



# Recent Global Advertising Law Developments



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## Argentina

Argentina eliminated the requirement that sweepstakes and contests must be authorized by the federal government. New rules were also issued requiring that advertising for sweepstakes and contests include a website address or toll-free number where the full rules can be reviewed.

## Australia

In Australia, penalties for false or misleading advertising were significantly increased. In addition, the Chairman of the Australian Competition and Consumer Commission said that its enforcement priorities for 2019 include customer loyalty schemes, customer guarantees, social media advertising, and subscription traps.

## Austria

A recent decision from the Austrian Supreme Court held that oversized packaging (not required for technical reasons) can communicate false or misleading claims about a product's essential characteristics, including number, size, volume, and weight. The Court stated that packaging is misleading if the average consumer, who pays adequate attention to the packaging, is misled in a manner that is likely to impact the consumer's purchasing decision.

## Belgium

There has been litigation and regulatory interest in Belgium in the online and offline gambling and betting market, including involving loot boxes. As marketers come up with new ways to use cross-selling and other techniques, there have been increasing challenges to comply with existing direct marketing and other rules. And, as technology continues to evolve, regulation is expected.

## Brazil

Brazil enacted its own General Data Protection Law and created a National Data Protection Authority. New rules are expected to be issued by August 2020 when the law comes into force.

## Bulgaria

The Bulgarian competition authority fined Metro Cash & Carry Bulgaria EOOD ("Metro") in the amount of BGN 15 million (approx. EUR 7,500 Million) for prohibited comparative advertising. The authority ruled that Metro has indirectly identified a competitor in one of its ads. This is the first decision of its kind from the authority.

## Canada

Ad Standards, the advertising self-regulatory body in Canada, has made several important updates, including the release of a new Advertising Dispute Procedure, which changes the way in which disputes between advertisers will be heard and resolved. Ad Standards also introduced new Influencer Disclosure Guidelines to provide "dos and don'ts" to assist the advertising industry in complying with the Canadian Code of Advertising Standards. The Competition Bureau may soon be enforcing in the area of influencer advertising.

## Chile

In Chile, the use of cartoons, toys, and certain other marketing tools are not permitted in connection with high-calorie packaged food, and the market appears to be widely in compliance. As a result, nearly all cereal and snack producers have refrained from even using registered trademarks that depict a cartoon or mascot. The Supreme Court has also confirmed that even the sale of Santa Claus-shaped chocolates violates the labeling law.

## China

Internet advertising is increasingly becoming the target of government enforcement in China. In addition, changes to the law impose strict requirements on websites regarding intellectual property, data protection, and advertising.

## Colombia

Bavaria, Colombia's largest beer manufacturer, advertised its "Friendship Bank," which was a place to exchange bottle caps and obtain credits to gain prizes. The Superintendence of Finance warned Bavaria about the use of the word "bank," as well as the use of terms such as currency, savings, and investment, since the "Friendship Bank" isn't really a "bank."

## Costa Rica

In December 2018, Costa Rica agreed to sign "The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data," which is its first legally binding international instrument in the data protection field. This will help the country to adopt the latest data protection best practices and standards. The current data protection law is expected to be modified accordingly.

## Croatia

In Croatia, the new Trademark Act, when defining the rights conferred by a trademark, specifically identifies the right of the trademark owner to prohibit the use of signs by third persons in comparative advertising in a manner that is contrary to the regulations of the European Union or the regulations of the Republic of Croatia concerning misleading and comparative advertising. Any unauthorized use of such signs entails misdemeanor liability and may result in a fine for the perpetrator of the misdemeanor.

## Curacao

The Fair Trade Authority Curaçao ("FTAC") has been operational for over a year and is in charge of monitoring and enforcing the National Ordinance on Competition. The FTAC works closely with regulators and has recently entered into a collaboration agreement with the consumer protection foundation regarding joint information activities about the rules of competition and forwarding consumer complaints about competition to the FTAC. Priority is presently being given to the construction and finance sectors.

## Cyprus

The Cyprus Advertising Regulation Organization, the self-regulating body of Cyprus, entered into a Memorandum of Cooperation with the Commissioner for Volunteerism and Non-Governmental Organizations, and issued a Good Practice Recommendation providing guidance about the advertising of charitable promotions.

## Czech Republic

The new Gaming Act is no longer regulates so-called consumer sweepstakes and also includes a new definition of gambling. As a result, in the Czech Republic, marketers can now run chance-based promotions (not involving betting).

