



GLOBAL ADVERTISING LAWYERS ALLIANCE

CONDUCTING PROMOTIONS IN A GLOBAL ECONOMY




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The authors of this paper are members of the Global Advertising Lawyers Alliance (GALA). GALA is an alliance of lawyers located throughout the world with expertise and experience in advertising, marketing and promotion law. The names of counsel in each country can be found at www.gala-marketlaw.com by clicking on the country's name or flag.

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SECTION I

EU OVERVIEW AND PRACTICAL TIPS

by: Stephen Groom, Osborne Clarke, London

1. EUROPEAN UNION UPDATE

a. ABC of the European Union

Acquis communautaire: the whole range of laws, practices, principles and obligations adopted or developed by the European Union. Countries seeking membership are legally obliged to accept the *acquis communautaire* and to incorporate it in their legislation before they can join the European Union.

Citizenship of the Union: all nationals of EU member states have the status of citizens of the Union. This guarantees, among other things: freedom of movement and residence within the territory of the Union; the right to vote and stand in local and EP elections in the country of residence; and the right to petition the European Parliament and to bring complaints before the European Ombudsman. Citizenship of the Union does not replace national citizenship, but complements it.

Council of Europe: Not to be confused with the European Council, this is an intergovernmental organisation with 43 member countries which drafts pan-European Conventions for adoption in areas such as human rights, culture and education. It has been based in Strasbourg since 1949. The Council of Europe is not an EU body.

Council of the European Union: otherwise known as the "Council of Ministers", this is made up of ministers (or their representatives) from each of the member states. It meets periodically in Brussels or Luxembourg to adopt Community legislation, often jointly with the European Parliament under the codecision procedure. The Council presidency rotates among the member states on a 6-monthly basis. The make-up of the Council varies with the subject (finance, agriculture, foreign affairs, etc.). Its decisions are prepared by the Committee of Permanent Representatives of the Member States (Coreper). [See also European Council]

Court of Justice of European Communities: consisting of 15 judges appointed by the member states and 9 advocates-general, the Court ensures compliance with the law in the application and interpretation of the treaties. Its seat is in Luxembourg. Not to be confused with the International Court of Justice, which is an organ of the United Nations and has its seat in The Hague, or the European Court of Human Rights, which has its seat in Strasbourg and is an organ of the Council of Europe.

Directive: EU directives are binding on the member states as regards the results to be achieved, but leave the choice of method up to them. Unlike Regulations, therefore, to be fully effective Directives have to be transposed into the law of each member state by local legislation. All Directives indicate the date by which all member states are expected to do this. The record of member states in terms of prompt implementation of Directives is currently causing concern. The "transposition deficit", in other words the number of Directives remaining unimplemented at the due time, has risen

substantially from last year from an average of 1.8% to 2.8%. In addition, only four countries have achieved the zero tolerance target, that is, of having no Directives remaining unimplemented two years after the due date. If member states have either failed to implement Directives by the due date or only partially or incorrectly implemented them, it is open to the European Commission to take enforcement action. Using this procedure, in September 2003, the Commission took action against no less than thirteen member states. It formally asked all members except Denmark and Italy to implement quickly the necessary legislation in a total of sixteen cases. If any of the states fail to give a satisfactory reply within the deadline given, the Commission may refer the matter to the European Court of Justice, which has the power to impose daily fines for non-compliance.

Enlargement: the term used to describe the four waves of new accessions whereby the six founding members of the European Community – Belgium, France, Germany, Italy, Luxembourg and the Netherlands – were joined by a further nine: Denmark, Ireland and the United Kingdom in 1973; Greece in 1981; Spain and Portugal in 1986; Austria, Finland and Sweden in 1995. At present 13 central and eastern European and Mediterranean countries are applying for membership, 12 of which have begun membership negotiations with the European Union. In order to join the EU they have to satisfy political and economic criteria and incorporate the *acquis communautaire* into their legislation.

European Commission: the institution that initiates Community legislation, runs European common policies, implements the budget and ensures compliance with the treaties. It is made up of 20 independent members (2 each from France, Germany, Italy, Spain and the United Kingdom and one from each of the other member states). It is appointed for 5 years subject to the approval of the European Parliament, to which it is accountable. The current President of the Commission is Romano Prodi.

European Community (EC): under the 1992 Maastricht Treaty, the EC replaced the European Economic Community (EEC) established by the Treaty of Rome in 1957. It governs matters relating to the free movement of people, goods, services and capital, transport, competition, tax, economic and monetary policy, trade policy, employment and social policy, culture, health, consumers, industry, regional development policy (economic and social cohesion), research, the environment and development. It forms part of the wider entity of the European Union.

European Council: since 1975 the European Council has brought together, at least twice a year, the heads of state or government of the member states of the Union – assisted by the foreign ministers – and the President of the European Commission. It lays down the broad policy guidelines of the Union and discusses topical international issues of major importance. The meetings are referred to by the media as 'summits'. [See also Council of the European Union]

European Parliament: this represents the peoples of the states brought together in the European Community. Some 375 million European citizens in 15 countries are now involved in the process of European integration through their 626 representatives in the European Parliament. The first direct elections to the European Parliament were held in June 1979 when for the first time in their history the peoples of the nations in Europe went to the polls to elect the members of a single parliament. The Parliament is elected every five years and today the European Parliament, as an equal partner with the Council of Ministers, passes the majority of European laws.

European Parliament resolution: a text adopted by the European Parliament embodying its opinion either on a legislative text – a 'legislative resolution' – or on any subject chosen on Parliament's own initiative – a 'non-legislative resolution' – with the intention of influencing a given European Union policy.

European Union (EU): the European Union is based on the Communities – the European Community, and Euratom – plus the common foreign and security policy and common action in the fields of police and judicial cooperation.

MEPs: the European Parliament has 626 members. The number of members per state is laid down in the Treaty of Rome. They are elected under a system of proportional representation. Suffrage is universal amongst all those aged 18 or over. In Belgium, Greece and Luxembourg voting is compulsory. In 1999 29.7% of elected MEPs were women and MEPs receive the same salary as their national parliamentary counterparts. Members sit in political groups, not in national delegations. Currently there are seven political groups which include members from over one hundred national political parties.

Presidency of the European Union: the presidency of the Union currently rotates among the member states every six months in alphabetical order.

Qualified majority: the method of voting used by the Council in the legislative procedure (except where unanimity is required). It involves giving the vote of each member state a weighting which broadly reflects the size of its population.

Regulation: in European legislation regulations are of general applicability; they are directly applicable in all member states, without the need for local implementing laws.

b. Current and future EU members

Current membership and Euro adoption

Currently the 15 EU member states are as follows. An asterisk indicates which of these have not yet joined the Euro single currency:

Austria
Belgium
Denmark*
Finland
France
Germany
Greece
Ireland
Italy
Luxembourg
Netherlands
Portugal
Spain

Sweden*
UK*

Future membership

Currently there are thirteen candidate countries due to join the European Union between 2004 and 2007.

The position regarding EU enlargement is laid down in the 1992 Maastricht Treaty. This provides that any European state may apply to become a member of the European Union provided it fulfils three basic requirements:

- a functioning market economy plus the capacity to cope with competitive pressures and market forces within the EU;
- a democratic political system; and
- acceptance of the "acquis communautaire"-essentially the legislation of the European Community (see more detailed definition in section a above).

The candidates are currently at differing stages of progress towards full EU membership and will join in three waves. Once all three waves have broken the population of the EU will have increased by at least 100 million.

The first wave

In the largest single influx of new EU members ever, ten states (otherwise known as "The Vilnius Ten" for reasons too obscure and unimportant to go into here), are due to assume full EU membership as of 1 May 2004. With a total population of over 75 million, the new kids on the block will be as follows:

Cyprus
Czech Republic
Estonia
Hungary
Latvia
Lithuania
Malta
Poland
Slovakia
Slovenia

All of these have held referenda on membership except Malta, which does not propose to do so. The last of the referendum-holding states to do so was Latvia, whose voters gave EU membership a 67% endorsement in September 2003.

There are still hurdles to jump before the May day accession can be said to be irreversibly in place. Beforehand, for example, all current EU member states have to formally ratify the EU Accession Treaty signed in Athens in April 2003 which enshrined the acceptance of the applications for membership of the ten.

Also, the ratification process cannot be completed without a suitable "Yes" vote in referenda in existing EU member states whose constitutions require that such a step is taken. The countries in question are currently Denmark and Ireland. It is anticipated that these votes will go smoothly for the EU, though the recent "No" vote in Sweden against its adoption of the Euro has knocked optimism.

The second wave

Two further candidates are likely to join a little later, in 2007. These are Bulgaria and Rumania.

The third wave

The last of the thirteen current candidates is Turkey. Turkey is currently due to begin negotiations for membership in 2005. This is subject to the successful outcome of a review of Turkey's ability to meet the three basic criteria for membership set out above, due to be completed in December 2004.

The next waves

By the end of the decade, there is little doubt that we will see other "greater European" states joining the fold.

Croatia, for example, is currently seeking an "association agreement" with the EU, the necessary precursor to full membership negotiations. And if Russia is currently hoping to qualify for the European Soccer Championship finals in Portugal in Summer 2004, what odds on their joining the EU by 2010?

c. Some EU laws already affecting promotion marketing

For reasons of space we can only include here some key points from five selected Directives which are generally of greater relevance to promotion marketers. There are many more, however, which may need to be consulted. These include:

- The Television Without Frontiers Directives 89/552/EEC and 97/36/EC
- The Unfair Terms in Consumer Contracts Directive 93/13/EEC
- The Directive on Packaging and Packaging Waste 94/62/EC
- The Data Protection Directive 95/46/EC
- The Directive on Injunctions for the Protection of Consumers' Interests 98/27/EC

- The Sale of Consumer Goods and Associated Guarantees Directive 99/44/EC

When considering all these instruments, it should always be borne in mind that member states are bound to give these the full force of law in their countries by way of local legislation. Also, many of the provisions in these instruments are described as "minimum" requirements, thus allowing member states to introduce stricter rules if they wish, although there are overall limits on their ability to do this (such as the "proportionality" requirement) enshrined in the Treaty of Rome.

