

Legal Extranet

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Argentina



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General Legal Overview:

There is a self regulation system managed by the Advertising Self-regulation Council (CONARP). Specific legislation is the exception to the general rule. In fact, few rules arising from the Fair trade act, Article 10 bis of Paris Convention and Civil Code apply to the advertising industry. Various dispositions contained in the Consumer Protection Act are also applicable to advertising. The advertising of some categories of products are prohibited by law and other categories only suffer limitations.

Basic Guide to Intellectual Property rights in the Territory:

Legal regulation of Intellectual or Industrial Property (IP) rights in Argentina started in the middle of XIX century. The first text of article 17 of the National Constitution (which remains exactly the same in the actual Constitution) provides that "all authors or inventors are the exclusive owners of their works, inventions, or discoveries for the term accorded by law". Argentina does not have an IP Code in which all the regulations are included. On the contrary, the various laws and rules related to IP are scattered among several separate laws or regulations. The main areas of IP rights in connection to advertising are: copyright, trade and services marks and unfair competition.

Trade Marks

According to Argentine law, trade mark rights arise from registration. No prior use in commerce is required to register a trade mark. However, non-registered trade marks intensely used may serve to oppose an application or to challenge an already granted registration. Any sign that has a distinctive capacity may be registered as a trade mark to distinguish goods and/or services, i.e., words with or without meaning, designs, emblems, monograms, engravings, seals, bands, packages, combinations of colours, advertising slogans, and reliefs with distinctive capacity. Unfair Trade Practices, Passing Off, Unfair Competition etc.

There is a Fair trade act which regulates the main obligations of traders. Unfair competition rules also arise from the Paris Convention, some rules of the Civil Code as well as others existing rules of the Trademark Act. There are also some complementary rules contained in the Consumer Protection Act, which are applicable to advertising campaigns.

Copyright

The author of a work has the exclusive right to exploit, publish, perform, represent, sell, reproduce, translate, or adapt such work in any way.

Article 1 of the copyright law describes the scope of protection and mentions the different works of art which comprise, such as: writings, drama, choreography, musical composition, pictures, paintings, sculptures, architectural works, drawings, maps, computer programs, compilation of data and photographs. The term of protection for original works vary, from the life of the author plus 70 years in some cases (literary or musical works) to 20 years after author's lifetime (for the case of photographs).

Copyright law allows an interested party to obtain the suspension of a theatrical, cinematographic, philharmonic, or other similar show. Injunctions may be requested before or after the filing of the lawsuit.

Cámara de la Industria del Tabaco (CIT)

Reconquista 656 - Piso 13 - (1003) - Buenos Aires Tel: 4313-7705/7708/4312-8080

CONARP - Código de Autorregulación Publicitaria

Sede Cámara Argentina de Anunciantes (CAA) Av. Belgrano 624, piso 3 (C1092AAT) Fax 54-11-4-331-9360
 Email: conarp@camaranunciantes.org.ar Sede Asociación Argentina de Agencias de publicidad (AAAAP) Hipólito Yrigoyen 1968 (C1089AAL) Capital Federal 4951-0575 conarp@aaap.org.ar
 Personal Contact: President: Héctor A. del Piano

Subsecretaria de Defensa de la Competencia y Defensa del Consumidor & Secretar de Comercio, Industria y PyME

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Autonoma de Buenos Aires. scdydc@minproduccion.gov.ar Secretaria de Comercio, Industria y PyME Av. Julio A. Roca 651 (C1067ABB) Ciudad de Buenos Aires Tel.: (54-11) 4349-3000

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Direct Marketing	02 November 2004