## Denmark

In Denmark, the Consumer Ombudsman has initiated heightened control of price marketing and of marketing done by influencers. The Consumer Ombudsman has reported the largest supermarket chain BILKA to the Police for alleged price fraud. The Supreme Court also handed down a decision rendering the use of copyright protected works of applied art as props in advertising illegal.

## Dominican Republic

The National Institute for the Protection of Consumer Rights put into effect regulations for the marketing of toys in the Dominican Republic. Legislation has also been passed regarding hookahs, including prohibiting advertising them to minors.

## Ecuador

Ecuador recently implement changes to its advertising laws, which include changing requirements for local production and authorizing the implementation of a self-regulatory system. Ecuador is also considering changes to its privacy laws, which may impact data collection for sweepstakes, contests and raffles.

## Egypt

The Egyptian government is currently considering amending its consumer protection laws to require advertisers to clearly provide relevant product information, as well as advertiser's contact information about the advertiser. The new law, if passed, will also require advertising to be in Arabic and will provide penalties for advertising products in a way that incites racism or religious hatred. Egypt is also considering a law requiring social media networks to be Egypt-based and requiring all users to over 18 and to register with a national identification number.

## Finland

The Finnish Supreme Court ruled that to the extent a marketer gives an overall impression of having the cheapest products on the market, the marketer must be able to substantiate that claim. In another case, the Supreme Administrative Court ruled that a company could not promote its association with a gambling company, that is not licensed in Finland, on its website or in social media.

## France

Recent developments include advertising limits on public television channels, limits (for an experimental two year period) on discounts that can be offered on human and pet food products, and a new self-regulatory rule that requires that when promoting test results for cosmetic products, the advertising disclose the specific type of testing conducted.

## Germany

The courts in Munich and Berlin have recently adopted diverging views in two different cease and desist cases about the question of whether and in what circumstances social media videos of individuals known as influencers featuring a product must be characterized and marked as advertising. Both courts discussed the issue of whether the absence of any instructions or financial sponsorship from the brand would make any difference, but decided the cases differently. Decisions from the appeals courts are eagerly awaited.

## Greece

In many recent cases, the Greek Self-Regulation Organization has recommended that advertisers modify advertisements for foods, dietary supplements, and OTC medicines due to poor substantiation. The SRO warned advertisers that they should take particular care when promoting these products because, due to lack of specialized knowledge, consumers may be easily misled by ambiguous, incomplete, or exaggerated claims.

## Honduras

Although there have not been any recent significant legal changes, the Directorate of Consumer Protection in Honduras' priorities have been deceptive advertising, guarantees, and airline complaints.

## Hong Kong

A bill has been introduced that would ban the advertising of all alternative smoking products, including e-cigarettes, heat-not-burn products, and herbal cigarettes.

## Hungary

The Hungarian regulator announced that it will be further ramping up enforcement efforts in digital markets. This includes not only strengthening enforcement on digital services and products, but also increased enforcement in areas where digital communication or platforms play a significant role as a means of communication and marketing, such as influencer marketing and platform-based business models.

## India

India has strengthened its regulations relating to the advertising of packaged foods. The Food Safety and Standards Authority of India released the Food Safety and Standards (Advertising and Claims) Regulations, 2018, which promote truthfulness in food advertising.



## Ireland

Ireland's Department of Health introduced the "Non-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement Voluntary Codes of Practice," aimed at limiting the promotion, marketing and sponsorship of foods high in fats, sugar and/or salt. These new voluntary regulations apply to non-broadcast media, including digital, billboards, print and cinema, as well as commercial sponsorship and retail product placement. The aim of the codes of practice is to reduce the exposure of Irish people to over-marketing of unhealthy and to encourage healthy eating.

## Israel

Israel passed new laws severely restricting tobacco advertising, limiting advertising to print only, requiring large health warning, and instituting plain packaging requirements.

## Italy

Italy banned almost all forms of advertising of games of chance and gambling. In addition, the Italian Competition Authority announced the opening of an investigation into several well-known influencers, who allegedly failed to disclose their relationships with the advertiser.

## Jamaica

In Jamaica, there has been increased dialogue about the role of social media in advertising and the need for regulation of social media while balancing freedom of the press. The Broadcasting Commission of Jamaica has expressed concerns that the media firms in Jamaica are no longer operating on a playing level field because they are now competing against technology firms that operate in unregulated and untaxed spaces while capturing all of the advertising revenue. The Broadcasting Commission has expressed concern over other social media issues, including cyberbullying, revenge porn, breaches of national security, and internet addiction. In response, the Broadcasting Commission has announced that it is in the process of developing a new model for content regulation.

