



Food & Beverage Advertising Regulation

Europe, the Middle East & Africa

Welcome



Speakers



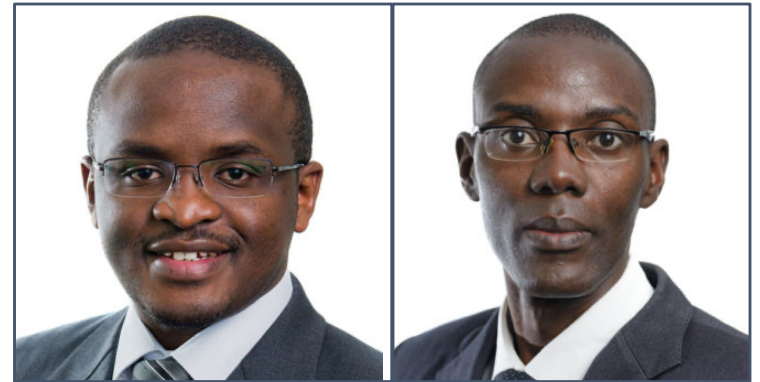
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Agenda

- The regulatory **landscape** for food & beverage advertising
- The **Hot Topics** and areas of focus
- Why does it matter? A word about **sanctions**
- **Key takeaways**

The background is a dark teal color. It features several glowing, wavy lines in a lighter teal shade that flow across the frame. In the bottom-left corner, there is a faint, light-colored grid pattern. The title 'The Regulatory Landscape' is written in a bold, white, sans-serif font, with a thin horizontal line underneath it.

The Regulatory Landscape

Regulatory Landscape

- Is it a self-regulatory system or is the sector governed by laws?
- Are there any entities mandated with regulation?
- Any quirks in each market?
- Any possible sanctions?

Regulatory Landscape

- Definition: Advertising law
- Constitutionally relevant economic activity (article 60° n°2 of the Constitution of the Portuguese Republic),
- Regulated in an autonomous **Advertising Code** (Decree-law n.° 330/90, of October 23rd)
- And many.. many... many other legal instruments
 - Portuguese Consumer's Protection Law (Law 24/96 of July 31); Portuguese Electronic Communications Law (Law 5/2004 of February 10); Law for Personal Data and the Protection of Privacy in Electronic Communications (Law 41/2004 of August 18); Postal Advertising Law (Law 6/99 of January 27); Audio-text Advertising Law (Decree-Law 175/99 of May 21); Law for Unfair Commercial Practices (Decree-Law 57/2008 of March 26); Portuguese Industrial Property Code (Decree-Law 36/2003 of March 5); Competition Law (Law 19/2012 of May 8); Distance Sale Contracts (Decree-Law 24/2014 of February 14); General Contractual Clauses (Decree-Law 446/85 of October 25); Legal Regime for Individual Restrictive Practices of Commerce (Decree-Law 166/2013 of December 27); Legal Regime for the Sale and Warranties of Consumer Goods (Decree-Law 67/2003); Legal Regime for the Right to Compensation for Competition Law Infringements (Law 23/2018); and EU Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR) (Regulation 2016/679/EU)...
- Main Principles:
 - Lawfulness; Identification; Truthfulness; Respect for consumer rights
 - **With regard to Advertising, Truthfulness is key**

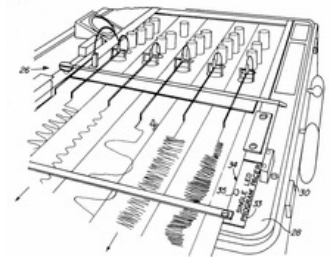


Image available [here](#)

Lex Specialis

- Labelling

- Regulation (EU) No 1169/2011
- Specific National Regulation
 - E.g.: Decrees-Law n.62/2017; 229/2003; or 157/2017

- Competition Law

- Article 7° of Decree-Law n.° 57/2008, regulating unfair (disloyal) commercial practices

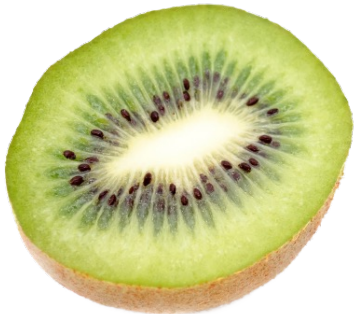
- Self-Regulation

- Code of Conduct for Advertising and other forms of Commercial Communication
- Code for Commercial Communication with Children in matters of Food and Drinks

