



**GALA**  
GLOBAL ADVERTISING LAWYERS ALLIANCE

## Social Media: A Global Legal Perspective





## ABOUT GALA

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

For further information about GALA, please contact the relevant member directly or GALA's Executive Director, Stacy Bess at:

**Global Advertising Lawyers Alliance**

488 Madison Avenue, 10th floor, New York, NY 10022

Tel: 212.705.4895 | Fax: 347.438.2185

Email: [sbess@galalaw.com](mailto:sbess@galalaw.com)

[www.galalaw.com](http://www.galalaw.com)



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ARGENTINA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The most popular social media platforms used by advertisers are Facebook, YouTube and Instagram. Other platforms available in Argentina are LinkedIn, Twitter, Pinterest and Snapchat, which are used by marketers depending on the audience they want to target.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Argentina currently does not have statutory legal provisions that specifically govern social networks. As a result, general rules contained in the Consumer Protection Law, Commercial Loyalty Law, Unfair Competition Law and the regulation for specific industries, such as tobacco and pharmaceutical products, also apply to social media.

In any event, advertising and marketing issues are mostly left to self-regulation through the Ethic Code of the Argentinean Self-Regulation Board ('CONARP'), together with other complementary papers issued by CONARP. In this regard, advertising via social media must comply with the same principles as would marketing through traditional media.

In 2017 CONARP published a paper which provides a brief introduction to best practice in commercial communications in social media. The paper emphasizes that, in all cases, online communications must be legal, truthful, honest, loyal and trustworthy.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

It is important to mention that social media remains beyond the control of ENACOM (National Entity of Communications), which is a decentralized and independent body within the National Executive Power that safeguards the enforcement of the Law on Audiovisual Communication Services No 26.522 and imposes any applicable penalties.

However, self-regulation is very important in Argentina. All advertisers must comply with the Ethic and Self-Regulation Code of CONARP, which has a Self-Regulation Commission ('SRC') that deals with claims against pieces of advertising.

In addition, depending on the type of product or service that is advertised via social media, the regulatory system is applied through different bodies, for example:

- ANMAT (National Administration of Drugs and Food) regulates the advertising of food, cosmetics, drugs, beverages, medical devices and other related products and services;
- The Secretariat of Tourism regulates travel agency services, air companies and tourist services in general;
- Central Bank of the Argentine Republic regulates loan products, financial and banking services; and
- Chamber of Beer Merchandisers in Argentina (which has its own self-regulation rules) concerns itself with the responsible consumption of beer.

Finally, note that any third party with a legitimate interest can file complaints against ads (including social media) that infringe the applicable legal framework.

There are three ways to report the content of an advertisement in Argentina, namely:

- (i) through an administrative procedure (for example, ANMAT (National Administration of Drugs and Food)),
- (ii) through self-regulation procedure managed by the self-regulation commission at CONARP, or
- (iii) through court action.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Influencers' activity is not specifically regulated by law. The use of hashtag disclosures is not required by law or regulations. However, CONARP suggest making it clear to the consumer when a brand is directly involved in third party posts/communications, to guarantee transparency in advertising.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws or regulations with regards to native advertising via social media. However, transparency should be the rule. As a general principle, advertisers should make clear to their audience when editorial or entertainment content constitutes a marketing action to promote a product or service.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

User generated content ('UGC') is not specifically regulated in Argentina. According to CONARP's paper on digital advertising, UGC cannot be considered commercial communication unless it is reproduced by the advertisers in their official social media channels.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

If a promotion (contest or sweepstakes) is run on social media, it is necessary to comply with the Commercial Loyalty Law and the Consumer Protection Law, together with any registration requirements, if applicable (depending on the territory).

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

When thinking about advertising on social media, it's important to always remember that many of the same rules that apply to other forms of advertising also apply to social media.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

It is worth mentioning that in case of infringements, most of the time many local companies and consumers find a fast and suitable solution by reporting the infringement directly to the social networking service company through the ‘notice and take down’ system.

CONARP also deals with claims against advertisements disseminated in traditional or digital media, but recent cases have not yet been published.

### ***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

Traditional advertising principles apply to social media, namely:

- to communicate truthful information,
- to avoid misleading/deceptive communications, and
- to recognize the personal or property rights of others.

These principles are contained within the Code of Ethics of CONARP and are also laid down in the Consumer Protection Act.

The most important rules when advertising through social media are as follows:

- to comply with all laws/regulations and third-party rules (eg, Facebook/Twitter), including, but not limited to, rules re copyright, trademark, consumer protection, privacy and data security;
- to obtain all rights to copy, display, distribute, deliver, render and publicly perform content, including with respect to commercial advertising; and to respect the privacy rights of users;
- to have a social media policy in place and monitor the activities of authorized social media agents engaged on the advertiser’s behalf;
- to respect the privacy rights of users;
- in the case of UGC, to watch out for potential liability for copyright, trademark, defamation, privacy, publicity and false product claims; and
- if a promotion (contest or sweepstakes) is run on social media, to comply with the Commercial Loyalty Law and the applicable legal framework.

AUSTRALIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The top social media platforms used by advertisers in Australia are (in approximate order of popularity): Facebook, YouTube, Instagram, WhatsApp, LinkedIn, Snapchat, Tumblr, Twitter, TripAdvisor and WeChat. All global social media platforms are available for use in Australia.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The same laws and regulations which apply to advertising and marketing generally in Australia also apply to social media.

The main piece of consumer protection legislation which regulates advertising and marketing claims (including in social media) is the Australian Consumer Law ('ACL'), contained within Schedule 2 to the Competition and Consumer Act 2010. The ACL contains provisions which, amongst other things, prohibit persons and corporations from engaging in conduct which is misleading or deceptive, or is likely to mislead or deceive. In addition, persons and corporations are also prohibited from making certain false or misleading representations, including in relation to testimonials. In either case, civil remedies are available (including restraining orders, corrective advertising, damages and civil pecuniary penalties) and, for false or misleading representations, criminal sanctions are also applicable by way of the imposition of substantial fines.

As discussed below (at answer 9), the ACL has been applied in respect of advertising in social media, including, in particular, in respect of comments made by third parties on an advertiser's social media website.

The government regulator and enforcer of the ACL, the Australian Competition and Consumer Commission ('ACCC') has issued guidelines in respect of advertising on social media (see <http://www.accc.gov.au/business/advertising-promoting-your-business/social-media>). In addition, the ACCC has issued guidelines in respect of managing online reviews (see <https://www.accc.gov.au/business/advertising-promoting-your-business/managing-online-reviews>).

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Australia has an established advertising self-regulation system in place. The Australian Association of National Advertisers ('AANA') has developed a number of advertising codes of conduct which are binding upon members of the AANA, and generally complied with by the broader advertising industry. The codes of conduct are not specific to the type of advertising medium used and so also apply to advertising and marketing via social media. The codes of conduct are administered by Ad Standards (formerly called the Advertising Standards Board).

The main code of conduct is the AANA Code of Ethics (see <http://aana.com.au/content/uploads/2017/02/AANA-Code-of-Ethics.pdf>). The AANA has also developed Best Practice Guidelines for Responsible Marketing Communications in the Digital Space (see [http://aana.com.au/content/uploads/2017/06/AANA\\_Best\\_Practice\\_Guide\\_Marketing\\_Digital\\_Space.pdf](http://aana.com.au/content/uploads/2017/06/AANA_Best_Practice_Guide_Marketing_Digital_Space.pdf)), which guides the interpretation of the AANA Code of Ethics in the context of digital media, including social media. More recently, the AANA released Best Practice Guidelines for Clearly

Distinguishable Advertising (see [http://aana.com.au/content/uploads/2017/01/AANA\\_Distinguishable-Advertising-Best-Practice-Guideline\\_Final.pdf](http://aana.com.au/content/uploads/2017/01/AANA_Distinguishable-Advertising-Best-Practice-Guideline_Final.pdf)), which emphasizes the importance of ensuring that advertising and marketing communication, particularly on social media, is easily distinguishable. As discussed below, there have been a number of recent decisions by Ad Standards which confirm the applicability of the AANA Code of Ethics to social media including in respect of user generated content.

In addition, the Communications Alliance has developed the Code of Practice Content Services Code 2008 ('Content Services Code') which applies to a broad range of internet content service providers who have an Australian connection, including content services provided through social media. This code has the force of law as it is registered under the Broadcasting Services Act 1992 which means that a breach of the Content Services Code amounts to a breach of the Act.

The Content Services Code prohibits certain content such as content containing explicit sexual themes or violence, detailed instruction on crime, violence or drug use, or material that advocates terrorist acts. It also places an obligation on these providers to promote online safety, including the provision of information and advice to assist parents to deal with safety issues associated with and controlling access to content (especially chat services) and the use of warnings and safety information for age restricted access content.

The Association for Data-driven Marketing and Advertising ('ADMA') also has also developed an extensive Code of Practice (2015) which regulates a range of its members' direct marketing activities (including email and mobile marketing). ADMA is Australia's largest marketing association and represents more than 600 member organizations.

#### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no laws specifically related to influencer marketing. The ACL applies generally to all types of marketing and advertising.

The AANA's Best Practice Guidelines for Clearly Distinguishable Advertising apply to influencer marketing. In recent years, there has been significant overlap between influencer marketing and native advertising, where influencers fail to disclaim sponsored content which has been paid for by advertisers.

#### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no laws specifically related to native advertising. The ACL applies generally to all types of marketing and advertising.

In addition to the ACL, the AANA's Best Practice Guidelines for Clearly Distinguishable Advertising directly target native advertising,

#### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no laws specifically related to use of user generated content on social media. The ACL applies generally to all types of marketing and advertising.

However, the courts have held (see *Allergy Pathway* case below at answer 9) that advertisers will be held liable for user generated content on websites and social media sites if the content contains representations that are misleading or deceptive, or likely to mislead or deceive, and the advertiser does not remove the misrepresentations when they become aware of them, or ought to have become aware.

**7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?**

There are no laws specifically related to conducting sweepstakes and contests via social media. The ACL and legislation on sweepstakes and contests in general would apply.

**8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?**

A general principle that underlies everything else is that all the laws, regulations and self-regulatory guidelines governing advertising and marketing are also applicable to social media advertising and marketing.

The release of the new AANA Best Practice Guidelines for Clearly Distinguishable Advertising recognizes that influencer marketing and native advertising have become more prevalent in today's society. It is important that companies using social media advertising or marketing in Australia are aware that influencer marketing and native advertising are likely to contravene the ACL unless appropriate disclosure of commercial arrangements are made.

**9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?**

- (1) *ACCC v Meriton Property Services Pty Ltd* [2017] FCA 1305 (**Meriton Case**): In the Meriton case, the Federal Court found that serviced apartment property company, Meriton, had engaged in misleading or deceptive conduct by deliberately preventing guests it suspected would give unfavorable reviews from receiving TripAdvisor's review prompt email. In doing so, Meriton effectively minimized the number of negative reviews posted on the site and, in some cases, affected the ranking of their properties on TripAdvisor. Meriton was also found to be in breach of misleading the public as to the characteristics and suitability of its services.
- (2) **Australia Post Case**: In December 2014, Australia Post was 'outed' by its own social media users when it was discovered that Australia Post had paid Instagram influencers to advertise Australia Post's brand and services without disclosing that fact. The influencers posted photos of themselves at an Australia Post branch, complimenting their services, without disclosing that their endorsements had been sponsored by Australia Post. The lack of disclosure did not comply with the ACCC's guidelines for online reviews and led to unfavorable online media scrutiny and criticism.
- (3) *ACCC v Allergy Pathway Pty Ltd (No 2)* [2011] FCA 74 (**Allergy Pathway Case**): In the Allergy Pathway Case, a number of false or misleading testimonials about the product were written

and posted by clients on Allergy Pathway's Facebook 'wall'. Whilst Allergy Pathway was not responsible for their initial publication, it was nevertheless held that once the advertiser had become aware of the false statements having been placed on its Facebook or Twitter page, and had decided not to remove them, it became the publisher of (and responsible for) the testimonials. Allergy Pathway was therefore held responsible for the misleading or deceptive and false representations written and posted by clients on its social media pages. The placement of a disclaimer by the advertiser on the website was not sufficient to overcome liability.

- (4) **ASB Cases:** The finding that advertisers are responsible for the representations made by third parties in user generated content has been echoed in a number of determinations before Ad Standards.

In case numbers 0271/12 and 0272/12, Ad Standards considered complaints in respect of Facebook pages for Victoria Bitter ('VB'), a popular brand of beer in Australia, and Smirnoff, a vodka product, respectively.

In both cases, it was held that advertising on a Facebook page was subject to the AANA Code of Ethics. In addition, in respect of the complaint regarding the VB Facebook page, the advertiser was held responsible in respect of the user comments and material posted on the advertiser's Facebook page. In that case, the advertiser had posted a number of questions inviting answers from the online community. The comments included derogatory and offensive material which was held to be in breach of the AANA Code of Ethics. The ASB found that the Facebook site of an advertiser was considered to be a marketing communication tool over which the advertiser has a reasonable degree of control, and that the site could be considered to draw the attention of a segment of the public to a product in a manner calculated to promote or oppose directly or indirectly that product. Therefore, the ASB held that the AANA Code of Ethics applied to both the content generated by the page creator and to the material and comments posted by users on the Facebook page. It should be noted that social media is an advertising platform that requires ongoing and regular monitoring to ensure that offensive material is removed within a reasonable timeframe and that content within a Facebook page should, like all other advertising and marketing communication, be assessed with the AANA Code of Ethics in mind.

### ***10. What are some key "best practices" for advertising and marketing via social media in your jurisdiction?***

Some key best practices are:

- Ensure that advertising and marketing communications are clearly distinguishable to the relevant audience by providing prominent and visible cues to enable them to immediately understand they are engaging with paid content.
- Ensure that the content of all advertising and marketing communications adhere to AANA Codes (for which see <http://aana.com.au/self-regulation/codes/>).
- Regularly review user generated content on advertisers' websites and social media sites and immediately remove user generated content that contains a misrepresentation.
- Do not manipulate online reviews.





AUSTRIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The common global social media platforms are used in Austria, most importantly Facebook, Instagram, Twitter and Snapchat as well as LinkedIn and its (mainly) German-speaking counterpart Xing.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

In principle, all existing laws concerning advertising and marketing also apply to advertising and marketing via social media. The main laws are the Austrian:

- Law against Unfair Competition;
- Law on Trade Mark Protection;
- Media Act;
- E-Commerce Act;
- Audiovisual Media Services Act;
- Telecommunications Act;
- Copyright Act; and
- (as of May 2018) the EU General Data Protection Regulation (replacing the current Federal Data Protection Act).

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Self-regulatory rules in Austria are issued by the Austrian Ethics Council for Public Relations (Österreichischer PR Ethik Rat) and by the Austrian Advertising Council (Österreichischer Werberat). These rules only have recommendatory character.

The Austrian Advertising Council has issued the Advertising Industry Ethics Code covering advertising and marketing in general, sets basic rules of conduct as well as special rules in relation to gender discriminating advertisements, children, elderly people, alcohol, tobacco and automotive vehicles.

The most notable publication for advertising and marketing via social media is the Code of Conduct for the Ethics in Digital Communication that is issued by the Austrian Ethics Council for Public Relations, setting out (non-binding) rules and principles for communication in online and social media channels.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific rules related to influencer marketing via social media; however, the general provisions in relation to advertising and marketing also cover influencer marketing, in particular:

- Advertisements and paid content need to be labelled in order to be recognizable as such by the relevant consumer, unless it is clear without doubt that it is 'paid content'.

- According to the E-Commerce Act it is also necessary to give details of the company/person that instructed the influencer with the advertisement.
- Influencers with young followers need to consider that a direct exhortation addressed to children to purchase goods or services is unfair according to the Law against Unfair Competition. However, the provision of mere information about specific goods or services directed to children is not an unfair practice.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Again, in relation to native advertising, the general laws on advertising and marketing are applicable (see answer 4). Thus, the advertisements must be adequately identifiable.

There are specific regulations in relation to videos. The nature of the advertisement needs to be easily recognizable; and surreptitious audiovisual commercial communication is prohibited under the provisions of the Audiovisual Media Services Act. Further restrictions exist with regard to advertisements of specific products (eg tobacco, medical goods, alcoholic beverages).

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Sharing, or re-tweeting, user generated content can have copyright implications and may violate rights of the originator. Furthermore, user generated content that is being shared in a commercial way needs to be cleared in order not to infringe any third party rights (eg trademark rights). Again, all advertising and marketing needs to be transparent and recognizable as advertising and marketing by the consumer.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The E-Commerce Act requires sweepstakes and contests to be recognizable as such and need to set out their terms and conditions.

Sweepstakes and contests do not need any prior registration or approval by an authority.

In cases where participants of sweepstakes and contests need to pay a fee, the Austrian Gambling Act requires the organizer to have a gambling license.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Under Austrian law, Consumer Protection Associations as well as competitors can file court actions against unfair commercial practices.

According to the Austrian Gambling Act, the organizer of a sweepstake or contest that is (inter alia) directed at Austria—even if there is no participation fee—needs to pay a tax of 5% of the worldwide total potential prizes.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

- The European Court of Justice (C-132/17) is currently dealing with the question as to whether the operator of a YouTube channel falls under the Audiovisual Media Services Directive (and its restrictions) that has been implemented in Austria by the Austrian Audiovisual Media Services Act.
- The ECJ decided recently (C-498/16) that an Austrian consumer can bring an action against a social media network (that has no seat or establishment in Austria) before the courts in Austria; and does not lose his status as a consumer even if he is publishing books, giving lectures etc about this topic.

***10. What are some key “best practices” for advertising and marketing via social media in your jurisdiction?***

Any advertising and marketing in Austria (online and offline) needs to be clearly identifiable as such by the relevant consumer. It needs to be transparent and objective and shall not violate third party rights.

BELGIUM

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms that advertisers use in Belgium are generally the same as those worldwide (Facebook, Instagram, YouTube, Twitter). Any important global social media platform is available for use in Belgium.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Legal controls apply to advertising and marketing published through social media in much the same way that they do for offline and other online media platforms.

This is the case in respect of the laws and rules on:

- the protection of distinctive signs such as trade marks and trade names;
- privacy data;
- fair market practices;
- copyright; and
- media.

Distinctive signs are trade marks, trade names, company names, domain names and names of physical persons. Article 2.20.1 of the Benelux Convention on Intellectual Property Rights grants an absolute protection to identical signs for the same products and services. For similar signs or for similar products and services, the risk of confusion is the decisive factor. A protection for very well-established trademarks can cover use in respect of other products and services. The Market Practices and Consumer Protection Chapter of the Belgian Code on Economic Law also has its central role in the context of social media advertising regulation. It implements the EU Directive on Unfair Commercial Practices and has chapters with general clauses, on misleading practices, on aggressive practices, on specific actions and omissions and has a black list of clauses and practices.

Again, the offline rules apply to the virtual world alike and the notions of market practice and advertising are construed extremely widely. Still, it is felt that more specific rules on social media advertising, given its overwhelming presence, importance and distinctive features, would be more than welcome.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There is a striking lack of clear self-regulatory rules dealing specifically with advertising and marketing via social media in Belgium. As is the case for laws and regulations, it is felt that more specific self-regulatory rules on social media advertising, given its overwhelming presence, importance and distinctive features, would be more than welcome.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Again, there are no laws or other rules dealing specifically with influencer marketing. However, as is the reality in other countries, covert advertising is clearly often present on social media platforms such as Instagram, Facebook Twitter and YouTube, where users and pages which have

garnered a large following provide an efficient way for brands to reach target audiences. But, just taking, for example, the Belgian regulation on unfair commercial practices, this covers issues of misleading omissions, misrepresentation, e-commerce and direct marketing, all of which are relevant to influencer marketing. Even if only general rules exist, the black list of prohibited practices, which details the practices deemed unfair in all circumstances, provides for a robust set of general principles applicable to influencer marketing. It is therefore more than recommended to highlight the sponsored nature of certain content by using wording such as ‘sponsored by’ or ‘in collaboration with’.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws, regulations or self-regulatory rules in Belgium related to native advertising via social media.

However, new applications of advertising, partially in new media and formats, prompted the self-regulatory organization, JEP, to issue recommendations on native advertising in 2016, emphasizing the importance of proper identification of advertising. Native advertising is understood as being advertising content, the design and form of which correspond as closely as possible with the form and content of the medium itself. JEP’s Recommendations concern how to ensure that a consumer can distinguish between editorial content and advertising. Reference is made to the existing self-disciplinary (ie ICC Code) and legal rules. More specifically, JEP provides guidance on how to make it clear that advertising is advertising, and how to make it recognizable regardless of the form and medium used. The advertiser has also to be identified.

Special caution is necessary for native advertising geared towards children/minors or advertising in which they appear. The recommendation repeats the general rules not to exploit or abuse their lack of experience in identifying/spotting what is advertising.

In cases of doubt, JEP offers prior advice (clearing).

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

No specific laws, regulations or self-regulatory rules exist on the use of user generated content when advertising via social media in Belgium. But, as is the case with influencers and native marketing (see answers 4 and 5 above), the general rules apply.

A company must not present a message as a being a consumer or market review or information from users, a private blog or an independent appraisal. If it does so, the ad runs the risk of being disqualified as an unfair market practice or misleading ad, prohibited by Article 12.XI of the Code on Economic Laws. Some websites or mobile apps, such as Yelp and Trip Advisor, enable the posting of appraisals. If what comes across as an independent appraisal is, in fact, a covert ad, the company fraudulently misrepresents itself as a consumer (infringement of Articles VI.100-22 and 106-2 of the Code on Economic Laws).

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

No difference in treatment is made between the rules, conditions and restrictions on lotteries, sweepstakes and contests in the classic media and those conducted via social media. Under the strict conditions that there should be:

- a free method of entry (absence of a consideration that is put at risk); and
- a sufficient level of required interaction, skill or initiative,

a game of chance can be a legal promotional game of chance.

If only a prize draw determines the odds of winning, as with sweepstakes, the game will be treated as a criminally prohibited lottery and can be prosecuted accordingly.

**8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?**

- A careful follow-up and regular vetting of the social media ads is part of the duty of care of an advertiser; draw up a proper social media policy—inspiration and tools are available on the main social media platforms.
- Never forget that copyright rules also apply online.
- Do not overlook the potential for an administrative action, initiated by the public services of the Belgian Economic Inspection.

**9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?**

Most of the relevant and important recent cases for Belgium are found in judgements from the European Court of Justice, such as:

- *Svensson v Retriever Sverige AB* (C-466/12, 13 February 2014);
- *BestWater International GmbH v Mebes and Potsch* (C-348/13, 21 October 2014); and
- *GS Media BV v Sanoma Media Netherlands BV* (C-160/15, 8 September 2016),

all three on the consent of right-holders for hyperlinking.

Case law on advertising via social media has started only very recently in Belgium and it is, at the moment of writing, a bit early to report on cases made publicly available.

**10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?**

- Disclose the relevant relationship and make it recognizable.
- Never manipulate messages or opinions in such a way the average consumer can be misled.
- Never incite kids of 12 years or younger directly to make advertising for products or services on social media.
- Take due care and take your responsibility towards the user who generates content and towards third parties seriously. This is an active obligation to duly inform, vet, control, follow-through and intervene.



BOLIVIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

As regards the importance of social media in Bolivia, on the one hand, it is important to state that one of the latest news stories in Bolivia regarding social media has to do with the (informal) announcement of President Evo Morales, in which he indicated that the government was preparing to face a ‘digital war’ via social media. From March, social organizations will be trained in the use of social media in order to defend President Morales and the ‘Proceso de Cambio’ (slogan used by the current government) in the war waged from these platforms (see <http://www.paginasiete.bo/nacional/2018/2/13/guerra-digital-alista-talleres-hasta-bnker-cochabamba-169719.html>).

The leader of the coca growers of the Tropic of Cochabamba, Leonardo Loza, revealed that six training workshops had already been set up to train users how to use Facebook, Twitter and WhatsApp. Loza also stated that the trainers are ‘voluntary professionals’ related to the government, who teach for free. As at mid-February 2018, 2,000 to 3,000 young people and union leaders had received the training (see <http://www.paginasiete.bo/nacional/2018/2/13/guerra-digital-alista-talleres-hasta-bnker-cochabamba-169719.html>).

However, one problem this announcement brings into focus is that in rural areas there is no universal internet coverage and not all the rural population has a smartphone; so currently, the government is looking for a way to solve this problem.

Moreover, it is important to note that the monthly contribution of the Coca Growers Federations of Cochabamba for the development of this ‘war’ is Bs. 45,000 (\$US 6,465 approx), while the national government set a budget this year of Bs. 5,000,000.00 (\$US 718,390 approx) for the Social Media Office to fight this ‘digital war’.

On the other hand, we can state that also, through the book *Bolivia Digital* edited by the Social Research Center (CIS) of the Vice-Presidency, with the support of the United Nations Development Program (UNDP) and published in March 2017, it was observed that Bolivians use social media more for entertainment and less for doing business or education, where only 12% use them to work or do business via social media.

We do not have statistics about advertising and marketing through social media in Bolivia. However, there is information from a survey done in 2016 and published in 2017 by the Agetic (Agencia de Gobierno Electrónico y Tecnologías de Información y Comunicación), which found that only 6% of people use social media to do business; and 4% to sell and buy products. Therefore, in light of the above, we can deduce that in 2016 only 10% (at most) of people used social media to advertise and market their products.

This survey also found that, in general, the main social media platforms that are used by people are: (i) Facebook 94%; (ii) WhatsApp 91%; (iii) YouTube 40%; (iv) Twitter 17%; (v) Instagram 15%. There are no social media platforms that are not available in Bolivia.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no important laws and regulations imposed directly on advertising and marketing via social media. However, some regulation can be found through the following laws:

- Law No 453 (Consumers Protection Law) (together with its administrative regulations, DS 2130): through this law, a consumer may make a formal complaint about misleading advertising via social media at the Vice-ministry of Consumer's Rights;
- Law No 164 (Telecommunications Law): this law regulates e-commerce;
- Law No 060 (Gaming Law) (together with its administrative regulations DS 2600): this law defines 'business promotion', its application and exclusions. Also, this law creates the Gaming Control Authority (Autoridad de Fiscalización del Juego) ('AJ') and states its functions;
- Supreme Decree No 2731: this decree creates the Social Media Office;
- Supreme Decree No 1793: this decree regulates e-commerce and states the conditions for commercial advertising communications.
- AJ - Administrative Resolution No 01-00001-17 ('AJ Regulations for Business Promotions'): this resolution sets out the requirements and procedure for obtaining authorizations for the development of business promotions and formal duties that must be fulfilled. (eg sweepstakes).
- ASFI - Regulation of Advertising, Promotion and Informative Material for the Stock Market and Financial Services (made by the Financial Control Authority (Autoridad de Supervisión del Sistema Financiero ('ASFI'))): this regulation sets out how advertising for financial services can be done through the internet and social media.

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are no self-regulatory rules specifically related to advertising and marketing via social media.

### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no laws, regulations or self-regulatory rules specifically related to influencer marketing via social media.

### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no laws, regulations or self-regulatory rules specifically related to native advertising via social media. However, according to the Criminal Code and Law No 045 (Racism and Discrimination Law), any person who disseminates or provokes racism and discrimination 'by any means' (such as racist advertising via social media) will be punished.

### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific laws, regulations or self-regulatory rules specifically related to the use of user generated content when advertising and marketing via social media.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific laws, regulations or self-regulatory rules directly related to conducting sweepstakes and contests via social media. However, there are general regulations, not specific to sweepstakes and contests via social media, which apply. These are the AJ Regulations for Business Promotions which set out the ‘general’ procedure to authorize a business activity, and therefore the procedure for the development of the sweepstakes and contests, and the awarding of prizes.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

As we mentioned before, in Bolivia there are no specific rules imposed directly on advertising and marketing via social media, but it is important to bear in mind that, according to Law No 045 and the Criminal Code, any advertising that disseminates or provokes racism or discrimination by any means is forbidden and penalized.

It is assumed that ‘by any means’ can include social media.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Despite the fact that we do not have cases relating to advertising and marketing via social media in Bolivia, we can state that there are cases related to social media and the current government policy.

In this sense, it is important to bear in mind that social media has played an important rôle since President Evo Morales lost the Referendum of 21 February 2016. Since then, the government, through Supreme Decree 2731, has created the Social Media Office, whose function, according to some politicians, journalists and activists, is to create false accounts (‘trolls’) in social media in order to collect information from those people who post contents against the government; to persecute political activists, publish content against the opposition and groups that are against President Morales, inter alia.

Also, we can refer to a political event in December 2017, where a young man posted a video on Facebook, under his personal account, regarding the Bolivian President re-election, and, as a result of the Facebook post, the government filed a criminal complaint against him and arrested him on the grounds that he provoked via social media rebellion against the Bolivian President in rejection of his re-nomination for President (see [http://www.la-razon.com/nacional/Detienen-joven-sedicion-redes-sociales-revelarse-Evo-Bolivia\\_0\\_2829917027.html](http://www.la-razon.com/nacional/Detienen-joven-sedicion-redes-sociales-revelarse-Evo-Bolivia_0_2829917027.html)).

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

There are no ‘best practices’ for advertising and marketing via social media in Bolivia. However, we can state that in Bolivia the majority (80% approx) of people engaged in trade are engaged in informal trade, ie commerce developed by SMEs or small economies. There are no statistics in Bolivia about advertising and marketing through social media. However, we believe that SMEs and small economies should use social media as a medium for mass advertising and marketing their

businesses or products as they would thus have a greater reach and presence in national commerce.



BRAZIL

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Important social media platforms, such as Facebook, Instagram, LinkedIn, Twitter etc, available in United States and Europe, are available and widely used in Brazil. In fact, Brazil is ranked third on number of Facebook users as of January 2018 and recognized as a leading country in terms of presence and use of social networks.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

In Brazil, there are no specific laws or regulations addressing issues arising out of social networks services or use. The social media environment is, nevertheless, subject to the same legal and regulatory control as is applicable to general marketing advertising. Legal control in this regard is mainly based on the Consumer Defense Code (Law 8,078/90) provisions, although the Federal Constitution and other laws, such as the Criminal Code (Law 2,848/40), Civil Code (Law 10,406/2002), Industrial Property Law (Law 9,279/96), Code of Civil Procedure (Law 5,869/73), Statute of the Child and of the Adolescent (Law 8,069/90), Internet Act (Law 12,965/14) and Copyrights Act (Law 9,610/98), are also applicable.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are no specific self-regulatory controls applicable to advertising and marketing via social media. However, Brazil has an efficient and fully functioning advertising self-regulation system, by which social media advertisers can be, and have been, challenged.

The Brazilian Advertising Self-Regulation Code was established in 1978, and in 1980 the Brazilian Advertising Self-Regulating Council ('CONAR') was founded as a non-governmental organization composed primarily of advertising agencies whose mission included the enforcement of the Brazilian Advertising Self-Regulation Code—especially the rules relating to ethical matters—and assurance of a fast and objective solution for disputes involving the advertising industry.

Although designed primarily as an instrument of self-discipline for advertising activity, the Brazilian Advertising Self-Regulation Code is also used by the authorities and courts as a reference document and treated as subsidiary legislation in the context of advertising and other laws, decrees, ordinances, rules or instructions that are directly or indirectly affected by the Code.

Any person or legal entity may submit a complaint to CONAR regarding national advertising, regardless of whether the ad is addressed to consumers, professionals or to business entities. Once the complaint is made, the Board of Ethics will meet and judge it, ensuring full rights of defense to the accused. If the complaint has merits, CONAR can recommend suspension of part of the advertising or suggest corrections. In Brazil, self-regulation does not replace government and legislative regulation, therefore, CONAR only implements administrative penalties: warning, recommendation for an amendment or correction of advertising, etc.

Thus, if there is any interest in pecuniary compensation, a court action will have to be filed, based on the Brazilian Civil Code. In Brazil, like other countries, advertising is submitted to a control system that has a mixed nature: self-regulation (Brazilian Advertising Self-Regulation Code,

CONAR) and legal (standards of the Consumer Defense Code and other regulations on specific products such as smoking, alcohol, drugs, therapies and pesticide advertising regulations).

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws, regulations or self-regulatory rules in Brazil related to influencer marketing. On the other hand, the Consumer Defense Code and Self-Regulation Code require that all advertising be clearly identifiable as such and this requirement is being used by CONAR to suspend influencers' social media posts that do not clearly disclose that the content in question is sponsored.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

The answer to question 4 also applies to native advertising, although we are not aware of specific decisions issued by CONAR on native advertising other than by influencers.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

The main applicable laws related to the use of generated content when advertising and marketing via social media are the Consumer Defense Code, the Internet Act and the Copyrights Act.

As regards the Consumer Defense Code, it is important to bear in mind that abusive contractual provisions imposed against consumers are not enforceable. Thus, we believe that a case of mass exposure of user generated content in an advertising campaign without adequate compensation to the user could be found to be abusive by local courts. Such use of user generated content must therefore be allowed by the terms of use of the relevant social network as well as specifically agreed to by the user.

The Brazilian Copyrights Act determines that licenses and assignments of copyrights shall be interpreted restrictively, meaning that such agreements must include a precise description of all types of use within their scope.

According to the Brazilian Internet Act, data subjects shall expressly opt in to the collection and storage of their data, as well as to the disclosure and transfer of their data to third parties. Moreover, it is unlawful to use personal data if not justifiable in accordance with the purpose of the collection.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Under Decree Law 70,951/72 (regulating Law 5,768/71), promotions involving the free distribution of prizes (contests, sweepstakes and gift certificates) require authorization by the Brazilian National Savings Bank (known in Brazil as Caixa Econômica Federal) prior to be implemented in Brazil. Such previous authorization requirement also applies to promotions via social networks.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

In addition to the issues mentioned in the previous answers, it is worth noting that the National Cinema Agency ('ANCINE') is the regulatory authority with jurisdiction enshrined in law in relation to the Brazilian audiovisual market. ANCINE's Normative Instruction 95/2011 specifically regulates broadcasting of audiovisual advertisements in Brazil and requires previous registration with ANCINE of audiovisual ads prior to broadcasting in Brazil. As of July of 2018, such requirement will also apply to broadcasting of audiovisual ads by means of the Internet, which includes broadcasting on social media.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Most important cases relating to advertising and marketing via social media are the ones related to advertising via influencers. Until recently there had been no decisions issued by CONAR in this regard, but it is now clear that failing to clearly disclose that a social media post is sponsored is likely to cause the suspension of the campaign by CONAR. For this reason, CONAR has already suspended influencers' advertising on fast-food, beer, a fat burner product and others.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Because Consumer Defense Code provisions are enforceable in Brazil in relation to social media, it is important to indicate that:

- Brazilian laws and jurisdiction shall be applied in case of a lawsuit based in the Consumer Defense Code provisions;
- consumers in Brazil are treated as individuals who are at a clear disadvantage in relation to companies in general. For this reason, under the Consumer Defense Code, all contractual provisions and conflicts are to be interpreted as having a clear bias towards the consumer;
- consumers shall be protected against false or misleading ads;
- social network services providers and announcers are jointly liable in cases where consumers' rights are violated;
- the burden of proof is placed away from the consumer; service providers and announcers are required to provide evidence to challenge consumers' claims;
- although social networks' terms and conditions and privacy policies are sufficient to regulate the use of users' information, clear and complete information on how the data will be used must be provided in writing to data subjects, who must then give express consent. In general terms, it is widely accepted that data subjects' authorization for the use of their personal information can be given through a click-to-accept electronic agreement, along with (or not) a click-to-accept privacy policy.

Regarding the Brazilian Advertising Self-Regulation Code, it is worth taking into consideration the following principles:

- advertisements should not contain anything that may lead to criminal or illegal activities or appears to promote, enhance or encourage such activities;

- no advertisement should promote or encourage any kind of racial, social, political, nationality or religious offence or discrimination;
- all advertisements must be prepared with due sense of social responsibility, avoiding emphasis any social differences in a depreciative manner;
- the advertiser, advertising agency and media are each liable towards consumers for all advertisements;
- the advertising activities dealt with by the Code must always be ostensible. The indication of the service or product mark, trade name of the advertiser or use of elements clearly associated thereto are in compliance with the ostensibility requirement;
- indirect advertising or 'merchandising' is also subject to all rules of the Code, especially to the requirement of ostensibility and advertising identification;
- all advertising activities must respect the dignity of the human being, privacy, institutions and national symbols, constituted authorities and family, as well as always aim to benefit society as a whole;
- no advertisement should contain statements or visual or audio presentations that may offend the decency standards of the audience it intends to reach;
- advertising must not exploit the consumers' credulity, lack of knowledge or inexperience;
- advertising must not contain anything that may induce violence;
- advertising must not exploit any type of superstition;
- the advertisement must contain a truthful presentation of the product offered;
- the advertisement must show only personalized and genuine testimonials;
- the advertisement must be clearly identifiable as such, whatever its type and whatever the broadcasting medium may be;
- comparative advertisement is accepted, provided that specific requirements provided by the Code are followed;
- in relation to children and teenagers, the efforts of parents, educators, authorities and community shall be an aggregating factor for the formation of responsible citizens and aware consumers;
- children and teenagers shall not appear in any ads that promote consumption of any products and services incompatible with use by them due to their age.





BULGARIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used by Bulgarian advertisers are Facebook, Instagram, YouTube and VBox7 (a local video sharing platform). However, depending on the type of the advertised products/services and the targeted audience, advertisers may use more specialized platforms, such as LinkedIn. Generally, there are no legal or technical restrictions that limit the access to any global social media platform in Bulgaria and all of them are available for normal use.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

All the general advertising and marketing regulations equally apply to advertising and marketing via social media platforms.

Advertising regulation in Bulgaria is dispersed among several legislative acts, containing different rules depending on the communication channel used.

The main legislative act that sets forth the general framework for presentation of commercial communication in good faith and prohibits misleading advertising content is the Bulgarian Protection of Competition Act ('PCA'). The PCA implements EU Directive 2006/114/EC concerning misleading and comparative advertising, and its provisions are applicable to any kind of commercial communication, regardless of the communication channel. The Commission on Protection of Competition ('CPC') is the governmental authority that is vested with the power to oversee advertising and marketing practises of commercial entities and to enforce the PCA rules.

The Bulgarian Electronic Commerce Act ('ECA') implements EU Directive 2000/31/EC concerning provision of information society services and e-commerce and regulates, inter alia, certain aspects of advertising through digital means.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The National Council for Self-Regulation ('NCSR'), a member of the European Advertising Standards Alliance, is the most influential self-regulatory organization in Bulgaria, and most advertising and media agencies are members, together with some of the major advertisers in Bulgaria. The NCSR has adopted the National Ethical Rules for Advertising and Commercial Communication ('NER'). The NER are applicable to all forms of promotional communication regardless of the communicational channel, including marketing and advertising via social medias.

The NER include a chapter specifically addressing identification of commercial communications. Every commercial communication should be clearly recognizable as such, regardless of its form or the communication channel used by the advertiser. The NER further state that where an advertisement is broadcast on a platform that usually broadcasts news, editorial or personal content, it should be designed in such a manner to be clearly distinguishable as an advertisement.

Enforcement of the NER is vested with the Ethical Committee of the organization, which reviews complaints from all interested parties. The decisions are binding for the members of the NCSR, however, until recently, compliance with those decisions depended entirely on the good will of the infringer. The Radio and TV Act (that regulates among others certain aspects of TV and radio

advertising) now provides that all TV and radio operators are required to observe the decisions of the competent bodies of the NCSR or face monetary sanctions by the Council for Electronic Media. However, no such rule with regard to online advertising, including via social media exists.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific rules, laws or regulations related to influencer marketing via social media.

However, in its case law, the CPC has adopted the position that influencers should comply with the general rules on presentation of commercial communication in good faith to the extent that their activity aims to promote the brand or goods of a specific merchant. Moreover, a violation of the applicable rules committed by an influencer under certain circumstances could be attributed directly to the undertaking whose products/services are promoted (for more details see answer to question 9).

In addition, it should be noted that pursuant to the provisions of the ECA, an influencer should promptly disclose whether his/her activity aims to promote certain product or service.

As noted above, the NER also requires that any advertising content is clearly distinguishable as such.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific rules or case law guidance related to native advertising via social media.

Under the general rules, native advertising via social media should comply with the ECA's requirement that any commercial communication published online should be clearly defined as such and that the advertiser should be clearly identified. Furthermore, the CPC's case law indicates that native advertising via social media should be in compliance with all general advertising regulations, including in particular, the prohibition against misleading consumers.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

The rules governing the use of user generated content for marketing purposes depend on whether the content is subject to copyright protection. The Copyright and Neighboring Rights Act prohibits the use of original work of authorship without explicit authorization by the author. The concept of 'original work' covers any work/product of literature, art or science which is the result of original creative work and is expressed in whatever manner and in whatever form. If user generated content could be classified as an original work, its use for advertising and marketing purpose via social media is allowed only with the consent of the author obtained in advance.

In addition, the use of user generated content for marketing purposes should be in compliance with the Bulgarian Personal Data Protection Act. Pursuant to Article 2 of this Act, personal data is 'any information related to an individual who is identified or identifiable, directly or indirectly, by reference to an identification number or to one or more specific features'. Hence, in a case where user generated content could be classified as personal data, the consent of the user has to be obtained before this content is used for marketing purposes.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Under Bulgarian law, any game or other activity involving wagering a stake whereupon a profit could be achieved, or the stake could be lost qualifies as a form of gambling and is regulated by the Bulgarian Gambling Act. The term ‘stake’ is legally defined as ‘any payment of money, directly or in the form of any tokens, coupons, tickets, telephone impulses and others, for participation in gambling games with a view to receiving a profit’. Gambling games in the territory of Bulgaria, regardless of whether they take place online or in brick and mortar premises may be organized and held only with the prior authorization of the State Gambling Commission, which is the gambling state regulatory authority.

On the other hand, where a sweepstake or contest does not involve wagering a stake, and its purpose is rather to promote the product or service of a particular producer or distributor, it would not be subject to regulation by the Gambling Act. However, the general rules on sales promotion set by the PCA have to be observed.

Article 36(3) of the PCA prohibits the sale of goods or services if accompanied by an offer or promise of something, the receipt of which depends on:

- the resolving of problems, puzzles, answering questions or riddles;
- the collection of a series of coupons etc.; or
- games of fortune with cash or object prizes,

the value of which significantly exceeds the price of the product or service sold.

The CPC has adopted a formal criterion as to the maximum value of the prize and has ruled that the prize ‘significantly exceeds’ the price of the goods or service sold where its value exceeds more than 100 (one hundred) times the price of the respective product or service; and in any event, the value of the prize should not exceed the sum of 15 (fifteen) minimum wages (currently BGN 7,650, approx. EUR 3,911). The statutory prohibition relates to cases where the participation in a promotion/game (respectively, the chance of winning a prize) is tied to the purchase of a particular product and/or service. If participation is open to everyone (for example by online registration via social media) without any requirement for submission of a code from a purchase receipt or any other ‘evidence’ that a particular product or service is purchased, the statutory limitations for the value of the prize will not apply. However, it should be noted that an option for registration via social media, without requirement for a purchase to be made, existing alongside a purchase-related enrolment mechanism, does not release the respective campaign from the PCA restrictions.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The CPC has established through caselaw that advertising and marketing via social media has to comply with all advertising regulations that are applicable to advertising via traditional channels. The authority’s position is that social media posts, regardless of whether published on the official profile of the advertiser or in a special profile which is intended only as an auxiliary channel for communication with customers, have the potential to reach unlimited number of people, since they are easily accessible by all internet users. Consequently, every post on a social media profile might have an advertising effect if it promotes a certain product/service or the brand of a particular company. Moreover, it has held that social media posts can be attributed to an advertiser even

where they were not expressly commissioned and the advertiser did not have control over the profile where they were published, but where the profile owner was acting in the advertiser's interest and the advertiser was aware of the posts (for more details on this case see, further, answer 9).

The Bulgarian authorities have adopted a very straightforward approach regarding firms' official profiles on social media platforms, holding that the profile owner is not released from liability for non-compliant commercial messages simply because it did not exercise strict profile management. Where access for posting is not restricted to dedicated marketing officers it is assumed that the profile owner agrees that every one of its employees, and, indeed, every person that has legally obtained the password for the respective profile, is authorized to post on its behalf. As a result, all posts appearing on the profile are automatically attributed to the advertiser and the latter is responsible for every infringement of the applicable rules, regardless who is the actual author of the respective post.

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

- (1) In a recent decision (CPC decision no 1244/2017 (**Laptop.bg**), appeal pending), the CPC sanctioned an online electronic gadgets retailer (the 'Retailer') for obtaining unfair benefit from two video vlogs made by a famous Bulgarian vlogger and posted on his YouTube channel. In these vlogs, the vlogger made several insulting statements against one of the Retailer's competitors, claiming that its products are of very low quality, while simultaneously praising the Retailer and its products. In its investigation, the authority found that the Retailer had not commissioned the vlogger, nor requested him in any other way to shoot the vlogs, make insulting statements or even discuss its competitor. It was also established that the Retailer did not have any control over the vlogger's channel and was not in a position to cancel or change the respective vlogs.

Despite the lack of intention or control, the CPC still held that the Retailer committed an act of unfair competition because it was aware of the respective vlogs, their negative impact on its competitor and its potential to attract new clients frustrated by the vlogger's statement, and it did not expressly and publicly renounce the vlogger's behavior, and, in particular, the insulting negative claims made with respect to the competitor and its products.

- (2) With an earlier decision from 2016 (CPC decision no 946/2016 (**Store.bg**), appeal pending) the CPC imposed sanctions on an online book retailer for posts on its Facebook page that were found to be misleading. It announced that a specific book was available exclusively via the retailer's online shop, which was not confirmed in the proceedings. The defendant expressly argued that Facebook posts should not be regarded as advertising in its case because:
- (i) its Facebook page was not actively used, and it had only few followers;
  - (ii) the page was created as a channel for direct communication with customers and was not intended to be a platform for advertising;
  - (iii) the posts could not be attributed to the defendant, because the access details for the user account were available to all employees and there was no access control, so even former ones could post.

The CPC dismissed all arguments noting that:

- (a) every Facebook page is easy accessible by all platform users and therefore it had the potential to reach an unlimited audience;
  - (b) information posted on a Facebook page is capable of influencing the market behavior of customers, regardless of the intended purpose of the user; and
  - (c) the lack of rules or control over posting in an official social media profile means that the advertiser concerned accepts that every employee may manage the profile or post on its behalf, and the advertiser accepts to be bound by such posts.
- (3) In 2015 (CPC decision no 250/2015, upheld on appeal, cassation pending) the CPC sanctioned a food producer for posting ads on its Facebook page using the images and names of famous Bulgarian athletes (Grigor Dimitrov and Tsvetana Pironkova—highly popular tennis players) without their consent. The defendant argued that the purpose of the publications was to congratulate the athletes on their successes and the images were freely available on the web. However, the CPC ruled that the fact that the images were published on a corporate Facebook page and were accompanied by the registered trademark of the respective undertaking misled customers into believing that the athletes were brand influencers of the company. The CPC noted that the simple use of images of celebrities is not a problem, as long as there is no trademark positioned on or near the photo. However, when the image is ‘branded’ it becomes marketing material, which creates the impression that the respective person supports the products offered under the trademark present. Considering that the athletes never allowed such use of their images, the competition authority concluded that the practice represented misleading advertising.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

Marketing and advertising activities should be always reviewed for compliance with the applicable statutory and ethical rules. The fact that an ad or marketing campaign is conducted only, or primarily, via social media platforms does not release the advertiser from the necessity to comply with the regulatory requirements. As noted by the CPC, a PCA infringement can be committed regardless of the communication channel used—both where a commercial message is broadcast via traditional advertising channels and where it is posted only in a social media profile. Moreover, in all scenarios the penalty can be very severe—the PCA empowers the CPC to impose sanctions of up to 10% of the advertiser’s Bulgarian turnover for the preceding year.

Since posting on official social media profiles is automatically attributed to the company, access to corporate accounts should be strictly managed, and only dedicated personnel should be allowed to administer the information published therein. Care should be taken to ensure that these employees or agents are well trained in the applicable regulatory requirements and aware of the consequences of the posts they make.



CANADA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms for advertisers in Canada include Twitter, Snapchat, Instagram, Facebook, Pinterest, and YouTube. There are no platforms that are restricted in Canada.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no advertising and marketing laws specific to social media in Canada. Laws of general application apply, regardless of medium. The federal Competition Act prohibits representations that are false or misleading in a material respect, and also governs disclosures and conduct related to contests, sweepstakes and other promotions. Provincial consumer protection laws also prohibit unfair or deceptive practices, such as false representations about a product or service. Privacy laws include the federal Personal Information and Electronic Documents Act ('PIPEDA') and provincial private sector privacy legislation that is substantially similar to PIPEDA. Canada's Anti-Spam Law ('CASL'), which governs the sending of commercial electronic messages, also applies to certain social media interactions.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Canadian Code of Advertising Standards is administered by Ad Standards and applies to all media, including social media.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Canada has no specific laws governing influencer marketing, and so the laws of general application (discussed above) apply, as does the Canadian Code of Advertising Standards. In October 2016, Ad Standards introduced an Interpretation Guideline to the Canadian Code of Advertising Standards, expressly requiring that the nature and fact of any material connection between the endorser and the advertiser behind the brand be disclosed in any testimonial, endorsement or review.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Canada has no specific laws governing native advertising, and so the laws of general application apply, as does the Canadian Code of Advertising Standards. See previous answers for detail.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Canada has no specific laws governing user generated content in advertising and marketing, and so the laws of general application apply, as does the Canadian Code of Advertising Standards. See previous answers for detail.

Intellectual property issues are often a concern in the context of user generated content, and are governed in Canada by the Copyright Act and Trade-marks Act.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Canada has no specific laws governing the use of social media platforms for sweepstakes and contests. Laws of general application would apply, including the Competition Act, the Criminal Code, and, in Quebec, the Act respecting lotteries, publicity contests and amusement machines.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Certain products are specially regulated and subject to their own regimes as to what such advertising can, cannot, or must say. These include alcohol, drugs, natural health products, cannabis, and cosmetics. The same restrictions apply to the advertising and marketing of such products, regardless of medium, and regardless of whether a post is made by the brand or by an influencer on behalf of a brand.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

In October 2015, Bell Canada entered into a consent agreement with the Competition Bureau under which it paid an administrative monetary penalty of \$1.25 Million and agreed to enhance its corporate compliance program. Certain Bell employees had posted positive reviews online of Bell customer apps, without disclosing that they were employees.