These two factors inevitably lead to differences in the ways in which member states apply the Directives, and hence a need to take specific local advice on the possibility of local variances.

EU Directive 84/450/EEC as amended by Directive 97/55/EC

Known as the "Misleading and Comparative Advertising Directive", this laid down an EU- wide definition of "misleading advertising" and required member states to ensure that systems were in place to regulate and police such activity.

"Comparative advertising" is also defined and a regime imposed which essentially outlaws all EU comparative advertising unless it complies with a set of requirements such as a need to always "objectively compare one or material, relevant, verifiable and representative features" of the products being compared and to always "compare goods or services meeting the same needs or intended for the same purpose."

EU Directive 97/7/EC

Known as the "Distance Selling Directive," this had to be implemented by EU member states by 4 June 2000.

The intention of the Directive was to give basic legal protection to consumers purchasing goods or services via distance selling means (including by electronic means). A distance contract is one where consumer and supplier do not have face to face contact up to and including the moment when the contract is concluded. The Directive covers the sale to consumers (not businesses) of goods or services concluded via e-commerce as well as other means of distance selling including mail order and telephone sales. It does not apply to the selling of financial services such as insurance, investments and banking services. Distance sales of these are governed by another EU Directive, as to which, see below.

In essence the Distance Selling Directive:

- imposes disclosure obligations, for instance as to the identity of the supplier where payment is required in advance and the main characteristics of the product or service offered;
- introduces a compulsory, unwaivable and unconditional cooling off period of at least seven working days during which the consumer is entitled to withdraw from the contract for any reason;

- requires fulfilment of contracts within a maximum period of 30 days unless the parties have agreed otherwise;
- places restrictions on the use of unsolicited communications for distance selling purposes, although most of these have now been superseded by subsequent Directives (see below); and
- prohibits inertia selling.

Some of the more relevant provisions from a promotion marketing point of view are:

- the obligation to inform the consumer, at or before the time that the distance contract is concluded, of their right to withdraw from the contract;
- the obligation which the Directive places on member state governments to take measures to ensure that, wherever the distance contract has a close connection with the territory of one or more EU state, the consumer does not lose the protection granted by the Directive by virtue of a clause in the supply terms which applies the law of a non EU state;
- the removal of the cooling off/withdrawal right in respect of contracts for the supply of custom-made products, audio or video recordings or computer software "which were unsealed by the consumer", newspapers, magazines and periodicals, and "gaming and lottery services." Does this latter exclusion mean there is a cooling off/withdrawal right in respect of prize promotions (which for the most part will neither be gaming nor a lottery)? Or is the withdrawal right excluded by the disapplication from this and other parts of the Directive of "contracts for the provision of leisure services where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period"?; and
- it is open to member states to introduce higher levels of protection, such as a longer unconditional cooling off/withdrawal period.

EU Directive 2000/31/EC

This is sub-titled as "on certain aspects of information society services, in particular electronic commerce, in the Internal Market" and is generally referred to as the Directive on Electronic Commerce.

Unlike the Distance Selling Directive, this Directive applies to business to business communications as well as business to consumer, though the full rigour of some of the provisions is relaxed in a "B2B" context.

In essence the Directive:

- introduces "country of origin" for electronic commercial transmissions sent from an EU member state (in other words if a communication is legal in the EU state from

which it is sent, then it is not open to a receiving EU state to hold it illegal under its local laws), although it must be noted there are substantial exceptions to this, for example where differences between member state laws are regarded as necessary for various reasons such as the protection of minors, the protection of public health and, perhaps the most worrying of all for those marketing across Europe, the protection of consumers;

- imposes disclosure obligations on those sending communications by electronic means;
- in something of a first for adopted EU legislation, it specifically mentions promotion marketing in the context of a requirement that in digital commercial communications "promotional offers, such as discounts, premiums and gifts, where permitted in the Member State where the [sender] is established, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented clearly and unambiguously;"
- in a further express reference to promotion marketing, the Directive provides that where digital commercial communications mention "promotional competitions or games, where permitted in the Member State where the [sender] is established," they must "be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented clearly and unambiguously.";
- requires that unsolicited commercial e-mail messages are identifiable clearly and unambiguously as such as soon as they are received;
- requires certain disclosures regarding the conclusion of contracts on-line and how these are concluded; and
- requires member states to encourage the drawing up of codes by trade, professional and consumer associations and organisations to contribute to the proper implementation of many of the above requirements.

EU Directive 2002/65/EC

This Directive concerns "the distance marketing of consumer financial services." It is due for implementation by all member states by 9 October 2004. It imposes similar requirements, in a financial services context to those in the original Distance Selling Directive, such as disclosure obligations as to the main characteristics of the product being marketed, the identity of and main business of the supplier and the existence of a cooling off period/withdrawal right.

The minimum cooling off period here is not 7 working days but 14 calendar days, extended to 30 calendar days in respect of sales of most types of life insurance policies and personal pension schemes.

EU Directive 2002/58/EC

This Directive concerns the processing of personal data and the protection of privacy in the electronic communications sector and is otherwise known as the "Directive on Privacy and Electronic Communications."

Without doubt the most important and wide ranging marketing-related EU law to date, the Directive applies to an unprecedented number of differing marketing tools and channels. As signed off by EU Ministers, it required Member States to implement the Directive by 31 October 2003. Amongst the provisions are requirements that:

- the use of electronic communications networks to store information or gain access to information stored in the terminal equipment of a telecoms system subscriber or user (e.g. cookies) is only allowed on condition that the subscriber or user is provided with clear and comprehensive information about the purposes of the processing and offered the right to refuse such processing;
- the use of "location data" (indicating where a cell-phone user is situated) for marketing purposes is only allowed with the prior consent of the user or subscriber (in other words "opt-in") before which the marketer has to have informed the user/subscriber of the type of location data which is to be processed, the purposes and duration of the processing and whether it will be transmitted to a third party;
- unsolicited marketing e-mails or cell-phone text messages to "individual subscribers" are not permitted unless either prior consent ("opt-in") has been obtained or the "soft opt-in" exception applies;
- the soft opt-in exception to "opt-in" applies where (1) the marketer has obtained the recipient's email address or cell phone number "in the context of the sale of a product or a service" (2) when first capturing the email address the marketer gave the recipient an opportunity to opt-out, free of charge and in an easy manner, of receiving future e-mails/texts which the recipient did not take up (3) the email/text is sent by that same marketer (4) the email/text is marketing products or services of the marketer which are "similar" to the products or services the recipient was buying when they first provided their digital contact details and (5) the recipient is given the opportunity, whenever a further email or text is sent, to opt out, free of charge and in an easy manner, of receiving more messages like this in the future and does not take up that opportunity.

d. Future Directives and Regulations

We have yet to see the very first EU law devoted specifically to promotion marketing, but there are proposals currently on the negotiating table which would change this.

Proposed Regulation on Sales promotion

If finally adopted, the "Regulation on Sales promotion" will undoubtedly be a watershed in the annals of the EU's long battle to harmonise Europe's marketing laws.

The current draft includes provisions that would for instance sweep away anomalous "pre registration" and "authorisation" requirements of the kind that still hamper prize promotions in for example France, Italy and Portugal. Other provisions would introduce standard, EU wide rules as to prize promotion terms and conditions, requiring for example that in the rules for all prize promotions in the Union, the odds of winning are stated.

Having said this, at the time of writing, the auguries for this initiative being progressed to adoption are not good. The draft regulation was first proposed as long ago as October 2001, and since then, inter state negotiations have been desultory and by all accounts highly contentious when they have happened, with some states refusing to give up their local restrictions for the sake of harmonisation.

Rapid progress has also been hampered by a parallel and to some extent overlapping initiative. This is a proposal for a Directive concerning unfair business-to-consumer commercial practices in the Internal Market, otherwise known as the "Unfair Commercial Practices Directive."

The Proposed Unfair Commercial Practices Directive

Also first launched in October 2001, this has made rather better headway through the tortuous EU law-making process, and on 18 June 2003, a fully formed proposed Directive was published. This now looks set reasonably fair to make its way through to formal adoption before the end of 2004.

The proposed Directive takes a different approach to previous marketing-related EU laws by setting out its stall as a so-called "Framework Directive." Having at its core the objective of delivering a high degree of consumer protection, it introduces a general prohibition of "unfair commercial practices" to overlay all existing relevant EU member state laws. In this context, "commercial practices" are specifically defined so as to include all "commercial communication and advertising."

Other features include a standard definition of the "average consumer" against which the fairness or otherwise of particular practices is to be judged, a blacklist of commercial practices which will in all cases be regarded as "unfair" and subdivisions of unfair commercial practices termed "aggressive commercial practices" and "misleading commercial practices" which are defined in more detail.

Industry lobbyists have fought hard against the concept of the instrument as introducing greater levels of uncertainty and unpredictability as to what will fall foul of the new law. However, so far these objections appear to have fallen on deaf ears. Time will tell whether continuing lobbying by bodies such as FEDMA will bear fruit in terms of the softening of some of the more aggressive and dangerously general prohibitions.