Regulatory Landscape



Spanish Food Safety and Nutrition Law (Ley de Seguridad Alimentaria y Nutrición)



Advertising Self-Regulation Code

CÓDIGO
(PAOS)



European Union Regulations

Regulatory Landscape

- **Key Laws and Regulations:**
 - Spanish Food Safety and Nutrition Law (art. 44 and cited laws)
 - Advertising Self-Regulation Code (PAOS)
- **Governing Bodies:**
 - Spanish Agency for Consumer Affairs, Food Safety, and Nutrition (AECOSAN)
 - Self-Regulation Organization (Autocontrol)



Regulatory Landscape

- No specific legislation on Advertising
- Inference is, however, made from the Competition Act 2010 and the Consumer Protection Act 2012.
- There are two professional bodies mandated with oversight and regulation of the Sector:
 1. Marketing Society of Kenya (MSK) - Regulates Marketing
 2. Association of practitioners in Advertising (APA)- Enforce Advertising Standards
- Primary guidelines are the Advertising Code of Practice and Guiding Principles- are developed by MSK +APA
- Advertising Standards Board (ABSK)- Formed by MSK+APA

Regulatory Landscape

General Laws

- The Constitution of Kenya 2010
- Consumer Protection Act 2012
- Competition Act 2010
- The Standards Act CAP 496

Sector Specific Laws

- The Food Drugs and Chemical Substances Act CAP 254
- Food Labelling Regulations
- The advertising Code of Practice and Guiding Principles (the Code)

Principles of Advertising

Legality
Honesty

Decency
Truthfulness

Regulatory Landscape

- **Regulatory Bodies**
 - Marketing Society of Kenya (MSK)
 - Association of practitioners in Advertising (APA)
 - Advertising Standards Board (ABSK)-
Formed by MSK+APA
 - Kenya Bureau of Standards
 - Competition Authority

Regulatory Landscape

- Advertising Regulatory Council of Nigeria (ARCON)
- Nigeria Communications Commission (NCC)
- National Agency for Food & Drug Administration & Control (NAFDAC)
- Central Bank of Nigeria (CBN) acting under the CBN Act and the Banking and other Financial Institutions Act (BOFIA).
- National Insurance Commission (NAICOM)
- Nigerian Communications Commission (NCC)

Regulatory Landscape

- The Consumer Protection Law – 1981
 - prohibits misleading consumers.
- Consumer Protection Regulations (Advertising and Marketing Methods Targeted at Minors) - 1991
 - advertisements and marketing methods must be adapted to the knowledge, understanding and maturity of the targeted audience.
 - prohibits encouraging minors to consume food that alters their body weight

Regulatory Landscape

- Protection of Public Health Law (Food) – 2015
- Protection of Public Health Regulations (food) (Nutritional Labeling) - 2017

The background is a vibrant, abstract composition of warm colors, primarily oranges and yellows. It features a dense network of thin, glowing lines that crisscross the frame, some appearing as straight paths while others curve gracefully. Interspersed among these lines are numerous soft, out-of-focus circular bokeh lights, creating a sense of depth and luminosity. The overall effect is one of dynamic energy and warmth, reminiscent of a starry night sky or a complex network of light trails.

Hot Topics

Hot Topics

- Disclosures
- Other unusual 'hot topics'?

Hot Topics

• Fat Foods

- Definition
- Legal Limitations to Fat Foods Advertising
- The National Program for the Promotion of Healthier Food Consumption



Image available at [Diário do Poder Wbsite](#)

• Food Analogues

- Definition
- Risks of Advertising Food Analogues:
 - Denominations and Labelling;
 - False or Deceitful Advertisement
 - Comparative Advertising



Image available at [Beyond Meat Website](#)



Image available at [Mosa Meat Website](#)