Various complaints have been lodged with Ad Standards, and have been resolved when influencers amended their posts to add ‘#ad’ or other similar indicators of the nature of the post and connection to the brand in question.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

- Disclose whether a post is advertising (eg with ‘#ad’) and material connections between the endorser and advertiser and any post. It is generally acceptable to follow the guidelines developed by the US Federal Trade Commission in making such disclosures.
- Intellectual property rights may apply to hashtags, both in terms of claiming rights in new tags, or the potential that use of a hashtag may infringe the rights of a third party. Consequently, hash tags should be cleared.
- Links to any terms, conditions or restrictions should be used cautiously. Canadian regulators will consider the general impression created by the post itself, which should stand on its own. Disclaimers and disclosures may elaborate but may not be used to correct an otherwise false or misleading impression. Any link to material terms and conditions should be identified as such, and be no more than one ‘click’ away.



CHILE

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used for advertising campaigns in Chile are Facebook, Instagram and Twitter. Other platforms, such as Pinterest, Snapchat and Tumblr are more likely to appeal to very specific groups of consumers, and are not as widely used for advertising purposes.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Rules and regulations governing advertising and marketing are scattered throughout various pieces of legislation, including the Consumer Protection Law, and regulation for specific industries, such as tobacco and pharmaceutical products. In this regard, advertising via social media is treated much in the same way as offline marketing would be.

The definition provided by the law of what constitutes ‘advertising’ does not distinguish between any particular forms, considering that any suitable mean is treated equally by the law. Consumers that are misled through social media marketing campaigns, or who find a particular online advertisement offensive have the same rights to demand the termination of that particular marketing campaign as they would with any offline issue.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Chilean Code of Advertising Ethics (‘CCAÉ’) is enforced by the Council for Self-regulating and Ethical Advertising (‘CONAR’), a non-profit organization which essentially acts as a court of arbitration that resolves disputes or complaints regarding decency issues, inter alia. According to the CCAÉ, advertising must respect the values, rights, and principles stated in Chile’s Political Constitution, especially regarding family morals and values, whilst also recognizing freedom of speech as a pillar of advertising.

CONAR’s members include advertising agencies, organizational groups of independent advertisers and various media, such as television networks, radio stations, magazines and newspapers. By paying their monthly membership fees, they can elect the members of the Board of Directors, and can file complaints for any behavior that contradicts the Code’s regulations. These complaints are handled first by the Board of Directors, with appeal to CONAR’s Advertising Ethics Court. Sanctions imposed by any of these are binding for members of CONAR, and may range from the temporary interruption of an advertising campaign to the expulsion of a member.

In addition, the Association of Direct and Digital Marketing (‘AMDD’) has issued a Code of Ethics and Self-Regulation. However, this Code deals mostly with commercial communications, such as telemarketing and promotional emails, and explicitly excludes social media marketing.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Influencer marketing via social media is not specifically regulated as such in our jurisdiction.

However, the CCAE does regulate testimonials, which can be assimilated to influencer marketing. The Code acknowledges that a public person can develop goodwill that could be used with advertising purposes. In this regard, if the person providing the testimonial has a pecuniary interest in the company that he is supporting, this must be made public.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Native advertising, via social media or offline, is not specifically regulated in Chile. However, the general rules contained in CCAE and the Consumer Protection Law must be followed, namely, the need to provide accurate and verifiable information and advertising must not seek to mislead consumers.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

User generated content is regulated by Intellectual Property Law and rules regarding personal image and goodwill. Authors have rights over their creations. As such, they can prevent their unauthorized use in advertising campaigns. Hence, it is mandatory for the advertiser to obtain authorization from the users who generate the material, in order to be enabled to include it in advertising.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Chilean law distinguishes between gambling games and games of skills, the former being those which results depend mostly on chance and the latter referring to games in which the physical or mental abilities of the players have a predominant role. Consequently, in order to ensure that a sweepstake or contest is not mistaken for a game of chance, it is highly recommended to always include skill-based questions. This same recommendation applies to sweepstakes and contests made through social media platforms.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Most rules regarding offline advertising are also applicable to campaigns made through social media. The CCAE does not differentiate between the platforms on which the advertising is placed; in consequence, the Code is applicable almost in its entirety to advertising via social media. In practice, local courts and self-regulating bodies have applied sanctions against advertisements made through social media.

The added complexity in social media arises from the fact that some advertisers may be acting from foreign jurisdictions, and if the advertising material is located on servers that are not within the territory of Chile, in practice it would be very difficult to enforce a judicial ruling.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

In 2016, CONAR ruled against an automotive retailer after it tweeted an advertisement encouraging consumers to use the company's SUV to drive off-road across a protected natural reserve area. The tweet upset various environmental groups who filed a complaint against the advertiser before CONAR.

In its decision, CONAR stated that the advertisement released through the tweet was against Article 1 of the CCAE because it did not respect the laws, values, rights, and principles stated in Chile's Constitution (the natural reserve area was declared vehicle-free by law); and against Article 27 that states 'advertising will not encourage behaviors that harm the environment'. The advertiser was forced to remove the tweet and to issue a public apology.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Other than the general rules previously described, we would add the following as 'best practices':

- Always obtain the necessary authorization from the relevant entities when using images, content, music and goodwill from third parties in a marketing campaign.
- If the social media campaign will use personal data from members who use that media platform, make sure that you have obtained the necessary consent, or can apply an exception to that consent, if needed.
- It has become increasingly more important to be aware of cultural and social sensitivities when preparing an advertising campaign. Considering the viral nature of some campaigns, it is good practice to review content to conform to current sensitivities.

CHINA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms that advertisers use in the People’s Republic of China (‘PRC’) for advertising and marketing to consumers include traditional social media platforms such as Weibo and WeChat; live streaming platforms such as DouyuTV and PandaTV; other consumer platforms such as Taobao and JD; and news media platforms such as Toutiao, which feature social media sections.

Twitter, Facebook and Instagram are also popular in China, but cannot be accessed without a VPN, meaning their reachable audience is limited.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no laws or regulations specifically directed at advertising and marketing via social media in the PRC. However, there are general laws on advertising and marketing, such as the Interim Measures for the Administration of Internet Advertising issued in July 2016 (‘Interim Measures’) and directed at advertising and marketing via the internet within the PRC.

The key provisions applicable to social media advertisements under these general laws include:

- (a) Articles 5 and 6 of the Interim Measures impose restrictions on certain content, respectively:
  - (i) No entity or individual may publish any advertisement for over-the-counter medication or tobacco by means of the internet.
  - (ii) No advertisement in the following areas may be published without passing an examination of an advertising examination authority as stipulated by law and regulation: medical treatment, medication, food for special medical purposes, medical apparatuses, pesticides, veterinary medication, dietary supplements or other special commodities or services.
- (b) Article 8 of the Interim Measures requires that an internet advertisement be clearly identifiable as an advertisement to consumers. Moreover, advertisements published on the internet, such as pop-up windows, must be clearly marked with a ‘close’ sign to ensure that they may be closed by the user with a single click.
- (c) Article 16 of the Interim Measures bans the following internet advertising activities:
  - (i) providing or using any application, software, or hardware to intercept, filter, hide, speed up, forward or otherwise impact the authorized advertisement of another party;
  - (ii) using network pathways, network equipment or applications to disrupt the normal data transmission of advertisements, alter or block authorized advertisements of other parties or load advertisements without authorization; and
  - (iii) using false statistical data, relaying misleading information regarding the value of advertising over internet mediums, and conveying incorrect price information seeking to influence or damage the interests of other parties.
- (d) Furthermore, the Interim Measures specify certain responsibilities for online advertisement publishers, specifically requiring that internet advertisement publishers must:
  - (i) establish and maintain an acceptable registration, examination and file management system for internet advertising business, including examining, verifying and recording

- the name, address, and contact number of each advertiser and other identifying information, while regularly maintaining and updating registration files;
- (ii) verify related supporting documents, confirm advertisement contents, not design, produce, or publish any advertisement with nonconforming content or without all necessary certification documents; and
  - (iii) be staffed with advertisement reviewers that have knowledge of advertisement regulations and, where conditions permit, implement a separate functional body for reviewing internet advertisements.
- (e) The Anti-Unfair Competition Law (revised 2017) provides regulations for false advertising, specifically requiring business operators not to:
- (i) promote through commercial means the performance, function, quality, sales status, user evaluation, or accolades received related to products and services in a false or misleading manner or otherwise attempt to mislead consumers; and
  - (ii) assist another business operator with its commercial promotions in a false or misleading manner by way of organizing false transactions or other means.
- (f) The Advertising Law (revised 2015) provides restrictions on advertisements for certain types of products, specifically:
- (i) Publication in mass media or in public places of advertisements for infant dairy products, consumable liquids and other consumable products claiming full or partial substitution of breast milk is prohibited.
  - (ii) Any advertisement for medical treatment, pharmaceuticals or medical devices may not contain:
    - any assertion or guarantee of efficacy or safety;
    - any statement on the rate of cure or other effectiveness;
    - comparison with the efficacy or safety of other pharmaceuticals or medical devices or with other medical institutions;
    - use of advertisement endorsements or testimonials; or
    - other items as prohibited by law and administrative regulations.
  - (iii) An advertisement for real estate must provide authentic housing source information and indicate the building or room dimensions, and may not contain:
    - any promise of appreciation or investment return;
    - an indication of the project location with reference to the amount of time it would take to travel to a given location(s);
    - violation of the relevant national provisions on price administration; or
    - misleading publicity on any traffic, commercial, cultural and education facilities, and other municipal amenities that are planned or under construction.
  - (iv) Advertisements involving health supplements may not contain:
    - any assertion or guarantee of efficacy or safety;
    - any assertion of the prevention of or curing of disease;
    - any claim or hint that the product advertised is necessary to safeguard health;
    - comparison with pharmaceuticals or other health supplements;
    - use of the advertisement endorsements or testimonials; or
    - other items as prohibited by laws and administrative regulations.

Advertisements involving health supplements must be clearly marked with the words ‘this product is not a substitute for medication’.
  - (v) It is prohibited to post tobacco advertisements in mass media or in public places, via public means of transport or outdoors.

- (vi) Advertisements involving alcohol may not contain:
- instigation to drink or promotion of excessive drinking;
  - any representations of the act of drinking;
  - any indication of conducting activities such as driving a car, or steering a boat or airplane; or
  - any express or implied statements that drinking has the effects of eliminating stress, anxiety or enhancing strength.
- (g) The Advertising Law also provides that endorsers who make endorsements or testimonials for products or services in advertisements may only do so based on factual information and not make endorsements or testimonials for products or services that have never been used or accepted by the endorser him/herself; moreover, minors under the age of ten may not be used as advertisement endorsers.
- (h) Lastly, the China Cyberspace Administration published four applicable administrative provisions in 2017 with which advertisers should monitor compliance when engaging in user comment follow-up services, internet forum and community services, internet chat groups, or official media accounts:
- (i) The Administrative Provisions on Internet Follow-up Comment Services provide that services related to following up on or responding to online comments must also strictly verify the identification information of registered users, establish and improve a user information protection system, establish and improve an internet follow up comment review and administration system for real-time monitoring of user comments, and occurrence of any emergency situations, etc.
  - (ii) The Administrative Provisions on Internet Forum and Community Services provide that internet forum and community service providers must assume primary responsibility for establishing and improving real time information verification, emergency response capabilities and personal information protections as well as other information security administration systems to institute preventative safety measures with employed professionals and necessary technical support for performing these duties.
  - (iii) The Provisions on the Administration of Information Services Provided through Chat Groups on the Internet require that providers verify the identification information of users of information services through internet chat groups and take necessary measures to protect user safety and personal information.
  - (iv) The Administrative Provisions on the Information Services Provided through Official Accounts of Internet Users require that providers review user information such as account information and qualifications for and scope of services, categorize users, and file such information with the local cyberspace administrator; and further establish a database with respect to registered persons, published content, the number of people subscribing to a given account, and the number of people reading the relevant articles published by the official user accounts, and implement specific management systems for official user accounts to be filed with the Cyberspace Administration.

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The China Advertising Association ('CAA'), the largest advertising association in China, published the Industrial Self-Regulatory Rules and Self-Regulatory and Exhortation Rules on 12 January

2008, followed by the Self-Regulatory Convention on 19 April 2016. These require all advertisers to comply with the Advertising Law.

In addition, certain social media platforms have promulgated their own internal rules on advertisement publication. For example, Weibo published the Filing Plan of Advertising and Promotion on Weibo in April 2016, requiring advertisers to file their advertising and promotion activities and conduct for Weibo's approval. WeChat also published Rules on the Use of WeChat Moments on 15 March 2015, which prohibits false advertising, and advertising on goods that are not related to the identity of the WeChat official account.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Although influencer marketing has become increasingly popular, current regulations in the PRC do not yet explicitly address this area. Therefore, regulation of influencers primarily comes from the advertising and internet laws of general applicability mentioned above. The most relevant of these include:

- prohibiting the use of endorsements or testimonials for certain products including medication and health supplements (Article 16 of the PRC Advertising Law);
- prohibiting minors under the age of ten from being used as endorsers (Article 38 of the PRC Advertising Law);
- prohibiting endorsements or testimonials for products or services that have never been used or accepted by the actual endorser (Article 38 of the PRC Advertising Law); and
- mandating that endorsers bear joint liability with the advertiser if the endorsed advertisement constitutes false advertisement and causes damage to a customer(s) (Article 56 of the PRC Advertising Law).

These are applicable to advertisements of all kinds, including but not limited to, advertising via social media. Also, if a user publishes a paid post, it is considered an advertisement, and should be identified as such.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

According to the latest legislation, native advertising should be clearly identified as 'advertising' (and not 'promotion') and be distinguishable from other content.

Article 14 of the Advertising Law provides that no mass media may publish an advertisement in the guise of a news report. Any advertisement published via mass media must be marked conspicuously as an 'advertisement' so as to distinguish it from other non-advertisement information and avoid misleading consumers.

Article 7 of the Interim Measures provides that an internet advertisement must be clearly identifiable to consumers as an 'advertisement'.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user-generated content when advertising and marketing via social media?***

User generated content that is copyrighted by the user is protected under the PRC Copyright Law. Generally, UGC platforms request users uploading UGC contents to grant the platform an exclusive license to use such content. Thus a license from the user and/or the UGC platform should be obtained before any use of such content.

User generated content that contains personal information and private information is protected under the Law of the PRC on the Protection of Consumer Rights and Interests, Cyber Security Law and the Provisions on Protection of Personal Information of Telecommunication and Internet Users. Hence, if a third party uses user generated content in another form based on permission granted in user terms or another agreement, it is generally advisable to delete any personal information such as names, addresses, contact information etc to avoid any risk of infringement (unless written authorization is obtained).

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific rules on sweepstakes and contests via social media in China. Relevant rules are scattered in various regulations, such as the provisions of the Regulations on Administration of Lotteries, which are applicable to the issue and sale of lottery tickets, the Anti-Unfair Competition Law, which is applicable to sales with a prize, the Circular on Specific Rectification Working Plan on Internet Financial Advertising and Conducting Financial Activities in the Name of Investment & Financing, and even the PRC Criminal Law regarding prohibition of illegal fund raising.

In particular, Article 10 of the Anti-Unfair Competition Law provides several limitations on sales with rewards; namely that a business operator of sales reward activities may not engage in sales with prizes attached:

- without expressly specifying the prize types, terms for collecting prizes, the amounts of cash or the goods as prizes, or other related information affecting prize collection;
- in a fraudulent manner by falsely claiming the existence of prizes or intentionally causing internally-chosen persons to win the prizes; or
- in the form of a lucky draw where the amount of the highest prize exceeds CNY 50,000 (approx US \$7,800).

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Advertisements distributed via social media or any internet platform are regulated under a number of laws (see the answer 2). In particular, advertisers should be mindful of:

- Article 7 of the Interim Measures provides that paid search advertisements must be clearly distinguished from natural search results.
- Article 8 of the Interim Measures provides that advertisements must be published or distributed by means of the internet without affecting the normal use of the network by users. Advertisements published on internet pages in the form of pop-up or other forms shall be clearly marked with a ‘Close’ sign to ensure users can close the advertisement with one click. No entity or individual may induce users to click on the content of an advertisement through deceptive means. No entity or individual may attach advertisements or links to advertisements in an e-mail sent by a user without his permission.

Aside from the above, each social platform has its own rules as to advertising and marketing, and usually requires the creation of account. In this regard, certain platforms, such as WeChat, require that any official account accessible from China must be owned by PRC citizens or PRC entities. Therefore, a foreign company cannot register an official account directly to conduct marketing activities in the PRC. It would need to either set up a PRC entity, such as a WFOE, or engage a PRC entity to conduct the social media marketing activity on its behalf.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Recently, several advertisers posted advertisements on their official WeChat accounts which violated the PRC Advertising Law. These publishers were punished by local authorities. For example, Marlboro posted covert tobacco advertising in articles it published on its WeChat official account ‘Marlboro Fans Club’ several times in a single year. It was fined CNY 1 million (approx US \$155,000) by the Beijing Administration for Industry and Commerce, Chaoyang district branch.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

Understand Chinese culture and follow the relevant regulations. Engage local counsel to review advertisement content and form, especially any that has been translated from another language.





# COLOMBIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms that advertisers use in Colombia for advertising and marketing to consumers are Facebook, Instagram, Snapchat, Pinterest, Twitter and YouTube.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The main laws and regulations governing advertising and marketing via social media in Colombia are those governing advertising and publicity in general.

Two laws regulate advertising and marketing in Colombia.

(a) Law 1480 of 2011 ('Consumers Protection Statute'). This law regulates the kind of information that the consumer must receive within the advertisement in order to obtain the full facts about the product or service. Accordingly, it establishes three specific requirements as to:

- minimum information,
- accurate content of the information and;
- public information of prices.

It also sets out obligations on the advertiser, whereby the advertiser will be liable for the information given about the product or service.

(b) Law 256 of 1996 regulates unfair competition in Colombia. This law states that any act which is confusing and may lead consumers into error is prohibited and considered unlawful.

Finally, it is important to mention that the Superintendence of Industry and Commerce, which is the competent national authority regarding these matters, has the power to analyze marketing conduct on a case-by-case basis, in order to determine any breach of the advertiser's obligations.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Unión Colombiana de Empresas Publicitarias ('UCEP'), is a conglomerate of advertising companies, that, in conjunction with la Asociación Nacional de Anunciantes ('ANDA') and the International Advertising Association ('IAA'), created the National Commission for Self-Regulation Advertisement ('CONARP') to regulate advertising from an ethical perspective. This is the only industry code of practice that comprises different professional associations.

CONARP has issued and develops the ethics code for advertisement activities. The code is called the Colombian Self-Regulatory Code on Advertisement and applies to members or subscribers and their employees, contractors or suppliers of advertising services.

The Colombian Self-Regulatory Code on Advertisement entitles CONARP to make judgments against an advertiser based on ethical considerations and admonish privately or publicly those responsible for advertising that violates an ethical standard and inform the competent public authorities when the advertisement under review breaches Colombian law.

Concerning marketing via social media, the principles applicable are truthfulness, decency, honesty, good faith, and social responsibility.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no special rules pertaining to using social media for advertising. The general rules of advertising apply to influencer marketing as well.

The general rules state that all relevant information must be disclosed, and that the advertisement must be clear, truthful, adequate, timely, verifiable, understandable, accurate and suitable for the products or services that are offered.

The Self-Regulatory Code on Advertising contains a chapter on social media advertising, which indicates that such advertising must respect individuals, groups and associations and should have acceptable standards of commercial behavior.

It is a mandatory rule for all advertisements that the person, company or entity that is offering the goods or services must be clearly indicated for consumer information.

As regards influencer marketing, it must be clear whether the testimony is an endorsement, an independent opinion, a belief, or an experience.

Liability for the testifier's claims or opinions can be joint and several if advertising rules are breached.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no special rules pertaining to using social media for advertising. The general rules of advertising apply to native advertising as well (see answer 4).

As regards native advertising, the consumer must be properly informed that the content is an advertisement and not a regular post.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user-generated content when advertising and marketing via social media?***

Recently, the Colombian Superintendence of Industry and Commerce issued a legal opinion intending to clarify the scope of liability of social networks when they are operated by the users as a selling platform. The main points are:

- An advertiser is liable to consumers, since the regulation refers to the manufacturer and/or provider which advertises the goods or services. However, the platform on which the advertisement is promoted would be liable in a case where it is possible to demonstrate bad faith or guilt on the part of the social network (in this case), concerning the deceitful advertisement.
- The Colombian Superintendence of Industry and Commerce considered that social networks do not have a commercial interest, but a social one. Hence, it is not possible for a social network to determine or affect a consumer in its decision-making process.
- If social networks act as advertisers, then the Consumer Protection Statute would be applicable to them, not only as a platform on which the advertisement is promoted, but as a manufacturer and/or provider.

- If a user commercializes goods or services, only the user would be liable for what it is advertised, as social networks cannot be responsible for the use given to the accounts.

This is not a decision per se, and curiously enough it is not binding for the Colombian Superintendence of Industry and Commerce. Nonetheless, it is the latest opinion issued related to user generated content when advertising and marketing via social media.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no special rules related to conducting sweepstakes and contests via social media. The general rules of advertising apply. Hence, there must be clarity in terms of the mode, time and place of the promotion. The terms and conditions of the promotion should be easily accessible to consumers.

If the promotion does not involve chance, no authorization from any regulatory entity is needed; nonetheless, the promotion and terms and conditions must comply with all the requirements of the Consumer Protection Statute, which is the governing law of the promotion.

If it is a chance-based promotion, authorization is needed.

It is important that all advertisement pieces include all the conditions of the promotion (ie they must include all the conditions relating to time, mode and place of the promotion), as the information provided to the consumer should be complete and clear.

The terms and conditions must be legible (ie the font size must be large enough to allow the average consumer to read them without having to make an effort). The SIC has emphasized in relation to ‘fine print’ that, while there is no requirement for it to be a certain size, the terms and conditions should be a normal and readable size.

The terms and conditions and the whole of the advertisement must be in Spanish.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The most important issue is to comply with the general rules. Hence, all relevant information must be disclosed and must be clear, truthful, adequate, timely, verifiable, understandable, accurate and suitable for the products or services that are offered.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There have been legal opinions; however, there has been no recent decision in which advertising and marketing via social media is the main element.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

The key ‘best practices’ are to:

- be loyal to consumers;
- avoid any misleading language or double entendre; and

- ensure compliance with both the Consumers Protection Statute and Law 256 of 1996.





## COSTA RICA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platform used by advertisers in Costa Rica is Facebook. Twitter and Instagram are also used, but on a much smaller scale.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Advertising in social media must always be identified as such, and the name of the advertiser must be mentioned.

In addition, advertising via social media is regulated in the same way as in any other traditional media. In summary, the basic principles of truthfulness and decency apply.

Although not expressly regulated, certain subjects deserve special attention due to the nature of social media. These include privacy and protection of intellectual property, in which general regulations—and their interpretation—have been adapted to social media and new technologies.

Moreover, there are criminal penalties for some of the so-called ‘e-crimes’. These include identity theft, phishing, and the like.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are no self-regulatory controls on advertising via social media.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Although influencers are not expressly mentioned, the E-commerce Regulation states that all advertising using electronic media must be clearly identified and the advertiser must be expressly mentioned. This directly affects influencer marketing.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no express regulations relating to native advertising via social media, although the general duty to identify advertising may also apply.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific rules on user generated content. General regulations relating to intellectual property, image rights, misleading advertising etc will apply.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific rules for sweepstakes and contests via social media. However, Consumer Protection Laws are very specific in this area, and they apply to all promotions including social media. These regulate, inter alia, language requirements, disclosures, rules for raffles, consent requirements etc.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

In addition to the response to question 2, another relevant rule may be the ‘safe harbor’ regulation, which regulates and clarifies the duties and liability of service providers for online copyright violations.

This regulation applies to providers of various services related to the use of the internet, such as hosting, search engines, ISPs, and the like. In essence, the regulation establishes the conditions that service providers must comply with in order to limit their liability for copyright infringements made using their systems. Also, it creates a procedure that must be followed when a copyright violation is found, which includes the issue of a report to the service provider and notice to the potential infringer, and details some remedies and measures to be taken, which may include the removal of contents from a site, denial of access to certain services, closure of existing accounts etc.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Most existing decisions involving social media relate either to defamation through social networks, or to the admissibility as evidence of statements made in the context of a social network.

As relevant developments, we foresee a strengthening of the regulations related to data protection. Also, it may be expected that we see more general regulations being applied to cases involving social media, rather than an express regulation of this activities.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

As with any other international media and forms of advertising, advertisers should be aware of local interpretations of the law and trends in the enforcement policies. Although the written rules are similar as in other countries, their interpretation is sometimes different in the local context.



CROATIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

According to publicly available data, the most popular social media platforms in Croatia are: Facebook (2 million local users), Instagram (0.9 million local users), Google+ and YouTube. Twitter, Pinterest and Snapchat, although very popular globally, are not as popular in Croatia. LinkedIn is commonly used for business purposes. These same social media platforms are the most popular among advertisers for advertising and marketing to consumers.

There are no important global social media platforms that are not available for use (or are not widely used) in Croatia.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The regulations that apply to advertising in general in Croatia apply to advertising and marketing via social media as well. These include, primarily, the Prohibited Advertising Act and the Consumers Protection Act. In addition, the Croatian Media Act and the Electronic Media Act may apply, where the advertising is an electronic format.

However, the general impression is that the regulations in force have been less effective against unlawful advertising online than in other circumstances. The reason for that is probably the difficulty of finding the actual source of unlawful advertising online. The same problems also appear in social media advertising, although social media has not been the main online channel in Croatia in terms of advertising products and services, at least as far as local producers and trademark owners are concerned.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Croatian Association of Communications Agencies ('HURA') has published an Advertising and Market Communications Code of Conduct, which is applicable to social media advertising. It regulates, inter alia, honesty and transparency in advertising, as well as the social responsibility entailed in the profession. One of the subjects covered in the Code is the regulation of direct marketing, as well as advertising via the use of the digital interactive media. It is based on the principle of full disclosure to consumers and breach of the Code carries the possible sanction of termination of the ad. Special focus has been put on the safety of internet users, especially where the user (such as children) or topic raised is sensitive.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Influencer marketing is not regulated by any specific laws, regulations or self-regulatory rules in Croatia. However, it is thought that, where marketing is in electronic format, the provisions of the Croatian Media Act apply, under which an advertisement is defined as 'a paid notification, the publication of which is ordered by a natural or legal person with the aim of improving the sales of goods or services, public image, etc'.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Native marketing is not specifically mentioned in laws or regulations in Croatia. As is the case for influencer marketing, it is thought that the definition of ‘advertisement’ in the Croatian Media Act is worded in a way which would entail a wide range of practices, including native advertising via social media.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user-generated content when advertising and marketing via social media?***

User generated content is a ‘grey area’ in local advertising law. User generated content often does not fall within the definition of advertising under local laws. As a result, each case should be treated and evaluated individually.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Contests in Croatia are divided between those which are luck/chance-based, ie dependent on a ‘subjective criterion’, and those dependent on an ‘objective’ criterion, which are not as strictly regulated.

Contests with a subjective criterion are strictly prescribed, and the organizer must fulfil a series of formalities and obtain an authorization issued by the Croatian Ministry of Finance.

For contests dependent on an objective criterion, the organizer is required to state the rules of the contest, as well as the promised prize, without leaving any room for interpretation.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The most important thing to be considered is the type of product or service being advertised. In Croatia, several laws and regulations prescribe goods and services which are prohibited from being advertised (eg cigarettes, weapons, ammunition, pyrotechnic devices), or advertisement of which is restricted by a special set of rules (eg medication, alcoholic beverages). This is applicable to any type of advertising, including advertising via social media.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

We are not aware of any judgment/decision specifically relating to the advertising and marketing via social media.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

Advertising and marketing via social media is a relatively new concept in the media environment and even more so in the local legal system. As a result, ‘best practices’ have not yet been developed.

The size of our country, which is in proportion with the number of its inhabitants and the size of the market, should be taken into consideration in this respect.

CYPRUS

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used by advertisers are Facebook, Instagram and Twitter.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Advertising via social media is currently treated in the same way as other kinds of advertising. Therefore, there are no specific legal controls that address advertising and marketing via social media. In Cyprus, the dominant advertising legislation is the Control of Misleading and Comparative Advertising Law (92(I)/2000) and the Unfair Business-to-Consumer Practices Law (103(I)/2007).

It is worth mentioning that the Competition and Consumer Protection Service ('CCPS') is the competent authority responsible for the enforcement of the law on misleading and comparative advertising as well as the law on unfair commercial practices. The role of the CCPS is to monitor the market in order to ensure that clear and adequate information is provided to consumers, protecting consumers' economic interests and improving consumers' education, information and awareness of their rights.

Additionally, in relation to social media marketing, the general law in the areas of intellectual property, contract and data protection are also relevant whereby advertisements placed on social media will also have to observe the terms of use of the social media used.

Consumers that are misled through a social media marketing campaign, or find a particular online advertisement offensive, have the right to file a complaint through the Cyprus Advertising Regulation Organization ('CARO') (see further answer 3) or alternatively to the CCPS.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Cyprus has an established advertising self-regulation system in place. The main body responsible for the self regulation of advertising across all media is CARO. CARO is a voluntary, non-profit organization and a member of the European Advertising Standards Alliance. Its aim is to promote ethical standards in advertising in Cyprus through industry self regulation according to Cypriot legislation and its own Code of Conduct and guidance notes. The Code of Conduct follows the code of the International Chamber of Commerce.

The Code of Conduct is not specific to the type of advertising medium used, and therefore also applies to advertising and marketing via social media. Its members are advertising companies and the media, including broadcasting channels, newspapers and websites. Where CARO has determined that an advertisement is not compliant with Cypriot legislation or its own Code of Conduct, it can request the withdrawal of the advertisement or its amendment, and, in the case of non-compliance, it will request the host of the advertisement to withdraw it.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws or regulations that address advertising and marketing via social media or specifically in relation to influencer marketing. Consequently, the generic advertisement legislation and CARO’s Code of Conduct and guidance notes may be applicable. See further answers 2 and 3 above.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

As mentioned above, there are no specific laws or regulations that address advertising and marketing via social media or specifically in relation to native advertising. Accordingly, the generic advertisement legislation and CARO’s Code of Conduct and guidance notes may be applicable. See further answers 2 and 3 above.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

As mentioned above, there are no specific laws or regulations that address advertising and marketing via social media or specifically in relation to the use of user generated content. Consequently, the generic advertisement legislation and CARO’s Code of Conduct and guidance notes may be applicable. See further answers 2 and 3 above.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Cyprus does not have any general law governing the operation of sweepstakes either generally or in relation to social media. With respect to contest laws, it is worth mentioning that this is regulated by the Lotteries Law (Cap 74) which, amongst other things, prohibits using a newspaper to conduct contests.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

As mentioned above in answer 2 the law and regulations do not specifically address social media advertising but the overarching general principles and prohibitions apply nonetheless when advertising through social media. Specifically, advertisers should:

- ensure the veracity of the advertisement;
- ensure that the advertisement is truthful and honest;
- avoid misleading advertising whether this manifests through inaccuracies, ambiguity, exaggeration or otherwise;
- avoid communications which contain anything that is likely to cause serious or widespread offence to morals; and
- ensure they have in their possession evidence to substantiate all claims prior to publishing an advertising.

When performing comparative advertising, advertisers should ensure that the comparison:

- does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing mark of a competitor or of the designation of origin of competing products;
- does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name;
- does not create confusion among traders, between the advertiser and a competitor, or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor.

In relation to marketing directed towards consumers, this should be conveyed in a clear, understandable manner, whatever form or medium used. The advertisement must not be misleading; the consumer must be allowed to comprehend the qualities and offers of the marketed product. Specifically, advertisers should avoid advertising that could mislead the average consumer as to the existence of an over-advantageous offer capable of inducing a transactional decision that would not otherwise be exercised, or engaging in practices that could mislead consumers as to the actual product price, the manner in which each product price was reached and the existence of a specific price advantage.

Further, it is advisable that advertisers should observe CARO's Code of Conduct and, especially, the guidance notes published in relation to advertisements relating to children, alcohol and food in general.

CARO's main principles, as stated in their Code of Conduct, are that advertisements should:

- be 'legal, decent, honest and truthful';
- be 'prepared with a sense of responsibility to consumers and society';
- 'respect the principle of fair competition'; and
- 'deal fairly with consumers'.

CARO also offers the service of reviewing advertisements before they are published in order to determine any likelihood of violation of its Code of Conduct.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

No cases have been referred to or tried by the Cypriot courts to date in relation to advertising through social media. However, a recent decision was made by CARO (judgment dated 28 April 2017) in relation to an advertisement posted on the Facebook page of the fast food Cypriot company Picomatrix Ltd trading as Roosters, which sells roasted chicken. The complainants stated that the advertisement promoted sexist behavior, stalking, and represented the female body in a manner which is insulting and degrading.

CARO agreed with the complainants and specifically noted that the fact that this advertisement was displayed on Facebook, which allows for a user to unfollow a website, did not negate the general obligation advertisers have in not offending genders through their advertisements.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Please see answer 8 above in relation to best practices for advertising through social media.

CZECH REPUBLIC

### ***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used by advertisers in the Czech Republic, are definitely Facebook, Instagram and YouTube. Also used, but less popular, are LinkedIn, Google+ and Twitter. Other social media platform use is marginal. However, we are not aware of any import global social media platform which is not available for use in the Czech Republic, though in some cases the pages are not completely translated to local language (ie Czech) or otherwise locally adapted, for instance.

### ***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There is no special legislation which only deals with advertising and marketing via social media in the Czech Republic. Advertising in general (and therefore also advertising via social media) is regulated by the Act on Advertising Regulation (Act No 40/1995 Coll).

Other important laws regulating advertising in general are the Civil Code (which deals in particular with unfair competition and personality protection) and the Copyright Act (governing the use of copyright works).

Self-regulatory rules of the advertising organizations are included in the Advertising Code (the present version is from 2013). The Advertising Code does not have the power of law, but it is widely respected by all the members of the Advertising Council which issues the Code. The Advertising Code also does not have specific provisions on advertising via social media.

In 2003, the Ethical Code of Internet Advertising was drawn up. This Code also does not have power of law and functions only as a self-regulatory device of Czech internet advertisers. In the case of this Ethical Code—unlike in the case of the Advertising Code above – there is no body which oversees adherence to the Code.

Also, social networks operators usually issue their own ‘ethical codes’ for their members. Naturally, in these cases, it is only the operators themselves who monitor, control and uphold compliance with such codes.

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Act on Advertising Regulation contains general rules on advertising in all types of communications media (ie the press, magazines, motion pictures, video-on-demand services, software, radio and TV broadcasting etc). There are several supervisory bodies which help ensure that the rules set down by the Act are adhered to. Since there is no established special body to exclusively supervise ‘social media’, the basic supervisory bodies are generally the regional Trade Licensing Offices.

The self-regulatory Advertising Code sets down rules on advertising in all types of ‘communications media’ (as defined in the broad sense above) and therefore also covers social media. A body within the Advertising Council called the Arbitration Committee monitors the Council’s members to ensure that they abide by the standards set out by the Advertising Code. The Committee has unofficial, but widely-respected authority to give a ruling in questionable cases.

Everybody (both legal entities and the public) has the right to file a complaint to the Committee concerning apparently unethical (ie Code breaching) advertisement.

As already mentioned, the Ethical Code of Internet Advertising does not have any body to oversee adherence to its principles.

#### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

To our knowledge, there are no laws, regulations or self-regulatory rules in the Czech Republic specific to influencer marketing via social media at present.

#### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

To our knowledge, there are currently no specific laws, regulations and self-regulatory rules in the Czech Republic governing native advertising via social media. However, on the general level, native advertising, in the form of product placement in online videos, is regulated by act number 132/2010, Coll. on Audiovisual Media Services on Demand; this regulation is a generally-faithful adoption of the Audiovisual Media Services Directive (Directive 2010/13/EU).

In addition, in social media (as in all other forms of media), surreptitious as well as subliminal advertising is forbidden.

#### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

The Czech Republic has quite literally adopted the legislation contained in the E-Commerce Directive (Directive 2000/31/EC), by Act No 480/2004 Coll. This means, basically, that in the Czech Republic—as in other EU countries—the users themselves are responsible for any content they generate on-line, unless it happens to be one of the cases when the responsibility of (generally hosting) service provider arises.

Otherwise, there are currently no specific laws, regulations and self-regulatory rules in the Czech Republic concerning this issue.

#### ***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There was fairly strict regulation of consumer sweepstakes (in the sense of games aimed at consumers, based on chance rather than skill) in the Czech Republic before 2017. However, since 1 January 2017 this regulation was revoked by the new Gambling Act (Act No 186/2016 Coll), which now regulates only ‘classic’ gambling.

Therefore there are no specific laws, regulations and self-regulatory rules in the Czech Republic at present which deal with conducting sweepstakes and contests via social media.

However, some of the social media providers have some ‘internal’ rules of their own, like the document called ‘Facebook Page Guidelines’, which deals also with conducting contests via Facebook.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

We believe there are no such issues that would be specific just to the jurisdiction of the Czech Republic.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There have been several interesting decisions in the past years dealing with advertisements on the internet—decided by courts as well as by the self-regulatory body.

However, to our knowledge, none has dealt specifically with advertising via social media. Moreover, in all cases, the disputes mainly concerned the content of the advertisement, not the type of media by which it was distributed.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

As with all other types of advertisements, social media advertisements are governed by the following basic principles:

- The advertisement must not be in breach of any law (eg the Copyright Act, the Civil Code etc).
- The advertisement must not be hidden (surreptitious or subliminal). This principle is particularly important in the area of social media, where certain advertisers can try to 'hide' their identity (for instance by pretending to be Facebook or Twitter users).
- The advertisement must not bother the consumer (spams etc.).
- The advertisement must be 'decent', ie it should be in compliance with good morals.
- The advertisement must not encourage aggressive or health-threatening behavior.
- Special rules apply, to advertisements, eg, for children, or those promoting tobacco products, alcoholic products, pharmaceutical products, food or guns and ammunition.

Apart from abiding by these rules, every advertiser using social media should (from the marketing point of view) carefully consider the target audience for the advertising and adjust the content of the advertisement to its audience (eg the possible use of vulgarities), and make the content as interactive as possible (which is also a way to watch over potentially illegal or otherwise harmful user-generated content).

DENMARK

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Social media platforms are not only used to share experiences and recommendations between friends online. The social media platforms are also used by a wide variety of different types of companies to advertise their products or services and in some instances by an influencer.

A statistical analysis by the Danish website [www.bureau.dk](http://www.bureau.dk) shows how users spread across social medias in 2017.

67% of the Danish population is on Facebook, 25% on Snapchat, 24% on Instagram, 24% on LinkedIn, 10% on Twitter and 9% on Pinterest.

With such a huge percent of the Danish population on Facebook, it is obvious that advertisers also use this media platform for marketing to consumers. In 2017 64% of Danish companies are active on social medias in accordance with statistics published by Statistics Denmark (the central statistical office in Denmark). Especially Facebook and LinkedIn are the main social media platforms used by the companies.

All global social media platforms are available in Denmark.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Under Danish law, the legal controls governing advertising and marketing via social media are identical to the regulations governing traditional advertising and marketing. The main laws and regulations in Denmark are:

- the Marketing Act: this is the main law governing marketing in Denmark. It regulates all types of marketing including E-commerce marketing. The Marketing Act has recently been revised so as to fully implement the Unfair Commercial Practices Directive (2005/29/EC).
- the E-Commerce Act: this also regulates marketing made through e-commerce activities.
- Furthermore, the general laws on intellectual property rights, such as the Danish Trademark Act and the Danish Act on Copyright also apply. These allow holders to take action against any misuse of intellectual property rights.

As soft law, the guidelines and comments issued by the Danish Consumer Ombudsman and the non-statutory regulation by the Danish Alcohol Advertising Board are very relevant sources of law:

- The Danish Consumer Ombudsman issues guidelines and guidance papers concerning specific or more general marketing issues on a regular basis. These guidelines are followed when analyzing whether or not a specific ad is violating any provision in the Danish Marketing Act, as the guidelines describe in detail the different relevant marketing topics in Denmark and the regulation of them.
- In 2012, the Consumer Ombudsmen of the three Nordic countries issued a position paper regarding the regulation of social media platforms, and this position paper is widely applied.
- The non-statutory regulation by the Danish Alcohol Advertising Board regulates alcohol advertisement in detail.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There is no specific self-regulatory body related to advertising and marketing via social media, except for those related to alcohol advertisement.

The Danish Consumer Ombudsman is an independent public authority which supervises compliance with Danish marketing law. By being an independent authority, the Ombudsman can prioritize the institution's work and activities according to resources and needs.

The Ombudsman has issued guidelines for bloggers and for advertising and marketing via social media.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

All marketing directed at consumers must be designed to be clear and easy to understand and the information provided must be sufficient and not misleading, so that the consumer is able to assess the marketed product and any offers or promotional measures.

According to the Marketing Act all advertisement must be clearly marked as such; and thus all influencers who perform sponsored activities must clearly indicate the nature of their activity, ie advertisement. The sponsor must secure that the ad is sufficiently marked as sponsored or paid for content. The company behind the ad is responsible under fairly strict standards for securing that the blogger marks the sponsored blogs as an ad. However, if this is not done, despite the efforts performed by the company, the company will not be held liable.

Whether a blog is considered an ad depends upon the agreement between the company and the blogger. The question is not whether an agreement has been made or not. The simple fact that a sponsor gives a gift or makes a product available for the blogger may result in the blog becoming an ad.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws regulating native advertisement other than the general prohibition vested in the Marketing Act against covert advertisement.

It is thus a general requirement that advertisement stands apart from the content, and so native advertisement may be illegal to the extent that the commercial intent behind the advertisement is not clear to the consumer.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Under Danish law there are no specific laws, regulations or self-regulatory rules related to the use of user generated content when advertising and marketing via social media. However, the Consumer Ombudsman has, in 2015, issued guidelines regulating user generated content.

The legal controls governing user generated content are identical to the regulations governing traditional advertising and marketing. Thus, if the user has been paid by a company, or otherwise

receives benefits for generating the content, this must be clear to the consumer. Otherwise, the user generated content may be considered an illegal covert advertisement.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Sweepstakes where the result is partly or fully dependent on chance, and where participation is dependent on payment of a sum, require a license from the Danish Gambling Administration. Sweepstakes that do not require payment of a stake do not require such a permit. To the extent the outcome is dependent fully or partly on chance, the holder must, however, register with the Tax Administration and pay tax on the prize money.

If the outcome of the game is fully dependent on skills, it is neither necessary to register with the Gambling Administration nor the Tax Administration.

In accordance with the Danish Marketing Act, companies promoting a sweepstake must always display the terms of the sweepstake in an easy-to-understand and clear manner. The rules must be easily accessible to the participant. Misleading and inadequate display of the rules and conditions is illegal.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

It is important that the commercial intent of the communication must always be displayed in a clear manner, so that the consumer is in no doubt.

Furthermore, it is important to remember that the clarity with which information (such as the terms of a sweepstake, or the commercial intent of the advertiser), must be displayed will vary, depending on the manner in which the advertisement appears. If the ad is only displayed very briefly, the requirements are stricter than if the content is not momentary.

Moreover, it should be noted that advertisement in a feed will not be considered spam. Only when the ad is directed at a person's mailbox or messenger account will the content will be considered spam, and then, only to the extent it is not solicited (see further, answer 9).

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

**(a) Regarding two Facebook pages**

Two news businesses had created two Facebook sites where the businesses shared their own articles; however, it was not clear that the businesses were behind the sites. If a reader clicked on a link shared on the Facebook page, the reader was taken to the entire article on the news business's own website. The Danish Ombudsman found that it should appear from the front page of each site who was behind the pages.

**(b) Regarding marketing in newsfeeds on Facebook**

The Consumer Ombudsman was asked to indicate whether it was legal to copy LinkedIn users' e-mail addresses in order to use such e-mail addresses to direct advertising to their newsfeeds on Facebook. The Ombudsman indicated that news feeds are not private and thus the activity was not spam. However, the recipient should be allowed to easily discontinue the feed. (30 June 2016)

**(c) Regarding a blogger exposing a product**

The Danish Ombudsman has also found that a posting by a blogger who gave exposure to a product was a covert ad since the blogpost was not marked as an ad. Prior e-mails exchanged between a company (via an advertising agency) and a blogger constituted an agreement that the blogger should mention the company's products in the blogger's Instagram. The Danish Consumer Ombudsman found that this was a violation of the Danish Marketing Act.

**(d) Regarding advertisement of a contest on Instagram**

An online store held a contest on Instagram. The prize was indicated to be an original Triangl bikini. However, the winner of the contest was sent a copy. The Danish Consumer Ombudsman found that the marketing of the contest was misleading. The reason, the Ombudsman stated, for its decision was that the marketing of the contest gave the participants a reasonable ground for believing that there was a possibility of winning an original Triangl bikini. The bikini in the Instagram post looked like an original and the text accompanied the picture did not make it clear that it was a copy. (22 January 2015)

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

When consumers see an advertisement, they must be aware that it is an ad, no matter what form it takes and no matter what medium it appears in. By this a transparency is created and consumers realize that there is a commercial interest behind the text and images.

Thus, when marketing in Denmark, business owners must make sure that their ads are identified as such. Social media is primarily perceived as a platform where individuals can exchange information with each other. Therefore, businesses and traders using social media for marketing should pay particular attention to the fact that it must be very clear whether or not it is an ad. The overarching purpose of the requirement for identification is that there is transparency and that users of social media can see when they are exposed to marketing or other commercial communication.

In relation to bloggers and influencers, it is important that the commercial intent is clear to the consumer. It is sufficient if this is explained or clearly appears from the context. If there is any doubt whether this clearly appears, the Consumer Ombudsman recommends that the influencer or blogger provides this information directly in connection with the ad, eg 'Advertisement for [company name]'.

If the advertisement is targeted at minors, stricter rules apply. In such cases it is very important that the minors are aware that the advertisement is actually an advertisement.

As explained by the Ombudsman in its paper on the common position on advertising and marketing, the volume of advertising on social media has grown significantly in recent years. Due to the fact that the platforms are mainly used by private consumers to exchange information with each other, companies who uses social media for marketing should pay particular attention to highlighting the fact that their purpose is to promote their goods or services. It is very important that consumers are not exposed to hidden advertising.





DOMINICAN REPUBLIC



***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

In the Dominican Republic, all social media platforms are used by advertisers. Twitter is used mainly only for large business advertising (eg telecommunication companies, banks). Facebook and Instagram are more popular for medium and small businesses.

The 'live' function of the social media platforms is very popular in the Dominican Republic; in addition, brands are starting to use the mobile game platform ('advergaming').

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The Antitrust Law forbids misleading or confusing advertising and contains rules on unfair competition. The Consumer Protection Law contains rules and guidelines for advertising and promotions in general, that also apply to the internet and social media, like trustworthy information. Intellectual property laws (trademarks and copyright) also apply.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The alcohol industry (beer and rum producers) has self-regulatory rules. The documents contain similar rules on:

- as to the legal age to consume alcohol (they encourage a minimum age limit of 18);
- not to promote violent behaviors;
- to try to avoid the projection of stereotypes of success from the consumption of beer or rum; and, very importantly,
- to respect the image of the woman in advertising and presentations.

In the Dominican Republic, there is no CONAR or auto-regulation body that works or enforces these Rules, and there are no self-regulatory rules for general advertising outside the alcohol industries.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific rules for influencer marketing via social media. The unfair competition regulations contained in the Antitrust Law must apply.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There is no regulation at all on native advertising. The unfair competition regulations contained in the Antitrust Law must apply.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There is no specific regulation on the use of user generated content. The unfair competition regulations, Consumer Protection Law and Copyright Law apply.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Promotions, sweepstakes and contests have specific regulations under the Consumer Protection Law. Registration with the Dominican Consumer Protection Agency (Proconsumidor) is mandatory.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

- In the Dominican Republic there is data protection legislation but there are no registrations or notification to comply with.
- The Consumer Protection Agency regularly enforces the regulation of registration of promotions.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

- An airline has been sanctioned by Proconsumidor, the Consumer Protection Agency for false advertising in social media messages. In a trade fair in the city of Santiago, the airline, DR, announced flights from US\$39. The ad said: 'COME BEFORE THE OFFERS GO FLYING AWAY ... !!!' The problem was not the tag line, but rather that flights were over the price announced.
- Newsjacking has been successfully used in the Dominican Republic.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Key best practices in the Dominican Republic include:

- the use of a 'community manager' for social media platforms;
- to register promotions and sweepstakes with the Consumer Protection Agency; and
- to check specific regulation on certain products (breastfeeding products, alcohol, cigarettes, etc).





## DUTCH CARIBBEAN

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used by advertisers in the Dutch Caribbean are Facebook, WhatsApp and YouTube.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no specific laws or regulations governing advertising and marketing via social media. The general laws apply, mainly the E-Commerce Ordinance and the Civil Code, where digital marketing is concerned.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are no self-regulatory rules on advertising and marketing via social media.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws, regulations or self-regulatory rules related to influencer marketing via social media. The general laws apply.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws, regulations or self-regulatory rules related to native advertising via social media. The general laws apply.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific laws, regulations or self-regulatory rules related to the use of user generated content when advertising and marketing via social media. The general laws apply, mainly the E-Commerce Ordinance and the Civil Code, where digital marketing is concerned.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific laws, regulations or self-regulatory rules related to conducting sweepstakes and contests via social media. The general laws apply, mainly the E-Commerce Ordinance and the Civil Code, where digital marketing is concerned. The sweepstakes and contests must be recognizable as such, the conditions to participate must be able to be fulfilled easily and must be detailed and clear.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

When advertising and marketing via social media, it is important to consider:

- clear identification of the advertiser and products and services advertised;
- provision of a clear and simple way for the consumer to object to receipt of advertising;
- identification of the region to which the advertisement pertains;
- intellectual property;
- privacy; and
- misleading advertising.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There are no cases to report.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

It is recommended to follow the internationally accepted rules of good practice.



ECUADOR

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Facebook, Instagram, Twitter, LinkedIn and Snapchat are the main social media platforms that advertisers use in Ecuador for advertising and marketing to consumers.

There is no legal restriction for access to any important global social media platforms in our jurisdiction.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The regulatory scheme that governs advertising and marketing is dispersed amongst several laws that regulate these areas, including:

- (a) Law for Consumer Protection,
- (b) Communication Law,
- (c) Antitrust and Market Law,
- (d) Organic Health Law, and
- (e) Bylaw for the Control and Authorization of Advertising and Promotion of Processed Food.

However, there are no laws focusing specifically on social media.

General principles apply, among the most important of which are:

- the information provided by the advertisement must be truthful, clear, timely and complete;
  - a prohibition on misleading, false, denigratory, or abusive publicity, and
  - a prohibition of comparative advertisement regarding non-comparable aspects,
- as well as specific rules regarding children, alcohol and tobacco.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The main self-regulatory rules on advertising and marketing are the Ethic and Self-Regulating Code and the Statute of the Ecuadorian Association of Advertisers ('AEA').

