticompetitive announcements in their advertising, such as: "we take away competitors' oxygen supply" or "our products/services can crush, kill, hurt, block etc. the competition." At the same time, making excessive use of false superlatives might be considered an attempt to mislead consumers (and jeopardize competition), mainly when the advertiser holds a dominant position in the Brazilian market (this will be legally deemed to be the case when the advertiser holds 20% or more of the market share).





WHAT ARE THE KEY RESTRICTIONS?

The key restrictions on comparative advertising in the CONAR Code are as follows:

- The main goal must be to inform and, to the fullest extent, to protect the consumer
- The main principle must be the objectivity of the comparison, not being allowed subjective, psychological or emotional information.
- The comparison must be verifiable.
- When it regards goods, the comparison must be made between models manufactured in the same year, except if the goal is to show evolution, in which case this must be duly stated.
- It must not cause confusion between concurrent products or brands.
- It must not constitute unfair competition nor cause harm to the reputation of another product or brand.
- It must not use the corporate reputation or prestige of third parties, except if duly justified.
- When comparing products of different price ranges, information must be clear.

Although there are no legal restrictions, we recommend for companies avoid making use of misleading and aggressive comparative advertising, as informed in the item above.

What are the key requirements for sustainability/ ESG claims?

There are no specific rules and regulations for advertising claims regarding sustainability/ESG in Brazil. However, the CONAR Code establishes an adverse position towards any advertising that directly or indirectly stimulates:

- the pollution of the air, water, forests and other natural resources;
- pollution of the urban environment; degrading of fauna, flora and other natural resources;
- visual pollution of the countryside and cities;
- noise pollution; and/or
- waste of natural resources.

Moreover, it provides that all use of environmental information and indications in institutional advertising and advertising of products and services must comply with the following principles:

- Veracity – environmental information must be true and verifiable.
- Accuracy – environmental information must be exact and precise: vague and generic information is not be allowed.
- Pertinence – the environmental information must be related to the production and commercialization processes of the products and services advertised.
- Relevance – the environmental benefit highlighted must be significant in terms of the total impact of the product and service on the environment, throughout its lifecycle, ie production, use and disposal.



Is there sector-specific regulation in each of the following areas?

ALCOHOL

Brazilian legislation (primarily the Federal Law No. 9,294/96) generally allows for advertisements and promotion of alcohol, subject to conditions. For example, ad content should not appeal to people under 18. Also, advertisements must not encourage irresponsible drinking. Warnings such as *“Beba com moderação”* and *“Se beber, não dirija”* must be included in ads for alcohol. The key concern of Brazilian legislation and self-regulatory bodies in this arena relates to underage drinking, and ads that would encourage irresponsible drinking.

Failure to follow applicable requirements can lead not only to adverse regulatory action, but also prosecutions, competitor challenges, causing reputational damage in addition to financial sanctions.

FINANCIAL SERVICES

In 1990, the Brazilian Consumer Defense Code was enacted to govern the relationships between products, service providers and consumers and to protect consumers. In September 2004, the Brazilian Supreme Court of Justice ruled that the Consumer Defense Code also applies to transactions between financial institutions and their clients. Financial institutions are also subject to specific regulations of the CMN that regulate relationships between financial institutions and their clients. CMN Resolution No. 3.694, dated March 26, 2009, as amended, CMN Resolution No. 3.919, dated November 25, 2010, as amended, CMN Resolution No. 4.283, dated November 4, 2013, CMN Resolution No. 4.479, dated April 25, 2016, CMN Resolution No. 4.746, dated August 29, 2019, and Joint Resolution No. 1, dated May 4, 2020 establish procedures with respect to the settlement of financial transactions and to services provided by

financial institutions to clients and the public in general, aiming to improve the relationship between market participants by fostering additional transparency, discipline, competition and reliability on the part of the financial institutions. The regulation consolidates all previously enacted related rules. Specifically, in relation to advertising, financial institutions are prohibited from releasing misleading or abusive publicity or information about contracts or services and are liable for any damages caused to their clients by their misrepresentations. Also, financial institutions must ensure clients are fully aware of all contractual clauses, including responsibilities and penalties applicable to both parties, to protect the counterparties against abusive practices.

FOOD AND BEVERAGE

Taken together, advertising of foods must primarily ensure food safety (product's name, ingredients, allergenics, nutritional facts, sugar added, true statements, substantiation for claims, adequate directions for consumption, consistency with the listing before regulators, if any, among others). For example, foods containing milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans, must include a warning such as *“ALÉRGICOS: CONTÉM [--]”* in the labelling. If a product is claimed to be lactose-free, this also must be included in the label clearly.

When a food product is for infant or child consumption, stricter requirements may apply.

The broad and somewhat vague statutory provisions on how best to enforce restrictions on the advertising of foods give the regulators, the self-regulatory bodies, and the law enforcement actors, significant and discretionary regulatory authority to impose to the extent applicable their requirements against each and every company in violation of the law.





GAMBLING

Engaging in gambling and betting activities without a formal license or authorization may be understood as an illegal activity in Brazil. In such cases, shareholders, managers and employees of the involved companies can be subject to the provisions of the applicable regulation (ie Criminal Misdemeanors Act, Law No. 3.688/1941).

The Criminal Misdemeanors Act expressly forbids the practice of “games of chance,” which are defined therein as: (i) a game in which losing or winning depends exclusively or mainly on the element of luck, (ii) bets on horses outside the racetrack or other places where such races are authorized, and (iii) bets over any other sports competition.

If the company’s servers are not located in Brazil, in theory, the activity would not be subject to the provisions of the Criminal Misdemeanors Act, ie some companies take advantage of the unregulated market to operate sports gambling by placing their servers outside the Brazilian territory, in countries where betting activity is legal. These companies rely on the interpretation that the betting activity is effected in the location where the bet is processed, rather than in the location where the gambler is.

Several betting companies have been expanding their customer base in Brazil over the last year, relying on the interpretation that the betting activity is effected in the location where the bet is processed. Such companies have been promoting their services on TV and sponsoring well-known soccer clubs.

The Brazilian Federal Supreme Court has already declared the general repercussion⁸ of an appeal that discusses the unconstitutionality of the treatment of bets as a misdemeanor in Brazil. The consequence of such

declaration is the suspension of all cases with the same discussion up to the final ruling on the matter. The ruling was expected to be issued by the Supreme Court in April 2021, but it was postponed without a deadline set.

Given that most gambling activities are not permitted, its advertising is not acceptable according to CONAR Code, of which the first article provides that all advertisements must be respectful, comply with the laws of the country, and also be honest and truthful.

The exception would be for sports bets and poker. Sports bets have been legalized in Brazil since the enactment of Law No. 13,756/2018. In respect of poker, Brazilian case law has been demonstrating a more flexible approach towards poker games, mainly because of claims that poker is not simply a game of chance, which is prohibited under Brazilian law, but rather a game of skill. A strong argument in favor of this interpretation is that the Ministry of Sports officially considered poker to be a “mind sport” in 2010. In these two cases, advertising would be permitted.

PHARMACEUTICAL/MEDICAL DEVICES

A comprehensive regulatory scheme regulates the advertising and promotion of drugs in Brazil. Brazil’s Health Surveillance Agency (ANVISA) is the crucial regulator, but many other government self-regulatory authorities (for example, the local health surveillance agencies and the self-regulatory body CONAR) and law enforcement actors (for example, the Public Prosecutor’s Office) also play key roles.

ANVISA’s regulatory oversight of drugs advertisement is fundamentally based on the ANVISA’s Resolution No. 96/2008, which in turn is complementary to Federal Law No. 6.360/76 and Federal Law 9.294/96.



⁸ A formal requirement for the trial of extraordinary appeals by the Federal Supreme Court in cases with constitutional discussion that have the potential to address a large number of interested parties.



Most of ANVISA'S regulatory requirements set forth in ANVISA's Resolution No. 96/2008 align with the principles established in the Brazilian body of law.

Self-regulatory bodies (for example, the Professional Boards for the pharmacy/medical professions) and law enforcement actors (for example, Public Prosecutors' Office) would focus the most on oversight on the myriad of the laws and regulations of the healthcare professions per se and companies' responsibility for the advertising to the public at large (for example, the Pharmacy's Professional Board ethical rules, the CONAR's rules on how to display and what to display, and the enforcement actions taken by the Public Prosecutor's Office from the consumer law standpoint).

The precise boundary between the regulatory actors on advertising of medicines can blur, as the distinction is not specifically codified in statute or regulation, but the distinction tends to be determined by the key concerns for each regulator. For ANVISA, the key is the presence of "true statements" related to safety and efficacy when advertising medicines, while for the self-regulatory body and law enforcement actors their focus would be narrowed to the ways in which an advertisement is delivered to consumers, and whether it could somehow be considered per se false, lacking in fair balance, or otherwise misleading, or violating the law.

Certain industry codes of conduct (eg INTERFARMA, SINDUSFARMA, ABIMIP, Professional Boards) also bring best recommended practices on advertising of medicines.

Note that self-regulatory codes cannot differ from the applicable law. For example, self-regulatory codes cannot prohibit a conduct permitted by the law or regulation, and vice-versa. The key for self-regulatory codes, in practice, is to put best recommended practices together. Exceptions always may apply.

Therefore, special care should be taken when evaluating the Brazilian body of law, the regulatory framework, the nature of rules, and the division of responsibility between the different regulators overseeing the advertising of health-regulated products.

Advertisements and promotion of medical devices do not have a very specific legal framework. Specifics may apply but the regulatory exposure must be assessed on a case-by-case basis. Note, however, that the mere absence here of specific references to pieces of law or regulations should not be taken as an indication that there is no regulation of the advertising and promotion of medical devices in Brazil.

TOBACCO AND E-CIGARETTES

Brazilian legislation (primarily the Federal Law No. 9.294/96) prohibits the advertisement of tobacco products in Brazil either through direct advertising or indirect advertising. Brazil's comprehensive advertising ban is meant to reduce smokers' exposure to pro-tobacco marketing and messages. The same applies for e-cigarettes, which are not even allowed in Brazil.

Since 2005, Brazil is also a signatory to the International Tobacco Control Policy Evaluation Project (ITC).

One important comment on that is that we have been now experiencing an unprecedented enforcement environment in the area of health-related regulation, in which the failure to follow applicable requirements can lead not only to adverse regulatory action, but also prosecutions, competitor challenges, triggering both reputational and financial harm.





OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

CONAR provides specific regulation regarding the following sectors:

- Education
- Employment
- Real Estate (Sale and Rental)
- Stores and Retail
- Pharmaceuticals
- Tourism and Hotels
- Motor vehicles
- Agricultural Pesticides
- Firearms

Influencer marketing

CONAR published on December 8, 2020, guidelines for the application of the rules of the CONAR Code to commercial content on social networks, especially content generated by influencers (the Advertising Guide for Digital Influencers or “Guide”), ie self-regulation by the advertising sector.

This Guide defines “advertising” by an influencer as the third-party message aimed at stimulating the consumption of goods and/or services, carried out by so-called “digital influencers,” based on the hiring by an advertiser and/or agency.

We have published a dedicated guide that examines the legal frameworks governing influencer marketing in 28 key global jurisdictions. It addresses the following questions from each jurisdictions’ perspective:

- What qualifies as advertising under local law?
- What are the typical influencer practices and in which cases are they considered advertising?
- What legal obligations apply?
- What are the applicable laws, regulations or guidance?
- What are the consequences for influencers if advertising content is not clearly labelled?
- What legal risks apply when cooperating with influencers?

Download that guide [here](#).

Prize promotions

Similarly, we have published a dedicated Prize Promotions guide designed to introduce you to some of the key requirements surrounding prize promotions, from the management of the early development stages of a promotion, to the outline of potentially problematic issues.

Download our Prize Promotions guide [here](#).





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Canada



Canada

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

- federal *Competition Act*
- federal *Criminal Code*
- federal legislation regarding advertising of specific products (eg alcohol, cannabis, cigarettes, health products)
- federal Consumer Packaging and Labelling Act, in relation to representations made on pre-packaged non-food consumer products
- federal Textile Labelling Act regarding representations made on consumer textile articles
- federal legislation regarding specific advertising media (eg broadcasting, telemarketing)
- provincial consumer protection laws
- Quebec lotteries legislation
- Quebec language legislation
- the Canadian Code of Advertising Standards
- federal *Personal Information Protection and Electronic Documents Act* and equivalent provincial legislation
- Canada's Anti-Spam Legislation

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

Yes. The Competition Act is the principal federal statute regulating advertising and marketing in Canada. It is a law of general application and applies to both business and consumer advertising and marketing in Canada. In addition, Canadian provinces have jurisdiction over consumer protection, and most provinces have legislation prohibiting false or misleading advertising to consumers. Quebec has laws regulating contests and requiring the use of the French language. Quebec also prohibits commercial advertising directed at children under 13 years of age.

HOW ARE ADVERTISING LAWS ENFORCED?

The Competition Tribunal (the Tribunal) and Federal Court or superior provincial courts (the Courts) have concurrent jurisdiction in respect of “deceptive marketing practices.” Criminal matters under the Competition Act and Criminal Code are prosecuted in the courts of criminal jurisdiction by the Director of Public Prosecutions. Anti-spam and privacy legislation are enforced by regulators, and in some cases by the courts.

WHO ARE THE RELEVANT REGULATORS?

The Competition Bureau is the federal body that, among other things, oversees the Competition Act. The Bureau is the primary regulator with respect to preventing fraud and deceptive marketing practices. The Commissioner of Competition (the Commissioner) leads the Competition Bureau.

Provincial and territorial consumer protection laws are enforced by the applicable ministry.



Privacy and data protection laws are administered by federal and provincial privacy commissioners. Canada's anti-spam law is primarily administered by the Canadian Radio-television and Telecommunications Commission.

There are also self-regulatory bodies, namely:

- Advertising Standard Canada (ASC) is the advertising industry's self-regulatory body. ASC maintains and enforces the Canadian Code of Advertising Standards.
- The Canadian Marketing Association (CMA) is a national industry association that maintains and enforces its Code of Ethics and Standards of Practice, with which its members must comply.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes, a private company may file complaints to the Commissioner, ASC, the Tribunal, or the Courts to challenge advertising and marketing practices.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The Courts or regulators may impose orders to do some or all of the following: stop engaging in the applicable conduct; publish a corrective notice; pay an administrative monetary penalty; compensate affected consumers. Penalties under some legislation (such as the Competition Act or Canada's anti-spam legislation) can be significant (eg up to CAD15 million for the former, and CAD10 million for the latter). The Criminal Code also provides for the possibility of imprisonment.

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

The Competition Bureau is currently focusing on the following:

- addressing deceptive conduct in a timely manner, particularly in key sectors of the economy, such as digital services, telecommunications, health, online marketing, and infrastructure;
- targeting deceptive claims related to the COVID-19 pandemic;
- advancing proactive enforcement by expanding intelligence-gathering efforts and examining trends in the marketplace; and
- leveraging technology, including AI, algorithms and cloud-based tools, to support the enforcement work.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Yes. The Competition Act grants a private right of action allowing private parties (business and consumers) to sue for damages for Competition Act breaches. Provincial consumer protection laws also include a private right of action. Parties may also have causes of action under other legal bases – for example, under trademark and copyright laws in relation to comparative advertising.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION

The primary remedies are injunctions and recovery of damages.



IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

The ASC provides a fee-based clearance service for advertisements of all media in the following sectors: prescription and non-prescription drugs; natural health products; medical devices; medical condition/disease state information; vaccines; cosmetics; food; alcoholic beverages; children's advertising. ASC provides a logo that can be included with ads that have been cleared. Practically speaking, many broadcasters require pre-clearance before accepting ads in these categories.

Broadcast ads aimed at children must be reviewed by the ASC's Children Clearance Committee for compliance with the ASC's Broadcast Code for Advertising to Children.

thinkTV, a television industry body, offers clearance services for broadcast advertising. Major broadcasters typically require thinkTV clearance for advertisements.

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, ASC is the Canadian advertising industry's self-regulatory body. It maintains and administers the Canadian Code of Advertising Standards (the Code), with which advertisers must comply. As the ASC describes it, the Code is structured to "set and maintain standards of honesty, truth, accuracy, fairness and propriety" in advertising. The Code covers topics such as accuracy and clarity, price claims, guarantees, comparative ads, testimonials, professional or scientific claims, superstitions and fears, advertising to children, and unacceptable depictions and portrayals.

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

Unless the advertiser is a Canadian person or entity, the Code does not apply to advertising on packaging, wrappers and labels, and foreign media that originate from outside Canada. The Code also does not apply to political or election advertising.

HOW IS IT ENFORCED?

The ASC may require advertisers that do not voluntarily comply to rectify breaches. It may also advise applicable exhibiting media of the advertiser's compliance failure and request that the media support the ASC by not exhibiting the applicable ads. The ASC may also make public announcements that the applicable ads and advertiser have violated the ASC Code.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The ASC, as described above, and the Canadian Marketing Association (CMA). The CMA is a national industry association that maintains and enforces its Code of Ethics and Standards of Practice, with which its members must comply.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. Disputes and complaints between advertisers are administered under ASC's Advertising Dispute Procedure.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The ASC may require advertisers that do not voluntarily comply to rectify breaches. It may also advise applicable exhibiting media of the advertiser's compliance failure and request that the media support the ASC by not exhibiting the applicable ads. The ASC may also make public announcements that the applicable ads and advertiser have violated the ASC Code. These enforcements are outside of, and in addition to, any regulatory enforcement by, for example, the Competition Bureau or provincial consumer protection authorities.



Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

An advertiser must not make a representation to the public that is deceptive in a material respect for the purpose of promoting a good or service or a business interest. For enforcement, it's not necessary to show that any person was actually deceived or misled, that any member of the public to whom the representation was made was within Canada, or that the representation was made in a place to which the public had access. When assessing whether a representation is materially false or misleading, regulators will take into account the representation's general impression as well as its literal meaning.

When offering a promotional contest, an advertiser must provide certain disclosures and must ensure that certain other requirements are met – for example, including a no-cost alternative method of entry, requiring contestants to correctly answer a time-limited skill-testing question, and (in Quebec) registering with the regulator, and translating the rules and advertisements into French.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

Under the Competition Act an advertiser must, before publishing advertising, have proof (in the form of “adequate and proper” testing) of any claims in the ad relating to the performance, efficacy or length of life of a good or service. The Competition Act does not specifically define the “adequate and proper test.” Regulatory guidance has indicated that test results must be significant and reproducible, and samples and comparisons must be representative.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

According to the ASC Code, ads should not:

- without justifiable educational or social grounds, encourage unsafe or dangerous behavior;
- exploit superstitions or play upon fears to mislead consumers;
- condone any personal discrimination (including based on race, religion, gender identity, sexual orientation, or disability);
- demean, denigrate or disparage, or attempt to bring into public contempt or ridicule, one or more identifiable persons, group of persons, organizations, professions, products or services;
- undermine human dignity;
- display obvious indifference to, or encourage (gratuitously and without merit) conduct or attitudes that offend, the prevailing standards of public decency.

There are also various legislative and regulatory restrictions on the extent to which, and how, certain products (such as drugs and alcohol) can be advertised, if at all.



WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

The rules for advertising to children are detailed and complex and vary by province, regulator and media. The general principle underlying the various rules is that minors require considerable protection from high-pressure marketing techniques.

For advertising purposes, generally “children” are considered to be under 12 (or 13 in Quebec) while “minors” are teenagers under the age of majority (typically 18 or 19, depending on the applicable province or territory).

The ASC Code states:

- Advertising directed at children must not exploit their credulity, lack of experience or their sense of loyalty, and must not present information that might result in their physical, emotional or moral harm.
- Products that cannot be sold to minors (eg alcohol, cannabis) must not be advertised in a way that appeals particularly to minors, and people featured in ads for those products must be clearly seen to be adults.

The ASC also maintains and administers:

- The Broadcast Code for Advertising to Children, which regulates ads directed to children in broadcast media. The ASC’s Children’s Clearance Committee must review and approve broadcast ads directed at children for compliance the Broadcast Code.
- The Canadian Children’s Food and Beverage Advertising Initiative, which was created in response to calls to promote healthy dietary choices and lifestyles to children and to combat childhood obesity.

The CMA Code recognizes that advertisers have a special responsibility to be sensitive to the different issues relating marketing to children and teenagers (especially those relating to protecting their privacy), and has many rules and guidelines around such activities.

With limited exceptions, Quebec’s Consumer Protection Act prohibits commercial advertising directed at children under the age of 13.

Comparative advertising

IS IT GENERALLY ALLOWED?

Comparative advertising is allowed, but the rules are complex and not entirely clear.

WHAT ARE THE KEY RESTRICTIONS?

Using or referencing a competitor’s name, product, slogan or other intellectual property in advertising raises legal risks relating to copyright law, trademark law (including under the Trademarks Act and at common law in relation to the tort of passing off). These risks apply even if the comparative ad is otherwise fair and accurate.

The Copyright Act prohibits advertisers from using a copyrighted work (eg a competitor’s logo, slogan, packaging) without permission.

Using or displaying a competitor’s name or brand brings risks of claims for trademark infringement, passing off, trade libel, and depreciation of goodwill. Part of the risk is that under Canadian trademark law, displaying a trademark in an advertisement counts as “use” of that trademark in association with services (though not with products). Therefore, if a competitor’s trademark relates to services, there is a clearer argument that using it in your own comparative advertising is trademark infringement.



The ASC Code requires that ads not unfairly discredit, disparage or attack other products, services, advertisements or companies, or exaggerate the nature and importance of competitive differences. Some form of comparison is acceptable, so long as it is not “unfair” (though the risks above still apply). The ASC Guidelines for the Use of Comparative Advertising provide further rules and guidance.

The Competition Act’s general rules regarding deceptive claims and substantiated claims apply to comparative ads. Comparison claims must be fair, accurate, and substantiated.

What are the key requirements for sustainability/ESG claims?

Environmental claims are subject to the Competition Act’s general deceptive advertising rules.

The Commissioner and the Canadian Standards Association have published “Environmental Claims: A Guide for Industry and Advertisers” to provide practical guidance and best practices, and there is also more recent federal guidance titled “Environmental Claims and Greenwashing.” Best practices include:

- avoiding vague claims such as “eco-friendly” that can lead to multiple interpretations, misunderstanding, and deception;
- ensuring that environmental claims are truthful and not misleading;
- ensuring that environmental claims are specific and precise about the applicable environmental benefits, and do not exaggerate those benefits;

- ensuring that environmental claims are substantiated and verifiable (as always, through adequate and proper tests); and
- ensuring that environmental claims do not imply an endorsement by a third-party organization (such as an environmental agency or organization) if there is no such endorsement.

Is there sector-specific regulation in each of the following areas?

ALCOHOL

Alcohol advertising is strictly and extensively regulated in Canada by various federal and provincial rules. For example, each province and territory has regulations and guidelines regarding alcohol advertising (and Quebec requires pre-clearance of such advertising), and the federal CRTC maintains and enforces the Code for Broadcast Advertising of Alcoholic Beverages. The ASC also maintains the ASC Alcoholic Beverage Advertising Clearance Guide.

Generally speaking, alcohol ads must not:

- encourage the general consumption of alcohol;
- promote the irresponsible or illegal use of alcohol;
- associate alcohol with social or personal achievement;
- be directed to individuals under the legal drinking age (which varies between 18 and 19); or
- associate alcohol with the use of motor vehicles or with activities that require a significant degree of skill or care.



FINANCIAL SERVICES

There are various rules depending on the nature of the ads and whether the advertiser is regulated federally or provincially.

Generally speaking:

- Federal laws and regulations (including the Bank Act and its Cost of Borrowing regulations and Credit Business Practices regulations) impose rules regarding cost of credit and other disclosures and advertising credit or financial products (credit cards, lines of credit, mortgages,) supplied by federally-regulated financial institutions.
- Provincial consumer protection laws have requirements around advertising credit or lease products.
- There are voluntary industry codes of conduct such as the Financial Consumer Agency of Canada's Canadian Code of Practice for Consumer Debit Card Services and Code of Conduct for the Credit and Debit Card Industry in Canada.

FOOD AND BEVERAGE

Canadian food advertising and labelling is generally governed by the federal Competition Act, the federal Food and Drugs Act, and the federal Safe Food for Canadians Act.

Generally, food ads must not advertise food in a way that is false, misleading or deceptive, or is likely to create a false impression about the food's character, value, quantity, composition, merit or safety. The Food and Drugs Act also permits only limited "disease reduction claims" (statements that link a food to a reduced of developing a diet-related disease or condition), and Health Canada mandates the precise wording of any such claims.