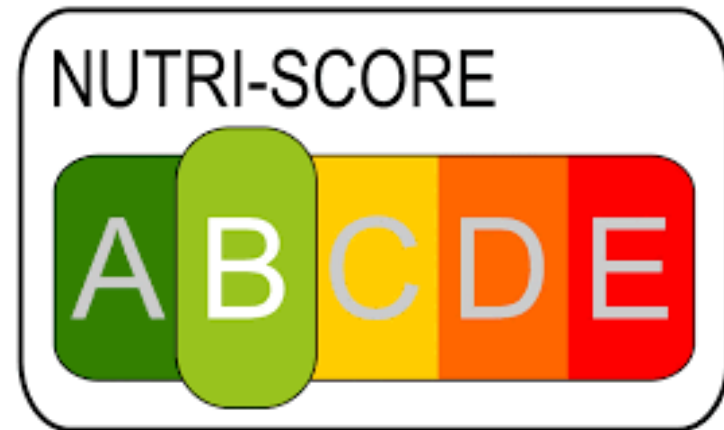
Image available at [Silk Canada Website](#)

Hot Topics



- Health and Nutrition Claims

- Labeling
- Nutriscore
- Limits to advertising



Hot Topics

- **Advertising of food and beverages aimed at children**
 - New draft regulation



¿Qué opinas sobre el Proyecto de Real Decreto sobre publicidad de alimentos y bebidas dirigida al público infantil?



#TeEscuchamos

Abrimos la consulta pública hasta el 22 de noviembre. Envíanos tus observaciones a través del correo electrónico: consultapublica@consumo.gob.es

Hot Topics

• Not- products Products

- Controversy at European level

INDUSTRIA CÁRNICA

La UE veta etiquetar como carne las hamburguesas vegetales

• La medida propone llamarlas “discos vegetarianos” como solución



La nueva norma aún tardará unos años en entrar en vigor (Gloria Carrón)

ALBERT MOLINS RENTER
06/04/2019 00:43 | Actualizado a 06/04/2019 02:25



don carlos
RESTAURANTE



Court of Justice of the European Union
PRESS RELEASE No 63/17
Luxembourg, 14 June 2017

Press and Information

Judgment in Case C-422/16
Verband Sozialer Wettbewerbs eV v TofuTown.com GmbH

Purely plant-based products cannot, in principle, be marketed with designations such as ‘milk’, ‘cream’, ‘butter’, ‘cheese’ or ‘yoghurt’, which are reserved by EU law for animal products

The same is true if those designations are accompanied by clarifying or descriptive terms indicating the plant origin of the product concerned. However, there is a list of exceptions.



La medida propone llamarlas “discos vegetarianos” como solución

El comité de Agricultura del Parlamento Europeo ha votado a favor de **prohibir** que se puedan denominar como hamburguesa, filete, salchicha, escalope y burger productos que no sean cárnicos.

En la práctica, esto quiere decir que ya no se podrán vender hamburguesas vegetales o salchichas de soja, usando estas **denominaciones** en los envases. El comité propone, para el caso de las hamburguesas, usar el nombre de “discos vegetarianos”.

Organizaciones ecologistas –como **Greenpeace** y **Birdlife**– y algunos eurodiputados sospechan que detrás de estas medidas se encuentra la **industria cárnica**, aunque el eurodiputado socialista francés **Éric Andrieu** –responsable de supervisar la legislación– lo negó y dijo que la prohibición era simplemente “sentido común” y que se había tomado pensando exclusivamente en el “interés de los consumidores”.



creatividad.

Desde el 2017, tampoco se pueden llamar leche o yogur a productos hechos a base de plantas

Según Andrieu, se ha considerado que la denominación bistec “se debe conservar para un bistec de carne”, y que “se deben crear nuevos nombres para todos estos nuevos productos”, porque las personas “necesitan saber qué es lo que están comiendo”.

Para el eurodiputado francés, la medida es una oportunidad para que las marcas vegetarianas dejen su impronta y exhiban su

Hot Topics

- **Kenya Food and Drugs Authority Bill 2019**
 - Proposed the Food and Drugs Authority (FDA)
 - FDA to prescribe and regulate food standards
- **Food and Feed Safety and Control Coordination Bill 2023**
 - Providing consumers with information on Pre-packaged foods
 - Public Health Standards Board to audit traceability mechanisms of manufacturers and advertisers

Hot Topics

- Kenya Bureau of Standards (KEBS) Draft Labelling Standards
 - Proposed disclosure of information, especially on High levels of Fat, Sugar and Salt (HFSS) Foods
 - Notably, these standards have not been extended to include food for infants and young children