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Activity	Collateral Gifts
Country	Argentina
Contact	Lotería Nacional Sociedad del Estado
General legal framework	In Argentina there are not specific regulations affecting collateral gifts. Notwithstanding, there are several regulations affecting promotions in general. The main guidelines are contained in a federal law, which is the Fair Trade Act Number 22.802, that basically determines which promotional tools are not admitted in Argentina. Moreover, some general principles and obligations stated by other laws can be applicable to these particular kind of promotions, like the provisions of the Consumer Protection Act Number 24.240. The LOTERIA NACIONAL SOCIEDAD DEL ESTADO (furthermore referred as "National Lottery"), is the competent national authority to exert the control of every promotional tool taking place in Argentina. Free Gifts, understood as every temporary offer of a certain good or service free of charge and independent of any prior obligation of purchase, are not subject to regulations, restrictions or authorizations of any kind. The same must be said about Premiums, defined as every temporary offer of a free gift to be received when purchasing a good or service. Nevertheless, it is important to mention that in this case, the free gift offered to consumers should not depend, either in a direct or indirect way, on the intervention of chance. If so, an authorization would be needed and several requirements will have to be satisfied.
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Subject	Alcohol
Country	Argentina
General legal framework	Advertising of alcoholic products is regulated in Argentina by law Number 24.788. According to said law, advertising on alcohol is forbidden when: a) it is addressed to under-aged, b) minors participate in the advertising campaign, c) it suggests physical or intellectual success, d) it stimulates sexuality or violence. Moreover, contests or competitions of any nature that may require the drinking of alcoholic drinks for participation are not allowed, if they are not expressly destined to sampling or tasting
Restrictions to the activity	Every alcoholic drink advertising must include, in a way consumers could easily notice it, the phrases: "Drink with moderation" and "Not to be sold to people under 18 years old".
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Subject	Tobacco	
Country	Argentina	
Contact	Cámara de la Industria del Tabaco (CIT)	
General legal framework	The tobacco industry advertising is regulated under Law Number 23.344. According to said law, every tobacco packaging must show in its body the phrase: "Smoking is harmful for health". Advertising of tobacco or tobacco related products is subject to the following limitations: • not allowed to be made on radio or TV between 8 am and 22 pm . • it cannot be made by well known people whose main activity is related to minors. • forbidden within publications, shows or events mainly destined to minors or where their presence is allowed. • Participation of under-aged or people representing them is banned in tobacco advertising campaigns. typical minor vocabulary cannot be used in such campaigns.	
General self-regulatory framework	Código para promoción, venta y publicidad de productos del tabaco (Tobacco Code). Said code was signed by the Tobacco Industry Chamber, Massalin Particulares S.A. (the Philip Morris Inc. local subsidiary) and Nobleza Piccardo S.A. (the BAT local subsidiary) and it regulates the main aspects of tobacco advertising. It's most relevant aims are to avoid minors to get involved in smoking and to get the authorities and common consumers to notice that the only purpose of tobacco advertising is to make smokers prefer certain trademark from another, but not to make new people to turn to smoke.	
Restrictions to the activity	Every advertising campaign, no matter the specific media in which is exhibited, must include the legend: "El fumar es perjudicial para la salud" (Smoking is harmful for health), in a way it could be easily seen by consumers.	
Restrictions to the media	<i>Cinema</i>	Only allowed when the film exhibited is forbidden for minors. No tobacco trademarks are allowed to be mentioned in the content of films.
	<i>Direct Mail</i>	Only for adults
	<i>E-mail</i>	Only for adults
	<i>Outdoor</i>	Not near schools, parks or places where children could frequently go.
	<i>Press</i>	Not allowed when its main readers are minors
	<i>Radio</i>	Not between 8 am and 22 pm.
	<i>TV</i>	Not between 8 am and 22 pm. No tobacco trademarks are allowed to be mentioned in the content of TV shows.
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Activity	Data Protection/Privacy
Country	Argentina
Contact	Ministerio de Justicia y Derechos Humanos
General legal framework	Section 43 of the National Constitution provides for a general protection of consumers in connection to the information contained in public or private databases about them. In such sense, every consumer has the right to claim for the confidentiality of that information, as well as its suppression, modification or rectification in cases of inaccuracy or falseness of said data. Law Number 25.326 regulates the main aspects of data protection. There is no problem on keeping a database for the purpose of organizing promotions if the information is obtained with the consent of consumers, if they provide it or if it was obtained from public sources of information. Nevertheless, consumers must be allowed to have a full and free access to the database, as well as require the removal of their data from it. The DNPDP is in charge of the Registry of Database, in which every existing database should be recorded. Consumers may file any claim against database owners before the DNPDP. Sanctions can be applied in case the non-compliance with the obligations stated by law are verified.
Restrictions to the activity	In the case of sensitive personal information, the explicit consent of the consumer is needed before the information can be processed. Every data processed in a database must be truthful, accurate and exact. It also has to be used for the same purpose of the one set out in the privacy statement. Consumers must be able to have free and easy access to the information they provided, so as to be able to exert a proper control over its accuracy and truthfulness. They must also be able to complete or modify such information when necessary.
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Subject	Motors
Country	Argentina
General legal framework	Besides from the general regulations contained in the Fair Trade Act and the Consumer Protection Act, advertisement for motor vehicles or related products is not subject to any particular regulation
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Subject	Health & Beauty
Country	Argentina
Contact	Administración Nacional de Medicamentos, Alimentos y Tecnología Médica (ANMAT)