The Canadian Food Inspection Agency monitors and enforces detailed rules around food labelling and advertising and provides guidance in these areas, including "General principles for labelling and advertising." The rules cover topics such as nutrient claims (including those relating to vitamins, minerals, fat, carbohydrates) and "made in Canada" claims.

"Organic" claims are subject to the Safe Food for Canadians Regulations.

The ASC maintains and administers The Canadian Children's Food and Beverage Advertising Initiative, and the ASC provides pre-clearance services for food and non-alcoholic beverage broadcasting ads.

GAMBLING

The Criminal Code prohibits a broad range of gaming and betting schemes, including lotteries and certain promotional contests. It states that, subject to various exemptions, advertising schemes for disposing of property by "lots, cards, tickets or any mode of chance whatsoever" is an indictable offence punishable by up to two years in prison. The exemptions include:

- provincial lottery corporations, which may advertise their lottery schemes under specific "responsible gaming" rules; and
- provincially-licensed and regulated gaming by charitable organizations for fund-raising (there are also specific advertising rules around these activities).

The Criminal Code also has general "aiding and abetting" offences that may apply to activities, like advertising, that are adjacent or connected to illegal gambling activities.

Some provinces also have gambling-related advertising rules. For example, Ontario's Consumer Protection Act prohibits advertising an internet gaming site that is operated contrary to the Criminal Code.



With respect to promotional contests, the Competition Act requires that there be full and adequate disclosure of the contest elements, in a reasonably conspicuous manner, *before* a potential contestant is inconvenienced in some way. These disclosures include: the conditions for entering, the prizes, the method of awarding prizes (eg random draw, judged selection), the number and approximate retail value of the prizes, whether a purchase is required, whether there is a skill-testing question, the chances of winning, regional allocation of prizes, the contest closing date, the place where full contest rules may be found, and any other facts that materially affect the chances of winning.

PHARMACEUTICAL/MEDICAL DEVICES

Advertising regarding therapeutic goods (eg prescription drugs, non-prescription drugs, natural health products, medical devices) is governed by the federal *Food and Drugs Act* and regulations under that legislation such as the Food and Drugs Regulations, Natural Health Products Regulations, and Medical Devices Regulations. Health Canada enforces the Food and Drugs Act and its regulations, and regulates the requirements that apply to advertising therapeutic products. Health Canada has published many guidance documents to assist advertisers.

Generally speaking, the Food and Drugs Act prohibits advertising any drug or medical device in a false, misleading or deceptive manner, or in a way that is likely to give consumers a false impression regarding the drug's or device's character, value, quantity, composition, merit or safety and (for a device) its design, construction, performance and intended use.

The Food and Drugs Act does not apply to advertising of services. Advertising medical and therapeutic services are subject to provincial laws and the guidelines and codes established by the various self-regulating healthcare colleges.

Prescription drug advertising to the general public must only mention the name, price and quantity of the drug.

The ASC provides pre-clearance services for consumer advertising relating to non-prescription drugs and natural health products, and “advisory opinions” on consumer-directed messages for prescription drugs and consumer-directed messages or materials that discuss a medical condition or disease.

The Pharmaceutical Advertising Advisory Board (PAAB) maintains the PAAG Code of Advertising Acceptance, which sets out detailed rules to mitigate the risks of failing to comply with the Food and Drugs Act's strict and detailed rules regarding advertising prescription drugs. PAAB provides voluntary pre-clearance services regarding compliance with the PAAB Code and also offers “advisory opinion” services regarding consumer-directed messages for prescription drugs and consumer-directed messages or materials that discuss a medical condition or disease.

TOBACCO AND E-CIGARETTES

Tobacco, e-cigarette and vaping advertising is highly restricted. The federal Tobacco and Vaping Products Act regulates the manufacture, sale, labelling and promotion of tobacco products and vaping products sold in Canada.

Tobacco Products

The Act's prohibitions include promoting a tobacco product or a tobacco product-related brand element (including by means of packaging) except as specifically authorized. It also prohibits any promotion of a tobacco product (including by means of packaging):

- in a manner that is false, misleading or deceptive with respect to, or that is likely to create an erroneous impression about the characteristics, health effects or health hazards of the tobacco product or its emissions;
- in a manner that could cause a person to believe that the product or its emissions are less harmful than other tobacco products or their emissions;
- by using prohibited terms, expressions, logos, symbols or illustrations;



- through a testimonial or endorsement (however displayed or communicated), and any depiction of a real or fictional person, character or animal is considered a testimonial or endorsement.

Subject to limited exceptions, the Act also prohibits promoting a tobacco product through an ad that depicts, in whole or in part, a tobacco product, its package or a tobacco product-related brand element or that evokes a tobacco product or a tobacco product-related brand element.

VAPING PRODUCTS

The Act's prohibitions include promoting a vaping product, a vaping product-related brand element, or a thing that displays a vaping product-related brand element:

- in a manner that is false, misleading or deceptive with respect to, or that is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the vaping product or its emissions;†
- by using prohibited terms, expressions, logos, symbols or illustrations that are prohibited by the regulations;
- by using prescribed terms, expressions, logos, symbols or illustrations in a manner that is contrary to the regulations;.
- by advertising if there are reasonable grounds to believe that the ad could be appealing to young persons;
- by means of "lifestyle advertising";
- through testimonials or endorsements (including, again, the depiction of a real or fictional person, character or animal);
- in a manner that is likely to create an association between the brand element or the name and a person, entity, event, activity or permanent facility.

OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Automobile
- Cannabis/CBD-derived products
- Charities
- Cosmetics
- Advertising and music licensing
- Union issues
- Uniquely Quebec issues
- Employment agencies
- Political cause/party advertising
- Weight control and slimming

Influencer marketing

There are no specific laws or regulations aimed at influencer marketing in Canada, but regulators have made it clear that the laws governing advertising and marketing in Canada apply to influencer marketing just as they do to other forms of advertising.

There's various guidance regarding influencer marketing. The Competition Bureau has issued the Deceptive Marketing Practice Digest with guidance for influencer marketing, and the ASC has published The Influencer Marketing Guidelines, which is specifically aimed at influencers.

Generally, influencers should clearly disclose and communicate, using clear, plain, and unambiguous language, any material connections to the business, products or services being promoted. "Material" connections are ones that might affect how consumers evaluate the influencer's independence from the brand, and could include being paid for the promotion, receiving free products or services, receiving discounts, having a personal or family relationship.



Using widely-accepted hashtags such as #ad, #sponsored, #<brand name>_ambassador, etc., is recommended. These disclosures should not be hidden or buried, and in video format should be upfront and identifiable. The disclosures should also be specific in relation to the material connection, the brand, and the specific products or services being promoted.

As always, an influencer's reviews or testimonials should be based on actual experience.

Learn more about Canadian influencer marketing law in our dedicated Influencer Marketing guide [here](#).

Prize promotions

Promotional contests in Canada are subject to various requirements, including some under the Criminal Code. It is therefore important to get Canadian legal advice before launching a contest in Canada.

The Criminal Code provisions are complex and have existed for a long time, and are not well-suited to modern promotional contests. The Criminal Code generally prohibits contests that involve all three elements of prize, chance and consideration (something of value) to enter. Canadian contests therefore are typically "no purchase necessary" (to avoid the consideration element) and have a mathematical skill-testing question (to address the chance element).

The Competition Act requires that there be full and adequate disclosure of the contest elements, in a reasonably conspicuous manner, *before* a potential contestant is inconvenienced in some way. These disclosures include: the conditions for entering, the prizes, the method of awarding prizes (eg random draw, judged selection), the number and approximate retail value of the prizes, whether a purchase is required, whether there is a skill-testing question, the chances of winning, regional allocation of prizes, the contest closing date, the place where full contest rules may be found, and any other facts that materially affect the chances of winning.

Quebec has specific additional contest requirements (including pre-launch regulatory registration and fee requirements) that generally apply when Quebec residents are invited to participate in a contest, and many Canadian contests exclude Quebec residents as a matter of course to avoid these issues. Quebec has recently suggested that "international contests" (open to Quebec residents and people outside of Canada) are not subject to the registration or fee requirements. Again, sponsors should obtain specific advice before assuming that this exception applies.

Download our Prize Promotions guide [here](#) for more information on some of the key requirements surrounding prize promotions in Canada, from the management of the early development stages of a promotion, to the outline of potentially problematic issues.

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China



China

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

- PRC Advertising Law 2021 (Advertising Law)
- Interim Measures for the Administration of Internet Advertisements 2016
- Interim Measures for the Promotion and Administration of Charitable Advertisements 2016 (Charitable Advertisement Interim Measures)
- PRC Anti-Unfair Competition Law 2019 (Anti-Unfair Competition Law)

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

The legislation referred to under the “general legislation” section above applies across China. There are also local and industry-specific regulations and rules, which must not contravene national legislation.

HOW ARE ADVERTISING LAWS ENFORCED?

The regulators described below have a range of powers to enforce the Advertising Law and the Anti-Unfair Competition Law. These include undertaking investigation and raid actions. Depending on the severity of violation of the Advertising Law and the Anti-Unfair Competition Law, the regulators can bring prosecutions before the criminal courts.

WHO ARE THE RELEVANT REGULATORS?

The state and local Administrations for Market Regulation (AMR) are the main administrative enforcement authorities to examine the legitimacy of advertisements, adjudicate complaints, review and supervise advertisements for drugs, medical devices, healthcare food and formula food for special medical purposes, etc. The state and local AMR are also the main administrative enforcement authorities to enforce the Anti-Unfair Competition Law.

The Cyberspace Administration of China (CAC) is responsible for the administration of websites, with the power to investigate and punish websites publishing illegal advertisements.

The National Radio and Television Administration (NRTA) and National Press and Publication Administration (NPPA) are responsible for the review and supervision of advertising activities on TV and broadcasting stations, publishing houses, newspapers, periodicals, journals and so on.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. Anyone (eg general consumer or private company) can bring a complaint to the regulators (generally the AMR). Upon receipt of the complaint, the AMR will handle the complaint and decide whether to accept the case within seven working days and the notify the complainant.





The AMRs have the following powers:

- undertaking onsite inspection of premises;
- making inquiries and investigations of the parties involved;
- requiring parties involved to submit documents within a specified time limit;
- reviewing and taking copies of contracts, invoices, books, advertisement works and other materials regarding the suspected violation;
- sealing and seizure of items, tools or equipment directly relating to the suspected violation; and
- ordering the suspension of the publication of the suspected illegal advertisements.

The regulators are required to make a decision within 90 days from acceptance of the case, which can be extended in certain circumstances, under Art. 60 of the PRC Administrative Penalty Law 2021.

The regulator must keep the identity of the complainant confidential.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

Depending on the severity of the violation, the sanctions include:

- cessation of the publication of the illegal advertisements;
- eliminating adverse effects eg publication of legal announcements in approved newspapers or journals;
- a fine up to (i) ten times the advertising expenses, or (ii) RMB2 million where the amount of the advertising expenses is difficult to determine or is obviously low;
- revocation of business license;

- revocation of advertising approval certificate and being barred from filing new advertisement approval applications for periods of between one and three years;
- disqualification of the responsible person of a company who is personally liable for the violation from serving as a director, supervisor or senior management officer of any entities within a three-year period from the revocation of the business license of that company.

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

The current enforcement focuses include:

- false advertising, in particular in the fields of cosmetics, medical cosmetology, education, agricultural products, real estate and financial investment;
- health claims relating to the COVID-19 pandemic; and
- claims including superlative language.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Consumers and private companies can bring claims before civil courts where:

- the advertisement contains false or misleading content;
- the content of an advertisement is harmful to the mental and physical health of minors or disabled people;
- the advertisement infringes upon patent rights;
- the advertisement disparages products or services of other producers or operators;
- the advertisement uses names or images of third parties without obtaining their prior consent;
- there are other acts infringing the legitimate civil rights and interests of other parties.





WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

Damages and an injunction.

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

Advertisements for products and services in certain sectors must be reviewed by the relevant authorities before being published eg medical treatments, drugs, medical devices, agricultural pesticides, veterinary medicines, healthcare food and formula food for special medical purposes. This requirement applies to all advertising methods, including TV, radio, print, online and others.

TV stations, radio stations, newspapers and magazines are also required to have internal advertisement inspectors, who will review all proposed advertisements.

Generally, an applicant is required to submit an application form to the advertising review authorities and organizations, with supporting documents, which generally include valid business certificates of the applicant, product labels or instructions, manufacturing certificates and proof of the IP rights (if any) claimed in the advertisements etc.

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, there are Self-Regulation Rules issued by the China Advertising Association (CAA) and local self-regulatory bodies, such as the Shanghai Advertising Association. They aim to self-regulate and improve advertising content, behavior and stability in the industry and market.

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

The Self-Regulation Rules apply to all forms of advertisements, including but not limited to traditional mass media (TV, radio, newspapers and magazines), printed advertisements, outdoor advertisements and internet advertisements.

HOW IS IT ENFORCED?

The CAA and local advertising associations are industry self-disciplinary bodies. Any individual or organization can report to the CAA and local advertising associations for (suspected) violations of laws, regulations and self-regulation rules for advertising content.





WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The China Advertising Association and local self-regulatory bodies such as the Shanghai Advertising Association.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. Any individual or organization can report to the CAA and local advertising associations.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

Those in violation of the rules will be subject to self-disciplinary measures:

- self-discipline and warning;
- public criticism;
- revocation of honorary title issued by the association;
- revocation of membership;
- lowering or cancellation of the Chinese Advertising Enterprises qualification recognized by the association;
- report to relevant government departments.

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

The general principle under the Advertising Law is that advertisements must not contain any false or misleading content which deceives or misleads consumers.

A misleading advertisement is an advertisement that deceives or misleads consumers with false or confusing content for any of the following reasons:

- the advertised products or services do not exist;
- the information on the products or services are inconsistent with reality and have substantial influence on the consumer's purchasing decision;
- the advertisement uses false or forged scientific achievements, statistics, research results, etc;
- the advertisement makes false claims regarding the effects of the use of products or services; or
- any other circumstances where consumers are deceived or mislead by false or misleading content of advertisement.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

Documentary evidence is required substantiating all claims contained in the advertisement, in particular with respect to the claims regarding sales figures, honors received, scientific, medical or clinical research results, statistics, and IP rights.

For advertisements that require pre-clearance as set out above, substantiation is required to be submitted before the review bodies before publication.

With respect to advertisements that are not required for pre-clearance, it's highly recommended that the advertiser hold the documentary evidence on file. If any complaints against the advertisement are filed before the relevant authorities, generally speaking advertisers are given a short timeframe to submit evidence.





Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

Content and phrases affecting public, national, personal or environmental interests are expressly prohibited from appearing in advertisements including:

- the Chinese national or army flag, anthem or emblem;
- use or disguised use of the name or images of organizations or officers of governments;
- superlatives such as “state-level,” “highest level,” “best” etc;
- content that harms the nation’s integrity or interest, or leaks national secrets;
- content that prejudices public interests or hinders social stability;
- content that harms individuals’ safety and property, or violates privacy;
- content that has negative effects on public order or social morals;
- content that is obscene, pornographic, related to gambling, superstitious or refers to terrorist or violent content;
- content that discriminates on the grounds of nationality, race, religion or sex;
- content that hinders the protection of the environment, natural resources or cultural heritage;
- other legally prohibited content.

WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

Generally, advertisements that harm the mental and physical health of minors are prohibited.

Specifically, the Advertising Law prohibits minors from being targeted in the following advertisements:

- for tobacco products of any description;
- for medical services, drugs, healthcare food, medical devices, cosmetics, alcohol and beauty services within mass media;
- for network games that endanger the mental and physical health of minors.

It’s also prohibited to publish any advertisements (except for charitable advertisements) in kindergartens, primary or secondary schools, whether on textbook, teaching material, workbook, stationary, teaching aid, stationery, school uniform, school bus and so on.

Advertisements targeting children under the age of 14 are prohibited from (i) inducing the children to request their parents to make a purchase, or (ii) causing the children to imitate unsafe acts.

Children under the age of ten cannot act as an endorser.





Comparative advertising

IS IT GENERALLY ALLOWED?

Yes.

WHAT ARE THE KEY RESTRICTIONS?

Comparative advertisements regarding medical treatment, drugs, medical devices and health food are prohibited.

More generally, comparative advertisements must not disparage third parties or their goods and services.

What are the key requirements for sustainability/ESG claims?

- There are no specific provisions for sustainability/ESG claims. However, the general rules under the Advertising Law, in particular the rules regarding false advertising, apply to sustainability and ESG claims. That means all sustainability and ESG claims must not contain any false or misleading content that deceives or misleads the consumer.
- There are also specific rules for charity-linked advertisements under the Charitable Advertisement Interim Measures. For example, the company name and logo of the promotor can be shown in charitable advertisements – however, the name of the promotor's specific products or services cannot be displayed in charitable advertisements.

Is there sector-specific regulation in each of the following areas?

ALCOHOL

Alcohol advertisements may not contain any of the following:

- any inducement to drink or any encouragement of excessive alcohol consumption;
- acts of drinking alcohol;
- acts of driving a car, ships or aircraft etc;
- an explicit or implied indication that drinking alcohol can relieve tension, stress or increase physical strength and so on.

Alcohol advertisements may also not be advertised in mass media targeted at children.

FINANCIAL SERVICES

Advertisements for financial products or services are required to have reasonable or sufficient warnings of potential risks and responsibilities. There cannot be (i) any promise as to the product's future outcome or profits etc.; or (ii) any implied or express statements that the products or services are risk-free, or have a guarantee of full return or profits, unless otherwise stipulated by other national legislation. Further, any endorsement of financial products or services by academic institutions, industrial associations, professionals or beneficiaries is prohibited.





FOOD AND BEVERAGE

Advertisements for healthcare food must be labelled clearly with “This product cannot substitute medicines.” Such advertisements must not contain any:

- assertion or guarantee of efficacy and safety;
- indication of disease prevention or treatment;
- express or implied statements that the advertised product is a necessity to safeguard health;
- comparison of the advertised health food with drugs or other healthcare foods;
- endorsements or testimonials etc.

Advertisements for health food should not be published in disguised form, eg in the form of an introduction of knowledge on health or health maintenance etc.

Healthcare food advertisements cannot be advertised in mass media which targets children.

In addition to the Advertising Law, there are also some specific industry rules regulating health food, eg Interim Measures for the Administration of Censorship of Advertisement on Medicines, Medical Devices, Health Foods and Formula Foods for Special Medical Purposes 2020.

GAMBLING

Advertisements relating to gambling are prohibited under the Advertising Law.

PHARMACEUTICAL/MEDICAL DEVICES

Advertisements relating to narcotic, psychotropic, toxic drugs for medical use, radioactive or other specific medicines, pharmaceutical precursor chemicals and drug addiction treatment medicines are prohibited. Other prescription drugs can only be advertised in medical and pharmaceutical professional periodicals approved by the relevant authorities.

Advertisements for medical treatment, medicine (other than the ones mentioned above) and medical devices must be reviewed and approved by the relevant authorities before being published. Furthermore, the following advertising practices are prohibited:

- assertion or guarantee for efficacy and safety;
- statements on cure rate or effective rate;
- comparison with the efficacy and safety of competitors;
- advertisement endorsements or testimonials;
- other items prohibited by law or administrative regulation.

Advertisements regarding different types of medicines should contain the corresponding statements. For example, “non-prescription drugs” should clearly be marked with “please follow the instructions or purchase and use in accordance with a pharmacist’s directions.”

Advertisements on medical treatment, medicine or medical devices are prohibited from being advertised in mass media targeted at minors.

In addition to the Advertising Law, there are also specific industry rules, eg Interim Measures for the Administration of Censorship of Advertisement on Medicines, Medical Devices, Health Foods and Formula Foods for Special Medical Purposes 2020.





TOBACCO AND E-CIGARETTES

Advertisements for tobacco are prohibited in mass media, in public places, public transit and outdoors. Advertisements for tobacco must not be distributed to minors. The name, trademark, packaging, design and other similar contents of tobacco products must not appear in advertisements for other goods or services or in charitable advertisements. The name, trademark, packaging, design and other similar contents of tobacco products must not appear in announcements published by the tobacco manufacturer or seller in relation to notices of relocation, change of name, recruitment and so on.

OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Cosmetics
- Medical cosmetology
- Agricultural pesticides, veterinary medicines, feed and additives
- Education or training
- Baby formula, drinks and food
- Seeds (crop seeds, forest seeds, grass seeds, breeding animals), aquatic fingerlings, planting and breeding)
- Formula foods for special medical purposes

Influencer marketing

We have published a dedicated guide that examines the legal frameworks governing influencer marketing in 28 key global jurisdictions. It addresses the following questions from each jurisdictions' perspective:

- What qualifies as advertising under local law?
- What are the typical influencer practices and in which cases are they considered advertising?
- What legal obligations apply?
- What are the applicable laws, regulations or guidance?
- What are the consequences for influencers if advertising content is not clearly labelled?
- What legal risks apply when cooperating with influencers?

Download that guide [here](#).

Prize promotions

Similarly, we have published a dedicated Prize Promotions guide designed to introduce you to some of the key requirements surrounding prize promotions, from the management of the early development stages of a promotion, to the outline of potentially problematic issues.

Download our Prize Promotions guide [here](#).





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France

France

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

- French Consumer Code
- French Environmental Code (regarding environmental and sustainability claims)
- French Public Health Code (regarding alcohol, tobacco and pharmaceutical products)
- Law No. 86-1067 of September 30, 1986, on the freedom of communication
- Decree No. 92-280 of March 27, 1992, enacted for the application of Sections 27 and 33 of Law No. 86-1067 of September 30, 1986, and setting the general principles defining the obligations of publishers with regards to advertising, sponsorship and teleshopping

Is there state, as well as federal advertising legislation? Not applicable. France is not a federal state. All legislation is national.

HOW ARE ADVERTISING LAWS ENFORCED?

The general advertising legislation is enforced by regulators, in particular the Consumer Protection Authority (DGCCRF) which can impose administrative fines or, alternatively, offer administrative settlements. The DGCCRF can also refer the case to the public prosecutor for criminal prosecution. Through this referral, the legislation can also potentially be enforced by the criminal court,

(eg if the regulator brings proceedings to the public prosecutor and the public prosecutor presses charges) or by the civil courts (in case of a claim by a consumer or competitor).

WHO ARE THE RELEVANT REGULATORS?

There are three regulators:

- the Consumer Protection Authority (the DGCCRF)
- the French Broadcasting Authority (the ARCOM, which was created from the merger of the previous broadcasting authority (the CSA) and the authority for the protection of rights on the internet (Hadopi))
- the French self-regulatory advertisement authority (ARPP)

The ARPP was granted the power to review television advertisements prior to their broadcasting by ARCOM.

In addition, there is a self-regulatory decision body which handles post-publication claims (the advertising ethics panel (the *Jury de déontologie publicitaire* (the JDP)). The JDP's decisions are not binding, but are taken into consideration by courts and regulators.



CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes, anyone can report a breach to a regulator (in particular to the DGCCRF). The regulator will decide whether it wishes to investigate the case. This can be done in various ways such as completing an online form.

Anyone can also bring a claim before the JDP.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The most severe sanctions are for non-compliance with the prohibition of misleading commercial practices. These sanctions include:

- up to two years' imprisonment;
- up to a EUR300,000 fine for an individual (the company's representative); and
- up to a EUR1.5 million fine for the company.

The fine would be set at:

- up to 10% (for individuals) and up to 50% (for the company) of the average annual turnover during the three preceding financial years; or
- up to 50% (for individuals) and up to 250% (for the company) of the cost of the practice constituting the offense; or
- up to 80% (for individuals) and up to 400% (for the company) of the cost of the practice constituting the offense when misleading commercial practices are based on environmental claims.

There are possible additional sanctions for individuals: prohibition (of up to five years) from exercising (i) the activity in the context of which the violation was made, or (ii) a commercial or industrial profession, or (iii) management or control of a commercial/industrial business or a commercial company. In addition, there are possible additional sanctions, including for the legal entity:

- prohibition for up to five years from:
 - operating a business;
 - operating one or several establishments having been involved in the violation;
 - issuing securities to the public;
 - submitting public procurement bids;
 - issuing checks; or
 - using credit cards.
- placement under judicial control for up to five years;
- confiscation of the means used to commit the violation;
- publication of the decision;
- the court may order the cessation of the misleading practice.