2. PROJECT MANAGING COMPLIANT EUROPEAN PROMOTIONS

a. Starting the process

Focus and reach a clear idea on basics such as:

- how much store you are going to put by "tick the box" international promotion law charts like the chart in this paper. As a first port of call, these have some use by way of giving a provisional view on the broad regulatory position across Europe. They should not be regarded, however, as a conclusive answer. The picture is not always as clear-cut as the chart may suggest, the information may not be up to date, particularly with states such as Italy and Germany starting to liberalise their promotion marketing controls as harmonising EU Directives and Regulations approach, and the providers of advice based on these sources may not be as insured against providing incorrect advice as you might wish!;
- the territories in which the promotion will be run. Here consider two particular aspects
 - "Europe" is too vague. As the member details above show, there are still many European countries that are not part of the European Union, so the only way to approach this is to list out the individual target countries
 - the law that applies will not necessarily be the law of the country where participants are resident. For instance if a promotion is international and can be entered in retail locations across Europe, consideration must be given to whether it is the law of the country in which the retail outlet is situated that applies;
- whether translations of the rules into local languages will be needed and at what point and by whom these should ideally be done;
- what is going to happen to data relating to participants that is collected in the course of the promotion. This will often be at the heart of the perceived commercial purpose of the promotion, but under EU data protection law there could be fundamental problems with realising this objective. Transfers of personal data from EU states to the US, for example, are problematic even if the sending and receiving companies are in the same corporate group. To avoid having to make significant changes to the promotion at a late stage which might undermine its whole commercial purpose, take early advice on these aspects from relevant experts;
- whether there are any other fundamental legal or regulatory problems with the mechanic. There is little point in briefing out a promotion to 10 European advisers who all come back advising that it is not viable owing to local legislation based on an EU Directive. For instance in certain product categories such as tobacco, pharmaceuticals and alcohol, EU-wide restrictions may apply. Here, seeking initial expert advice from one European lawyer acting as a hub or anchor as to whether they see any fundamental problems will be considerably more cost effective
- what the timeframe is for the promotion. It is vital that sensible timelines are set at an early stage. There is little point spending time developing grand plans for a pan-European promotion and allowing three days at the end of the process to obtain legal clearance and translations. Take early advice from your "hub" as to the likely time that will be needed to complete the advisory process;

- allow for "lifestyle/seasonal" differences between European states when considering the timeline for taking clearance advice. It is not necessarily realistic for example to expect a 24 hour turn round in Sweden in July or in France in August!;
- when it comes to timing, allow also for delays involved in complying with local pre registration and/or prior authorisation requirements. These may apply for example in France, Italy and Portugal.
- consider what budget you are allowing for clearance/translation costs, and obtain early up-front fee quotes from your advisers to avoid later, unpleasant surprises. Expect the hub's quote to include an element for their time spent co-ordinating the international clearance process;
- on the budgetary front, consider also possible prize tax or other similar liability;
- agree with your clearance advisers at an early stage on how the work is to be billed. For example, who is the bill going to be made out to, who is going to be delivering the bill and what currency is it going to be made out in.

b. Cost and timing issues

- Consider a "hub/spoke" approach, in other words using, as your single point of contact, and your single supplier from the billing point of view, one EU-based adviser for the whole project (such as a member of the Global Advertising Lawyers' Alliance) with the right network back-up.
- Ask your advisers to send one bill, in one currency, itemising their own and individual country advice costs.
- Work with the "hub" adviser on a set of draft Rules for the promotion that are satisfactory to the hub adviser on aspects such as clarity and data protection, so as to minimise the time spent by the "spoke" advisers on such basic points.
- Get the briefing right first time. Cost overruns and delays will be inevitable if there are later changes of plan or the briefing is unclear on aspects so that all the advisers raise supplementary queries which need answering before they can advise.
- Consider with the hub adviser the use of a template, with set questions, for the provision of the "spokes" advice, and the more "closed" the questions the better!
- Agree in advance with your adviser, before fees are set, how the advice from the various countries is to be provided. For instance photocopies of the individual country advices may not be particularly user friendly.

c. Promotion rule points

- Bear in mind that provisions excluding the promoter's liability for, e.g. death or personal injury are unlikely to be enforceable in most European states.
- If promotion participant data is going to be used for more than just their participation in the promotion, consider carefully disclosures as to the likely future use of that data or risk non-compliance with data protection laws.
- With on-line promotions take care with last entry deadlines bearing in mind time zone differences.
- Take care with any dates given, e.g. "closing date 5/12/03" means 5th December 2003 in the UK.
- Think about provisions indicating which country's law applies and which country's courts will have jurisdiction in the event of any dispute. These may not be conclusive on these aspects as mandatory consumer protection laws in EU states, such as regulations driven by the Distance Selling Directive, for example, may well still apply, but the issue should be considered nevertheless as there may be other aspects of the promotion where, should things go wrong, providing that a particular country's laws will apply could pay dividends.

SECTION II

HOW TO STAY OUT OF TROUBLE WHEN CONDUCTING AN INTERNATIONAL PROMOTION: PARIS REPORT

by: Michel Béjot & Barbara Doittau, Bernard Hertz Bejot, Paris

3. “BEWARE OF HOW TO ADVERTISE SWEEPSTAKES !”

In *France*, a frequent method of customer relation management and of advertising in France is the use of sweepstakes, *i.e.*, lotteries by mail.

For instance, when subscribing to a magazine or to a credit card, customers sometimes receive a mail claiming that they have won a very valuable prize, whereas the winning of the prize is actually subject to a subsequent random drawing.

This drawing is often :

- either not advertised for in the mailing,
- or advertised in very small print.

These practices often lead certain consumers to believe mistakenly that they have won the prize at stake.

Periodically, disappointed consumers take legal action against the advertiser, generally on the ground of misleading advertising.

Recent court cases in France provide interesting information on what may be done and on what should be avoided.

The facts :

The facts are always fairly similar. The following events usually take place :

- a distance sale company sends a letter to the plaintiffs:

“You have won € 16,000 !”

- later, another letter informs them that they have actually only been chosen through a “pre-draw” and that they have not won the prize at the final draw.

The consequences :

1- No sanctions for misleading advertising

A court of appeal overruled a first instance decision insofar as the first instance judges considered that the company was liable in tort for having published a misleading advertising¹.

The court considered that the plaintiffs were allowed some compensation, but that the company which organized the sweepstakes should not be held liable for misleading advertising.

2- Granting € 800 in damages is not sufficient

In two important decisions, one handed down by the *Cour de cassation* and one by a court of appeal, it was held that the advertised amount of the prize should be delivered to the plaintiffs.

In the first case, a decision of the court of appeal was overruled because the court had considered that the damages could not amount to the prize which Mr. Bossa believed he had won (€ 16,000). The court of appeal had only granted € 800 in damages to the plaintiff.

The *Cour de cassation*² considered that, by informing an individual that he/she had won a sum of money without informing him/her of the existence of an element of chance, the company had entered into a quasi-contract. Under such a quasi-contract, the company which advertised the prize had to deliver such prize. The amount of € 800 in damages was therefore not sufficient.

This principle was applied in a subsequent decision of a court of appeal in 2003³.

3- No compensation to plaintiffs who act in bad faith

In another decision of the *Cour de cassation* based on the same facts and brought against the same defendant by another plaintiff, the court reached a different solution⁴.

The plaintiff's request was rejected on the ground that his claim was made in bad faith and that he had suffered no prejudice.

He was therefore granted no damages and he had to pay 1 FF (€ 0.15) in nominal damages for abusive court action.

The criterion applied by the courts is the perception by the plaintiff of the information provided by the defendant; this means that the promoters of such marketing tools, when drafting such information, must consider the lower common denominator.

Regarding the advertising of sweepstakes, there is another requirement in France according to which the advertisement of sweepstakes sent by mail should in no instance look like an official document issued by a bank or by the French authorities.

Similarly, **in the Netherlands**, a promotion for financial products was subject to legal action⁵ because it was advertised though a mailing placed in blue envelopes reading the following :

¹ *Cour d'appel de Bourges, chambre civile*, January 22, 2003. SA Biotonic c/C.

² *Cour de cassation*, September 6, 2002, Association UFC Que Choisir et autre [Mr. Bossa] v/ Société Maison française de distribution

³ *Cour d'appel de Bourges, chambre civile*, January 22, 2003. SA Biotonic c/C.

⁴ *Cour de cassation*, September 6, 2002, Mr. Stéphane Marchewka v/ Société Maison française de distribution

« PERSOONLIJK :
INFORMATIE OVER BELASTING
BESPARING LENING EIGEN HUIS »

« *Personal
Information on taxes
Saving to rent personal houses* »

In addition, it is worth noting that the tax authorities and the ministry of finances in the Netherlands have been using blue envelopes for their communication for 30 years and that they have registered the color as a trademark.

The promotion was deemed an infringement of the trademark, leading to a risk of confusion between the advertiser and the tax authorities. It was also considered that the similarity aimed at attracting the consumers' attention, that the advertiser could not be identified and that the communication between the tax authorities and the citizens was hindered.

4. CROSS-COUPONING : UNFAIR COMPETITION AND/OR TRADEMARK INFRINGEMENT ?

Practices of cross-couponing, as described below, often give rise to legal difficulties and should thus be handled with care. Most issues arise on the grounds on unfair competition or trademark infringement.

a. Where operations of cross-couponing are possible, subject to specific care

(i) In *France*, the technique of "couponing" is usually applied by manufacturers who deliver to the customer a coupon entitling the latter to a reduction in the price of the product to which the coupon relates. The distributor then forwards the coupon to the manufacturer who pays to the distributor the amount of the coupons plus a handling fee.

Coupons may be affixed to a product, to be used for a subsequent purchase. They may also be distributed separately.

In France, the technique of simple couponing does not raise particular difficulties, but requires that the information which appears on the coupon be clear as to the conditions of use of the coupon.

Concerning cross couponing, after seven years of judicial procedure, the case between Coca-Cola Beverages, Orangina and Catalina was definitely judged in 2001.