Although self regulation does not replace government and legislative regulation and is not legally binding, the Ecuadorian Supreme Court, in an antitrust case, has accepted the applicability of ethical codes according to a specific industry (see Case No 7-IX-96, Official Register No 78, 3-VI-97).

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There is no rule in our legislation that specifically regulates influencer marketing via social media. Such practice must comply with the general principles (as to which see answer 2).

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

The Communication Law and the Law for Consumer Protection specifically state that any type of advertising content must be clearly and fully identified as such; this includes native advertising.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There is no specific regulation on UGC; however, it must comply with the general principles (as to which see answer 2).

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Sweepstakes and contests, in general, are regulated through the Law of Sales by Lot and its Regulations; and, the Instructions for the Intervention of the General Police Intendants.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

As there is no specific legislation or regulation regarding advertising and marketing via social media, the general rules of advertising and marketing law apply (as to which see answer 2).

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There are no relevant recent cases, judgments or decisions relating to advertising and marketing via social media in our jurisdiction.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

(1) One of the key best practices to take into account prior to advertising or promoting through social media in Ecuador or through an Ecuadorian entity or with presence in Ecuador, is to consider the content of Article 98 of the Communication Law:

**Production of advertising:** Advertisement that is in any way performed in Ecuador through the media must be produced by natural persons or legal Ecuadorian entities, and a majority of the shareholders must be Ecuadorian persons or foreigners legally settled in Ecuador, and at least 80% of the people or entities involved in the production of the advertisement must be Ecuadorian persons or foreigners legally resident in the country. This percentage includes hired professional services.

The import of advertising materials produced outside the country by foreign companies is forbidden.

For the purposes of this law, production of advertising shall be understood as television and movie theater commercials, radio spots, photography for static advertising, or other audiovisual pieces used for advertising purposes.

Advertisements that do not comply with these provisions may not be broadcast and the natural or legal person that orders the placement of the ad shall be punished with a fine equal to 50% of the amount collected by the placement of such advertisement. In the case of a static advertisement, the fine will be charged to the company that broadcasts the advertisement.

International advertising campaigns intended to promote the respect and exercising of human rights, peace, solidarity and human development, are exempted from the provisions of this article.'

NOTE: '50% of the amount collected by the placement of such advertisement', could be interpreted as the 'benefits' due to ad placement, in the form of economic benefits/revenue/profit, which would be very burdensome.

- (2) The Regulatory Statute to the Communication Law (2014) also provides that all **photography** to be used to advertise products or services in Ecuador must be taken/produced by Ecuadorian nationals or foreigners residing regularly in Ecuador. The only exceptions to this rule are:
- (a) photos or images to advertise foreign movies or audiovisual productions; artistic, cultural or sporting events that take place abroad; touristic destinations abroad; fictional or animated characters protected by intellectual property rights; and
  - (b) up to 20% of the photographic compositions destined to make visible the people or personalities (celebrities) that are the international image of the product may make use of images produced abroad.
- (3) The Regulatory Statute to the Communication Law also provides that all **audiovisual** advertising broadcast on Ecuadorian territory can only include sequences, scenes or images produced abroad, for up to 20% of the total length of the ad, when advertising:
- (a) foreign movies or audiovisual productions;
  - (b) artistic, cultural or sporting events that take place abroad;
  - (c) touristic destinations abroad;
  - (d) products or services using celebrities that are the international image of the product; or
  - (e) using sequences of places and objects that are not in Ecuador, that reduce to seconds scenes that in real time can take days, weeks or months to be filmed.



# EGYPT

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The most popular and frequently used social media platforms in Egypt are Facebook, WhatsApp, YouTube, Twitter, Instagram, Snapchat and LinkedIn. There are other social media platforms available in Egypt which are uncommon, such as Tumblr, Flickr, Quora as well as some personal blogs.

There are no specific platforms which are blocked in Egypt. However, it is important to note that during times of political unrest it is common for Facebook and other platforms to be blocked.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There is no specific law which governs social media in Egypt. However, the Egyptian Government is discussing such matter and planning to issue a new law to govern the usage of social media, which may be issued during 2018.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are no self-regulatory rules specifically regarding advertising and marketing via social media in Egypt. However, there are some general rules governing tort and willful misconduct in the Egyptian Civil Code and Egyptian Commercial Law which apply in all matters including advertising and marketing via social media.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no laws, regulations or self-regulatory rules regarding influencers marketing via social media in Egypt.

However, Article 163 of the Egyptian Civil Code provides that ‘a person committing any fault causing harm to another is obliged to compensate for the damages suffered’. Thus, three elements must be present for liability in tort to arise:

- fault or error,
- damage to another, and
- a causal connection between the fault and the damage.

Also, Article 66 of the Egyptian Commercial Law provides that:

- 1 ‘All act contravening the customs and norms observed in commercial dealing shall be considered an illegal competition. In that shall be included in particular, the encroachment on a third party’s trademarks, his commercial name, the letters patent, or his industrial secrets which he possesses the right to invest, and instigating the workers in his trading to store or divulge his secrets, or quit working for him, and also all act or claim that results in causing confusion to the trading store or his products, or in weakening the confidence in its owner or those in charge of its management, or in his products.

- 2 All illegal competition shall force its perpetrator to compensate the harm ensuing therefrom. The court shall, in addition to the compensation, have the power to pronounce a ruling ordering the removal of the harm and the publication of a summary of the sentence at the expense of the judgment debtor in a daily newspaper.'

It can be assumed that these Articles apply to bloggers and social media influences.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws, regulations or self-regulatory rules to govern advertising via social media in Egypt. However, Law No 120 of 1982 prohibits any person who is not registered in the Commercial Agents and Brokers Register to work in the field of marketing and advertisement.

Moreover, registration in the Commercial Agents and Brokers Register is strictly prohibited for anyone other than Egyptian nationals or people who have held Egyptian nationality for more than 10 years.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Scenes of adultery or offensive, abusive or defamation contents are forbidden in any kind of advertising or marketing. Moreover, it is prohibited to advertise for any terrorist group, anti-regime propaganda or illegal protests against the government.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific laws, regulations or self-regulatory rules governing sweepstakes and contents via social media in Egypt. However, the Competition Organizing Law applies generally to competitions and contests.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

In the event of force majeure or an emergency, the Egyptian authorities and government may sometimes cut off all networks and all means of communication. See, for example, what happened during the 25th January revolution.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

The most recent case related to advertising in general was Decision No 32 2017 issued by the Council of State to stop broadcasting Vodafone's last commercial for having inappropriate scenes and language.

*10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?*

EL SALVADOR

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Facebook is the most popular social media platform in El Salvador, followed by Instagram. Most platforms are available, but Twitter is not widely used to advertise because it only sends links, and most people do not like to receive advertising links.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no laws or regulations specifically governing advertising and marketing via social media. However, there are certain restrictions by way of consumer protection, and on regarding matters such as regulation of drugs (medicines).

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Code of Advertising Ethics (which is the self-regulatory code in El Salvador) only applies to formal businesses.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no laws, regulations or self-regulatory rules related specifically to influencer marketing via social media.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no laws, regulations or self-regulatory rules related specifically to native advertising via social media.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no laws, regulations or self-regulatory rules related specifically to user generated content via social media, other than those that regulate the applications in which the information is placed.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Sweepstakes and contests (including raffles, draws, lotteries, etc) which are to take place at a national level in El Salvador are regulated by the Ministry of Government (Ministerio de Gobernación y Desarrollo Territorial).

Authorization of such Ministry must be requested before any contest may be launched or advertised, and retroactive authorization cannot be obtained.

Authorization of the Municipal City Hall of the town where the contest takes place or where the prize is delivered is also required.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

- Fair competition; and
- Intellectual Property.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

No information is available

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

- Be creative;
- Use simple language and content;
- Create your own hashtags—do not copy them;
- Be consistent and update the content regularly;
- Generate a new approach including attractive visual aspects, authentic and realistic photographs and videos, people in real situations.





FINLAND

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

All the main social media platforms, such as Facebook, Instagram, Twitter, YouTube, Snapchat, Blogger and LinkedIn, as well as various forum sites, are used for consumer marketing in Finland.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Advertising and marketing in social media are basically governed by the same laws as traditional advertising and marketing, with some additional provisions. Electronic commerce and marketing in Finland are mainly regulated by the following Acts:

- Consumer Protection Act,
- Unfair Business Practices Act,
- Act on the Protection of Privacy in Electronic Communications, and
- Personal Data Act.

Legislative changes relating to the EU data protection reform should be taken into account, as well as intellectual property laws regarding the use of trademarks and copyright protected material in marketing via social media.

In addition to the Acts, electronic commerce and marketing are regulated by general guidelines given by regulatory authorities. The main regulatory authorities controlling advertising and marketing via social media in Finland are the Consumer Ombudsman and the Data Protection Ombudsman. The Consumer Ombudsman supervises the lawfulness of marketing, and can both intervene in specific cases and issue general guidelines. As regards marketing in social media, the most relevant guidelines are the Guidelines on Principles in so-called ‘Tell a Friend’ Marketing (issued in 2008, reviewed in 2015), the Guidelines on Recognizability of Marketing in Blogs (2013), and the Guidelines on Marketing Sweepstakes (issued in 2011, reviewed in 2015). In addition to these, there are different guidelines for specific industries. Legal disputes concerning advertising and marketing are resolved in the Market Court.

In 2010, the Nordic Consumer Ombudsmen issued a position on electronic commerce and marketing, and in 2012, issued a supplemental position specifically on social media marketing. The positions consist of recommendations and obligatory requirements that are based on legislation. The Consumer Ombudsmen have not taken a stand on whether companies’ actions are against the law if the recommendations are not followed. The issue is evaluated case by case. The 2010 position includes central norms and principles that companies practicing consumer commerce should follow in order to fulfill the requirements of good marketing. The supplement issued in 2012 concentrates on discussing how specific marketing requirements are more difficult to fulfill in social media (eg banner marketing and ensuring that certain marketing does not reach children). The supplemental position also includes an Appendix stating the Ombudsmen’s opinion on what is considered as electronic communication in Facebook.

The Nordic Consumer Ombudsmen have also, in 2016, issued guidelines concerning covert marketing. The guidelines emphasize the effect of social media on covert marketing and the importance of making the advertising nature of any advertisements on social media sites and blogs clear to the consumers the very moment they are faced with the advertisement.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

In addition to international self-regulation, electronic advertising and marketing is also self-regulated on a national Finnish level through several organizations. For example, the Finnish division of the European Interactive Advertising Bureau ('IAB Finland') and The Finnish Association of Marketing Communication Agencies periodically provide standards and recommendations for marketing professionals. The Council of Ethics in Advertising, operated under the Finnish Chamber of Commerce, provides statements on the ethical acceptability of advertisements or advertising practice.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Influencer marketing is governed by the same laws and regulations as social media marketing in general, and is also subject to specific self-regulatory guidelines and statements of the Council of Ethics in Advertising. The Consumer Ombudsman has, in particular, commented on the use of influencer marketing via blogs. The Guidelines on Recognizability of Marketing in Blogs (2013) underlines the responsibility of advertisers to prevent covert marketing and to inform their blogger partners. Professional bloggers are also bound by the norms of the Consumer Protection Act, while hobby bloggers are not bound by the marketing regulations, creating an even bigger responsibility for the advertiser to abide by the rules. IAB Finland has issued guidelines on how to collaborate with popular YouTubers.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

IAB Finland has issued self-regulation guidelines on native marketing. As for all marketing and advertising, native advertising should be recognizable as a marketing message, and the company/person on whose behalf the message is sent should be clear.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Currently there are no specific guidelines relating to the use of user generated content. However, it is advisable to get an express confirmation from the content generator, often a consumer, of having read and accepted potential terms and of having obtained consent from the people present in photos. However, the liability between the content generator and the advertiser, for example as regards copyright-protected material, is not completely clear as there is currently no Finnish case law on the matter.

Advertisers are advised to keep an eye on social media fan pages using the company's brand in order to ensure that there is no confusion on the origin of the material, but to act with caution so that any steps taken are not seen as the company's efforts to control the discussions too heavily.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

As regards contests and sweepstakes, the same laws apply to the digital environment as to the non-digital one, such as consumer protection and data protection regulations. Naturally, advertisers must also follow the rules of the platform used. Generally, as regards contests and sweepstakes, it should be noted that the terms of the competition should be clear, easy to understand and easily accessible.

There can be no charge for entry into contests or sweepstakes; but a precondition that a product must be bought in order to take part is allowed as long as there is no extra surcharge for entering the contest.

### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The following issues are important specifically in relation to advertising and marketing taking place via social media:

- When a company creates a company profile, page or the like in social media, the company needs to make sure that the page contains relevant identification information in order for consumers and authorities to be able to contact the company if necessary. The company name, address, email address and company identification number are considered sufficient information.
- The most relevant issue in electronic marketing is that the marketing should be recognizable as a marketing message, and that the sender or the company/person on whose behalf the message is sent is clearly noted in the message. Therefore, marketing cannot be executed in a manner that would suggest the message was produced by a private person. If a private person does communicate a marketing message in return for a payment or benefit, the private person is similarly obliged to indicate the company on whose behalf the message is communicated. In the same manner, a representative of a company must make clear that a message is sent on the company's behalf.
- Sending consumers electronic messages or social media messages is also regulated by law. A private person cannot be contacted by an electronic message unless he/she has given his/her prior, express consent to receive marketing messages from the relevant company. The permission to send marketing messages to a private person cannot be obtained through an electronic message, but needs to be obtained prior to sending even the first electronic message. Also, in each message it is necessary to specify how the person can unsubscribe from receiving marketing messages.
- It should also be noted that marketing methods typical specifically to social media, such as banners, must also fulfill marketing legal requirements, irrespective of possible limited space or other restraints.

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

No judgments/decisions directly concerning advertising and marketing via social media have yet been made in Finland. However, the Council of Ethics in Advertising has issued a few statements on ethical acceptability of marketing on social media. The statements include statements on recognizability of advertisements in blogs and on YouTube channels (see, eg, decisions MEN 1/2017 and 13/2016), and the Council has recently given multiple remarks in cases where

advertising has been done via popular Youtubers but where it has not been sufficiently clear for whom the marketing has been carried out (see decisions MEN 37/2017 and 38/2017).

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

As mentioned above, the key requirement for all marketing is that its nature as a marketing message must always be recognizable irrespective of the forum, including all the various forms of social media. Advertisers should be especially careful of covert marketing and aware of the consumer-protective regulation.



FRANCE

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

All social media platforms are available for use in France. Advertisers use, in particular, Facebook, Twitter and Instagram.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There is no specific regulation dedicated to social media, but rather rules applying irrespective of the media used, such as:

- Consumers Code (deceptive, misleading and comparative advertising);
- Intellectual Property Code (trademarks/copyrights infringements);
- Civil Code (the rights of individuals to the protection of their image);
- Law of August 4, 1994 (providing for a mandatory use of the French language in any written, spoken and audiovisual advertising. The use of the foreign language with a translation into French is tolerated).

There is, however, a law dedicated to e-commerce, dated June 21, 2004, ('E-Commerce Law') which addresses some specificities of the activities carried out through Internet (liability of the service providers, the conclusion of online agreements and so on).

This law also sets out general rules which are the same as those applied in the 'real word', such as the requirement to have the ads, whatever their format (pop-ups, ad banners and so on), identified as such and therefore clearly distinguished from non-commercial information (Section 20 of the E-Commerce Law).

The Consumer Code was amended by a law dated March 14, 2016, whereby it now contains the following rule:

'a commercial practice which aims at [...] using editorial content in the media in order to promote a product or a service is deemed misleading if the advertiser has paid for this content without clearly informing the consumer that it is paid-for content, in the content at stake, in writing, with images or sounds clearly understandable by the consumer'

(Section L121-4 11° of the Consumer Code).

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The French self-regulatory agency, Autorité de Régulation Professionnelle de la Publicité ('ARPP') has issued a Recommendation dedicated to digital ads. This Recommendation also contains Annexes providing for more specific guidelines for specific types of advertising/marketing activity, such as communication carried out by influencers (introduced in April 2017), native advertising and so on.

As a general rule, marketing communications and advertising should be clearly distinguishable as such, whatever their form. That identification can be achieved by any means whereby the consumer can clearly and immediately understand that the message is an ad.

Two instances must be distinguished:

- The case where the commercial nature of the message is obvious, either because it uses a common advertising format or because of the content itself: in this event there is no need for an identification of the commercial nature of the message.
- The case where the commercial nature of the message is not obvious. In this event it is recommended to add a clear notice identifying the commercial nature of the message. When the message is surrounded by news or editorial content, it should be presented in a way that it is instantly recognizable as an advertisement. The notice must be readable or audible, and intelligible.

#### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

French law is not specifically focused on influencers. But the general obligation to identify a content as an ad is applicable to any content posted by an influencer which can be deemed an ad (Section 20 of the E-Commerce Law, Section L121-4 11° of the Consumer Code).

The ARPP's Recommendation on digital ads provides that, when an influencer has no obligation to promote a brand or a product (ie an advertiser sends products to an influencer who is free to talk about this product, or not, in his/her social network), there is no commercial collaboration between the influencer and the advertiser. It is deemed a 'press relationship', as it is common practice in the 'real world' between an advertiser and journalists/the press.

When there are mutual undertakings between the influencer and the advertiser, the relationship is deemed a commercial collaboration, which must be identified as such in the content posted by the influencer (eg: "#sponsored", "#in collaboration with etc). However, the influencer is not obliged to comply with the ARPP's Recommendation (such as the prohibition on presenting dangerous behavior, the prohibition on presenting someone eating in front of a TV screen etc) because the content is not qualified as an ad.

Commercial collaborations can be qualified as an 'ad' when the following three criteria are met:

- compensation is offered by the advertiser (payment or any other compensation such as gifts),
- there is editorial monitoring of the advertiser, including a prior review of the post/message, and
- there is promotion by the influencer of a product or service of the advertiser (speech, message or image with a promotional purpose).

When the commercial collaboration is qualified as an ad, the obligation to identify the commercial nature of the message applies (eg: '#ad', '#sponsored', '#in collaboration with' and so on), but there are also other obligations imposed on the influencer. The ARPP's Recommendation applies to the content posted by the influencer, insofar as the content is qualified as an ad.

#### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

French law is not specifically focused on native advertising, but there is the general obligation to identify the commercial nature of the message when it is integrated into editorial content.

The ARPP's Recommendation on digital ads addresses native advertising in its Annex.

The Recommendation defines native advertising as covering a group of various advertising formats, which use (or look like as much as possible) the design and form of the website on which they are inserted/published, and adapt themselves to the experience of the user. Such communication must be clearly and immediately identified as an ad. The ARPP recommends highlighting the sponsored character of the content through the use of explicit references such as «advertising», «sponsored by», or «in partnership/collaboration with». Such references must be readable, or audible, and be understandable/clear enough, so that the advertising character of the communication may immediately be understood.

As a general rule (applicable to any type of ad), the content of the ad must be honest and true.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user-generated content when advertising and marketing via social media?***

French law is not specifically focused on user generated content.

There are, however, general principles governing the assignment of copyrights on a work (the generated content of the user). In particular, the assignment of copyright (or licensing) must be:

- for a limited duration,
- for a defined list of media and
- with a defined territorial scope.

The types of right (reproduction, representation etc) which are assigned/licensed must also be identified.

The moral right of the author is perpetual in France (already deemed a public order rule by French courts).

The ARPP's Recommendation on digital ads provides that, when users are invited to create content for advertising purposes (eg, an ad creation contest set up on a 'User Generated Content' video platform), the principles set out in the Recommendation will have to be complied with, eg, through a moderation of the contributions by the advertiser.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The general rules on sweepstakes and contests apply when the promotion is advertised or carried out through social media.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

It is important to consider the protection of personal data, particularly in view of the implementation in France of the General Data Protection Regulation ('GDPR') on 25 May 2018.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There are a few cases addressing advertising and marketing via social media.

Relevant cases include the following.

- (1) On November 17, 2017, the Court of Appeal of Paris considered that it has jurisdiction over a dispute concerning the infringement of copyrights committed on the Facebook page of the TV show ‘the Voice’ broadcast on the Belgian TV (namely the use, for the credits of the TV show and broadcast on the Facebook page of the show, of a piece of music composed by a French band ‘Anstonvilla’). The Court of Appeal took into account the fact that the Facebook page in question was available in France so that, according to the Court of Appeal, France was the place where the harmful event occurred (in accordance with Section 5-3 of Council Regulation 44/2001/EC of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).
- (2) On 3 July 2013, the Cour de cassation confirmed the decision of the Court of Appeal of Paris which sanctioned the violation, by an alcoholic beverages’ manufacturer (Pernod Ricard), of the rules applicable to the advertising of alcoholic beverages. The ad campaign concerned included the offer of an app, to be downloaded for free (but which required the user to have a Facebook account), allowing the user to see the video of the Ricard ad campaign, but also to download codes leading to cocktails recipes using the alcoholic beverage Ricard, to be published on the user’s Facebook wall.

The Cour de cassation approved the decision of the Court of Appeal of Paris which considered that, despite the fact that the user was sharing the message of the advertiser on his/her Facebook wall with his/her Facebook friends, the message remained an ad, and subject, as such, to the French Health Public Code which, in particular, prohibits online ads for alcoholic beverages where the websites at stake are destined to young people.

The Court of Appeal noted in particular that the use, in the ad campaign, of the Hashtag («#») references was aimed at targeting young consumers who were interested in the new technologies.

### ***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

Some key ‘best practices’ in France are to:

- clearly identify the message as an ad,
- ensure that young people are protected (limitation of access, protection of the image of young people/children etc), and
- ensure that the message is true and accurate.



GERMANY

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

In Germany, the most-used social media platforms for advertising and marketing to consumers are Facebook, YouTube and Instagram. Thus, the main social media platforms are all available for use in Germany.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There is no distinction made between advertising and marketing published through social media or through other channels. Any advertising directed to recipients in Germany must comply with the German fair trade rules. Any review of such advertising would cover at least the following aspects of German advertising law:

- Act against Unfair Competition,
- distant selling rules,
- consumer protection rules,
- labelling requirements,
- clearance of third party rights (eg trademarks, company names, designs, etc.).

Moreover, further requirements must be met in specific industry sectors, such as pharmaceutical advertising, tobacco and alcohol advertising, food advertising etc). Since social media platforms are considered telemedia for the purposes of the German Telemedia Act, aspects of data protection (governed by the German Federal Data Protection Act) and direct marketing come into play as well. On 25 May 2018, the European General Data Protection Regulation ('GDPR') will come into effect; to be followed by the Privacy Regulation which will provide more guidance on electronic communication (covering social media platforms).

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are no specific legal bodies of importance regulating social media advertising, nor, indeed, 'offline' advertising.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws or regulations in Germany regarding certain types of marketing. Instead some general rules, like those set up in the Act against Unfair Competition, are applied to all different marketing techniques. In the case of influencer marketing via social media, eg §5a VI of the Act against Unfair Competition demands the advertising character of content to be disclosed. The same requirement can also be found in the German Telemedia Act as well as the Interstate Broadcasting Agreement.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws or regulations related to native advertising via social media. The general rules have to be applied (see question 4). Furthermore, if the advertising content is embedded in an editorial medium, it has to be well separated from editorial content, so that the consumer might not be deflected from detecting the advertorial purpose of the content.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user-generated content when advertising and marketing via social media?***

There are no specific laws or regulations related to user-generated content when advertising and marketing via social media. The general rules have to be applied (see question 4).

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

German regulations regarding the conduct of sweepstakes and contests via social media are very liberal compared to regulations in some other EU member states. The most important aspect regarding sweepstakes and contests in Germany is to carefully separate them from fee-based gambling. The latter is governed by strict regulations; and therefore any kind of participation-fee should be avoided while conducting a sweepstake or contest.

With regard to the latest changes in the Act against Unfair Competition, a link between a sweepstake and a purchase of a product is no longer prohibited per se (due to EU jurisdiction). In general, sweepstakes and contests in social media are not subject to any kind of registration requirement nor any limitation regarding the prize.

Following the judgment of the Higher District Court Berlin (File No 5 U 156/14, 8 April 2016), where the messenger app WhatsApp was ordered to provide its terms and conditions in German, it could be possible that in the future the terms for participation in sweepstakes and contests must also be provided in German.

As for all marketing actions, the advertising character of the sweepstake or contest must be disclosed.

If the sweepstake or contest collects data from the users, a respective data protection declaration and the user's consent are required.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Typically, advertising and marketing law is enforced in the civil courts, upon the action of a competitor, a qualified consumer or industry trade association. The procedure would involve a cease and desist letter and—if done quickly (in some courts, within 1 month of finding out about the existence of the ad)—an application for a preliminary injunction if the cease and desist letter is not complied with. This system allows very fast reactions to unfair advertising and marketing strategies. Furthermore, a competitor bringing a successful action can demand reimbursement for all his costs regarding the cease and desist letter and the court proceedings.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

According to the judgment of the Higher District Court Berlin (File No 5 U 156/14, 8 April 2016) social media platform terms have to be available in German language. The judgement itself only refers to the popular mobile messenger application WhatsApp, but can be applied to other social media platforms as well.

As regards the ever-present requirement to disclose the advertorial character of social media content, the judgement of the Higher District Court Celle (File No 13 U 53/17, 8 June 2017) was the first court decision to address and request such disclosure in the context of influencer marketing content.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Some general best practice regarding social media marketing includes the provision of an imprint with all necessary contact data of the host, following the general advertising rules of the Act against Unfair Competition and clearing third party rights.

Social media marketing best practice must include the surveillance of commercial activities of employees, for which the employer might be held responsible and therefore should carefully examine.

A more specific example for best practice in social media marketing can be found in the field of advertising alcoholic beverages, for which the German Advertising Standards Council ('GASC') has issued a four-step-guideline:

- (a) Commercial communication for alcoholic beverages in social media must not be aimed directly at minors and therefore advertisers should make use of any platform-inherent age-limit-features to prevent minors gaining access. If such features are not available, the GASC recommends an age indication that the following content is 'exclusively intended for persons legally permitted to purchase and consume alcohol'.
- (b) The sharing of alcohol advertising content to minors should be blocked, if technically possible. If not, a notice or age indication as mentioned above should be included.
- (c) User Generated Content uploaded into a company's digital channel should be regularly checked and, if necessary for legal reasons, deleted.
- (d) Lastly, the manufacturers of alcoholic beverages should set a high level of transparency regarding their own channels by stating their responsibility for the included content. This also helps to distinguish official sites from fan sites.

GREECE

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

All important social media platforms are available in Greece. The main platforms used by advertisers in Greece are: Facebook, Twitter, YouTube and Instagram.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

In Greece, social media have become the new, alternative and absolutely dynamic way of communication, interaction and interconnection of people, both at a personal and business level. According to the Digital Economy and Society Index 2017, 68 % of individuals in Greece use social networks, while approximately 4 million Greeks are Facebook members. In view of this, the portion of advertising that is done via social media in Greece is expected to increase significantly over time.

In the context of Greek legislation, there is no specific regulation governing advertising and marketing via social media; rather, they are governed by the provisions of the laws applied for advertising/marketing in general.

Consequently, the main instrument for imposing controls on advertising and marketing via social media is the Greek Consumer Protection Law (Law No 2251/1994, as amended). Article 9(1)a stipulates that ‘advertising is any communication of any kind of form, used in the context of a commercial, industrial, handicraft, professional activity in order to promote sales of goods or services’. The Consumer Protection Law, inter alia, regulates distance selling and marketing, misleading and comparative advertising, unfair and aggressive commercial practices.

A basic principle of Greek law, which has a great importance in the field of advertising via social media, is that the advertisements should be clearly identifiable as such. With regard to commercial communications which are part of, or constitute, an information society service, this principle is set out in article 5a of Presidential Decree No 131/2003 (which implemented into Greek Law the E-Commerce Directive (Directive 2000/31/EC)).

Furthermore, and with the purpose of protecting the personal data and privacy interests of individuals, specific controls are imposed by the Greek Law for the Protection of Personal Data and Privacy in the Electronic Telecommunications Sector (Law No 3471/2006), which may be also applicable in the area of marketing and advertising via social media. The issue of ‘unsolicited communications’ is specifically treated in Article 11 of Law No 3471/2006, which provides that the subscriber’s/user’s prior consent must always be obtained, when using automated calling systems with or without human intervention, facsimile or electronic mail for the purpose of direct marketing of goods or services or any other advertising purposes. Furthermore, Law No 4070/2012, which amends Article 4 of Law No 3471/2006, explicitly stipulates that any storage of information, or access to information which is already stored on a computer system (ie installation of ‘cookies’) is allowed, provided only that the subscriber/user has been specifically informed and has granted his/her prior consent. With this amendment, Greek legislation—being compatible with relevant EU legislation—has adopted the ‘opt-in’ regime on this matter, according to which a valid informed consent of the individual/subscriber is always required (in contrast with the ‘opt-out’ regime, which has been traditionally favored by advertisers).

It is worth noting that the general provisions included in other Greek laws (such as the Unfair Competition Law, Intellectual Property Law, laws on defamation prohibitions etc) could be of particular importance in the area of advertising via social media, as in all other areas of advertising.

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

In addition to legislation, self-regulation also plays an important role in the control of advertising via social media.

Generally speaking, the self regulation of advertising industry in Greece is handled by the Regulation of Communication Council ('SEE') which is a member of the European Advertising Standards Alliance ('EASA'). SEE was founded by the Hellenic Association of Advertising and Communication Agencies ('EDEE') and the Greek Advertisers Association ('SDE').

SEE monitors compliance with the Hellenic Code of Advertising—Communication Practice, which was based on the ICC's Consolidated Code of Advertising and Marketing Communication Practice. Apart from the General Provisions, the Hellenic Code includes a special chapter on advertising and communication using electronic media and the telephone (chapter D).

In addition, in December 2017, SEE published the Digital Marketing Communications Best Practice based on EASA's Digital Marketing Communications Best Practice. It is important to highlight that digital marketing communications must not only be in accordance with the Digital Marketing Communications Best Practice but also with the Hellenic Code of Advertising—Communication Practice, which sets out the main principles and guidelines implemented in all forms of advertising and marketing communications, including the digital ones.

The main aim of the recently published Digital Marketing Communications Best Practice is to clarify whether a form of digital communication consists a marketing/advertising communication subject to the control of SEE or not.

In addition, Digital Marketing Communications Best Practice makes clear that marketing communications via social media:

- fall into the scope of self-regulation,
- should respect the principles and general provisions of the Hellenic Code of Advertising—Communication Practice and
- are subject to the control of SEE. However, other forms of communication, such as editorial content, independent review websites, User Generated Content which has not been distributed or approved by the advertiser, are not considered marketing communications and are outside the remit of self-regulation.

Under Article 1.6 of Digital Marketing Communications Best Practice, the distinction in social media between marketing communications and editorial content should be clear. It should be obvious to the consumer that a message constitutes a marketing communication and such communication must not falsely claim or give the misleading impression that the advertiser is a consumer. The identification of an advertisement as such can result from different elements, such as the lay-out or the content of the webpage, the use of identifiers etc.

According to Article 1.8 of Digital Marketing Communications Best Practice, the rule of lawful collection of users' personal data is also applicable in digital marketing communications.

**4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?**

- (1) **Laws:** Influencer advertising via social media is controlled by the following legal provisions:
- (a) All marketing communications should be clearly identifiable as such (Article 5a of Presidential Decree 131/2003) and
  - (b) Marketing communications must not falsely imply or claim that the advertiser is acting as a consumer (Article 9f of Law No 2251/1994 as amended)
- (2) **Self-Regulatory Rules:** It should be obvious to the consumer that a message constitutes a marketing communication and such communication must not falsely claim or give the misleading impression that the advertiser is a consumer (Article 1.6 of Digital Marketing Communications Best Practice).

**5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?**

- (1) **Laws:** Native advertising via social media is subject to the requirements of the laws referred to in answer 4(1) above. More specifically, the following practices are prohibited because they are in all circumstances considered misleading:
- (a) using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer; or
  - (b) falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.
- (2) **Self-Regulatory Rules:** The distinction in social media between marketing communications and editorial content should be clear (Article 1.6 of Digital Marketing Communications Best Practice).

The basic principle that marketing communications should be clearly distinguishable as such, whatever their form and whatever the medium used, is also stipulated in article 9 (General Provisions) of the Self-Regulatory Hellenic Code of Advertising—Communication Practice. Article 9 clarifies that a communication promoting the sale of a product should not be disguised as, for example, market research, consumer surveys, user generated content, private blogs or independent reviews.

**6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?**

Article 1.7 of Digital Marketing Communications Best Practice provides that user generated content ('UGC') is normally out of the scope of self regulation and can be dealt with as freedom of speech; but it can be considered as advertising communication if specific criteria are met. In establishing whether a given case of UGC should be regarded as a digital marketing communication, and consequently fall within the SEE remit, SEE examines if the advertiser has ordered, adopted, approved, recognized, accepted, spread or actively promoted the UGC. (Examples of adopting/approving/accepting of UGC are 'liking', 'retweeting', 'sharing', or its use in other means of communication). In cases where the answer to the above question is 'yes', the UGC

under consideration constitutes a marketing communication; and SEE is entitled to review it. If SEE concludes that the UGC breaches its code, the advertiser should take all reasonable steps to amend or remove it. On the other hand, if the answer is 'no', the UGC is considered not to be a digital marketing communication and therefore falls outside SEE's remit.

In cases where an advertiser or a brand owner concludes an agreement with users for creating UGC, which he could control, in exchange for financial or other form of compensation, the UGC should be always considered as marketing communication.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

According to article 5d of Presidential Decree No 131/2003, which implemented into Greek law the E-Commerce Directive, promotional contests or games should be clearly identifiable as such. Moreover, the conditions for participation should be presented clearly and in detail and the consumers should have an easy access to them.

It should be noted that the special chapter on Sales Promotions (Chapter A) of the Hellenic Code of Advertising—Communication Practice, which provides general rules concerning presentation of promotional contests to consumers, also applies to contests via social media.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The above rules will also apply to new, emerging, social media.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

In Greece, no court judgments nor decisions of the self-regulatory forum (ie SEE) have so far been issued relating to the field of advertising via social media. The existing court judgments in Greece relate to the violation of personality rights (mainly defamation) and violation of personal data legislation performed via social media.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

The key best practices for social media advertising are included in Digital Marketing Communications Best Practice recently issued by SEE.





# GUATEMALA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used in Guatemala for advertising and marketing to consumers are Facebook and YouTube; Twitter has a steady following and Waze (the app) and Pinterest are gaining significance for such a purpose.

Practically all social media platforms are available to the public; however, not all of them are widely used. Looking at statistics in order to determine most popular platforms or apps based on number of users, it is clear that some platforms are not widely used in the country, such as WeChat, QQ, QZone and Sina Weibo.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There is no specific law regulating advertising in general, nor for social media marketing and advertising in particular. However, principles and norms that apply to traditional advertising should be observed when it comes to social media advertisement and marketing. The Consumers' Protection Act (and its bylaw) refers to certain characteristics and data to be observed when communicating information to consumers (such as truthfulness, clarity). The Consumers' Protection Act also expressly prohibits deceitful advertising.

Another law that contains provisions applicable to advertising and marketing is the Commercial Code, which expressly prohibits comparative advertisement and refers to other forms of conduct that are considered unfair competition.

For certain regulated products, such as tobacco, alcoholic beverages and pharmaceutical products, advertising and marketing is regulated under the Health Code and its bylaws.

As for social media, even though there is not yet a specific law regulating personal data protection, there are court decisions that should be followed, particularly in relation to considerations as to data privacy and right of intimacy and informed consent.

Finally, it is important to bear in mind that intellectual property laws are to be observed when advertising and marketing via social media.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There aren't any specific self-regulatory rules on advertising and marketing via social media in Guatemala. However, there is an Advertising Ethics Code subscribed by the Association of Advertisers of Guatemala, the Guatemalan Union of Advertising Agencies, the Media Chamber of Guatemala and the Independent Media Council. The Code, drawn up in 1999, provides that its content will apply to any 'advertising media that may exist in the future'; and therefore covers social media as well.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There is no specific regulation related to influencer marketing via social media. However, the principles and norms contained in the Consumers' Protection Act (which, inter alia, forbid deceitful advertising/marketing) and the Commercial Code are applicable, as well as those specific norms applicable to 'regulated products'. In the case of tobacco and alcoholic beverages, the provisions of the Health Code state that advertising/marketing for such products cannot show direct consumption of the products or use a certain category of people for their promotion.

### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no laws, regulations or self-regulatory rules in Guatemala specifically related to native advertising via social media. Therefore, the general principles and provisions contained in the laws cited above in answer 2 must be observed (ie the requirements that such advertising should not be deceitful, of truthfulness, and of no comparative advertisement).

### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

User Generate Content ('UGC') is not specifically covered in legislation currently in force. Use of UGC by third parties is, nevertheless, subject to consent. However, whilst it is not specifically regulated, UGC is by no means exempted from the provisions and principles contained in the Commercial Code, the Consumers' Protection Act, the Health Code and the laws providing for the protection of intellectual property, and even relevant principles and provisions contained in the criminal code and interpretations that have resulted from the courts' decisions regarding privacy and personal rights.

### ***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There is no specific regulation for sweepstakes and contests via social media. Regulations applicable to traditional means apply; this includes the need to translate certain information into Spanish if the contest or sweepstake is in a different language. Sweepstakes and contests must observe the provisions of the Consumers' Protection Act (and its bylaw), the Commercial Code and Decree No 1610. For purposes of control and public information, sweepstakes and contests must be submitted for approval (authorization) by a government agency; such approval is needed before the sweepstake or contest can be publicized via social media platforms (though exceptionally the launch may take place contemporaneously with filing for approval).

### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Issues to consider include:

- copyright and other IP clearance;
- review risks for ambush marketing/unfair competition;
- clear claims to be included in the advertisement; and
- cultural and religious sensitivity.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There have been no relevant cases involving social media; although there have been court cases on comparative advertisement.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

- Clear the content/visuals for IP reasons, conduct reasons and when applicable, regulatory reasons.
- Engage with the audience/public, interact with them, reply.
- Check recent stats and tendencies on how users are perceiving advertising and marketing in social media. Currently, people in the country dislike invasive advertising display (such as pop-ups); conversely, 'information' is the main reason that motivates locals to check advertising in social media, so it is suggested that one should work in providing actual and innovative information. Recent surveys show that 21.7% of users do not like advertising on the internet, the number grows to 23.9% when it comes to Facebook. However, 36.7% (internet in general) and 36.9% (Facebook in particular) of users do like advertisement when checking the internet/social media.

HONG KONG

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The principal social media used in Hong Kong are Facebook, Instagram, Twitter and WeChat from China.

Where social media carry advertisements, the relevant laws of Hong Kong applicable to advertising apply without exception to the social media advertising channel.

Hong Kong cherishes freedom of expression and there is no legislation governing advertisement channels per se, with the exception of radio and television broadcasting.

There are elements of personal data privacy law, as provided in the Personal Data (Privacy) Ordinance, which directly bear on advertisements; and the Trade Descriptions Ordinance sanctions false trade descriptions, whether in respect of goods or services.

However, the Broadcasting Ordinance specifically provides that the internet is not a broadcast medium; and so social media communication on the internet is not subject to broadcasting licenses and controls.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

In the main, Hong Kong adopts the ‘hands off’ approach to freedom of expression, which is demonstrated by the broad self regulation of advertisements, which, with certain legislated exceptions, relies upon the observance by the advertising industry of the codes of practice and guidelines published by the Association of Accredited Advertising Agencies (‘the Association’). The 4As’ Code of Practice (‘the 4As’ Code’) is published by the Association as a self-disciplining body and all members of the Association are required not to contravene and to comply with the provisions of the 4As’ Code on pain of penalty provided for in the 4As’ Code. Accordingly, the frontline of code observance is the membership of the Association’s individual members are thereby constrained to adhere to the principles of the 4As’ Code.

Whether or not communicated through social media or in any other way, specific ordinances apply to specific advertising channels. Relevant ordinances are:

- the Dangerous Drugs Ordinance,
- the Pharmacy and Poisons Ordinance,
- the Antibiotics Ordinance,
- the Competition Ordinance,
- the Control of Obscene and Indecent Articles Ordinance,
- the Smoking (Public Health) Ordinance,
- the Undesirable Medical Advertisements Ordinance,
- the Unsolicited Electronic Messages Ordinance,
- the Public Health and Municipal Services Ordinance
- the Broadcasting Ordinance and
- the Communications Authority Ordinance.

Under the Broadcasting Ordinance, the Communications Authority publishes the Generic Code of Practice on Television Advertising Standards, the Generic Code of Practice on Television Programme Standards and the Radio Code of Practice on Advertising Standards.

The Trade Descriptions Ordinance heavily penalizes false trade descriptions with the Hong Kong courts able to levy financial penalties and/or imprisonment.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

See answer 2 for the main self-regulatory rules on advertising and marketing via social media in Hong Kong.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Please see answer 2 for the outline of the specific laws, regulations and self-regulatory rules in Hong Kong related to influencer marketing via social media. Particular reference should be made to the functions of native advertising and restriction upon the avoidance of responsibility for advertised content.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

While there is no specific law directed at control and regulation of native advertising, it is important that consumers are clearly aware of the full extent of the merger of the pure advertisement element and the editorial content in a platform publication. The legal provisions referred to in the answer to question 2 above apply equally to the product placing element of the native advertising work.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

All the provisions of law referenced in the answer to question 2 relate to the use of user generated content.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Whether conducted through social media or otherwise, any sweepstake will be caught by the definition of 'lottery' if it involves a game of chance. A lottery requires an official license and registration of (inter alia) a specific Hong Kong party to take responsibility for all aspects of administration and potential difficulty.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The important issues are summarized above.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There have been no recent cases concerning social media.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Best practices under the 4As' Code is for advertising to avoid doing any of the following:

- create false, deceptive or unjustified expectations of favorable results;
- imply the ability to influence any court, tribunal, regulatory agency or similar body or official;
- make unjustified claims to be an expert or specialist in a particular field;
- contain purported statements of fact which cannot be verified, or which are misleading by reason of the context in which they appear;
- contain testimonials or endorsements (subject to certain exceptions); or
- contain any other representation that could be likely to cause a reasonable person to misunderstand or be deceived.

Also, regard should be given to the Trade Descriptions Ordinance - see answer 2.



# HUNGARY

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Advertisers in Hungary primarily use Facebook and Instagram for advertising and marketing purposes; however, LinkedIn, Twitter, YouTube, Snapchat, Flickr, FourSquare and other popular services are available and widely used as well. We are not aware of any major global social media platforms that would not be available in Hungary.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There is no specific legislation for advertising and marketing via social media; the general rules and laws on advertising are applied. The main laws regulating advertising and marketing are:

- Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions on Commercial Advertising Activities ('Advertising Act') and
- Act XLVII of 2008 on the Prohibition of Unfair Trade Practices with Consumers ('UCP Act') which shall be applied jointly with the Terms & Conditions of the actual social media platform.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Self-regulation plays an important role in Hungary. The Self-Regulatory Advertisement Board is a Hungarian entity aimed at promoting self-regulation amongst advertisers. The Board has adopted the Hungarian Code of Advertising Ethics ('Code of Advertising'), the purpose of which is to provide additional rules and clarifications when applying the rather general advertisement laws.

The Code of Advertising contains specific provisions on digital advertising (including online behavioral advertising, unsolicited targeted advertising, digital advertising to minors, etc). In connection with advertising via social media, it states that it is even more necessary to pay particular attention to the requirement that advertisements and their commercial nature are identifiable as such and must avoid creating the impression that an advertisement is an opinion of a consumer or an independent body.

In addition, in the case of social media, it is necessary to take into consideration the Code of Content Providers, adopted by the Hungarian Association of Content Providers.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws or self-regulatory rules regarding influencer marketing via social media. However, due to the growing importance of this subject, the Hungarian Competition Authority ('HCA') has issued an information paper regarding this issue. With this information paper the HCA intends to help increase the awareness of consumers by demonstrating how these contents can be published properly in line with international legal practice and guidelines. The HCA also started to investigate certain Hungarian influencers in order to ensure compliance with its recommendations.

The HCA recommendations are:

- It is important that consumers are able to distinguish independent content from paid content. The reason for this is that paid content does not reflect the independent, neutral opinion, style, or spontaneous reflection of the author, or publisher; on the contrary, their economic interests are in the background. For this reason, paid content is considered to be an advertisement and can be misleading to consumers. Publishing such online content can be considered to be an unfair commercial practice and can be subject to a procedure of the HCA.
- An ‘influencer’ can be anybody who is able to exercise influence over consumers and to shape the views of consumers in the digital environment. Influencers are not just public figures, but can even be under-age bloggers, vloggers, YouTubers etc.
- Consideration received for posts may be money, but it also can also take the form of other incentives for which one should normally pay consideration. The case when parties provide each other with mutual services (‘barter’) is also a form of consideration.
- The undertaking in whose interest the sale of a certain product is promoted is responsible for publishing this content. Therefore, not only the influencer, but the manufacturer, distributor and the cooperating agencies and offices may be held liable for this commercial practice.
- To comply with the law, it should be indicated in the post that it is paid, sponsored content, in a clear, noticeable, easily understandable and emphasized way. Also, the post should provide a real, actual, credible and fair picture of the product or the service. Furthermore, the business relationship should be marked in the same way on the same platform. The mark should clearly appear to consumers without the need for them to make any search or take any other action, even if the content is too long to be seen by consumers on the screen at first sight. The business relationship should be indicated as being directly connected to the content concerned. It should also be noted that different platforms provide different ways of publishing these marks, eg there is the ‘branded content tag’ on Facebook.
- If mainly visual content, only short text content and hashtag signs are used on a certain social media platform (eg Instagram), the following marks should be sufficient: #Advertisement, #Advertising, #Paid content, #Sponsored content, and the name and commercial trademark of the concerned company could also be marked. The hashtag relating to the sponsored content should be put first, before every other hashtag. However, if there is mainly text content posted on the given platform (eg Facebook), merely using hashtags is not sufficient. It is not necessary to mark the exact registered name of the company, but the brand name should be marked, possibly together with the trademark of the company.
- The following marks are unlikely to make the existence of the business relationship clear for consumers, and are therefore not sufficient in order to comply with the law: #Thankyou #partner, #Promotion. It is also insufficient to publish the business relationship in a hidden form, eg in footnotes, or in other parts of the text which are unlikely to be read by consumers. Merely showing a link leading to the website of the advertiser, or merely giving the name of the company, is not sufficient.
- It is suggested that advertisers prepare terms of contract, systems and programs which can ensure that the influencers with whom they are in a business relationship get familiar with the legal requirements regarding these posts, since they may be held liable for such posts if they have participated in forming the content and the form of them. A monitoring and reporting system should also be considered.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws with respect to native advertising via social media in Hungary; however, the Code of Advertising provides some relevant provisions. Unsolicited advertising which is addressed individually may only be distributed via digital media if the content or offer can be relevant to the consumer, and the company provides the consumer with a clear and simple way to express that he/she does not want to receive any such advertisement in the future.

It is also important to note that in Hungary, as a general rule, direct marketing is governed on an opt-in basis, meaning that advertising by direct marketing may be sent electronically only with the prior (electronic or written) consent of the consumer.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

According to a recent decision by the Constitutional Court of Hungary, the entity operating a website has an objective liability for any potentially unlawful comments by users even if such comments are moderated. This decision naturally caused quite an uproar among content providers, who feared that this could have a significant impact on free speech in the online environment.

However, based on the actual practice of the courts, it is quite rare that the courts actually oblige the operator of a website to pay damages in respect of a comment generated by a user.

In its decision, the Constitutional Court also made a distinction between a website operated by a content provider (eg a news portal) and Web 2.0 platforms (eg Facebook), arguing that ‘there is a serious difference between content that appears on a website that is edited by an operator and that appears on Web 2.0, meaning social media platforms [...]. The latter has no editor, thus it does not have a purpose to inform or similar: its purpose is to provide a means of communication and discussion among the members of a group on the internet.’

On the basis of the above, it could be argued that the strict rules on liability for user generated content do not apply for social media, however there is, unfortunately, still a level of ambiguity in this question.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific regulations regarding sweepstakes and contests via social media.

Gambling is generally a state monopoly in Hungary, the only exceptions are prize draws. A ‘prize draw’ is a promotion in which a customer who has purchased goods—without having to pay a further fee—has a chance to win prizes if the ticket received at the time of the purchase is drawn during a public draw.

According to the Code of Advertising Ethics, consumers must be informed about the rules of a contest, including:

- the detailed rules to participate in the prize promotion,

- any costs associated with participation over and above the usual (base telephone fee, postage),
- the nature, value and number of the prizes and any possibility of a cash prize substitution,
- in case of a skill contest, the nature of the questions and the criteria of judgment,
- the selection procedure for the award of prizes,
- closing date of the competition,
- when and how the results will be made available,
- whether the beneficiary may be liable to pay tax as a result of winning a prize,
- the time period during which prizes may be collected,
- where a jury is involved, the composition of the jury,
- any intention to use winners or winning contribution in post-event activities, and
- the exact place and time of the open draw winning procedure.

The rules of the relevant social media site must also be taken into consideration.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

An advertisement may not abuse the trust of consumers, and may not make use of their lack of experience, knowledge or credulity.

The following information should be presented clearly and unambiguously in connection with any electronic advertisement (including advertising both via the internet and email):

- (a) the advertiser, or person on whose behalf the electronic communication is transmitted by way of electronic mail or equivalent individual communication, should be clearly identifiable (as soon as the ad is made accessible to the recipient);
- (b) promotional offers, such as discounts, premiums and gifts should be clearly identifiable as such, including the conditions which are to be met to qualify for them;
- (c) promotional competitions or games should be clearly identifiable as such, including the conditions for participation.

The advertiser, the provider of electronic communications, and the publisher of electronic communications will be jointly liable for any infringement of the provisions contained in paragraphs (a) and (b). Liability for any infringement of the provisions contained in paragraph (c) lies with the advertiser.

In every case, content providers shall be as transparent with their users as possible when it comes to identifying which legal or natural entity operates the service being used, and whether its content belongs to the category of edited, paid, or user generated content.

Paid and unpaid content must, in every case, be separated by the content provider as clearly as possible.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There have been three recent cases where the HCA imposed an obligation on the company which advertised its product via a social media influencer without calling the attention of the consumers

to the fact that they were seeing paid advertisements on Instagram and Facebook. The companies subject to investigation undertook to act in accordance with the information paper issued by the HCA (see answer 4).