Hot Topics

- **WHO Recommendation on Stronger Policies to Protect Children from Harmful Food Marketing**
 - Provides guidelines on policies to protect children from the harmful impact of food marketing
 - The recommends restriction of marketing HFSS Foods and non-alcoholic beverages.
 - Highlights the unaddressed sector of advertising involving children especially with pre-packaged HFSS foods

Hot Topics

- Ban on use of foreign models and voiceover artists (August 22, 2022)
- Implementation of 75% cumulative local content in ads effective January 1, 2023
- Requirement for Skit-makers to seek pre-approval for all digital adverts – December 12, 2022



Hot Topics

- Protection of Public Health Regulations (food) (Nutritional Labeling) – 2017
- Defines the manner of informing consumers that food:
 - Contains a high level of salt
 - Contains a high level of sugar
 - Contains a high level of fat

Hot Topics



Hot Topics

Class Action 13190-03-13, Sabach vs. Secrets of the East Ltd.

Defendant claimed his Tibetan Tea:

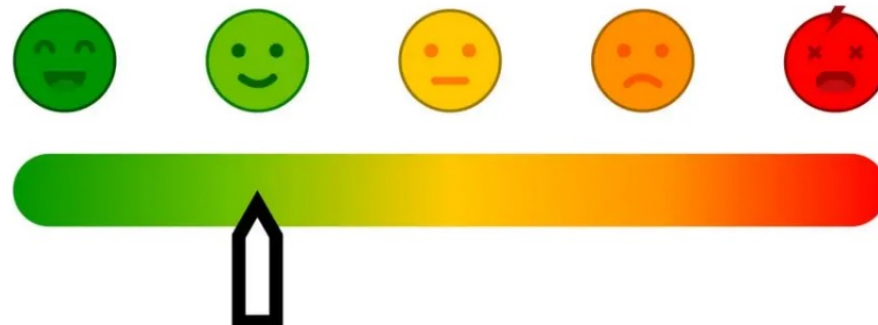
- Turns fat into Energy
- Increases Metabolism
- Cleanses the Body
- Calms the Nerves
- Reduces Body Weight
- Authorized by the Ministry of Health

Sanctions



Sanctions

- What kind of sanction and how severe?



- Risk of sanction being imposed in practice?



Sanctions



Portugal

[Available here](#)

- **Economic**

- Advertising Law Code
 - Fines starting at EUR 1750 and rising to EUR 45 000
- Disloyal Commercial Practices
 - Fines starting at EUR 650 and rising to EUR 24 000
- Breaches of Labelling Rules
 - Varying according to legal instrument

- **Other Nature**

- Prohibition of Advertising for up to 2 years
- Loss of subsidies and other social benefits
- The suspension or prohibition of the infringing campaign

- **Risk Analyses**

- Low, but growing

Sanctions

• Potential sanctions

Fines and Penalties

Penalties for infringements range up to fines of 600,000 euro.

Advertiser Accountability

In addition, the infringing advertiser may also be obliged to revert the situation, without prejudice to compensation for any damages caused. Consumers are entitled to sue the company in the civil courts for damages.

AESAN

advertising relating to goods (or services) with specific regulation as food, are supervised by the competent authorities in the respective areas.

Sanctions

- **Standards Appeal Council (SAC)**
 - order withdrawal of advertising, pre-publication advice on future advertisements,
 - publish adverse publicity, or require media to withhold advertising space
- **Violation of Standards Act**
 - 1st offence- fine not exceeding USD 6,700 or a jail term not exceeding one year or both
 - Subsequent offences- fine (not prescribed) or jail term not exceeding five years, or both.

Sanctions

- **Food, Drugs and Chemical Substances Act- deceptive advertising**
 - 1st offence- fine not exceeding USD 3,350 or a jail term not exceeding two years or both
 - Subsequent offence- fine not exceeding USD 4,700 or jail term not exceeding five years, or both
 - Cancellation of any food licence issued under the Act
- **Consumer Protection Act- deceptive or misleading representations**
 - punitive damages in any action by a consumer
 - fine not exceeding USD 6,700 or imprisonment for a term not exceeding three years or both

Sanctions

- Imposition of fines
- Prosecution: e.g. ARCON's action against Meta Corporation for violating its vetting requirements – October 2022
- Suspension
- Caution & reprimand
- Revocation of licenses for advertising practitioners



Bad Advertising & ARCON's Reprimand of FreislandCampina WAMCO

Nigeria



Nigeria

Sterling Bank's Controversial Easter Message / Ad

Like Agege Bread, He Rose!