## Japan

The Japanese Copyright Act has no general "fair use" provision such as provided in the U.S. Copyright Act, but the amended Act expands the law to permit certain uses of a copyrighted work without the approval of the copyright holder. The amended Act allows for the use of copyrighted works in a search service or analysis service, which were questionable under the former Act without the permission of the rights holder.

## Kenya

In Kenya, the Pharmacy & Poisons Board is discussing whether to regulate e-commerce platforms that sell pharmaceutical products.

## Luxembourg

Luxembourg recently created a national artificial intelligence laboratory. Marketers may also be impacted by expected revisions to the Audiovisual Media Services Directive.

## Mexico

A federal court in Mexico struck down a Mexico City ordinance prohibiting outdoor advertising of alcoholic beverages near schools on the grounds that it violates the companies' freedom of expression.

## Netherlands

The Dutch Advertising Code for Foodstuffs was amended to restrict the use of child idols (this includes licensed media characters such as Mickey Mouse) in advertising for or packaging of food that is marketed to children aged twelve years and younger. Child idols may, however, be used to promote food that meets certain nutritional criteria, but only if the advertising is aimed at children between seven and twelve years old. The use of brand mascots, e.g. promotional characters invented by the food companies themselves to promote their products, fall outside the scope of the Code.

## New Zealand

A new Advertising Standards Code came into effect in New Zealand on February 1, 2019. The new Code consolidates six previous codes. It features two broad guiding principles based on advertisers being required to exercise "a due sense of social responsibility to consumers and society" and making representations that are "truthful, balanced and not misleading."

## Nicaragua

New regulations related to the labeling of cosmetics in Nicaragua prohibit deceptive claims and claims that they have therapeutic properties to treat diseases, skin problems, and related issues.

## Norway

In Norway, the supervising authority for advertising has been transformed from a dialogue-oriented Ombudsman to a stricter Consumer Authority with increased power. In 2019, the Consumer Authority's priorities are expected to include advertising towards children and young adults, use of influencers, and social media.

## Panama

In Panama, there have been several changes that affect advertising in connection with elections, including limiting the period of time before the election that advertising can run and restricting who can pay for the advertising.

## Paraguay

In Paraguay, the Office of Protection of Consumer established the "Do Not Disturb Registry." If consumers register, then companies may not contact them by mobile phone for advertising purposes.



## Peru

In Peru, the “Advertising Warning Manual” for food labeling under the Law on the Promotion of a Healthy Diet was recently published. The manual establishes specifications for the inclusion of warnings on the front of package labels of food products that exceed the limits for salt, sugar, saturated fat, and trans-fats.

## Poland

Is asking for consent for telemarketing during a phone conversation with consumers a form of telemarketing in itself? A Polish court said no, so long as the conversation involving the question is free from any marketing.

## Portugal

Recent changes to the law remove authority to authorize contests from Portuguese Ministry of Internal Affairs. Now, national and international contests must be authorized by the municipality in which the headquarters of the advertiser is located.

## Romania

The National Audiovisual Council in Romania has launched a project to amend the Audiovisual Content Regulatory Code, to help provide protection for the individual’s right to privacy. The proposed amendments focus on the protection of the right to a good name and banning the appearance of children in food advertising.

## Russia

The Federal Antimonopoly Service in collaboration with the Association of International Pharmaceutical Manufacturers and other market players established guidelines on recommended advertising of OTC medicines. This self-regulatory document should become a very effective tool for pharmaceutical companies in the production of advertising and the resolution of advertising disputes in Russia.

## Serbia

A new self-regulatory body, the National Association for Ethical Standards in Advertising, is being established in Serbia. It will be responsible for pre-clearing advertising and assessing compliance with advertising standards.

## Singapore

The Sale of Infant Foods Ethics Committee Singapore issued a revised Code of Ethics, which includes additional restrictions on the marketing of baby formula, including expanding the restrictions to infants who are up to one year old, further restrictions on sponsorships, and additional labelling restrictions. In addition, Parliament has passed legislation to enforce plain packaging for tobacco products.