To be noted: specific sanctions may also apply, depending on the type of advertisement.



WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

Sustainability claims, health claims relating to the COVID-19 pandemic (eg re. protective equipment, cleaning products, medicines and tests), influencer content not identified as advertising, gender stereotypes, offensive portrayals of women, claims likely to harm children/other vulnerable individuals and cryptocurrency trading ads.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Yes, competitors or consumers could bring claims before civil courts: the claim would typically be based on tort liability (generally, where the claim is brought by a competitor, based on unfair competition) or IP infringement, to obtain compensation if they suffered a loss (eg reputational harm, financial damage, bodily injury). In addition, they could try to alert the public prosecutor of the violation, to request that the case be brought before criminal courts.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

In the event of a successful claim by consumers, they could obtain monetary compensation for their material (bodily and property) harm and/or moral harm, as the case may be. Competitors could obtain monetary compensation for the reputational harm suffered for example.

Courts could also order publication of the decision (for example on the website of the company and other publications), withdrawal of the ad etc.

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

Television advertising must be submitted for prior review (before broadcast) by the ARPP.

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, the French advertising self-regulatory authority (the ARPP) published a number of recommendations (Recommendations or ARPP Code), based on the ICC Code on Advertising and Commercial Communications (which must also be complied with) and reinforced, for certain key topics, by charters of commitments signed by representatives from trade federations, the ARPP and the public authorities. Among the Recommendations, some are in respect of digital advertising communication, on mentions and references, on advertising vocabulary and on sustainable development. The ARPP Code, although not binding per se, sets forth rules followed by professionals of all sectors, and courts and regulators also take these recommendations into account.

What are the limits of scope of such self-regulatory system? The ARPP Code applies to all types of advertising (eg broadcast, online, print, point of sale), without limitation of scope.

HOW IS IT ENFORCED?

The advertising ethics panel (*jury de déontologie publicitaire* (JDP), body of the ARPP that handles complaints) issues non-binding opinions on non-compliance of advertisements with these recommendations. These are however published and widely read, and so have the potential to cause (significant) reputational harm.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The ARPP (self-regulatory body). See above.





CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. The JDP may be approached by any legal or natural person (individuals, associations, administration, private companies) in relation to an advertisement. The complaint, which is entirely free of charge for the complainant, may concern any medium and sector.

The complaint must comply with the following requirements:

- clearly identify the concerned advertising;
- the advertising must have been effectively broadcast in the French territory during the two months preceding receipt of the complaint;
- the complaint must be linked only to the content of the advertising (eg message, sounds, atmosphere);
- the advertisement must, where possible, attached to the complaint or be precisely described so as to be identifiable;
- a complaint cannot be considered if it is anonymous; it must be accompanied by the full name and contact details of the complainant; and
- the complaint must be in writing.

Complaints can be submitted via an online form available [here](#).

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

An adverse ruling from the ARPP will draw adverse publicity and cause reputational harm to the company. It could also bring the attention of the regulators, of competitors and/or of consumers, and/or lead to court proceedings or administrative fines in case of subsequent investigations and sanctions by regulators.

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

The main principles that all advertising should follow in order to not be misleading are detailed below. Advertising should be:

- loyal;
- honest;
- truthful; and
- identify the name of the advertiser and nature of their advert.

In general, advertising must comply with applicable law (mentioned above) and with the ARPP Code.

In particular, under French law, unfair commercial practices are prohibited. There are two types of unfair commercial practices: misleading commercial practices, and aggressive commercial practices. A commercial practice is deemed to be misleading when:

- it creates confusion with another product, trademark, commercial name or other distinctive sign of a competitor;
- it is based on false or misleading allegations, indications or representations concerning, in particular:
 - the essential characteristics of the service, for example:
 - its substantial qualities;
 - its accessories;





- its origin;
 - the conditions of its use;
 - its properties;
 - the results expected from its use;
 - in particular its environmental impact;
 - the results and main characteristics of the tests and controls carried out; and/or
 - the scope of the advertiser's commitments, in particular with regard to the environment, or the nature of, or the process or reason for, the sale of the products;
- the advertiser is not clearly identifiable;
 - it consists of:
 - displaying a certificate, quality label or equivalent without having obtained the necessary authorization;
 - falsely claiming to be a signatory to a code of conduct;
 - falsely claiming that a code of conduct has been approved by a public or private body; or
 - falsely claiming that a professional, including through its commercial practices, or a service has been approved, endorsed or authorized by a public or private body, or failing to comply with the conditions of the approval, endorsement or authorization received.

Please note that this list is not exhaustive.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

Advertisers must be able to substantiate all claims in the event of challenges from authorities, competitors, or consumers.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

Prohibitions include requirements that marketing communications may not:

- contain anything that is likely to cause serious or widespread offence (including on grounds of age, race, gender, religion and sexual orientation);
- cause unjustifiable fear or distress;
- contain anything that is likely to condone or encourage violence or anti-social behavior;
- condone or encourage unsafe practices (especially if depicting or addressing a child);
- portray or represent anyone who is, or seems to be, under 18 in a sexual way; or
- include gender stereotypes that are likely to cause harm or serious or widespread offence.



WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

Marketing communications addressed to or targeted at children may not, in particular:

- be unclear as to their advertising nature;
- represent antisocial or illegal behaviors or incite children to adopt such behaviors;
- represent as legal behaviors those which are in fact contrary to citizenship principles, health and sanitary principles, the protection of the environment and social principles;
- undermine parental or educators' authority, responsibility or judgement;
- offend sensitivity, shock or provoke, by broadcasting/showing an image of the child which violates their dignity or decency;
- portray the child in situations likely to devalue them or harm their physical or moral integrity;
- create for the child a feeling of anxiety or unease;
- picture child nudity, without ensuring that the child's behavior corresponds to the attitudes that they are likely to adopt in their daily environment;
- represent any scene of violence or mistreatment, whether it be express or suggested, whether moral or physical;
- trivialize violence or mistreatment or give the impression that these behaviors are acceptable;
- encourage children to act in an aggressive or violent way;
- present the products in an environment and situations that don't meet the safety rules provided for by the standards in force;
- give the impression that unsafe or reckless behavior is acceptable and that this behavior can be copied, including when playing physical games;
- mislead children, in particular on: (i) the characteristics, dimensions, value, nature, lifespan or performance of the product (ii) the results that can be expected from its use by minimizing, for example, the strength, skill or degree skill required. If the addition of certain elements is essential for the operation of the product presented (batteries for example) this must be mentioned;
- suggest that the mere possession or use of a product gives the child a physical, social or psychological advantage over other children of their age, or that failure to possess such product would have a negative impact;
- create a sense of urgency about the purchase or suggest that the purchase is essential;
- make the product presented within the reach of any family budget or minimize its price by using terms such as "only," or "fair";
- contain any mentions that directly encourage children to persuade their parents to buy the product or service presented to them.





Comparative advertising

IS IT GENERALLY ALLOWED?

Yes, under strict requirements.

WHAT ARE THE KEY RESTRICTIONS?

Comparative advertising must:

- relate to products that address the same needs or purpose;
- be limited to an objective comparison of one or more essential, relevant and verifiable characteristic representative of the products. For example, price may be a comparable characteristic.

Comparative advertising may not:

- be misleading or deceptive;
- take unfair advantage of the reputation of mark/name/distinctive signs of a competitor;
- disparage, denigrate or discredit;
- trigger confusion between the advertiser and their competitor or their respective marks, names, signs or products;
- present products that are an imitation or reproduction of a product/service with a protected mark/trade name.

What are the key requirements for sustainability/ESG claims?

A number of rules apply to sustainability/ESG claims, such as:

- rules regarding misleading commercial practices (see above);
- environmental laws (Law on the Circular Economy of February 10, 2020, Climate and Resilience Law of August 22, 2021) which modified a number of provisions of the French Environmental Code;
- the ARPP Recommendation on Sustainable Development.

The main requirements are the following:

Advertising may not:

- mention or depict any behavior contrary to the protection of the environment and the preservation of natural resources (such as waste or degradation of natural resources, damage to biodiversity, air, water or soil pollution, climate change), except where the purpose is to call out such waste, degradation, damage;
- directly or indirectly encourage excessive consumption patterns or consumption that is contrary to the principles of the circular economy. In this respect, it may not encourage wastefulness by discarding a product or allowing it to deteriorate while it still functions and/or remains consumable, without taking into account, where possible, its sustainability, reuse, second life or recycling;
- discredit the principles and objectives, as well as advice or solutions, commonly accepted with regard to sustainable development;
- detract from the purpose of environmental protection messages or measures taken in this area;





- appear to endorse working conditions that are contrary to social and human rights. This includes advertising that appears to endorse child labor, any form of discrimination, bullying, poor health and safety conditions.

Advertising must:

- avoid minimizing the consequences of the consumption of products that may affect the environment;
- avoid all statements or visual representations likely to generate irrational or unfounded fears.

The following principles must be complied with:

- Truthfulness of action, meaning that:
 - Advertisements may not mislead the public about the actual actions of the advertiser or the properties of its products in terms of sustainable development.
 - The advertiser must be able to support its sustainable development claims by evidence that is objective, reliable, truthful and verifiable at the time of the advertising. For any message based on a scientific claim, the advertiser must be able to present the origin of the findings and methodology used for the calculation.
 - Advertisements may not resort to demonstrations or scientific conclusions that do not comply with generally approved scientific findings.
 - Advertisements may not make a general sustainable development claim if the commitment of the advertiser does not cumulatively include the three pillars of sustainable development (environmental, social/societal and economic development).

- Proportionality of messages
 - The advertisement must accurately express the actions of the advertiser or the properties of its products in accordance with available and communicable evidence.
 - The advertising must be commensurate with the scale of the advertiser's action(s) in terms of sustainable development and the properties of the products. In particular:
 - The advertisement may not be presented in such a way as to imply that it relates to more pillars of sustainable development or a greater impact than can be justified by the evidence.
 - The message may not unduly suggest a total lack of negative impact.
 - The presentation of actions or products at an experimental or project stage must be clearly presented as such, and their scope may not be exaggerated.
- Clarity and qualifications of messages:
 - The advertiser must indicate in the advertisement how its activities or products have the claimed qualities.
 - If the advertising argument is only valid in a particular context, this context must be clearly presented.
 - When an explanation is necessary, it must be clear, legible or audible, and comply with the requirements of the Recommendation of the ARPP on Mentions and References.
 - Where this explanation is too long to be included in the advertisement, essential information must be included, together with a reference to some means of communication allowing the general public to obtain further information.





- Any statement regarding a reduced negative impact or an increase of efficiency must be precise and accompanied by detailed figures, indicating the basis for the comparison.
- Any advertisement based on a scientific study must indicate its source.
- Fairness
 - The advertising may not attribute exclusive qualities in terms of sustainable development to a product or an advertiser when competitor products or competitors have similar properties.
 - An advertiser may not claim that certain actions are exclusive to it if they are imposed on all by existing regulation.
 - An advertisement may not unduly create a link between general corporate actions of an advertiser concerning sustainable development and the characteristics of a service.
 - Concerning environmental claims:
 - A reduction of a negative impact may not be presented as a direct “recovery” of natural ecosystems.
 - An environmental claim may not emphasize the absence of a component, ingredient, characteristic, or impact (typified by formulations such as “without ...,” or “no ...,” or “...-free”) that never affected the family of products or activities presented by the advertisement.

Please note that there are specific recommendations regarding signs, labels, logos, symbols, self-declarations, wording used and specific rules (as detailed in legislation and the Recommendations) for claims based on specific mechanisms such as carbon offsetting (Section L. 229-68 of the French Environmental Code) or advertising of products with an excessive impact on climate (Sections L. 541-9-1 and L. 541-9-11 of the French Environmental Code).

Is there sector-specific regulation in each of the following areas?

ALCOHOL

Chapter III of Title II of Book III of Part III of the legislative part of the French Public Health Code (Section L. 3323-2 et seq.) sets forth the conditions under which direct or indirect propaganda or advertising for alcoholic beverages, the manufacture and sale of which is not prohibited, is permitted. Non-compliance with these provisions is punishable by a fine of up to EUR75,000 for individuals, (company representatives) and up to EUR375,000 for a legal entity (company). This fine can be increased to 50% for individuals (company representatives) or 250% (for the legal entity) of the amount spent on illegal advertising (L. 3351-7 of the French Public Health Code). Additional sanctions may be imposed, such as the suppression, removal, confiscation or cessation of the advertising at the expense of the company or individual. In the event of a repeat offence, natural persons may incur a five-year ban on the sale of the alcoholic beverage that was the subject of the illegal operation; legal entities are fully or partly jointly and severally liable for payment of the fines.



FINANCIAL SERVICES

As regards financial products, there are specific rules set forth by the ARPP but also by law (eg as regards advertisement and sponsoring for crypto products such as bitcoin, prohibition of advertising for high-risk financial products).

There are several ARPP Recommendations depending on the type of financial product or service concerned, namely:

- recommendations on financial and investment products;
- recommendations on leveraged financial products and contracts, allowing access to Forex, stock market indices, commodity prices and binary options; and
- recommendations on so-called atypical investments and related services;

In addition, there are a number of information requirements as regards advertisement of consumer credit and mortgages (Section L. 312-5 – L. 312-11, and L. 313-3 – L. 313-5 of the French Consumer Code).

FOOD AND BEVERAGE

A number of rules apply to advertising of food products. In particular, the National Nutrition and Health Program (PNNS) provides that advertising messages concerning food are regulated and must in particular contain health information. In addition, the CSA published a charter to promote healthy diets and behaviors in audiovisual programmes and advertising (2020-2024) on January 30, 2020. Following the transposition of the revised AVMSD under French law, the CSA must promote the conclusion of codes of good conduct aimed at effectively reducing children's exposure to audiovisual commercial communications about food or beverages containing nutrients or substances with a nutritional or physiological effect, in particular fats, trans-fatty acids, salt or sodium and sugars, the presence of which in

excessive quantities in the overall diet is not recommended. In addition, there is an ARPP Recommendation on "Food Behaviors" (third version) which was updated, in a third version, based on the abovementioned CSA Charter.

GAMBLING

The law of May 12, 2010 (Law No. 2010-476), referred to as the French Gambling Act, addresses the introduction of competition and regulation in the online gambling sector. It sets forth a number of obligations for the advertising of gambling (Article 7 of the Act), including:

- the obligation to accompany such advertising with warnings against excessive or pathological gambling, as well as providing the number of a helpline for those requiring assistance; and
- the prohibition from any such advertising in public communication services, in publications, audiovisual communication services and programmes and in movie theatres broadcasting works accessible to minors.

Only operators authorized to operate in France may broadcast (or arrange to be broadcast) advertising to the French public, and even then only provided that it relates to authorized gambling.

PHARMACEUTICAL/MEDICAL DEVICES

Advertising for medicines is subject to strict requirements under Chapter II, Title II, Book I of Part V of the French Public Health Code, legislative part (Section L. 5122-1 et. seq.).

Section L. 6122-1 of the French Public Health Code includes a definition of human medicine advertising. Only medicinal products for which the relevant marketing authorization or registration requirements have been satisfied, may be advertised (Section L. 5122-3 of the same code). Advertising may not be misleading or damage the protection of public health (Section L. 5122-2



of the same code). Section L. 5122-6 of the French Public Health Code sets forth a number of requirements for medicine advertisement, among which:

- a medicinal product may be advertised to the general public only if it is not subject to a medical prescription, and if none of its various presentations is reimbursable by compulsory health insurance schemes; and
- the marketing authorization or registration does not contain any prohibition or restriction on advertising to the general public because of a possible risk to public health, in particular where the medicinal product is not suitable for use without the intervention of a medical practitioner for the purposes of diagnosis, initiation or monitoring of treatment.

In addition, the content of the advertisement is subject to strict requirements.

As regards advertising targeted at healthcare professionals, requirements are detailed under Section L. 5122-9 of the French Public Health Code.

TOBACCO AND E-CIGARETTES

Section L. 3512-4 of the French Public Health Code prohibits direct or indirect propaganda or advertising for tobacco, tobacco products or any other element present in a finished tobacco product, including paper, filter, ink, capsules and glues. The prohibition extends to any free distribution or sale of a tobacco product at a price lower than that which has been approved by the ministers responsible for health and for the budget.

This prohibition does not apply to:

- signage of tobacco shops, provided that these signs comply with the characteristics defined by government order;

- publications and online communication services published by professional organizations of producers, manufacturers and distributors of tobacco products which are targeted at their members;
- specialized professional publications, the list of which is established by government order;
- online communication services published on a professional basis which are only accessible to professionals in the production, manufacture and distribution of tobacco products;
- printed and published publications and online communication services made available to the public by persons established in a country that does not belong to the EU or the EEA, when these publications and online communication services are not primarily intended for the European Community market;
- the broadcasting of motor sport competitions containing direct or indirect advertising for the products mentioned in Article L. 3512-5 which take place in countries where tobacco advertising is permitted. Such competitions may be broadcasted on television.

In addition, any sponsorship operation is prohibited when it is carried out by manufacturers, importers or distributors of tobacco products or when its purpose or effect is direct or indirect propaganda or advertising for tobacco, tobacco products and ingredients.

Section L. 3513-4 of the Code provides for an almost identical principle for vaping products (e-cigarettes).

Section L. 3512-20 et seq. impose a neutrality requirement for cigarette packs, packaging units, outer packaging, overwraps of cigarettes and rolling tobacco, cigarette paper and cigarette rolling paper must be neutral and standardized.





OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Firearms
- Job offers and employment
- Cosmetics
- Financials, consumer credit and property loans
- Political cause and party advertising

Influencer marketing

We have published a dedicated guide that examines the legal frameworks governing influencer marketing in 28 key global jurisdictions. It addresses the following questions from each jurisdictions’ perspective:

- What qualifies as advertising under local law?
- What are the typical influencer practices and in which cases are they considered advertising?
- What legal obligations apply?
- What are the applicable laws, regulations or guidance?
- What are the consequences for influencers if advertising content is not clearly labelled?
- What legal risks apply when cooperating with influencers?

Download that guide [here](#).

Prize promotions

Similarly, we have published a dedicated Prize Promotions guide designed to introduce you to some of the key requirements surrounding prize promotions, from the management of the early development stages of a promotion, to the outline of potentially problematic issues.

Download our Prize Promotions guide [here](#).

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Germany



Germany

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

Overall there is no comprehensive law in about advertising. But instead there's a bundle of different acts, regulations and guidelines that can roughly be classified into the following three categories:

General advertising law

- The central legal framework in about consumer protection and market behavior with regard to advertising is the Unfair Competition Act (UWG). The aim of the law is to prevent misleading or aggressive advertising; to regulate comparative advertising; and to create the legal framework for direct marketing. In addition, breaches of the law governing commercial practices is – under certain circumstances – enforced under the UWG. Since 2008, the UWG is influenced on a European level by the Unfair Commercial Practices Directive and the Misleading and Comparative Advertising Directive. In addition, the new European “Omnibus Directive” (2019/2161/EU) together with the CPC-Directive will also have a significant impact on the general German advertising law.
- In addition to the UWG, the German Price Indication Ordinance (PAngV) should also be mentioned. It governs the correct declaration of prices for offering goods and/or services to consumers.

Media-related advertising law

- The State Treaty on Media (MStV) and the Statutes for the Implementation of the Advertising Regulations of the State Treaty on Media (*Werbesatzung (WerbeS)*) mainly regulate “Introductory Advertising.” They contain provisions on certain advertising limitations on broadcasting and broadcast media (eg legal provisions on product placement or surreptitious advertising). The Interstate Treaty on the Protection of Minors (JMStV) regulates advertisements regarding the protection of minors in the field of broadcasting and/or media.
- Advertisements broadcast or else communicated via digital commercial communication might be covered by the Telemedia Act (TMG). In principle, the regulations here affect both the individual provider of the corresponding content and the person who arranges access to it.
- The State Press Acts (eg *HamPresseG*) govern advertising opportunities in the press.

Content-related advertising law

- Finally, there's a bundle of sector-specific regulations that apply to specific goods or services, particularly in the field of consumer protection – for example, the German Food and Feed Code (LFGB); German Medicines Act (AMG); the German Pharmaceutical Advertising Law (HWG); and the German Law on Energy Efficiency Labelling (EnKVG).
- Self-imposed codes of conduct that are only binding on specific trade association members.
- Various industry codes of practice.



IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

For the most part, no. The general legislation applies across the whole of . Although there are different national press acts and media regulations, they contain substantially the same legal provisions.

HOW ARE ADVERTISING LAWS ENFORCED?

There is no comprehensive law governing the enforcement of laws on advertising and related commercial practices.

The UWG rules regarding advertisement are enforced in such a way that competitors or qualified entities and consumer protection associations are entitled to take legal action at a civil court to stop unfair practices in advertising.

The media-related advertising law on the other hand is regulated by the respective supervising media authority (*Landesmedienanstalten*). These 14 media authorities supervise compliance with advertising principles and labelling requirements in the media.

The advertising law requirements of sector-specific regulations are again enforced according to the UWG, as far as these provisions are intended to regulate market conduct (so-called “breach of law” determined in section 3a UWG). In addition, there are also special criminal provisions in numerous laws for the case of unlawful (misleading) advertising – for example, in the law on medicinal products (sec. 96 AMG), foodstuffs (section 59 par. 1 n. 7 and 9 LFBG) or pharmaceuticals (section 3, 14 HWG). The regulations provide for the imposition of a prison sentence of up to one year or a fine. Proceedings would be instituted by the competent public prosecution department and tried before a criminal court.

WHO ARE THE RELEVANT REGULATORS?

There is no main governmental regulator. Only the MStV and the JMStV are enforced by the federal media authorities.

General advertising law is “regulated” at the level of private law by different consumer protection associations that are coordinated by the Federation of German Consumer Organisations (*Verbraucherzentrale Bund* (VZBV)) and the German Advertisement Council (*Wettbewerbszentrale*), that together can be considered as the most important supervisors of the UWG, without being comparable to a governmental regulator.

For specific breaches, in particular of the content-related laws, the trading supervision departments are responsible (supported by prosecutors for severe infringements).

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Privates companies can inform the Federation of German Consumer Organisations or the German Advertising Council about a possible statutory violation, but are more likely to initiate legal measures (on the basis of an UWG infringement) on their own, provided that there’s a concrete competitive relationship between the parties (which basically means they offer products or services of a similar type and address the same customers).

In appropriate cases, they can inform the trading supervision departments.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The answer depends on the specific law. Usually, civil courts decide unfair competition cases. However:

- according to section 20, paragraph 2 of the UWG, there can be fines in the case of advertising by means of a telephone call or using an automatic calling machine without the consumer’s prior consent, up to EUR300,000;
- there are financial sanctions possible, if price labelling does not fulfil the requirements of the PAngV (section 10 PAngV together with section 3 *WirtschaftsstrafG* enables fines up to EUR25,000);



- it should be noted that the UWG will be amended by the end of May 2022 due to the Omnibus Directive (EU) 2019/2161. In the case of a widespread infringement that affects several Member States, misleading marketing campaigns and advertisements could lead, in the worst case, to a fine of up to EUR100,000 or even 4% of annual revenue (on the basis of the revenue reached in the specific Member State where the unlawful practice took place) due to section 5c and 19 UWG-E. Since this is only possible in the case of a coordinated action due to the CPC-Directive (see EU section here [\[INSERT LINK\]](#)) and considering the various exceptions and upstream measures for the responsible authority to prevent the infringement, such high financial fines are expected to be rather rare;
- in the field of media related advertising law, the sanctions of the relevant supervising authority in the event of legal violations on broadcasting or media platforms are set out in section 109 MStV. They range from a declaration of the violation of law to the prohibition or blocking of certain unlawful content. Violations of the MStV provisions that are committed intentionally or negligently are also considered as administrative offences, and can result in fines of between EUR50,000 and EUR250,000 (section 115 MStV).

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

One focus area is social media advertisement, especially by influencers (and related labelling requirements) on social networks such as Instagram. In addition, the state data protection authorities are concerned about the use of personal data for customized advertising campaigns, especially in the area of online marketing. The German legislator has also just implemented new documentation duties for consumer consent in the field of telephone marketing (new section 7a UWG), which could lead to a larger focus in the future. According to the new German coalition agreement, the issue of sustainability will also play a greater role in upcoming legislation (eg in mandatory information duties for certain products).