Happy Easter

"...let the one who has never sinned throw the first stone."

For our recent errors, we sincerely apologize.
Forgive us in the spirit of Easter!

Appeals to Sanctions

Advertising Practitioners Disciplinary Committee

- Appeals lie from this Committee to the Federal High Court

Advertising Offences Tribunal

- Appeals lie from this Tribunal to the Court of Appeal

Sanctions

- **Civil Proceedings Against Advertisers:**
 - Monetary Relief, Plaintiff must prove he was misled and actual damages
 - Injunctions
- **Possible Sanctions Under the CPA:**
 - A fine up to approximately US\$17,000
 - Possible criminal actions (under extreme circumstances)
- **Possible Sanctions Under the Class Action Law – 2006**
 - No Limit

A silhouette of a person wearing a cape, standing with arms raised in a celebratory gesture against a vibrant sunset sky. The sun is low on the horizon, creating a warm orange and yellow glow. The person's shadow is cast on the ground in front of them. The overall mood is one of triumph and achievement.

Key Takeaways

Key Takeaways

- Advertising Hot Topics
 - Transparency is key for consumer protection and legal compliance
- Avoiding Fines
 - Clear understanding of the legal rules and limitations on Advertising
- Last but not least: When in Doubt, call for a Specialist
 - We're here to help!



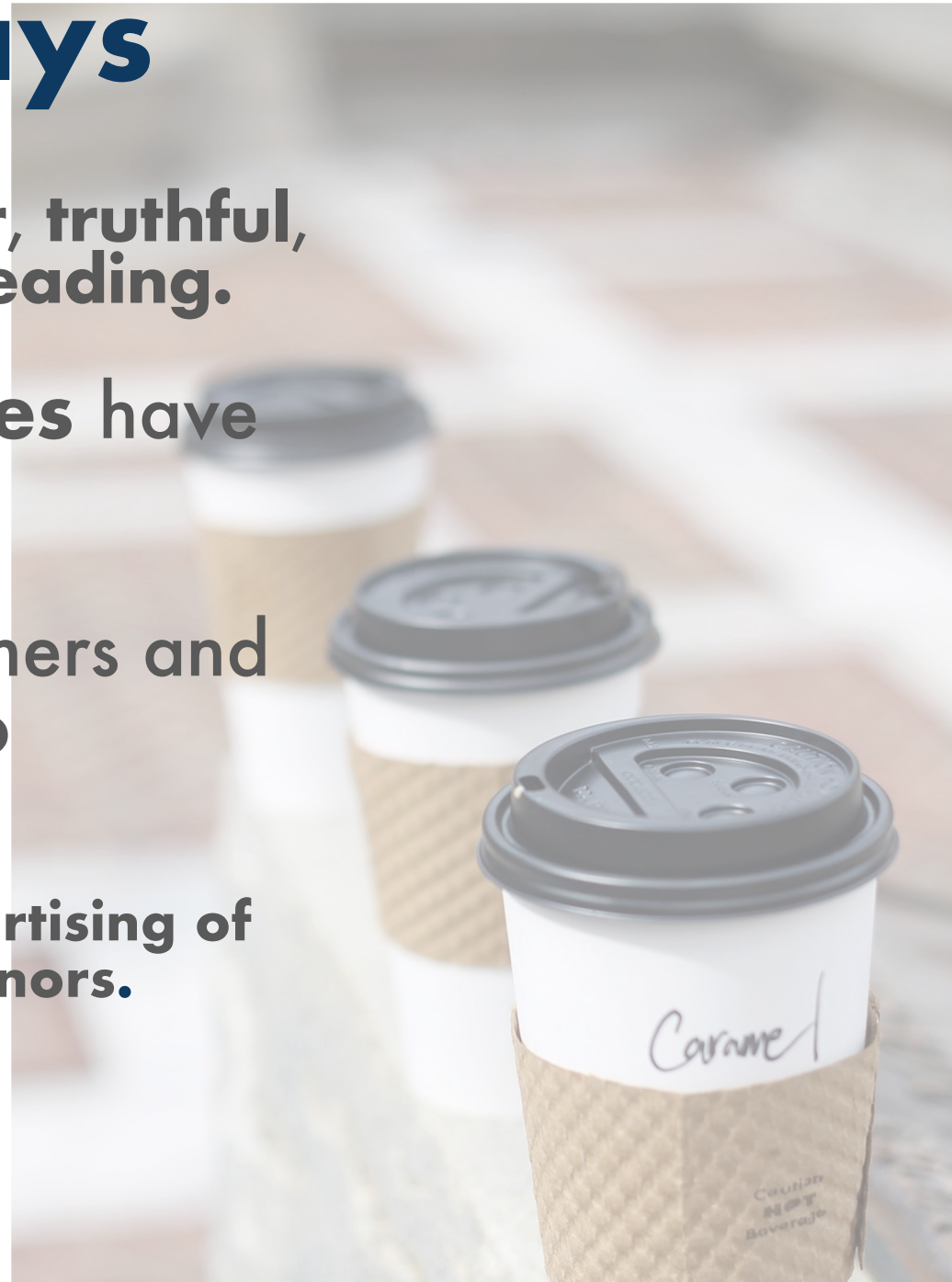
Image Available [here](#)