## Slovakia

The Slovak Parliament has recently approved a new law related to the food industry, which requires that food marketers ensure that in all advertising (including digital communications), at least 50% of all promoted agricultural products and foods have a Slovak origin. The law has caused a wave of criticism, with many arguing that it not consistent with the Slovak Constitution or EU law. This opinion is also shared by the President of the Slovak Republic, who refused to sign the Act.

## South Africa

The advertising industry’s self-regulatory body, the Advertising Standards Authority, ceased operations in September 2018. In November 2018, a new self-regulatory body, the Advertising Regulatory Board ([www.arb.org.za](http://www.arb.org.za)), was established. The alcohol beverage industry’s self-regulatory organization, the Industry Association for Responsible Alcohol Use, changed its name to Association for Alcohol Responsibility and Education ([www.aware.org.za](http://www.aware.org.za)), and it is expected to issue a revised Code of Commercial Communication in the next few months.

## Spain

New rules were passed about the marketing of cosmetics products and about marketing products as “organic.”

## Sweden

In Sweden, changes to gambling laws now make it possible for marketers to run chance based promotions (sweepstakes, draws, etc.). The new rules permit chance based promotions provided that there is no stake or cost for participation, the promotion does not target people under the age of 18, and the marketing complies with certain standards.

## Switzerland

Audiovisual advertising regulation in Switzerland will continue to be limited to (linear) TV program services. Advertising on interactive audiovisual services are subject to sector specific restrictions only (e.g. alcohol, tobacco, and health-related products). This is the result of a draft law on electronic media which was up for public comment in 2018.

## Turkey

Due to changes in the law, advertising in online television, radio, and on-demand services are now subject to the same restrictions as traditional advertising. Turkey will also start applying plain packaging for cigarette and tobacco products. In addition, the advertising of some types of foods (such as foods that are high in fat or sugar) may not be advertised to children and may only be advertised to adults if health warnings are included.

## Ukraine

Alcohol advertising is heavily regulated in Ukraine. Ukraine's National Television and Radio Broadcasting Council issued new guidelines for television and radio sponsorships for alcohol brands, "On Sponsorship with the Use of Trademarks which are Used to Define an Alcohol Brand's Identity," which further restricted the ability to promote alcohol.

## United Arab Emirates

The National Media Council released new advertising guidelines, which included guidance on the use of social media. The guidelines clarified that paid advertising must be clearly identified as such in social media, with "#ad" or "#paid\_ad" as the preferred method (and with "thank you to..." or "in co-operation with..." not being sufficient). The guidelines also said that the disclosure must be on the first screen and must be visible without scrolling or clicking.

## United Kingdom

In January 2019, the Competition and Markets Authority in the UK, which is the statutory body in charge of enforcing UK consumer law, announced the outcome of its investigation into non-disclosure of payment by celebrity influencers in social media, particularly Instagram. Any form of reward, including money, gifts, or loans of products (e.g. clothes, styling and hairdressing) is relevant – even if unsolicited – and needs disclosure. Past relationships within a "reasonable time" – such as 1 year – need to be disclosed too. #ad, Advertisement Feature, and the "Paid Partnership" tool on Instagram are good forms of disclosure, but use of "tagging" is not sufficient, nor is #ad hidden at end of a text or a long list of hashtags.

## United States

The U.S. Federal Trade Commission continues to pursue an aggressive consumer protection agenda, bringing cases related to, for example, influencers, disclosures, green marketing, and "made in USA" claims, as well as marketing of fraudulent products (particularly to vulnerable audiences).

## Uruguay

In Uruguay, food processors and importers have new disclosure obligations on packaging when certain pre-packaged foods exceed the limits for sugars, fats, saturated fats, or sodium. Uruguay has also enacted plain tobacco packaging regulations.

## Venezuela

Sweepstakes are no longer permitted in Venezuela. Due to censorship by traditional television and radio networks, advertising is moving to pay TV. Measurement of media audiences is also limited, because audiences are only measured in the capital.

## Zimbabwe

Despite recent political discord and economic woes, the government of Zimbabwe has been moving forward with laws to provide greater protection to consumers. A popular form of advertising is outdoor advertising. Recent regulations prohibit the use of advertisements in public areas and roads without permission of the relevant Council. Where permission is granted, certain rules apply regarding content, size, etc.

For more information about advertising law around the globe, GALA recently released the second edition of Advertising Law: A Global Legal Perspective which is a detailed report on advertising law in more than 65 countries. A hard copy of the book may be purchased on Amazon.com. For a free electronic copy, contact [info@galalaw.com](mailto:info@galalaw.com).



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