In the field of the MStV, covert advertisement in tv shows or movies is a particular focus of the respective authorities. Since product placement is no longer generally prohibited under the new MStV and the WerbeS, questions in this regard might also be of high importance in the future. It also remains to be seen to what extent gender-neutral advertising will become the focus of attention in the future.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Cases before the civil courts are the regular solution for infringements. Private companies can bring claims for breach of the UWG to the civil courts, when there is a concrete competitive relationship.

In general, consumers did not have rights to bring claims under the relevant advertisement regulations (yet). However, they can inform the consumer organizations who are entitled to claim at court.

But there has recently been an amendment in the German UWG (which came into force at the end of May 2022) due to the European New Deal for Consumers. It gives consumers the opportunity to claim damages, provided that a concrete damage can be substantiated.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

In the case of claims based on unfair competition, the courts may grant several remedies that are subject to compulsory execution, namely, cease and desist, correction or damages.

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

There's no general clearance procedure for advertisements, irrespective of the advertising medium used. However, the use of specific claims may be regulated by sector-specific law, eg certain health and nutrition claims have to comply with the requirements of the Health Claims Directive (1924/2006).



Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, there is the German Advertising Council (which is part of the German Advertising Federation (ZAW)) that develops guidelines and codes of conduct for specific advertising activities, and for certain products and services. For example, the council has established a strict code of conduct for advertising alcoholic beverages. In the field of data protection in the advertising industry, there's also the German Data Protection Council for Online Advertising (DDOW). Because the codes are self-regulated, the codes overall are not binding. However, non-compliance can be seen as an indication of unfair competition, which can give rise to a civil claim.

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

The self-regulatory rules on advertising essentially apply for all sectors and industries, and all communication channels (offline and online). In addition, there are specific sets of rules for some sensitive areas like advertisements targeting children, or commercial communications for alcoholic beverages or gambling.

HOW IS IT ENFORCED?

The German Advertising Council investigates cases either on receipt of a complaint or at its own instigation. A complaint can be submitted by anyone. Once a complaint is upheld, the advertiser is notified about the complaint and

asked to modify or discontinue the infringing advertisement. If it is suspected that the accused did break the law, the council might also pass the case to the responsible authorities (see 1 d).

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The non-governmental regulator is the German Advertising Federation (ZAW), which is located in Berlin. Its aim is to achieve politically balanced conditions for the advertising industry, and to defend or promote the freedom of commercial advertising.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. Complaints can be submitted to the Advertising Council by anyone, and in any form (email, postal mail or fax). Anonymous complaints are not processed.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

Because the German advertisement association is a voluntary self-regulation organization, the German Advertising Council is not entitled to impose financial sanctions/fines. The only sanction in practice is to issue a public reprimand and make the case public via a press release and/or in the media. However, public reprimands are rather unusual, as on average 94% of the advertisers fulfil the request to modify or discontinue the advertisement.



Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

The general provisions on misleading advertising can be found in the UWG. The law states that consumers should be able to make their commercial decisions on the basis of correct information, thus any misleading of consumers is prohibited.

Misleading consumers can be caused in principle by both active and passive conduct (omission). According to section 5 par. 1 UWG, a commercial practice is regarded as misleading if it contains false statements or other information that's deceptive and leads the consumer to take a transactional decision that they would not have taken otherwise. On the other hand, misleading advertising is also possible by omission of material information that a consumer might need to take an informed transactional decision (sec. 5 a UWG).

The consideration of whether an advertising statement could be misleading is based on a three-stage scheme. For this purpose, the target group must first be identified and the understanding of an average member of this public must be determined. The result must then be compared with reality. An advertising statement can be addressed to the general public but also to specific expert persons. The understanding of the content of an advertising statement can therefore differ depending on the target group. Within the respective target group, the applicable standard is the consumer who is reasonably well informed and reasonably observant and pays the appropriate

attention to advertising. The degree of attention can vary – for example, it might be lower in the case of advertising of everyday consumer goods than in the case of high-value products.

In principle, misleading advertising can occur not only in the case of advertising that makes objectively untrue statements of facts (eg statements about features of a product that the product does not actually have or an allegedly top position of the seller), but also by emphasizing self-evident facts.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

Advertising claims must – as said above – not be inaccurate or misleading. But this does not always require prior proof nor specific substantiation. However, in the event of a possible dispute about the accuracy of an advertisement, it might be necessary to provide evidence.

There are specific requirements for using survey results in an advertisement or in a presentation. For example, an advertiser who has a product depicted in a catalogue with the claim “test winner” must clearly indicate a reference to the relevant test, so consumers have the opportunity to check the test themselves.

Lastly, sector-specific law may require proof for claims about particular products and services, such as the Advertising of Medicines Act (HWG) regarding medicinal products. According to section 3 of the HWG, advertising statements about therapeutic efficacy are only permissible if there's scientific proof to support the claim.



Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

Although the term “socially irresponsible advertising” is not defined as such in German advertising law, you can say that marketing communication in principle should not:

- contain shocking advertising that violates human dignity (this could be considered differently when the shocking advertising has no direct reference to the advertised product) and that degrades a human being to a mere object;
- illustrate cruelty, torture or sexual harassment;
- contain the use of threatening or abusive language or behavior;
- significantly impair the consumer’s freedom of choice by coercion, including the use of physical force or undue influence; or
- deliberately exploit any specific misfortune or casualties to influence the consumer’s free decision.

WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

Marketing communication addressed to or targeted at children should not, in particular:

- directly exhort minors to buy a product by exploiting their credulity, loyalty (to their parents, teachers or other trusted person), vulnerability or lack of experience (section 4 par. 1 UWG);
- include a direct exhortation to children to buy or to persuade their parents to buy, an advertised product;
- contain anything that’s likely to injure their physical or mental health (can be found in particular in section 6 par. 2 of the Interstate Treaty on the Protection of Minors in Media, JMStV);
- contain advertisement for medical products that is addressed exclusively or predominantly to children under the age of 14 (section 11 of Advertising of Medicines Act, HWG);
- advertise any operative plastic surgery procedures exclusively or predominantly to children; or
- depict the consumption of alcohol or tobacco.



Comparative advertising

IS IT GENERALLY ALLOWED?

Yes, comparative advertising is generally permissible, but can be deemed to be misleading where a comparison does not fulfil the legal requirements (defined in section 6 of the UWG), eg where it does not relate to goods or services that meet the same needs or purposes.

WHAT ARE THE KEY RESTRICTIONS?

Marketing communications that include a comparison with an explicit or implicit *identifiable* competitor must:

- relate to goods or services that meet the same needs or are intended for the same purpose;
- relate to one or more material, relevant, verifiable and representative feature of the goods or to their price;
- not lead in the course of trade to a risk of confusion between the products offered by the advertiser and the competitor;
- not take unfair advantage of or impair the reputation of a distinguishing mark used by a competitor; and
- not discredit or denigrate the competitor's goods and services or present goods or services that are imitations or replicas of the goods sold under a protected mark from the competitor.

Provided these conditions are met, it might be also permissible to use the competitor's name or use/show a third-party trademark, if this does not lead to a risk of confusion (as mentioned above).

What are the key requirements for sustainability/ ESG claims?

German law does not (yet) provide a special law that makes sustainability aspects in advertising binding for companies. Usually, the law on misleading advertising would aim to regulate ESG claims. The crucial question often is the correct understanding of such claims. Terms such as "environmentally friendly" are only permissible if the consumer is clearly informed about the advantage of the product or service in comparison to the products that do not have such an environmentally beneficial effect.

However, since many topics are currently being discussed in this area, especially at the European level, further developments remain to be seen. The coalition agreement of the new German government, for example, provides for sustainability issues to be given greater prominence in consumer protection.

Is there sector-specific regulation in each of the following areas?

ALCOHOL

According to the general advertising principles in section 8, paragraph 10 of the MStV, advertising for alcoholic drinks must not promote the excessive consumption of such drinks. Furthermore, advertising alcoholic beverages is subject to the general regulations of the JuSchG and JMStV, when aimed at minors. Pursuant to section 6, paragraph 5 of the JMStV, advertising of alcoholic beverages must not be aimed at minors, nor specifically appeal to them through its presentation or show minors consuming alcohol. Besides this, the German Advertising Council has established a strict code of conduct for advertising alcoholic beverages, which prohibits statements in commercial communication that can be misunderstood as an invitation for the abusive consumption of alcoholic beverages (the code of conduct can be found [here](#)). Inappropriate advertising of alcoholic products can be also covered by the general regulations of the UWG.



FINANCIAL SERVICES

Advertising of credit or financial products must meet the specific requirements for clear and comprehensive information about the product. In this regard, the Ordinance Regulating the Indication of Prices contains detailed provisions, particularly on the amount of mandatory information. For example, credit advertising must contain information on the net loan amount, the borrowing rate and the annual percentage rate using an easily understood example (section 6, 6a PrAngV). Any commercial communication must fulfil the criteria of integrity and honesty. Besides, there are also special provisions in the German Securities Prospectus Act (WpPG) — for example, disclosure duties about the availability of a security prospectus in the advertisement. The infringement of most of the rules is further deemed to be unfair competition. In addition, such advertising is subject to the general rules of the UWG and therefore must not contain any misleading information. This applies, in particular, to claims about the risks and the earning potential of the investments being advertised.

FOOD AND BEVERAGE

Health and nutrition claims in advertisements are only permissible if the respective claim complies with the provisions of the EU Regulation 1924/2006 on nutrition and health claims made regarding foods. Whereas health claims must be authorized by the competent authority, the regulation contains a list of approved nutrition claims. Advertisers should review the EU register of permitted nutrition claims, authorized health claims and their respective conditions of use. Violations of this Regulation may be deemed to be unfair competition pursuant to the UWG.

Claims that make reference to weight control are generally permitted if they are scientifically substantiated and not misleading. Specific advertising activities outside the scope of Regulation 1924/2006 are covered by the national rules of the German Food and Feed Code.

In addition, Regulation (EU) 1169/2011 establishes the general principles, requirements and responsibilities regarding food information and food labelling, and states how nutrition claims must be expressed. Based on its German implementing regulation, the German legislator established a legal framework to use additional forms of expression for nutrition claims in the form of a nutrition score signs (“nutri traffic light”).

GAMBLING

In , the operation of gambling is strictly regulated. The same applies to its advertising, which is in particular subject to the regulations of the State Treaty on Gambling (GlüStV). Pursuant to section 5, paragraph 2 of the GlüStV, advertising must not be aimed at minors or comparably vulnerable target groups. Misleading claims, in particular regarding the chances of winning or the nature or amount of the winnings, are prohibited. Public gambling advertisements on television, the internet or telecommunications systems are forbidden.

However, a fundamental revision of gambling law came into force on July 1, 2021. The new GlüStV now provides the opportunity to obtain a permit for online poker, virtual slot machines and online casino games. Pre-existing possibilities to obtain permits (eg for sports betting and lotteries) were extended. Holders of an official permit may, subject to other statutory provisions, advertise and sponsor the permitted games of chance (sec. 5 par. 1 s. 1 GlüStV 2021). Nevertheless, there are still strict generally applicable guidelines on the way advertising is carried out. It's not possible to advertise via broadcast and the internet for virtual slot machine games, online poker and online casino games between 6am and 9pm. It is permitted to advertise immediately before or during the live broadcast of sport events for sports betting based on the ongoing sport event.



PHARMACEUTICAL/MEDICAL DEVICES

Specific rules for therapeutic claims can be found in the German Pharmaceutical Advertising Law (HWG), the Medical Devices Act or the professional requirements for pharmacists at state level. Misleading advertising for therapeutic goods and services is also deemed to be unfair competition pursuant to the rules of the UWG. The HWG provides special rules for advertising outside the medical circle of experts. The act contains a list of broad restrictions for third-party endorsements and testimonials, advertisements using pictures and specific advertising methods (section 11 HWG). In addition, it's generally prohibited to advertise remote medical treatment. Furthermore, advertising medicines that have not been approved for sale on the German market is forbidden.

TOBACCO AND E-CIGARETTES

Advertising tobacco products and electronic cigarettes is strictly regulated in . In May 2016 the Tobacco Products Directive (Directive 2014/40/EU) was transposed into national law by the Law on Tobacco Products and Related Products. The Act provides for restrictions on any communication channel. While tobacco advertising is completely banned on television and radio, advertising in print media and on the internet is restricted to media that's only available for tobacco distributors or that mainly contains information about tobacco products (section 19 para 2 TabakerzG). A sole exception was made for advertisements in cinemas after 6pm, but this law was abolished at the beginning of 2021. Now, cinema advertising of tobacco products and electronic cigarettes is only possible when the movie has been categorized as "not suitable for young persons aged under 18" (section 11 para 6 JuSchG). Thus, similar to the advertising of alcoholic beverages, advertising for tobacco must not be addressed to minors.

OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Political, religious and ideological advertising is inadmissible in broadcasts according to section 8, paragraph 9 sentence 1 MStV.
- Cosmetics

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Hong Kong



Hong Kong

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

There's no specific piece of legislation governing advertising in Hong Kong. However, there are a number of Ordinances and Codes of Practices that regulate different aspects of advertising activities, including:

- The Trade Descriptions Ordinance (Cap. 362) (TDO), which prohibits false trade descriptions, false, misleading or incomplete information, false marks and misstatements in respect of goods or services provided in the course of trade.
- The Generic Code of Practice on Television Advertising Standards (Television Code), which regulates materials included in a television programme service licensed under the Broadcasting Ordinance (Cap. 562) (BO).
- The Radio Code of Practice on Advertising Standards (Radio Code), which regulates materials included in a sound broadcasting service licensed under the Telecommunication Ordinance (Cap. 106) (TO).

In addition, there's industry specific legislation targeting advertising in various industries. Details of these are set out in subsequent parts of this guide.

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

No. The legislation above applies across Hong Kong.

HOW ARE ADVERTISING LAWS ENFORCED?

TDO

The TDO can be enforced in the courts or, alternatively, there's an administrative compliance-based mechanism where enforcement agencies can resolve matters.

Television Code and Radio Code

- The Television Code and Radio Code are enforced by the regulating authority via written directions to the television programme services or sound broadcasting services licensees.
- The regulating authority may require the licensees to take actions to comply with the relevant legislation, license conditions or codes of practice.
- The regulating authority can impose a fine, request an apology and/or correction, or even suspend, revoke or recommend a revocation of a license.

WHO ARE THE RELEVANT REGULATORS?

TDO





The main enforcement agency for the TDO is the Customs and Excise Department (C&ED). The Communications Authority (CA), with the Office of the Communications Authority (OFCA) as the executive arm, shares concurrent jurisdiction with the C&ED to enforce the TDO in relation to any commercial practices of licensees under the BO and TO that are directly connected with the provision of telecommunications services and broadcasting services.

Television Code and Radio Code

The Television Code and Radio Code are enforced by the CA with OFCA as the executive arm.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

TDO

Yes, anyone can bring complaints to the C&ED via phone, email, fax or mail. Relevant complaints to the CA can be made via a complaint form that can be returned by mail, fax or email or submitted online. All complaints will be reviewed, and the enforcement agencies will decide whether to investigate the case further. It should be noted that most of the relevant offences apply only to business-to-consumer conduct as opposed to business-to-business conduct.

Television Code and Radio Code

Yes, anyone can bring a complaint to the CA regarding allegations that a licensee may have breached the Television Code or Radio Code. Complaints should be made via a complaint form, which can be returned by mail, fax or email or submitted online. The CA will review and investigate a case and if there is prima facie evidence of a breach, the case will be referred to the Broadcast Complaints Committee for further consideration and recommendation to the CA.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

TDO

Under the TDO, any person found guilty of contravening the relevant sections will have committed a criminal offence and be liable for:

- a maximum penalty of HKD500,000 and imprisonment for five years on conviction on indictment; and a fine of HKD100,000 and imprisonment for two years on summary conviction; and
- the court may also order the convicted party to compensate any person for the financial loss resulting from the offence.

As an alternative to initiating prosecution, the TDO provides for a civil compliance-based mechanism under which the trader can provide an undertaking not to commit or repeat the conduct. However, the enforcement agency is more likely to institute criminal proceedings than to seek an undertaking where there is a serious contravention. An injunction may also be applied for to stop the contravening act.

Television Code and Radio Code

A breach of the Television Code and the Radio Code may lead to the following possible sanctions:

- financial penalty not exceeding HKD200,000 for the first occasion on which a penalty is imposed, HKD400,000 for the second occasion, and HKD1 million for any subsequent occasion for contravening the Television Code;
- a financial penalty not exceeding HKD80,000 for the first occasion on which a penalty is imposed, HKD200,000 for the second occasion and HKD400,000 for any subsequent occasion for contravening the Radio Code;





- inclusion in the relevant licensed service a correction and/or apology; and
- suspension or revocation of the license.

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

Due to the pandemic, the regulators in Hong Kong have been focusing on the sale of defective surgical masks, COVID-19 rapid antigen test kits and other anti-epidemic products which involve suspected false trade descriptions.

Various special enforcement actions took place and a number of sellers who were alleged to have sold such anti-epidemic products with false trade descriptions via online social media platforms were arrested. Some were convicted and fined.

In addition, as the socio-economic situation evolves, online shopping has become very popular. The regulators are keen on monitoring unfair trade practices involved in online shopping and have actively initiated investigations and prosecutions where appropriate to address the increased consumer concerns.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

TDO

An aggrieved party may institute private action for the amount of the loss or damage suffered due to another person's conduct which constitutes an offence under the specified provisions of the TDO. It should be noted that most of the relevant offences apply only to business-to-consumer conduct as opposed to business-to-business conduct.

Television Code and Radio Code

Private companies and consumers cannot bring a claim under the Television Code and Radio Code.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

TDO

The claimant can recover damages under the TDO.

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

There is generally no requirement to pre-clear advertising in Hong Kong.

However, there are some pre-approval requirements for advertisements in some industry-specific legislation.

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, the Association of Accredited Advertising Agents of Hong Kong (the 4As) has issued a Code of Practice to regulate the conduct of its members in advertising (HK4A Code). The members of the 4As consists of companies, organizations or individuals in the advertising industry.

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

The word "advertisement" is interpreted under the HK4A Code in its broadest sense to cover any form of advertising.

HOW IS IT ENFORCED?

The 4As is a self-disciplining body. Any member who has failed to comply with the HK4A Code will be penalized in accordance with the rules of the association.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The 4As is itself the regulator to ensure compliance with the HK4A Code.





CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. Complaints can be made informally to the 4As if any member is found to be contravening the HK4A Code. The regulator, the 4As, will investigate the issue.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

There would be warnings to the member who has contravened the HK4A Code and depending on the severity of the case, the 4As has the power to suspend or terminate the membership of the member.

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

TDO

The TDO prohibits false trade descriptions, false, misleading or incomplete information, false marks and misstatements in respect of goods or services provided in the course of trade.

Traders should provide accurate, truthful and pertinent information in relation to goods or services to allow consumers to make an informed decision. A commercial practice is a misleading omission if it, taking into account the relevant factors in the context:

- omits or hides material information;
- provides material information in a manner that is unclear, unintelligible, ambiguous or untimely; or
- fails to identify its commercial intent, unless this is already apparent from the context,

and as a result, it causes, or is likely to cause, the average consumer to make a transactional decision that the consumer would not have made otherwise.

Television Code and Radio Code

The Television Code sets out generic advertising standards governing misleading advertising, including:

- Advertising materials should be clearly identifiable so viewers can make their own assessment and attach appropriate weight to it.
- The advertisement must be a truthful representation of the product or services, all factual claims and best-selling claims should be capable of substantiation and no advertisements may make misleading claims implying special features which cannot be established.
- For products or services that include substantiation, references to any research results or tests should be presented carefully and should not mislead viewers.
- Irrelevant data and scientific jargon must not be used to mislead.

The Radio Code also sets out generic advertising standards governing misleading advertising, namely:

- The advertisements must be clearly distinguishable and be recognizably separate from the programmes.
- Great care must be placed to prevent the presentation of false, misleading or deceptive advertising.
- Advertisers must produce evidence to substantiate any description, claims or illustrations used.





WHAT KIND OF SUBSTANTIATION IS REQUIRED?

TDO

Under the TDO, there's no specific requirement in respect of substantiation. However, claims without sufficient supporting evidence may constitute an offence of false trade descriptions.

Obvious exaggerated statements and puffery are legitimate in circumstances where the statements are not meant to be taken literally and the average consumer is unlikely to take the words literally.

Claims with reference to quantifiable standards must be substantiated. For example, "the best-selling product in a particular year" would be expected to be substantiated by showing the corresponding sales records.

Traders are highly encouraged to obtain documentary proof (eg certificates of origin, certificates issued by accredited laboratories and scientific reports) which could support the trade descriptions applied to the products to ensure trade descriptions are not false.

Television Code and Radio Code

Under both the Television Code and Radio Code, descriptions, claims or illustrations should not expressly or by implication depart from the truth or be misleading about the product or service advertised and should be substantiated with evidence.

Special categories of products or services including, for example, claims relating to nutrition or dietary effects, medical preparations and treatments and real property are subject to specific substantiation requirements.

The Television Code further sets out specific requirements for factual and best-selling claims:

- where a factual claim is substantiated by research or testing based on the advertiser's own assessment or work done at his request, the source and date of the assessment must be indicated in the advertisement;
- best-selling claims must be substantiated by independently audited figures or probability sample surveys which are of industry-wide accepted standard or scientifically conducted to ensure findings are statistically significant, reliable and valid;
- best-selling claims should not be used unless there's adequate and explicit specification in the advertisement of the category of brand leadership, country, and the time period it covers; and
- superlatives like "most popular," "most preferred," "most favored" when used to suggest a top selling position should be subject to the same governing standards for best-selling claims.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

Television Code and Radio Code





In general, all advertising should be legal, clean, decent, honest and truthful. It is required that advertisements should be presented with courtesy and good taste and should not disparage competitors, play on fear, or include disturbing materials. Advertisements for unacceptable services or products prohibited under the Television Code and/or Radio Code include but are not limited to:

- firearms and associated equipment;
- fortune-tellers and the like (other than subject of general interest, eg horoscopes, feng shui, etc.);
- unlicensed employment services, registries or bureaus;
- betting, excluding advertisements for lotteries, football or horse racing betting, which are authorized under the Betting Duty Ordinance (Cap. 108) (BDO);
- night clubs, sauna houses or similar establishments in which hosts or hostesses are employed for the primary purpose of attracting or entertaining customers or in which activities involving sexual behavior are presented;
- escort services and dating services targeting young persons under the age of 18;
- pay per call information services that offer adult material of a sexual nature, not including licensed services restricted for adult viewing.

There are other specific ordinances governing socially irresponsible advertising. The Race Discrimination Ordinance (Cap. 602), Sex Discrimination Ordinance (Cap. 480), Disability Discrimination Ordinance (Cap. 487) and Family Status Discrimination Ordinance (Cap. 527) have specific provisions regulating discriminatory advertising involving race, sex, disability and family status. The Control of Obscene and Indecent Articles Ordinance (Cap. 390) (COIAO) regulates the publishing of obscene and indecent articles.

WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

The Television Code and Radio Code set out requirements on advertisements targeted at children. Particular care is required if the advertising is broadcast within or in close proximity to programmes or channels targeting children, or in which children are to be employed. In general, advertisements should not:

- harm children physically, mentally, or morally;
- take advantage of children's natural credulity and sense of loyalty;
- encourage children to take part in any scheme that contains an element of danger to them;
- urge children to purchase or ask their parents or others to purchase;
- contain any appeal to children which suggests that unless the children buy the product or service or encourage others to buy the product or service that they will be failing in some duty;
- lead them to believe that if they do not own the product, they will be inferior to other children;
- deal with the activities of a club without the submission of satisfactory evidence that the club is carefully supervised, and that it is not a secret society;





- exaggerate the prizes and the chances of winning if it is a competition for children; and
- be misleading, taking into account children's immaturity of judgment.

In addition, certain advertisements are prohibited from being broadcast in close proximity to children's programmes eg, advertisements that are frightening, provoke anxiety, contain depictions of violent, dangerous or anti-social behavior and contain products or material not suitable for children. The appearance of children in advertisements is also subject to strict control – for example, participation in advertisement of alcoholic or tobacco related products is prohibited.

Other relevant industry-specific legislation includes the COIAO under which publishing an indecent article to a person who is a juvenile is prohibited. The BDO also prohibits advertisements or promotional materials relating to horse racing or football betting and lotteries targeting juveniles.

Comparative advertising

IS IT GENERALLY ALLOWED?