Coca-Cola Beverages had created an electronic system, set up and distributed by Catalina, which issued a coupon granting the consumer a price reduction on their future purchase on certain Coca-Cola products (*e.g.*, Fanta) to purchasers of competitors' products (*e.g.*, another beverage such as Orangina).

⁵ COLLEGE VAN BEROEP STICHTING RECLAME CODE COMMISSIE (Netherlands), november 7, 2002, (*I.E.R., nummer 1, februari 2003*)

In this instance, French judges sanctioned the fact that the coupons were given to promote a competitor's product. Cross-coupons would thus be allowed in France as it is to promote a competing product from the same company, but not a product from a competitor.

Judges ruled that those practices constituted a diversion of clientele, and were not justified by freedom of business : neither by uses of business, marketing and promotions, nor by the great number of products activating the cross couponing.

(ii) In other countries such as *the Netherlands*, a company which attempted to organize an operation of cross-couponing stopped the promotion before the end of it, probably through a settlement agreement with its competitors. Under Dutch law, there were important risks of being sanctioned on the ground of trademark infringement, since the advertising of the promotion showed the competitors' trademarks.

Furthermore, it is interesting to note that other countries have even stricter limits and prohibit promotions that are usually deemed acceptable in most European countries. In particular, in certain countries of Scandinavia referred to below, even the simple technique of cross-couponing between products of a same company may not be used.

b. Where operations of cross-couponing may not be organized

(i) In *Denmark*, the law prohibits discounts or other benefits provided in the form of stamps, coupons or the like, when such promotions have been made available by persons carrying on a trade or business prior to the purchase of an article.

Consequently, a coupon given in connection with the purchase of an item and offering a discount on a subsequent purchase is illegal, even if the promotion takes place between two products of a same company.

There is an exception to this rule, since companies may issue coupons on the condition that customers be given the opportunity to obtain a cash redemption without the requirement for another purchase. Should companies wish to offer a rebate on a subsequent purchase, coupons must give a choice to customers between **(i)** obtaining a rebate on a future purchase and **(ii)** obtaining a refund of exactly the same value. Moreover, the law requires that both opportunities be treated equally.

Danish provisions concerning collateral gifts and inducements therefore vary from the relevant provisions in most other EU countries. Several attempts have been made over the years to have the provisions abolished, but so far without any success.

(ii) In *Norway*, when a coupon is attached to the purchase of a product and the coupon grants a rebate on the purchase of another product, it is considered as a premium.

Since premiums are prohibited in Norway, operations of cross-couponing, even between products of a same company, are also prohibited.

SECTION III

MAGIC AROUND THE WORLD: A CLOSE-UP ON SELECTED EUROPEAN COUNTRIES

by: Felix Hofer, Hofer Lösch Torricelli, Florence

5. UNDERSTANDING THE EUROPEAN UNION AND ITS FUTURE

Even if established as a common internal market and governed by a legal framework (Directives and Regulations) issued with harmonizing intents, the European Union still suffers from significant differences between member states as to regulation of industry and business sectors. The expansion process, which in the next years will bring into the Union more than ten new member states, is not likely to contribute – in short– to “the smoothing of the edges”. Such development will rather stress the existing – already broad – range of differences between member states, which currently may be recognized as a result of combining together areas characterized by cultural and social differences, established within the context of a longstanding past of distinctions.

6. NATIONAL DISTINCTIONS – EXPERIENCE REPORT

Law and jurisprudence, in general, and legal regulation of single sectors, specifically, are obviously not immune from the negative impact derived from “distinctions” due to domestic reasons and habits.

Sales promotions offer a good example of how such lack of harmonization within what’s supposed to be a “common market” may display harmful side effects to cross-border business. A review of the distinct regulations applied in some European countries will eloquently demonstrate how much harmonization is needed in order to abolish the current barriers to business and services targeted to a transnational public.

7. CZECH REPUBLIC

The Czech Republic – a candidate state applying for EU membership and therefore always eager to adopt the EU Directives and Regulations even prior to its formal admission as a full member state – does not have, in its legal system, specific provisions governing sales promotion.

This situation results from the fact that:

- on one side, while the entire Czech legal system suffered from a total “blackout” between 1945 and 1995, regulation of sales promotion was probably not considered among the primary and most urgent needs to deal with after the establishment of a democratic regime in the country,

- on the other hand, with the EU itself lacking a harmonized regulation of the sector, the status of a candidate state and the perspective of the upcoming EU membership did not steer particular interest versus the topic.

Nevertheless, the Czech legal system contains provisions governing promotions performed through prize contests and games. The latter are subject to significant restrictions (e.g. as to nature and value of the prizes) and have to comply with a registration procedure.

a. “Thou shall not desire your competitor’s coupon!”

Even in absence of a specific national regulation, sales promotions give rise to legal fights. Among the most recent cases the following could be mentioned: McD., a well known, international brand in the sector of food products decided to run a discount promotion performed by distributing vouchers to its customers, to be redeemed at a future visit to its POS. Competing company K. reacted by immediately starting a parallel promotion with identical characteristics and using the following headline; **“We accept ‘advantage coupons’ of our competitors.. choose where you use them... because only in K... you know what you eat”**. McD. filed a claim with a Czech Court of parasitic passing off and succeeded.

8. HUNGARY

In Hungary – another country applying for EU membership – sales promotions have resulted as a very popular marketing tool and therefore have been addressed by several laws, issued from 1991 to 1997.

Those laws are intended:

- to grant compliance with fair, correct and transparent marketing practices (e.g. as to promotional messages, discounts, free gifts),
- interestingly do not focus – with specific regulation – on promotional contests,
- consider promotional games as falling within the context of the Gambling Act.

Also in this country courts and public authorities have already started to deal with claims originating from sales promotion campaigns.

a. “Films: Don’t think that nobody looks at disclaimers!”

A well known Japanese camera producer announced a promotion with the following ad: **“By developing only one film you can win our prizes...moreover, you get as many coupons as films you give us to be processed”**. The Official Rules, the Information sheet and the Coupon specified as condition for participation “developing” and “enlargement” of a film.

The Competition Council applied a fine (Euro 2.000,00), as it considered the ad’s reference to film’s developing as misleading, when actually “film processing” was required for entry.

b. “Be careful with the bottle!”

The Hungarian Branch of an international company promoted a furniture cleaner (same container and content as used in previous campaigns, i.e. 300 ml bottle) with a label stating “*get + 50 ml for free*”. The product was distributed - without any specific agreements as to the final price - through retail shops, warehouses and wholesalers. Unfortunately, some retailers charged the same price applied during the previous year. This resulted in a fine to the company from the Competition Council (€ 4.00,00) for misleading labeling.

c. “A bicycle is not just a bicycle!”

A company promoted a bicycle of a specific brand and type at a certain sales price. The actual, bicycle sold was the specific brand, but not the specific type; it had different technical characteristics and was also of an inferior quality. Again, the Competition Council found the promotion misleading and applied a fine.

9. GERMANY

In principle, German law allows prize/premium promotions, however, in the past it has subjected them to heavy restrictions up until what may be considered as “The Date of Revolution” (i.e. August 1st, 2001), when the “*Zugabeverordnung*” (Promotional Gifts Regulation) and the “*Rabattgesetz*” (Discount Law) were abolished.

9.1 - According to those previous laws, sales promotions could not result in:

(i) *Sales coupling* – “*Absatzkoppelung*” - (free access to the promotion had to be granted, no relation between the participation in a promotion and the purchase of product or service had to be)

(ii) *Psychological purchase compulsion* – “*Psychischer Kaufzwang*” – (i.e. increase of winning expectations when ordering a product or visiting a shop; undue influence on consumers’ anonymity status had to be avoided)

(iii) *Exaggerated enticement* – “*Übertriebenes Anlocken*” (i.e. to induce purchase through improper information or by references not connected with product or service)

(iv) *Misleading Effects* – “*Irreführung*” - (unclear indications as to characteristics, number, value, awarding system of prizes or as to chances of winning had to be avoided)

9.2 - After August 1st, 2001 the following key effects may be recognized:

As to Discounts:

- no limits as to the rebate offered (previously max. 3% of the sales price),
- no restrictions as to different discounts (e.g. 15% for members of Club „B“, 10% for players of Soccer Team „A“),

As to the Promotional Gifts Regulation:

- Promotions with gifts,
- Sales coupling in general and also for accessing a sweepstakes promotion are now allowed.

BUT the problem of the requirement of a “correct” proportion between the value of gift and the value of promoted product still stands as no legal provision gives a clear indication on this aspect.

In addition, some general side effects took place. The old vision of the “standard consumer’s characteristics” (shy, naive, easy to cheat and therefore in extreme need of protection) was replaced by a new legal definition, according to which the “standard consumer” nowadays:

- is familiar with current marketing practices,
- is aware of the fact that retailers don’t give away additional products/services for free,
- knows that costs for additional services/ products are always covered by revenues from other sources,
- is no more urged to a hasty purchase by the offer of a free gift or a prize,
- makes his decision after proper consideration of various aspects,
- will generally achieve accurate information in advance and compare products and services with those offered by competitors.

Subsequently, German law now offers a very different presentation of the “standard consumer” as well as new criteria (even if most of them still have to be determined in detail) for the evaluation of aspects as:

- psychological purchase compulsion,
- exaggerated enticement,
- unfair marketing practices, in general.

9.3 - Unfortunately, the initial, enthusiastic reactions had to quickly face the fact that the abolition of the Discount Law and the Promotional Gifts Regulation did not lead to a “now everything goes” situation as to sales promotions. Several restrictions set by special regulations as well as by the general provisions on unfair competition (UWG) still remain valid (discount on global stock is not allowed, unfair sales practices as application of so-called ‘moon prices’ – i.e. prices artificially increased to a very high level, in order to allow an extremely significant discount rate [e.g. 70%] – are still considered as illegal).