It is also important to note that the HCA plays a very active role in monitoring advertisements and initiates a large number procedures ex officio when it detects that an advertising might be misleading. Its procedures usually end with the imposition of a fine that can have significant financial consequences due to the fact that the maximum fine it can impose is 10% of the net turnover of the previous year.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

The Self-Regulatory Advertising Board is the main platform for professional consultations, including settlement of conflicts, the giving of prior professional opinion and the raising of complaints against a specific advertisement. As a consequence, this entity substantially forms the best practices in the area of marketing via social media as well. If an advertiser is unsure about whether a specific advertisement, communication or commercial practice is compliant, it is best to seek legal advice and/or contact the Self-Regulatory Advertising Board for a prior opinion, the latter of which could prove to be a mitigating circumstance in case of a subsequent procedure carried out by the HCA.

Furthermore, as advised above, the HCA has recently issued an information paper regarding influencer advertisement with some actual recommendations (as to which see answer 4).

INDIA

**1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?**

The major social media platforms that advertisers use in India for advertising and marketing to consumers include Facebook, Twitter, Instagram, LinkedIn, YouTube, Pinterest, Google Plus, Tumblr, BharatStudent, Flickr, Snapchat, Reddit, MySpace and WhatsApp.

As far as we are aware, there are no important global social media platforms that are not available for use (or are not widely used) in India.

**2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?**

The main laws and regulations governing advertising and marketing via social media in India include:

- provisions of the **Indian Penal Code**: no obscene, sexually explicit, violent or scandalous content should be present anywhere. Defamatory or derogatory remarks against any community, religion and section in India are also prohibited. There should not be anything detrimental to the sovereignty and security of India and its friendly relations with other countries.
- **Information Technology Act 2000**: this Act makes it an offense to publish information which is obscene in nature. Section 67 of the Act provides that whoever publishes, or transmits, or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest, or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished with imprisonment and fine.
- **Consumer Protection Act 1986**: this Act is also applicable to advertising and marketing through social media which is false and frivolous as it terms such practices as 'unfair trade practices' which is not allowed under the Act. Further, the Act also prohibits advertising which disparages competitors 'product or services.
- general **intellectual property laws**: intellectual property laws such as, Indian Trademarks Act, Indian Patents Act and Copyright Act deal with protection of intellectual property in advertising and marketing through social media.
- **Indian Contract Act 1872**: this Act provides (in Section 11) who is competent to contract: 'Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject'.
- **Indecent Representation of Women (Prohibition) Act 1986**: this Act prohibits the depiction of any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or are likely to deprave, corrupt or injure the public morality or morals.
- **Consumer Protection Bill 2018**: this was introduced by the Government of India in the Indian Parliament in the first week of January. The bill seeks to replace the Consumer Protection Act 1986. The Consumer Protection Bill 2018 proposes the establishment of a Central Consumer Protection Authority ('CCPA') to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are

prejudicial to the interests of public and consumers. The bill also proposes a monetary penalty and ban on celebrities for endorsing false and misleading advertisements.

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Self-regulation plays an important role in regulating advertising and marketing via social media. The Advertising Standards Council of India ('ASCI'), an autonomous body formed to regulate advertisements in India, has laid down a Code for regulation of advertisements in India ('ASCI Code'). This Code, although not specifically focused on social media, has applicability to advertising and marketing via social media as well. Though not at par with law, the Code has been designed as per the requirements of law and, in fact, complements legal and statutory controls. Hence, the provisions of the Code should be observed by any company and or an advertiser in consonance with legal provisions while advertising products or services in India through social media.

The ASCI Code requires that:

- there should be truthfulness and honesty in claims made in advertisements,
- an advertisement should not offend public morals;
- an advertisement should not promote products which are hazardous to society or individual and
- an advertisement should not lead to unfair competition etc.

The ASCI Code is recognized by Supreme Court of India and other ministries and departments in India.

The purpose of the Code is to control the content of advertisements, not to hamper the sale of products which may be found offensive, for whatever reason, by some people. Provided, therefore, that advertisements for such products are not themselves offensive, there will normally be no ground for objection to them in terms of this Code.

The Consumer Complaints Council ('CCC') has been appointed by ASCI board. It deliberates on complaints received from consumers and industry against advertisements which are considered to be false, misleading, indecent, illegal, leading to unsafe practices, or unfair to competition, and consequently in contravention of the ASCI Code.

### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

The ASCI Code provides that testimonials, endorsements or representations of opinions or preference of celebrities must reflect genuine, reasonably current opinion of the individual(s) making such representations, and must be based upon adequate information about or experience of the product or service being advertised. 'Celebrities' are defined in the Code as famous and well-known people who are from the fields of entertainment and sports and would also include other famous and well-known personalities such as doctors, authors, activists, educationists etc who are compensated for appearing in advertising. It is also specified that celebrity should do due diligence to ensure that all description, claims and comparisons made in the advertisements which they appear in or endorse are capable of being objectively ascertained and capable of substantiation and should not mislead or appear deceptive. Celebrities should not participate in any advertisement of a product or treatment or remedy, advertising of which is prohibited under the Drugs & Magic Remedies (Objectionable Advertisements) Act 1954 or the Drugs & Cosmetic Act

1940 and Rules 1945. Nor should they participate in any advertisements for products which, by law, require a health warning such as ‘is injurious to health’ in their advertising or packaging.

In cases where brands have editorial control over the posts of influencers, it is advisable to declare such editorial control by indicating that posts are sponsored or are a marketing communication of the brand.

### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no special guidelines or regulations to deal with native advertising or sponsored content in social media in India. In absence of these, general guidelines applicable to other media apply, namely, clear demarcation between advertisements and editorial content, ensuring truthfulness and honesty of representations and adherence to the principles of free and fair journalism.

The demarcation of the advertisement from other content in India is done by indicating that a particular piece is sponsored content, an impact feature or advertisement. These disclaimers are specifically required where the general public is likely to mistake an advertisement as main content of a particular media. Any omission, such as non-disclosure of the sponsored/advertising nature of post, would be considered to be misleading consumers. Additionally, adequate disclosure or disclaimers as to who is sponsoring the content, may be provided.

The ASCI Code Chapter 1.4 stipulates that advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions.

Also, the ASCI has issued guidelines for disclaimers made in supporting, limiting or explaining claims made in advertisements, wherein it is specified that ‘a disclaimer should not attempt to hide material information with respect to the claim, the omission/absence of which is likely to make the advertisement deceptive or conceal its commercial intent’.

### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

India does not have any specific rules/legislation pertaining to social media or user generated content (‘UGC’) in particular. Once UGC is owned by a brand or advertisers, they have to ensure that it complies with all the laws and regulations that govern advertising on social media. The most important law in this regard is the Information Technology Act 2000, which makes it an offense to publish information which is obscene in nature. Section 67 of the Act provides that whoever publishes or transmits or causes to be published in electronic form any material which is lascivious or appeals to the prurient interest, or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished with imprisonment and fine. Further, advertisers incorporating UGC into their advertising on social media should ensure that the content being posted is responsible, and not misleading, harmful or offensive. They should also ensure that the content is accurate with the evidence to prove the same when required.

As regards the liability of social media platforms for hosting UGC, there are specific provisions in the Information Technology Act 2000. Section 79 of the Information Technology Act, 2000 specifies cases where an intermediary (ie any person who, on behalf of another, stores or transmits a message or provides any service with respect to that message) is liable or not:

- (a) An intermediary is **not** liable for any third party information, data, or communication link made available or hosted by him, if:
- (i) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or
  - (ii) the intermediary does not initiate the transmission, select the receiver of the transmission, and select or modify the information contained in the transmission;
  - (iii) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.
- (b) The intermediary **is** liable if:
- (i) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or authorize in the commission of the unlawful act;
  - (ii) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

The Information Technology (Intermediary Guidelines) Rules 2011 provide a due diligence framework to be observed by intermediaries under Section 79.

**7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?**

To date there is no legislation in India which specifically regulates sweepstakes and contests via social media or otherwise. Therefore, for legally reviewing official rules of a particular sweepstake or contest in India, the following statutes/regulations of law, inter alia, are normally considered and reviewed.

- (1) The **Indian Contracts Act 1872** (for which see answer 2)
- (2) The **Competition Act 2002** provides for the establishment of a Competition Commission to:
- (a) prevent practices having adverse effect on competition,
  - (b) promote and sustain competition in markets,
  - (c) protect the interests of consumers and
  - (d) ensure freedom of trade carried on by other participants in markets in India, and for matters connected therewith or incidental thereto.

Section 3 of the Competition Act 2002 bars any agreement which causes or is likely to cause an appreciable adverse effect on competition within India.

- (3) The **Prize Competition Act 1955** provides control and regulation over prize competitions. 'Prize competition' is defined in Section 2(d) as any competition (whether called a crossword prize competition, a missing-word prize competition, a picture prize competition or by any other name) in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation, of letters, words, or figures. The Act will not come into play if the sweepstake or contest does not involve the solution of such a puzzle.

- (4) Section 2(b) of the **Lotteries (Regulation) Act 1998** defines 'lottery' as 'a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those participating in the chances of a prize by purchasing tickets'. If the sweepstake or contest does not involve any purchase of tickets, the Act will not apply.
- (5) Under the **Tamil Nadu Prize Schemes (Prohibition) Act 1979**, prize schemes are banned in the state of Tamil Nadu. A 'prize scheme' is defined in Section 2(b) as any scheme by whatever name called whereby any prize or gift (whether by way of money or by way of movable or immovable property) is offered, or is proposed to be given or delivered to one or more persons to be determined by lot, draw or in any other manner from among persons who purchase or have purchased goods or other articles from shops, centers or any other place whatsoever specified by the sponsors of the scheme or on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in relation to such purchaser. This Act may not be applicable if the prizes offered are not related to the sale of any product or are not contingent upon any kind of purchase.
- (6) **Public Gambling Act 1867**: this Act prohibits the activity of gambling, where it is being done as a business to earn profits; and provides punitive provisions for maintaining premises known as 'common gaming houses' for the purpose of carrying out gambling activity or games where the element of chance is present. 'Common gaming house' is defined as 'any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house... whether by way of charge for the use of the instruments of gaming or of the house... or otherwise'. The Act strictly prohibits gambling in any form, which would cover even online gaming sites which provide their services for a fee or subscription. For this Act not to apply, a chance-based prize draw would need not to be conducted for the purposes of profit or gain by way of charge for use and there would need to be no wagering/betting for money/money's worth, which is an essential part of the act of gambling.
- (7) Statutes relating to intellectual property rights, including **the Copyrights Act 1957, the Patents Act 1970, the Designs Act 200 and the Trademarks Act 1999**: These statutes deal with ownership and assignment of intellectual property, as well as use of the intellectual property of third parties in relation to sweepstakes and contests.
- (8) One of the prime objects of the **Consumer Protection Act 1986** is to promote and protect the rights of the consumers such as the right to seek redress against unfair trade practices. By Section 2(1)(r), (3) 'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:
- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole; or
  - (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.
- (9) The **Constitution of India** in Part III enshrines rights which are described as Fundamental Rights and under Article 19 (1)(a) all citizens shall have freedom of speech and expression, which implies the right to express one's thoughts and ideas freely via any medium. But Article 19(2) imposes reasonable restrictions on the exercise of the right conferred in the

interest to protect the country's integrity, security, public order, morality and decency and to prevent contempt of court, vulgarity, incitement to an offence and defamation.

- (10) Under the **Indian Penal Code** no obscene, sexually explicit, violent or scandalous content should be present any where. Defamatory or derogatory remarks against any community, religion and section in India are also prohibited. There should not be anything detrimental to sovereignty and security of India and its friendly relations with other countries.
- (11) The **Information Technology Act 2000** defines various offences such as:
- (a) tampering with computer source documents;
  - (b) computer-related offences, such as unauthorized access to computer, obtaining data from a computer without permission, introduction or cause to be introduced any virus into any computer, causing damage, disruption etc in any computer system;
  - (c) sending of offensive messages through communication service etc;
  - (d) violation of privacy;
  - (e) publishing or transmitting obscene material in electronic form;
  - (f) publishing or transmitting of material containing sexually explicit act, etc;
  - (g) publishing or transmitting of material depicting children in sexually explicit act, etc in electronic form;
  - (h) breach of confidentiality and privacy;
  - (i) disclosure of information in breach of lawful contract etc
- and prescribes punishment for these offences.
- (12) **Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules 2011:** Under the Information Technology Act 2000 (as amended in 2008), rules have been framed making regulations for processing/handling information to provide for policy of privacy and disclosure of information; for taking consent from the provider of sensitive personal data or information regarding purpose of usage before collection of such information; reasonable steps to be taken by the body corporate to ensure that provider of the information has knowledge about the collection of information, the purpose of collection, intended recipient of the information, name and address of agency collecting information and retaining information; providing facility for correction or amendment of the personal information; providing option to the provider of the information to not provide the data or information sought to be collected as well as to withdraw consent to provide information given earlier; prior permission of provider of the information for disclosure of such information to third party in absence of any contract to provide such information to third party; provision for transfer of information collected by body corporate in India to any other body corporate or person in India or located outside India; provision of reasonable security and procedures.
- (13) The **Emblems and Names (Prevention of Improper Use) Act, 1950** forbids the improper use of certain emblems and names for professional and commercial purposes.

### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The regulation of advertisements on social media/digital platforms is not uniform in India, due to a lack of specific laws or regulations for such advertisements, as well as the lack of an established enforcement mechanism in the context of social media/digital platforms. There is no clear-cut demarcation as to what is acceptable on social media; and the fact remains that social media/digital platforms provide tremendous freedom in the context of creative licenses to

companies/brands. At the very least, social media/digital platform are much less policed. Many companies are taking advantage of the fact that advertising on social media/digital platform is regulated more liberally than that in mainstream media.

However, the four general principles followed by ASCI in context of advertisements should be observed when advertising and marketing via social media. They are:

- honest representations of advertisements (ie advertisements should be truthful and honest to consumers and competitors);
- advertisements should be non-offensive to public (ie they should be within the bounds of generally accepted standards of public decency and propriety);
- advertisements should not portray harmful products/situations and should not to be used indiscriminately for the promotion of products hazardous or harmful to society or to individuals, particularly minors, to a degree unacceptable to society at large; and
- advertisements should be fair in competition (ie they should not be derogatory to competition and should not be a plagiarism).

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There are no Court decisions regarding advertising on social media in India. However, here is a brief discussion of a few instances of advertising in social media:

- In November 2017, Nokia linked up with one of the top online content creators of India for their digital ad campaign. The digital advertisement video revolved around the issue of spending more time with family rather than their smart phones. The advertisement video has more than 30 million views on YouTube. The digital advertisement campaign did a good job in raising awareness about the Nokia comeback in India.
- In April 2016, taxi aggregator Ola was forced to pull down an advertisement from its official YouTube channel after a controversy erupted over it on social media. The advertisement titled ‘Micro Stories: Too expensive to take GF out on a date?’ was released in April 2016. The advertisement features a guy walking through a market with his girlfriend, where he is being forced to stop at every shop and pay for the things she buys. The advertisement ends with the boy turning to the camera and saying ‘Meri girlfriend chalti hai Rs. 525 per km, but Ola Micro chalti hai sirf Rs. 6 per km’ (‘It costs me Rs. 525 per km with my girlfriend but Ola Micro runs at just Rs. 6 per km’). However, due to ‘sexist’ remarks, the advertisement did not go down well with the Twitter users, who slammed Ola for the advertisement being a ‘sexist portrayal of women’. Following outrage on Twitter, Ola pulled the advertisement from its YouTube channel.
- In 2015, online shopping portal, Myntra’s, advertisement film on social media for Anouk, a clothing brand, broke norms, creating ripples with a lesbian storyline. While advertising in India is still quite conventional, airing such advertisements on social media instead of conventional media is a way to escape scrutiny, which conventional media is subjected to by public at large. If this advertisement had been published or telecast in conventional media, there would have been protest and would, in all probability, been pulled, but on social media it was accepted and even appreciated and there was no backlash against this advertisement.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

There is no specific code of best practice for advertising and marketing via social media or otherwise in India. In view of absence of any specific code, we believe the principles laid down in the ASCI Code serves as model guidelines for advertisers and marketers for all media. This Code has been drawn up by people in professions and industries in or connected with advertising, in consultation with representatives of people affected by advertising, and has been accepted by individuals, corporate bodies and associations engaged in or otherwise concerned with the practice of advertising, with the following as basic guidelines, with a view to achieve the acceptance of fair advertising practices in the best interest of the ultimate consumer:

- to ensure the truthfulness and honesty of representations and claims made by advertisements, and to safeguard against misleading advertisements;
- to ensure that advertisements are not offensive to generally accepted standards of public decency;
- to safeguard against the indiscriminate use of advertising for the promotion of products, which are regarded as hazardous to society or to individuals to a degree or of a type and which is unacceptable to society at large; and
- to ensure that advertisements observe fairness in competition so that the consumer's need to be informed of choices in the marketplace and the canons of generally accepted competitive behavior in business is both served.





# IRELAND

### ***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used by advertisers in Ireland are Facebook, Twitter, Instagram, Snapchat and YouTube. There are no restrictions on use of any particular platform.

### ***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The chief legislation relevant to advertisements in Ireland is the Consumer Protection Act 2007, which sets out various rules applicable to claims made about goods and services. It protects consumers from misleading advertisements. All types of communications that promote goods or services are covered by the Act. It contains restrictions which are applicable to online advertising.

In Ireland, there are restrictions on unsolicited direct marketing by fax, telephone, automated calling systems, Short Messaging Service ('SMS'), email and Multi Media Service under the Data Protection Acts 1988–2003.

Social media and the law is still largely untested in the Republic of Ireland. The laws in relation to privacy, defamation and copyright are particularly relevant in relation to advertising and marketing on social media. Personal information collected from users online is personal data; and the legal controls in relation to this area are governed by the Data Protection Acts 1988–2003. The ePrivacy Regulations 2011 (Statutory Instrument 336 of 2011) deal with data protection for phone, e-mail, SMS and internet use.

The law of defamation is also being used as a method of controlling use of social media; and that can impact advertisers. The Defamation Act 2009 does not deal specifically with user-generated sites such as Twitter, Facebook or YouTube; however, a defamed party has one cause of action for multiple publications, and this is important in respect of a defamatory statement which is published on the internet. Where a defamed party is unable to identify the author of a defamatory statement on the internet, the internet service provider or the social media service provider may be held liable rather than the author. Again, advertisers need to be aware of this, particularly if they allow publication of user generated content on their own websites or on social media pages such as a product Facebook page.

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Advertising Standards Authority of Ireland ('ASAI') is an independent self-regulatory body established by the advertising industry in Ireland to regulate commercial marketing communications. It publishes a Code of Standards for Advertising, Promotional and Direct Marketing ('ASAI Code').

The ASAI has extended the Code to include marketing communications on advertisers' social media profile pages and other non-paid-for space online as well as viral advertising. The extension to the remit of the Code took effect on 2nd January 2013. If an advertiser, in the case of misleading advertising, does not adhere to the adjudication of the ASAI it can refer the matter to the National Consumer Agency.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

None other than the general ASAI Code and the laws highlighted above.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

None other than the general ASAI Code and the laws highlighted above.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

The extension of the remit of the ASAI Code to include social media has raised the question as to whether user generated content ('UGC'), should be considered as a marketing communication falling within the remit of the Code. If the answer to either of the following two questions is 'yes', and the content is deemed to be a marketing communication, then the UGC does fall within the remit of the Code:

- Did the advertiser originally solicit the submission of UGC from individuals, then adopt and incorporate it within their own marketing communications? or
- Did an individual provide the advertiser, on an unsolicited basis, with material which the advertiser subsequently adopted and incorporated within their own marketing communications?

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The same rules apply for a sweepstake or contest, regardless of whether it is conducted by social media or not. The ASAI Code and the laws highlighted above will apply.

Also, if the contest involves a purchase to enter, then, unless there is a skill test for entry, it may fall within the definition of a 'lottery' contained in the Gaming and Lotteries Acts 1956–1986, in which case a lottery license would be required.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The ASAI Code is 'applied in the spirit as well as in the letter'. The Code requires that all marketing communications should be 'legal, decent, honest and truthful' and should be 'prepared with a sense of responsibility both to the consumer and to society' and should 'conform to the principles of fair competition as generally accepted in business'. Marketing communications should not be misleading and should 'contain nothing that is likely to cause grave or widespread offence'. The Code sets out a number of general rules and principles which are supplemented by additional requirements for particular products or sectors. For example, specific principles are contained in the rules of the Code which relate to marketing communications which address or include children. All of the rules in the ASAI Code will apply to marketing communications that fall within the extended digital remit.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Since the introduction of the Defamation Act 2009, the law for offline publication also applies directly to online publications; and the Act has been used and relied upon in social media claims. In a recent Irish case, a prominent businessman received an apology and reached an out-of-court settlement after defamatory comments were published about him on the social media site, Twitter. Again, advertisers need to bear this risk in mind particularly if they allow user generated content on their sites.

The update to the ASAI Code extending it to all forms of social media has seen various complaints raised in relation to social media marketing. In 2017 there were two separate decisions of the ASAI Complaints Committee regarding the use of Snapchat and proper disclosure of sponsored ‘snaps’. As part of its decision the Complaints Committee issued a reminder to advertisers that the onus is on them to ensure their marketing communications are compliant with the ASAI Code even if the communication is via a third party on social media.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

Best practice is to adhere to the same principles as would apply for traditional marketing communications. Avoiding misleading communication is key as this is the most common complaint raised in relation to social media advertising and marketing. Full disclosure of ‘paid for’ or sponsored postings or content is always best practice.

ISRAEL

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms in Israel used by advertisers are primarily Facebook and YouTube. Snapchat is becoming increasingly popular among young users. It is interesting to mention that Twitter has not become very popular in Israel. All the important global social media platforms are available for use in Israel.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The main legal controls on advertising and marketing via social media in Israel are those prescribed in the relevant laws and regulations, namely the Consumer Protection Law 1981 ('CPL') and its derived regulations. The CPL and its regulations provide prohibitions, instructions and guidelines as to the manner in which one can market and advertise goods.

Obviously, the CPL governs all methods of advertising and marketing, including advertising and marketing via social media. Other relevant laws which are often relevant to advertising and marketing via social media include the Trademark Ordinance, the Commercial Torts Law, the Privacy Protection Law and the Prohibition of Defamation Law.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Advertising, in its entirety, is not governed by a single self-regulatory body. The different laws (in the form of primary legislation), establish regulatory mechanisms headed by the different government ministries. As an example, the Consumer Protection Law ('CPL') empowers the Minister of Industry and Commerce to set regulations related to consumer protection. In addition, the CPL formed and empowers a Consumer Protection Commissioner, who enforces the CPL and its regulations.

It should be noted, that the different ministers are mainly concerned with legislation and not the day-to-day control over the manner in which the laws and regulations are enforced. In practice, the courts are the primary bodies which enforce and interpret the various advertising and marketing laws, including those relevant to social media.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

According to Section 7a of the CPL, a person may not represent himself, directly or indirectly, as a consumer advisor or protector, if he is acting for the purpose of profit or his actions are based on economic considerations or sponsored or funded by a commercial body.

Although Section 7a is not directly linked to social media, it is very relevant to influencer marketing.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Section 7 of the CPL prohibits advertisements which may cause reasonable viewers not to realize that they are actually viewing an advertisement. An advertisement which is structured as an article, or item, without clearly stating ‘advertisement’, is regarded as a misleading advertisement.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Sections 7 and 7a of the CPL (as to which see answers 4 and 5 above) apply to user generated content.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

In Israel, skill-based contests, provided that the skill element is more dominant than the luck element, are legal and common. A skill-based contest may be conducted via social media platforms.

Sweepstakes are permitted provided they adhere to the General License to Conduct Draws for Commercial Advertising (‘General License’). Thus, as long as the draw’s objective is advertising and promotion and it is conducted in accordance to the General License, it will be legal in Israel and may be conducted via social media.

According to the General License, a draw must be supervised by a draw supervisor (‘supervisor’). The supervisor must be an Israeli lawyer or accountant. The supervisor must register himself as the draw supervisor at the relevant Israeli authority within the Israeli Ministry of Finance and ensure that the draw adheres to all the technicalities of the General License. Namely, he must:

- review the terms and conditions,
- publish the terms, and the chances/odds of winning,
- supervise the actual draw (if relevant/when not an instantaneous win) and
- confirm that the gifts/prizes are distributed (at least 80% of prizes).

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

There are no specific laws and regulations specifically targeted at social media. The general principles of marketing and advertising apply.

First and foremost, the CPL and its regulations, combined with all other relevant laws, prohibit misleading and confusing consumers. Additionally, the following main principles apply to advertising and promotions in Israel, inclusive of social media.

Ads and promotions must not misrepresent or confuse consumers as to:

- quality and substance of the goods/services;
- components, measurements, weight of the goods;
- date of supply;
- method of use and handling of the goods;
- identity of manufacturer, the importer and service provider; and
- trade name.

The laws and regulations relating to the promotion, sale and advertising of tobacco, alcohol and pharmaceuticals are quite stringent and detailed:

- Pursuant to the Limitation of Tobacco Advertisement Act 1983, it is prohibited to market tobacco products with accompanying free prizes, gifts or the right to participate in a sweepstake or competition. The Consumer Protection Regulations (Advertisements and Marketing Methods Targeted at Minors) 1991 prohibit advertisements and marketing methods which encourage minors to consume alcoholic beverages and the use of cigarettes or other tobacco products.
- Pursuant to the Ministry of Health's Procedure No 24, it is prohibited to advertise prescription medicines in any manner whatsoever.

Obviously, advertising and marketing tobacco, alcohol and pharmaceuticals via social media are subject to the above-mentioned laws and regulations.

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

In recent years, an increasing number of court judgments mention social media in one form or another. However, there has not been any substantial judgment relating to advertising and marketing via social media.

### ***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

The most important thing for advertisers to keep in mind is that the general laws and regulations which apply to advertising also apply to advertising and marketing via social media. For example, the stringent advertising laws that apply to alcohol and tobacco apply to all platforms, inclusive of social media platforms. Therefore, advertisers which intend to advertise, via social media, 'sensitive' goods and services, such as pharmaceuticals, tobacco and alcohol, should seek legal advice before doing so.

All advertisers should be aware that the CPL and its derived regulations, first and foremost, protect consumers against deception and confusion. Thus, an advertiser should take care not to give misleading or false information.

Finally, there have been rulings in which the courts have stated that the advertiser's physical presence is irrelevant when determining if Israeli law applies. If Israeli recipients are targeted by the social media platform, Israeli law will apply.

ITALY

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Facebook, Instagram, Twitter, YouTube, Snapchat and Myspace rank among the main social media platforms used by advertisers for advertising and marketing to consumers (see also the statement of the Italian Competition Authority ('AGCM') of 24 July 2017 'Influencer Marketing: advertising must always be clearly recognizable').

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

In Italy there is no specific law or regulation designed to regulate advertising and marketing via social media as such. Accordingly, these activities are subject to general rules applying to consumer protection and commercial communication, as well as those provisions that may come into play with respect to online platforms. Several bodies of rules have then to be taken into account, including:

- the 'Consumer Code' (Legislative Decree no 205 of 6 September 2005), that was amended in 2014 to implement Directive 2011/83/EU on consumer rights and lays down the principles governing B2C relations that may affect commercial communication. In particular, the Consumer Code provides for a set of rules concerning false/misleading advertising and unfair commercial practices;
- Legislative Decree no 145 of 2 August 2017, governing misleading and comparative advertising;
- the Civil Code, which contains, inter alia, some provisions on unfair competition;
- the 'E-Commerce Decree' (Legislative Decree no 70 of 9 April 2003), that implemented E-Commerce Directive (2000/31/EC) in Italy and sets forth, inter alia, the liability exemptions applicable to digital platforms that merely act as hosting provider;
- the 'Data Protection Code' (Legislative Decree no 196 of 30 June 2003), by which Directive 95/46/EC was transposed into the Italian legal order. However, please note that the Data Protection Code will be significantly amended as result of the application of the General Data Protection Regulation (Regulation 2016/679).

In addition to the above, specific restrictions may apply, where provided by law, to the marketing or advertising of particular categories of products or services.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The most important set of self-regulatory rules is enshrined in the Self-regulatory Code on Commercial Communication (the 'Code'), whose application and enforcement is administered by the Institute for Advertising Self-regulation ('IAP'). IAP is a private association representing the various actors involved in marketing and advertising, including firms that invest in marketing, agencies that create advertising, and media that distribute advertising.

The Code applies to marketing communication, ie advertising and all other forms of communication including corporate and institutional messages whose aim is to promote the sale of goods or services, as well as social marketing communication.

It includes a set of rules of conduct (articles. 1–6), some rules for specific types of products/services or sale systems (articles 17–28-ter), provisions defining the institutional framework (articles 29–35), rules governing procedures and providing for sanctions (articles 35–42), a special procedure for the promotion of creative ideas (articles 43–45) and ad-hoc norms concerning social advertising (article 46).

Inter alia, the Code sets forth two key provisions:

- Article 4 provides for that testimonials and other forms of endorsement of a product, having a promotional nature, should be recognizable as such.
- Article 7 generally requires that marketing communication is clearly recognizable as such, also when is carried out through means or forms of communication where other types of content are circulated.

In addition to the Code, the Digital Chart was adopted by the IAP in 2016. This document specifically addresses the key legal aspects raised by the use of online media for marketing and advertising purposes. The objective of the Digital Chart is to conduct a survey of the most commonly-used forms of marketing communication online and in the digital context in general. More in detail, the Chart is divided into several chapters, focusing respectively on: endorsement; native advertising; social networks and content; sharing in-app; advertising; advergames.

In addition, specific bodies of rules may be adopted by the various authorities whose regulatory powers may affect social media, including the Italian Competition Authority, the Italian Data Protection Authority and the Italian Communication Authority.

#### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Section 4 of the Code regulates the use of testimonials and endorsements having promotional purposes, ie it regulates every statement made by users of the relevant product relating to its quality or features.

In cases where testimonials are involved, the ad must:

- **make clear its promotional nature:** the consumer needs to be able to distinguish between users' ideas and experiences and the promotional materials;
- **be authentic:** the advertiser must provide consumers with details so as to allow them to reach the giver of the testimonial directly and verify with him/her the content of the ads;
- **be accountable:** the testimonials shall be made in good faith without any overestimation as to the quality or features of the relevant product;
- furthermore, as a general rule the ad should **be real:** the testimony should be made by users of the product or by persons who have actually experienced the use of the product.

In addition to the above, the role of influencer marketing is specifically addressed by the Digital Chart, within the 'Endorsement' section. Influencers are defined as figures 'who are able to influence consumers in choosing a product and express opinions about a brand'. The Digital Chart provides that 'when comments or opinions expressed by a celebrity, influencer or blogger about a product or brand have the characteristics of a marketing communication, they are subject to Self-Regulatory Code application'.

Also, the Chart states that, if not made clear by the context, the promotional purpose of the comment or opinion must be disclosed to the user in an appropriate manner in accordance with Article 7 of the Code. Although there is no specific or compulsory way for making such disclaimer

to users, the promotional nature of content posted on social media can be disclosed through the use of wording such as ‘Advertising’, ‘Promoted by’, ‘Sponsored by’, ‘in partnership with’, to be placed at the top of the relevant post. Additionally, these words must be included among the first three hashtags: #Advertising, #Sponsored by or #ad followed by the name of the #brand.

However, in cases where the relationship between the influencer and the advertiser is limited to the advertiser occasionally sending products free or in exchange for a limited amount, and the influencer names these products, uses them or displays them on social media, this disclosure notice is not required and can be replaced by the simple wording: ‘product sent by’.

### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

A specific section of the Digital Chart is devoted to native advertising; and focuses in particular on three forms: in-feed units, paid search units and recommendation widgets. Like influencer marketing, native advertising is subject to the Code, most notably Article 7, which requires commercial communication being clearly identifiable as such. In order for this requirement to be met, different wording may be used depending on the specific types of native advertising:

- **in-feed units:** the promotional nature must be disclosed by the use of wording such as: ‘Advertising’, ‘Promoted by’, ‘Sponsored by’, ‘Sponsored Content’, ‘Sponsored Post’, ‘Presented by’. The wording should be of adequate size and be placed in an appropriate position, combined with specific graphic arrangements, eg the use of frames and/or shading and/or text highlighting;
- **paid search units:** techniques to make the promotional nature recognizable include the use of a ‘shading’ effect (by adding a shadow and/or highlighting the text) and the use of wording that explicitly and unambiguously informs users that the content has promotional nature (eg ‘Advertising’), to be displayed in appropriate size, close to the results of the sponsored search and placed in a ‘user-friendly’ position;
- **recommendation widgets:** the Digital Chart includes among the options as to how to disclose the promotional nature of this form of advertising the following:
  - the use of wording informing users that the box contains sponsored content,
  - showing the Advertiser’s name or logo alongside the content, and/or a warning that the content is sponsored;
  - the use of wording such as ‘Advertising’, ‘Promoted by’, ‘Sponsored by’;
  - also, if the content has been developed by an intermediary, the use of wording such as ‘By’ or ‘Content offered by’.

### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user-generated content when advertising and marketing via social media?***

The Digital Chart provides that user-generated content (including text messages, comments, pictures and videos) which constitutes purely an expression of thought, non-solicited opinions or user preferences does not fall within the scope of commercial communication and, thus, of the Code. If, on the contrary, user-generated content is aimed at influencing consumers’ preferences by promoting brands or products based on an agreement with an advertiser or any other third party, the Code will apply. In such a case, Article 7 of the Code requires the appropriate steps to be

taken for the promotional nature of the content to be disclosed, including those set out in answer 4.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Under Italian law a ‘prize competition’ is a promotional activity where the winning of the prize depends upon chance or the ability/skills of the entrants. Prize competitions are heavily regulated in Italy under the Presidential Decree of 26 October 2001, no 430 (the ‘Decree’) and the Interpretative notes and the Frequently Asked Questions, both issued by the Ministry of Economic Development (‘FAQ’) should also be consulted. A number of requirements must be fulfilled prior to launching a prize competition in Italy (whether via social media or not), including, eg:

- the appointment of a representative in the national territory for tax purposes,
- the competition’s Ts&Cs must be sent to the Ministry of Economic Development at least 15 (calendar) days before the starting date of the competition,
- the payment of a bond to the Ministry of Economic Development equal to the total value of the prizes,
- the distribution to not-for-profit organizations of any prize not attributed (or not claimed),
- the prohibition of cash prizes.

Further, where, in order to enter a competition, an entrant needs to have a social media account or, in the absence of one, needs to open one, the FAQ set out some additional requirements:

- the server containing and managing all data regarding the prize competition must be located in Italy (or, if the server is located abroad, a proper mirroring system, with specific requirements, sending all data regarding the prize competition to a sever located in Italy, must be implemented);
- in the case of prize competitions run online (eg via social platforms), the owner of the social platform (eg Facebook, Instagram, etc) could qualify as ‘co-promoter’ insofar as the mechanics of the competition also indirectly promote the use of the social platform, being the exclusive way to entry into the competition. Under Italian law, all co-promoters are jointly liable to the participants in connection with the competition (eg in respect of the fulfillment of the relevant formal requirements). In order to avoid the possibility that the owner of the social platform could be deemed co-promoter of the prize competition, it would be necessary to:
  - arrange alternative ways other than the social platform in order to enter the competition (such as an ad-hoc built microsite); and
  - restrict the eligible entrants only to people already registered on the social platform at the starting date of the competition—in this case, the promoter shall ensure that the registration to the social network occurred before the starting date of the competition, therefore it is advisable that the Official Rules expressly provide for the promoter’s right to request evidence of entrants’ registration.

In addition:

- prize competitions carried out via a social platform shall comply with the rules on prize competitions issued by the social platform.

**8. *What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

In addition to the above, it is worth noting that the Italian Communication Authority has recently launched an investigation into influencer marketing practices carried out on social media, by urging the relevant stakeholders to comply with the provisions of the Consumer Code in respect of the need to take proper steps to reveal the nature of the message, whether or not it is based on an existing commercial relationship, and also when it derives from the free provision of branded goods to the influencer.

Furthermore, as noted above, social media may be subject to general provisions enshrined in the relevant resolutions issued by:

- the Italian Communication Authority, most notably with regard to audiovisual media services, and
- the Italian Data Protection Authority, eg in respect of profiling or practices that in any way consist of/require the targeting of users.

**9. *What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

**(1) AGCM decision no PS9030**

In 2015 AGCM-sanctioned an online operator of penny auctions for, inter alia, publishing an online website having promotional nature but presented as a blog page. Through the 'blog page', the operator played the role of a consumer who talked enthusiastically of his experience with the penny auctions service. While the proceedings were on-going, the operator modified the landing page of the blog by adding in the footnote the disclaimer 'This article is advertorial and not for news'. The AGCM, however, considered the ad misleading since the disclaimer was not enough to make consumers aware of the promotional intent of the information included in the article since it:

- (a) was not well marked; and
- (b) was located in an extremely marginal position on the web page.

The operator was therefore ordered to pay an overall penalty of Euro 300,000.00.

**(2) IAP decision no 66/2016**

In 2016, IAP considered some 'in-feed units' concerning online trading published by an operator on a third party web site. By clicking on these in-feed units, the user was redirected to some articles concerning the successful experience of different consumers with online trading which had an obvious promotional content. The IAP found the in-feed units (and the related articles) to be misleading, given that their promotional intent was not duly noticed and consumers were led to believe that the articles reported real experiences. As a consequence, the IAP ordered the withdrawal of these ads.

**(3) AGCM decision no 25288**

In 2014 the AGCM started proceedings against an app developer and several digital platforms which offered for free-download (and advertised as 'for-free') a videogame-app without specifying—in the app's description—that 'in-app' purchases were necessary in order to progress in the game. The AGCM regarded such conduct as an unfair commercial

practice since the average consumer was not enabled to take a fully aware commercial decision on the download of the app.

The proceedings were concluded on January 25, 2015 with the implementation of ad hoc undertakings by both the app developer and the digital platforms, which were regarded by the AGCM as suitable to remove the unlawfulness of the conduct.

Basically and inter alia the professionals undertook:

- (a) to use the ‘for-free’ wording or similar wordings only in case of apps which do not allow ‘in-app’ purchases;
- (b) in case of apps which allow ‘in-app’ purchases, to integrate the ‘for-free’ wording by inserting a relevant wording (having the same graphical prominence) aimed at specifying which part of the app the ‘for-free’ wording refers to;
- (c) to clarify, in the relevant informative pages of the online store (and of the app itself, by the app’s developer), that the app allows ‘in-app’ purchases and to provide a range of the relevant prices;
- (d) to change the online store’s settings in order to prevent consumers from being allowed to make purchases without inserting the password already entered for a recent purchase.

In light of these undertakings, no penalties were imposed on the traders.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

Since the purpose of the Digital Chart is to conduct a survey of the most commonly-used forms of marketing communication online and in the digital world in general, and to establish criteria for the acknowledgement of marketing communications in compliance with Article 7 of the Code, it can be considered the most authoritative source of best practice for advertising and marketing via social media.



JAMAICA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main available platforms are Facebook, Instagram, Twitter, YouTube and Google Ads.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no laws which speak specifically to advertising via social media. However, legislation such as Fair Competition Act, Consumer Protection Act, Sale of Goods Act, the Standards Act and the Television and Sound Broadcasting Regulations outline principles of advertising which apply to both traditional and online media.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The self-regulation systems for advertising are based on the Jamaican Code of Advertising Practice ('JCAP') and the Code of Marketing Communication Practices ('MCAP') which complement current advertising laws. These Codes outline basic rules for advertising in traditional media which can also apply to social media. MCAP outlines general rules governing marketing communications which cover advertising via the internet and, though not expressly, social media such as Facebook. The Code applies to all members' brand marketing communications to consumers, regardless of the medium used.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no laws, regulations or self-regulatory rules in Jamaica specifically related to influencer marketing via social media.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no laws, regulations or self-regulatory rules in Jamaica related specifically to native advertising via social media.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no laws, regulations or self-regulatory rules in Jamaica in relation to user generated content when advertising via social media.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The Betting Gaming & Lotteries Act and attendant regulations.

**8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?**

All advertisements and marketing campaigns must be honest, truthful and decent and should not contravene any law. They should not mislead the consumer or be deceptive in any respect. Comparative advertisements must be fair and must not misuse or infringe another's intellectual property rights, such as trademarks, tradenames and copyright content. Written permission must be sought from individuals in order to use their images in advertisements, particularly where any endorsement could be implied. Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience of a reasonable person.

**9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?**

*Television Jamaica (TVJ) v CVM Television LTd (CVM) (CD 00112 of 2015)*

Although this case does not deal directly with advertising or marketing law it is the first Jamaican case which is instructive on the court's interpretation of the doctrine of fair use/fair dealing in the context of broadcasting and social media. In this case TVJ sued CVM for breaches of its exclusive rights to broadcast the 2015 World Athletic Championships which it had acquired from the International Association of Athletics Federations ('IAAF'), owner of the copyright in the event. CVM carried portions of the event in its regular news programme News Watch and also through a newly developed programme called 'Return to the Nest'. CVM also posted material from the IAAF Live Stream on its Facebook page which was accessible via Facebook and Twitter. CVM claimed its use was for the purpose of reporting current events, and invoked the fair dealing defense and claimed it never used the TVJ feed, only the IAAF Live Stream.

The trial judge, Sykes J, found that some of the uses by CVM were not fair dealing, hence it breached TVJ's exclusive rights, while some were protected by the defense of fair dealing. The parties have filed an Appeal and Counter-Appeal before the Court of Appeal Jamaica.

**10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?**

All advertisements and marketing campaigns must be honest, truthful and decent and should not contravene any law.

Advertisers should:

- seek permission to use images of individuals and copyright content;
- ensure proper use of another's trademark or trade name when employing comparative advertising,
- obtain permission when featuring someone's picture or testimonial; and
- refrain from sending ads promoting sexual activities as they breach the Obscene Publications Act.



JAPAN

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms that advertisers use in Japan are: Facebook, Twitter, Instagram, LINE, LinkedIn, Snapchat and WeChat.

Many important global social media platforms are available for use in Japan.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Advertising activities are generally regulated in Japan under:

- the Act against Unjustifiable Premiums and Misleading Representations ('AUPMR'),
- the Act on Specified Commercial Transactions ('ASCT'),
- the Medical Care Act,
- the Act on Pharmaceuticals and Medical Devices (formerly the Pharmaceutical Affairs Act), and
- the Health Promotion Act.

There are no specific laws regulating advertising and marketing via social media.

There is also a 'fair commission code' applicable to advertising, and a number of advertising guidelines issued by government bodies responsible for specific industries.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The WOMJ Guideline, prepared by the Word of Mouth Japan Marketing Association in 2017 and the Moral Manifesto for Internet Advertising and Guideline for Publication prepared by the Japan Interactive Advertising Association in 2015 are the main self-regulatory rules on advertising and marketing related to social media in Japan.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws or regulations related to influencer marketing via social media in Japan. The WOMJ Guideline indirectly mentions influencer marketing, although it does not define 'influencer'.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws or regulations related to native advertising via social media in Japan. The Moral Manifesto for Internet Advertising and Guideline for Publication (see answer 3 above) requires the nature of advertising to be stated clearly, using words such as 'advertising', 'PR' or 'AD'.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no such specific laws, regulations or self-regulatory rules in Japan.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Sweepstakes are generally regulated under the AUPMR; and this is also true of a sweepstake via social media. Under the AUPMR, the Prime Minister (actually the Minister of Consumer Affairs Agency) may limit the maximum value of a prize or the total value of prizes, the kind of prizes or the method of offering prizes, or may prohibit the offering of a prize in any case in order to prevent the unjust inducement of customers to enter into a competition, etc and to encourage voluntary and rational decision-making by consumers. A sweepstake would constitute a competition for these purposes.

The AUPMR applies to a prize if it is:

- financial gain, such as goods or money,
- offered to induce customers, or
- related to a transaction in goods or services provided by a company.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

If advertising and marketing via social media is related to

- health care or medical care, or
- credit or financial products,

specific laws and regulations such as the Act on Pharmaceuticals and Medical Devices and the Financial Instruments and Exchange Act will apply.

The Act on Pharmaceuticals and Medical Devices prohibits false or exaggerated advertising in relation to the name, effect or efficiency of medicines, quasi-drugs (whose effect on the human body is milder than drugs) and cosmetics, medical equipment and regenerative medical products.

The Financial Instruments and Exchange Act requires a business operator of financial instruments to indicate certain information in advertising, such as:

- the name or trade name of the financial instruments business operator;
- the fact that the financial instruments business operator is authorized as a financial instruments business operator, and its registration number; and
- matters concerning the contents of the financial instruments business conducted by the financial instruments business operator.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

‘Stealth marketing’ using influencer via social media is criticized.

A web auction site (Penny Auction) used many influencers (entertainers) to promote its auction service and many entertainers used word of mouth in relation to Penny Auction regardless of the fact that they actually did not use the site. Penny Auction used fraudulent methods in the auctions, and bidders, who had to pay a small amount in virtual currency to enter into the bidding, were never successful in a bid. Operators of Penny Auction were arrested for fraud and many influencers were investigated by the police and had to refrain from activities as entertainers for a while.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

It is just as important to make the nature of advertising and marketing clear, and not to mislead customers, in advertising and marketing via social media as well in advertising and marketing via other media. In addition, if advertising and marketing is related to a specific area, such as health or financial services or products, it is important to comply with laws and regulations for that specific industry.

KENYA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media sites in Kenya are Instagram, Facebook, Twitter, WhatsApp, YouTube, LinkedIn and Snapchat.

Social media sites that are not widely used are WeChat, Weibo.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Kenya does not have specific statutes and regulations governing advertising and marketing via social media. There are, however, a number of statutes which contain general provisions on advertising. The provisions of these statutes would apply to advertisements on social media. Such statutes include:

- the Alcoholic Drinks Control Act No 4 of 2010;
- the Consumer Protection Act No 46 of 2012;
- the Competition Act No 12 of 2010;
- Tobacco Control Act No 4 of 2007;
- the Pharmacy and Poisons Act CAP 244;
- the Food, Drugs and Chemical Substances Act CAP 254;
- the Elections Act No 24 of 2011;
- the Films and Stage Plays Act CAP 222;
- the Advocates Act CAP 17; and
- the Accountants Act No 15 of 2008.

There is also subsidiary legislation that affects marketing and advertising, namely:

- the Guidelines for Advertising and Promotion of Medicines and Medical Products in Kenya;
- the Code of Promotional Practices for Pharmaceutical Representatives;
- the Advocates (Marketing and Advertising) Rules; and
- the Consumer Protection Guidelines.

The Competition Act has several objectives, one of which is to protect consumers from unfair and misleading market conduct. The Act has provisions that prohibit misleading information being given to customers. The Competition Authority of Kenya developed the Consumer Protection Guidelines which were revised in December 2017. Section 15 of these Guidelines state:

‘Any statement representing a supplier’s products or services should be true, accurate and able to be substantiated. It is a violation of the Act for a supplier to make statements that are incorrect or likely to create a false impression, whether intentional or not. This includes advertisements or statements in any media (print, radio, television, social media and online) or on product packaging, and any statement made by a person representing a supplier’s business.’

The Consumer Protection Act, which was passed in 2012, is aimed at protecting consumers from unfair trade practices. This Act prohibits false, misleading or deceptive representations being made to consumers.

The Communications Authority of Kenya has also issued Guidelines on Prevention of Dissemination of Undesirable Bulk and Premium Rate Political Messages and Political Social Media Content via Electronic Communications Networks. These guidelines were specifically developed in July 2017 to control the political propaganda that is shared on social media during the election period. This was done in consideration of the General Elections in August 2017.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There is a Code of Advertising Practice and Direct Marketing which was developed by the Advertising Standards Body of Kenya ('ASBK'). The ASBK was formed by the Marketing Society of Kenya and the Association of Practitioners in Advertising, and the Code applies to members of these bodies, though is not compulsory. According to this Code, advertisements should be legal, decent, honest and truthful. Even though the Code does not make specific reference to social media, we are of the view its provisions would apply to advertising and marketing on social media.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

In Kenya there is no single Act of Parliament that regulates advertising and influencers in marketing. However, the provisions of various Kenyan statutes on advertising apply. The Consumer Protection Act 2012 Section 12 prohibits false representation. This section states that it is an unfair practice for a person to make a false, misleading or deceptive representation. The Competition Act and the Consumer Protection Guidelines developed by the Competition Authority of Kenya also provide that incorrect statements and statements that are likely to create a false impression should not be published on any print media which includes social media.

The Code of Advertising and Direct Marketing has a section on testimonials. This Code provides that testimonials should be based on personal experience. Influencers should therefore actually use the goods which they are marketing.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws that are related to native advertising through social media.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific laws related to user generated content. Such material needs to be in line with the Consumer Protection Act and the Competition Act, which prohibit false statements made to consumers as advertisements. In addition, the terms and conditions of use applicable to the various social media platforms would apply to user generated content.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The Betting, Lotteries and Gaming Act applies in relation to sweepstakes and prize competitions. Section 2 of the Act defines a lottery to ‘include a sweepstake, a raffle and any scheme or device for the sale, gift, disposal or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or by the withdrawing of tickets, cards, lots, numbers or figures, or by means of a wheel, or otherwise howsoever’. According to this Act, a lottery should only be promoted or conducted in accordance with the Act. This means that one should procure the necessary license from the Betting Control and Licensing Board.

This law would also apply to sweepstakes that are conducted over social media. The Act, inter alia, makes it an offence for person to print or publish or cause to be printed or published an advertisement or other notice of or relating to an unauthorized lottery or of or relating to the sale of a ticket or chance in any such lottery.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

In Kenya the main issues relating to social media have been in relation to defamation, privacy and hate speech. Advertisements should not be offensive or promote ethnic violence.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

In 2017 there was a case (*Constitutional Petition No 468 of 2017, Katiba Institute v Presidents Delivery Unit & 3 others* [2017] eKLR). The parties in this case were the Katiba Institute, an NGO in Kenya, and the President’s Delivery Unit (PDU) and 3 others. The PDU is a center whose primary duty is to improve the co-ordination of National Government flagship programs and to monitor, evaluate and report on timely fulfilment of projects of the Government in development priorities. On various dates in 2017, the PDU published advertisements in the media, through billboards and through other platforms including social media using the tags #GOK DELIVERS and #JUBILEE DELIVERS. The petitioner requested the PDU for information on how many advertisements had been published, through what media, schedules and dates when it was done, copies of the documents advertised, total cost incurred and the relevant government accounting office(r) and the individual or government agency that met the cost. The PDU did not give them this information therefore the petitioner sought court intervention.

The court considered that the main issue for determination was the petitioners’ right to access of information. It found that the PDU, as a government agency, was under both a constitutional and legal obligation to allow the petitioner to access the information in its possession which is held on behalf of the public.