Yes.

WHAT ARE THE KEY RESTRICTIONS?

Comparative advertising is generally allowed provided it is in accordance with honest practices.

It is a defense against trade mark infringement under section 21 of the Trade Marks Ordinance (Cap. 559) if the use of the registered trade mark is for the purpose of identifying goods or services as those of the owner of the registered trade mark and the use is in accordance with honest practices in industrial or commercial matters.

In determining whether the use of the mark is honest, the court will consider factors that are relevant, including in particular:

- whether the use takes unfair advantage of the trademark;
- whether the use is detrimental to the distinctive character or repute of the trademark; or
- whether the use is such as to deceive the public.

The Television Code and Radio Code both prohibit claims that have the effect of disparaging competitors, competing products or services or other industries, professions or institutions.

What are the key requirements for sustainability/ ESG claims?

In general, there are no special rules in Hong Kong for claims regarding a product's impact on the environment or sustainability. All sustainability and ESG claims should not be misleading or false and should comply with the TDO, Television Code and Radio Code.

It's worth noting that the Hong Kong Securities and Futures Commission (SFC) has issued guidelines on ESG funds. In a circular on June 29, 2021, it provided guidance on enhanced disclosure of ESG funds and additional guidance for funds with a climate-related focus. The guidelines took effect from January 1, 2022. In general, reference to ESG or similar terms in the fund's name and marketing materials should accurately and proportionately reflect the ESG features against other features of the fund and should not overstate or overemphasize the ESG features. Other disclosure requirements include information concerning ESG investment strategy, expected proportion of ESG investment, for investors to make an informed investment decision.





Is there sector-specific regulation in each of the following areas?

ALCOHOL

Television Code and Radio Code

In summary, alcohol advertisements should only be targeted to adult audiences and no children or adolescents should be used in such advertisements. The advertisements should not be shown in proximity to children's programmes. It is prohibited to present drinking as a desirable new experience or to link drinking with one's popularity and success or to show the use of alcohol as essential to maintain social status, for stress relief etc.

Further conditions setting out restrictions on advertising alcohol beverages can be found here:

[Television Code](#) – Chapter 6

[Radio Code](#) – Paragraph 17

FINANCIAL SERVICES

There are several ordinances regulating advertising in relation to financial products.

Banking Ordinance (Cap. 155) (BO)

Under the BO, advertisements containing an invitation to make deposits or to enter into any agreement to make deposits with unauthorized institutions are prohibited. The Hong Kong Monetary Authority has the power to order authorized institutions to withdraw or remove advertisements if they consider the statement or representation made to be false, misleading or deceptive.

[BO](#) – Sections 92 and 95

Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (C(WUMP)O)

The prospectus regime under the C(WUMP)O imposes specific requirements for advertisements concerning prospectus to ensure the public can make an informed decision.

[Companies \(Winding Up and Miscellaneous Provisions\) Ordinance](#) – Section 38B

Money Changers Ordinance (Cap. 34) (MCO)

The MCO requires that where a money changer advertises the rates of exchange for any currency, the money changer must give equal prominence to buying rates and selling rates for each currency and display the buying and selling rates in such a way that a potential customer is able to compare the buying rate with the selling rate for any currency without the need to refer to more than one board.

In addition, a money changer must not advertise that they charge or do not charge commission or that they make or do not make any other charges on exchange transactions.

[MCO](#) – Section 8

Securities and Futures Ordinance (Cap. 571) (SFO)

Under the SFO, advertisements relating to certain investments are prohibited unless they have been authorized by the SFC. Furthermore, persons not duly licensed or registered to carry out specified regulated activities may not issue advertisements related to presenting oneself as being prepared to carry on such a regulated activity.

[SFO](#) – Sections 103, 105 and 109





The SFC has also published some [Guidelines](#), which are applicable to advertising in respect of certain financial activities, for example:

[Advertising Guidelines Applicable to Collective Investment Schemes](#)
[Authorized under the Product Codes](#)

[Guidance Note for Persons Advertising or Offering Collective Investment Schemes on the Internet](#)

[Guidelines on Marketing Materials for Listed Structured Products](#)

Television Code and Radio Code

The Television Code and Radio Code require licensees to ensure that the financial advertisements comply with all legal and regulatory requirements under the relevant ordinances and codes for financial advertising. There are also specific requirements in the Television Code and Radio Code for:

- deposit and saving facilities
- lending and credit
- review or advice about the stock market or investment prospects
- investment products
- regulated activities under the SFO
- financial publications
- estimate of the proceeds of insurance policies

[Television Code](#) – Chapter 6

[Radio Code](#) – Paragraph 21 and Appendix I

FOOD AND BEVERAGE

Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO)

Advertisements making claims relating to nutrition or dietary effects must, in addition to the TDO, comply with the PHMSO. It's an offence under the PHMSO to publish an advertisement that falsely describes food or is likely to mislead as to the nature, substance or quality of the food.

There are also several other provisions related to advertising in the PHMSO.

[PHMSO](#) – Section 61

Television Code and Radio Code

Both the Television Code and Radio Code specifically contain rules for food with claims on nutrition or dietary effects, including:

- specific claims for the nutritional value of food must be supported by sound scientific evidence and must not give a misleading impression of nutritional or health benefits of the food as a whole; and
- advertisements for dietary supplements, including vitamins or minerals, must not state or imply that they are necessary as additions to a balanced diet in order to avoid dietary deficiency or that they are the only means to enhance normal good health.

[Television Code](#) – Chapter 6

[Radio Code](#) – Paragraph 27





GAMBLING

Gambling Ordinance (Cap. 148) (GO) and BDO

In Hong Kong, gambling is unlawful except as exempted or licensed under the relevant ordinances. These ordinances also contain some provisions which are relevant to gambling-related marketing and advertising. Under the GO, it's illegal to promote or facilitate bookmaking or betting with a bookmaker except as authorized. Under the BDO, the conduct of lotteries and horse races or football matches betting are not allowed to be advertised on television or radio during specific hours. In addition, no such advertising or promotional activity should target juveniles, exaggerate the likelihood of winning or expressly, or impliedly suggest that betting on football matches or horse races and lotteries are sources of income or viable ways to overcome financial difficulties.

[GO](#) – Sections 16A and 16B

[BDO](#) – Sections 6GB(4), 6I(4) and 6X(4)

Television Code and Radio Code

The Television Code and Radio Code also contain provisions that prohibit advertisements on betting (including pool) except for those authorized by or under the BDO. Advertisements for horse racing and football betting publications and pre-recorded information on horse racing and football betting are allowed provided the advertisements do not encourage betting or make reference to betting tips. However, such advertisements must comply with specific requirements – for example, they should not feature extensive or reckless betting.

[Television Code](#) – Chapter 5

[Radio Code](#) – Paragraph 11

PHARMACEUTICAL/MEDICAL DEVICES

PHMSO

It's an offence under the PHMSO to publish an advertisement that falsely describes any drug or is likely to mislead as to the nature, substance or quality of the drug. Drug includes any medicine, Chinese herbal medicine or proprietary Chinese medicine for internal or external use by humans.

[PHMSO](#) – Section 61

Undesirable Medical Advertisements Ordinance (Cap. 231) (UMAO)

The UMAO regulates the publishing of medical advertisements. It provides that no one shall publish any advertisements that is likely to lead to the use of any medical, surgical appliance or treatment for the purpose of treating human beings for or preventing them from contracting any disease or conditions specified in Schedule 1 of the UMAO, except for permitted purposes, and for treating human beings for purposes specified in Schedule 2 of the UMAO.

[UMAO](#)

Television Code and Radio Code

The Television Code and Radio Code both have a specific section regulating medical preparation and treatments. Unacceptable products or services that cannot be advertised include eg pregnancy testing services, relief of cure of alcoholism and drug addiction.





There should not be any impression of professional advice and support in an advertisement, unless it can be substantiated that professional advice or recommendation has been obtained from an acceptable organization of the relevant profession. Other restrictions include that no medical advertisements should exploit one's credulity, encourage excessive use of a medical preparation or treatment.

[Television Code](#) – Chapter 6

[Radio Code](#) – Paragraph 26 and Appendix II

TOBACCO AND E-CIGARETTES

Smoking (Public Health) Ordinance (Cap. 371) (S(PH)O)

The S(PH)O was amended to ban the import, promotion, manufacture, sale and possession for commercial purposes of alternative smoking products in Hong Kong. The new provisions took effect on 30 April 2022. Under the amended ordinance, “alternative smoking products” include electronic smoking products, heated tobacco products, herbal cigarettes and their accessories. The “smoking product advertisement” is defined to cover advertisements in relation to conventional smoking products (eg cigarette and cigarette tobacco) and alternative smoking products.

The amended ordinance contains provisions which prohibit, subject to exceptions:

- smoking product advertisements in printed publications;
- display of smoking product advertisement in writing or other permanent or semi-permanent form;

- broadcast of smoking product advertisement by radio or visual images;
- exhibition of smoking product advertisement by film; and
- placing of smoking product advertisement on the internet.

[SPHO](#) – Sections 11, 12, 13, 13A and 13B.

The Administrative Measures for E-Cigarettes, coming into effect on May 1, 2022 (Measures), lay out the regulations for the production, marketing and sales of e-cigarettes. The Measures specify that advertising legislation or regulations regarding tobacco products also apply to e-cigarettes. The Measures further ban holding exhibitions, forums and expositions, etc. to promote e-cigarette products. In addition to the Measures, the State Tobacco Monopoly Administration, the country's main regulator of tobacco products, further released the Provisions on E-Cigarettes Warning Signs, which set out specific rules regarding the warning signs and prohibitive terms on e-cigarettes product packaging.

Television Code and Radio Code

The presentation of tobacco products as prizes or gifts for television and radio contests is prohibited under the Television Code and Radio Code.

[Television Code](#) – Chapter 6

[Radio Code](#) – Paragraph 14 – 16





OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Film
- Political advertising
- Real estate
- Educational courses
- Substances used in reproductive technology
- Weight control and slimming

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Italy



Italy

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

- Legislative Decree September 6, 2005, no. 206 (Consumer Code)
- Legislative Decree August 2, 2007, no. 145 on misleading advertising (L.D. 145/2007)
- Legislative Decree August 2, 2007, no. 146 on unfair commercial practices, whose provisions have been included in the Consumer Code
- Legislative Decree July 31, 2005, no. 177 on TV advertising (Audiovisual media services Code)
- Section 2598 of the Italian Civil Code on unfair competition

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

No. The legislation referred to in the “general legislation” section applies across all Italy.

HOW ARE ADVERTISING LAWS ENFORCED?

- Civil Courts
- Autorità Garante della Concorrenza e del Mercato (Italian Competition and Markets Authority, (AGCM))
- Autorità per le Garanzie nelle Comunicazioni (Italian Communications Authority, (AGCOM))

WHO ARE THE RELEVANT REGULATORS?

AGCM in the case of misleading advertising and unfair commercial practices.

AGCOM in the case of breach of the Audiovisual Media Services Code.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes, private companies can report misleading commercial communications or comparative advertising to the AGCM either by ordinary post, by email or by an online form available on the AGCM’s website. They can also report a breach of the Audiovisual Media Services Code to the AGCOM via an online form on the latter’s website.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The AGCM can intervene – also through the adoption of precautionary measures – by ordering the cessation of the unfair practice and by imposing administrative pecuniary fines up to EUR5 million.

The AGCOM can adopt administrative pecuniary fines, and measures consisting of the temporary suspension of the activity (max six months) as well as the revocation of authorization to carry out an activity.



WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

Influencer content not identified as advertising is a significant issue. During the COVID-19 pandemic, health claims have been a particular area of focus (eg disinfectant products, products for purification, air conditioning, humidification and cooling of the air).

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Private companies may bring claims before the courts based on misleading advertising and unfair competition, while consumers may bring claims based on the Consumer Code.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

Remedies include take-down of the advertising, an order not to carry out the same conduct in the future, and damages compensation.

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

Yes, but for specific products (eg medicines).

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, there is the Self-Regulation Advertising Code (*Codice di Autodisciplina Pubblicitaria*, (CAP)).

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

The CAP applies to all users, advertising agencies, and all those who have accepted it directly or through their trade association or the provision of an advertising agreement with a party who is a CAP member. It applies to all means of communications, save for specific rules applying to each means.

HOW IS IT ENFORCED?

The Advertising Self-Regulation Authority (*Istituto di Autodisciplina Pubblicitaria*, (IAP)) investigates cases (either on receipt of a complaint or at its own instigation), and may make a formal ruling that an advertisement breaches (or does not breach) the CAP. The IAP comprises the Jury and the Review Board. The Jury examines the marketing communication submitted to it and judges it according to the provisions of the Code. The Review Board autonomously submits to the Jury any marketing communications that have been reported to it or that it believes to be non-compliant with the provisions of the Code safeguarding consumer interests or marketing communication in general. The Jury and Review Board can, at any time, ask the marketer to supply documentation in support of the truthfulness of the data, descriptions, statements, illustrations or testimonials used. The Jury and Review Board may use experts to evaluate the documentation.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The IAP.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. Complaints to the IAP can be sent via an online form on the IAP's website. Petitioners should submit a written request containing a description of the marketing communication that's being submitted to the Jury, the reasons for the petition, supporting documentation and the relevant administrative charges.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

If the Review Board assesses that an advertisement is not compliant with the Code advertising principles, it may:

- for minor breaches, invite the advertiser to modify the message;



- if the message is manifestly incorrect, issue an injunction to desist, to block its display;
- in more complex cases, submit a petition to the Jury. In this event, the Jury may impose the blocking of the advertising campaign and, in some cases, it may require the publication of an extract of its decision through media specified by the Jury.

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

Generally speaking, the principles which should inspire an advertising campaign are:

- Transparency and recognizability: the commercial communication must be clear and recognizable as an advertisement, ie it must be distinguishable from other forms of communication to the public, including by adopting clearly understandable graphic labels.
- Truth: the commercial communication must be truthful, ie it must avoid any declaration or representation that is such as to mislead consumers, even by means of omissions, ambiguities or exaggerations that are not clearly hyperbolic. Misleading representations may occur in particular in relation to the characteristics and effects of the product, the price, any claim that something is “free,” the terms of sale, availability, the identity of persons represented in an advertisement, and details of any prizes or awards in a promotional advertisement. On the other hand, advertising consisting of statements that are clearly not meant to be taken literally is acceptable.
- Fairness: the commercial communication must be correct, ie it must be presented in such a way as not to harm other competitors.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

Documentary evidence which substantiates all claims that consumers are likely to regard as objective must be held before distributing a marketing communication or submitting it for publication. A particularly high level of substantiation – where relevant consisting of trials on human subjects – is required for medical and scientific claims about health and beauty products, as well as for commercial communications declaring or evoking environmental or ecological benefits.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

Prohibitions include requirements that commercial communications must not:

- contain statements or representations of physical or moral violence or which, according to the taste and sensibility of consumers, would be considered indecent, vulgar or repugnant;
- offend moral, civil or religious beliefs or anyone’s dignity in all its forms and expressions; and must avoid all forms of discrimination, including that of gender and race;
- contain representations of behaviors or attitudes marked by the sexualization of children, or of individuals who appear to be children.

WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

Commercial communications addressed to or targeted at children must not, in particular:

- contain anything that’s likely to result in their physical, mental or moral harm;



- exploit their credulity, loyalty, vulnerability or lack of experience;
- lead them to violate generally accepted rules of social behavior, take actions that expose themselves to dangerous situations, interpret the lack of possession of an advertised product as inferiority or failure of the parents to perform their duties;
- include a direct exhortation to children to buy, or persuade adults to buy, an advertised product.

Comparative advertising

IS IT GENERALLY ALLOWED?

Yes, within the limits set above.

WHAT ARE THE KEY RESTRICTIONS?

Commercial communication that includes a comparison with an identifiable competitor is considered lawful upon the following conditions:

- it is not misleading pursuant to Sections 21, 22 and 23 of the Consumer Code;
- it compares goods or services that satisfy the same needs or have the same objectives;
- it objectively compares one or more essential, relevant, verifiable and representative characteristic, possibly including the price, of such goods and services;
- it does not create confusion on the market between professionals or between the advertiser and a competitor or between the brands, trade names, other distinctive signs, goods or services of the advertiser and those of a competitor;

- it does not discredit or denigrate trademarks, trade names, other distinctive signs, goods, services, activities or position of a competitor;
- for products with designation of origin, it refers to products with the same designation;
- it does not unfairly benefit the reputation associated with the trademark, trade name or other distinctive sign of a competitor or the designations of origin of competing products;
- it does not present a good or a service as imitation or counterfeit goods or services protected by a registered trademark or trade name.

What are the key requirements for sustainability/ ESG claims?

There are specific rules and guidance for commercial communications claiming or suggesting environmental or ecological benefits, which include the following:

- they must be based on truthful, pertinent and scientifically verifiable evidence;
- they must ensure a clear understanding of which aspect of the product or activity the claimed benefits refer to.

Commercial 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.



Is there sector-specific regulation in each of the following areas?

ALCOHOL

Some provisions on the advertising of alcoholic beverages are set by Law no. 125 of 2001 on alcoholics and alcohol-related issues, which:

- requires radio and TV broadcasters and advertising agencies, with the representatives of the manufacturing companies, to adopt self-regulatory codes on the methods and contents of commercial communications regarding alcohol;
- establishes limitations to protect minors from alcohol advertising; and
- prohibits the dissemination of misleading messages (Article 13).

In the implementation of the latter, some specific rules on commercial communications concerning alcoholic beverages have been included in the CAP (Section 22). As a general principle, such commercial communications must conform to consumption models inspired by measure, fairness and responsibility, thus protecting the primary interest of people and in particular of children and adolescents in a family, social and working environment safeguarded from the negative consequences of alcohol abuse.

Among other things, commercial communications must not:

- encourage excessive, uncontrolled, and hence harmful consumption of alcoholic beverages;
- depict an unhealthy attachment or addiction to alcohol;
- generally lead people to believe that resorting to alcohol can solve personal problems;
- target or refer to minors, even only indirectly; or
- depict minors or people who clearly appear to be minors, consuming alcohol.

Further rules are set by the TV and Minors self-regulation code, which binds TV broadcasters to comply with rules of conduct, aimed at safeguarding the public with less ability to judge and discern advertising messages, through careful content control, and targeted programming based on time slots.

Also, the advertising of alcoholic products must comply with the provisions of the L.D. no. 145/2007 and in particular, as products likely to endanger the health and safety of the public, alcohol advertising must not induce consumers to neglect the normal rules of prudence and supervision (Section 6).

FINANCIAL SERVICES

Financial advertising is governed by Legislative Decree February 24, 1998, no. 58, the Consolidated Finance Act (Section 101), and by provisions issued by the main financial protection and regulatory bodies, ie CONSOB (Securities and Exchange Commission) regulations concerning companies listed on the stock exchange, companies listed on the restricted market, trust companies and funds and ISVAP (Supervisory institute of private and public-interest insurance companies) regulations related to insurance companies operating in the life insurance market.

The CAP also provides for some specific rules concerning commercial communications aimed at soliciting or promoting financial transactions, and in particular transactions for savings and investments in securities or real estate property. Among other requirements, such commercial communications must supply clear and comprehensive information to avoid misleading consumers regarding the promoter, the nature of the proposal, the quantity and characteristics of the products or services being offered, the terms of the transaction, and the relevant risks, to ensure that the recipients of the message, even if inexperienced in this field, can make informed choices about the use of their resources.



FOOD AND BEVERAGE

Specific rules on the advertising of food products are set by Regulation (EU) no. 1169/2011 (see European section [INSERT LINK]) on the provision of food information to consumers. In accordance with EU legal developments, the Italian legislator adopted the Legislative Decree December 15, 2017, no. 231 containing sanctions for the breach of the Regulation (EU) no. 1169/2011.

The CAP also contains specific rules relating to food advertising, providing, among other things, that advertisements must not diminish the role of parents and other educators in providing sound dietary advice or lead consumers to adopt unbalanced eating habits, or neglect the need to follow a healthy lifestyle.

Specific rules are also set for food supplements and health foods.

GAMBLING

Decree-law no. 87/2018 (converted into Law August 9, 2018, no. 96) provided for an absolute ban on advertising of games and bets, including sponsorships and forms of indirect advertising. In particular, Section 9 prohibits any form of advertising, even indirect, relating to games or bets with money winnings, regardless of the medium used (radio, TV, press, internet, social media), including sports, cultural or artistic events. On April 18, 2019, AGCOM issued guidelines on how to implement the advertising ban contained in Section 9 of the above Decree-law.

PHARMACEUTICAL/MEDICAL DEVICES

Specific rules are set by the Legislative Decree April 24, 2006, no. 219 on health advertising and the Legislative Decree February 24, 1998, no. 46 on medical devices, which, among other things, provides that advertising referring to medicines and medical devices addressed to the public must be pre-authorized by the Ministry of Health, and that solely non-prescription medicines can be advertised to the public, while no prescription-only medicines can be advertised to consumers.

Further rules are set by the guidelines of the Ministry of Health which also regulate the advertising of medical devices via social media.

The CAP also deals with commercial communications concerning medical products (Section 25), stating, among other things, that commercial communications must consider the sensitivity of the matter and display the utmost sense of responsibility, drawing the consumer's attention to the need for caution in using the product, as well as accurately reflecting the details contained in the fact sheet summarizing the product specifications.



TOBACCO AND E-CIGARETTES

Law April 10, 1962, no. 165 generally prohibits the advertising of tobacco products.

Specific rules are set by the Ministerial Decree November 30, 1991, no. 425, which prohibits television advertising of cigarettes and any other tobacco product, even if carried out indirectly, through the use of names, brands, symbols or other characteristic elements of tobacco products or companies whose main activity involves the production and sale of such products. In addition, the Legislative Decree December 9, 1993, no. 581 prohibits the sponsorship of programs by persons whose main activity involves the manufacture or sale of cigarettes or other tobacco products.

Similar rules have been implemented for e-cigarette products, under Legislative Decree January 12, 2016, no. 6 on the processing, presentation and sale of tobacco products and related products, including electronic cigarettes and refill containers, both of which are among the products whose commercial communication is prohibited.

OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Cosmetic and personal hygiene products
- Physical and aesthetic treatments
- Instruction courses and study or teaching methods
- Package tours
- Sales systems (eg distance sales)
- Political cause/party advertising

Influencer marketing

We have published a dedicated guide that examines the legal frameworks governing influencer marketing in 28 key global jurisdictions. It addresses the following questions from each jurisdictions' perspective:

- What qualifies as advertising under local law?
- What are the typical influencer practices and in which cases are they considered advertising?
- What legal obligations apply?
- What are the applicable laws, regulations or guidance?
- What are the consequences for influencers if advertising content is not clearly labelled?
- What legal risks apply when cooperating with influencers?

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Prize promotions

Similarly, we have published a dedicated Prize Promotions guide designed to introduce you to some of the key requirements surrounding prize promotions, from the management of the early development stages of a promotion, to the outline of potentially problematic issues.

Download our Prize Promotions guide [here](#).



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Netherlands

Netherlands

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

- Unfair Trade Practices Act, Dutch Civil Code Book 6 section 3A (*Burgerlijk Wetboek*) (implementing Directive 2005/29/EC)
- Products price indication decree (*Besluit prijsaanduiding producten*)
- Dutch Telecommunications Act (*Telecommunicatiewet*)

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

No. The legislation referred to in the “general legislation” section applies across the Netherlands.

HOW ARE ADVERTISING LAWS ENFORCED?

Regulators have a range of powers to enforce the relevant provisions of the Unfair Trade Practices Act, the Products Price Indication Decree, and the Dutch Telecommunications Act.

WHO ARE THE RELEVANT REGULATORS?

The primary regulator is the Dutch Authority for Consumers and Markets (ACM). With respect to the Dutch Telecommunications Act (which sets out anti-spam rules), the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) (AP) is also relevant.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes, anyone can submit a tip-off, report a breach, or otherwise notify the relevant authorities. The relevant authority will decide (based on its enforcement priorities) whether it wishes to investigate the case.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The relevant authorities can choose from a wide array of enforcement instruments, such as imposing regulatory fines, penalty orders or warnings. The sanctions and maximum fines vary according to the authority imposing the sanction. In the event of a violation, the ACM can generally impose a fine of up to EUR900,000 per violation. In certain cases, the maximum fine can be even greater than EUR900,000 and amount to a percentage of total annual turnover.