In addition, national courts clearly tend to have a conservative approach towards new, aggressive or unconventional promotion techniques.

a. “Watch out for too appealing prizes!”

In August 2003 the Central Office for Competition („*Wettbewerbszentrale*“) stopped a „*Win a Smart Roadster*“ promotion performed by a US based airline and targeted to travel agency employees. The prize – the “Smart Roadster” – was awarded through a drawing procedure, in which all plane tickets sold by the agencies’ employees were entered into.

The Authority considered the prize to be far too attractive, and able to induce the agency employees to take care only of their personal interest of selling as many tickets as possible and to forget about their duties of advising customers on the grounds of objective, fair and professional criteria.

The US airline agreed to withdraw the promotion.

b. “The older you are less you pay for your spectacles! No way, that’s incorrect”

An optician announced a promotion for spectacles, which was targeted to elderly people and was structured as follows: a message stated **“up to 100% discount on spectacle frames!”** In detail, the discount was dependent on age (1% less for each year); so, a 100-year-old person could get the frame for free.

The Court of Nürnberg (“*Landgericht - LG*“) was called to deal with the promotion, first in an urgency proceeding filed for a temporary injunction, and then again when the case was decided on the merits. The Court stopped the promotion holding that it resulted in an illegal “special sale”.

c. “Don’t be too generous!”

A recent promotion of a famous fast food producer ran into trouble with the court in Munich (“*Landgericht – LG*“). The campaign, run in the company’s restaurants, was meant to attract clients by distributing scratch cards at the purchase of certain products. The cards allowed entry to a drawing awarding the following prizes: a scooter, digital cameras, ten money prizes of 10.000 Euro each, food products and, finally, a top prize of 1.000.000 Euro. Being that the promotion was aimed primarily at attracting children and adolescents, the court found that the remarkable value of the prizes appeared likely to cause undue psychological purchase compulsion and exaggerated enticement towards the targeted public. Therefore the promotion was considered illegal.

d. “Throw the dice for the right price! That’s OK”

But the signs of time may be seen on the horizon. Recently – in June 2003 – a court in Hamm (“*Oberlandesgericht – OG*“) was called by a branch association to check the in-shop promotion of a Dortmund based cloth retailer. The promotional message stated, **“Throw the dice for your discount!”**; at the cashier the customer, when asking for the bill, could earn a discount on the sales price, ranging from 2% to 12%, by throwing the dice.

The court cleared the promotion and dismissed the case holding that:

- the promotion’s structure did not appear likely to urge consumers, through exaggerated enticement, to thoughtless purchases,

- the amount of the discount offered (from 2 to 12%) did not result appealing to an extent that the consumer would not base its decision on objective and factual criteria, rather than on the irrational desire of achieving the benefit in any case,
- that free entry did clearly exclude that an illegal lottery had been performed by the promoter.

10. ITALY

In Italy the topic is now subject to a new regulation, introduced through Law by Decree no. 430 dated October 26th, 2001 (in force since April 12th, 2002), which has significantly eased performing sales promotions through abolishing previous restrictions and limits.

10.1 - The prior authorization from the Ministry for Finance - previously required as a condition for beginning a premium or contest/game promotion - has been abolished and the following simplified procedure now applies:

(a) for promotions awarding prizes by chance or skill (so called "*concorsi*", contest and games), companies have to notify their initiative to the competent Ministry for Production by filing a standard schedule and submitting the promotion's Official Rules,

(b) for promotions awarding premiums to anyone who has bought a certain quantity of a product collecting purchase proofs (so called "*operazioni a premio*"), companies are exclusively required to provide the Official Rules, certifying their authenticity; these Rules must be kept in the company's headquarters for consumer awareness and shall be stored there for at least 12 months after the end of the promotion.

Furthermore, sales promotions may nowadays be promoted even from: (i) foreign companies, without a local branch, through their fiscal representative in Italy, (ii) enterprises joined in partnership on that purpose.

Prizes allowed for sweepstakes promotions can now include real estate. As to the nature of the prizes, promotions cannot include monetary prizes, private or state loans, bonds, or corporate capital shares. Moreover, the prize cannot consist of money awarded in cash, even if gold tokens may be used.

The Ministry for Production is now in charge of the control of sales promotions. Such control may be performed either by the Minister (ex officio) through a sample method, or following a claim filed by whoever is interested in such supervision.

10.2 - It has to be considered that all games and contests, which fall under the local definition of "lotteries" are state reserved games, governed by a particular regulation.

10.3 - In Italy cases of illegal sales promotions could fall within the competencies of ordinary courts as well as of special, governmental or independent, authorities: e.g. the Market and Competition Commissioner (in charge of handling cases of misleading or illegal comparative advertising), the Ministry for Production (having a general competence on supervising sales promotions), the Industry Self-Regulation.

a. “Chocolate isn’t always sweet!”

Complaints about promotions containing misleading messages to consumers are brought up quite frequently. A typical example may be found in the following promotion: the message stated “To win is as easy as to look at a movie; just dial no. xxx, have your chocolate packet ready and answer some simple questions regarding cinema and chocolate XXX: You could be one of the lucky winners! Win: 3 trips for two persons in the U.S. and 1.000 season tickets for 10 free movies in the best cinemas of the main Italian cities”. So, what was wrong with this campaign?

The fact that the Official Rules (not included in the chocolate packet) contained additional limits: only the first incoming calls – received after a certain hour – got effective consideration for the prize promotion and could benefit from a real chance of winning.

b. “Bad lines if there are no deadlines!”

Frequently sales promotions face trouble for what – at a first glimpse – could appear as a “venial sin”.

A local beer producer’s prize contest – awarding Japanese cars to winners and promoted on TV by a Formula GP driver as a testimonial – got stopped by the Review Board of the Italian Institute for Self-Regulation in Advertising (injunction no. 126/2003) because the promotion did not mention any deadline for participation. The Review Board felt that, by omitting the deadline, consumers were likely to be misled, as they could not achieve a clear indication as to the duration of the incentive initiative.

A radio commercial, announcing that “*Super Summer 2003 - if you stop at XXX gas station, there will be always a different present waiting for you!*” resulted in the same outcome. Again, the Review Board considered (injunction no. 132/2003) that, by not indicating the deadline of the promotion, consumers could easily be induced to access the particular gas station, because they were attracted by the benefits promised. In addition, the staff at the gas station could take unfair advantage from the possibility of telling customers that the promotion had already run out.

11. SPAIN

In Spain there is a main distinction between the provision concerning “sales incentives” (i.e., discounts, sell-out, end-of-season sales, other special sales) and promotional initiatives structured as premiums, free gifts, prize contests/games. The sector is governed by the rules established by the “Ley de Ordenación del Comercio Minorista” – LOCM (Law on regulation of retail).

Incentive sales are subject to restrictions and prescriptions – general as well as regional ones – with respect to time periods allowed for performing, nature, characteristics and quality of the promoted products.

As to the other promotional initiatives Spanish legislations appear to be rather flexible and permissive (e.g. as to free gifts or premiums); nevertheless, such promotional incentives have to

comply with the requirements set by the “Ley de la Competencia Desleal” (Unfair Competition Act) with respect to fair business practices.

A different approach may be found with respect to games promotions, awarding prizes on the basis of chance, where specific local (i.e. regional) regulation becomes relevant and may contain distinct provisions (with authorization requirements and special prohibitions). Furthermore, such promotions are open only to Spanish residents, implying handling through a local representative and control by local authorities during their running and require the official rules to be drafted in Spanish language.

Like in other countries, special prescription govern particular categories of products or services (e.g. alcoholics, tobacco, pharmaceuticals, etc.)

12. TURKEY

The Turkish legal system does not contain a specific regulation for sales promotions. Therefore, discounts and special sales become relevant only under the rules of fair competition, while other commercial promotions and their advertising (as free gifts, premium, prize contests/games) are dealt with by special provisions as the National Lottery Act, the Consumer Protection Act (in force since March 8th, 1995), Law no. 1262 of 1990 for promotion and advertising of pharmaceuticals.

Specific restrictions apply as to alcoholics and tobacco products.

“Buy a newspaper, get a TV set!”

In Turkish jurisprudence the following is considered as one of the leading cases with respect to sales promotions.

According to Article 11 of the Consumer Protection Act, a second product or service, offered – as a premium or prize awarded through a coupon, lottery, contest or game mechanism - for promoting newspapers, may consist only in a so-called ‘cultural good’ (i.e. books, magazines, encyclopedias, posters, audio or visual tapes or CD, etc). This kind of sales promotion has to be performed within a period of sixty days and does not require compliance with the ‘free entry’ principle.

Within the context of a lawsuit concerning a case of unfair competition, the 8th Commercial Court of Ankara required an opinion of the Constitutional Court on compliance with the aforementioned provision of the Consumer Protection Act within the following articles of the Turkish Constitution:

- Article 10, which contains the principle of equality and of non discrimination as to language, race, sex, religion, political opinions,
- Article 13, which sets the principle that limitations to fundamental rights may take place only on the basis of a specific legal provision and in consideration of reasons of superior public interest (e.g. national security, public order, public health, etc.),
- Article 29, which grants freedom of press,

- Article 48, which affirms the principle of freedom of private economic initiative and of establishment,
- Article 172, which favors consumer protection.

The Constitutional Court affirmed compliance with the Constitution's fundamental principles and delivered its opinion as follows:

- no violation of Article 172 could be found as the provision of the Consumer Protection Act had to be interpreted in the perspective of the objective need that fair market conditions are granted to all competitors (in the case, the publishing houses), unconditional of their financial resources, on the one side, and was also aimed at avoiding that the consumers' purchase decision could be negatively influenced by exaggerated enticement (resulting from disproportion between the value of the promoted product and the value of the premium/prize offered), on the other hand,
- Articles 48 and 13 appeared not relevant to the case, as the specific provision (containing restriction as to the products admitted as premiums, gifts or prizes) was set in the public interest and did not affect the right to freely conclude contracts,
- reference to Article 29 was not correct as the provision did not impose restrictions on the freedom of press or on dissemination of information, being directed only to regulate sales promotion of newspapers,
- finally, principles set by Article 10 were observed as it did not result clear how and why the above-mentioned restriction could determine non-equality or discrimination (with regard to promotions allowed for other products, such as books, TV sets, etc.), requiring such violation a different application of the same legal rule to identical situation (a premise which could not be found in the case).