This case demonstrates that members of the public can make requests for information on advertisements that government agencies run on different platforms, including social media.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

There are no specific ‘best practices’ for advertising and marketing via social media in Kenya. Some of the best practices in relation to advertising generally are set out in the Code of Advertising and Direct Marketing and the Consumer Protection Guidelines, namely:

- Advertisements should be legal, decent, honest and truthful;
- Advertisements should not attack, discredit or disparage other products, services, advertisers or advertisements either directly or indirectly. Businesses are allowed to compare goods and services in other markets on price, quality etc, as long as those comparisons are not false or misleading and appropriately compare the products;
- Advertisers must ensure that their advertisements do not so closely resemble any existing advertisement, local or international, that it misleads or causes confusion to the purchaser or consumer; and
- Advertisements should not make false or misleading representations about products and services.





# LUXEMBOURG

**1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?**

The main social media platforms used by advertisers in Luxembourg for advertising and marketing to consumers are Facebook, Instagram, LinkedIn, Twitter, Pinterest, Snapchat amongst others.

All important global media platforms are available for use in Luxembourg.

**2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?**

Advertising and marketing via social media is not regulated as such but must comply with the following laws governing advertising and marketing in general in Luxembourg:

- (a) The **Luxembourg Consumer Code** prohibits unfair commercial practices (commercial practices can include advertising or marketing). An example of an unfair commercial practice would be misleading or aggressive commercial practices, committed by a trader and directly connected with the promotion, sale or supply of a product to consumers.

A commercial practice is especially regarded as misleading if, in its factual context, it causes or is likely to cause the average consumer to take a transactional decision that he/she would not have taken otherwise, and it involves any marketing of a product, including comparative advertising, which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor (Article L 122-2(2), a).

Also, in any circumstances, commercial practices are considered as unfair if they use editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial) (Article L 222-4).

- (b) The various Luxembourg laws and regulations which regulate more specifically advertising for **food, alcohol, drugs, financial products, games of chance** or which are directed at **children** (including the Law of 27 July 1991 on electronic media, and the Regulation of 5 April 2001 fixing the rules applicable to commercial communication in audiovisual media services )

- (c) Rules applying to **online behavioral advertising**: this is not regulated as such, but the law of 30 May 2005 lays down specific provisions for the protection of persons with respect to the processing of personal data in the electronic communication sectors. This law aims to strengthen transparency and fair use standards particularly as regards the use of cookies, where:

- (i) prior consent ('opt in') is needed for the use of cookies, unless the cookie is strictly necessary for the provision of a service to that subscriber or user;
- (ii) subscriber or user must be provided with clear and comprehensive information about the purpose of the processing and, particularly, the identity of the advertising network provider and that the cookie will allow the advertising provider to collect information;
- (iii) browser settings can be used as a means to obtain consent, but the consent must be 'prior' to the use of a cookie.

Criminal sanctions can be incurred for non-compliance.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

A Luxembourg Code of Ethics in Advertising (Code de déontologie de la publicité au Luxembourg) ('Advertising Code of Ethics') has been enacted by the Luxembourg Council for Advertising (Conseil de la Publicité du Grand-Duché de Luxembourg), a not-for-profit association of private law formed by the major players active in the fields of marketing and commercial communication in the country.

Members of the Luxembourg Council for Advertising (firms, associations and organizations representative of the advertising sector) undertake to respect the Advertising Code of Ethics, which sets out non-compulsory general guidelines relating to advertising (on principles such as loyalty, honesty, veracity, decency, protection of privacy, etc), but also specific guidelines regarding children, alcohol and drugs. The Advertising Code of Ethics is based on general principles of the ICC Code.

The Commission luxembourgeoise pour l'Ethique en Publicité ('CLEP'), an independent commission created by the Luxembourg Council for Advertising, regulates the application of the Advertising Code of Ethics. The CLEP can advise the advertising community and handle complaints. It can also act on its own initiative and ask for modifications to, or decide to ban, an advertisement.

Complaints regarding advertising can also be referred to the following Luxembourg authorities:

- Independent Authority for the Audiovisual Sector, which is competent only for audiovisual advertising;
- Luxembourg Consumers' Association, which is competent in matters relating to the infringement of regulations regarding advertising to consumers.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There is no specific law, regulation or self-regulatory rule related to influencer marketing via social media in Luxembourg. However, the general rules governing advertising discussed in answer 2 may also be applicable to influencer marketing via social media.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There is no specific law, regulation or self-regulatory rule related to native advertising via social media in Luxembourg. However, the general rules governing advertising discussed in answer 2 may also be applicable to native advertising via social media.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There is no specific law or regulation relating to the use of user generated content when advertising and marketing via social media in Luxembourg, but Law of 30 May 2005 (as to which see answer 2 at (c) above) applies. Moreover, the European General Data Protection Regulation 2016/679/EU will apply from 25 May 2018.

In addition, there are provisions about online behavioral advertising in the Advertising Code of Ethics which specify that the use of cookies must be subordinated to the authorization of the user. All users must have the right to access, modify, rectify and delete personal data concerning them.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There is no specific law, regulation or self-regulatory rule relating to conducting sweepstakes and contests via social media in Luxembourg.

Sweepstakes and contests via social media must comply with the Law of 20 April 1977 on the exploitation of games of chance and bets relating to sporting events (as amended) and its implementing regulations.

Games of chance are generally prohibited under Luxembourg law regardless of their medium.

There are 3 exceptions to this principle and therefore three kinds of instant win lotteries that can be advertised:

- (a) Promotional games, sweepstakes and raffles exclusively organized for commercial propaganda purposes are not considered as games of chance;
- (b) Instant win lotteries organized by the Luxembourg National Lottery (Loterie Nationale); and
- (c) Lotteries and raffles fully or partially of public interest.

Claiming, in a commercial practice, to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent, or that products are able to facilitate winning in games of chance are especially deemed to be unfair practices (Article L 122-4 of Luxembourg Consumer Code).

Articles 301–304 of Luxembourg Penal Code provide penal sanctions.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

**(1) IP Rights/Ambush marketing**

A competitor may bring an unfair competition claim before the courts if someone acting in the same field of activity does not comply with advertising law and regulation. A court may order the defendant to stop the infringing advertising and to pay the claimant damages as compensation for the loss suffered. The claimant may also file summary proceedings asking the judge to order the cessation of the infringing advertising. Failure to comply with such an injunction may lead to a criminal fine ranging from EUR 251.00–120,000.00.

In the event of the illegitimate use of a trademark in advertising (eg, illegal comparative advertising) the trademark-owner may bring proceedings for infringement of its intellectual property, asking for an injunction preventing the use of its trademark as well as damages.

In some circumstances when no intellectual property rights exist, a company may also bring an action against another when the latter tries to take advantage of the reputation the former company has acquired or the investment it has made.

**(2) Determination of the liabilities between the author, the editor or the broadcaster**

The Luxembourg Law of 8 June 2004 relating to Freedom of Speech in the context of media determines the liabilities between the author, the editor or the broadcaster of any

information given by way of any type of media (either factual, opinion or ideas). The breach of the provisions of the Freedom of Speech Law may lead to both civil liability and criminal liability either of the author of the publication, if known, or of the editor or the broadcaster. In addition, any advertiser may be held liable for statements made by users on its website or social media page, but only in limited cases. In such cases, the advertiser can be regarded as a web host, which means that it will only be held responsible for the information stored if:

- the information stored is obviously illicit or if the advertiser has been made aware of its illicit character, and
- it does not act quickly to remove the information or make access to it impossible from the moment it becomes aware or should have become aware of the illicit content.

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There are no cases relating to advertising and marketing via social media in Luxembourg.

### ***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Tips for Advertising and marketing via social media are:

- Make advertising and marketing easily recognizable;
- Do not use subliminal techniques;
- Monitor the content and the commercial message;
- Avoid making false or misleading statements
- Avoid making prohibited solicitations
- Tread cautiously with testimonials, endorsements, and ratings; and
- Ensure you are GDPR (ie General Data Protection Regulation 2016/679/EU) compliant as regards profiling and online behavioral advertising.



MALAYSIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Social media platforms preferred by advertisers are Facebook, Instagram, WeChat and Twitter. However, we are not aware of any important global social media platforms that are not available for use in Malaysia.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

At present, there are three laws governing online advertising and marketing in Malaysia; namely:

- the Malaysian Communications and Multimedia Content Code ('MCMC'),
- the Anti-Fake News Act 2018 and
- the Consumer Protection Act 1999.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The MCMC and the Consumer Protection Act 1999 are self-regulated. A member of the public may lodge a complaint against advertisers whose advertising content is not in compliance with the laws.

Under the MCMC, a member of the public may first lodge a complaint directly with the content provider or service provider. Any unresolved matter may then be referred to the Complaints Bureau.

Under the Consumer Protection Act 1999, a consumer may also lodge a complaint with the Consumer Tribunal for any loss suffered on any matter concerning his interest as a consumer.

'Content', as defined by the MCMC, includes any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically. 'Advertisement' under the MCMC refers to an announcement of a public nature whether for the sale or purchase or provision of goods or services or constituting an invitation to participate in an activity and conveyed by or through any signage, image or sound disseminated through electronic medium for advertising purposes.

The basic principles of advertising are:

- it must be legal, decent, honest and truthful;
- it should be prepared with a sense of responsibility to consumers and to society;
- it should respect the principles of fair competition generally accepted in business.

Meanwhile, the Consumer Protection Act 1999 defines 'advertisement' so as to include every form of advertisement, whether or not accompanied by or in association with spoken or written words or other writing or sound and whether or not contained or issued in a publication, and includes advertisement by the display of notices, by means of catalogues, price lists, circulars, labels, cards or other documents or materials, by the exhibition of films or of pictures or photographs, or by means of radio, television, telecommunication or any other similar means.

The newly-introduced Anti-Fake News Act 2018 is also self-regulated. However, instead of lodging a complaint to local authority, it is the duty of the person who has in his possession, custody or control any publication containing fake news to remove such publication immediately upon knowing or having reasonable grounds to believe that such publication contains fake news. Any person who fails to do so commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit. Meanwhile, investigation of fake news and information disseminated through electronic media is also within the purview of the MCMC.

'Fake news', as defined by the Anti-Fake News Act 2018, includes any news, information, data and reports which is/are wholly or partly false, whether in the form of features, visuals or audio recordings, or in any other form capable of suggesting words or ideas.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

The MCMC states that advertisements must not portray, or refer to by whatever means, any living person unless their express prior permission has been obtained. This requirement applies to all persons, including public figures and foreign nationals.

It is also an offence under the Anti-Fake News Act 2018 to publish an advertisement portraying a living person, or containing a caricature of a living person, as an individual with skills or achievements which the person publishing the said advertisement knows to be false or untrue. (Eg if A publishes an advertisement containing a caricature of Z depicting Z as a successful investor in an investment scheme knowing that Z is not involved in the investment scheme, A is guilty of an offence under Section 4(1) of the Anti-Fake News Act 2018.)

Section 4(1) of the Anti-Fake News Act 2018 states any person who, by any means, maliciously creates, offers, publishes, prints, distributes, circulates or disseminates any fake news or publication containing fake news commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six years or to both.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Online advertising is controlled by the MCMC, Anti-Fake News Act 2018 and Consumer Protection Act 1999.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Any online advertising or marketing is governed by the MCMC, Anti-Fake News Act 2018 and the Consumer Protection Act 1999.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The MCMC prohibits advertisement relating to any form of gambling including betting, sweepstakes or lotteries.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The basic principles of advertising are:

- (a) it must be legal, decent, honest and truthful;
- (b) it should be prepared with a sense of responsibility to consumers and to society; and
- (c) it should respect the principles of fair competition generally accepted in business.

It is prohibited to advertise products or services in relation to:

- cigarette, tobacco and its accessories;
- any item banned in the Postal Services Act 1991 for the purpose of cheating or misleading;
- the occult and fortune tellers;
- marriage agencies and friendships clubs;
- unlicensed employment agencies;
- any form of gambling including betting and gambling tips;
- clothing which is printed with word(s) or symbol(s) that have an inappropriate message;
- sexual or indecent scenes including kissing scenes between adults;
- pornography;
- pig, pork products and its derivatives;
- fire crackers;
- financial speculation intended to promote or attract interest in any stocks or shares;
- death notices, funeral and burial service notices and burial monuments;
- disco scenes; and
- slimming products, whether to be used orally or by physical application.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

We are not aware of any cases relating to online advertising and marketing.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Advertising must be legal, decent, honest and truthful.

MEXICO

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used by advertisers in Mexico for advertising and marketing to consumers are Facebook, YouTube, Instagram and Twitter.

All important global social media platforms are available for use in Mexico.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

In Mexico, the laws and regulations that are applicable to standard advertising and marketing are also applicable to advertising and marketing via social media.

The Federal Law on Consumer Protection—which states that advertising must be truthful; the Regulations to the General Law on Health in Advertising Matters; the Federal Law on Gambling and Draws; and the General Law on Tobacco Control are some of the most important legal instruments regarding advertising and marketing (for both regular and social media advertising and marketing).

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Council for Advertising Self-Regulation and Ethics ('CONAR') has issued a Code for Advertising Ethics, as well as two other sectoral codes (one of them dealing with the advertising of food and non-alcoholic beverages directed at underage audiences; and the other one related to alcoholic beverages).

It is important to note that these codes are applicable both to standard advertising and marketing, as well as to advertising and marketing via social media.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws, regulations, and self-regulatory rules related to influencer marketing via social media. However, this type of marketing is within the general scope of application of the laws, regulations and self-regulatory rules mentioned in answers 2 and 3 above.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws, regulations, and self-regulatory rules related to native advertising via social media. However, this type of marketing is within the general scope of application of the laws, regulations and self-regulatory rules mentioned in answers 2 and 3 above.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific laws, regulations, and self-regulatory rules related to the use of user generated content when advertising and marketing via social media. However, the general rule of truthfulness of the advertising established in the Federal Law on Consumer Protection is applicable, as are the other laws, regulations and self-regulatory rules mentioned in answers 2 and 3 above.

The use of user generated content may also entail the need of use certain licensing tools defined in the Federal Copyright Law.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The Federal Law on Gambling and Draws regulates both regular sweepstakes and contests, and those conducted via social media. If sweepstakes and contests (involving the element of chance) are to be performed within Mexican territory, then a prior authorization from the Federal Ministry of the Interior (Secretaría de Gobernación) must be obtained. This procedure may take 4 to 6 weeks for completion.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

As can be seen in the previous answers, the laws, regulations and rules that are applicable to regular advertising/marketing are also applicable to advertising/marketing via social media. Therefore, a good knowledge regarding the application of these laws, regulations and rules will be crucial for a sound legal assessment of the advertising/marketing via social media.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

So far there has not been a widely-known case related specifically to advertising/marketing via social media (it should be borne in mind that advertising/marketing via social media is relatively recent in Mexico). Nevertheless, it is important to mention that, according to Article 97 of the Federal Law on Consumer Protection, any person may denounce before the Federal Agency on Consumer Protection ('Profeco') the violation of any of the provisions of the Federal Law on Consumer Protection. This could include Article 32, which establishes the general principle of truthfulness of advertising/marketing for both regular and social media advertising/marketing.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Article 32 of the Federal Law on Consumer Protection establishes one of the main pillars for advertising/marketing in Mexico (which is also applicable to advertising/marketing via social media); namely that the information or advertising of goods, products or services that are presented/transmitted through any means or form shall be truthful, provable and lacking any texts, dialogues, sounds, images, trademarks, appellations of origin, or other descriptions, that lead or may lead to mistake or confusion because of their misleading or excessive nature.





# NETHERLANDS

### ***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms that advertisers use for advertising and marketing to consumers are the following:

- Facebook;
- YouTube;
- LinkedIn;
- Instagram;
- Snapchat;
- Twitter;
- Pinterest; and
- Tumblr.

There are no important global media platforms that are not available or are not widely used in the Netherlands.

### ***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Advertising and marketing via social media is governed by civil law and the self-regulatory system.

The Dutch Civil Code regulates the main principles of three types of commercial practices: B2B, B2C and comparative advertising. The Copyright Act, the Benelux Convention on Intellectual Property and the European Union Trade Mark Regulation ('EUTMR') regulate the use of third party IP and portraits in (inter alia) advertising.

There are also various sector-specific laws in place that regulate certain aspects or types of advertising. For instance:

- the Commodities Act and the various Decrees based on the Commodities Act (food advertising);
- the Media Act 2008 (advertising related to the media);
- Licensing and Catering Act (alcohol advertising); and
- the Tobacco Act (tobacco advertising is prohibited).

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Dutch Advertising Code regulates the main principles of advertising, such as what constitutes misleading advertising. Alongside this code, numerous specific codes apply, such as:

- Advertising Code Social Media;
- Advertising Code for Alcoholic Beverages;
- Advertising Code for Games of Chance;
- Code for Advertising directed at Children and Young people;
- Code for Passenger Cars;
- Code for Environmental Advertising; and

- Code for the Advertising on Medicinal Products to the General Public.

The most important set of rules specifically related to advertising and marketing via social media is laid down in the Advertising Code Social Media ('RSM'). Below is a summary of the main rules from the RSM.

- (a) **Advertising must be recognizable as such:** Most importantly, the RSM imposes a transparency requirement on advertisers and distributors (bloggers/vloggers/influencers). Where an advertiser and a distributor have a 'relevant relation' with each other, the content and nature of the relevant relation must be disclosed. In the context of the RSM, 'relevant relation' means a relationship aimed at (causing the) distribution of advertising through social media, in return for payment or any benefit, that might affect the credibility of advertising through social media. 'Advertiser' means the party that:
- (i) encourages the distributor to create and/or publish advertising through social media;
  - (ii) advertises by placing advertising on social media and/or by (causing the) modification of communications on social media.
- The explanatory notes with the RSM give examples as to how the relevant relation may be disclosed.
- (b) **No manipulation:** Modifying posts or other communications on social media, such that the average consumer may be misled, is prohibited. If an advertiser modifies posts or other communications, or causes such modification to commend its or a third parties' product, service or activity, it must disclose this in a clear and accessible manner. If posts or other communications on social media are modified, selected or compared within the context of commending a product of the advertiser or a third party, the advertiser must do everything necessary to clearly mention the nature of the relevant relation. Furthermore, the advertiser is prohibited from systematically creating and/or using false or non-existent identities in bulk to communicate about a product and/or service through social media. The advertiser is also required to make this known when displaying content generated by consumers in a selective manner, as a result of which only positive communications are presented.
- (c) **Children:** Directly encouraging children aged 12 or under to advertise products or services on social media is prohibited.
- (d) **Duty of care:** The advertiser is required to inform the distributor of the content of the RSM and to oblige the distributor to comply with all relevant rules and regulations, including the RSM. If the distributor is allowed to involve third parties, the advertiser is required to draw the distributor's attention to the fact that such third parties must also comply with these provisions.

In addition to the RSM, YouTube-influencers have recently adopted the **Social Code: YouTube**. This code contains a self-regulatory set of rules that only bind the influencers. Advertisers are not required to comply with the rules laid down in the Social Code: YouTube. Please note that at the moment there are no consequences for violations of this code.

#### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

In the Netherlands, there are no specific laws or regulations on influencer marketing via social media, except for the RSM (as to which see answer 3).

### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific rules or regulations related to native advertising via social media. The general rule applies: advertising, whether or not through social media, must be clearly recognizable as such. This can be especially problematic with native advertising, as the rationale is to somewhat ‘blend in’ the advertisement with its surroundings.

### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

No specific rules or regulations (other than those discussed in answers 2 and 3) apply to user generated content in particular when advertising via social media. Which rules apply depends on the platform used, the type of post and the product/service advertised in it. For instance: if:

- the user generated content is considered an advertisement;
- it is published on YouTube; and
- alcohol is advertised in it,

the post will have to comply with, inter alia, the Dutch Advertising Code, the Advertising Code Social Media and the Advertising Code for Alcoholic Beverages.

### ***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

As for the determination of the applicable rules, a distinction should be made between promotional games of chance (chance-based) and ‘normal’ competitions (skill-based).

An example of a promotional game of chance is a lottery, where winners are simply randomly selected. The Betting and Gaming Act (law) and the Code of Conduct for Promotional Games of Chance (self-regulatory rules) apply to promotional games of chance (whether or not conducted via social media).

However, if the outcome of the competition can be influenced by the participants (for instance: the most beautiful or original entry wins), the contest is a ‘normal’ competition, to which no specific rules apply.

NB: Sweepstakes and contests must, of course, comply with the applicable terms and conditions of the specific social media platform that is used.

### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

An ever-present issue is the difficulty in distinguishing advertising (where advertising rules apply) from original content (falling within the scope of freedom of expression). An important question has been whether a social media post can be considered advertising, even if there is no form of collaboration between an advertiser and an influencer. The Advertising Code Committee has been very quick to consider posts as advertising, even in the absence of agreements regarding posts on social media. Advertisers should keep this in mind when concluding talent agreements.

**9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?**

- (1) A vlogger promoted infant formula in one of her vlogs (advertising is not allowed for this product category). There was no collaboration between her and the producer of the formula product, Nutricia. The ACC found that, regardless of the existence of a relationship, the vlogger was advertising for Nutricia. Since the vlog did not comply with the rules on infant formulas, it was found to be in breach of the law.
- (2) Supermodel Doutzen Kroes posted on Instagram about the brand Rivella, in which she did not sufficiently disclose her relationship with Vrumona, the producer of Rivella. This ad was found to be in breach of the RSM. She used a hashtag with the slogan of Rivella, which was not sufficient to make clear to her followers that there was a relevant relationship between Doutzen and Vrumona.
- (3) A vlogger reviewed various types of coconut oil. He was only positive about one type of coconut oil, and the complainant contended that there was a relationship between the producer of this oil and the vlogger. The vlogger stated that he only based his opinion on personal experience and his own research. As the advertiser also denied that there was any sort of collaboration, the vlogpost was found to fall within the scope of the vlogger's freedom of expression and could not be seen as advertising.

**10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?**

- Make sure that social media advertising is clearly recognizable as advertising. Take note of the explanatory notes with the RSM, which explain how to disclose a relevant relationship (NB these explanatory notes will be updated in 2018).
- If possible, conclude a written agreement with influencers. Oblige the influencer to comply with all the applicable rules.
- In the absence of a written agreement with an influencer, advertisers should at the very least actively inform the influencer about the RSM and other applicable rules. For instance, when sending an influencer a sample product, include a note in which the influencer is asked to review the product and post on his/her social media channels but is also asked to comply with the applicable rules.

Any rules specific to the product concerned should be listed (eg, avoid health claims when posting about food products).



NEW ZEALAND

### ***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The most common social media platforms used by New Zealanders are:

- YouTube;
- Facebook;
- Instagram;
- Pinterest;
- Google+;
- LinkedIn;
- Twitter;
- Tumblr; and
- Reddit.

### ***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The main legal controls applicable to advertising and marketing via social media in New Zealand are the same as those that apply to advertising in all media, and are not particular to social media.

Intellectual property, contract law, passing off and defamation are all areas of law that are relevant to advertising. In respect of legislation, the Fair Trading Act 1986 ('FTA') is the primary act controlling marketing and advertising in New Zealand.

The increase in marketing via social media has increased the attention on how the legal controls, which to a large extent were created in the context of more traditional marketing (eg print and television), apply to different concepts in the use of social media.

The FTA includes a general prohibition on conduct in trade that is misleading or deceptive or is likely to mislead or deceive. This general provision captures advertising in any form that may mislead or deceive consumers. It is an objective test and there is no need for someone to actually have been misled or deceived. This provision is often used in conjunction with more specific provisions that the advertising or marketing may also have breached.

Further, more specific prohibitions include making a false or misleading representation that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits. The concept of 'endorsement' has become more relevant in the context of social media, in particular if the endorsement has been paid for.

The FTA is enforced by the Commerce Commission. The Commerce Commission monitors social media and, where it sees online complaints that might raise issues under the FTA, may advise the complainant to visit the Commerce Commission website for information on how to make a formal complaint.

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Advertising Standards Authority ('ASA') is a self-regulatory body in New Zealand that regulates advertising in all media. The ASA issues codes of advertising standards ('Codes') for advertisements to comply with.

The ASA has a broad jurisdiction in relation to various forms of 'advertisements'. For the purposes of the ASA Codes of Practice, the term 'advertisement' is taken in the broadest sense and includes any form of advertising which promotes the interest of any person, product or service, imparts information, educates or advocates an idea, belief, political viewpoint or opportunity.

Members of the public can lodge a complaint with the ASA, free of charge, if they feel an advertisement has breached one of the Codes. Complaints are heard by an independent Advertising Complaints Board. There is a right of appeal to the independent Advertising Standards Complaints Appeal Board. If a complaint is upheld, the advertiser will usually be required to remove the offending advertisement. All decisions are published on the ASA's website.

As referred to above, advertising through social media will generally come within the ASA's jurisdiction and therefore the Codes will apply. There are currently a total of 14 Codes which cover various different topics, including advertising to children, environmental claims and advertising food. The Advertising Code of Ethics provides five basic principles (as well as a number of more specific rules):

- (1) All advertisements must comply with the laws of New Zealand;
- (2) No advertisement should impair public confidence in advertising;
- (3) No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer: This reflects the prohibition in the FTA. Advertisements must not, either directly or by omission or ambiguity, mislead or deceive consumers. They should not refer to a testimonial unless it is genuine, current, directly relevant and is typical and not an exceptional case. Advertisement should also not use tests, surveys, research results, or quotations from technical and scientific literature in a manner that is misleading;
- (4) All advertisements should be prepared with a due sense of social responsibility to consumers and to society: Advertisements should not contain content that would, in the context of the prevailing community standards, be regarded as offensive. They should not play on fear, or contain unacceptable violent behavior. They should not contain depictions of danger or illegal behavior or situations that encourage a disregard for safety, unless justifiable on educational grounds; and
- (5) All advertisements should respect the principles of free and fair competition generally accepted in business.

With increasing amounts of advertising occurring through social media platforms, the ASA issued a Guidance Note on Social Media in 2012. The ASA comments in the Guidance Note that they will have jurisdiction over representations made on social media platforms an advertiser uses to promote its brand or product over which the advertiser has a 'reasonable degree of control'.

#### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Where social media influencers are being paid by brands to advertise their products or services, there is potential for consumers to be misled into thinking that the influencer's content is editorial, where in fact it is an advertisement. Therefore, there is a risk of breaching the general prohibition in the FTA on engaging in misleading and deceptive conduct in trade.

The FTA also specifically prohibits a person in trade from representing that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits where doing so would be false or misleading. Therefore, marketing that implies or encourages consumer to infer that a social media influencer is sponsoring, approving or endorsing a good or service via editorial content, rather than making it clear such content is an advertisement, may breach the FTA.

The ASA's Advertising Code of Ethics requires that advertisements must be presented so that they are easily distinguishable and readily recognized as an advertisement. Therefore, where an influencer's content is really an advertisement, ie the content is controlled by the advertiser as opposed to the influencer, advertisers should take steps to ensure that viewers are notified that the content is advertising. The ASA Guidance Note on Social Media specifically states that paid-for Twitter endorsements should include the hashtag #ad. This is likely to be applicable to sponsored Instagram and other social media posts too.

### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

The inherent nature of native advertising means there is a risk that a consumer may be misled into thinking content is independent and editorial when it is in fact paid promotional material/advertising. Therefore, those using native advertising are encouraged to clearly disclose that the content is an advertisement, or risk being liable for misleading and deceptive conduct under the FTA. As with all advertisements, native advertising must meet the standards established by the ASA Code of Ethics, including the requirement that consumers are able to tell when content is being paid for. Note, however, that there is no required method of disclosure stipulated.

### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

An advertiser's liability for user generated content ('UGC') is an area that is receiving increased attention in New Zealand. Under the FTA, advertisers may be found liable for misleading representations. According to the ASA, this can extend not only to those representations made by the advertiser itself, but also UGC, which may fall within the ASA's jurisdiction where it is regarded as advertising. Therefore, representations made by consumers commenting on the social media page of a particular advertiser may result in the advertiser being penalized. The ASA has commented that this will be considered on a case-by case-basis, and that matters they take into consideration include:

- whether the advertiser solicited the submission of UGC and adopted it and used it in its advertising;
- whether the advertiser received unsolicited content which it then incorporated in its advertising; and
- whether the advertiser solicited the UGC (including, eg, through a competition entry) that was then posted on the advertiser's site.

### ***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

New Zealand has specific gambling laws that apply to sweepstakes generally, including where those sweepstakes are undertaken online (eg, via remote interactive gambling). Therefore, any person proposing to conduct an online sweepstake or contest via social media that will be open to New Zealand entrants should seek specific legal advice on the application of New Zealand's gambling laws to that sweepstake. In addition to this, social media platforms often have their own requirements relating to sweepstakes.

In relation to advertising specifically: In addition to the general restrictions on false or misleading conduct, the FTA provides that, where an advertiser promotes goods/services by offering consumers gifts or prizes, they must actually intend to provide the prize/offer and in the manner in which it was offered. Therefore the advertiser should describe the prize/offer accurately, including any relevant conditions and time limits, and generally refrain from misleading consumers about their chance of winning the prize or the terms of the offer.

### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

When advertising/marketing to New Zealand residents it is important to assess the subject-matter of the advertisement and consider any industry-specific considerations that may be applicable. As mentioned above, the ASA has established 14 Codes which set out a number of specific rules that advertisers must comply with in key consumer areas, including the sale of alcohol, gambling, promotion of medications, provision of financial services.

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Generally recent cases relating to social media have concerned the jurisdiction of the ASA to consider the complaints. This is due to the rise of social media advertising is a fairly new area and the ASA's jurisdiction on some issues is yet to be established.

A decision in late 2017 involving the company DB Breweries Limited considered in part the scope of the ASA's jurisdiction regarding UGC. The complaint was in relation to Facebook and Instagram pages that depicted the consumption of Double Brown beer, a product of DB Breweries. The complainant asserted that the content breached the ASA's Code for Advertising and Promotion of Alcohol for various reasons, including having content that promotes excessive drinking and irresponsible drinking behaviors. DB Breweries said it did not own or control the content of the pages in any way.

The Complaints Board considered that in order for the content meet the definition of 'alcohol advertisement' it needs to:

- be generated by an alcohol producer; and
- be a message controlled directly or indirectly by the advertiser; and
- have an intent to influence; or
- be advertiser-endorsed or distributed user generated content.

Because DB Breweries had not generated or controlled the content on the pages, or endorsed or distributed the UGC, the content subject to the complaint was not an alcohol advertisement and was therefore outside the jurisdiction of the Complaints Board. Therefore, the decision highlights that in order for UGC to meet the definition of 'advertisement' and come under the jurisdiction of the ASA, there must be some form of positive endorsement of the material by the advertiser.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

The Marketing Association's Social Media Marketing Best Practice Guidelines, referred to in the ASA's Guidance Note on Social Media, provide some guidance for advertisers/marketing when promoting on social media. Below are some of the key guidelines:

- Provide the name of the organization/brand being promoted.
- Distinguish between personal and organizational posts in order to ensure consumers can clearly tell the content is advertising.
- Make use of disclosure endorsements: If content is being paid for, ensure that consumers are notified of this.
- Disclose who manages social media channels: This provides greater transparency as to who is controlling the content and is therefore less likely to be misleading.
- Ensure that representation of your organization/brand is consistent across platforms.

Some other best practices that an advertiser should consider:

- If you are sending a product to an influencer with the intention of having them promote it on a social media platform, it would be prudent to enter into an agreement with them setting out their obligations in order to reduce the risk of them making false/misleading statements/representations about the product.
- Where advertisers control/manage a social media platform, they should develop their own social media policies, with clear terms of use for users posting UGC.
- An advertiser should also have a disclaimer on the social media platform that the advertiser is not responsible for UGC.



# NICARAGUA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms that advertisers use in our jurisdiction for advertising and marketing to consumers are Facebook, YouTube, Pinterest and Twitter.

We are not aware of any important global social media platforms that are not available or are not widely used in our jurisdiction.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The main laws and regulations governing advertising and marketing via social media in Nicaragua are:

- Consumers and Users Protection Act, Law No 842 (2013).
- Regulations to the Consumers and Users Protection Act, Decree No 36-2013 (2013).
- Competency Promotion Act, Law No 601 (2006)
- Regulations to the Competency Promotion Act, Decree No 79-2006.

The Consumers and Users Protection Act controls advertising and marketing practices as a whole. The Competency Promotion Act controls comparative advertising and also includes a general prohibition on unfair commercial practices. Also, it is important to underline that the general law in the areas of intellectual property, contract and defamation is very relevant with regard to advertising and marketing.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

With the exception of the beer industry, self-regulation is non-existent in Nicaragua. Therefore, the legal controls, as earlier outlined, are most important.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

At present, there is no difference in the main legal controls that apply to advertising and marketing via social media, as compared to offline and other online media platforms. Furthermore, we do not foresee any changes in the near future.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

At present, there are no specific laws, regulations, and self-regulatory rules in our jurisdiction related to native advertising via social media.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

At present, there are no specific laws, regulations, and self-regulatory rules in our jurisdiction related to the use of user generated content when advertising and marketing via social media.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The specific law related to sweepstakes and contests is the Consumers and Users Protection Act, Law No 842 (2013). However, there are no different or specific provisions regarding sweepstakes and contests via social media. Therefore, the general rules are applied.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

In view that there are no specific provisions for advertising and marketing via social media, comparative advertising and other forms should be done according to the provisions of the Competency Promotion Act.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

At present there have not been any judgments/decisions, and we do not foresee any changes/legislation relating to the field of advertising and marketing via social media in our jurisdiction.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

- Avoid comparative advertisement.
- Ask for a review of the advertising prior to the launch, to be sure you are complying with the local regulations.



NIGERIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms frequently used by advertisers in Nigeria include the following:

- Facebook;
- Instagram;
- Twitter;
- Pinterest;
- LinkedIn;
- Snapchat; and
- YouTube.

All these platforms are quite popular among Nigerian businesses seeking effective media for advertisement, although some, such as Facebook, Instagram and YouTube, are more popular, and thus more frequently used by Nigerian marketers, advertisers and businesses alike.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Currently, there are no specific laws and regulations specifically governing social media advertising and marketing in Nigeria. However, the traditional rules governing advertisement generally apply. These include:

- the Trademark Act;
- the Nigerian Code of Advertising Practice and Sales Promotion and the Nigerian Broadcasting Code (5th ed);
- the Cinematography Act of 1990;
- the Copyright Act;
- Regulations 1 and 2 of the Cosmetics and Medical Devices (Advertisement) Regulation of NAFDAC (National Agency for Food and Drug Administration and Control) 1995;
- the National Tobacco Control Bill (NTCB) 2009, 2012 & 2013;
- Regulations 1 and 11 of the Bottled Water (Advertising) Regulations of NAFDAC 1995;

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The main self-regulatory rules on advertising and marketing via social media in Nigeria include the following:

- advertising must tell the truth and must not mislead consumers;
- claims must be substantiated;
- consumers' online privacy must be protected;
- rule against plagiarism—disclaimers and disclosures must be clear and conspicuous;
- demonstrations must show how the product will perform under normal use;
- refunds must be made to dissatisfied consumers where this option has been provided;

- the rule against inflammatory adverts; and
- the rule of few words on pictures—pictures must not be obstructed by too many words.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws, regulations, and self-regulatory rules in Nigeria related to influencer marketing via social media.

However, the following advertising rules are adhered to by the advertising public:

- the duty to be honest;
- where a claim is made as to expertise, such a claim must not be false; and
- the duty of disclosure—a person who endorses a product, whether for money or for free or at a discount, or via some other sort of contract, must disclose the nature of that relationship.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

As relates to the use of influencers, native advertising and online reviews, it is important that companies make the proper disclosures so that consumers are not misled.

It is also expected that the influencer or endorser shows the source of the product as well as their relationship with such product (if any), especially where such relationship is bound to influence the response of the consumers to the goods.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific laws, regulations or self-regulatory rules in Nigeria related to the use of user generated content when advertising and marketing via social media. However, the following rules and guidelines relating to conformity with public morality are to be adhered to by the advertising public:

- the rule against plagiarism;
- an advert must not be politically, culturally or religiously inflammatory;
- an advert must have regard to the socio-economic and cultural realities of Nigeria; and
- an advert must be free of hate speech.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific laws or state legislation concerning the conduct of sweepstakes and contests via social media in Nigeria. Certain self-regulatory rules, however, serve as a guide in this regard, although they are not really binding. These are as follows:

- the rule against non-disclosure of all the rules of the completion (eg as regards who can enter, as well as those excluded under a checklist for giveaway);
- the rule not to offer up illegal products; and

- sweepstakes require a means of entry that does not require a purchase/consideration.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Other important issues to consider include:

- time management;
- insight as to the intent of the advert;
- organization;
- good design;
- honest communication & integrity;
- effective communication;
- nature of product; and
- access of target market to the internet.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

N/A

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Social media advertising is subject to the terms and conditions of the host platform's own terms of use. However, a few best practices include the following:

- full disclosure;
- adverts or marketing should not be misleading; and
- adverts/marketing should not infringe on trademarks or copyrights of any brand.

NORWAY

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms that advertisers use are Facebook, Instagram and YouTube. Snapchat is also used, but less than the other three.

The most important global social media platforms are all available, but What'sApp is not much used in Norway.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no particular Norwegian laws regulating advertising and marketing published through social media as such. Advertising and marketing via social media follows much the same legal controls as offline advertising and marketing, and advertising and marketing on other online media platforms. Also, as in all areas of advertising and marketing, intellectual property law, personal data law, general contract law and defamation law have to be taken into consideration.

The legal provisions in Norway relating to advertising and marketing are contained in the Marketing Control Act 2009. This contains a general prohibition on unfair commercial practices; and further contains special provisions relating to the protection of children, including a general prohibition on unfair commercial practices affecting children.

The Marketing Control Act controls advertising and marketing practices as a whole, including via social media. However, advertising and marketing in the context of social media gives rise to particular issues which make certain enactments more relevant than they may be elsewhere.

Key principles include:

- marketing messages to be designed and presented in such a way so that it is clear that it is a marketing communication;
- the consumer to be in control of the advertisements he/she receives, requiring the consumer to give prior, active, voluntary, express, specific and informed consent to receive electronic marketing;
- banner advertisements to comply with general legislative requirements; any conditions relating to any sales promotions, competitions, offers or gifts with purchase to be clear, transparent and easily accessible to the social media user; and
- marketing directed at children and young people under the age of 18 to follow additional requirements.

The Consumer Authority ('CA') (see below) has issued a number of guidelines of particular relevance to social media, including:

- Guide for labelling of advertisements in YouTube videos (2017);
- The Consumer Ombudsman's guidance on labelling advertising in social media (2017);
- Position of the Nordic Consumer Ombudsmen on social media marketing (3 May 2012);
- The Consumer Ombudsman's Guidelines for Bloggers on the Marketing Control Act;
- Guidelines on marketing by e-mail, SMS etc (MCT §15) (21 January 2013);
- Guidelines on Commercial Practices towards Children and Youth (September 2009);
- Guidelines on Advertising on the Internet (November 2005); and

- Mobile Content Services—Guidelines 2009.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The only self-regulatory rules on advertising and marketing in Norway concern the marketing of unhealthy food and drinks directed especially towards children (see <http://www.mfu.as/37532-English> for more information).

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Influencers must comply with the laws and regulations mentioned above. The CA emphasizes that it is the advertisers' responsibility to ensure compliance with laws and regulations when promoting through influencers (for more information see <https://www.forbrukertilsynet.no/eng-articles/advertisers-using-social-media-must-comply-with-the-marketing-control-act>).

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Please see answer 4. The CA emphasizes that the consumer should not be in doubt whether a post in social media is advertising or not.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Please see answer 4. The CA emphasizes that the consumer should not be in doubt whether a post in social media is advertising or not.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Advertisers using social media must comply with the Marketing Control Act. As far as sweepstakes and contests are concerned, the Marketing Control Act Section 18 is of importance, which states:

“Traders who in marketing offer consumers an additional advantage or an opportunity to obtain such an advantage, for example in the form of discounts, gifts, participation in competitions or games, shall ensure that the terms and conditions for making use of the offer are clear and easily accessible to the consumers.”

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

From 1 January 2018 the Consumer Ombudsman ('CO') changed its name to the Consumer Authority ('CA'). At the same time, it was given new and more efficient tools to stop illegal marketing, unfair contract terms and other violations of consumer protection laws.

The CA is an independent administrative body with the responsibility of supervising measures in the market, and which seeks to exert influence on traders to observe the regulatory framework. The CA considers cases following complaints from consumers and traders, but will also look at marketing measures on its own initiative.

The changes from 1 January 2018 mean, in short, that the CA itself can stop unlawful practices and impose sanctions against traders, whilst the Market Council becomes an appeal body. Decisions can be made in cases without negotiations first being carried out with the traders; and more types of offences can be sanctioned with direct administrative fines in the form of infringement penalties.

Although the CA is no longer obliged to negotiate with traders, dialogue, guidance and negotiations to arrive at voluntary solutions remain an important part of its activities.

The CA carries out supervision of the Marketing Control Act as well as supervising certain parts of the regulatory framework governing advertising in broadcasting. The CA and the Market Council have authority to issue decisions banning unlawful marketing and contract terms and conditions in standard contracts, when deemed necessary in the interests of consumers.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

N/A

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Best practice is regulated in:

- Guide for labelling of advertisements in YouTube videos ( 2017); and
- Consumer Ombudsman's Guidance on labelling advertising in social media (2017).



PANAMA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

There is no limitation in the use of social media platforms in Panama. Instagram, Facebook and Whatsapp are the social media platforms that are most widely used in the Panamanian jurisdiction.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The Panamanian jurisdiction does not have a specific law governing advertising and marketing via social media. The regulations governing advertising and marketing generally are :

- Law No 45 of 31 October 2007, and
- Executive Decree No 446 of 23 June 2009.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Whilst there are no specific regulations for advertising and marketing via social media in the Panamanian jurisdiction, a self-regulatory rule applicable in general to different situations is that advertising and marketing material should not portray behavior contrary to law, public order and morals.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

The Panamanian jurisdiction does not have a specific law or regulations in relation to influencer marketing via social media.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Whilst there is no specific law or regulations relating to native advertising via social media, aspects for this are regulated by Law No 45 of 31 October 2007 and Executive Decree No 446 of 23 June 2009.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

The Panamanian jurisdiction does not have a specific law or regulations relating to the use of user generated content for advertising and marketing via social media.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The Panamanian jurisdiction does not have a specific law or regulations relating to the conduct of sweepstakes and contests via social media. Notwithstanding the above, Resolution No 65 of 2 October 2002, issued by the Game Control Board of the Ministry of Economy and Finance, may be applicable, which regulates on the functioning of games of luck and chance and activities that generate bets placed through games systems of electronic communication.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The same rules that are applied to common advertising are also applied to advertising and marketing via social media.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

At this time there is no jurisprudence relating to advertising and marketing via social media in the Panamanian jurisdiction.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Please note that some key 'best practices' for advertising and marketing via social media in the Panamanian jurisdiction are:

- advertising should not portray behavior contrary to law, public order and morals; and
- all advertising and marketing material should be duly verified by your local lawyer.





# PARAGUAY

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms utilized by advertisers in Paraguay are:

- (a) Facebook (for the sales of mass consumption products), followed by:
- (b) Twitter (for interaction with the public in general),
- (c) Instagram (which use has grown considerably during the past two years and, in the year 2017 alone has registered an increase of users of 77%),
- (d) the professional network LinkedIn is also used by marketers and advertisers but on a much smaller scale.

There are no important global social media platforms not available for use, however, there are some platforms that remain unknown to the majority of the people and therefore not used by companies, (such as periscope).

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Regulation of advertising and marketing via social media is not specifically addressed by Paraguayan legislation, so in any given situation one has to refer to legislative bodies and regulations concerning advertising in general.

For example, the Law on Consumer Protection sets out the main guidelines for advertising and, inter alia:

- ensures that consumers have the right to adequate protection against misleading advertising, coercive or unfair commercial methods, by which advertisements posted by marketers and advertisers shall be direct, straight-forward and avoid any kind of ambiguity or deception in the offer of the product or service;
- determines that manufacturers, importers, distributors and sellers of products or services must provide the consumers with true, accurate and objective information regarding such products or services, which shall also be efficient and sufficient as to the features or characteristics of the same;
- determines that, with respect to products or services that when utilized may pose a normal and foreseeable risk, they shall be commercialized (and thus, advertised), with observation of the mechanisms, instructions and norms necessary to guarantee their reliability;
- (with reference to the publicity and advertisement themselves) establishes that any sort of misleading or deceptive publicity/advertisement is strictly prohibited. The Law also explains what is meant by ‘misleading’ advertising, namely any kind of advertising information, disclosure or communication that is partially or completely false or is capable of confusing consumers; and
- prohibits comparative advertising. Abusive advertising (meaning advertisements that, for example, display some sort of discrimination, or incite violence or the taking advantage of children) is also banned.

There are special regulations regarding some products, such as tobacco products, alcoholic beverages and pharmaceutical products, that should also be taken into account by advertisers when making publicity via social media platforms. For example:

- (a) the advertisement of prescription medicines or pharmaceutical products is prohibited;

- (b) publicity concerning tobacco products shall contain a disclosure, asserting that tobacco produces cancer and other respiratory diseases; and
- (c) the advertisement of tobacco products and alcoholic beverages cannot display pictures/images/footages of children or teenagers under 18, cannot be related to family environments or athletic/sports events, among other issues.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are no self-regulatory rules that specifically address the advertising and marketing of products or services via social media. However, the Advertising Self-Regulatory Code in Paraguay sets out the main principles concerning advertising and marketing in Paraguay which must be taken into account, and these are also applicable to advertising via social media. For example, the Code determines that advertising must respect human dignity, privacy and shall not induce the public to commit felonies or crimes; it shall respect the moral and good practices, it shall be accurate, truthful, avoiding deception or the prospect of misleading the consumers.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Influencer marketing via social media is not regulated in Paraguay. However, it is worth noting that there is a rule, which could apply to influencers and their advertisements/marketing strategies, concerning the traceability of the advertiser; whoever makes an advertisement or markets a product is subject to disclosing the origin of the product/service and also, the source of the publicity or advertisement.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no laws or regulations concerning native advertising via social media; however, such types of advertisement/practices are subject to the main regulations discussed in answer 2; in particular, that advertisers, influences, marketers, etc must avoid all types of misleading advertisement. For this reason it is our opinion that advertisers, marketers and influencers should disclose any contract or agreement they have with any corporation/individual for whom they are working or advertising products or services.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

The use of user generated content when advertising and marketing via social media is not regulated in Paraguay and such contents are subject to what is established in the copyright law and trademark law. It is doubtful that a user may have any claims regarding content he/she uploaded to a social network unless it is protected by copyright, for example. In any case, protection also depends upon, and is governed by, the agreements and terms of use of each social media platform.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific laws. They are governed by the laws and regulations concerning contests and sweepstakes in general.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

There are no other important issues to be considered when advertising or marketing via social media.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

We do not know of any recent judicial case concerning the advertising and marketing via social media in Paraguay. This is a field that is in its infancy and taking its first steps; although it is starting to be of great concern to the public in general.

However, we would like to mention a situation that took place just a few weeks ago, when a social-media influencer, model and actress, daughter of a well-known theatre actress and director in Paraguay, posted an article on Facebook and Instagram, alleging that all meat products, dairy products, and gluten-containing products are detrimental to people's health, supposedly based on scientific evidence. This had a major impact within the community, as such posts could lead people, especially teenagers, to think that such foods are bad for their health and cause them to remove such foods from their diets, which could have a harmful effect, particularly on children and teenagers. Although this matter caused a widespread reaction in the public at large, and with nutritionists and health practitioners in particular, such acts are not regulated by the Paraguayan legislation (at least, not specifically) nor is there an authority in charge; therefore, there are no sanctions to people, users, companies and influencers who provide false—and ultimately, harmful—information.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

In general, we would advise advertisers and marketers to observe the norms set forth by the Law on Consumer Protection and the Advertising Self-Regulatory Code, as well as the rules for publicity of specific products. In this sense, all advertisement should be truthful, clear, concise, not misleading, not deceptive, not abusive; the origin of the advertisement should be able to be traced and marketers and advertisers should avoid mainly comparative advertisement as well as unfair competition practices. Care should also be taken when using third parties' trademarks, copyright or the image of people, whether famous or not.



POLAND

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The social media platforms used by advertisers in Poland include Facebook, YouTube, LinkedIn, Instagram, Twitter, Pinterest, Snapchat, Google+ and other most popular worldwide platforms. We are not aware of any social media platforms that are not available for use in Poland; however, there are some social media platforms that are not widely used such as Quora, Steller or Airhoot.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

In Poland, there are no specific provisions regarding advertising and marketing via social media. Therefore, the general rules on advertising and marketing may apply, to be found, inter alia, in the Act on Combating Unfair Competition of 16 April 1993.

In terms of advertising, unfair trading practices include, in particular:

- advertising that is contrary to law or honest trade practices, or that offends human dignity;
- advertising that, by misleading customers, may affect their decision to buy a product or service;
- advertising that appeals to consumers' emotions by causing fear or drawing on the superstitions or credulity of children;
- a statement that, whilst in reality encouraging the purchase of products or services, gives the impression of neutral information;
- advertising that significantly intrudes into customers' privacy, in particular by bothering customers in public places, sending, at a customer's cost, products that were not ordered by the customer, or abusing technical means of communication.

When evaluating a misleading advertisement, all the elements of the advertisement should be taken into consideration, in particular those concerning the quantity, quality, ingredients, manufacturing method, fitness for a particular purpose, uses, repair or maintenance of the advertised products or services as well as the customer's behavior.

In the reality of social media, the regulations regarding 'undercover' marketing (stealth marketing) are of particular importance. Polish law proscribes any advertising which gives the impression of neutral information, including references to the quality of products made via social media by persons seemingly acting as private, impartial users whilst, in reality, acting in connection with a marketing campaign. Such activities also fall within the scope of the Act on Counteracting Unfair Marketing Practices of 23 August 2007, which forbids misleading omissions such as non-disclosure of the commercial nature of an activity undertaken by a business entity towards the consumer.

Other rules that are worth mentioning are set out in the Act of 29 December 1992 on Radio and Television Broadcasting. This Act provides that advertising tobacco products, alcoholic beverages, medical services, medical products, card games and mutual bets, psychotropic products and solarium services are forbidden. This Act applies solely to the defined on-demand audiovisual media service providers within all kinds of advertising, including via social-media.

Additionally, the regulations on SPAM may be relevant to marketing via social media. Under the Electronic Services Act of 18 April 2002, it is forbidden to send unsolicited commercial information to specified individual recipients by means of electronic communication, in particular via e-mail. This provision is also applicable to commercial messages sent, for instance, via Facebook. The

consent of the recipient is necessary to avoid violation. It may be argued that clicking ‘Like’ on the fanpage of the advertiser is equivalent to such a consent; however, the law requires that such consent is express and cannot be interpreted (derived) from a declaration of different kind.