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

Sustainability claims, fake reviews and fake likes or followers, behavioral advertising, IoT devices, effective transparency, effects of the COVID-19 pandemic, the energy transition, algorithms and AI, dark patterns, unacceptable influencing of (young) consumers in digital ecosystems.





CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Yes, private companies and consumers can bring claims for breach of advertising legislation before the courts. For instance, competitors may request a prohibition of the advertisement in case of comparative advertising that does not meet the legal requirements. In practice, consumers are generally more likely to submit a complaint to the self-regulatory body (see “Self-regulatory systems” section below).

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

A prohibition, rectification or damages. It’s worth noting that damages can only be claimed in full proceedings on the merits (and not in interlocutory proceedings).

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

No.

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, the Dutch Advertising Code Committee (*Stichting Reclame Code*) (ACC) deals with the self-regulation system of advertising in the Netherlands. The advertising rules are laid down in the [Dutch Advertising Code](#) (*Nederlandse Reclame Code*) (NRC).

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

The scope of the self-regulatory systems is very broad. It includes all forms of advertisements and promotions, online (in paid for and non-paid for space, and in social media) and offline (eg hard copy, outdoor, point of sale, packaging).

HOW IS IT ENFORCED?

Anyone may submit a complaint to the Advertising Code Committee (ACC). The ACC will assess whether the advertisement in question complies with the rules of the Dutch Advertising Code (NRC). When a violation of the NRC is established, the sanction is a “recommendation” from the ACC to discontinue the non-compliant advertisement. Following the recommendation, the ACC will check if the advertiser has put the recommendation into effect. If not, the ACC will list the company as non-compliant on its website.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The Dutch Advertising Code Committee (*Stichting Reclame Code*).

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Anyone who feels an advertisement violates the Dutch Advertising Code can easily file a complaint at the ACC and, in principle, every complaint will result in a ruling. Complaints can be made via an online form and are free of charge for consumers. For private companies, there are limited fees associated with filing a complaint.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The main sanction in practice is the adverse publicity that results from publication of a recommendation (or non-compliant listing) by the ACC.

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

Misleading advertising is all advertising that includes incorrect information or information that’s unclear or ambiguous to the average consumer, and which would consequently entice or may entice the average consumer to make a transactional decision that they would otherwise not have made.





Misleading advertising claims may include any false, incomplete, or suggestive information about: the product, features of the product, the extent of the obligations of the advertiser, the price (or the way the price is calculated), necessary services and repair, quality, or the legal rights of the consumer.

Also, marketing communications must not mislead by omitting material information (ie information consumers need to make informed decisions about a product).

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

Documentary evidence substantiating all claims that consumers are likely to regard as objective must be held before distributing any marketing communication or submitting it for publication.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

Prohibitions include requirements that marketing communications should be in accordance with the law, the truth, good taste and decency. This includes that advertising must not offend human dignity nor contain or promote any type of discrimination based on gender, race, ethnic descent, nationality, religion, philosophy, handicap, age or sexual orientation.

Within the criteria of “good taste and decency,” an assessment must be made based on current social views as to whether the communication exceeds permissible limits, also considering the manner in which it is published and its effect on the public as a result.

In addition, marketing communications should not:

- contravene the public interest, public order or morality;
- be gratuitously offensive or constitute a threat to mental and/or physical public health;

- undermine confidence in advertising (whether through its form or content);
- arouse feelings of fear or superstition (unless there is a justifiable cause);
- be aggressive; nor
- be dishonest.

WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

The way children and minors/young people perceive and/or react to advertising depends on their age, experience, and the manner in which the advertising is brought to their attention. For example, the fact that an advertisement is suitable for minors/young people does not necessarily mean it would be suitable for children. When advertising is aimed at children and minors/young people, it’s important that the advertising message is recognizable as being advertising. In addition to this general rule, the [Children and Youth Advertising Code](#) indicates for each medium how advertising should be identified as being advertising.

Comparative advertising

IS IT GENERALLY ALLOWED?

Yes.

WHAT ARE THE KEY RESTRICTIONS?

Article 6:194a DCC provides a checklist of eight conditions for comparisons, all of which must be met before a comparison is permitted. Most notably, amongst other conditions, comparative advertising must:

- not be misleading;
- not create confusion between the marketer and its competitors;
- compare products meeting the same need or intended for the same purpose; and





- not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor.

What are the key requirements for sustainability/ ESG claims?

The Dutch Consumer and Market Authority (ACM) has produced [Sustainability Claim Guidelines](#). This guide contains rules of thumb and practical examples to help companies formulate sustainability claims.

Consumers and businesses increasingly want to contribute to a world that remains liveable in the long term. Therefore, they find it increasingly important to make sustainable choices. Consumers are more interested in the sustainability impact of products and services they purchase. This is a factor in their purchasing decision.

However, claims about sustainability are often seen as unreliable by consumers. Companies must be honest about sustainability and may only use clear, correct and relevant sustainability claims. The ACM has created five rules of thumb to help companies make honest sustainability claims:

- Make clear what sustainability benefit the product has.
- Substantiate sustainability claims with facts and keep them up to date.
- Comparisons with other products, services or companies should be fair.
- Be honest and specific about your company's sustainability efforts.
- Make sure visual claims and labels are helpful to consumers and not confusing.

Is there sector-specific regulation in each of the following areas?

ALCOHOL

Yes, there are two Special Advertising Codes as part of the NRC: [Advertising Code for Alcoholic Beverages 2014](#) and [Advertising Code for Alcohol-free and Low-Alcohol Beer](#).

- Advertising Code for Alcoholic Beverages 2014

Alcohol advertisements are subject to strict rules. The advertising code for alcoholic beverages outlines rules and restrictions on how advertising may be conveyed to the public. Alcohol advertising may for instance not target minors, or display, suggest, or encourage excessive or otherwise irresponsible consumption. Another example is that advertising for alcoholic beverages may not portray abstinence from alcohol consumption or moderate alcohol consumption in a negative manner. Additionally, the code provides restrictions with respect to sampling, maximum discounts, and the mandatory use of an advertising slogan “no alcohol under 18.”

- Advertising Code for Alcohol-free and Low-Alcohol Beer

The code for alcohol-free and low-alcohol beer (applicable to alcohol-free beer with a percentage of max. 0.5%) prohibits specifically targeting minors (and portraying individuals who are or appear to be evidently younger than 18 in advertising), and sets out restrictions in terms of promotions.



FINANCIAL SERVICES

There is significant regulation of financial promotions under Dutch law, in various acts:

The Dutch Financial Supervision Act (*Wet op het Financieel Toezicht*)

This Act outlines that any advertisement made by a financial undertaking regarding the offering of a financial product, a financial service or an ancillary service (as defined in article 1:1 of the Dutch Financial Supervision Act), must be correct, clear and not misleading. In addition, the financial undertaking must ensure that the commercial purpose of the information provided is clearly identifiable.

The Market Conduct Supervision (Financial Institutions) Decree (*Besluit Gedragstoezicht financiële ondernemingen Wft*)

This Decree outlines that an advertisement about a complex product must provide information about the main financial risks by means of a risk indicator. A risk indicator reflects the risk level of a complex product. In addition, advertisements concerning credit must contain a warning regarding the possible consequences of taking out the credit.

Further regulations on the Supervision of the Conduct of Financial Undertakings (*Nadere regeling gedragstoezicht financiële ondernemingen Wft*)

A risk indicator in advertisements for complex products must meet the requirements of this Act. The financial supervisory authority, the Dutch Authority for Financial Markets (*Autoriteit Financiële Markten*), published information on what constitutes a good and clear picture of a risk indicator. A good example of this is the well-known phrase “*geld lenen kost geld*” (“borrowing money costs money”) included in advertisements.

FOOD AND BEVERAGE

The Dutch Food and Consumer Product Safety Authority (NVWA) monitors the safety of food and consumer products. There are various guidelines and instructions that must be adhered to, which are (partly) included in the [Advertising Code for Food Products 2019](#), which forms part of the Dutch advertising code. This advertising code includes limitations in terms of the use of health claims and limitations in terms of targeting advertising for food products to children of 12 years and younger.

GAMBLING

In the Netherlands, gambling operators are regulated by the Dutch Gambling Authority (*Kansspelautoriteit*), under the Dutch Gambling Act (*Wet op de Kansspelen*). To advertise in the Netherlands, gambling operators must comply with the relevant licensing requirements set out in the legislation. In addition, the [Online Gambling Advertising Code](#), which forms part of the Dutch Advertising Code, outlines that advertising for online games of chance should, for example: include information on minimum age; use the “play consciously” slogan; be restrained; be aimed at responsible participation; and not incite risky gaming behavior that can lead to addiction to games of chance.

PHARMACEUTICAL/MEDICAL DEVICES

In the Netherlands, advertisements for medicines are regulated in the Dutch Medicines Act (*Geneesmiddelenwet*). The Act makes a distinction between prescription medicines and self-care drugs (drugs without a prescription). It's prohibited to advertise prescription drugs to the public. It's possible to advertise prescription drugs to professionals, such as doctors and dentists, under certain strict conditions. These conditions are outlined in the Medicines Advertising Code of Conduct (*Gedragscode Geneesmiddelenreclame*) of the Medicines Advertising Code Foundation.





It's possible to, under certain conditions, advertise medicines that are available without a prescription (self-care medicines). The Advertising Code Commission adopted special advertising codes relevant to this area, including the Public Advertising Code for Medicines 2019, the [Advertising Code for Medical Self-Care Products 2019](#), the [Code for Health Product Promotion](#) and the [Code for Medical Cosmetic Treatments performed by Physicians](#).

TOBACCO AND E-CIGARETTES

The Dutch Tobacco Products and Related Products Act (*Tabaks- en rookwarenwet*) regulates advertising for tobacco products and related products. Advertising tobacco products or related products (e-cigarettes and refill packs/cartridges – both with and without nicotine – and herbal products intended for smoking) is prohibited in the Netherlands. This applies to retailers, manufacturers, wholesalers and importers. The Dutch Food and Consumer Product Safety Authority (*Nederlandse Voedsel- en Warenautoriteit*) monitors all possible forms of marketing, promotion, advertising and sponsorship for these products.

OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Use of Postfilter (Dutch Robinson list)
- Letter box advertising, door-to-door sampling, direct response advertising
- Distribution of unaddressed printed advertising material
- Advertising via email
- Telephone information services
- Passenger cars
- Travel offers
- Mobile services

- Telemarketing
- Field marketing
- Cosmetics
- Infant and follow-on formulae

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Spain





Spain

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

- Spanish General Act 34/1988 on Advertising
- Spanish Act 34/2002 on Information Society Services and E-Commerce
- Spanish Act 3/1991 on Unfair Competition
- Spanish Royal Legislative Decree 1/2007 approving the Spanish General Act for the Defence of Consumers and Users and other complementary laws

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

Yes, there is federal and regional (from the Autonomous Regions of Spain) legislation. In Spain, advertising legislation is mainly federal legislation. However, some Autonomous Regions regulate certain aspects of advertising (such as institutional advertising of public administrations, dynamic advertising, and advertising affecting consumers), but these specific aspects are subject to the federal regulations reflected in question 1(a) of the questionnaire.

HOW ARE ADVERTISING LAWS ENFORCED?

Mainly through civil courts, at the request of a party (although the active legitimation is very generous, covering not only those affected but also associations or the public prosecutor's office, among others).

In addition, if you're a consumer or a member of the Spanish Association for the Self-Regulation of Marketing Communication (AUTOCONTROL), then applicable laws can be enforced by this institution if the offender is also a member. In situations of slander, libel or false allegations, or misrepresentations that cause serious and manifest harm to consumers, criminal courts will enforce the law.

Finally, if the matter concerns consumers, a complaint can be lodged with the competent consumer authority in each Autonomous Region.

WHO ARE THE RELEVANT REGULATORS?

AUTOCONTROL (self-regulatory association, only binding for members or companies agreeing to be subject to its decisions), the Spanish National Markets and Competition Commission (CNMC) is in charge of compliance with the regulations on audio-visual marketing communications, and the Autonomous Regions' consumer authorities.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes, any natural or legal person with a legitimate interest in complaining against a particular marketing communication can do so on the CNMC's website. Through the website any member of AUTOCONTROL or any consumer (even if they are not a member) can access the AUTOCONTROL Advertising Jury, which is an independent extrajudicial body responsible for resolving advertising disputes and complaints.



WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

In the case of the CNMC in application of the aforementioned Spanish Audiovisual Communication Act, the fines vary greatly depending on whether it's a very serious, serious or minor infringement, and whether it was committed by a television or radio and electronic communication service. For television adverts, the amount ranges between EUR500,001 and EUR1 million (very serious infringement), EUR100,001 and EUR500,000 (serious infringement), and up to EUR100,000 (minor infringement). In all other media, the fines will range from EUR100,001 to EUR200,000 (very serious infringement), from EUR50,001 to EUR100,000 (serious infringement), and up to EUR50,000 (minor infringement).

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

AUTOCONTROL: recent areas of focus include sustainability claims, health claims relating to the COVID-19 pandemic (eg protective equipment, cleaning products, medicines, tests), influencer content not identified as advertising, claims likely to harm children/other vulnerable individuals, cryptocurrency trading ads.

The CNMC focuses mainly on requests for advertising exemptions.

Recent rulings have dealt with misleading advertising where the truthfulness of the information is not proven, unlawful automobile advertising, unlawful advertising related to the prohibition of advertising of high-alcohol beverages on public roads, and the absence of misleading advertising when all the information in an advert is presented in a way that is not misleading.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Yes, in certain circumstances private companies or consumers may bring claims in the following cases. In cases of unfair advertising, any natural or legal person whose economic interests are directly harmed or threatened may do so. In cases of unlawful advertising, damages and unjust enrichment, any person who is affected may bring a claim.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

It depends on what is actually claimed. Generally, the cease (and non-repetition) of publication of the advertising, and the publication of the court decision in the media where the illicit or misleading advertising took place, are sought. In consumer cases, the convicted offender is usually obliged to compensate the consumer with the same amount that the consumer paid for the advertised product or service.

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

Advertising may be subject to prior administrative authorization only regarding those goods and services likely to generate a risk to the health, safety or welfare of persons or their property. That is, medicines and health products (subject to the authorization of the Spanish Commissioner for Medicines and Medical Devices, the AEMPS) and gambling (subject to the authorization of the Spanish Directorate General for the Regulation of Gambling, the DGOJ).

In other cases, the campaigns shall be reported in advance to the regulators. This is for example, the case of publicity campaigns on crypto-assets, that shall be reported in advance to the Spanish Stock Exchange Commission (CNMV).



Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, there is an Advertising Code of Conduct (ACC) and several sectoral codes (hygienic wipes, cinema, perfumes and cosmetics, videogames, toys) elaborated by AUTOCONTROL, which is a private and independent association of self-regulation of the advertising market players in Spain.

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

The ACC applies to any advertising communication activity, regardless of its form or format, aimed at promoting, directly or indirectly, the contracting of goods or services or the promotion of trademarks and trade names.

HOW IS IT ENFORCED?

In accordance with AUTOCONTROL's bylaws, the Disciplinary Affairs Committee has the competence to initiate disciplinary proceedings against a member, ex officio or upon complaint from any natural person with a legitimate interest, or any legal person being an AUTOCONTROL member.

Furthermore, AUTOCONTROL has an Advertising Jury whose resolutions AUTOCONTROL members are obliged to comply with. In addition, the resolutions of the Jury are effective between the disputing parties (whether members or not) that accept to be bound by them in advance.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

AUTOCONTROL and the CNMC.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. The CNMC has an online form where any user can file a complaint.

In the case of AUTOCONTROL, a complaint can be brought both as an individual consumer and as an entity or person partner of AUTOCONTROL, also through an online form.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

In the case of AUTOCONTROL sanctions, they also vary according to the seriousness of the infringement, and the sanctions are mainly: public or private warnings; temporary suspension of electoral rights in the association; and, in the most serious case, expulsion. These are on top of the main decision on the case (eg finding the advertising unfair, ordering to stop the broadcasting of the advertising).

In the case of the CNMC, in application of the aforementioned Spanish Audiovisual Communication Act, the fines vary greatly depending on whether it is a very serious, serious or minor infringement, and whether it was committed by a television or radio and electronic communication service. For television, the amount ranges between EUR500,001 and EUR1 million (very serious), EUR100,001 and EUR500,000 (serious), and up to EUR100,000 (minor). In all other media, the fines will range from EUR100,001 to EUR200,000 (very serious), from EUR50,001 to EUR100,000 (serious), and up to EUR50,000 (minor).



Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

In Spain, the law considers any marketing communication to be misleading advertising if it:

- contains false information, or contains information that, although truthful, induces or could induce the recipients to make an error by its content or presentation;
- is likely to alter the economic behavior of the recipients; and
- affects aspects such as the existence or nature of the promoted good or service, its characteristics, after-sales assistance, price, or the way it is fixed, among other things.
- Misleading advertising can be punished by the courts with cease and desist orders, or may even be punished with damages.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

Substantiation (understood as collection and storage of fact evidence demonstrating that advertising is real/accurate and not misleading) should be held by the advertiser *before* publication of an advertisement. It may be that the parties damaged by advertising react swiftly, and that post-publication collection of evidence is not feasible for the advertiser within a short period of time. Moreover, it may be that some of the sources that were used to prepare the advertising are removed or become unavailable after the date of publication. Holding substantiation materials well in advance therefore makes complete sense.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

Under Spanish law, marketing communications should not:

- violate the dignity of the person or the values and rights recognized in the Spanish Constitution, especially those relating to equality, the protection of the right to honor, privacy and self-image, and the protection of youth and children;
- present women in a humiliating or discriminatory manner, either by using their bodies as mere objects or having their image associated with stereotyped behaviors that contribute to generating violence against women;
- contribute to generating violence or discrimination against minors or promoting stereotypes of a sexist, racist, aesthetic (ie based on a person's physical appearance), or homophobic or transphobic nature or based on disability;
- include subliminal advertising;
- infringe specific regulations applying to certain goods and services; nor
- include misleading, unfair, and aggressive advertising.



WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

Marketing communications addressed to or targeted at children should not, in particular:

- incite them to purchase a good or service, exploiting their inexperience or credulity;
- depict children persuading parents or guardians to purchase;
- present children in dangerous situations without a justified reason;
- mislead about the characteristics of the product, nor about its safety, nor about the capacity and aptitudes necessary for the child to use it without causing harm to themselves or to third parties; nor
- include a direct exhortation to children to purchase goods or services or to convince their parents or other adults to purchase the advertised goods or services.

The new General Audiovisual Communication Act 13/2022 contains additional restrictions intended to protect children in that context.

Comparative advertising

IS IT GENERALLY ALLOWED?

Yes, subject to strict limitations.

WHAT ARE THE KEY RESTRICTIONS?

- Comparative advertising by making an explicit or implicit allusion to a competitor is permitted only if the following requirements are met:
 - The goods or services compared have the same purpose and satisfy the same needs.

- The comparison is made objectively between one or more essential, relevant, verifiable and representative characteristics of the goods or services, including price.
- In the case of products covered by a denomination of origin, geographical indication, specific denomination or traditional specialty guaranteed, the comparison may only be made with other products of the same denomination.
- Goods or services must not be presented as imitations or replicas of others to which a protected trademark or brand name is applied.
- The comparison must not contravene the provisions on acts of misleading, denigration and exploitation of the reputation of others.

What are the key requirements for sustainability/ ESG claims?

Marketing communications must not depict behaviors generally considered harmful to the environment, unless the display has an educational or demonstrative pro-environmental motive; nor should they encourage such behavior.

Is there sector-specific regulation in each of the following areas?

ALCOHOL

The Spanish General Act 34/1988 on Advertising (Article 13) forbids advertising of alcoholic beverages with an alcohol content of more than 20% in an audiovisual context except between 1 AM – 5 AM (and also forbids advertising of such drinks in places where selling or drinking them is forbidden).

The new General Audiovisual Act 13/2022 specifically prohibits the audiovisual publicity of alcoholic beverages when intended for children, claiming benefits for health, personal success, encouraging excessive consumption or praising alcoholic content, criticizing modest or no consumption. It is also forbidden



not to include a warning encouraging moderate consumption. The audiovisual publicity of beverages with more than 20% alcohol is forbidden except from 1 AM to 5 AM. If the beverages' alcoholic content is under that threshold, the permitted times go from 8:30 PM to 5 AM, with some exceptions.

In addition, AUTOCONTROL has published three advertising codes of conduct with various associations covering numerous alcoholic beverage companies. It published the [Wine Commercial Communication Code](#), made with the Spanish Wine Interprofessional Organisation; and the Advertising Self-Regulation Code of Brewers in Spain, made with the Spanish Federation of Spirits, the Spanish Brewers Association and the Spanish Confederation of Consumers and Users. These codes establish behaviors such as: how far away from schools advertising should be placed on bus shelters; not associating alcohol consumption with driving or social success; not targeting pregnant women; and not showing people who have had too much to drink, among other things.

FINANCIAL SERVICES

The Bank of Spain published Instruction 4/2020 on the Advertising of Banking Products and Services, which establishes the rules, principles and criteria to which the advertising of these products and services must be subject.

This regulation establishes, among other things, that:

- Entities must have a commercial communication policy, where a description of the advertising activity, the principles and criteria established in the Annex of the Instruction, the designation of the areas of the entity responsible for reviewing advertisements, and a detailed description of the internal review procedures and controls are established.
- Entities must keep an internal register with all the data of the different advertising campaigns, which must be available to the Bank of Spain so it can carry out its supervisory work.

- Entities subject to advertising self-regulation systems must obtain at least one positive report prior to the launching of advertisements.
- Among the principles established in the Annex, it should be noted that (among other things) the language used must be clear and simple; if information is given on cost or profitability of a product, the exact amount must be indicated; font size must be appropriate for the relevant advertising format.

At present, AUTOCONTROL does not have a sectoral code for banking products. The Publicity of Crypto-Assets is specifically regulated by Circular Letter 1/2022 of the Spanish Stock Exchange Commission (CNMV).

FOOD AND BEVERAGE

AUTOCONTROL and numerous companies in the food sector subscribed to the Code for the Self-Regulation of Food and Beverage Advertising aimed at Minors, Obesity Prevention and Health. It establishes criteria for presenting advertising to minors, such as not misleading them about the characteristics of the food, not exploiting their imagination, the language should be understandable and should not exploit their inexperience to incite them to buy or persuade their parents to do so, and prices must be indicated concretely, without using reductionisms such as “for only....”

Although the regulation is extensive, the Minister of Consumer Affairs of the Spanish government has announced that he will regulate the advertising of unhealthy food and beverages aimed at minors, as he considers that the aforementioned code has proved to be “insufficient.”⁹ The regulation is expected to be published in 2022 (a draft was released by the authorities in March 2022), establishing limitations on advertising in content that targets minors under 16. In principle, the ban on advertising aimed at minors will affect five product categories, including chocolate and sugar confectionery, cakes, cookies, candies, juices, energy drinks and ice cream, among others.

⁹ <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/consumo/Paginas/2021/281021-publicidadmenores.aspx>



GAMBLING

In Spain, gambling advertising is regulated by Spanish Royal Decree 958/2020 on commercial communications of gambling activities, and it is supervised by the DGOJ. This regulation has brought a major regulatory change, significantly restricting space for advertising of gambling operators.

Among other things, operators will no longer be able to sponsor sporting events or broadcasts, nor to be named sponsors for sports facilities/stadia, nor on sports teams' shirts. Also, gambling advertising may now only be targeted at existing players, and not at new customers. Furthermore, celebrities and other individuals of social prominence cannot be used for gambling advertising. There are also rigid time slots where gambling advertising may be inserted in all media (including those provided from the internet).

General Audiovisual Communication Act 13/2022 has confirmed further restrictions in the audiovisual context, like the prohibition to broadcast or display it except from 1 AM to 5 AM.

PHARMACEUTICAL/MEDICAL DEVICES

The advertising of medical devices and treatment is regulated in Spanish Royal Decree 1591/2009, which regulates medical devices, and in Spanish Royal Legislative Decree 1/2015, which approves the law on guarantees and rational use of medicines and medical devices. For medicines, it is regulated in the latter decree and in Spanish Royal Decree 1416/1994 on the advertising of medicinal products for human use. Similarly, there are several codes of conduct made by AUTOCONTROL for advertising both medicines and medical devices.

In the case of medicines, marketing communications are forbidden for those medicines financed with public funds, or that require a doctor for their use, or are considered narcotic or psychotropic substances.