SECTION IV KEY CANADIAN PROMOTIONAL LAWS

by: Wendy Reed, Heenan Blaikie, Toronto

13. PREMIUMS AND DISCOUNTS

a. Discounts

In Canada, merchants are welcome to give consumers as much of a discount as they'd like, subject to the prohibition on predatory pricing that would apply to dominant firms⁶.

There are some “evils” that can sometimes be associated with “great deals”, however, and a number of them are specifically prohibited under the federal *Competition Act* and/or provincial consumer protection legislation. These include, among others, “bait and switch” – i.e. advertising products at bargain prices that are not available in reasonable quantities⁷; selling products at a price higher than that advertised⁸; and the issue highlighted below, advertising “ordinary prices” and bargains that are misleading.

Misleading Bargains - The Most Heavily Challenged Area

Misleading advertising respecting prices and bargains has always been a particularly heavily enforced provision (formerly s.52(1)(d) and now s.74.01(3) of the *Competition Act*.)

And the monetary penalties are nothing to sneeze at either. Recently (June 13, 2003), a retailer, Suzy Shier Inc., paid a \$1 million penalty under a Consent Agreement, as a result of placing price-tags on garments indicating a “regular” and “sale” price when in fact, the Consent Agreement provided, the garments were not sold in a substantial quantity or for a reasonable period of time at the purported “regular” price. The savings claimed were therefore considered by the Competition Bureau to be inflated. In addition to paying the penalty, Suzy Shier had to publish corrective notices in newspapers across Canada and to implement a detailed corporate compliance program to educate its advertising and pricing personnel on the relevant law.

b. Coupons

Cross Promotions and Trading Stamp Laws

⁶ Predatory pricing is an offence under s.50(1)(c) of the *Competition Act*, punishable by up to two years imprisonment. Predatory pricing is where a firm engages in a policy of selling products at unreasonably low prices, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have such effect.

⁷ S.74.04 *Competition Act*.

⁸ S. 74.05 *Competition Act*.

Discount and free product coupons proliferate in Canada as they do in the United States. To avoid surprise on your part, though, we must alert you one extremely common couponing approach in the U.S. that is actually illegal in Canada – the much loved cross-redemption coupon.

Yes, believe it or not, coupons (or various other devices) that: i) are given to consumers with a purchase and; ii) are redeemable by another vendor are prohibited under our *Criminal Code*. An example would be a coupon you'd find inside a camera package that entitles you to \$1.00 off a pack of a particular brand of batteries. Or a coupon you're given with a gasoline purchase that entitles you to \$5.00 off the price of entry at a particular theme park.

As innocent as these dastardly schemes seem, they constitute trading stamps, as broadly defined under s.379 of the *Criminal Code*. A person giving, selling or otherwise disposing of trading stamps to a merchant, or a merchant giving or disposing of trading stamps to a purchaser of goods from him is guilty of an offence punishable on summary conviction.

Do we mean to tell you, then, that these cross-coupon promotions are not done in Canada? Actually, we can't say that. Why is this? There has not actually been a prosecution under the trading stamp provisions for well over 30 years now. Happily, the police seem to see little reason in wasting governmental resources enforcing this outdated and overly broad law. The problem in advising clients, of course, is that the law does remain on the books and, indeed in the *Criminal Code*. So many advertisers do make some attempts, usually quite cumbersome, to avoid treading on this law.

Note that the full definition of trading stamps covers a fair bit of ground, so you should have reference to it if you want to ensure that you're not crossing any of the numerous lines drawn by s.379.

c. Free Products/Services

Still the No. 1 attention-grabber, "Free" is probably as commonly used in Canada as it is in the U.S. Well, it's hard to offer the consumer a much more attractive deal than that. Again, though, this term is often abused, which has led to case law firmly shutting the door on some common tricks of the less scrupulous trade.

One of these abuses is to inflate the price of the main article so that it will cover the cost of the "free" article. The case law is clear that doing this renders the claim "free" false or misleading.

Equally, if a 2 for 1 sale is offered, the advertiser will find itself in trouble if it sells one article for half the price he's advertising for the two together, or if the second article is of lesser quality. It is also problematic to offer an additional product or service "free" where the initial product or service is sold at a price arrived at through bargaining, rather than at a regular price.

There are no specific national guidelines or laws outlining the required size of the word "Free".

14. CONTESTS, GAMES AND SWEEPSTAKES

a. Skill Contests

Skill contests are not specifically regulated in Canada and the principles applicable in the U.S. (e.g. proper judging criteria must be outlined and followed and the judges must be qualified) would also pertain in Canada.

Note that some kinds of skill contests conducted in Quebec may need to be registered with the Régie des alcools, des courses et des jeux (the “Régie”). The types of promotions covered by the Quebec *Act respecting lotteries, publicity contests and amusement machines* (“publicity contests”) are, “a contest, a lottery scheme, a game, a plan or an operation which results in the awarding of a prize, carried on for the object of promoting the commercial interests of the person for whom it is carried on”. As the Régie currently applies the Act, it covers contests that are open broadly to consumers, such as photo, recipe and essay contests. It is not administered so as to cover contests offered to a more select and highly qualified audience, such as a software writing contest open to professional software developers. If you are unsure whether a particular contest is considered to be covered, it is a good idea to check.

Another note that often surprises Americans bears note. Even where a contest is one of pure skill, charging entry fees may still be illegal under s.206(1)(e) of the *Criminal Code*. This should be discussed with legal counsel on a case by case basis.

b. Sweepstakes, Instant Win Games and Other Chance Promotions:

Skill-Testing Question Nightmares

I have belaboured, over many years at this Law Conference, how the *Criminal Code* requires us to add some element of skill – usually a “skill-testing question” (“STQ”) - to a promotion of pure chance. This year I will simply recount a couple of important practical reasons to advert to this Canadian anomaly earlier, rather than later, when planning a promotion for Canada.

STQ Nightmare Number 1:

The most awkward situation in which to incorporate the STQ is the instant win in which hundreds or thousands of consumers are meant to win prizes. How do you do this? There are two main ways (though these are not the only ways):

- Ideally, the question should be put onto the game card. The answer should then be checked before the prize on the game card is awarded.
- When the game card/piece is too small for a STQ, consumers are generally required to answer the STQ on a separate form before being awarded their prize. Where prizes are to be redeemed at retail, the form would need to be completed and handed in at the store. In this case, you would need to pay attention to the practicalities of whether this requirement would be enforced, and the skill-testing question checked, by the staff at the retail store. Where prizes are to be redeemed by a redemption centre (usually the case for higher level prizes), the form would be mailed in.

The situation in which you do not want to find yourself is having forgotten about the STQ until it's too late – i.e. the cards are already printed or are not big enough to include the STQ and it can't be administered in any other way.

That's when it's time to brush up on the case law that suggests that you only need a skill test when a purchase or other consideration is required. Yes, some people, even authorities, take that view. Check with your legal counsel for the details.

STQ Nightmare Number 2:

You remember to print the STQ on your game cards! But you discover to your horror afterwards that there was a typo and the answer to the question is “10.436” (not the intended “25”). Needless to say, this can be a real problem. We have seen this happen in other situations, although they were not quite as disastrous – e.g. where a STQ was given online or on pre-printed entry forms. In the latter case, where fortunately only a few prizes were to be awarded, the problem could be fairly remedied by “cancelling” the first STQ and requiring only the selected entrants to answer another STQ by phone or mail after the drawing.

These scenarios also underscore the cardinal *general* rule for promotions, which is to always include in the Official Rules a clause allowing the sponsor to terminate or modify the promotion in appropriate circumstances.

15. ADVERTISING ISSUES

a. Misleading Promotional Messages

“Win!” “Win!” “Win!” It's natural for advertisers to want to maximize excitement around their contest. In Canada, however, you overstate the chances of winning at your peril.

The classic case in point was presented in *R. v. Simpsons Ltd.* (1988), 25 C.P.R. (3d) 34 (Ont. Dist. Ct.). This one may not be hot off the press but it bears mention as it illustrates a scenario that many advertisers seem to find so hard to resist – namely, not ‘fessing up about the true odds of winning.

In this case, the Simpsons department store conducted a promotion in which you could fold one of four tabs down on a card to see if the discount you would receive on the goods you were purchasing would be 10%, 15%, 20% or 25%. The cards and the advertising for the promotion did not disclose that the odds of getting a 10% discount were 90%. The Court found that the impression conveyed by the four tabs, without any qualification, was that there was a 25% chance of getting any one of the four discounts. Given that Simpsons failed to disclose the smaller chances of getting the higher discounts, it was convicted of misleading advertising and failing to adequately and fairly disclose the odds of winning. Fine for that one: \$100,000.

b. Advertising Restrictions You Might Not Expect

Comparative Advertising – OK for Goods (in some cases) But Not Services?

In Canada, there are trade-mark restrictions on comparisons (using the competitor's registered trade-mark)⁹ being drawn in media ads for goods but not services – go figure. As well, comparisons may not be made using marks for wares right on the product packaging or at point of sale.

This anomaly stems from the way s.22 of the *Trade-marks Act* was interpreted by the leading case of *Clairol International Corp. v. Thomas Supply Equipment Co. (1968) 5 C.P.R. 176 Ex. Ct.* Section 22 says that, “No person shall use a trade-mark registered by another person in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto.” In *Clairol*, the Court said that attempting to attract custom away from the competitive product constitutes “depreciating the value of the goodwill” within this provision. That’s a really broad test!