Key Takeaways

Advertising must be **clear, truthful, objective** and **not misleading**.

Food and beverages have a special advertising regulation with **extra protection** to consumers and **super protection to minors**

Upcoming **new law** on **advertising of food and beverages to minors**.



Key Takeaways

- Ad law is strictly and jointly regulated by different government bodies
- ARCON's powers now includes prosecution
- Good advertising practice must be encouraged
- Adverts must be pre-approved before exposure

Key Takeaways

Kenya

- Ensure advertisements containing health claims in relation to fats, vitamins, and minerals can be readily substantiated.
- Do not make any representations or omissions, or engage in any practices likely to cause unreasonable risk or harm to consumers.
- Provide recommended dietary uses and food and beverage warnings for uses that may harm consumer health.
- Ensure advertised and marketed products adhere to Kenyan Standards prescribed by KEBS
- Implement or review internal marketing standards and policies

Key Takeaways

- Do not mislead consumers when marketing and advertising food and beverage
- Be extra careful when targeting minors
- Be aware of labeling regulations relating to foods with a high content of salt, sugar and fat

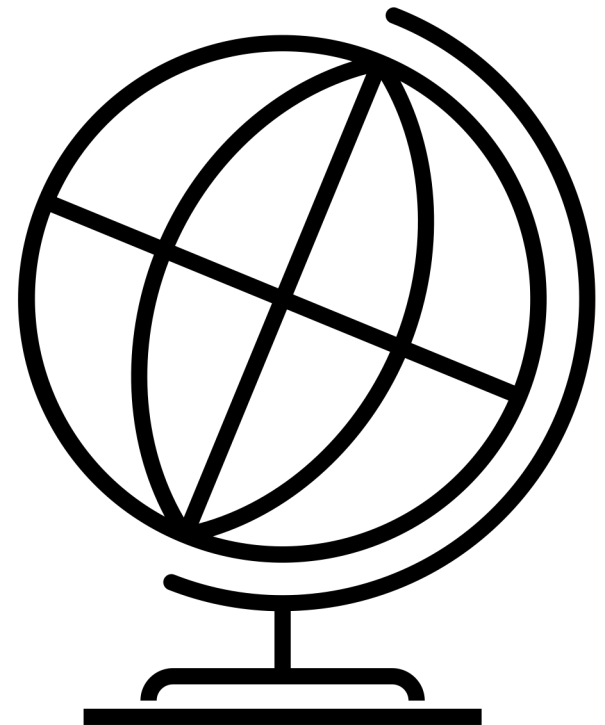


GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

Any Questions?

Upcoming Webinar

- Global Advertising Law Year in Review 2023
 - December 7, 2023
 - 12pm EST



Resources

- GALA Website - www.galalaw.com



- GALA Blog - blog.galalaw.com