There are also more detailed sectoral provisions on advertising in relation to the specific categories of object being advertised that should be complied with, also when advertising via social media. For example, under provisions of the Act on Upbringing in Sobriety and Counteracting Alcoholism of 26 October 1982 it is forbidden to publicly advertise and promote alcoholic beverages, with the exception of beer. Moreover, advertisement for beer must satisfy statutory prerequisites, such as that it is not directed minors, does not encourage excessive alcohol consumption and does not evoke associations with relaxation or leisure. Another example may be found in the provisions of the Pharmaceutical Law, which provides, inter alia, a prohibition on advertising medicinal products by publicly known persons, scientists or persons with medical or pharmaceutical education.

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The main self-regulatory rules on advertising and marketing are provided in Code of Ethics in Advertising which is a basic document of the Council for Advertising—a self-regulating body which comprises advertising and marketing associations as well as sector associations. The Council for advertising supervises compliance with the Code of Ethics and handles complaints from consumers and competitors in relation to any perceived infringements. The Code of Ethics does not distinguish between advertising via social media and other forms of advertising; advertising via social media is also the subject of the Council’s resolutions.

The Code of Ethics contains several principles regarding advertising that should be obeyed by advertisers, of which the primary one is that advertising activities shall be performed with due diligence, in accordance with the prevailing standards of decency, with a due sense of social responsibility, and should conform to the principles of fair competition. The Code is divided into chapters that regulate specific aspects of advertising; eg advertisements addressed to children, those containing ecological information, and sponsorship or direct marketing. Although, the Code does not legally bind the advertisers, the Council’s resolutions issued as a result of filed complaints filed may have a huge impact on the advertiser’s image.

### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

We are not aware of any laws/regulations or self-regulatory rules related to influencer marketing via social media.

### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are neither specific laws and regulations nor self-regulatory rules related to native advertising via social media; nor, indeed, does there exist a definition of ‘native advertising’ in Poland. General principles and provisions of Polish law regarding advertising and marketing apply.

For instance, under the provisions of the Press Law Act of 26 January 1984, advertisements should be duly marked in a manner that does not cause any doubts, and journalists must not conduct

hidden advertising activity, which aims to create financial or personal gain. These rules apply to advertising that takes place in the ‘press’ within the broad definition of that word given in this Act.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific laws, regulations or self-regulatory rules related to the use of user generated content. Moreover, there is no legal definition of ‘user generated content’, and so use of such content should be interpreted in light of general rules and principles set forth in Polish law.

The Polish Act of 4 February 1994 on Copyright and Related Rights protects an author’s copyright to each individual creative work, embodied in any form, regardless of its value, designation, or medium of expression. If a user’s content falls within the scope regulated by this Act, any use of such content should be preceded by the author’s consent, while respecting the author’s moral rights.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

From a legal point of view, conducting sweepstakes and contests via social media should be regarded as the provision of services by electronic means regulated in the Electronic Services Act of 18 April 2002, due to the fact that they are organized via the internet. This Act imposes an obligation on the service provider to create the rules governing terms of service, and in case of contests, these should comprise, inter alia the organizer’s data, a description of the prize, explanation how the winner is to be selected, conditions of participation and contest time period.

Sweepstakes, which contain an element of randomness, may only be conducted if specific requirements laid out in provisions of the Gambling Act are met. This should be confirmed by decision in the Director of the Tax Administration Chamber. Failure to fulfill these requirements may result in the imposition of high financial penalties.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

It is worth mentioning that the regulatory bodies for specific business sectors monitor advertising via social media. For instance, the State Agency for Prevention of Alcohol-Related Problems (‘PARPA’) considers fan-pages created by the alcohol manufacturers to be alcohol advertising, which is forbidden in Poland for any alcoholic beverages except beer (along with some other exceptions). In theory, such activity undertaken via social media may even result in criminal prosecution instigated by PARPA.

It is important to note that violations of the rules relating to advertising have recently been of particular interest to the consumer and competition regulator in Poland. If the violation threatens the collective consumers’ interests, the regulator may impose a fine amounting to 10% of the annual income of the perpetrator. Some of the recent decisions have specifically addressed the issue of advertising via the internet.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

We are not aware of cases that would be particularly groundbreaking as regards advertising and marketing via social media.

There was, however, a controversial advertisement of energy drink published on Instagram on the anniversary of the Warsaw Uprising last year. It presented an obscene middle hand finger gesture (flip off) with a verbal description 'Remembrance day. Screw all that's happened. What's important is what will happen'.

The case didn't come to court. The Council for Advertising resolved that that advertisement was not performed with a due sense of social responsibility and that it crossed the line of good manners and violated historical value; whereupon, the energy drink producer decided voluntarily to pay half million of Polish zloty to the World Association of Home Army Soldiers as an apology.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

There are no general 'best practices' for advertising and marketing via social media in Poland. However, there are several sectoral-specific documents issued in relation to good practices in advertising, such as:

- the Advertising Code of Polish Breweries, which, inter alia, indicates that advertising cannot in any way be addressed to people under 18 years of age; and
- the Code of Good Advertising Practices for Dietary Supplements, where it is provided that advertisement of dietary supplements should at least include the term 'dietary supplement' and the name of the entity that appears on the product.





PORTUGAL

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms that advertisers use in Portugal are Facebook, Instagram, Spotify and YouTube. As for other global social media platforms, Twitter is the only one that is not widely used by advertisers.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no specific laws and regulations for advertising and marketing via social media. The general rules for advertising apply.

Advertising is mainly regulated at a national level by the Advertising Code, which establishes the core principles and rules for advertising activity in Portugal.

The following are also of relevance:

- Unfair Commercial Practices Law, that prohibits those practices which do not employ the necessary professional diligence, and are likely to distort the economic behavior of the consumer; and
- Consumer Protection Law, which contains some rules concerning the right to obtain a certain quality of goods and services, according to the consumer’s legitimate expectations and information provided by the supplier/service provider.

It is also important to refer to some of the provisions of the Portuguese Civil, Criminal and Authorship Rights Codes which contain some important rights and limitations to some marketing practices used in social media, eg regarding defamation/libel, with the use of advertising means; or the use of a person’s image; the use of third party content or of User Generated Content, etc.

Finally, in certain situations privacy laws and personal data protection laws, should also be taken into consideration, especially those regarding privacy in the electronic communications sector that may apply to online marketing activities.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Association of Advertising Self-Regulation (‘ARP’)—previously called Institute of Self-Regulation for Commercial Communications (‘ICAP’)—and the Consumer General Directorate ([www.consumidor.pt](http://www.consumidor.pt)), are the main supervising entities which exercise some control over advertising and marketing practices as a whole, specifically to protect consumers from illegal commercial behaviors. They cover all types of media, including social media.

Though there are no specific self-regulatory rules on advertising and marketing via social media, ARP has drafted several codes of conduct and guides to key practice, namely:

- The self-regulatory Code of Conduct, based on the International Chamber of Commerce Code of Conduct and specifically on the international standard (ISO 14021);
- The Good Practice Guide on Digital Marketing Communications and Online Behavioral Publicity in the Context of Self-Regulation;

- Self-Regulation Code for Commercial Communication of Food and Beverages directed at Children;
- Code of Self-Regulation for the Commercial Communication on Alcoholic Beverages—Wines and Spirits.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific legal controls for influencer marketing via social media. Therefore the general rules regarding advertising provided in the Advertising Code and in other self-regulatory rules should be considered.

According to the general rules, advertising, and, by extension, ‘influencer marketing via social media’, must respect the principle of identifiability. In compliance with this principle, all advertising must be unequivocally identified as such, whatever the means used (Article 8 of the Advertising Code).

It is forbidden to use subliminal images to advertise without the addresses being aware of the advertising message (Article 9).

As for self-regulatory rules, although there are no specific rules for ‘influencer marketing via social media’ the rules set out by ARP should be considered. The ICAP Code of Conduct regarding Advertising and other Means of Marketing Communication states that the advertisers must take every measure to ensure that the consumer understands the commercial nature of the communication (Article D1).

The consolidated ICC Code on Marketing Communications again states that marketing communications must be clearly distinguished as such, thus the communication must be presented in a way that can be easily recognized as an advertisement and that allows the consumer to easily identify the advertiser.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Portuguese legislation does not provide specific laws, regulations or self-regulatory rules regarding native advertising.

The rules discussed in the answer to question 4 also apply to native advertising via social media.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user-generated content when advertising and marketing via social media?***

Portuguese legislation does not provide specific laws and regulations regarding User Generated Content (‘UGC’).

However, unlike native advertising and influencer marketing, there are self-regulatory rules that apply specifically to UGC.

The Good Practice Guide on Digital Marketing Communications and Online Behavioral Publicity in the Context of Self-Regulation states that UGC is considered marketing when the ‘end user creates

advertising for products, services, or organizations, or when such content becomes part of an organization's marketing strategy'.

The Good Practice Guide also foresees that UGC is considered digital marketing when the content is 'generated by third parties or as a result of viral marketing that has been appropriate or used by the merchant/advertisers'. Thus, to establish if a given case of UGC is to be considered digital marketing there are two questions that must be taken in consideration:

- Did the advertiser generate or distribute the UGC and/or viral material?
- If not, did the advertiser endorse the UGC and/or viral material generated by a third party?

If the answer to either of these questions is 'yes', the UGC in question will constitute a marketing communication within the established definition and, as such, the ARP is competent to analyze that UGC and, if the ARP concludes that the UGC violates its Code of Conduct, the advertiser in question must take all appropriate measures to correct or remove it.

In addition, it should be noted that the general rules regarding advertising provided in the Advertising Code, and in the specific legislation for each media used to advertise, will also be applicable.

Also, given that this kind of advertising and marketing uses content created by users of a system or service that is made available publicly on that system, it is also important to refer to some of the provisions of the Portuguese Civil, Criminal and Authorship Rights Codes which contain some important rights and limitations.

### ***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Current Portuguese law regarding prize draws does not specifically consider the medium used to conduct sweepstakes and contests. Therefore, the general provisions regarding prize draws must be considered.

Portuguese law has a general prohibition (under the Gambling Law, Decree-Law 422/89 of 2 December (last amended by Law 114/2017 of 29 December)) on prize draws (in which the chance of winning is dependent on luck/chance or a combination of skill and luck/chance), except those which are authorized by the General Secretary of the Ministry of Internal Affairs ('SGMAI'), under the terms and conditions authorized by law.

On the other hand, for skill-based contests (in which the chance of winning is dependent only on skill) there is no need to obtain said authorization or a registration and there are no specific rules limiting the terms under which they can be executed.

In light of this, in order to promote prize draws, it is necessary for the promoter to request prior authorization from the competent local authority.

There is also an issue concerning minors entering into prize draws and skill-based contests. Although Portuguese civil law admits that minors above 16 and under 18 can enter into certain agreements, contracts with minors may not always be upheld, and minors may not be bound by the terms and conditions of a contract to which they are a party. Therefore, it is necessary to seek the express consent of the parents/guardian when directing a prize promotion at minors.

### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

We are not aware of any important issues regarding advertising and marketing via social media other than those already stated above.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

We are not aware of any decisions or judgments specifically addressing these issues.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Even though there are no key 'best practices' for advertising and marketing via social media in Portugal, the Advertising Code establishes a number of key principles:

- legality,
- identification,
- truthfulness and
- respect for the rights of the consumer.

Advertising and marketing via social media must be clearly identified as such, whatever the media used. The use of subliminal images or other media exploring the possibility of transmitting advertising without the recipient being aware of the nature of the advertising message is also forbidden.

Advertising and marketing via social media should respect the truth and not misrepresent the facts. Therefore, all statements concerning the origin, nature, composition, properties and conditions in respect of goods or services advertised for purchase shall be accurate and capable of proof, at any time before the competent bodies.

Also, advertising and marketing via social media must not infringe consumers' rights and should not depict inappropriate behavior, such as encouraging the consumption of alcohol, the use of tobacco or contain obscene or sexually explicit content.

These principles are very consumer-protective. Moreover, other principles require additional care to be taken when featuring or addressing children in marketing communications eg a minor can only be principal addressee of an advertisement when there is a direct connection between minors and the service or goods being advertised.



PUERTO RICO

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used for advertising and marketing in Puerto Rico are Facebook, Twitter, LinkedIn, Instagram, Pinterest, and Snapchat. These are also the most widely-used in the continental United States.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The main regulations governing advertising and marketing in Puerto Rico are the Regulations Against Misleading Practices and Advertising, Reg Num 8599-2015, and the Raffle Regulations, Reg Num 7764-2009, governed by the Department of Consumer Affairs of Puerto Rico. The Lanham Act and the Federal Trade Commission also govern advertising and marketing in the jurisdiction of Puerto Rico.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The self-regulatory rules on advertising and marketing in Puerto Rico come from the same sources as those governing advertising and marketing in the United States. The principal ones are the Advertising Self-Regulatory Council, the National Association for the Deaf, and the Better Business Bureau.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Influencer marketing via social media is mainly regulated by the Federal Trade Commission ('FTC'). The main source of guidance with regard to this phenomenon are the FTC's Endorsement Guides.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

The main laws and regulations preventing deceptive and unfair practices in Puerto Rico are the FTC Act and the Regulations Against Misleading Practices and Advertising, Reg Num 8599-2015.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are two statutes that govern the extent of authorship rights and user generated content when it comes to advertising and marketing in social media:

- (1) the Puerto Rico Author Moral Rights Act of 2012, which grants authors the rights to attribution, integrity, and withdrawal of their works, and
- (2) the Copyright Act of 1976.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The main regulations governing advertising and marketing in Puerto Rico are the Regulations Against Misleading Practices and Advertising, Reg Num 8599-2015; and the Raffle Regulations, Reg Num 7764-2009.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

One important factor to take into consideration when advertising and marketing via social media in Puerto Rico is that the statutes and regulations governing marketing and social media in the United States also apply to Puerto Rico. Locally, the Consumer Affairs Department governs regulations on raffles and misleading practices and advertising. As a commonwealth of the United States, even though autonomous on various aspects, Puerto Rico's statutes and regulations in advertising and marketing are intertwined with mainland regulations and statutes.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Puerto Rico has no recent cases regarding advertising and marketing via social media. Federal cases and Federal Trade Commission decisions apply in Puerto Rico.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

The best practices for advertising and marketing in the Puerto Rico jurisdiction are the guides issued by the FTC.



ROMANIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Facebook, Instagram and Snapchat are the main social media platforms used in Romania for general advertising and marketing to consumers.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The law that regulates the advertising and marketing via social media and other marketing channels is Law No 148/2000 on Advertising. Law No 158/2008 on Misleading and Comparative Advertising is also applicable, having a focus on consumer protection and the avoidance of unfair commercial practices and the legal indicators to be considered by the Romanian authorities in qualifying a commercial marketing practice as misleading or comparative advertising.

With a strong focus on EU provisions, Romania has adopted Law No 365/2002 regarding e-commerce. This law regulates the free movement of the informational society, the commercial communication, the contract concluding and the liability of service providers.

Regarding the content of advertising on social media, the following are also applicable:

- Law No 8/1996 on Copyright and Neighboring Rights;
- Law No 84/1998 on Trademark and Geographical Indications; and
- Law No 11/1991 on the Repression of Unfair Competition.

General Data Protection Regulation No 679/2016 regulates the protection of personal data of natural persons when advertising and performing marketing strategies, including, but not limited to, social media advertising.

Government Emergency Ordinance No 34/2014 on Consumer Rights in Contracts Concluded between Consumers and Professionals regulates the consumers' withdrawal right from distance agreements.

Government Ordinance No 21/1992 on Consumers' Protection regulates consumers' rights in relation to the advertising and marketing methods developed by advertisers.

Law No 506/2004 on the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector should also be considered of interest.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The main self-regulatory regulation is the Code of Advertising Practice issued by the Romanian Advertising Council ('RAC'), the Romanian self-regulatory body in the advertising industry.

The above-mentioned regulation is not mandatory and comes as a recommendation for those who perform advertising and marketing strategies on social media platforms.

Also, the National Authority for Consumer Protection has issued Order No 72/2010 on the Consumers' Informing Measures, imposing obligations to all economic operators that perform online advertising.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific legal provisions on influencer marketing via social media in Romania.

The general laws described in answer 2 above, along with the Romanian Civil Code, are applicable to these types of activities.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no laws, regulations or self-regulatory rules in Romania related to native advertising via social media.

Article 29 Data Protection Working Party's Opinion No 5/2009 on Online Social Networking offers guidelines regarding contextual, segmented and behavioral marketing on social media platforms.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Law No 677/2001 on the Protection of Individuals with regard to the Processing of Personal Data and the Free Movement of Such Data is the national law that regulates the protection of personal data of the natural persons in relation to advertising and marketing user generated content. This will be replaced as of 25 May 2018, when the General Data Protection Regulation No 679/2016 will come into force.

We also consider of great impact the Guidelines on Automated Individual Decision-making and Profiling for the purposes of Regulation No 2016/679 issued by the Article 29 Data Protection Working Party.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Government Ordinance No 99/2000 regarding the Sale of Products and Services on the Market covers, to a great extent, actions to promote:

- sales at a reduced price: eg 'sold out', clearance sales, sales in factory outlets or factory warehouses, promotional sales, price reductions for products which have not been sold within three months of supply, price reductions for perishable goods, price reductions determined by the competition or imposed on the market; and
- direct sales: eg multilevel marketing, advertising lottery, the organization of contests etc.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

One of the main issues concerning advertising and marketing via social media is related to personal data protection/data privacy. The users of social platforms are often aggressively targeted by advertisers without their prior consent and without them being informed that their personal data is processed and transferred for marketing purposes.

Users are regularly spammed with unwanted advertorial content without them being able to opt-out easily from being profiled by the advertisers within social media platforms.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

In Romania, numerous complaints regarding data protection legislation infringements have been submitted to the Romanian Data Protection Supervisory Authority. Most of the complaints concern unwanted and unsolicited marketing communications received via social media.

In one high-profile cases a Belgian court banned Facebook from collecting personal data without prior consent and sentenced Facebook to a EUR 250,000 fine/day of infringement.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

The RAC Code of Advertising Practice represents a set of ethical rules to be observed by all those involved in advertising and any form of commercial communication, in order to provide a proper, honest and decent communication, observing the law and the practice principles in the internationally recognized advertising and commercial communication drafted by the International Chamber of Commerce ('ICC').

RUSSIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Russian social media landscape is represented by Vkontakte, with around 100,000,000 active users, and OK.ru, with around 50,000,000 active users, that dominate in this area. International players Facebook and Instagram are also popular in Russia.

Among the video hosting platforms, YouTube, and its Russian analogue RuTube, are widely used by advertisers.

As for non-available platforms, LinkedIn is the most significant one, which was blacklisted in the territory of Russia in 2016 due to non-compliance with Russian personal data laws.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Russian laws do not contain specific regulation with regard to social media. The Federal Anti-monopoly Service of the Russian Federation ('FAS'), a state advertising regulator, considers advertising campaigns on social media in the same manner as advertisements in general. The Federal Law on Advertising provides a list of key principles to be followed in order to comply with the laws.

First of all, advertising must be truthful, ie it must contain correct information, including information on the advantages of the purchased goods/services, any characteristics of the goods, price of the goods, purchasing terms, product warranty liabilities and so on.

Second, the advertising should be 'fair and trustworthy'. Advertisements must not contain incorrect comparisons or discredit the honor, dignity or business reputation of third parties, including competitors. Advertising of third parties' goods in a manner intended to discredit such third parties' reputation is prohibited and may be recognized an unfair competition in accordance with the antimonopoly legislation.

An advertisement shall be deemed inaccurate if it contains, inter alia, inaccurate information on:

- advantages of the advertised goods or services;
- any characteristics of the goods;
- prices/discounts;
- intellectual property rights, etc.

It is strictly prohibited to use swear words, rough and offensive images, as well as comparisons and expressions, inter alia, in respect of sex, race, nationality and age in advertisements.

Special regulations are set out with respect to the advertising of tobacco and alcohol, including on the internet.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are no specific self-regulatory guidelines developed in Russia with respect to advertising and marketing in social media. Certain guidance for online sources is provided by the ICC (International Chamber of Commerce)'s Code of Advertising and Marketing Communication Practice (<https://iccwbo.org/content/uploads/sites/3/2016/10/ICC-Consolidated-Code-of->

Advertising-and-Marketing-2011-English.pdf) (which underpins much of self-regulation worldwide), which is also applicable to social media, namely:

- When collecting personal data from individuals, care should be taken to respect and protect their privacy by complying with relevant rules and regulations. In particular advertisers should ensure that the individuals concerned are aware of the purpose of the collection and of any intention to transfer the data to a third party for that third party's marketing purposes. No collection of personal data is allowed other than collected for specified and legitimate purposes and not used in any manner incompatible with those purposes (Article 19);
- Websites devoted to products or services that are subject to age restrictions such as alcoholic beverages, gambling and tobacco products should undertake measures to restrict access of minors to such websites (Article D5);
- Digital marketing communications directed at children in a particular age group should be appropriate and suitable for such children (Article D5).

It was announced in September 2017 that the Russian Code of Advertising and Marketing Communications Practice was adopted during the IAA International Ad Issues Summit in St Petersburg; however, this has not yet been published.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Russian legislation does not contain special regulation on influencer marketing. The Federal Law on Information, Information Technologies and the Protection of Information used to contain provisions developed specifically for bloggers mandated to comply with advertising laws if they meet the criteria established by this Law. However, these are no longer in force, and therefore only general rules and regulations apply to influencer marketing.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws or rules on native advertising. General advertising self-regulation, and the Federal Law on Advertising will apply. This means that native advertising must comply with general legal principles and must be fair, true and accurate. Such advertising should not promote any illegal content.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific laws or regulations on user generated content. However, despite the lack of specific legislation, Russian authorities are now paying considerable attention to activity on the internet and treat information of any nature disseminated through sources targeting Russian users very carefully. To illustrate, the Federal Service for Supervision of Communications, Information Technology and Mass Media issued an official letter in August 2017 stating that users must adhere to legal requirements when publishing user generated content.

From 2012, breach of Russian legal requirements (ie information laws, personal data regulation or other legal rules) may result in an official ban of the information source (such as a website or webpage) and the inclusion of the source in the official blacklist managed by a Russian authority.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Promotional events, including sweepstakes and contests, are subject to general requirements of Russian legislation, such as civil laws as well as advertising, data protection regulations etc.

Certain requirements regarding the advertisement of promotional events are established by the Federal Law on Advertising, namely, that the advertisement must:

- refer to timeframes of the event;
- refer to the source (ie not to the information itself) where information about the organizer of the event, the event's rules as well as information as to the number of prizes awarded within the event, deadlines, the place and procedure for receipt of these prizes is disclosed.

From the perspective of Russian law, skill-based promotions may qualify as public contests or gambling activities. In such a case, civil law or gambling laws will apply.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

In addition to general principles of advertising regulation, the following requirements should be noted:

- all placed advertising must be translated into Russian or supported with a translation, except for trademarks protected in Russia that do not require translation;
- Russian law has specific provisions aimed at protection of minors. The key regulations are the Federal Law on Advertising and Federal Law on the Protection of Children against Information that may be Harmful to their Health and Development;
- advertising that comprises remote/distance selling must include the seller's name, registered address and the registration number of its entry in the State Registry of Legal Entities;
- special rules were adopted due to the upcoming FIFA World Cup in Russia aimed at protection of FIFA rights.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Nowadays, one of the hottest topics in online advertising area is: 'Is one's web-page advertising or not?'. It is a trend for companies to have an official group in social media providing information about their business. From a practical standpoint, website/social media page content is deemed to be general information and cannot be classified as advertising.

However, there are cases when this issue was considered adversely. For example, under Russian laws it is prohibited to promote alcohol on the internet, as well as any corresponding activity, unless it is general information about the company and the goods it offers. A Russian alcohol retailer posted news on a new product—vodka—and illustrated this news with a banner. The banner attracted attention to a particular product and had a promotional nature. Therefore, it might not be considered general information about the seller or its goods and the FAS decided that website materials should be classified as advertising.

In another case, a Russian bank posted an advert targeting teenagers through Instagram, which contained a slang word referring to a certain criminal subculture. The FAS initiated proceeding against the bank claiming use of foul language in advertising. The case is currently under consideration.

### ***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Due to lack of any clear regulation of native advertisement, VKontakte, a major social media in Russia, requested the official opinion of the FAS with respect to paid messages regulation. The FAS confirmed that it is not required to distinguish such messages from any other by marking them with 'ad' or 'advertising' notice if posted in social media.

Facebook users complained to the FAS due to disseminating of an unlawful advertisement of smoking blends (drugs) over social media. According to Facebook policies, any advertisement of drugs is prohibited. Facebook took proper measures to remove such illegal content and no penalties or other liability issues, such as blacklisting the social media in Russia, were raised against Facebook.



SERBIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Most of the global social media platforms are available in Serbia. The most popular social network is Facebook, but advertisers also use (for marketing purposes) YouTube, Instagram, LinkedIn, as well as Viber and What'sApp. So-called 'influencer marketing' is becoming more and more popular, but there is no official data about this type of 'online' advertising.

To the best of our knowledge, the most important media buying agencies active in the Serbian market are using, or even developing, particular tools for 'measurement of the influencers' in order to track down and use the most important individuals for the purposes of advertising.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There is no separate regulation concerning advertising and marketing via social media. All types of advertising (print, radio, TV, online, direct marketing etc) are regulated by the general Law on Advertising.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The most important self-regulatory rules in the area of advertising (in general) are developed within the Serbian Branch of the IAA (International Advertising Association). IAA Serbia has drafted a Code of Marketing Communications. This Code also covers 'advertising by the use of digital media'. There are also initiatives for launching a self-regulatory body whose main goal will be to monitor the implementation of Code in practice and to give opinions as to the compliance of a particular campaign.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There is no separate regulation that covers the area of influencer marketing on social media. However, the Law on Advertising covers so-called 'online advertising'. Article 45 defines 'online advertising' as advertising which uses web-presentation, social network, application or any other form of online communication, where the contents of the advertising 'unambiguously indicates that it is addressed to advertisement recipients from the Republic of Serbia and that the advertised goods or services can be purchased and/or delivered on the territory of the Republic of Serbia'. Although, 'influencer marketing' is not specifically recognized, the definition of 'online marketing' is broad enough to include also this type of marketing.

The most important area specific to online advertising relates to the responsibility of the advertising platform. This is treated as an 'intermediary', which means that it is responsible only upon notice from the controlling body (the 'Notice and Take Down' system in online advertising). All other (general) rules that are applicable to other forms of advertising are also applicable to 'online advertising' (eg, rules concerning surreptitious and misleading advertising, rules related to the protection of children and minors, limitations on the advertising of alcohol and gambling, prohibition of discrimination etc).

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

The Law on Advertising regulates native advertising. In particular, Article 12 forbids surreptitious advertising. Article 13 requires, where advertising appears together with other information of a non-advertising nature, that the advertisement be clearly marked with recognizable sign. In other words, native advertising is allowed if it is properly marked by ‘graphical, visual and/or audio sign which, subject to the method of advertising, characterizes a particular message as advertisement (eg “paid media space”, “advertisement” and the like)’. In other cases, where there is no appropriate mark, native advertising will be treated as surreptitious and therefore forbidden. The rule is applicable for all advertising platforms, including social media.

The Code of Marketing Communications also has rules that could be applied to native advertising, for example Article 8(2) of the Code prescribes that a ‘marketing communication should not hide its commercial purpose. Therefore, a communication that promotes the selling of a particular product should not be presented, for example, as research, user generated content, a private blog or independent survey’.

In addition, the self-regulatory body for the press (and informative portals), the Press Council, has developed its own rules, the so-called ‘Guidelines for the Implementation of the Journalists’ Code of Ethics in the Online Environment’, which also have provisions relevant to native advertising. These state, inter alia, that every type of commercial advertising and political propaganda should be clearly separated from the journalistic and user generated content. Such separation should take account of the level of media and digital literacy of the user. Promo content should be marked pursuant to the regulations and self-regulatory instruments which prescribes the rules on advertising (for example ‘paid area’, ‘advertising message’, ‘promo content’, ‘Advertorial’ etc.).

Therefore the most important regulatory and self-regulatory rules recognize the native advertising, and in all such rules it should be properly marked as commercial content.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

See answers 2–5.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no separate rules relating to games of chance and other similar contests via social media; the general rules are applicable, depending on the nature of the contest.

The most important regulation is the Law on Games of Chance (governing the conditions for organizing the contest) and the Law on Advertising (concerning limitations on advertising this particular service).

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The important issue is that the whole ‘social media phenomenon’ is relatively new, therefore, its marketing potential as an advertising platform has been recognized only recently. Data on the value of the media market in general, and percentage of the online (digital) market shows that the industry still doesn’t use this advertising platform to its full potential. Pursuant to Nielsen Estimate, in 2008, digital was only 1% of the total value of the market. On the up-side it is that rare market which has stable growth, and in 2016 it was over 13% of the market, but this still is very low comparing to TV advertising (above 55%).

This aspect of the market dictates the extent of the regulation and regulatory control. This can be seen, for example, in the area of political marketing, where the advertising of a political party could be forbidden on TV by reason of it being in breach of the rules relating to the content of the advertising message, but it could be freely distributed, for example, via YouTube, although the same rules are (in theory) applicable on both platforms. As TV is still the predominant media platform in Serbia, most of the available resources for enforcement of the advertising rules are focused on TV.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

One of the main problems is the control of advertising via social media. Although we have rules, the state bodies responsible for ensuring compliance with the advertising rules do not have the capacity to check compliance across the board. For example, under Serbian Law, online advertising of alcoholic beverages above 20% proof (eg whisky) is not allowed; but, in practice there are clear cases of such advertising. The same is true for advertising gambling services—in Serbia only the companies that hold a gaming license can be advertised under the provisions of the Law on Advertising, but in practice, there are many companies that are advertised via social networks which don’t have such a license. On the other hand, major companies don’t want to risk being caught breaking the law, and in most cases, comply with the regulation.

See also the answer under 8 above.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

Unfortunately, there are many cases of malpractice, for reasons of:

- the above-mentioned rules being relatively new (for example, the Law on Advertising was passed in 2016);
- the specifics of the market; and
- the nature of the regulatory control.



SINGAPORE

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

There is an increasing trend amongst advertisers for using social media. Facebook, WhatsApp, LinkedIn, Twitter, Google Plus, Instagram, WeChat, YouTube, Line and Pinterest are the preferred social media platforms for advertising and marketing to consumers in Singapore. However, most of the important global social media platforms are available for use and are accessible in Singapore.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The Singapore Code of Advertising Practice ('SCAP'), which is administered by the Advertising Standards Authority of Singapore ('ASAS'), sets out the basic framework for the regulation of advertising and marketing in Singapore (including, but not limited to, advertising and marketing via social media). In addition, there are specific statutes regulating advertisements of certain products and services, such as the sale of tobacco, pharmaceuticals, etc. Since social media encompasses 'online forms of communication', the requirements stipulated in a plethora of other laws, rules and regulations, including, but not limited to, the Internet Code of Practice, the Electronic Transactions Act, the Computer Misuse Act and the Penal Code, will need to be adhered to. Further, the ASAS has recently published Guidelines for Interactive Marketing Communication & Social Media.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The SCAP sets out a number of key principles in relation to advertising in all forms of media in general (and which equally applies to advertisements via social media):

- (a) all advertisements should:
  - (i) **be legal:** The content ought not to contain anything that is illegal or which might incite persons to break the law. Further, such activity should not be condoned in advertisements. Further, advertisements should not contain anything that contravenes the ethical code of recognized professional bodies in Singapore,
  - (ii) **be decent:** The content ought not to contain anything that may be deemed to offend the standard of decency that prevails in society,
  - (iii) **be honest:** The content ought not to abuse the trust of its users or exploit their lack of experience, expertise or knowledge,
  - (iv) **avoid fear, superstition and violence:** The content should not contain anything that might lead or lend support to acts of violence,
  - (v) **be truthful:** Advertisements ought to be honest and must not be misleading,
  - (vi) **be safe:** The content should not show a disregard for safety,
  - (vii) **protect children and young adults:** The contest should not exploit the natural credulity of children, and
  - (viii) **uphold social and cultural values:** Regard should be had to the prevailing social and cultural norms;
- (b) all advertisements should be prepared with a sense of responsibility to the consumer and society;

- (c) all advertisements should conform to the principles of fair competition generally accepted in business, including:
  - (i) non-denigration,
  - (ii) non-exploitation of goodwill, and
  - (iii) non-imitation;
- (d) All advertisements shall not subvert the shared values in Singapore’s society including:
  - (i) nation before community and society above self,
  - (ii) family as the basic unit of society,
  - (iii) community support and respect for the individual,
  - (iv) consensus, not conflict, and
  - (v) racial and religious harmony;
- (e) All advertisements shall not subvert Singapore’s family values of:
  - (i) love, care, and concern,
  - (ii) mutual respect,
  - (iii) filial responsibility,
  - (iv) commitment, and
  - (v) communication; and
- (f) no advertisement should bring advertising into disrepute or reduce confidence in it as a service to the industry and to the public.

In addition, the Guidelines for Interactive Marketing Communication & Social Media published by ASAS set out the following general principles:

- All marketing communication must be identified as such and distinguished from editorial or personal opinions.
- Marketing communication should be clearly distinguishable from personal opinions and editorial content, and should not be made to appear like them.
- Where there exists a connection between the endorser and the marketer that may materially affect the credibility of the endorsement, such a connection must be fully disclosed.
- The subject descriptor and context should not be misleading.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Some of the general principles in relation to influencer marketing via social media are as follows:

- To the extent possible, the segment in the ad portraying the influencer and/or his/her opinion ought to be genuine and related to the personal experience of the influencer.
- Care should be taken to ensure that the influencer is indeed a real person; in other words, the influencer portrayed should not be based on a fictitious character so as to give the impression that real people are involved.
- Any exceptional experience of the influencer (ie which do not reflect the experience that an average user of the product would ordinarily expect to have) should not be used.
- Where a connection exists between the influencer and the marketer that may materially affect the credibility of the endorsement, such a connection must be fully disclosed.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

As per local practice, ‘native’ advertising generally refers to publications which resemble the publisher’s editorial content but is paid for by an advertiser and is intended to promote the advertiser’s product and/or service. The SCAP sets out certain principles which need to be adhered to in that regard:

- The advertiser and the publisher have an obligation to ensure that anyone who looks at the advertisement is able to see, without reading it closely, that it is an advertisement and not editorial matter.
- The word ‘advertisement’ should stand alone and should appear on top of every page in such size and font as to be easily seen.
- If the advertisement occupies part of a page, it should be separated from any adjacent matter by a distinct border.

For the avoidance of doubt, the above are only some of the general principles which need to be complied with.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Some of the general principles which apply in relation to user generated content are as follows:

- Where marketers use social media tools to encourage, measure and trace user engagement in relation to user generated content, marketers must not boost user engagement through fraudulent means.
- The purchase of ‘bulk’ likes is not permitted.
- The creation of fake accounts is not permitted.
- The use of programs that generate the said content and/or page views, is not permitted.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The Common Gaming Houses Act stipulates that any person who:

- (a) announces or publishes or causes to be announced or published, either orally or by means of any print, writing, design, sign or otherwise (including, but not limited to, via social media), that any place is opened, kept or used as a common gaming house, or in any other manner invites or solicits any person to commit a breach of the provisions of the said Act; OR
- (b) conducts in or through any newspaper or any other periodical publication (whether via social media or otherwise), or in connection with any trade or business or the sale of any article to the public:
  - (i) any competition in which prizes are offered for forecasts of the results either of a future event or of a past event the result of which is not yet ascertained or not yet generally known; or
  - (ii) any other competition success in which does not depend to a substantial degree upon the exercise of skill,

shall be guilty of an offence and shall be liable on conviction to a fine of not less than \$5,000 and not more than \$50,000 and shall also be punished with imprisonment for a term not exceeding 3 years.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Please refer to answers 2 and 3.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Cases in relation to advertising and marketing are seldom put in the public domain in Singapore, as parties generally settle the matter out-of-court and/or before the ASAS issues a public decision. Be that as it may, there have been a few cases which have been reported in the media in the past, one example is the dispute between Singtel, StarHub and M1 (as to which see <http://www.straitstimes.com/singapore/singtels-controversial-campaign-good-wake-up-call-for-social-media-marketing-say-experts>).

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Please refer to answer 3.

SLOVAKIA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Currently, the most frequently used social media platforms in Slovakia are Facebook and YouTube.

In a business environment, LinkedIn is also very popular.

Other global social media platforms such as Twitter, Instagram, Snapchat, Google+ etc are also available and regularly used by advertisers.

The most popular local social media platform in Slovakia is a dating app, Pókec.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There is no special legislation regulating social media advertising in Slovakia. Relevant rules are scattered between various laws, including those covering advertising in general, unfair competition, data protection and consumer protection.

Advertising in general is regulated primarily by the Act on Advertising which lays out the general principles of advertising, as well as basic requirements for the content and form of advertising. These principles and requirements are applicable to all forms of advertising, including social media advertising.

Other rules that must be taken in consideration are contained in the Commercial Code (unfair competition rules, including misleading advertising), Civil Code (personality protection), Copyright Act (authors' rights), Consumer Protection Act (consumer protection), Data Protection Act (personal data protection), Trademark Act, Act on Electronic Communications, Act on Retransmission, Act on Digital Retransmission, etc.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Self-regulatory rules for advertising and marketing via social media are mainly contained in the Code of Ethics for Advertising Practice issued by the Slovak Advertising Standards Council (Slovak member of EASA). The Code of Ethics is a general regulation applicable to all forms of advertising, including advertising and marketing via social media, and contains general principles and standards of advertising as well as requirements for the advertising of specific goods and services. Although the Code of Ethics does not replace or supplement the legal regulation, its principles are generally respected by advertisers in Slovakia.

Since 2008 the Rules for Online Advertising have been adopted by IAB Slovakia, the biggest association on the Slovak digital market, representing leading Slovak publishers, media agencies and other important players active in online advertising in Slovakia, with the aim of establishing a single set of rules and standards for the online advertising.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws or regulations related to influencer marketing via social media, despite the fact that this form of advertising has become very attractive for advertisers in recent years. In the absence of specific rules, general binding and self-regulatory rules apply.

A basic (implied) requirement for influencer marketing via social media is a clear disclosure of and recognizability of relationship between the influencer and the advertiser. According to the Code of Ethics, there is a relationship between advertiser and influencer if the communication process initiated by the advertiser or a person authorized by the advertiser is carried out in return for remuneration or other consideration. The Code does not specify the forms of such consideration. Whilst any kind of material consideration is clearly caught by the rules, it is questionable if a reward in form of increase of number of clicks or followers would be also regarded as consideration establishing a link between the advertiser and the influencer.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Again, there are no specific laws or regulations in Slovakia related to native advertising via social media, thus general binding and self-regulatory rules apply.

In first place, the regulators would assess if the native advertising is clearly distinguishable from the remaining content of the platform. According to the Code of Ethics, each ad must be identifiable as such. Native advertising via social media should therefore always be transparent and visibly marked as such in order not to confuse the users of the platform. Without a clear disclosure, the advertiser and the media operator could be in breach of general requirements for truthfulness and honesty of advertising.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

General binding and self-regulatory rules also apply to the use of user-generated content when advertising and marketing via social media.

According the Code of Ethics, user-generated content within social networks, blogs or similar virtual platforms is considered as advertising, and, as such, subject to assessment by the Advertising Council, only if such content falls within the general definition of advertising.

Advertising for the purposes of the Code of Ethics means the communication process initiated by advertiser or a person authorized by the advertiser, as well as the content resulting from this communication process, if:

- this communication process is carried out in return for remuneration or other consideration, or
- the purpose of the communication process is to influence the behavior of the consumer, in particular to provide the consumer with information on the product, activities or targets of the advertiser, or advertiser's project of a charitable or non-commercial nature.

If the user-generated content falls within the definition of advertising, it must comply with all requirements for advertising, including truthfulness, decency, honesty and due sense of responsibility vis-à-vis consumers.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

General binding and self-regulatory rules valid in Slovakia also apply to conducting sweepstakes and contests via social media.

Sweepstakes and marketing contests are generally carved-out from the strict regime of the Act on Hazardous Games and represent a very popular marketing tool in Slovakia. Binding laws as well as self-regulatory rules emphasize the requirement for transparency and require a clear disclosure of all relevant information regarding the contest. Without a clear disclosure, the advertising in form of sweepstakes and contests could be easily found misleading, whereas a simple potential to mislead and affect economic behavior of a consumer is enough for breach of the law.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

A typical issue in advertising and marketing practice in Slovakia is the misleading nature of advertising. As there are no specific rules for advertising via social media, many issues pertaining to this form of advertising are subsumed under the general provisions on misleading advertising.

According to the Commercial Code, misleading advertising is advertising which misleads or could mislead a person to whom it is addressed and which may affect the economic behavior of such person or which harms or may harm another competitor or consumer.

According to the Code of Ethics misleading advertising is advertising which in particular:

- misleads the average consumer or significantly influences or is likely to significantly influence the economic behavior of the average consumer in relation to the product in a manner which prevents him from making a qualified decision, or
- transmits in unclear, incomprehensible, multi-meaning or inappropriate manner information essential to the average consumer for making a qualified decision; or
- uses another misleading business practice.

Both definitions of misleading advertising are quite broad. As mentioned above, a simple potential to mislead a consumer and affect his/her economic behavior is enough to constitute a breach of the law/self-regulatory rules.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Most of the recent cases relating to advertising and marketing on the internet in Slovakia have concerned ‘traditional’ issues regarding advertising content, such as the misleading nature of claims, missing or untrue information, offensive claims or images, insufficient protection of minors, etc. Significant decisions relating to different pitfalls of advertising via social media are still to come.

***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

‘Best practices’ for advertising and marketing via social media in Slovakia include:

- transparency (eg fair disclosure of relationship between advertiser and influencer),

- disclosure of relevant information (eg adequate disclosure of all material terms and conditions of sweepstakes and contests),
- clear identification of native advertising, fair acting with respect to customers' reviews (eg avoiding manipulation with customers' reviews, avoiding false profiles and reviews, etc.), and
- fair and transparent acting in general.



## SOUTH AFRICA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The most widely-used social media platforms in South Africa for purposes of advertising and marketing to consumers include Facebook, Twitter, Instagram, YouTube and LinkedIn. In South Africa, most global and prominent platforms are available to the public.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

At present, social media advertising is not regulated in South Africa by way of any specific legislation. However, all advertising and marketing, including advertising and marketing via social media, must comply with the Consumer Protection Act 68 of 2008 ('CPA'). The CPA contains specific provisions relating to the marketing of goods and services in South Africa and sets general standards to ensure that the public is not misled.

In short, the CPA provides that a supplier of goods or services may not, when marketing a product:

- make a false, misleading or deceptive representation to consumers as to the material facts relating to a product; or
- fail to correct an apparent misapprehension on the part of consumers.

Such conduct includes instances where a supplier falsely states, or implies, or fails to correct an apparent misapprehension on the part of a consumer concerning the ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval or the particular standard, quality, grade, style or model of a product when this is not true.

Furthermore, a supplier may not use exaggeration, innuendo or ambiguity as to a material fact pertaining to a product.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Advertising Standards Authority of South Africa ('ASASA') is a self-regulatory body and plays a significant role in the regulation of advertising in South Africa.

The Code of Practice of ASASA ('ASA Code') requires that advertising should be:

- legal, decent, honest and truthful;
- prepared with a sense of responsibility to the consumer;
- conform to the principles of fair competition and business; and
- not bring advertising into disrepute or reduce confidence in advertising.

Furthermore, an advertiser must be able to substantiate all claims in marketing or advertising material that are capable of objective substantiation, by way of documentary evidence.

In addition to the ASA Code, advertisers and marketers may also need to comply, to the extent applicable, with the codes of conduct of the Direct Marketing Association of South Africa or the Wireless Applications Service Providers Association.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

No specific legislation deals with influencer marketing via social media. However, given the broad scope of the definitions of ‘advertising’ and ‘advertisement’ within the CPA and the ASA Code, influencer marketing may well be regarded as advertising. When bloggers/influencers post on social media in relation to an advertiser’s products or services, those posts could be regarded as advertisements, because they are intended to market, promote, advertise or publicize the advertiser or the relevant goods or services. Accordingly, this would also require compliance with the CPA and ASA Code. Influencer marketing should therefore comply with the requirements of fair and honest marketing and not imply a false or misleading representation.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Despite there being no specific reference to native advertising in the CPA, it can be inferred that such advertising is subject to the CPA’s provisions in ensuring that fair and responsible marketing is adhered to. Advertisers should ensure that native marketing is conducted in a manner that is not misleading, fraudulent or deceptive in any way. Furthermore, the Advertising Code of Practice requires that ‘advertisements should be clearly distinguishable as such whatever their form and whatever the medium used’.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There is currently no legislation that specifically deals with the use of user generated content when advertising and marketing via social media.

User generated content specified for use or inclusion in advertising and marketing via social media may (depending on the nature of the content) amount to personal information as specified in the Protection of Personal Information Act 2013 (‘POPI’). However, POPI is not yet in force and will only become effective on a date to be determined. Once POPI is fully in effect, it will apply to any person or public or private body who determines the purposes of and means for processing of personal information (‘responsible party’) as well as third parties who process personal information for responsible parties (‘operators’). An advertiser, as a responsible party, and its operators are thus required to comply with the requirements for lawful processing of personal information as specified in POPI.

As far as user generated content is concerned, it is worth mentioning the Films and Publications Board’s draft Online Regulation Policy. If the Policy is implemented, advertising and marketing platforms would have to ensure that content posted on their online platforms is not offensive, specifically against children. An online advertising platform would also be required to report any suspicious behavior relating to the content posted by users. Failure to do so would result in the imposition of fines or penalties.

South Africa’s exchange control system might also have an impact on promotions and other activities that involve user generated content. If a promoter intends to obtain ownership of the intellectual property rights in user generated content, and the promoter is not a resident of South

Africa, users will need to obtain exchange control approval in order to assign their rights to the non-resident promoter.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The CPA governs the running of promotional competitions (sweepstakes/chance-based promotions). Although no reference is specifically made to conducting these via social media, it would follow that compliance with the CPA's provisions would still be required for them. Such competitions do not require permits or registration. However, the CPA prescribes the required content of promotional offers relating to such competitions, and the running of such competitions must be supervised by an independent auditor. In contrast, contests (skill-based competitions) are not regulated, but must still comply with general advertising law requirements.

In addition, once POPI comes into operation, advertisers will have to ensure compliance with POPI in respect of all personal information that emanates from South Africa, for example when hosting online competitions in which South African consumers may participate.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

South Africa is a constitutional democracy and it is therefore important to note that all legal issues, including those relating to advertising, will be viewed through the prism of the Constitution. In terms of advertising, constitutional issues, such as the right to equality and freedom of expression, can be relevant. In terms of cultural considerations and public morals, South Africa, being a very diverse country, has widely-varying cultural and moral norms, depending on, for example, race, socio-economic factors, language, gender and religion.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Currently, social media is an undeveloped area of law in South Africa and there is not much case law on this subject. There has been a steady rise in the number of defamation cases emanating from social media platforms, where the court and tribunals have had to rule on issues relating to defamatory comments posted on social media sites. However there does not appear to be case law specifically dealing with advertising and marketing via social media.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Advertising claims may not, directly or by implication, omission, ambiguity, inaccuracy, exaggeration or otherwise, mislead the consumer. The facts contained in an advertisement must be capable of being proven truthful. Conspicuous disclaimers and footnotes are allowed, but cannot be used to correct an otherwise misleading claim. They may only clarify a claim.

In terms of the ASA Code, advertisements must be clearly distinguishable as such and, in respect of electronic media, particular care should be taken to distinguish clearly between program content and advertising. Where there is the possibility of confusion, advertising should be identified in a manner acceptable to the ASA.

It should be noted that ASA was placed in business rescue in October 2016, but remains operational at this stage. Despite the current jurisdictional limitations and financial situation of the ASA, the ASA Code sets out the conditions and requirements for fair and acceptable advertising in South Africa. As such, it is advisable to ensure that all adverts that are directed at South African consumers should comply with the ASA Code.



SPAIN

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media used in Spain by advertisers for advertising and marketing to consumers are: Facebook, Twitter, Instagram and YouTube. Others used are: LinkedIn, myspace, Flickr, Pinterest, Vimeo and Vine.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The main laws governing advertising and marketing in Spain are:

- Ley General de Publicidad ('General Advertising Law');
- Ley 3/1991 de Competencia Desleal ('Unfair Competition Law');
- Ley 34/2002 de Servicios de la Sociedad de la Información y de Comercio Electrónico (Law on Services of the Information Society and Electronic Commerce ('LSSI'));
- Ley Orgánica 15/1999 de Protección de Datos de carácter personal (Organic Law on Protection of Personal Data ('LOPD')); and
- RDL 1/1996, enacting the consolidated text of Ley de Propiedad Intelectual ('Intellectual Property Law').

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The Spanish advertising self-regulation association ('Autocontrol') has elaborated two important self-regulation codes in advertising and marketing.

The Code of Advertising Conduct is based on the ICC International Code of Advertising Practice and defines the basic principles of advertising which are truthfulness, legality, honesty and loyalty of commercial communications.

The Code of Ethics of Electronic Commerce and Interactive Advertising ('Confianza Online') contains specific regulations on advertising in electronic communications media.

These Codes are binding on the members of the association. At the same time, they serve as a guideline for practices with no existing legal framework.

Compliance with the decisions of Autocontrol in respect of complaints as to advertising practices is mandatory for its members and non-members who expressly accept the competence of the jury, and is voluntary for the rest.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws, regulations and self-regulatory rules related to influencer marketing via social media. Accordingly, the general rules are applicable, namely:

- The contents of influencer marketing will be regulated by the Unfair Competition Law. In addition, being essentially an advertising activity, the General Advertising Law is also applicable.
- The contractual relationship is governed by the Workers' Statute, the Commercial Code and Civil Code.
- The activity is also related and affected by the LSSI and the consumer's position by the General Law for the Defense of Consumers and Users.
- And finally, the Intellectual Property Law and the Organic Law on Protection of Personal Data also come into play.

First of all, the specific terms and conditions of the social network on which contents are to be uploaded should be observed, and the influencer should be requested to be especially careful.

The influencer content must comply with the intellectual property regulations to avoid third party claims for the use of pictures, marks, texts drawings etc.

The way in which the influencer presents the content to the consumer is also paramount, since users need to be clear that the content constitutes an ad and relate it to the advertiser, the brand and so on. Generally, clear references to the advertiser are included, eg, by tagging in the images or including references to their profile in the social network or a hashtag.