In the remaining cases, there are restrictions such as the prohibition to link marketing communications of medicines with bonuses or incentives, the requirement for prior authorization from the authorities of the Autonomous Regions where they are to be advertised, or the requirement that essential information regarding the correct use of the medicine be included in the communication.

In the case of marketing of medical devices, they must not be advertised to the public if they are products used exclusively by healthcare professionals. If this is not the case, they may be advertised, provided that the contraindications of the product and the side effects are given, and the technical data of the product is indicated. It's prohibited to include recommendations made by scientists, healthcare professionals or other persons who, due to their notoriety, may incite their use. The same requirements apply to medical treatments.

TOBACCO AND E-CIGARETTES

In Spain, according to Article 9 of Act 28/2005 on health measures against smoking and regulating the sale, supply, consumption and advertising of tobacco products, advertising of tobacco to the public is forbidden in all media, including vending machines. The only exceptions concern publications or presentations of tobacco products that are aimed exclusively at professionals in the sector or those involved in the tobacco trade.

In the same Act, in the 13th additional provision, limitations were established on the advertising of "nicotine-releasing products" (e-cigarettes). Advertising in information society services, radio and the press was prohibited. There has been some controversy, as some companies have taken advantage of vagueness in the law on e-cigarette advertising to, for example, carry out advertising campaigns on bus shelters, in the underground or on large posters on buildings under renovation.



OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Political elections' advertising
- Institutional communication and of the General State Administration
- Certain educational establishments
- Audio-visual communication and radio broadcasting

Influencer marketing

We have published a dedicated guide that examines the legal frameworks governing influencer marketing in 28 key global jurisdictions. It addresses the following questions from each jurisdictions' perspective:

- What qualifies as advertising under local law?
- What are the typical influencer practices and in which cases are they considered advertising?
- What legal obligations apply?
- What are the applicable laws, regulations or guidance?
- What are the consequences for influencers if advertising content is not clearly labelled?
- What legal risks apply when cooperating with influencers?

Download that guide [here](#).

Prize promotions

Similarly, we have published a dedicated Prize Promotions guide designed to introduce you to some of the key requirements surrounding prize promotions, from the management of the early development stages of a promotion, to the outline of potentially problematic issues.

Download our Prize Promotions guide [here](#).

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United Arab Emirates



United Arab Emirates

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

- National Media Council (NMC)¹⁰ NMC Advertising Guide (Ad Guide)
- Administrative Decision No. 35/2012 On the Standards of Advertisements Content in the Media (Advertisement Content Decision)
- Federal Law 15 of 1980 on Printed Matter and Publications (Press and Publications Law)
- Cabinet Decision No. 23/2017 On Media Content (Media Content Decision)
- NMC Board’s Resolution No. (26) of 2017 on Media Content (NMC Media Content Decision)
- Federal Law No. 15 of 2020 on Consumer Protection (Consumer Protection Law)
- Federal Decree-Law No. 34/2021 Concerning the Fight Against Rumors and Cybercrime (Cybercrime Law)
- Telecommunications and Digital and Government Regulatory Authority (TDRA) Internet Access Management Policy (Internet Access Management Policy)
- Federal Law No. 19/2016 – On Commercial Fraud (Commercial Fraud Law)

Above are the key pieces of legislation, but it’s not an exhaustive list, and we have referenced additional pieces of legislation in certain responses below.

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

Advertising is primarily regulated at the Federal level; however, there are certain Emirate (ie state) level requirements, which primarily (although not exclusively) apply to advertisements in public spaces within each of the Emirates. We are not aware of any Emirate level laws that apply materially different advertisement content standards, but many impose requirements to secure Emirate-specific permits for certain advertisements (which would ordinarily be secured with the support of a locally licensed advertising agency). Those include (but are not limited to):

- Ras al Khaimah Law No. 11/2008 On the Control of Advertising
- Dubai Municipality External Circular No. 1/2016
- Sharjah Executive Council Decision No. 30/2019 On the Regulation of Outdoor Advertising in the Emirate of Sharjah
- Abu Dhabi Decision No. 144/2020 On the Regulation of Granting Advertisements and Promotions Permits

HOW ARE ADVERTISING LAWS ENFORCED?

The primary methods of enforcement are:

- The MRO has various enforcement powers (see below), as do the UAE courts (with the Public Prosecution having the power to bring criminal actions, in certain cases, where indicated).

¹⁰ Under recently passed legislation, the Media Regulatory Office (MRO) at the Ministry of Culture and Youth (MCY) has formally replaced the NMC as the body responsible for proposing “legislation, bylaws, standards and principles required for regulating and licensing the media tools and activities including, online media and publication” and “supervis[ing] their implementation”.





- The TDRA (working with the two internet service providers in the UAE, du and Etisalat) may block webpages hosting advertisements which breach local content restrictions.

In addition:

- The Consumer Protection Department at the Ministry of Economy (CDP) may also take action with respect to misleading advertisements (see below).
- There are criminal consequences for infringements of the Consumer Protection Law and the Cybercrime Law, including both fines and custodial sentences.

WHO ARE THE RELEVANT REGULATORS?

The CDP, MRO (which forms part of the MCY) and the TDRA.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Private companies could bring complaints to the CDP, MRO and/or the TDRA. Such complaints can be raised by way of email, letter, telephone call or in-person meeting.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

Ad Guide

Failure to comply with the Ad Guide can lead to the following:

- A fine of up to AED5,000, which can be doubled for repeat offences (up to AED20,000).
- The NMC (now the MRO) “may delete any phrase, paragraph, page, image, scene or any part of the publication if it violates the principles or standards of advertising content.”
- The NMC (now the MRO) may “prohibit” (ie ban) the circulation of the infringing advertisement entirely.

Advertisement Content Decision

Article 7 sets out the consequences of a failure to comply with the Advertisement Content Decision. The NMC (now the MRO) may:

- issue a warning;
- suspend the advertisement and demand an apology;
- remove the “damage resulting from the violation”;
- close the infringing “establishment or shop”; and/or
- suspend or cancel any media license issued by the NMC (now the MRO).

Press and Publications Law

The Press and Publications Law carries a range of consequences for non-compliance, including imprisonment (up to one year for the majority of the relevant infringements) and monetary fines. For a breach of the relevant provisions, those fines are fairly modest (up to AED5,000, although those can be doubled for repeat offences). There’s also the possibility that the “showroom” (which we read as meaning shop or business) could be closed for up to one month. Any action taken under the Press and Publications Law would be brought by the Public Prosecution.

Media Content Decision

It’s not entirely clear from the Media Content Decision what the consequences of failing to meet the content requirements are for a party that is not licensed by the NMC (now the MRO) (with cancellation of the permission or license being the primary consequence). However, there is potentially a power for the NMC (now the MRO) to effect the “facility’s closure” for repeat violations of the Decision.



**NMC Media Content Decision**

The NMC's Media Content Decision also sets out a number of standards that must be met when publishing media content, which again may potentially be applied with respect to infringing adverts. Under this Decision the NMC (now the MRO) has the power to delete and/or order the rectification of infringing content, as well as to revoke any license issued to a party which has published infringing content.

Consumer Protection Law

The penalties under the Consumer Protection Law are significant. The publication of a misleading advertisement could lead to imprisonment of up to two years, as well as a fine of up to AED2 million.

Cybercrime Law

There are various provisions under this law that criminalize the publication/distribution of certain types of content via information technology (which would include online advertisements which fall foul of any content requirements under the Cybercrime Law; misleading advertisements are covered below). The most serious content-related offences carry fines of up to AED10 million, and imprisonment (for an undetermined time).

Internet Access Management Policy

The TDRA's [Regulatory Policy on Internet Access Management](#) sets out a list of categories of prohibited content at Annex 1. The TDRA has the power to block any content that falls foul of that Policy.

Commercial Fraud Law

Fines of up to AED1 million and imprisonment for up to two years.

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

Given the patchwork and overlapping nature of the legal framework governing advertising, and a lack of transparency around the actions of regulators in the UAE (decisions and judgments are often not published), it's difficult to say with certainty the current focus. However, there has recently been significant press coverage around the obligations of influencers to secure permits to promote products and services on social media, as well as a general focus on misleading advertising content.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

Consumers can bring claims for compensation with respect to any misleading advertisements under the Consumer Protection Law.

Please also refer to our comments with respect to comparative advertising below.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

Please refer to the sections on "Can private companies or consumers bring claims for breach of advertising legislation before the courts?" (see below), and "Comparative Advertising" (see below).

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

Not generally, although pre-clearance is required for certain types of advertisement (eg health/medical advertisements, as explained in the medical sector section (see below).





Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

No, although advertisers are expected to comply with the requirements set out under the laws cited above.

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

N/A

HOW IS IT ENFORCED?

N/A

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

N/A

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

N/A

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

N/A

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

There are various broad prohibitions in relation to misleading advertisements in the UAE. Those include:

- The Ad Guide prohibits the publication of “advertisements that contain false, malicious, and misleading information.”

- The Cybercrime Law prohibits the promotion of goods or services through misleading advertisements (defined as “[a]dvertising goods or services based on deceitful information or omission of substantial or essential information relevant to the goods or services which may affect the consumer’s decision and induces him to enter into contract, so that the consumer would not have contracted, but for such information”) via an information network or using information technology methods (ie online/digital advertising).
- The Consumer Protection Law imposes a prohibition against “describing the Good or Service in a manner that contains incorrect data and from making any Misleading Advertisement in connection therewith.” “Misleading Advertisement” is defined as “[a]dvertising a Good or Service based on deceptive information or omitting essential or basic information related to the Good or Service, which affects the Consumer and leads him to enter into a contract that he would not have entered into without that information. Announcing fake or unreal prizes or Discounts shall [also] be considered misleading advertising.”
- Those who commit “Commercial Fraud” are subject to the sanctions of the Commercial Fraud Law. Commercial Fraud is defined at Article 1 of the Commercial Fraud Law as: “Deceiving a customer in any way by altering or changing the nature, amount, type, price, essential characteristics, origin, source or validity of the commodities or any other matter related thereto or submitting incorrect or misleading commercial data on the promoted products. This shall include deception, counterfeiting and fraud in the service in a way not compliant with the laws in force at the State or for including false or misleading statements.” The following are also expressly prohibited:





- “Advertising fake or unreal prizes or reductions”;
- “Exploiting commercials, submitting the same or promising to submit the same in misleading and incorrect promotions or promoting fake, corrupt or counterfeit commodities”;
- “Offering, submitting, promoting or advertising fake commercial service.”

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

UAE is not prescriptive in this regard; however, given the breadth of the various obligations, we strongly recommend that advertisers are prepared to substantiate any claims made in their advertising and retain evidence to support those claims.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

Whilst there is a general trend towards liberalization of content in the UAE, it remains heavily regulated. The UAE is a Muslim country, and the pervading and overarching principle is that any advertisements should not be contrary to “public morals.” The key restrictions can be broadly summarized as follows (as reflected in the Ad Guide). Advertisements must:

- show respect for the UAE government, its emblems and political institutions, along with the cultural heritage of the UAE;
- observe the conditions and terms concerning the use of the flag, emblem and national anthem of the UAE and respect its national identity;
- avoid harming national unity and social cohesion;

- avoid the inclusion of images or words that could violate public morality, a broad concept which is typically present within the laws of the UAE and which would typically cover anything which violates the societal norms around “modesty” across the GCC region. This would mean avoiding publishing any advertisements with sexual implications (eg models in revealing clothing, or sex toys). Profanity should also be avoided. Any advertising for “witchcraft, sorcery and astrology” is also prohibited;
- respect the intellectual property rights of third parties;
- comply with codes of conduct and standards of honesty, including compliance with the rules governing business, especially those with regards to consumer protection and fair competition controls, prohibition of commercial fraud and illegal monopoly;
- comply with the rules of health advertisements;
- be approved by the relevant authorities for advertisements relating to health, medicine, energy drinks, nurseries, education, promotions and special offers, real estate and Hajj and Umrah campaigns;
- be real (which we understand to mean “accurate”) and unexaggerated; and
- be clearly identified as advertisements and appear distinct and independent from other editorial and information materials. Clear boundaries must separate advertisements from any other material.

In addition, advertisements must *not*:

- “offend God and Islamic beliefs,” and must show respect for other religions. Generally, we recommend avoiding religious statements in advertisements due to the sensitivity (ie avoid advocating and/or disparaging any religion);
- be vague, ambiguous or unclear;
- spread rumors or misleading, false, deceptive or malicious content,





including any content which incites hatred or violence;

- include content which is intended to exaggerate, claim exclusiveness or “despise competitors” (which we interpret to be equivalent to “disparage”);
- disseminate information that harms or abuses children and women, or any other social groups;
- promote alcoholic beverages or narcotics in any form, whether directly or indirectly;
- promote tobacco or smoking of any kind;
- include any false, fake or unrightfully formulated mark, sign or image. We understand this to be a restriction on using another party's brand designation (such as its trademark) without permission;
- create any confusion by any means with any other brand names, products or activities;
- advertise anything that involves a crime or violates the principles and standards of the media content and the applicable age restriction; and
- advertise anything that may harm the public interest directly or indirectly.

WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

Advertisers should take an extremely conservative approach with respect to any advertisements directed at children. Specifically, they should be careful not to:

- “urge children to commit any behavior against the public order or that could encourage public delinquency”;
- “promote children’s access to restricted places or playing in dangerous areas”; and/or
- direct any advertising content that might “cause harm to physical, mental, emotional and moral development of children.”

Comparative advertising

IS IT GENERALLY ALLOWED?

There is no general ban on comparative advertising in the UAE. However, there would be some risk in using comparative advertising techniques for the reasons set out below. As such, it’s uncommon to see comparative advertising used in the UAE.

WHAT ARE THE KEY RESTRICTIONS?

Article 66 of the UAE Commercial Code provides that “a trader must not resort to fraud and cheating when making his goods, nor may he spread or publish false particulars that are prejudicial to the interests of another competitor trader.” It’s possible that a competitor could bring a civil claim for damages under Article 66 of the Commercial Code, provided that the competitor can demonstrate that it suffered some loss as a result of “false information” published by the advertiser.

As per the Advertisement Content Decision, advertisements must: “not contain false or misleading allegations, shall not provoke intimidation, claim exclusivity, disdain the competitors or contain any forms of fraud and deception.” There’s a risk that the MRO may consider comparative advertisements to be an attempt to “disdain competitors.”

Advertisements must also “not contain signs, logos or images that are forged, counterfeit or illegally placed.” There’s a risk that a competitor may argue that using its brand name in the context of a comparative advertisement is a breach of this requirement.

The Ad Guide provides that:

- “The advertisement should not include any false, fake or unrightfully formulated mark, sign or image.” There’s a risk that the use of a competitor’s name in the context of a comparative advertisement might be considered to be the use of an “unrightfully formulated mark”; and



- “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.” There’s a risk that comparative advertising content which specifically identifies competitors may be deemed to be “despising” competitors (given that this term is not defined).

The Media Content Cabinet Decision and NMC Media Content Decision each contain prohibitions around the infringement of third party intellectual property rights; such an infringement could occur through the unauthorized use of a competitor’s brand name or logo in a comparative advertising context.

Finally, it’s possible that the unauthorized use of a competitor’s brand name or logo in a comparative advertising context could amount to an infringement under Federal Decree-Law No. 36/2021 On Trademarks.

What are the key requirements for sustainability/ESG claims?

We’re not aware of any specific restrictions in this regard. The general principle that advertisements should not be misleading would apply (see above).

Is there sector-specific regulation in each of the following areas?

ALCOHOL

It’s forbidden to advertise alcohol in the UAE (pursuant to the Ad Guide and a number of the content related laws and regulations, along with certain Emirate level laws such as Dubai Law No. 1/1972 Alcoholic Beverage Control Law, and Liquor Law No 8 of 1976 in Abu Dhabi).

FINANCIAL SERVICES

In January 2021, the UAE Central Bank published a set of Consumer Protection Standards and a set of Consumer Protection Regulations, each of which contain detailed requirements regarding advertisements issued by Licensed Financial Institutions (as defined therein) for their Products and Services (each as defined therein).

In addition, the Securities and Commodities Authority Decision No. 3/2017 on the Regulation of Promotion and Arranging Activities imposes a licensing requirement specifically around the “marketing, distribution, announcement, publication or dissemination of data, information or advertising materials related to securities, commodity contracts, derivatives, structured products, or any other foreign securities.” That license would be obtained from the Emirates Securities and Commodities Authority.

The Cybercrime Law prohibits the “[a]dvertisement, promotion, mediation or dealing in any form or encouraging the dealing in a virtual currency, cryptocurrency, stored value unit or any payments unit not officially recognized in the state or without license of the competent body.”

FOOD AND BEVERAGE

We’re not aware of any approvals for food related advertisements (other than those which have medicinal properties, which would fall under approvals detailed below), although any food advertised in the UAE should be approved for lawful sale in the UAE. There are also various legal requirements around ensuring that information with respect to food products (including any national information) is accurate and not “deceptive,” including those under Federal Law No. 10/2015 On Food Safety, Cabinet Decision No. 26/2017 on the Implementing Regulation of the Federal Law No 10/2015 on Food Safety and the Dubai Food Code.



GAMBLING

It's forbidden to advertise gambling in the UAE (with gambling being prohibited pursuant to the UAE Penal Code and the Cybercrime Law).

MEDICAL (MEDICINES/TREATMENTS/MEDICAL DEVICES)

A permit (Advertising Permit) from the Ministry of Health and Prevention (MOHAP) is required to advertise certain products, pursuant to Council Decision No. 7/2007 Regarding Health Advertisements Regulation (Federal Health Advertisement Regulation). MOHAP applies a broad definition when determining which products require an Advertising Permit ("Whatever manufactured, or related or linked to human health, including medicine and drugs, herbal and nutritious medications and additives, beauty centers, medical equipment and accessories, medical institutions, medicine practitioners including doctors and technicians, traditional or alternative medical treatment methods").

To secure the Advertising Permit, the advertiser would first need to secure a Marketing Authorization from MOHAP (pursuant to Federal Law No. 8/2019 on Medical Products, Profession of Pharmacy and Pharmaceutical Institutions) to trade the relevant product in the UAE (which would lead to it being listed on MOHAP's Registered Product Directory). An Advertising Permit cannot be secured for a product that has not yet been authorized for sale in the UAE.

There are also certain Emirate and/or free zone level requirements for advertising permits that apply to operators in the healthcare sector in those Emirates/Free zones.

TOBACCO AND E-CIGARETTES

As per the Ad Guide, "tobacco advertising, smoking of all kinds and methods" (which would include e-cigarettes) is prohibited.

OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Education
- Infant Formula

- Real Estate
- Military products/weapons
- Narcotics
- Cryptocurrencies

Influencer marketing

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- What qualifies as advertising under local law?
- What are the typical influencer practices and in which cases are they considered advertising?
- What legal obligations apply?
- What are the applicable laws, regulations or guidance?
- What are the consequences for influencers if advertising content is not clearly labelled?
- What legal risks apply when cooperating with influencers?

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Similarly, we have published a dedicated Prize Promotions guide designed to introduce you to some of the key requirements surrounding prize promotions, from the management of the early development stages of a promotion, to the outline of potentially problematic issues.

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United Kingdom



United Kingdom

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

- Consumer Protection from Unfair Trading Regulations 2008 as amended by the Consumer Protection (Amendment) Regulations 2014 (CPRs)
- Business Protection from Misleading Marketing Regulations 2008 (BPRs)
- Price Marking Order 2004 (Price Order)

All of these derive from EU Directives, and have not yet been substantially amended post-Brexit; thus the UK advertising regime retains some similarity to those of EU countries despite the UK having left the EU.

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

No. The legislation referred to in the “general legislation” section above applies across the UK (ie across England, Wales, Scotland and Northern Ireland).

HOW ARE ADVERTISING LAWS ENFORCED?

Solely by regulators, who have a range of powers to enforce the CPRs, BPRs and the Price Order. These include bringing prosecutions before the criminal courts, and applying to civil courts for civil injunctions to prevent further breaches.

WHO ARE THE RELEVANT REGULATORS?

The CPRs, BPRs and Price Order are enforced by government agencies, particularly local Trading Standards authorities and the Competition and Markets Authority (CMA). The CMA tends to focus on market-wide issues.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes, anyone can report a breach of the CPRs, BPRs or the Price Order to a Trading Standards authority. The Trading Standards authority will decide (based on its enforcement priorities) whether it wishes to investigate the case. This can be done informally, for example by completing an online form or over the telephone.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The most severe sanctions are an unlimited fine and/or up to two years’ imprisonment.

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

Sustainability claims, health claims relating to the COVID-19 pandemic (eg protective equipment, cleaning products, medicines, tests), influencer content not identified as advertising, claims likely to harm children/other vulnerable individuals, crypto asset-related ads, and adverts for certain other financial products, such as buy-now-pay-later services.





CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

No, private parties (such as consumers and competitor businesses) do not have rights to bring claims under the CPRs, BPRs or the Price Order. It's possible that advertising could give rise to claims by such private parties other than under the CPRs, BPRs or the Price Order. For example, competitors may be able to bring IP or defamation claims against non-compliant advertisers, and consumers may be able to bring contractual claims or claims for fraudulent misrepresentation.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

Not applicable – see “Can private companies or consumers bring claims?” section above.

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

Yes, for TV, radio and cinema advertising only. The clearance agencies are: Clearcast for TV, Radiocentre for radio, and the Cinema Advertising Association for cinema. Copy must be submitted to the relevant clearance agency for approval (together with evidence of substantiation), and approval must be obtained before transmission.

There's no requirement to pre-clear non-broadcast advertising.

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes, there are the UK Code of Broadcast Advertising (BCAP Code) (for broadcast advertising) and UK Code of Non-Broadcast Advertising and Direct & Promotional Marketing (CAP Code) (for other advertising), written by the Committee for Advertising Practice (CAP).

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

The BCAP Code applies to advertisements and programme sponsorship credits on radio and television services licensed by the UK communications regulator, Ofcom.

The CAP Code applies to all other forms of advertisement and promotions, including online (in paid for and non-paid for space, and in social media), hard copy, outdoor and cinema advertising.

HOW IS IT ENFORCED?

The Advertising Standards Authority (ASA) investigates cases (either on receipt of a complaint or at its own instigation), and may make a formal ruling that an advertisement breaches (or does not breach) the CAP Code or the BCAP Code.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The ASA is an independent regulator which is funded by the advertising industry.



CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. Complaints to the ASA can be made informally, via an online form, correspondence or telephone. Where a complainant is a competitor of the relevant advertiser, the complainant must comply with the ASA's competitor complaints procedure; this includes a requirement that a complainant must first notify its competitor of the complaint, and allow the competitor five working days to resolve the complaint before filing a complaint with the ASA.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The main sanction in practice is the adverse publicity that results from publication of an adverse ruling by the ASA. Other potential sanctions include:

- referral to Trading Standards/the CMA for enforcement action under the CPRs/BPRs;
- issuing an "ad alert" to CAP members (including the media), advising them to consult CAP's copy advice team before accepting an advertisement by the advertiser for publication;
- CAP members may revoke an advertiser's trading privileges; and
- requiring the advertiser to submit future ad copy to CAP's copy advice team for vetting before publication.

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

- Marketing communications must not materially mislead.
- Obvious exaggerations ("puffery") and claims the average consumer is unlikely to take literally are allowed.
- Marketing communications must not mislead by omitting material information (ie information consumers need to make informed decisions about a product).
- Marketing communications must state significant limitations and qualifications. Qualifications must be clearly stated and may clarify but must not contradict the main claims.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

Documentary evidence which substantiates all claims that consumers are likely to regard as objective must be held before distributing a marketing communication or submitting it for publication. Guidance indicates that a particularly high level of substantiation is required for medical and scientific claims about health and beauty products, where relevant consisting of trials on human subjects.



Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

Prohibitions include requirements that marketing communications should not:

- contain anything that's likely to cause serious or widespread offence (including on grounds of age, race, gender, religion and sexual orientation);
- cause unjustifiable fear or distress;
- contain anything that's likely to condone or encourage violence or anti-social behavior;
- condone or encourage unsafe practices (especially if depicting or addressing a child);
- portray or represent anyone who is, or seems to be, under 18 in a sexual way; or
- include gender stereotypes that are likely to cause harm, or serious or widespread offence.

WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

Marketing communications addressed to or targeted at children should not, in particular:

- contain anything that's likely to result in their physical, mental or moral harm;
- exploit their credulity, loyalty, vulnerability or lack of experience;

- exploit children's susceptibility to charitable appeals;
- undermine parental authority; or
- include a direct exhortation to children to buy, or persuade adults to buy, an advertised product.