The Court also said that showing another’s trade-mark on your package (there was a comparative colour chart showing how Revlon colours corresponded to Clairol colours) did constitute “using” the trade-mark for the purposes of s.22¹⁰. It also found, however, that showing the competitor’s trade-mark on product brochures inside the box did not constitute “use”. They were not considered to be “associated with wares at the time of transfer of property or possession in the wares” within the definition of “use” for wares as brochures found only in the box would not be seen by the purchaser until after the product was purchased.

After *Clairol*, not surprisingly, injunction applications were brought where a company’s trade-marks for services were shown in its competitor’s comparative ads. For example, Purolator Courier obtained an interlocutory injunction against its competitors Canpar and Mayne Nickless Transport Inc., in 1989 and 1990, respectively, when these defendants did comparative advertising against Purolator. Purolator sued under s.22 (as well as for making false or misleading statements tending to discredit the business and services of Purolator, contrary to s.7(a) of the *Trade-Marks Act*). There have, in all, been a number of injunction cases brought on this issue, as well as fervent debates, not only about the rationality, or lack thereof, of the distinction that has resulted between wares and services, but also about whether s.22 should apply where the material or advertising points out *differences* between the products or only where it seeks to *equate* the products. All in all, s.22 certainly remains a “red flag” issue for those who wish to mention their competitor’s trade-marks in Canada.

Self-Regulatory Restrictions – “Unacceptable depictions and Portrayals” – How Sexy Can Canadian Ads Be?

It’s always wise, when marketing into another country, to attempt to gauge where the cultural lines are drawn on certain issues. How far advertisers can go in using sex is a good one as it tends to be on the more sensitive side of the scale in many cultures.

⁹ It must be registered for s.22 to apply.

¹⁰ In this, the Court indicated that it was proper to refer to the definition of “use” of a mark under Section 4 of the *Trade-marks Act*. This provides:

4. (1) *A trade-mark is deemed to be used in association with wares if, at the time of the transfer of the property in or possession of the wares, in the normal course of trade, it is marked on the wares themselves or on the packages in which they are distributed or it is in any other manner so associated with the wares that notice of the association is then given to the person to whom the property or possession is transferred.*

Idem

(2) *A trade-mark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.*

This year, we had numerous examples of sexuality-related ads and Advertising Standards Canada's ("ASC") consideration of them through Council hearings has helped us to gauge where the line will tend to be drawn in Canada.

A Molson ad, for example, showed us what would stand just inside the border of acceptability. The ad at issue was used to launch its new Brazilian beer, and left Canadians beaming, gasping or seething, depending on their perspective, age and/or state of health.

Yes, *A Marca Bavaria* washed up onto Canadian shores with the help of Pietra, a beautiful Brazilian model. In the ad that sparked the debate, two mid-twentyish men are sitting on a private Brazilian beach, looking out over the water. One reaches into an ice cooler and pulls out a bottle of *A Marca Bavaria* beer. As he pulls the bottle out of the bucket, Pietra rises out of the surf. As he twists and turns the bottle, she follows the movements of the bottle, spinning first to the right and then to the left, revealing all sides of her ... personage, then stretching out on her stomach on a beach blanket. At the climax of the ad, he begins to peel the label off the bottle. The look on his face is, well, about what you'd expect it to be for a guy in this situation. Joy. Wonder. Rapture. Not believing this dream. As the label peels from the bottleneck, Pietra begins, correspondingly, to undo the string on one side of her bikini. His mouth drops open, eyes widen and, although you can't hear the pounding of his heart, you can feel it.

But, all good things have to come to an end now, don't they? Just as the point of no return nears, Pietra stops untying her bikini, shakes her head no with a smile, and puts an end to the exchange. The men wince with anguish but laugh at themselves. Undone, but what a way to go.

Well, not everyone loved this ad as much as we did. First, there was the close-up of the back side of the thong bikini. Yes, it's true that there's not all that much to see on the back side of a thong bikini, so these people focused on the only other thing in the shot, which was the back side of Pietra. The concern here was that the camera work put too much emphasis on the woman's sexuality. Then there were those who perceived the man to actually be controlling Pietra, which they found objectionable. We may not understand males very well, but we would have thought that if the man was controlling Pietra, there would probably have been a different end to the story?

In any event, newspapers and consumers *everywhere* buzzed about the ads. Letters were sent to ASC and the Consumer Response Council ("Council") of ASC ended up reviewing the ad in June, 2003, to see if it violated clause 14 of the *Canadian Code of Advertising Standards* ("the Code"). As it then read (it was in fact just amended, as of September 1, 2003), Clause 14 provided, in part, that advertisements shall not:

(c) demean, denigrate or disparage any identifiable person, group of persons...or attempt to bring them into public contempt or ridicule; or

(d) undermine human dignity, or appear to encourage or be indifferent to conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.

Now, you might think – well, that's a big vague. Indeed, on the "sexuality" front, some help is given by the *Gender Portrayal Guidelines*, to which the Council may refer in applying Clause 14. Clause 3 of the *Gender Portrayal Guidelines* deals with "Sexuality", providing that, "*Advertising should avoid the inappropriate use or exploitation of sexuality of both women and men.*" Now, you might think – well, that's

still a bit vague. Indeed, there is an Interpretation document to the *Guidelines* that are used to interpret Clause 14 of the Code, and this commentary is somewhat more detailed. In essence, however, the biggest problem is when the use of sexuality is irrelevant.

So, what did the Council think?

It ruled in Molson's favour. The Council commented that some of the body shots in the original ad had made some members feel uncomfortable, but not to the point of violating the Code. They were not irrelevant because the brand's essence and image was "Brazil", Brazil "is", to many, beautiful beaches, and women at Brazilian beaches do wear thong bikinis.

The Council also considered the relationship between the man and the woman in the ad. After viewing the ad, the Council saw the ad as a scene of mutual play in which, ultimately, the woman was in control. The Council commented that had the woman not said "no" at the end of the ad, they would have reached a different conclusion. As filmed, though, the ad was not demeaning to women and therefore not a violation of the Code.

By contrast, an outdoor ad for a radio station in Alberta was found to offend clause 14. In that ad, three radio announcers were shown naked, each holding a very large chestnut in front of their more personal parts. The caption read, "See...they're nuts! K-ROCK 97.3".

This was too much for Alberta and the ad was found to infringe the Code.

Under the newly revised Clause 14, advertisements must not "undermine human dignity; or *display obvious indifference to*, or encourage, *gratuitously and without merit*, conduct that offends the standards of public decency prevailing among a significant segment of the population." (emphasis added). Well, it's unlikely that the *A Marca Bavaria* ad or the K-Rock 97.3 would have been decided differently just on the basis of these changes. However, the new language does help to narrow down the scope of the provision. You might think, though: "Still a bit vague, isn't it?"

16. OTHER LAWS YOU MIGHT NOT EXPECT

Much as there may be some odd state laws in this area, Canada has its share of odd promotion-related laws as well. For example:

No Greater Emphasis on Premium Than on Product – Quebec

In Quebec, it is an offence to give greater prominence in an ad on a premium being offered on the sale of a product.¹¹ This kind of restriction is no stranger to those who direct broadcast ads to

¹¹ Section 232, Quebec *Consumer Protection Act*.

232. No merchant, manufacturer or advertiser may, by any means whatever, put greater emphasis, in an advertisement, on a premium than on the goods or services offered.

"Premium" means any goods, services, rebate or other benefit offered or given at the time of the sale of goods or the performance of a service, which may be granted or obtained immediately or in a deferred manner, from the merchant, manufacturer or advertiser, either gratuitously or on conditions explicitly or implicitly presented as advantageous.

children. Devoting more than 50% of the commercial time to the premium or contest is also forbidden under the *Broadcast Code for Advertising to Children* (administered by ASC but also backed by the potential of losing one's broadcast licence if the Code is contravened). In Quebec, all ads are subject to the constraint.

Prohibition on Asking For Money Before Delivering Product - Quebec.

Another true kicker is the prohibition in Quebec on requiring money to be sent in by consumers before you send them their goods. This arises under the "remote parties contract" provisions of the *Quebec Consumer Protection Act*. Section 20 describes a remote parties contract as follows:

20. A remote-parties contract is a contract entered into between a merchant and a consumer who are in the presence of one another neither at the time of the offer, which is addressed to one or more consumers, nor at the time of acceptance, provided that the offer has not been solicited by a particular consumer.

Section 22 describes the prohibition of requiring payment up front:

22. Subject to section 309, no merchant may, when soliciting a consumer for the purpose of making a remote-parties contract or when making such a contract, demand total or partial payment by the consumer or propose to collect such payment before performing his principal obligation.

This generally applies in the direct mail context, but also applies to sales made over the phone or Internet.

As it's interpreted by the Quebec Consumer Protection Office, this even applies where consumers give their credit card number before the goods are delivered to them. Not to get too upset about this, however, there are two points of cheer:

- i. first, marketers can get an exemption from the prohibition if they post a bond with the Quebec authorities. The amount of the bond is \$50,000 the first year and after that is related to the amount of sales concluded by the marketer in this way.
- ii. second, there is talk that this prohibition is going to be repealed, although at the moment nothing specific has been tabled. The impetus for changing the law is the increasing frequency of online transactions and the prejudice suffered by Quebec-based vendors, who must post the bond, versus out-of-province vendors who, while also theoretically covered, reside outside the enforcement swath of the Quebec authorities.

Prohibition on Advertising to Children in Quebec. What does that do to your Internet contest (among other things)?