The relationships between a brand or company and an influencer may be assimilated to the relationship with a collaborator and framed by a contract that specifies the services agreed on, for contractual certainty, and to clarify the responsibilities incurred in by the influencers in case of infringement.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific rules related to native advertising via social media, and accordingly the general rules are applicable.

The main regulation is the General Advertising Law. This does not address native advertising directly as an autonomous concept, but regulates prohibited practices, as well as setting out different aspects that must be considered so that the advertising is legal, such as avoiding 'misleading', 'covert' or 'disloyal' advertisements.

Additionally, native advertising is affected by the Unfair Competition Law, by the LSSI and by Law 29/2009, modifying the legal regime of Unfair Competition and Advertising for the improvement of consumers' and users' protection.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific rules related to user generated content, and accordingly the general rules are applicable, in particular, the Intellectual Property Law, the LSSI, and the Organic Law 1/1982 on Civil Protection of the Right to Honor, to Personal and Family Privacy and to One's Own Image.

With regards to user generated content, the legal conditions of the advertising campaign or action and the social network's conditions (as to which see answer 4) are essential and will frame both

the future use of the user generated content and the possible responsibilities for infringements or moral rights violations.

The promotions must be clearly identified, although the terms ‘publicidad’, ‘public’ etc are not compulsory.

### ***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific laws and accordingly the general rules are applicable, namely:

- the LSSI, as to how to provide information on the Internet;
- Royal Decree 439/2007 approving the Personal Income Tax Regulation, as to the tax treatment of prizes; and
- Organic Law 15/1999 on Protection of Personal Data; supplemented by Royal Decree 1720/2007, which develops this as regards data collection.

Also possibly applicable, depending on the later purposes of the promotion are:

- RDL 1/1996 approving the revised text of the Intellectual Property Law and
- Organic Law 1/1982 on Civil Protection of the Right to Honor, Personal and Family Privacy and to One's Own Image.

As regards self-regulatory rules, Autocontrol has a Código de Conducta Sobre Comunicaciones Comerciales de las Actividades de Juego.

Just as the contract regulates the relationship with the influencer, the legal bases of the promotion regulate any future uses of the content and any responsibilities or conflicts with the participants.

The legal bases need to be accessible to users before and during the promotion, in the same way as in ‘physical’ promotions. A clear wording of the legal bases is also requested as in any other sweepstakes and contests. No differences here except as in the means of participation.

In general, no prior authorizations are requested for sweepstakes and contests. For draws, an advance tax payment of 10% of the value of the prizes is required to be made. However, this is not a requirement for contests. The difference between a ‘draw’ and a ‘contest’ is in the ‘luck’ or ‘random’ factor. A promotion is a draw where the winner is selected by chance; in contests, the winner is determined by merits, not chance.

The advertiser needs to make sure that a reference to the ‘contest’, ‘draw’, ‘raffle’ and so on is included so that there is a valid indicator of the user’s willingness to participate.

The main specific characteristic of sweepstakes and contests via social media is that the object of many of them is to seek to obtain more subscribers, followers, likes, reposts or retweets; with the winner depending on the impact that they have on the social network for the brand. In this respect, considering the peculiarities of the social network platforms and the easiness to distort the results (duplicated profiles, users created ad hoc etc), specific mechanisms of control for these bad practices need to be implemented.

### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

It is important to ensure that:

- the advertising and marketing it is addressed only to the brand’s followers in the specific network;
- the advertising nature of the message is clearly identified, including the word ‘Publi’ or ‘Advertising’ at the beginning of it; and
- information as to how to prevent receiving further promotional messages is given.

As already mentioned above, advertising and marketing practices in social media are also covered by the general rules applicable in the area of advertising. These require advertising to be truthful, legal, honest and loyal and of a nature that does not mislead the consumer and user. The advertiser and the advertising message must be identifiable as such. Surreptitious advertising is prohibited.

The rules in the self-regulation codes of Autocontrol state that advertising in the electronic communications media must be developed with a sense of social responsibility and may not constitute a means for abusing the good faith of the addressees. Furthermore, content which could be discriminatory (for reasons of nationality, race, sex, sexual orientation, religious or political convictions), be against personal dignity or incite the commission of unlawful acts is prohibited.

Advertising communications in electronic media must respect the intellectual and industrial property rights of third parties (other than those of the advertiser).

Article 11 of the Confianza Online Code establishes guidelines for advertising in newsgroups, forums, chatrooms and the like. With the exception of forums and chatrooms of an advertising nature, the signatories to this code are required to inform their users that newsgroups, notice boards, forums or chatrooms cannot be used for online advertising. (This does not apply when the advertising complies with the rules regarding the admission of advertising in the group, forum or chatroom in question and if the prior consent of the moderator or service provider has been obtained.)

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Almost all the recent examples are cases of sexist or racist advertising, some with a court ruling, others with mere social pressure on the social networks, that are withdrawn on the basis of consumer associations, and other collectives threat of bringing court actions.

One example relates to a claim was brought by a consumer’s association (ADECUA) with respect to a Ryanair campaign, where female flight attendants appeared in bikinis with the slogan ‘Tarifas al rojo vivo’ (red hot rates). The provincial Court of Malaga held this to be unlawful and unfair for being sexist and ordered the company to cease this campaign and to refrain from resuming it in the future.

Also in Malaga, the Town Hall has banned an advertising campaign of a website showing the buttocks and genitals of a woman with an explicit slogan. Out of interest, the website remains active, with its sole content being a submission form which has been there from the beginning.

Examples of social media pressure can be found in an ad for electric bicycles. In Pinarello Nyro campaign, the picture of a woman was accompanied by the slogan ‘I’ve always wanted to go out riding my bike with my boyfriend, but it seemed impossible, everything will be possible soon’. The overwhelming reaction of users on social networks was such that, just hours later, Pinarello was forced to withdraw the controversial ad.

Big companies are not free from guilt either. Yves Saint Laurent was forced to withdraw a campaign after controversy aroused in the social networks accusing the French company of ‘inciting rape’ by showing images of women in poses that were considered as ‘degrading’ by users.

On a different topic, an inhabitant of a small town in Valladolid obtained a favorable ruling on his complaint against the Town Hall for including him without his consent in a WhatsApp group in which he received publicity and news. The Spanish Agency for Data Protection (AEPD) declared this infraction as severe (with fines from 40001€ up to 300000€).

### ***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

- To respect the general rules and to clearly identify the commercial communications as well as the natural or legal person in whose name are conducted.
- Not to perform intrusive advertising.
- Include clear references to the advertiser, for example, tagging in the images or including references to their profile in the social network.
- Although it is not mandatory or required by the applicable regulations, it is increasingly common to include the hashtag #publi, #publicidad, #anuncio #ad, #sponsor, etc.

SWEDEN

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

All important global social media platforms are available for use in Sweden and these are used in various degrees by advertisers. Facebook, Instagram and YouTube are the main platforms used for advertising and marketing in Sweden.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There is no specific regulation governing advertising and marketing via social media, but general laws and regulations apply.

Advertising and marketing is primarily regulated by the Swedish Marketing Practices Act ('MPA') and other marketing legislation such as the Swedish Act on Name and Image in Advertising.

The marketing legislation is supplemented by various statutory consumer protection laws. There are also provisions relevant for advertising found in sector-specific legislation relating to, inter alia, alcohol, tobacco, lotteries, consumer credits; and media-specific legislation relating to radio and television etc.

In addition, intellectual property and data protection legislation (the European General Data Protection Regulation ('GDPR') will enter into effect on 25 May 2018) must be considered.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The primary and general self-regulatory system is the Swedish Advertising Ombudsman ('AO'). The AO, amongst other roles, reviews whether advertising is compliant with the Advertising and Marketing Communication Practice from the International Chamber of Commerce (the 'ICC Code'). Individuals, companies and other organizations can file a complaint to the AO. In cases of general public interest, the AO may also initiate its own investigation without a complaint having been lodged.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There is no specific regulation governing advertising and marketing via social media, but general laws and regulations apply.

The MPA provides that a commercial post (such as paid content) published by an influencer shall be formulated and presented in such a way that it is clear that it is a matter of marketing. The average consumer should therefore be able to identify commercial communications as a matter of marketing with ease. Additionally, the party responsible for the advertising must also be clearly indicated. In case of well-known brands, use of a trademark may suffice in this regard.

An advertiser is obligated to inform the influencer of these duties.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There is no specific regulation governing advertising and marketing via social media, but general laws and regulations apply.

The issues relevant to influencer marketing discussed at answer 4 also apply to native advertising.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

The obligation under the MPA to identify commercial content as marketing means, inter alia, that it must be made clear if a user has been incentivized to promote a product or service. A trader will be obligated to inform the user of the duty to disclose a commercial relationship.

If user generated content is created in response to a call to action by an advertiser (eg as part of a contest or similar) or the advertiser somehow uses or refers to such content in its marketing activities, it could trigger liability under marketing or intellectual property legislation for the advertiser.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Promotion of participation in lotteries (which include sweepstakes or other contests and games where the outcome is determined primarily by chance) organized from abroad, or which are unlawfully organized within Sweden, is currently illegal. Note, however, that changes to this prohibition are anticipated as part an ongoing reregulation of Swedish gaming regulation.

In contrast, skill-based contests are allowed, provided that all material information about the contest (such as terms and conditions, time limits etc) is presented to the participants prior to entering the contest and that the contest is executed properly.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

With regard to unsolicited commercial electronic communications, the MPA prescribes, as a general rule, that advertising by electronic mail (for example direct messages on Facebook) requires that the recipient has given his or her prior consent to such advertising from the sender (opt-in).

Moreover, according to the MPA, a trader must be able to prove all claims made in advertising and will also bear the burden of proof. As such, evidence for substantiation must be retained for all claims, even user generated content used or referred to by an advertiser.

An advertiser is not allowed to use the name, the portrait or any other identifiable sign of a living person in advertising or commercial communication unless the advertiser has proper consent from that person.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

On 31 January 2017 the Swedish Patent and Market Court held an influencer liable for breaching the MPA by failing to:

- clearly identify one blog post and one Instagram as marketing, and
- indicate the company responsible for the marketing

(Case PMD 11949-16 The Swedish Consumer Ombudsman/Alexandra Media Sweden AB et al). The case is pending for appeal.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Best practice advice regarding advertising and marketing via social media includes adopting a policy of:

- following the general advertising rules of the MPA;
- clearing third party rights; and
- the surveillance of commercial activities of employees, influencers and other contributors for which the advertiser might be held responsible.

Co-operation with influencers should be governed by a written agreement (laying out the obligations of the influencer and providing recourse if the influencer acts in breach laws or regulations etc).



SWITZERLAND

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used by advertisers in Switzerland include Facebook, YouTube, Twitter, LinkedIn, Xing, Google+, Instagram, Flickr, Pinterest, Foursquare and Snapchat.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Advertising and marketing via social media is subject to general laws and regulation on advertising.

In particular, the Swiss Federal Law against Unfair Competition ('UWG') prohibits unfair, misleading or overly disparaging advertising.

Swiss law generally prohibits mass (spam) (e-)mails without prior consent.

Sector-specific requirements apply to advertising of particular products or services (eg pharmaceuticals, medical services, foodstuffs, alcohol, automobiles, lotteries, legal services, financial services, credits and loans), advertising claims (eg price information, comparisons, health claims and indications of origin) and forms of advertising (eg TV and radio advertising, sweepstakes, targeted advertising using personal data).

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Self-regulatory rules govern advertising and marketing in general and address particular topics (see answers 2 above and 10 below).

The collection of Principles on Fairness in Commercial Communication, issued by the Swiss Commission on Fairness, is the most important self-regulatory framework for advertising practices in Switzerland.

Other relevant self-regulatory frameworks include the Code and Directives of the Swiss Press Council on the Professional Ethics of Editorial Staff of Printed and Electronic Press Publications and the Guidelines for Advertisers and Agencies issued by the Interactive Advertising Bureau ('IAB') (Europe).

These all focus on transparency, separation of paid and editorial content as well as editorial freedom.

No particular rules apply to social media advertising and marketing in particular.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

General rules on advertising and marketing apply (see answers 2, 3 and 10), in particular with regard to transparency and the separation of advertisements and editorial media content, eg for sponsored content and product placement.

On a statutory level, a TV or radio broadcaster's permanent editorial employees may not participate in its advertising programs. A legislative proposal for a new law on electronic media is

expected for publication and consultation in 2018. The proposed law would cover press, radio, TV and online media and would presumably stipulate transparency obligations.

According to current self-regulation (see answer 3), sponsors of media reports must be disclosed transparently. The editorial freedom regarding selection of content (eg lifestyle products, consumer advice) and handling of the report must be respected. The press needs to disclose trips paid for by third parties. Press coverage may not serve as consideration for paid advertising (eg in the form of ‘accompanying’ editorial pieces). Credibility of the media requires critical, not overly positive, presentation of goods and services, mentioning of goods and services only to the extent necessary for the respective media coverage, and no blatant reproduction of advertising slogans in the editorial sections.

No specific laws, regulations or self-regulatory rules apply for influencer marketing via social media.

### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

General rules on advertising and marketing apply (see answers 2, 3, 4 and 10), in particular with regard to transparency and the separation of advertisements and editorial media content, eg for sponsored content and product placement. A clear separation of editorial content from advertising (paid content or content supplied by third parties) is essential to the credibility of the media. Self-regulation (see answers 3 and 4) requires clear visual or acoustic separation. Native advertising should be marked as such (eg ‘paid content’, ‘sponsored content’, ‘ad’).

No specific laws, regulations or self-regulatory rules apply for native advertising via social media.

### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

General rules on advertising and marketing apply (see answers 2, 3 and 10). User-generated content may be subject to copyright and trademark protection. Use of third-party contributions may raise issues regarding personality rights and trigger data protection requirements. No specific laws, regulations or self-regulatory rules apply for user-generated content in advertising and marketing via social media.

### ***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

General rules on advertising and marketing apply (see answers 2, 3 and 10), in particular with regard to transparency of contest rules, data protection and the use of participants' contributions. Swiss law regularly requires a non-purchase route to participate with an equivalent chance of participating/winning. In particular, Swiss law prohibits lotteries and lottery-like chance-based games for which participation requires a monetary stake or purchase.

### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

General rules on advertising and marketing apply (see answers 2 and 10). Swiss official languages are German, French and Italian. Swiss law provides for very limited language requirements, but the Swiss audience might expect ads in the local language depending on the products, services and advertising messages involved.

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Case law on particular social media advertising and marketing related issues are rare. Recent civil and criminal cases regarding social media addressed defamation, terrorism and racism issues, rather than advertising and marketing. In 2016, a cantonal court found the robot search/copying of third-party online ads and automated integration to another website ('spidering') to qualify as unfair competition practice (Civil appellate court of the canton of Freiburg, 22 August 2016, no 102 2015 189, published in (sic!) 2017, p 228 et seq). A cantonal court qualified 'liking' and commenting defamatory third-party posts on Facebook as slander (District Court of Zurich, 29 May 2017, no GG160246, subject to pending appeal). It is questionable whether this ruling applies to Facebook-likes in general.

### ***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Be transparent:

- Use labels such as 'sponsored content' or 'advertising' to distinguish between advertising and classic media content/program;
- Inform users on the identity of the advertiser as well as of any sponsored contribution (eg tested goods and services, product placement).

Be accurate:

- Only use objective criteria for claims and comparisons in advertising;
- Only list current prices, discounts and special offers;
- Do not use claims, comparisons, and disclaimers etc. that are materially ambiguous to the average audience.

Respect third party rights:

- Do not use third party content (eg texts, pictures, trademarks) without prior consent.

Protect personal data:

- Minimize personal data gathered and used for advertising via social media to the extent necessary and adequate;
- Inform individuals as soon as possible about the data collection and processing (whenever possible prior to the collection of data);
- Be transparent about the purpose of collection and processing;
- Limit access to personal data to a need-to-know basis;
- Protect personal data from unintentional disclosure, disclosure without prior consent, data loss and the like.

Be customer/user friendly:

- Handle negative user/customer comments and complaints diligently, as the impact and success of social media advertising largely depends on the activity of users;

- Keep promises made in advertising and go beyond to satisfy the customer.



TURKEY

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Social media platforms preferred worldwide are also commonly used in Turkey in the context of social media marketing; with Facebook, Instagram, YouTube, Snapchat and Twitter taking the lead.

There are no platforms that are currently unavailable in Turkey; however, this was not always the case. On 20 March 2014, citing the new provisions of the amended Law No 5651 on Regulation of Broadcasts and Publications via the Internet and Prevention of Crimes Committed through Such Broadcasts ('Internet Law') the Information and Telecommunication Technologies Authority ('ICTA') implemented a protection order that blocked access to the micro-blogging website Twitter. On the database of the ICTA the grounds for the blocking order against Twitter were listed as three court decisions, and another decision issued by the Istanbul Chief Prosecutor's Office. The ICTA also issued a statement a day after the blocking order was implemented, stating that court decisions concerning the violation of personal rights and the rights to privacy had been notified to the ICTA, that these decisions relating to the removal of content were then notified to Twitter, but as Twitter had not complied with these requests it was deemed necessary to block access to the entire website in accordance with the provisions of the Internet Law. The ICTA also stated that if Twitter removed said content and undertook to apply the rulings made by Turkish Courts, access to the website would be restored. The controversy originally stemmed from images that were uploaded to Twitter during a hostage crisis that saw a prosecutor and two hostages killed.

Shortly after the blocking of access to Twitter, on 27 March 2014, the ICTA also banned access to the video sharing website YouTube due to the posting of a conversation alleged to have taken place between the Minister for Foreign Affairs and senior members of the Turkish Intelligence Organization. It is important to note that YouTube has been previously blocked in Turkey due to the uploading of content insulting the memory of Atatürk. Nevertheless, access to both websites has been restored through the decisions of relevant Criminal Courts of Peace, rendering all global platforms accessible for use.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

In Turkey, there are no special laws relating to advertising and marketing through social media. Control of advertisements via social media is subject to the same laws and regulations as advertisements in any other kind of media. The principal legislation governing advertising is the Consumer Protection Law no 6502 ('Consumer Protection Law'), which was enacted on 28 November 2013 and entered into force on 28 May 2014, (repealing the Law on Consumer Protection no 4077) as well as the Regulation on Commercial Advertisements and Unfair Practices ('Regulation') which was prepared in line with the new Consumer Protection Law and replaced the Regulation on Procedures and Principles of Commercial Advertisements and Announcements.

Under **Article 61 of the Consumer Protection Law**, it is essential that commercial advertisements and notices conform to:

- the laws and principles adopted by the Board of Advertisement,
- general morality,
- public order, and
- personal rights.

Further, no advertisement, notice or implied advertisement may:

- contain untrue, incorrect information,
- deceive or mislead the consumer, or abuse his lack of experience or knowledge,
- threaten the life of the consumer and safety of his property,
- encourage acts of violence or incite people to commit crime,
- endangers public health, or
- abuse the elderly, children or disabled people.

It is incumbent upon the advertiser to prove the material claims made in the commercial advertisement or announcement. Advertisers, advertising agencies or media companies must comply with the provisions of the Consumer Protection Law.

**Article 5 of the Regulation** sets forth the basic principles to be considered. Advertisements must:

- conform to the law and to public morality,
- conform to the rules of fair competition,
- not feature content which poses a threat to the security and safety of people,
- not be hidden, misleading, or contrary to public and moral values.

According to principles of the Regulation an advertisement should be clearly distinguishable as an ‘advertisement’ no matter what is its format or the media where it is broadcasted. When an advertisement is broadcast in a media that contains news and editorial elements, it shall be stated that it is an ‘advertisement’. If a tweet or any other post on a social media platform contains advertorial content, it is possible that an administrative fine may be imposed on the grounds of hidden advertisements. **Article 6 of the Regulation** stipulates that ‘advertisements shall not contain misleading expressions or images which may confuse the consumers directly or indirectly in terms of bringing false impressions by providing incomplete information, leading to confusion or presenting exaggerated claims’.

The Advertisement Board established under the Turkish Ministry of Customs and Trade is the main authority to control ads in Turkey. Its duties include determining the rules and policies to which advertisements must adhere and prohibiting and/or imposing a monetary fine on advertisements which are contrary to the law. The Board also takes into consideration globally-accepted rules related to advertising. The Board can examine the ads ex officio or upon complaint. The Board’s duties are not restricted to reviewing any particular form of media, and therefore all forms of social media advertisements are subject to review. Advertisement Board decisions are legally binding and may be appealed before the administrative courts.

In addition, all online broadcasts in Turkey are also subject to the Internet Law. Although the Internet Law sets out no direct rules on advertising and marketing via social media, its general principles should be applied. Under **Article 8 of the Internet Law**, if the content of an online broadcast—including the ads—constitutes a specified crime, access to the website can either be banned by the regulatory body ICTA (for child abuse and obscenity crimes) or by the court depending on the type of the case and urgency. The specified crimes are as follows:

- encouraging suicide,
- child abuse,
- facilitating the use of drugs,
- procurement of substances that pose health risks,
- obscenity,
- prostitution,
- gambling and

- offenses related to insulting Atatürk.

Moreover, under **Article 9 of the Internet Law**, an individual is entitled to request that the internet content provider or the service provider remove any infringing content on the internet that violates his/her rights. If he/she cannot get a satisfactory response, then he/she is entitled to apply before the authorized criminal court of peace to ask for the removal of this infringing content from the relevant website and broadcast his/her response statement against this infringement.

If any statement in an ad on social media constitutes an assault against the personal rights of someone, that person may claim protection from the judge against those who made the assault under the **Turkish Civil Code**. Unless there is consent of the person whose personal rights are damaged or unless there is an authorization conferred by law, each assault shall be considered contrary to the law. In such a lawsuit, the claimant may request that the judge prevents the assault, eliminates the threat and determines the unlawful consequences of the assault. Additionally, the rights holder is also entitled to demand material and immaterial compensation for his/her damages.

From the criminal law aspect, advertisements or social media posts may constitute a crime such as defamation or insult under **Turkish Criminal Code**. The punishment for defamation is a prison sentence starting at three months to one year and may increase depending on the seriousness of the offense. The punishment for insult is imprisonment of between one and four years.

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

The sole self-regulatory organization, the Advertising Self-Regulatory Board ('ROK') was founded by advertisers, advertising agencies and the media, arguing that advertisements should be legal, ethical and correct. It intends to implement the Advertisement Implementation Principles of the International Chamber of Commerce, which have been accepted worldwide.

Whilst the decisions of the Advertisement Board are legally binding, ROK's decisions are only ethically binding. Although the ICC International Code of Advertising Practice ('ICC') standards do not have direct enforceability; ROK has adopted them in its Principles of Self-Regulation and these principles were enacted in parallel with the ICC standards. The ICC standards are considered by ROK in its evaluation of ads when giving advisory opinions.

ROK does not have particular self-regulatory rules on advertising and marketing via social media. The general principles apply to the extent they are applicable.

### ***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific laws, regulations, or self-regulatory rules related to influencer marketing via social media; general advertising rules and principles are applied. In this regard, influencer marketing should also adhere to rules regarding conformity to public order, fair competition, public/moral values and veracity.

An influencer marketing attempt including hidden advertisement or advertisement of prohibited products such as tobacco/alcohol products might be considered as circumvention of the law and should be banned. Influencer marketing can also be categorized as a particular form of testimonial

advertising. Although testimonials are not defined in the body of current law, the Regulation provides for certain rules and limitations on testimonials.

Testimonials generally consist of written or spoken statements of individuals who have used the product that is being advertised, communicating the quality and superiority of these products. **Article 16 of the Regulation** stipulates that ‘advertisements shall not include or refer to any testimony or endorsement that is not authentic or not based on the experience of the testifier’. As regards influential marketing, the problem arises when the social media influencer is sharing an experience that is fictional, pursuant to his/her advertising agreement.

Another issue of law concerning influential marketing is when the social media influencer, who is financially supported by a brand, does not explicitly communicate this affiliation or the fact that their post essentially serves as an advertisement for the brand; such behavior would be contrary to the prohibition of hidden advertisements. **Article 5 of the Regulation** sets forth the basic principles to be considered, including that an advertisement should be clearly distinguishable as an advertisement no matter what its format is or the media in which it is broadcasted. When an advertisement is broadcast in a medium that contains news and editorial elements, it shall be clearly stated that it is an advertisement.

The solution to this problem when it comes to social media influencer marketing is to convey that the post is indeed an advertisement, ideally through disclaimers informing the consumers that the influencer has been reimbursed by the brand-owner.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific laws, regulations, or self-regulatory rules in our jurisdiction related to native advertising via social media. We refer to the general rules discussed in the answers to questions 2 and 4.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user-generated content when advertising and marketing via social media?***

There are no specific laws, regulations, or self-regulatory rules in our jurisdiction related to the use of user generated content when advertising and marketing via social media. We refer to the general rules discussed in the answers to questions 2 and 4.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The Regulation on Lotteries and Drawings for Non-Cash Rewards No 26309 (‘Regulation No 26309’) defines ‘contests’ as ‘mechanisms of which the winners are determined among the participants depending on the knowledge and skill qualifications of the participants and by the elimination method considering the success degrees or by the assessment of a jury determined within the same principles and at the end of which an in-kind and/or cash prize is given, and also the puzzles, riddles, entertainment programs and such others’. If the winners of the promotion are determined by a jury or according to a scoring method, or if the prize is granted to the first x number of participants without any draw mechanism, such promotion can be regarded as a contest under Regulation No 26309. However, by Article 2/ç of Regulation No 26309, ‘contests in which a

certain amount is not charged from the participants and which do not serve for the purpose of the promotion or sale of a certain good or service' fall outside the scope of Regulation No 26309. In line with this provision, contests cannot serve for the purpose of the promotion or sale of a certain good or service and everyone shall have an equal opportunity to participate in order to be regarded as a contest and to fall outside the scope of the National Lottery Administration ('NLA') which is the sole organization with authority to organize lotteries and draws with a cash reward and to permit lotteries and draws with a non-cash reward.

If the winners of the promised prizes are determined by a draw depending on a chance factor the procedures and principles of which are approved by the NLA, the promotion will be deemed as a draw under Regulation No 26309. Should the monetary value of the non-cash prize in a prize draw exceed TL 93,12 (approximately € 20) then the organization of such promotion will be subject to the official permission of the NLA.

Prize contests cannot be organized with a pre-condition of payment or purchases. In addition, if a promotion is deemed to be a contest, then the terms and conditions of the contest should be in compliance with the Turkish Consumer Protection Law and the promotion should not contain misleading elements for consumers and every term and condition of the contest should be clear and understandable by the participants.

Under Regulation No 26309, if the prize draw is subject to official permission of the NLA, the advertising of such prize draw should incorporate information as to the NLA authorization, including the authorization number and the date authorization was granted. Also, any advertisements of the same should comply with the following:

- any prize awarded should not be different than that promoted and should satisfy the average consumer expectation,
- any prize awarded should be provided together with the prize's market price and written terms of the promotion in which it was won, and
- the terms of the promotion and its result should be published.

Since it is forbidden for minors (the legal age of majority under Turkish Civil Law is 18) to participate in prize draws the advertisement of prize draws should explicitly note that minors cannot participate and that prizes are not awarded in case of accidental or unauthorized participation based on age.

Other than the above general rules regulating the advertisements of sweepstakes in any media there are no specific laws, regulations, and self-regulatory rules governing sweepstakes and contests conducted through social media. On the other hand, since scrutiny over social media contests and sweepstakes are not as strict, it is possible to observe many prize draws, which should actually be subject to NLA's permission, being drawn via social media platforms without such authorization and without complying with the advertisement restrictions. Having said that, we would like to point out that we have not yet observed any decision including a sanction for non-compliance via social media.

#### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Due to the lack of specific rules for advertising and marketing via social media, control is weakened. However general principles still apply, together with the prohibition on hidden advertisements. Advertising bans on specifically prohibited goods such as tobacco and alcoholic

products should be firmly observed by advertisers since the controlling authorities are more watchful on these types of products even in social media.

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

The Advertisement Board tends to be tolerant towards social media advertising, and this attitude is clearly reflected in its decisions. On the other hand, when it comes to social media advertisements of health institutions, the Board regularly employs much stricter control. In this manner, many decisions of the Advertisement Board cite the Regulation on Private Health Institutions for the Diagnosis and Treatment of Outpatients, which provides that health institutions may not advertise their services, but can only inform people of the launch of their practice, practice areas and services. The promotions or testimonials used in these advertisements should not contain misleading, exaggerated or scientifically unproven claims to increase consumer demand.

Due to the increasing awareness of social media in Turkey, we expect some new regulations that will specifically cover social media activities in the near future.

### ***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

As explained above, since no de facto sanctions are being enforced, there are no 'best practices' in the strict meaning of the phrase. On the other hand, we have observed that some worldwide social media platforms now implement certain tools to avoid possible liabilities. A good example of this is the recent trend of giving 'paid by' disclaimers on social media posts in order to evade liability for taking part in covert advertisements. This practice is also adopted by some social media influencers in Turkey while the rest do not have such practice.



UKRAINE

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used in Ukraine for the purpose of advertising and marketing include Facebook, Twitter, LinkedIn, YouTube, Google+ and Pinterest. In addition, advertisers pay attention to popular messenger services (Skype, Viber, WhatsApp, etc.) as a channel of ads distribution.

Certain popular social platforms, such as Vkontakte ([www.vk.com](http://www.vk.com)), Odnoklassniki ([www.ok.ru](http://www.ok.ru)) and service platform Mail.ru ([www.mail.ru](http://www.mail.ru)) are not available for use due to economic sanctions and restrictions introduced against certain Russian-based or owned/controlled companies (Resolution of the National Security and Defense Council of Ukraine dated 28 April 2017. The ban has been in effect since 17 May 2017 and was introduced for an initial term of 3 years.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

To a large extent, advertising/marketing on the Internet (including social media) is regulated the same way as advertising offline. However, in addition to specific advertising-related laws (the Law of Ukraine on Advertising ('Advertising Law')) and general legislation, it is necessary to ensure compliance with the Law of Ukraine on Electronic Commerce ('E-Commerce Law').

From a practical interpretation, marketing/advertising in social media should be in line with the Ukrainian advertising laws if:

- the social media is located within a Ukrainian segment of Internet (eg registered in domain .UA);
- customers targeted by such advertising are located in the territory of Ukraine;
- advertising is placed by technical means located in the territory of Ukraine.

The Advertising Law establishes specific requirements regarding promotion of services via means of electrical communication (telecommunications) which arguably includes advertising by the Internet/ social media. Such advertising should provide detailed specifications of:

- the content of the service;
- the cost of the service;
- age or other limits;
- the name, address of the advertising provider.

With regard to content, social media content should be in line with general norms (eg principles of advertising, ban of tobacco/alcohol ads, etc.). Any adverts should be clearly identified, eg by using words 'advertisement', 'on a commercial basis', 'sponsored content', etc.

In addition, promoting goods, work, services or business reputation on the internet, including by way of sending electronic messages ('commercial electronic message'), is subject to the following regulation by the E-Commerce Law:

- A seller (contractor, service provider) that distributes a commercial electronic message (directly or through engaged agencies) shall provide customers with a direct, simple and uninterrupted access to certain information (its full name; its location or place of registration; e-mail and/or address of the internet-store; information about licenses (series, number, validity term, issuance date) (if activity is subject to licensing); identification code (for legal entities) or tax ID (for individuals registered as entrepreneurs in Ukraine); amount

of taxes included in the value of goods, work or services and, if a promoted product needs to be supplied, information on supply costs; and other information that is subject to mandatory disclosure).

- The commercial electronic message may be distributed to a person or an entity upon consent of such person or entity only; consent is not required provided that the addressee may unsubscribe from further receiving such messages.
- The commercial electronic message shall be clearly identified as such.
- Advertising messages regarding rebates, premiums and recognition prizes, etc shall be clearly indicated as such and conditions of their receipt shall be available and worded in such a way as to avoid ambiguity, as well as comply with the advertising laws requirements.

Moreover, the E-Commerce Law expressly prohibits the practice whereby the fact of receipt of the commercial electronic messages by a consumer without his or her consent is used as a reason for increasing service fees charged by telecom operators/providers, payment system operators, hosting providers, internet access providers, etc.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

No over-arching advertising self-regulation rules on advertising and marketing via social media are in place in Ukraine.

However, there is ‘soft law’ which may be used voluntarily by advertisers in Ukraine, inter alia, in relation to advertising or marketing via social media: namely the Standards of Non-Discrimination because of Gender in Advertising (2011), Advertising and Marketing Communication Practice (‘Consolidated ICC Code’).

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

No specific laws, regulations, and self-regulatory rules related to influencer marketing via social media are in place in Ukraine. General legislation, as well as specific advertising-related laws (eg the Advertising Law) and the E-Commerce Law apply (see answer to question 2).

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

No specific laws, regulations or self-regulatory rules related to native advertising via social media are in place in Ukraine. However, such advertising must comply with the principles, requirements and restrictions stipulated in the Advertising Law, including, without limitation:

- prohibition of hidden advertising,
- ban of tobacco/alcohol ads,
- requirement to provide accurate, full and non-deceptive information in the ad.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user-generated content when advertising and marketing via social media?***

There are no specific laws, regulations or self-regulatory rules in Ukraine with respect to the use of user-generated content when advertising and marketing via social media. However, such use may fall under the definition of ‘advertising’ and, therefore, be subject to general laws and regulation applicable to advertising. Therefore, such content must be carefully monitored by the advertiser to ensure compliance with the Ukrainian advertising laws (eg its legality, accuracy, trustworthiness, no infringements on public ethics or morals, no discriminating statements, etc).

In addition, the advertiser may use a photograph or name of the relevant user only with such user’s written consent.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

There are no specific laws, regulations, or self-regulatory rules with respect to conducting sweepstakes and contests via social media and so the general rules apply.

A sweepstake is generally permissible as a chance-based game that does not require consideration for participation (and, therefore, it may be considered not to be gambling). From a legal standpoint, it is considered a public promise of reward upon the contest results, and is subject to the respective provisions of the Civil Code of Ukraine.

Skill-based contests are also generally permissible and are also usually organized as public promise of the reward upon the contest results according to the provisions of the Civil Code of Ukraine. In particular, the Gambling Law specifically excludes the following skill-based contests from its regulation (ie does not treat them as ‘games of chance’):

- art, sport and other similar contests, irrespective of whether their rules offer prizes in money form or in kind;
- pool, bowling and other games which do not result in the winner being awarded a prize;
- free-of-charge draws with respect to (the advertising or promotion of a specific product, service, trademark, trade name or directions of business of a legal entity, and commercial program with a prize in money form or in kind;
- draws in the form of contests (games, quizzes) whose rules do not require any pay-to-play fee and prescribe awards to a participant who showed the best personal knowledge and skills (personal win award) in money form or in kind; and
- free-of-charge draws for entertainment, charity and educational purposes.

As a part of their advertising (promotion), sweepstake or contest rules should also take into account regulation specific to such advertising. In particular, the Advertising Law states that advertising of contests, lotteries, prize draws, events of an advertising nature, etc, must include:

- information as to the date and place of such events;
- reference to an information source where the rules (terms) may be found; and
- the place of conducting any such events.

Information regarding any changes of the rules, place and term of the such events should be provided in the same manner as initially distributed.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The issues of intellectual property rights, particularly copyright protection, are important to consider when advertising and marketing via social media in Ukraine.

In 2017, the Copyright Law was amended to provide copyright owners with a notice-and-takedown procedure to combat copyright infringement on the internet.

As per the established procedure, a holder of the copyrighted work has the right to send a takedown notice to the website or webpage owner. If the latter fails to comply, the rights holder then has the right to send a takedown notice to a hosting provider. However, the hosting provider should resume access to the respective content if the website or webpage owner objects to the takedown notice and the rights holder has not provided a confirmation of commencement of the respective court proceedings within 10 working days.

Note, that the procedure is established as limited only to the following copyrighted works: music, audiovisual works, software, video, audio, and broadcasts (programs) of broadcasting organizations.

To benefit from the notice-and-takedown procedure, the rights holder can act only through a Ukrainian attorney-at-law (ie a lawyer who meets certain professional criteria, has passed a bar exam, and obtained an attorney-at-law certificate).

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Ukrainian court practice on social media advertising is rather undeveloped. However, advertising in social media that violates statutory requirements may attract the attention of the Ukrainian authorities. For example, in 2017, the Ukrainian Parliament Commissioner for Human Rights discovered provocative posts on Facebook, advertising fast food and containing images and texts that could be considered discriminatory on the grounds of gender (ie describing women as sexual objects, hinting at sexual relations or sexuality in a case where there is no link to the promoted product and no direct associations with the consumption of advertised products, goods, services etc). The Commissioner requested the State Service of Ukraine on Food Safety and Consumers Protection of Ukraine to check the advertising as to compliance with the requirements of the Advertising Law. However, no conclusion or results of this case have so far been publicly reported.

### ***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

One of the key 'best practices' with respect to advertising and marketing via social media in Ukraine is in relation to chance-based games. In the event of a promotion being conducted in such a format, it is important to avoid receiving consideration from the participant. Otherwise, such advertising or marketing event may be considered as a form of gambling which is prohibited in Ukraine.





UNITED ARAB EMIRATES



***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Advertisers are attracted to the main global brands of social media such as Facebook, Instagram, SnapChat and the like. In addition, YouTube has a very strong following in the region and attracts advertisers as well.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no specific laws that apply to advertising and marketing on a social media platform—the advertisers and publishers are expected to comply with the laws applicable to advertising, and to content generally.

The following is a list of the main laws that apply to media and advertising in the jurisdiction:

- Federal Law No 15 of 1980 Governing Publications and Publishing;
- Federal Law No 5 of 2012 on Cybercrimes;
- Federal law No 2 of 2015 on Discrimination;
- Telecommunications Regulatory Authority Regulations Annex 1 (aka IAM policy);
- National Media Council Resolution No 20 of 2010 on Media Content;
- National Media Council Resolution No 35 of 2012 on Advertising; and
- Cabinet Resolution Nos 19, 22, 23 of 2017 on Media.

Note that parts of the Consumer Laws, the Civil Code and the Penal Code may also apply in some cases.

In addition, the National Media Council has introduced the Electronic Media Activity Regulation Resolution 2018, which reiterates the requirement to comply with all advertising standards when advertising on social media: ‘Ads that are presented on Social Media shall be subject to the advertising standards that are applicable at the Council’. This reiterates the view that National Media Council Resolution No 35 of 2012 on Advertising and Cabinet Decision 23 of 2017 are both applicable to social media, notwithstanding that social media is not specifically noted within each.

It should be noted that the relevant regulators (the National Media Council and the Telecommunications Regulatory Authority) both tend to react to complaints rather than proactively seek out infringing material. If a complaint is raised by any person under Federal Law No 5 of 2012 on Cybercrimes, however, it must be raised with the relevant department of the police who will then determine with the public prosecutor if a case should be launched.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are no self-regulatory rules in the jurisdiction.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

The Electronic Media Activity Regulation Resolution 2018 features a licensing system for any entity that is involved in ‘E-Media’. Electronic Media is defined as ‘media activity that is practiced through the tools and means of electronic publication.’

Under this Resolution ‘influencers’, ie ‘Social Media accounts’ owners who offer paid advertising services’ (which would naturally include influencers) now have to obtain a license from the National Media Council in order to operate commercially.

Of particular interest in relation to influencers is that ‘electronic advertising’ is defined as being ‘paid or unpaid’; as long as it is intended to promote, it is captured by the Resolution.

The Resolution requires that ‘Ads that are presented on Social Media shall be subject to the advertising standards that are applicable at the Council’. This means that the various standards must be applied to influencer content, including those provisions that require disclosure in relation to advertising content. This includes compliance with Article 5(7) of the National Media Council Resolution No 35 of 2012 on Advertising which states that ‘[t]he advertisement's identity shall be clearly determined, and it shall appear as unique and separate from other editorial or media material, and there shall be separations between the advertisement and any other material in addition to time intervals in case of radio or television broadcasting.’

In addition, Article 17 of Cabinet Resolution No 23 of 2017 on Media states that ‘[a]ll paid advertising material must be explicitly and clearly stated as paid advertising material’.

Whilst there have been no prosecutions as yet under these articles, they do indicate that all paid content posted by an influencer should be identified as advertising material.

### ***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

As above.

### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are no specific laws in this regard.

### ***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

It is important to note that the jurisdiction has an absolute prohibition on gambling. On that basis, the conducting of sweepstakes and contests is regulated in a manner that differs from many other jurisdictions, as they are considered to be a form of gambling. The usual differentiation that applies in other countries between games of skill and games of chance does not necessarily assist promoters in this region.

Many of the Emirates require permits before any sweepstakes or contests can be run. Permits can only be obtained by local entities, however, so the question of the territoriality of the promotion is important. In addition, many conditions that might only be applicable to ‘offline’ sweepstakes or contests may still apply when they are transferred to social media, such as having an official at the draw, as the relevant authority may require this.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

The healthcare sector has additional regulations applicable to advertising and marketing; and the authorities are stringent in ensuring these are applied across social media as well as traditional media. Advertising for healthcare services and healthcare devices (which are both defined broadly) must comply with the regulations and must also be approved before publication.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

Cases are not made public in the jurisdiction and, as this is a civil jurisdiction, they would hold little precedent value in any event.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

There are some topics that we advise clients to use with caution, and seek advice before publication. These include religion, political issues, alcohol, smoking, nudity or overt sexuality, crude language, and obscenity. There is also a prohibition on content that would be contrary to the 'cultural and social mores' of the jurisdiction. This term is broad in scope, meaning that the regulators can apply the laws in a subjective manner.



## UNITED KINGDOM

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Facebook, Instagram, Twitter, Pinterest, Snapchat, YouTube and LinkedIn are all commonly used by advertisers in the UK. There are no restrictions on use of any important global social media platforms within the UK; all popular global platforms are used.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

Legal controls apply to advertising and marketing via social media in much the same way that they do for traditional offline and other online media platforms.

The general law in the areas of intellectual property, data protection and defamation are of relevance to social media marketing. Contract law is also relevant, as those marketing on social media sites will also need to comply with the terms of use of the relevant platforms.

Much of the legal controls in the UK exclusively relating to advertising and marketing are contained in the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') and Business Protection from Misleading Marketing Regulations 2008. The Business Protection Regulations control comparative advertising. The CPRs control advertising and marketing practices as a whole, introducing a general prohibition on unfair commercial practices. Of particular relevance to social media marketing are the following rules under the CPRs:

- a general requirement not to mislead;
- a requirement to disclose commercial intent;
- a requirement to disclose if you are paying for editorial content or advertorial; and
- a prohibition on posing as a consumer.

The CPRs are enforced by the Competition and Markets Authority ('CMA') and Trading Standards. These bodies have the ability to bring criminal prosecutions for breach of the CPRs. Many contraventions of the CPRs will also be a breach of the regulatory codes (see answer 3 below), as the regulatory codes have been amended to incorporate the CPRs. Accordingly, for less serious violations of the CPRs, the Advertising Standards Authority ('ASA') will generally be the body that deals with such matters under its self-regulatory powers instead.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Self-regulation is extremely important in the UK. In practice, it is a source of greater control over advertising and marketing activities than that imposed by law. The ASA is the UK's independent regulator of advertising across all media (including, since 1 March 2011, all online media including social media). The ASA enforces the advertising codes, which are written by the Committees of Advertising Practice ('CAP'). The code which is relevant to social media is the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing ('CAP Code'). This Code must be followed by all advertisers, agencies and media.

In respect of social media, the ASA has jurisdiction over (a) User Generated Content if it has been adopted and incorporated into marketing (eg retweeting an individual's tweet) and (b) social media under a brand's control (eg Facebook and Twitter).

The ASA cannot impose any financial penalties. Sanctions for breaching the Code include:

- Adverse publicity via adjudications: the ASA has a micro site of offenders and for serious offenders paid for ads can be imposed highlighting non-compliance;
- Sponsored links can be taken down;
- Ad Alerts can be sent to the press;
- Ads can be vetted pre-publication; and
- For serious or persistent breaches, referrals can be made to the OFT.

Beyond the ASA and the CAP, the regulatory system flows through other bodies. Compliance with the CAP Code and with ASA decisions is a membership obligation imposed by bodies such as the Internet Advertising Bureau UK ('IAB'), the trade association for online and mobile advertising; the Incorporated Society of British Advertisers ('ISBA'), representing the largest advertisers in the UK; and the Institute of Practitioners in Advertising, the trade association for advertising agencies.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

Regulation 3(1) of the CPRs prohibits unfair commercial practices. This includes using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer. It places an obligation on brands to be clear about which endorsements and promotional content has been paid for. The CPRs are enforced by the CMA rather than the ASA, and, whilst the ASA's powers are limited to posting adjudications against a brand (which could result in negative PR and additional costs if content needs to be changed), the CMA has wider enforcement powers.

Where influencer content breaches the CPRs, it is also likely to be in breach of CAP Code provisions specifying that communications must not be materially misleading and must be identifiable as marketing.

There is a distinction between sponsorship and advertising. With regards to sponsorship, the influencer may be paid but retains editorial control of the content. In this case, the content will not be classed as advertising and will not, therefore, fall within the scope of the CAP Code. However, where the brand or marketer has editorial control over the content, it will be classed as advertising and must be identified as such (for example, by using #ad on social media posts) in order to comply with the Code. It is arguable, however, that even without editorial control, the disclosure requirement would arise under the CPRs in relation to pure sponsorship (if it is not self-evident).

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Legal and regulatory requirements in the UK state that advertisements must be transparent. Given the nature of native advertising, this can often create issues for brands.

The CPRs specifically state that two of the practices which are deemed 'always unfair' are:

- (i) 'using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial)' and

- (ii) 'falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer'.

Section 2 of the CAP Code also states:

'2.1 Marketing communications must be obviously identifiable as such;

...

2.3 Marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession; marketing communications must make clear their commercial intent, if that is not obvious from the context.'

In making its assessments, the ASA will consider adverts from the point of view of the 'average consumer' viewing the relevant advert. The 'average consumer' in the UK is 'reasonably well informed, reasonably observant and circumspect'.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

Brands are generally not responsible for user generated content ('UGC') unless they interact with it in some way. If the UGC is unprompted, it is likely to be outside the remit of the CAP Code. However, if the content is then 'adopted and incorporated' into the company's own materials then the content will be considered to be 'by or from' the company and could come under ASA scrutiny. 'Adopting and incorporating' content is construed widely and could involve simply republishing, retweeting or liking a post. The ASA is also likely to consider UGC which is prompted or solicited from users as adopted and incorporated by the company and therefore within its remit.

If content does come within the remit of the CAP Code, the rules will apply as if the company were the original publisher. In this case, brands must take care that any claims can be substantiated and the content is not harmful or offensive. It is also likely that the brand will be liable for any content if it infringes third party rights or is defamatory.

In particular, the Defamation Act 2013 may apply to statements made in the UGC. Any brand which repeats or republishes the statements could be liable if the statement is untrue and causes serious harm to the reputation of the claimant. There is, however, a defense available under section 5 of the Defamation Act provided a notice and takedown procedure is followed.

Copyright in the UK is governed by the Copyright Designs and Patents Act 1988 and copyright will exist in any videos or photos published in the UGC. There is likely to be third party copyright in UGC if any images are used or music clips incorporated. Registration is not necessary for copyright to be protected in the UK. However, social media platforms will have their own rules outlined in their website terms about ownership and licensing of material contained in UGC.

From a privacy perspective, the General Data Protection Act ('GDPR') is due to come into force in the UK on 25 May 2018, placing more robust requirements on the processing of personal data and requiring brands to document how this data is used. If a brand collects users' personal details to enable them to post UGC, it will need to make this clear to the user in accordance with the specific requirements in the GDPR.

The CPRs are applicable to UGC as they include a prohibition on falsely representing yourself as a consumer. This provision captures any fake reviews posted by a brand employee; however, brands

may be able to rely on the ‘due diligence’ defense’ if they take reasonable precautions to prevent such postings.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The laws relating to sweepstakes and contests in the UK are all encompassing and there are no specific additional requirements for social media which go beyond these.

Sweepstakes are generally permissible in the UK; however, a promoter should ensure that the promotion mechanism it employs does not result in the sweepstake falling within the definition of either a ‘lottery’, ‘gaming’ or ‘betting’ within the Gambling Act 2005. For example, a ‘lottery’ comprises: (a) payment by or on behalf of the entrant; (b) allocation of prizes; (c) such allocation by chance. Promoters should look to remove the payment element to avoid conducting an illegal lottery.

Contests are also generally permissible in the UK, however, as with sweepstakes, a promoter should ensure that a contest does not fall within the definition of a ‘lottery’, ‘gaming’ or ‘betting’ within the Gambling Act 2005. For example, the skill-based element of the contest should not depend on the winner guessing the result of a football match or horse race (particularly if there is a requirement to pay to enter), nor should it take the form of casino-style games such as roulette or blackjack.

In order to minimize the risk of a contest being defined as a ‘lottery’, a promoter could again remove the need for payment to enter. Alternatively, if a promoter wants the entrant to pay, it should ensure that the level of skill is sufficient to deter a sufficient proportion of potential entrants from entering or prevent a significant proportion of those who do enter from winning a prize.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

Gender stereotyping is currently a hot topic within the advertising and marketing sector in the UK following an ASA research study into the issue in 2016. The study was in response to increased public discussion around equality in the UK. The study found that gender stereotyping can be harmful by restricting the opportunities or aspirations of individuals, particularly children. In the near future the UK is likely to see new rules introduced regulating the use of such stereotypes. Marketers considering advertising on social media in the UK should be particularly careful in how they use gender roles in their content. While there is unlikely to be an outright ban on all ads depicting women cleaning or men doing DIY, brands should be conscious that even if such content is not scrutinized by the ASA, there is heightened public awareness around the issue which could result in negative publicity.