Comparative advertising

IS IT GENERALLY ALLOWED?

Yes.

WHAT ARE THE KEY RESTRICTIONS?

- Marketing communications that include a comparison with an *identifiable* competitor must:
 - not be likely to mislead the consumer about the advertised product or the competing product;
 - compare products meeting the same need or intended for the same purpose;
 - objectively compare one or more material, relevant, verifiable and representative features of those products; and
 - not create confusion between the marketer and its competitors.
- Marketing communications that include a comparison with an *unidentifiable* competitor must not be likely to mislead the consumer. The elements of the comparison must not be selected to give the marketer an unrepresentative advantage.



What are the key requirements for sustainability/ESG claims?

- There are specific rules and guidance for environmental claims, which include the following:
 - environmental claims must be clear; unqualified claims could mislead if they omit significant information;
 - the meaning of all terms used in marketing communications must be clear to consumers;
 - absolute claims must be supported by a high level of substantiation;
 - environmental claims should be based on the full life cycle of the advertised product, unless the communication states otherwise; and
 - marketing communications must not mislead consumers about the environmental benefit that a product offers.
- There are also specific rules for charity-linked promotions – for example, that the promoter must identify the charity, and specify how it will be benefitted.

Is there sector-specific regulation in each of the following areas?

ALCOHOL

There are dedicated sections in each of the CAP Code (section 18) and the BCAP Code (section 19) on alcohol advertising, setting out specific obligations such as the need for alcohol advertising to be socially responsible and not encourage excessive consumption or consumption by under-18s. In addition, the [Portman Group](#) administers voluntary codes of practice on (i) Naming, Packaging and Promotion, and (ii) Sponsorship. Many industry members comply with these codes, and the Portman Group investigates and publishes rulings in relation to alleged breaches of these Codes. In Scotland, there is separate legislation on the pricing and promotion of alcoholic drinks.

FINANCIAL SERVICES

There's significant regulation of financial promotions under the Financial Services and Markets Act 2000 (FSMA), the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended), and the rules and guidance issued and enforced by the Financial Conduct Authority (FCA) (its website is at www.fca.org.uk). That regulation covers marketing communications for (among other things): investments; banking; home finance transactions (eg regulated mortgages); and general insurance. The FCA also regulates other consumer loans under FSMA, the Consumer Credit Act 1974 (as amended), the Consumer Credit Act 2006 and the FCA's Consumer Credit sourcebook.

There are also sections of the CAP and BCAP Codes (section 14 of each) on financial products; these apply to marketing communications that are not regulated by the FCA.

FOOD AND BEVERAGE

There are various statutes that affect marketing communications for foods and beverages, including Food Safety Act 1990, the Food Information Regulations 2014 and retained EU Regulation (EC) No 1924/2006 on nutrition and health claims made on foods.

There are also dedicated sections of the CAP and BCAP Codes (section 15 of CAP and 13 of BCAP) on food advertisements. These include specific restrictions on the marketing to children of food or soft drink products that are assessed as high in fat, salt or sugar (HFSS), according to a specific nutrient profiling model.

The UK government plans to introduce significant further statutory restrictions on the marketing of HFSS products (to the public in general, not just to children) in 2022/2023, including a ban on TV adverts for HFSS products before 9pm.



GAMBLING

In the UK, gambling operators are regulated by the Gambling Commission, under the Gambling Act 2005. To advertise in the UK, gambling operators must comply with the relevant licensing requirements set out in the legislation. The Gambling Commission's Licence Conditions and Codes of Practice make it a direct requirement on licensed operators to ensure their marketing communications comply with the CAP and BCAP Codes.

The CAP and BCAP Codes each contain a section on gambling advertising (section 16 of CAP, section 17 of BCAP). In addition, there are specific rules on the scheduling of broadcast gambling adverts in section 32 of the BCAP Code.

PHARMACEUTICAL/MEDICAL DEVICES

Medical Devices

The applicable medical devices legislation does not explicitly regulate the promotion of medical devices other than to prohibit marketing of devices that do not conform to the relevant legislation. There are self-regulatory codes of practice however, such as:

- The Association of British Healthcare Industries (ABHI) Code of Practice, which is a voluntary code which binds its members.
- The PAGB Medical Devices Consumer Code, which applies to advertising by PAGB members of certain self-care medical devices.
- There are also other sector-specific medical devices trade associations which operate their own codes of practice which regulate advertising among other matters.

Medicines

Advertising of medicines must comply with The Human Medicines Regulations 2012/1916 and any marketing authorization conditions. This is supplemented by:

- Guidance published by the Medicines and Healthcare products Regulatory Agency (MHRA) in its "Blue Guide – Advertising and Promotion of Medicines in the UK."
- The Association of the British Pharmaceutical Industry (ABPI) Code of Practice, which is a voluntary code which binds its members.

Advertising of veterinary medicines must comply with the Veterinary Medicines Regulations, and any marketing authorization conditions.

TOBACCO AND E-CIGARETTES

UK legislation (notably the Tobacco Advertising and Promotions Act 2002) includes wide bans on advertising tobacco products to the public. These bans are also reflected in Section 21 of the CAP Code and sections 10.1.3 and 10.3-10.5 of the BCAP Code.

E-cigarette products are the subject of separate legislation (particularly the Tobacco and Related Products Regulations 2016), which permits advertising, with restrictions. The CAP Code sets out specific rules for the marketing of e-cigarette products in section 22, and the BCAP Code does so in section 33.



OTHER SECTORS WITH SIGNIFICANT SPECIFIC ADVERTISING REGULATION

- Automobile
- Cannabis CBD-derived products
- Charities
- Cosmetics
- Employment agencies
- Political cause/party advertising
- Weight control and slimming

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United States of America

United States of America

General law on advertising

WHAT ARE THE KEY PIECES OF GENERAL LEGISLATION RE ADVERTISING?

The key federal laws include:

- Federal Trade Commission Act – this law allows the Federal Trade Commission (FTC) to act in the interest of consumers to prevent deceptive and unfair acts or practices.
- Lanham Act – allows consumers and competitors to bring cases for deceptive advertising.
- Dodd Frank Act – created the Consumer Financial Protection Bureau which provides for consumer protection jurisdiction over banks and financial institutions.
- Telemarketing and Consumer Fraud and Abuse Prevention Act – allows the FTC to regulate deceptive telemarketing practices.
- The Communications Act – allows the Federal Communications Commission (FCC) to accept complaints regarding broadcast advertising and customers can lodge complaints about offensive or obscene broadcast material.
- Food, Drug, and Cosmetic Act – oversees the safety and accuracy of product labeling.

Most states also have their own laws governing advertising.

IS THERE STATE, AS WELL AS FEDERAL ADVERTISING LEGISLATION?

Yes. Both federal and state have laws regulate various advertising issues. While the laws and regulations created by Congress and federal regulators like the FTC are applicable to every consumer and business in US commerce, states may create their own laws that are more restrictive than what the federal government provides. While many states create laws that are essentially the same as the FTC Act, some states also create laws that impose more stringent requirements which must be followed by any business or consumer advertising in that state.

HOW ARE ADVERTISING LAWS ENFORCED?

Various types of plaintiffs may enforce against false or misleading advertising and/or violations of advertising statutes in various venues. The FTC, the states' Attorneys General, and other regulators can bring claims against advertisers through their administrative procedures or in court. Consumers and competitors may also bring claims in state or federal courts, through individual or class action lawsuits. Consumers or competitors may also bring claims with the National Advertising Division of the Better Business Bureau, the industry self-regulatory body that hears disputes over national advertisements.

WHO ARE THE RELEVANT REGULATORS?

The primary regulators are the FTC, the Consumer Financial Protection Bureau (CFPB); the FCC, and the states' Attorneys General.



CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. Private companies can submit a complaint with the FTC, CFPB, and FCC by filing a complaint directly with them.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

The FTC has often imposed the following sanctions:

- Cease and Desist Orders: this creates a legally binding offer that could require the company to cease running a certain advertisement or provide substantiation for future claims.
- Civil Penalties, Consumer Redress, and Other Monetary Penalties.
- Corrective Advertising or Disclosures: this could require the company to affirmatively correct misinformation by contacting customers or taking out a new advertisement to clarify a previous misleading statement and any confusion caused.

WHAT ISSUES ARE REGULATORS CURRENTLY FOCUSING ON?

Misleading or deceptive endorsements, customer reviews, claims likely to affect children, health care privacy and COVID-19 claims, other health-related claims, deceptive pricing or “free” claims (including in the context of recurring subscription payment programs), “made in USA” claims, and marketing through use of “dark patterns”.

CAN PRIVATE COMPANIES OR CONSUMERS BRING CLAIMS FOR BREACH OF ADVERTISING LEGISLATION BEFORE THE COURTS?

The Lanham Act provides a private right of action against false advertising. Additionally, many state consumer protection laws include a private right of action.

WHAT REMEDIES CAN BE OBTAINED IN THE EVENT OF A SUCCESSFUL COURT CLAIM FOR BREACH OF ADVERTISING LEGISLATION?

In the event of a successful claim for violation of advertising laws, defendants have had to pay monetary relief including actual damages, civil penalties, and attorneys’ fees. Monetary settlements are often reached in false advertising claims. Additionally, courts have also awarded injunctive relief including preliminary injunctions and corrective advertising. Some violations of advertising laws could result in criminal penalties including fines and imprisonment.

IS THERE ANY REQUIREMENT TO PRE-CLEAR ADVERTISING?

No.

Self-regulatory systems

IS THERE A SEPARATE SELF-REGULATORY SYSTEM IMPLEMENTED BY THE ADVERTISING INDUSTRY?

Yes. The National Advertising Division (NAD) of the Better Business Bureau regulates the advertising industry. Additionally, there are several organizations that provide guidance on advertising issues, including the Digital Advertising Alliance (DAA), the Better Business Bureau (BBB), and the Children’s Advertising Review Unit (CARU).

WHAT ARE THE LIMITS OF SCOPE OF SUCH SELF-REGULATORY SYSTEM?

The NAD can review national advertisements that were on broadcast or cable television, radio, in magazines or newspapers, on the internet or commercial online services, or provided direct to the home or office. The organization accepts false and misleading advertising claims, including product performance claims, superiority claims against competitive products, and all kinds of scientific and technical claims. The NAD hears disputes between parties and may also initiate proceedings on its own.





HOW IS IT ENFORCED?

Once a case is initiated, the NAD generally evaluates and issues a ruling within 60 to 90 business days. Advertisers can choose to accept or reject the ruling. If the advertiser would like to appeal, they can bring their appeal to the National Advertising Review Board.

WHO ARE THE RELEVANT REGULATORS FOR THE SELF-REGULATORY SYSTEM?

The NAD acts as the regulator in these cases.

CAN PRIVATE COMPANIES BRING COMPLAINTS TO THE REGULATOR?

Yes. Private companies can submit a complaint to the NAD and will have to pay filing fees to do so.

WHAT ARE THE SANCTIONS IN THE EVENT OF REGULATOR ENFORCEMENT?

Rulings from the NAD are not binding on the advertiser. If an advertiser receives an adverse decision from the NAD, they can choose to ignore it, but they run the risk that the NAD or another interested party will refer this complaint to the FTC or another regulator who could bring an action against them.

Misleading advertising

WHAT ARE THE KEY GENERAL PRINCIPLES IN RELATION TO MISLEADING ADVERTISING?

- Advertising must be truthful and cannot be deceptive. Advertisements should not mislead a reasonable customer.
- Advertising cannot be unfair. According to the FTC, an advertisement is unfair if it contains statements that cause or are likely to cause injury to the customer and that injury is not outweighed by any other benefits to the customer.
- Advertisers must be able to provide information that substantiates their claim, whether or not the claim is express or implied.

WHAT KIND OF SUBSTANTIATION IS REQUIRED?

Advertisers need to have a reasonable basis for all express and implied claims before publication. Certain types of claims have heightened substantiation requirements (ie more substantiation is required to reach the “reasonable basis” standard). For example, health claims generally require, among other things, well-controlled clinical studies to substantiate them. If an advertisement indicates a particular level of support for the product claim (for example, laboratory tests or scientific studies), the advertiser must be in possession of the advertised substantiation before dissemination of the advertisement.

Social responsibility

WHAT PROHIBITIONS ARE THERE ON SOCIALLY IRRESPONSIBLE ADVERTISING?

There are no specific prohibitions at the federal level on this type of advertising, but this conduct may be prohibited by federal or state antidiscrimination laws. Additionally, industry self-regulatory bodies may have industry-specific guidance that imposes additional restrictions (for example, alcohol and tobacco industry self-regulatory codes prohibit people who are under the age of 25 from appearing in advertisements for those products).

WHAT ARE THE KEY GENERAL RESTRICTIONS ON ADVERTISING TO CHILDREN?

The Children’s Online Privacy Protection Act (COPPA) requires operators of online websites to obtain parental consent before collecting, using, or disclosing a child’s personal information.





Additionally, the Children's Advertising Review Unit of the Better Business Bureau (CARU) has set forth guidelines regarding advertising to children which provide the following core principles:

- Advertising should not stimulate children's unreasonable expectations about product quality or performance.
- Products and content inappropriate for children should not be advertised directly to them.

Comparative advertising

IS IT GENERALLY ALLOWED?

As long as the advertising is truthful and not misleading, and as long as the competitor's branding is not overused (for example, featured too prominently or too frequently), advertisers may make comparative claims.

WHAT ARE THE KEY RESTRICTIONS?

Comparative advertisements are generally held to the same standard that all advertisements are held to. Advertisers must have a reasonable basis to make all express and implied claims about their own products and those of the competitor. Comparative adverts should not be false or misleading, should not exaggerate the differences between their products and a competitor's products, and comparative claims should generally be narrowly expressed.

What are the key requirements for sustainability/ESG claims?

There is no existing federal regulation specifically related to ESG claims. The FTC has published The Green Guides to provide advertisers with guidance on the principles that apply to environmental advertising claims. The Green Guides are not law but provide guidance to businesses wanting to advertising laws generally. The Green Guides apply to all forms of marketing, advertising, labeling and promotional materials, all forms of express and implied claims, and all media channels.

The Green Guides set out four general principles. First, any disclosures that are required to prevent a deceptive claim must be clear, prominent, and easy to understand, in large type, and in close proximity to the qualified claim. Second, each environmental claim should clearly specify whether it applies to the product, the product's packaging, service, or just a portion of the product, packaging, or service, to avoid misleading consumers about the portion of the product, service, or packaging to which the claim applies. Third, environmental marketing claims should not overstate an environmental attribute or benefit; if the benefit is negligible, it should not be mentioned at all. Fourth, any comparative environmental marketing claim should be clear to avoid consumer confusion about the basis of the comparison. The Green Guides also provide specific guidance pertaining to various specific types of ESG claims, for example, a claim that a product is compostable or recycled.

Is there sector-specific regulation in each of the following areas?

ALCOHOL

The Federal Alcohol Administration (FAA) Act creates standards for regulating the labeling and advertising of wine, spirits, and malt beverages and the Treasury Department's Alcohol and Tobacco Tax and Trade Bureau (TTB) create guidelines to prevent alcohol advertising materials from being misleading. States and localities also implement laws that regulate alcohol advertising which can include: limiting where alcohol advertisements can be placed (ie near a house of worship), prohibiting advertising which may be seen by minors, and prohibiting any advertising and promotions that promote the unhealthy consumption of alcohol. Members of certain industry groups are also subject to voluntary industry guidelines, for example, members of the Wine Institute are subject to the Wine Institute's Code of Advertising Standards, and members of the Beer Institute are subject to the Beer Institute's Advertising & Marketing Code.



FINANCIAL SERVICES

There are multiple sources of regulation in the financial services and consumer credit space. The FTC and the Consumer Financial Protection Bureau are two of the principal regulators that coordinate regulation of deceptive advertising and marketing in the financial services industries. Additionally, the Securities and Exchange Commission oversees and regulates the sale of securities, focusing on the disclosure of important market information, fair dealing, and protection against fraud.

FOOD AND BEVERAGE

The Food and Drug Administration (FDA) regulates the manufacturing, packaging and labeling of food under the Federal Food, Drug, and Cosmetic Act. The FDA regulations also address the information that is required to appear on food product labels and advertising claims made about food products such as nutrient content claims, health claims, structure and function claims, and descriptive claims. The FTC has issued informal guidance regarding food marketing and nutritional supplement marketing over the years. There are also voluntary industry self-regulatory initiatives such as The Children's Food and Beverage Advertising Initiative and The Children's Confection Advertising Initiative, which are voluntary principles that restrict advertising of certain types of foods and confections to children ages 12 and under.

GAMBLING

It's illegal to advertise unlawful gambling. Some states prohibit all promotion of gambling, while a few states permit advertising of legal gambling with certain restrictions and/or requirements. The most frequently-invoked anti-gambling statutes include:

- Illegal Gambling Business Under The Organized Crime Control Act (OCCA), 18 U.S.C. §1955. This is a federal offense based on violating state antigambling laws.

- The Travel Act, 18 U.S.C. §1952. The so-called Travel Act makes it a federal crime to travel or use any facility in interstate or foreign commerce to carry on "unlawful activity," defined as a business enterprise involving gambling "in violation of the laws of the State in which they are committed or of the United States."
- Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 et seq. Broadly stated, RICO makes it unlawful to participate in the conduct of an enterprise through a pattern of racketeering activity or a pattern of collecting unlawful debt. Racketeering activity includes any act involving gambling or that is otherwise indictable under, among other statutes, the Wire Act. 18 U.S.C. § 1962(c).
- Federal Lottery Statutes, which contain broad prohibitions on importing, shipping in interstate or foreign commerce, or using the US mails for lottery material.
- Various State Laws, with several states having either passed new laws specifically prohibiting online gambling or relying on pre-Internet era laws broadly banning all types of gambling.
- The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), which defines "bet or wager" to mean "the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome," and provides that no person engaged in the business of betting or wagering may knowingly accept credit or payment in connection with the participation of another person in unlawful Internet gambling (defined as "to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made"). This is a criminal statute and penalties can include fines and imprisonment for up to five years.



- The Wire Act, 18 U.S.C. § 1084. This law contains two general clauses, with each clause prohibiting two different kinds of wire transmissions as follows: Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, will be fined under this title or imprisoned not more than two years, or both.

PHARMACEUTICAL/MEDICAL DEVICES

The FDA has responsibility for regulating the labeling of drugs and prescription drug advertising. Within FDA, the main division responsible for overseeing drug promotion and advertising is the Office of Prescription Drug Promotion (OPDP). The governing laws and regulations include the Federal Food, Drug, and Cosmetic Act (FD&C Act) and the implementing regulations codified in 21 C.F.R. Parts 201 (Labeling) and 202 (Prescription Drug Advertisements). There's also a large body of FDA guidance documents related to promotional labeling and advertising which contain non-binding recommendations but reflect FDA's current thinking and interpretation of laws and regulations that it enforces.

Finally, pharmaceutical companies who are members of the Pharmaceutical Research and Manufacturers of America (PhRMA) are also subject to voluntary industry guidelines on direct-to-consumer prescription drug advertising. PhRMA is comprised of leading innovative biopharmaceutical companies in the US. Non-members may also voluntarily agree to follow these PhRMA guidelines.

TOBACCO AND E-CIGARETTES

In the US tobacco advertising is governed by federal laws, the 1998 Master Settlement agreement (the MSA), and industry self-regulation.

At the federal level, the FTC requires that all tobacco packaging bear visible labels warning consumers of the health hazards of consuming tobacco products. Additionally, The Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act), which gives the FDA the authority to regulate the manufacture, distribution, and marketing of tobacco products to protect public health. Advertisements for cigarettes, cigarillos, and smokeless tobacco are prohibited on any medium of electronic communication that is subject to the jurisdiction of the Federal Communications Commission.

In recent years, the FDA's regulatory authority has expanded to include other tobacco and tobacco adjacent categories that were not previously within the scope of the Tobacco Control act such as cigars, pipe tobacco, hookah, e-cigarettes, e-liquid, and parts and components of any of the foregoing products. These products must also include health warning statements on packaging and advertising.

The MSA is a settlement agreement between 46 states, the District of Columbia, US territories and the four largest tobacco manufacturers in the US. The MSA imposes restrictions on how tobacco products are advertised and promoted in the US.

The tobacco industry has also taken steps to self-regulate by establishing the voluntary Cigarette Advertising and Promotion Code (CPAC), which establishes voluntary restrictions that govern tobacco advertising in the US.





Influencer marketing

We have published a dedicated guide that examines the legal frameworks governing influencer marketing in 28 key global jurisdictions. It addresses the following questions from each jurisdictions’ perspective:

- What qualifies as advertising under local law?
- What are the typical influencer practices and in which cases are they considered advertising?
- What legal obligations apply?
- What are the applicable laws, regulations or guidance?
- What are the consequences for influencers if advertising content is not clearly labelled?
- What legal risks apply when cooperating with influencers?

Download that guide [here](#).

Prize promotions

Similarly, we have published a dedicated Prize Promotions guide designed to introduce you to some of the key requirements surrounding prize promotions, from the management of the early development stages of a promotion, to the outline of potentially problematic issues.

Download our Prize Promotions guide [here](#).

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European Union

What are the relevant EU regulations regarding advertising and how are they enforced?

Since a large part of the general national law about advertising is based on various EU regulations or directives, it's also important to take a wider look towards the European legal background of advertising regulation.

First of all there's the Directive (EU) 2005/29 on unfair commercial practices (UCP Directive), which might be (along with the Directive concerning misleading and comparative advertising 2006/114) the most important legal framework regarding advertising. The primary scope of the UCP Directive is to prevent unfair business-to-consumer commercial practices, before and during a commercial transaction in relation to a product, so it affects advertising as this is typically a commercial practice that is undertaken in advance of a trade. A commercial practice is considered unfair if it's misleading or aggressive, and thus leads the average consumer to an economic decision they wouldn't otherwise have made.

Further relevant directives are the Directive 98/6/EU on Consumer Protection in the Indication of Prices on products offered to consumers, and the Consumer Rights Directive (EU) 2011/83. The Consumer Rights Directive entails a bundle of different information obligations a trader has to disclose before a contract becomes binding. So this type of event might often coincide with a released advertisement and therefore always should be kept in mind. There's also the Directive 2000/31/EC of the European Parliament on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (E-Commerce Directive).

The European regulations mentioned above all fall within the scope of application of the new CPC Regulation (EU) 2017/2394 (Consumer Protection Cooperation (CPC) Regulation). The CPC Regulation provides the legal basis for taking coordinated investigation and enforcement measures by the national competent authorities against possible infringements of various harmonized EU regulations (listed in the annex to Art. 3 no. 1 CPC regulation). The CPC Regulation is applicable if there's an intra-union infringement (that harms consumer interests in maximum two Member States), a widespread infringement (that harms consumer interests in maximum two Member States) or a widespread infringement with a union dimension (the infringement harms consumer interests in at least two-thirds of the Member States, accounting for at least two-thirds of the population of the EU). So in the case of a possible unlawful misleading advertisement, the CPC Directive might be applicable when the spot is broadcast in Germany and Austria (as this would be an intra-union infringement) or even additionally in France and Spain and then would be handled as a widespread infringement.

The enforcement measures that can be imposed by the national competent authority (in Germany the Federal Office of Justice (*Bundesamt für Justiz*)) range from obtaining commitments from the trader responsible for the infringement (Art. 9 sec. 4 b) CPC) to informing the harmed consumer on how to seek compensation or ordering in writing the cessation of the infringement (Art. 9 sec. 4 d), e)). When no other effective means are available, the competent authority is also entitled to impose penalties such as fines or periodic penalty payments (Art. 9 sec. 4 h). The "Germany By-Law to CPC regulation" further includes a fine up to EUR10,000 when not following an enforceable order of the competent authority.



Furthermore, there are various EU regulations governing different aspects of advertisement in consumer protective areas like medicine, nutrition or energy, including:

- EU regulation 1169/2011 on correct labelling of a food product and the mandatory information that has to be disclosed;
- EU regulation 2017/1369 setting a framework for energy labelling;
- EU regulation 2017/745 on medical devices regulating for example the permissible use of claims that describe the function of a device;
- EU regulation 655/2013 laying down the common criteria for the justification of claims used in relation to cosmetic products;
- Health-Claims-Directive (EU) 1924/2006.



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