Advertising direct to children under 13 is prohibited in Quebec, subject to some limited exceptions.¹²

¹² *248. Subject to what is provided in the regulations, no person may make use of commercial advertising directed at persons under thirteen years of age.*

Those running Contests online (which is almost everyone) panic when they consider the implications for being able to include Quebec children. As a matter of practice, there is a way to do this that the Consumer Protection Office has unofficially indicated will not draw its objection. If this is an issue for you, you should contact legal counsel.

Differences in Age of Majority Across the Country

You certainly must consider different ages of majority when you are doing international contests and, in fact, you must also consider it when doing a contest in Canada: in roughly half of our 13 jurisdictions (6 provinces), 18 is the age of majority and in the remaining provinces (4), as well as the territories (3), it is 19.

Taxes on Prizes – Different Rules for Consumer and Trade Promotions

You may already be aware of Canadians' one tax advantage over Americans: we're not taxed on "windfalls". We're taxed on absolutely everything else¹³, but not on windfalls. That means that prizes won in a lottery (yes, all those millions) or in a consumer chance promotion (e.g. sweepstakes or instant win) are not subject to tax - except in three circumstances: a) where the prize is an annuity (in which case the present value is not subject to tax but the interest is); b) where the contest involves true skill versus being a windfall; or c) where the prize occurs in the course of or by virtue of one's employment.

In the latter case, which arises in trade promotions, there are actually a number of in's and out's that may be relevant to getting the right tax answer so you need to look at each situation in detail. Usually the U.S. sponsor's first question is whether it has to issue a form to the employee or to the Canadian "IRS" (here, it is Canada Customs and Revenue Agency or CCRA). The answer in fact depends - on the nature and value of the prize and whether or not the person is the sponsor's employee or someone else's employee.

In an employer-employee promotion, whether or not it must be reported by the employer (the sponsor) depends solely on whether it is taxable to the employee. It will be unless it meets CCRA's policy on employee gifts and awards. CCRA considers that "gifts" are given for holidays, weddings and birthdays. "Awards" are given for such things as long service, innovation, or excellence. A prize given in a pure game of chance wouldn't be considered either a gift or an award. The policy provides that an employer can give, tax-free, up to two non-cash gifts per year, as long as their total cost to the

249. *To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of*

- (a) the nature and intended purpose of the goods advertised;*
- (b) the manner of presenting such advertisement;*
- (c) the time and place it is shown.*

The fact that such advertisement may be contained in printed matter intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over, or that it may be broadcast during air time intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over does not create a presumption that it is not directed at persons under thirteen years of age.

¹³ OK, slight exaggeration.

employer is under \$500 CAN. The same rule applies for non-cash awards. If the prize doesn't meet the CCRA's gift and awards policy, then it is taxable, and the employer must report its value on the employee's T4 slip.

If the sponsor is not the employer, then the sponsor only has to issue a T4A slip to the employee if the value of the prize is over \$500. Note, however, it is the employee's responsibility to include the value of the prize in his employment income, regardless of the prize's value.

SECTION V

PROMOTIONS OVERVIEW

by: Members of the Global Advertising Lawyers Alliance (GALA)

PROMOTIONS OVERVIEW

	Austria 	Belgium 	Canada 	Costa Rica 
<i>DISCOUNTS</i>				
Permitted?	Yes	Yes	Yes	Yes
Specific regulation?	Yes	Yes	Yes	Yes
Limits as to amount?	No	No	No	Yes
<i>PREMIUM / FREE GIFT</i>				
Permitted?	Yes/No	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	Yes	No	No
Registration necessary?	No	Yes	No	No
Others?	No		No	Yes
<i>Restrictions?</i>				
Nature?	Yes	Yes	Yes	Yes
Value?	No	Yes	No	Yes
<i>PRIZE CONTESTS (SKILL)</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	No	Yes	No
Registration necessary?	No	No	Yes	No
Others?	No	No	Yes	Yes
<i>Restrictions?</i>				
Nature?	No	No	Yes	Yes
Value?	No	No	No	Yes
<i>GAMES (CHANCE)</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	No	Yes	No
Registration necessary?	No	No	Yes	No
Others?	No	Free Entry	Yes	Yes
<i>Restrictions?</i>				
Nature?	Yes	No	Yes	Yes
Value?	Yes	No	No	Yes

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PROMOTIONS OVERVIEW

	Czech Republic 	Denmark 	France 	Greece 
<i>DISCOUNTS</i>				
Permitted?	Yes	Yes	Yes	Yes
Specific regulation?	No	Yes	Yes	Yes
Limits as to amount?	No	No	Yes	No
<i>PREMIUM / FREE GIFT</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	No	No	No
Registration necessary?	No	No	No	No
Others?	No		Yes	No
<i>Restrictions?</i>				
Nature?	No	No	Yes	No
Value?	No	No	Yes	No
<i>PRIZE CONTESTS (SKILL)</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	No	No	Yes
Registration necessary?	No	No	No	
Others?	No	No	Yes	
<i>Restrictions?</i>				
Nature?	No	No	Yes	
Value?	No	No	No	
<i>GAMES (CHANCE)</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	Yes	No	No	Yes
Registration necessary?	Yes	No	Yes	
Others?	No	No	Yes	
<i>Restrictions?</i>				
Nature?	Yes	Yes	Yes	
Value?	Yes	Yes	No	

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PROMOTIONS OVERVIEW

	Hungary 	Ireland 	Italy 	Mexico 
<i>DISCOUNTS</i>				
Permitted?	Yes	Yes	Yes	Yes
Specific regulation?	Yes	Yes	Yes	Yes
Limits as to amount?	No	Yes	No	Yes
<i>PREMIUM / FREE GIFT</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	No	No	No
Registration necessary?	No	No	No	No
Others?	No	No	No	No
<i>Restrictions?</i>				
Nature?	No	Yes	No	Yes
Value?	No	No	No	Yes
<i>PRIZE CONTESTS (SKILL)</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	Yes	No	No, except TV
Registration necessary?	No	Yes	Yes	Yes
Others?	No	Yes	Yes	Yes
<i>Restrictions?</i>				
Nature?	No	Yes	Yes	Yes
Value?	No	Yes	No	No
<i>GAMES (CHANCE)</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	Yes	No	Yes
Registration necessary?	No	No	Yes	Yes
Others?	No	No	Yes	Yes
<i>Restrictions?</i>				
Nature?	No	No	Yes	Yes
Value?	No	Yes	No	No

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PROMOTIONS OVERVIEW

	Netherlands 	Portugal 	Puerto Rico 	Romania 
<i>DISCOUNTS</i>				
Permitted?	Yes	Yes	Yes	Yes
Specific regulation?	No	Yes	Yes	Yes
Limits as to amount?	No	No	Sometimes	Yes
<i>PREMIUM / FREE GIFT</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	No	No	No
Registration necessary?	No	No	No	No
Others?	No	No	Yes	No
<i>Restrictions?</i>				
Nature?	No	Yes		Yes
Value?	No	No		Yes
<i>PRIZE CONTESTS (SKILL)</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	Yes	No	No
Registration necessary?	No	Yes	No	No
Others?	No	No	Yes	No
<i>Restrictions?</i>				
Nature?	No	Yes	Yes	Yes
Value?	Yes	No	No	No
<i>GAMES (CHANCE)</i>				
Permitted?	No*	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	-	Yes	No	No
Registration necessary?	-	Yes	No	No
Others?	-	No		Yes
<i>Restrictions?</i>				
Nature?	-	Yes		No
Value?	-	No	No	Yes

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PROMOTIONS OVERVIEW

	Spain	Sweden	Switzerland	Turkey
				
<i>DISCOUNTS</i>				
Permitted?	Yes	Yes	Yes	Yes
Specific regulation?	Yes	Yes	No	No
Limits as to amount?		No	No	No
<i>PREMIUM / FREE GIFT</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	No		No
Registration necessary?	No	No		No
Others?	No	No		No
<i>Restrictions?</i>				
Nature?		Yes		Yes
Value?		No	No	No
<i>PRIZE CONTESTS (SKILL)</i>				
Permitted?	Yes	Yes	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	No	No	No	No
Registration necessary?	No	No	No	No
Others?	No	Yes	No	No
<i>Restrictions?</i>				
Nature?	Yes	Yes	Yes	Yes
Value?	Yes	No	No	No
<i>GAMES (CHANCE)</i>				
Permitted?	Yes	No	Yes	Yes
<i>Procedural requirements?</i>				
Authorization required?	Yes	No	No	Yes
Registration necessary?	Yes	No	No	No
Others?	Yes	No	No	No
<i>Restrictions?</i>				
Nature?	Yes	No	Yes	Yes
Value?	Yes	No	No	No

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PROMOTIONS OVERVIEW

	United Kingdom	United States
		
<i>DISCOUNTS</i>		
Permitted?	Yes	Yes
Specific regulation?	No	Yes
Limits as to amount?	No	No
<i>PREMIUM / FREE GIFT</i>		
Permitted?	Yes	Yes
<i>Procedural requirements?</i>		
Authorization required?	No	No
Registration necessary?	No	No
Others?	No	No
<i>Restrictions?</i>		
Nature?	No	No
Value?	No	No
<i>PRIZE CONTESTS (SKILL)</i>		
Permitted?	Yes	Yes
<i>Procedural requirements?</i>		
Authorization required?	No	No
Registration necessary?	No	Yes (AZ only)
Others?	No	No
<i>Restrictions?</i>		
Nature?	No	No
Value?	No	No
<i>GAMES (CHANCE)</i>		
Permitted?	Yes	Yes
<i>Procedural requirements?</i>		
Authorization required?	No	No
Registration necessary?	No	Yes (FL, NY, RI)
Others?	No	No
<i>Restrictions?</i>		
Nature?	No	Yes
Value?	No	No

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**THANK YOU TO THE FOLLOWING GALA MEMBERS WHO
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