In addition, CAP and BCAP have recently introduced stricter rules prohibiting the sexual representation of under-18s. The rules prohibit representation of anyone who is, or seems to be, under 18 in a sexual way, unless the principal function is to promote the welfare of or prevent harm to under 18s and provided that the sexual representation is not excessive.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

- **Mondelez UK Ltd ‘Oreo Lick Race’ (November 2014)—Influencer Marketing**  
 Two famous vloggers were featured participating in an Oreo ‘lick race’ on their YouTube channels. Each vlogger stated that they were working with Oreo and mentioned other vloggers who had also taken part in their own ‘lick race’. Each video also included the following statement: ‘Thanks to Oreo for helping to make this video happen!’  
 A complainant challenged whether the adverts were obviously identifiable as marketing communications.  
 The ASA upheld the complaint holding that the disclosures made were insufficient. It stated that the videos were in the style of the videos on the vloggers’ YouTube pages, as such it was not clear that the videos were adverts or that a commercial relationship existed between the vloggers and Oreo.
- **Procter & Gamble (Health & Beauty Care) Ltd t/a Beauty Recommended (May 2015)—Influencer Marketing**  
 A video entitled ‘Easy Lip Makeup Tutorials for Winter Time’ was featured on the Beauty Recommended YouTube channel. The video featured a model vlogger talking about and using a number of products; these included several Max Factor products. At the beginning of the video, text appeared which stated ‘Sponsored by BEAUTY RECOMMENDED, brought to you by Procter & Gamble’. This text was also repeated in the video description.  
 A complainant challenged whether the advert was obviously identifiable as such.  
 The ASA upheld the complaint, stating that, in the case of marketing vlogs, consumers should be made aware before clicking on a video link that the content which follows is an advert. Further the ASA considered that consumers might not be aware that the brand Beauty Recommended is owned by Procter & Gamble. The channel and video titles did not give any indication as to the commercial nature of the video and the phrases ‘sponsored by’ and ‘brought to you by’ were insufficient to make clear that this was advertising and not merely sponsored content that had been financed but not controlled by the brand. In this case, it was both financed and controlled by P&G.
- **Michelin Tyre plc and Telegraph Media Group Ltd (December 2015)—Native Advertising**  
 An advert for Michelin tyres appeared on The Telegraph’s website. Text and a video compared Michelin’s tyres to a non-disclosed cheaper brand and concluded that Michelin tyres were safer and would perform better in wet weather. Text appeared in the right hand corner of the advert which stated ‘In association with Michelin’ and also contained a statement which read ‘As part of the Telegraph’s recent Performance Driving Day, in association with Michelin’. Both the page and the video contained Michelin’s logo.  
 The complaint was upheld. The ASA considered that the advert would be understood by consumers as an objective study between budget tyres and Michelin tyres rather than a Michelin advertisement. Whilst the statements connecting Michelin to the advert might have shown that a financial arrangement existed, it did not necessarily show that the content was an advert.
- **Henkel Ltd t/a Dylon (January 2016)—Native Advertising**  
 A Dylon advert was placed on the Buzzfeed site entitled ‘14 Laundry Fails We’ve All Experienced’, the article’s content was similar to that of a typical Buzzfeed post, although a

Dylon Color Catcher logo was placed below the article with text which read ‘Dylon Brand Publisher’ with a link to the Dylon page on BuzzFeed.

A complainant challenged whether the advert was obviously identifiable as such.

The ASA upheld the complaint stating that, whilst labels appeared next to the advertorial on BuzzFeed’s home page, website visitors could access the advertorial via a number of different pathways; it should have been made immediately clear when arriving on the article page that it was an advert. It was also stated that the advert should include labels other than ‘Brand Publisher’ for advertorials.

- **Nomad Choice Pty Ltd t/a Flat Tummy Tea (April 2017)—Influencer Marketing**

A make up blogger posted a selfie on her Instagram page holding a selection of tea products. The post was captioned ‘@flattummytea 20% off guys!!!! If you’ve been following me you’ll know I used this and genuinely feel less bloated and a flatter tummy... oh yessss’.

The ASA concluded that Flat Tummy Tea exercised sufficient control over the content of the post in order for the post to be considered a marketing communication. Further, the content and context of the post did not make clear that the post was an advertisement, particularly in the absence of an identifier such as ‘#ad’. The complaint was upheld.

- **Diamond Whites (October 2017)—Influencer Marketing**

A reality TV star created a Snapchat snap of herself while holding a Diamond Whites product. The text on the Snap stated: ‘50% off everything from Diamond Whites! Swipe up [heart emoji]’ and a link to the Diamond Whites website.

The ASA upheld the complaint that the advert was not obviously identifiable as such and that it was not obvious that the reality star had a commercial relationship with Diamond Whites.

### ***10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?***

Before utilizing UGC it is best practice to obtain the consent of the user, whether that is through a written agreement whereby rights in the content are formally assigned or licensed to the brand, through the website terms and conditions, or by seeking informal permission from the user.

Obtaining a formal written agreement is the safest and most secure way to proceed, particularly if the usage is likely to be high profile or for a long duration. If this is not practical, the website terms could be drafted to specify that any uploaded content will be assigned or licensed to the brand and warranties could be included to ensure that the content does not infringe third party rights. It is important to ensure that the user reviews the terms and accepts them, otherwise there is a risk that the term could be deemed ineffective. Seeking informal or implied permission from the user is the least reliable form of consent.

Whilst moderating content is important in order to protect the brand and remove inappropriate content, the more a brand moderates the content, the greater the risk that the brand will be legally responsible for any content which is posted. There is therefore a fine line between protecting the brands reputation and compromising its legal position.

Brands should also implement policies against the making of defamatory statements, and implement complaints and notification procedures to allow users to notify the brand of potentially defamatory material and giving the brand the ability to remove or block the content.

Disclosure is essential for native advertising and social influencer posts, particularly if the influencer has been paid and there has been any degree of control over the content of the post.

The other key area is online reviews. Moderation guidelines should be carefully drafted and applied by trained staff to ensure that fake positive or negative reviews are removed, along with reviews that are offensive or infringe third party rights. However, genuine negative reviews should not be removed.

UNITED STATES

### *1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?*

The main social media platforms that advertisers use in the United States include Facebook, Instagram, Twitter, Pinterest, Snapchat, Reddit, Tumblr, WhatsApp, and LinkedIn.

### *2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?*

Advertising and marketing in the United States, including through social media, is heavily regulated by federal, state, and local law, as well as by various self-regulatory organizations. The laws are complex, and are constantly evolving. Below are some key examples of the laws governing advertising practices in the United States:

**Federal Laws:** While there are numerous advertising laws, including statutes prohibiting deceptive practices, as well as statutes governing specific marketing practices, two of the main examples are:

- **FTC Act:** This Act is a federal law prohibiting ‘unfair or deceptive acts or practices’ affecting US commerce. *See* 15 USC §45.
- **Lanham Act:** This is the federal false advertising statute, which provides the key federal cause of action for competitors. *See* 15 USC 1125(a)(1)(B).

**State Laws:** Each state also regulates advertising, both with general consumer protection statutes (many modeled after the FTC Act), as well as with statutes regulating specific practices (such as the administration of sweepstakes and contests). Private plaintiffs as well as state regulators can bring actions under these laws.

**Local Laws:** Some counties and municipalities also have consumer protection laws. These laws run the spectrum from general prohibitions on deception to specific requirements related to pricing and other retail practices.

**Self-Regulation:** As discussed more fully below, self-regulation plays an important role in the advertising industry. Industry groups have promulgated respected and widely-followed self-regulatory codes, and many advertising disputes are resolved through self-regulatory dispute mechanisms.

Advertising through social media can also implicate many other areas of law, including copyright, trademark, right of publicity, defamation, unfair competition, union issues, idea misappropriation, obscenity and indecency, hate speech, other tort liability, criminal law, and privacy. Advertising involving user generated content (‘UGC’), which is quite common in the social media space, can also pose special liability risks for advertisers, although there are protections potentially available for advertisers:

- The Digital Millennium Copyright Act (‘DMCA’) provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law, but provides a ‘safe harbor’ from liability for ‘service providers’ who follow certain technical requirements. 17 USC §512.
- The Communications Decency Act (‘CDA’) provides certain protections for the publication of third party online material, providing that ‘no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.’ 47 USC §230(c)(1). However, the CDA does not provide

immunity from liability under certain types of laws, including criminal laws and intellectual property laws (47 USC 230(e)), and it is unsettled whether the CDA safe harbor covers state right of publicity claims (compare *Perfect 10 v CCBill* 488 F3d 1102 (9th Cir 2007) with *Jane Doe v Friendfinder* 540 F Supp 2d 288 (DNH 2008)) or provides any protection against a regulatory action brought by a governmental entity such as the FTC.

Social media advertising is also subject to the terms and conditions of the host platform’s own terms of use.

As noted above, numerous regulatory bodies have authority over advertising and marketing. The Federal Trade Commission (‘FTC’) is primarily responsible for enforcing the nation’s federal consumer protection laws, including the FTC Act. State attorneys general and local district attorneys also have jurisdiction to enforce state and local consumer protection laws. In addition, there are regulatory agencies charged with responsibility over specific industries and their advertising and marketing practices, such as:

- the US Food and Drug Administration (‘FDA’), which is charged with regulating prescription drug and biomedical advertising (see, eg, 21 CFR 312.7(a));
- the Consumer Financial Protection Bureau (‘CFPB’), which has authority to implement and enforce federal consumer financial law for ‘nonbank’ financial companies (see, eg, 12 USC §5491);
- the Department of Transportation (‘DoT’), which has jurisdiction to regulate airline advertising (see, eg, 49 USC §41712);
- the Securities Exchange Commission (‘SEC’), which has control over the false advertising of securities (see, eg, Securities Act of 1933, 15 USCA §77a; Securities Exchange Act of 1934, 15 USCA § 78a);
- the Financial Industries Regulatory Authority (‘FINRA’) has a variety of rules and guidelines affecting advertising by its members (see, eg, FINRA Rule 2210); and
- the Federal Alcohol Administration, which regulates unfair competition, including false advertising, in connection with the interstate sale of alcoholic beverages (see, eg, 27 USCA §205(e), (f)).

### ***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

There are also industry self-regulation organizations with advertising codes, guidelines or dispute regulation programs and jurisdiction over various advertising activities:

- NAD: the National Advertising Division, which resolves truth-in-advertising disputes (see [www.asrcreview.org](http://www.asrcreview.org));
- CARU: the Children’s Advertising Review Unit, which resolves disputes regarding compliance with CARU’s Self Regulatory Guidelines for Children’s Advertising’ (see [www.asrcreview.org](http://www.asrcreview.org));
- ERSP: the Electronic Retailing Self-Regulation Program, which resolves disputes regarding truth in advertising primarily for direct response advertising (see [www.asrcreview.org/ersp](http://www.asrcreview.org/ersp); see also [www.retailing.org](http://www.retailing.org));
- BBB: the Better Business Bureau, which has issued its own Code of Advertising (see [www.bbb.org/membership/codeofad.asp](http://www.bbb.org/membership/codeofad.asp));

- DMA: the Direct Marketing Association, which has issued numerous guidelines on marketing practices, such as Guidelines for Ethical Business Practice (see [www.the-dma.org](http://www.the-dma.org));
- MMA: the Mobile Marketing Association, which has issued various guidelines for the mobile marketing industry (see [www.mmaglobal.com](http://www.mmaglobal.com));
- IAB: the Interactive Advertising Bureau, which provides guidelines and best practices for many areas of online and social media marketing (see <https://www.iab.com/guidelines/social-media-native-content>);
- Networks: The major broadcast networks (such as ABC, CBS, NBC, and Fox), as well as some others, who require that commercials that air on their networks comply with their guidelines. In order to ensure compliance, the networks pre-clear commercials before they are accepted for broadcast;
- Ratings Organizations: Some industry groups provide ratings on entertainment products to give consumers information about the content of those products. They include the Motion Picture Association of America ([www.mpa.org](http://www.mpa.org)), the Entertainment Software Rating Board ([www.esrb.org](http://www.esrb.org)), and the Recording Industry Association of America ([www.riaa.com](http://www.riaa.com)); and
- Industry Groups: Many industry groups have also issued self-regulatory guidelines which are applicable to the marketing of specific types of products. Examples include the Distilled Spirits Council of the United States ([www.discus.org](http://www.discus.org)) and the American Gaming Association ([www.americangaming.org](http://www.americangaming.org)).

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

The FTC has issued the Guides Concerning the Use of Endorsements and Testimonials in Advertising (see <https://www.ftc.gov/policy/federal-register-notices/guides-concerning-use-endorsements-and-testimonials-advertising-16-1>). The Guides include a companion piece, which is frequently updated: Endorsement Guides: What People Are Asking (see <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking>). These guidance documents do not have the force of law but represent the FTC’s staff current interpretation as to what business practices comply with Section 5 of the FTC Act. These documents include guidance for use of influencers, as well as other endorsements and testimonials.

The IAB has also issued guidance for publishers (see [https://www.iab.com/wp-content/uploads/2018/01/IAB\\_Influencer\\_Marketing\\_for\\_Publishers\\_2018-01-25.pdf](https://www.iab.com/wp-content/uploads/2018/01/IAB_Influencer_Marketing_for_Publishers_2018-01-25.pdf)).

The Word of Mouth Marketing Association (“WOMMA”) has issued influencer guidelines (see <https://womma.org/wp-content/uploads/2017/05/WOMMA-Social-Media-Disclosure-Guidelines-2017.pdf>).

The basic requirements are that any material connection between an influencer and a brand advertiser that would not be expected is disclosed clearly and conspicuously. The FTC has said disclosures like ‘ad,’ ‘sponsored,’ or ‘paid’ are not ambiguous. Further, such disclosure should come at the beginning of the post or in no case after a viewer must scroll or click ‘read more’. In addition, an endorsement must reflect the actual experience of the influencer and can only make claims about a product or service that are substantiated and not misleading.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

The FTC has issued the Enforcement Policy Statement for Deceptively Formatted Advertisements (see <https://www.ftc.gov/public-statements/2015/12/commission-enforcement-policy-statement-deceptively-formatted>) and Native Advertising: A Guide for Business (see <https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>).

The IAB has also issued a Native Advertising Playbook (see <https://www.iab.com/wp-content/uploads/2015/06/IAB-Native-Advertising-Playbook2.pdf>).

The same requirements for influencer posts generally apply in the native advertising context as well. If a native ad is in the form of a video, disclosure that the content is advertising should appear in the video itself at the beginning of the video. If native content is live streamed, the disclosure should be repeated throughout.

### ***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

As discussed above, the use of UGC content can implicate copyright, trademark, and right of publicity issues. While UGC can impose risks, there are protections potentially available for advertisers through the DMCA and CDA, as discussed above.

The laws relating to copyright and rights of publicity generally dictate that written consent must be obtained by the copyright owner of the UGC as well as from any identifiable persons who appear in the UGC. If UGC is collected through the use of a contest or sweepstakes, the laws applicable to contests or sweepstakes will also apply.

In addition, UGC may fall under the category of influencer marketing (if consumers are making claims about an advertiser's product or services), and so the considerations applicable to influencers will also apply.

### ***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

Sweepstakes and contests are generally regulated by individual state law in each of the fifty States, and these same laws apply to sweepstakes and contests via social media as well. In general, if sweepstakes or a contest has all three elements (of price, chance, and consideration), the promotion is illegal in the United States. Legal chance promotions generally remove the element of consideration and legal skill contest promotions generally remove the element of chance. Additional general information on conducting sweepstakes or a contest in the United States can be found in GALA's publication, Sweepstakes and Contests: A Global Legal Perspective.

Some social media sites have their own guidelines relating to the conduct of sweepstakes and contests in social media including:

- Facebook: see [https://www.facebook.com/page\\_guidelines.php](https://www.facebook.com/page_guidelines.php);
- Twitter: see <https://help.twitter.com/en/rules-and-policies/twitter-contest-rules>;
- YouTube: see <https://support.google.com/youtube/answer/1620498?hl=en>;
- Snapchat: see <https://support.snapchat.com/en-US/a/promotions-rules>;
- Instagram: see <https://help.instagram.com/179379842258600>; and
- Pinterest: see <https://policy.pinterest.com/en/advertising-guidelines>.

Of important note is the FTC's investigation of Cole Haan. In 2014, the FTC investigated a contest conducted by Cole Haan on Pinterest, which required entrants to post a picture of a Cole Haan shoe in order to enter. In a closing letter, the FTC indicated that if a contest entrant posts content in social media in order to enter, in order to comply with the FTC's guidance on the use of endorsements and testimonials in advertising, he/she must disclose that the post is a contest entry (see further discussion at answer 9).

### ***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

As a general rule, the laws governing traditional advertising in the United States also govern advertising through social media. It is important, then, for advertisers to ensure that their advertising on social media is vetted in the same manner as their other advertising content. There is some uncertainty, however, about what types of social media communications by companies would not be considered to be advertising.

Advertisers should ensure that their express and implied advertising claims in social media are truthful and properly substantiated. Because advertisers may be held responsible for statements made on their behalf (such as by influencers or endorsers), statements made in sponsored content (such as native advertising), and statements made in online content adopted by the company, advertisers should have procedures in place to ensure that these claims are truthful and properly substantiated as well. Advertisers are also generally not permitted to use third parties (such as an endorser) to make a claim that the advertiser could not properly make itself.

Particularly with respect to social media advertising, there has been a great deal of attention lately on the issue of transparency—the idea that consumers have the right to know when they are the target of advertising. When individuals are speaking on a company's behalf (such as a social media influencer), or a publication works with an advertiser to publish content that promotes a brand (such as through native advertising), it is critically important that the content should clearly disclose the relationship with the advertiser. For social media posts by influencers, this may be done through hashtag disclosures such as #ad or #sponsored. For native advertising, disclosures such as 'advertisement' may be needed.

There has also been a great deal of attention paid to the effectiveness of online disclosures. The general rule is that, in order for a disclosure to be effective, it should be 'clear and conspicuous'. For disclosures in social media, this often means that the disclosure should be in a prominent, unavoidable location—not in a location that is easily missed by consumers (such as when it is only visible by scrolling, clicking on a hyperlink, or clicking to expand the readable area).

### ***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There have been numerous cases in the US relating to advertising and social media in social media. Cases include regulatory investigations, private litigation, and self-regulatory proceedings. Some key examples include:

- **Ann Taylor:** The FTC investigated Ann Taylor in connection with allegations that it provided gifts to bloggers who the company expected would post blog content about the company's LOFT division. In its letter closing the investigation, the FTC said that it was concerned that

bloggers who attended a preview of LOFT’s collection ‘failed to disclose that they received gifts for posting blog content about this event.’

- **Cole Haan:** In 2014, the FTC concluded its investigation of Cole Haan in connection with a contest Cole Haan conducted on the social media site Pinterest. The inquiry focused on Cole Haan’s ‘Wandering Sole Pinterest Contest,’ which instructed entrants to create Pinterest boards with images of Cole Haan shoes and pictures of their ‘favorite places to wander,’ for a chance to win a \$1,000 shopping spree. The brand also asked entrants to include the hashtag ‘#WanderingSole’ in their entries.

In its closing letter concluding the investigation, the FTC stated that ‘pins’ of Cole Haan products constituted endorsements of the brand. The FTC also stated that the opportunity to win a significant prize was an incentive for entrants, and one that would not reasonably be expected by consumers who saw the pins, thus requiring additional disclosure. The FTC concluded that Cole Haan’s failure to instruct contestants to label their pins and Pinterest boards to make clear they were pinning Cole Haan products in exchange for a contest entry could constitute a violation of the FTC Act and that the hashtag ‘#WanderingSole’ did not adequately communicate the material connection between the contestants and Cole Haan.

- **Warner Bros:** In 2016, the FTC settled its lawsuit against Warner Bros Home Entertainment Inc, which included allegations that Warner Bros falsely represented that positive gameplay videos of its game, Shadow of Mordor, posted by YouTube influencers reflected the independent opinions of impartial gamers; and failed to adequately disclose the influencers’ material connection to the company.

In exchange for posting pre-approved videos designed to promote Warner Bros’ game, the YouTube influencers received free access to the game and up to thousands of dollars in cash. The influencers were instructed to promote the game in a positive way and to place sponsorship information in the description box below the video, where it was not immediately visible. In many cases, the influencers did not disclose that Warner Bros had paid them to promote the game. The videos generated more than 5.5 million views on YouTube.

The final order required Warner Bros to clearly disclose material connections to influencers or endorsers. It also specified the measures Warner Bros must take to educate and monitor what influencers do on the company’s behalf, including, under certain circumstances, withholding payment or terminating influencers or ad agencies that do not comply with requirements.

- **Lord & Taylor:** In 2016, The FTC alleged that Lord & Taylor deceived consumers by paying for native advertisements, including an article published online by the fashion magazine Nylon, a Nylon Instagram post, and other incentivized social media posts by fashion influencers, without disclosing that the posts were actually paid promotions for the company’s Design Lab collection. Among other charges, the FTC alleged that Lord & Taylor gave the influencers a free dress and paid them between \$1,000 and \$4,000 each to post a photo of themselves wearing it on Instagram or another social media site. Lord & Taylor pre-approved each post, and the influencers were obligated by contract to tag ‘@lordandtaylor’ as part of the posts and to use the hashtag ‘#DesignLab’ in the caption of the photos. According to the FTC, Lord & Taylor failed to require the influencers to disclose that they received the dresses for free or were paid by Lord & Taylor for their posts.

*10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?*

- Advertisers should ensure that any social media content posted or sponsored by them complies with the same fundamental principles and legal standards that are applicable to advertising generally.
- Any advertiser using social media influencers should develop and implement a process by which it can monitor and review influencer posts to ensure the posts are truthful and properly disclose the influencer's relationship to the advertiser.
- Advertisers should ensure that social media disclosures are easily seen and read by consumers and should not rely on consumers navigating to other locations to obtain important qualifying information.
- Finally, rights holders continue to aggressively enforce their rights, particularly with respect to copyright infringement and right of publicity violations. Accordingly, advertisers should exercise extra caution to ensure that rights are cleared before material is posted.

URUGUAY

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

Facebook, Twitter and Instagram are the most widely-used social media platforms in Uruguay for advertising and marketing to consumers. There are no blocked platforms in Uruguay.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no specific regulations concerning advertising and marketing via social media in the Uruguayan legal system. Notwithstanding this, general regulations applicable to all types of advertising apply to advertising and marketing activities carried out through social media.

Act 17,250 on Consumers' Rights and its regulatory Decree 244/000 provide the general regime applicable to marketing and advertising.

The Act affirms one of the most important consumer rights: the protection against deceptive and/or misleading advertising. Accordingly, all advertising must be transmitted and made available to the public in such a way that consumers are aware that it is an advertisement. All types of deceptive or misleading advertising are completely forbidden.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

In 2017, the self-regulatory advertising council ('CONARP') issued some guidelines applicable to digital advertising. These guidelines complement the general advertising rules issued by CONARP in 2013.

The main rules are:

- the advertiser must clearly disclose to customers all relevant information about the product;
- the advertiser must give information about how the customer will legally accept an offer or assume any obligation; and
- if the advertiser collects data from customers, customers must have the chance to verify the accuracy of the data.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are no specific regulations or self-regulatory rules related to influencer marketing via social media. According to the self-regulation guidelines, influencers have a 'transparency' duty. Unfortunately, this duty is not explained in the guidelines.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are no specific regulations or self-regulatory rules related to native advertising via social media. The general rule is that the consumer must understand what is actual news/content and what is advertising.

**6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?**

Given that the internet itself is not considered by the local privacy law regulator to be a ‘public source of information’, the collection of personal data via the internet requires, in principle, that the data is obtained from the data subject himself or provided with his consent for the purpose of receiving advertisements and/or marketing-related information.

However, social networks may be considered press and therefore data may be used. This is still an open issue in Uruguay, so a case-by-case analysis is required.

**7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?**

There are no specific regulation or self-regulatory rules in Uruguay. General rules apply.

There are two types of sweepstakes regulated under Uruguayan law

- Sweepstakes, for which money must be paid for entry, are legally restricted and can only be carried out with the prior authorization of the National Directorate of Lotteries (Dirección Nacional de Loterías y Quinielas).
- Sweepstakes related to the consumption or promotion in any way of certain products or services are regulated by Law 15.851 and Decree 449/995. All promotions of products or services are required to be filed for prior authorization of the Directorate General of Trade at least 30 days before the beginning of the promotion. Depending upon the value of the prices, a municipal authorization may also need to be obtained.

**8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?**

According to Act 17,250 on Consumers’ Rights, all information provided by the supplier, including information on advertisements released by any means of communication, is binding on the supplier and is part of the agreement with the consumer.

When the contract is entered into via social media, the consumer has a five-business-day period to cancel the purchase. The supplier must disclose the right to cancel in the agreement. If the right to cancel is not disclosed, the consequence is that the consumer may cancel the purchase at any time.

**9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?**

N/A

**10. What are some key ‘best practices’ for advertising and marketing via social media in your jurisdiction?**

N/A



VENEZUELA

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms used by advertisers in Venezuela are Instagram, Twitter and Facebook, in that order. No important social media platform is blocked for access from Venezuela.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

The main laws governing advertising and marketing via social media in Venezuela are:

- Law on Social Responsibility in Radio, Television and Digital Media; and
- Consumer Protection Act.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

Whilst it will not be found written down anywhere, there is an absolute ban on politics in advertising, and it is essential for all advertisers to steer clear of matters of sensitive social, political or financial interest in order to avoid unwanted political exposure and become a target for the Government.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

No specific legislation is in force concerning the activity of individuals conducting business via social media; only that all content posted with marketing purposes must clearly be identified as 'advertising'. General legislation (ie the Consumer Protection Law, the Criminal Code), is applicable.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

Veracity and transparency are the key rules. Content must clearly be understood as advertising or sponsored material, as in the case on traditional media.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

See answer 5.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

The same laws, regulations and self-regulatory rules apply as in the traditional media. Terms and conditions of promotions/contests/sweepstakes are subject to review by the Consumer Protection Agency.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

See answer 3.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There have been none of relevance.

***10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?***

Credibility remains king. In spite of Venezuelans being avid users of social media platforms, companies believe that their reputation is their best asset to maintain/increase their client base.



ZIMBABWE

***1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?***

The main social media platforms that are used by advertisers in Zimbabwe are Facebook (and Facebook Messenger), Twitter, What'sApp, Instagram, Snapchat, Pinterest, LinkedIn, Vimeo, Vevo and YouTube.

In Zimbabwe there are no social media platforms that are not available/blocked for use. However, YouTube, Vimeo and Vevo are not widely used in Zimbabwe for advertising purposes.

***2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?***

There are no specific laws related to social media; the same general laws which would apply to off-line activities apply to social media where it affects transactions and/or persons within the borders of Zimbabwe. Such laws include but are not limited to:

- the Competition Act related to unfair business practices, false or misleading advertising;
- intellectual property;
- contract; and
- defamation.

In 2017 there was a proposal to introduce a Cyber Crime and Cyber Security Bill, which was tabled before Parliament for discussion. The main aim of this Bill was purportedly to criminalize inciting violence, revenge porn, racist/xenophobic material, bullying, causing 'substantial' emotional stress, communicating falsehoods and degrading other people.

In addition, the Advertising Standards Authority of Zimbabwe (now referred to as 'ASAZIM'), after a period when it was non-functional, became active again in March 2017. As a voluntary, self-regulatory body, its mandate is to promote accessible and cost-efficient mechanisms to ensure advertising is legal, decent, honest and truthful. Although it relies upon its Code of Standards, it recognizes the need to amend the Code to reflect current developments and challenges evolving in the advertising and marketing industries, particularly related to social media.

***3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?***

At this time there are no self-regulatory rules which specifically govern social media. However, advertising via social media will most likely fall under, and be governed by, the Code of Standards which is used by ASAZIM.

***4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?***

There are currently no laws, regulations or self-regulatory rules for influencer marketing in Zimbabwe. However, the general guiding principles in the Code of Standards are that influencer marketing, just as any other advertisement, must not be false, misleading or deceptive. Therefore, disclosure may be required under the terms of the Code.

***5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?***

There are currently no specific laws, regulations, or self-regulatory rules for native advertising in Zimbabwe. However, the general guiding principles in the Code of Standards are that native advertising, just as any other advertisement, must not be false, misleading or deceptive. Therefore, disclosure may be required under the terms of the Code.

***6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?***

There are currently no specific laws, regulations, or self-regulatory rules related to the use of user generated content when advertising and marketing via social media, except the general laws which would apply to off-line activities connected to social media where it affects transactions and/or persons within the borders of Zimbabwe, eg, Competition Act.

***7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?***

In Zimbabwe, sweepstake competitions are regulated by the Lottery and Gaming Act (Chapter 10:26). However, it is unclear how the laws apply to contests via social media where the promoters and contestants are not fulfilling any requirements or receiving any benefits within the borders of Zimbabwe. Promoters must be aware that contestants are prohibited under the Exchange Control Act from agreeing to pay any amount (eg, for application, entrance, ticket fees etc.) in US or other currency outside Zimbabwe without the prior authority of the Reserve Bank via an authorized commercial bank in Zimbabwe.

***8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?***

A balance must be struck between the advertiser’s rights to free speech and expression, the competitor’s right not to be disparaged and the consumers’ right to protection from false and/or misleading claims.

***9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?***

There are no judgments/decisions at this time.

***10. What are some key “best practices” for advertising and marketing via social media in your jurisdiction?***

The best practice is to be truthful and honest about the properties of any product that is being advertised or sold to ensure that consumers are not aggrieved when a product does not meet the standards which were portrayed when it was advertised. In the event of influencer marketing or native advertising, there should be disclosure of the pecuniary interests of those participating in the advertisement.





## GALA MEMBERS

## ARGENTINA

Paula Fernandez Pfizenmaier  
*Randle Legal*  
Carlos Pellegrini 1135, 2nd  
Buenos Aires B1009ABW  
T: +54.11.5252.0700  
E: pfernandez@randlelegal.com  
W: www.randlelegal.com

## AUSTRALIA

Peter Le Guay  
*Thomson Geer*  
Level 25, 1 O'Connell Street,  
Sydney NSW 2000  
T: +61.2.8248.5800  
E: pleguay@tglaw.com.au  
W: www.tglaw.com.au

## AUSTRIA

Stefan Kofler & Dr. Georg Huber  
*Greiter, Pegger, Kofler & Partners*  
Maria-Theresia Strasse 24, A-6020  
Innsbruck  
T: +43.512.571.811  
E: stefan.kofler@lawfirm.at  
E: georg.huber@lawfirm.at  
W: www.greiter.lawfirm.at

## BELGIUM

Jan Ravelingien  
*Marx, Van Ranst, Vermeersch & Partners*  
Avenue de Tervueren 270, 1150 Brussels  
T: +32.2.285.01.00  
E: jan.ravelingien@mvp.be  
W: www.mvp.be

## BOLIVIA

Marcos Mercado & Jorge Inchauste  
*Guevara & Gutierrez*  
Calacoto Calle 15  
Torre Ketal, Piso 4, Oficina 2 - Calacoto  
La Paz P.O. Box 9332  
T: +591.2.2770808  
E: mmercado@gg-lex.com  
E: jinchauste@gg-lex.com  
W: www.gg-lex.com

## BRAZIL

Valdir Rocha  
*Veirano Advogados*  
Av. Presidete Wilson, 231, 23. andar  
20030-021 - Rio de Janeiro  
T: +55.21.38244747  
E: valdir.rocha@veirano.com.br  
W: www.veirano.com.br

## BULGARIA

Kalina Tchakarova & Violetta Kunze  
*Djingov, Gouginski, Kyutchukov & Velichkov*  
10 Tsar Osvoboditel Blvd.  
Sofia 1000, Bulgaria  
T: +00359.2.932.1105  
E: kalina.tchakarova@dgkv.com  
E: violetta.kunze@dgkv.com  
E: dgkv@dgkv.com  
W: www.dgkv.com

## CANADA

Catherine Bate  
*Miller Thomson LLP*  
Scotia Plaza, 40 King Street West,  
Suite 5800, P.O. Box 1011, Toronto,  
Ontario, M5H 3S1  
T: 416.595.8582  
E: cbate@millerthomson.com  
W: www.millerthomson.com

## CARIBBEAN

Karyl D. Bertrand (Dutch)  
*Bertrand Legal & LP Consultancy*  
Castorweg 22-24  
Willemstad, Curaçao  
T: +5999 461 8199  
E: bertrandlegalconsultancy@gmail.com

Dianne Daley (English)

*Foga Daley*  
7 Stanton Terrace, Kingston 6,  
St. Andrew, Jamaica  
T: +876 927 4371  
E: daley@fogadaley.com  
W: www.fogadaley.com

## CHILE

Rodrigo Albagli & Ariela Agosin  
*Albagli Zaliasnik*  
El Golf, Piso 4, Las Condes,  
Santiago  
T: +56 2 2 445 6000  
E: ralbagli@az.cl  
E: aagosin@az.cl  
W: www.az.cl

## CHINA

Kevin Guo, Philip Qu & Justina Zhang  
*TransAsia Lawyers*  
Suite 2218, China World Office 1  
1 Jianguomenwai Avenue, Beijing  
100004  
T: +86 10 6505 8188  
E: kguo@transasialawyers.com  
E: pqu@TransAsiaLawyers.com  
E: whzhang@TransAsiaLawyers.com  
W: www.TransAsiaLawyers.com

## COLOMBIA

Juan Carlos Uribe & Fernando Triana  
*Triana, Uribe & Michelsen*  
Calle 93B No. 12-48 P. 4, Bogotá,  
D.C. 110221  
T: +57 1 6019660  
E: jcu@tumnet.com  
E: fts@tumnet.com  
W: www.tumnet.com

## COSTA RICA

Uri Weinstok M.  
*BLP*  
BLP Building, 4th floor. Via Lindora  
Business Center San José  
T: +506.2205 3939  
E: uweinstok@blplegal.com  
W: www.blplegal.com

## CROATIA

Mladen Vukmir & Aleksandar Bijelic  
*Vukmir & Associates*  
Gramaca 2L 10 000 Zagreb  
T: +385.1.376.0511  
E: mladen.vukmir@vukmir.net  
E: aleksandar.bijelic@vukmir.net  
W: www.vukmir.net

## CYPRUS

George Z. Georgiou  
George Z. Georgiou & Associates LLC  
1 Iras Street, Nicosia 1060  
T: + 35722763340  
E: admin@gzg.com.cy  
W: www.gzg.com.cy

## CZECH REPUBLIC

Mr. Libor Štajer, Mr. Pavel Musil &  
Mr. Petr Kuta  
KMVS, advokátní kancelář, s.r.o.  
Hellichova 1, 118 00 Praha 1 -  
Malá Strana  
T: +296.210.562(3)  
E: libor.stajer@kmvs.cz  
E: petr.kuta@kmvs.cz  
E: pavel.musil@kmvs.cz  
W: www.kmvs.cz

## DENMARK

Johan Løje  
Løje, Arnesen & Meedom  
Øster Allé 42, 6. floor, P.O.Box 812  
DK-2100 Copenhagen Ø  
T: + 45.33.114622  
E: jl@sandel.dk  
W: www.iplaw.dk

## DOMINICAN REPUBLIC

Jaime R. Angeles  
Angeles & Pons  
Mustafá Kemal Atatürk Ave. 27 de  
Febrero 210, Suite 203 El Vergel  
T: +809.373-9418  
E: jangeles@angelespons.com  
W: www.angelespons.com

## EGYPT

Mohamed Eldib & Amr Eldib  
Eldib & Co  
World Trade Center, Floor 17, 1191  
Corniche El Nil, Beaulac 11221  
T: + 20 2 2578 6000  
E: mohamed.eldib@eldib.com  
E: amr.eldib@eldib.com  
W: www.eldib.com

## ECUADOR

Carlos Alberto Arroyo del Rio  
Falconi Puig Abogados  
Av. Amazonas N21-147 y Roca  
Edificio Río Amazonas, Oficina 900, Quito  
T: +593.2. 256.1808  
E: carroyo@falconipuig.com  
W: www.falconipuig.com

## EL SALVADOR

Roxana Romero, Jose Roberto,  
Carlos Castillo & Roberto R Pineda  
Romero Pineda & Asociados  
Edificio AVANTE, Suite 5-01, Blvd. Luis  
Poma Santa Elena, Antiguo  
Cuscatlan  
T: + 503.2505.5555  
E: roxana@romeropineda.com  
E: jose@romeropineda.com  
E: ccastillo@romeropineda.net  
E: roberto@romeropineda.com  
W: www.romeropineda.com

## FINLAND

Mikael Segercrantz &  
Johanna Flythström  
Roschier, Attorneys Ltd.  
Keskuskatu 7 A 00100 Helsinki  
T: +358.20.506.6000  
E: mikael.segercrantz@roschier.com  
E: johanna.flythstrom@roschier.com  
W: www.roschier.com

## FRANCE

Michel Béjot & Caroline Bouvier  
Bernard Hertz Béjot  
29, rue Fortuny Paris 75017  
T: +33.1.43.18.8080  
E: mbejot@bhbfrance.com  
E: cbouvier@bhbfrance.com  
W: www.bhbfrance.com

## GERMANY

Dr. Søren Pietzcker (Hamburg Office)  
& Dominik Eickemeier (Cologne Office)  
Heuking Kühn Lüer Wojtek  
Goetheplatz 5-7, Frankfurt 60313  
T: +46.69.975 61-446  
E: s.pietzcker@heuking.de  
E: d.eickemeier@heuking.de  
W: www.heuking.de

## GREECE

Kriton Metaxopoulos & Asterios Syssilas  
A. & K. Metaxopoulos & Partners  
Law Firm  
54 Vas. Sofias Av. , 11528 Athens  
T: +30.210.7257614  
E: k.metaxopoulos@metaxopouloslaw.gr  
E: asyssilas@metaxopouloslaw.gr  
W: www.metaxopouloslaw.gr

## GUATEMALA

Marco Antonio Palacios &  
Hilda Monterroso  
Palacios & Asociados / Sercomi  
Avenida Reforma 6-64 zona 9  
Edificio Plaza Corporativa,  
Torre I, Nivel 9,  
01009, Guatemala City  
T: +502.2385.3416 / 19  
E: mapalacios@sercomi.com.gt  
E: hmonterroso@sercomi.com.gt  
W: www.sercomi.com.gt

## HONDURAS

José Álvarez & Fernando Godoy  
BLP  
Torre Nova, 5th Floor, Suite 95-A,  
Paseo Los Próceres, Tegucigalpa 11101  
T: 504.2269.1217  
E: jalvarez@blplegal.com  
E: fgodoy@blplegal.com  
W: www.blplegal.com

## HONG KONG

Angus Forsyth  
Angus Forsyth & Co.  
16A, Hillier Commercial Building, 65-67  
Bonham Strand, Sheung Wan  
T: +852.2638.9099  
E: angus@angfor.hk  
W: www.angfor.hk

## HUNGARY

András Szecskay, Anikó Keller &  
János Vajda  
*Szecskay Attorneys at Law*  
H-1055 Budapest, Kossuth Lajos  
tér 16-17  
T: +36 1 472 3000  
E: andras.szecskay@szecskay.com  
E: aniko.keller@szecskay.com  
E: janos.vajda@szecskay.com  
W: www.szecskay.com

## INDIA

Sharad Vadehra  
*Kan and Krishme*  
KNK House, A-11 Shubham Enclave  
Paschim Vihar, New Delhi-110063  
T: +91.11.4377 66 66, 4377 66 75  
E: knk@kankrishme.com  
W: www.kankrishme.com

## IRELAND

Duncan Grehan & Conor Griffin  
*Duncan Grehan & Partners Solicitors*  
Gainsboro House, 24 Suffolk Street,  
Dublin 2  
T: +353.1677.9078  
E: dgrehan@duncangrehan.com  
E: cgriffin@duncangrehan.com  
W: www.duncangrehan.com

## ISRAEL

David Wolberg  
*Kuperschmit, Goldstein & Co.*  
Upper Galilee Regional Counsel  
Compound PO Box 1032  
Kiryat Shmona 11019, Israel  
T: +972.4.695.1755  
E: dwolberg@kgcolaw.com  
W: www.kgcolaw.com

## ITALY

Ernesto Apa, Lydia Mendola  
& Donata Cordone  
*Portolano Cavallo*  
Via Rasella 155, Rome 00187  
T: + 39 06 696661  
E: eapa@portolano.it  
E: lmendola@portolano.it  
E: dcordone@portolano.it  
W: www.portolano.it

## JAPAN

Chie Kasahara  
*Atsumi & Sakai*  
Fukoku Seimei Bldg., Reception: 12F  
2-2-2 Uchisaiwaicho, Chiyoda-ku, Tokyo  
100-0011  
T: +81 3-5501-2438 (Direct)  
E: chie.kasahara@aplav.jp  
W: www.aplav.jp/en/

## KENYA

John Syekei  
*Bowmans (Coulson Harney)*  
5th Floor, ICEA Lion Centre,  
West Wing, Riverside Park, Chiromo Road,  
Nairobi  
PO Box 10643-00100, Nairobi  
T: +254 20 289 9000  
E: john.syekei@bowmanslaw.com  
W: www.bowmanslaw.com

## LUXEMBOURG

Michael Molitor & Virginie Liebermann  
*MOLITOR, Avocats à la Cour*  
8, rue Sainte - Zithe, B.P.690, L-2016  
T: +352.297.298/1  
E: michel.molitor@molitorlegal.lu  
E: virginie.liebermann@molitorlegal.lu  
W: www.molitorlegal.lu

## MALAYSIA

Patrick Mirandah  
*mirandah asia*  
1 Coleman Street #07 – 08  
The Adelphi, 179803  
T: +65.6336.9696  
E: malaysia@mirandah.com  
W: www.mirandah.com

## MALTA

Georg Sapiano  
*Aequitas Legal*  
Valletta Buildings, South Street  
Valletta, 1103  
T: +356 21 234085  
E: gsapiano@aequitas.com.mt  
W: www.aequitas.com.mt

## MEXICO

Roberto Arochi  
*Arochi & Lindner*  
Insurgentes Sur 1605, 20th Floor  
San José Insurgentes, Mexico City,  
03900  
T: +52.55.50.95.2050  
E: rarochi@arochilindner.com  
W: www.arochilindner.com

## NETHERLANDS

Ebba Hoogenraad & Daniël Haije  
*Hoogenraad & Haak*  
Emerald House Jozef Israelskade 48G  
1072 SB, Amsterdam  
T: + 31 20 305 3066  
E: eh@hoogenhaak.nl  
E: dh@hoogenhaak.nl  
W: www.hoogenhaak.nl

## NEW ZEALAND

Erich Bachmann  
*Hesketh Henry*  
Level 14, PwC Tower, 188 Quay  
Street, Auckland 1010  
T: +64.9.375.8709  
E: erich.bachmann@heskethhenry.co.nz  
W: www.heskethhenry.co.nz

## NICARAGUA

Julián J. Bendaña-Aragón  
*Guy José Bendaña-Guerrero & Asociados*  
PO Box 3140, Managua 00005  
T: +505.2266.5662  
E: julian.bendana@guybendana.com.ni  
W: www.guybendana.com.ni

## NIGERIA

Lara Kayode  
*O. Kayode & Co.*  
3rd Floor, Sterling Bank Building, 198  
Igbosere Road Moloney, Lagos Island  
T: +234.1.292 2412  
E: lara@okayode.com  
W: www.okayode.com

## NORWAY

Bente Holmvang  
*Bull & Co*  
Postboks 2583 Solli, N-0203 Oslo  
T: +47.23.01.01.01  
E: bho@bull.no  
W: www.bull.no

## PARAGUAY

Hugo Mersan & Lorena Mersan  
*MERSAN*  
Fulgencio R. Moreno No. 509 Edificio  
"De La Colina". Casilla de Correos  
Nº 693, Asuncion  
T: + 595 21 447 739  
E: hugo@mersanlaw.com  
E: lorenamersan@mersanlaw.com  
W: www.mersanlaw.com

## PANAMA

Ramón R Benedetti A.  
*Estudio Benedetti*  
Edificio Comosa, Piso 19, Avenida  
Samuel Lewis, Panama 5, Panama  
T: + 507 321 5700  
E: ramon@estudiobenedetti.com  
W: www.benedetti.com.pa

## POLAND

Ewa Skrzydło-Tefelska  
*Softysinski Kawecki & Szlezak*  
ul. Jasna 26, 00-054 Warsaw  
T: +48.61.856.0420  
E: ewa.tefelska@skslegal.pl  
W: www.skslegal.pl

## PORTUGAL

César Bessa Monteiro & Ricardo Henriques  
*Abreu Advogados*  
Av. Infante D. Henrique, 26  
Lisbon 1149-096  
T: +351. 217.231.800  
E: bessa.monteiro@abreuadvogados.com  
E: ricardo.henriques@abreuadvogados.com  
W: www.abreuadvogados.com

## PUERTO RICO

Eugenio Torres  
*Ferraiuoli LLC*  
221 Ponce de León Avenue, 5th Floor  
Hato Rey, Puerto Rico 00917  
T: 787.766.7000  
E: etorres@ferraiuoli.com  
W: www.ferraiuoli.com

## ROMANIA

Silviu Stratulat & Ana Kusak  
*Stratulat Albulescu Attorneys at Law* 221  
27 Ion Brezoianu St., ground 5th & 6th  
Floor, Bog'Art Center, 1st District  
Bucharest  
T: 40.21.316.87.49  
E: Silviu.stratulat@stratulat-albulescu.ro  
E: ana.kusak@stratulat-albulescu.ro  
W: stratulat-albulescu.ro

## RUSSIA

Irina Anyukhina  
*ALRUD Law Firm*  
6 floor, 17 Skakovaya Street,  
125040, Moscow  
T: +7.495.234.96.92  
E: ianyukhina@alrud.com  
W: www.alrud.com

## SERBIA

Slobodan Kremenjak, Nebojša  
Samardžić & Miloš Stojković  
*Živković Samardžić*  
Makedonska 30/II  
Belgrade 11000  
T: + 381 11 2636636  
E: slobodan.kremenjak@zslaw.rs  
E: nebojsa.samardzic@zslaw.rs  
E: milos.stojkovic@zslaw.rs  
W: www.alrud.com

## SINGAPORE

Denise Mirandah  
*mirandah asia*  
1 Coleman Street, #07 - 08  
The Adelphi, 179803  
T: +65.63369696  
E: denise@mirandah.com  
W: www.mirandah.com

## SLOVAKIA

Dušan Nitschneider  
*Nitschneider & Partners*  
Cintorínska 3/A,  
811 08 Bratislava  
T: +421 2 2092 1213  
E: nitschneider@nitschneider.com  
W: www.nitschneider.com

## SOUTH AFRICA

Kelly Thompson & Jenny Pienaar  
*Adams & Adams*  
P O Box 1014, Pretoria, 0001  
T: +27 12 432 6000  
E: kelly.thompson@adamsadams.com  
E: jenny.pienaar@adamsadams.com  
W: www.adamsadams.com

## SPAIN

Ignacio Temiño Cenicerós, Rubén Canales  
Quinto & Carolina Montero Peralta  
*Abril Abogados*  
Calle Amador de los Rios, 1 Madrid  
28010  
T: +34 91 7020331  
E: ignaciot@abrilabogados.com  
E: rcanales@abrilabogados.com  
E: cmontero@abrilabogados.com  
W: www.abrilabogados.com

## SWEDEN

Erik Ullberg  
*Wistrand*  
Box 11920, SE-404 39, Göteborg  
T: +46.8.5072.0000  
E: erik.ullberg@wistrand.se  
W: www.wistrand.se

## SWITZERLAND

Dr. Rolf Auf der Maur  
*VISCHER AG*  
Schuetzengasse 1, P.O. Box 1230,  
CH-8021 Zurich  
T: +41 58 211 34 00  
E: ram@vischer.com  
W: www.vischer.com

## TRINIDAD AND TOBAGO

Olive Ramchand  
*Fitzwilliam Stone Furness -  
Smith & Morgan*  
48-50 Sackville Street, Port of Spain  
T: +868.623.1618  
E: oramchand@fitzwilliamstone.com  
W: www.fitzwilliamstone.com

## TURKEY

Ugur Aktekin & Hande Hancer  
*Gün + Partners*  
Kore Sehitleri Cad. No: 17,  
Zincirlikuyu 34394, Istanbul  
T: +90.212.3540000  
E: ugur.aktekin@gun.av.tr  
E: hande.hancer@gun.av.tr  
W: www.gun.av.tr

## UGANDA

Paul Asimwe  
*SIPIL Law Associates*  
Jocasa House, Third Floor, Unit 5, Plot 14,  
Nakasero Road, P.O. Box 4180  
Kampala, Uganda  
T: + 256 393 272 291  
E: paul@sipilawuganda.com  
W: www.sipilawuganda.com

## UKRAINE

Oleksandr Padalka  
*Sayenko Kharenko*  
10 Muzeyny Provulok,  
Kyiv 01001  
T: +380 44 499 6000  
E: opadalka@sk.ua  
W: www.sk.ua

## UNITED ARAB EMIRATES

Fiona Robertson  
*Al Tamimi & Company*  
6th Floor, Building 4 East Dubai  
International Financial Centre Sheikh  
Zayed Road PO Box 9275  
Dubai T: + 971 (0)4 364 1641  
E: f.robertson@tamimi.com  
W: www.gun.av.tr

## UNITED KINGDOM

Brinsley Dresden  
*Lewis Silkin LLP*  
5 Chancery Lane, Clifford's Inn,  
London EC4A 1BL  
T: +44 (0) 20.7074.8069  
E: brinsley.dresden@lewissilkin.com  
W: www.lewissilkin.com

## UNITED STATES

Ronald R. Urbach, Joseph J. Lewczak  
& Allison Fitzpatrick  
*Davis & Gilbert LLP*  
1740 Broadway, New York, NY 10019  
T: +1.212.468.4800  
E: rurbach@dglaw.com  
E: jlewczak@dglaw.com  
E: afitzpatrick@dglaw.com  
W: www.dglaw.com

Jeffrey A. Greenbaum & Rick Kurnit  
*Frankfurt Kurnit Klein & Selz P.C.*  
488 Madison Avenue  
New York, New York 10022  
T: +1.212.980.0120  
E: rkurnit@fkks.com  
E: jgreenbaum@fkks.com  
W: www.fkks.com

Amy Mudge, Melissa Steinman  
& Angel Garganta  
*Venable LLP*  
600 Massachusetts Avenue NW  
Washington 20001  
T: +1.202.344.4000  
E: amudge@venable.com  
E: mlsteinman@venable.com  
E: agarganta@venable.com  
W: www.venable.com

## URUGUAY

Agustin Mayer  
*Ferrere Abogados*  
Juncal 1392, Ferrere Tower, 11.000  
Montevideo  
T: +598 2 900 1000  
E: amayer@ferrere.com  
W: www.ferrere.com

## VENEZUELA

Ricardo Alberto Antequera &  
María Alejandra Castillo  
*Estudio Antequera Parilli & Rodriguez*  
Edificio Centro COINASA, PH-B,  
Avenida San Felipe, La Castellana,  
Caracas 1060  
T: +58.212.263.9944  
E: ricardoalberto@antequera.com.ve  
E: mcastillo@antequera.com.ve  
W: www.antequera.com.ve

## ZIMBABWE

Brenda M. Wood Kahari  
*B.W. Kahari*  
Baronage House, 24 Lanark Road  
Belgravia/Avondale, Harare  
T: +263.4.250994/5 or 253941  
E: brendak@bwkahari.com  
W: www.lawyersforafrica.com







488 Madison Avenue, 10th Floor, New York, NY 10022  
Tel: 212.705.4895 | Fax: 347.438.2185 | Email: sbess@galalaw.com

[www.galalaw.com](http://www.galalaw.com)

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