General legal framework	Apart from the general regulations contained in the Fair Trade Act and the Consumer Protection Act, the Disposition 3186/99 of the ANMAT determines the applicable legal framework for advertising of health and beauty products. Said disposition determines that every advertising campaign regarding beauty and health products shall comply with the following requisites: • use the official language • avoid implying the capability of healing certain chronic or incurable diseases. • explain the correct application or usage of the product. • refrain from advertising a determined product as "new" when it has been commercialised in the market for two years. • It is forbidden to label healing or therapeutic properties. • Refrain from including phrases which could provoke fear, distress or that could make consumers believe that the non use of certain product could be dangerous for health. • Refrain from including texts such as "recommended by experts" or "clinically tested" when said fact is untrue. In connection to pharmaceuticals, the main regulations are detailed in the corresponding chapter.
Restrictions to the activity	There is a general restriction to misleading advertising, false or incomplete information and replacing medical advice.
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Activity	Comparative advertising
Country	Argentina
Contact	AAAP (Asociación Argentina de Agencias de Publicidad)
General legal framework	Trademark law states that a person is liable for using a trademark that belongs to another person. However, case law -that in the past considered that comparative advertisement was a trademark infringement-, have allowed it in cases were information was objectively compared, based on features or qualities of the same kind of products and did not tarnish the other person's trademark or trade name.
General self-regulatory framework	Comparative Advertising is authorized according to the "Best Practice Code for the Advertising" (CONARP), but messages should avoid direct or indirect exaggerations, ambiguity or minimization that may lead to mistakes about characteristics, nature, origin, composition, usefulness, quantity, quality, properties or value of the products. They must also avoid deceitfulness in connection to the conditions of commercialisation, delivery, maintenance, repair, guarantees, intellectual property rights or recognitions (prices, medals, diplomas, etc.). Messages of comparative advertising should not try to denigrate, confuse, deform or create a rejection against the products of the competition.
Restrictions to the activity	Only the same kind of products can be compared using objective criteria -such as price, qualities or features-, without tarnishing the other party's trademark or intellectual property rights. To make the comparison, products of the same range must be used and publicity must not change the size, shape or quality of any of the products compared. Some particular products have their own regulations -see pharmaceutical products-
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Subject	Financial products and services
Country	Argentina
Contact	BCRA (Central Bank of the Argentine Republic) is the regulation government agency.
General legal framework	The most important regulation is the one provided by the law of Financial Entities (Number 21.526) which only allows authorized entities to advertise services in order to obtain resources from the public for financial products. There are several specific regulations, most of them communications of the Central Bank of the Argentinian Republic (www.bcra.gov.ar) about advertising qualities, rates and ways to show qualifications and recognitions. All advertising of financial products should include the total financial costs. The Consumer Protection Act also states that for the operations of credit for the acquisition of goods or services in which credit is used, the offer must stipulate the total price, the price if purchased "cash down", the annual rate, and any additional cost involved.
General self-regulatory framework	"Best Practice Code for the Advertising" (CONARP) of the AAP states that the advertisement about financial products and services should include clearly the benefits, interests and commissions of the product or service involved.
Restrictions to the activity	Only authorized entities can advertise. The total cost for the offer of financial services must be included on the advertisements. Financial information can only be provided as regulated by the BCRA. If products involve financial services, the offer must stipulate the total price, the price if purchased "cash down", the annual rate and any additional cost involved. All operations and services offered must include the total financial cost.
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Subject	Pharmaceuticals	
Country	Argentina	
Contact	ANMAT (Administración Nacional de Medicamentos, Alimentos y Tecnología Médica) www.anmat.gov.ar	
General legal framework	Law Number 16.463 establishes the general restrictions and designates the ANMAT as the regulatory entity. There are specific dispositions of ANMAT such as decrees 7331/1998 and 3186/99 about advertising of prescription drugs. Prescription drugs can only be advertised directly to health professionals and pharmacy stores through authorized professionals known as APM (Agente de Propaganda Médica). Therefore, it is forbidden to advertise pharmaceutical products to the general public.	
General self-regulatory framework	There is a Code of Ethics of the "ASOCIACION MEDICA ARGENTINA" issued on 2002. The "Best Practice Code for the Advertising" (CONARP) also has specifications about pharmaceutical and medical products (not promoting superiority or convenience to buy certain pharmaceutical products when the same ingredients and concentrations are found in other products) .	
Restrictions to the activity	Only Advertisements of pharmaceuticals that do not need prescription are allowed and they are subject to the following limitations: • use the official language • avoid implying the capability of healing certain chronic or incurable diseases. • explain the correct application or usage of the product. • refrain from advertising a determined product as "new" when it has been commercialised in the market for two years. • It is forbidden to label healing or therapeutic properties. • Refrain from including phrases which could provoke fear, distress or that could make consumers believe that the non use of certain product could be dangerous for health. • Refrain from including texts such as "recommended by experts" or "clinically tested" when said fact is untrue.	
Restrictions to the media	<i>Cinema</i>	If the advertisement lasts less than 20' the phrase "ANTE LA MENOR DUDA CONSULTE A SU MEDICO" can be avoided.
	<i>Radio</i>	If the advertisement lasts less than 20' the phrase "ANTE LA MENOR DUDA CONSULTE A SU MEDICO" can be avoided.
	<i>TV</i>	If the advertisement lasts less than 20' the phrase "ANTE LA MENOR DUDA CONSULTE A SU MEDICO" can be avoided.
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Activity	Coupons
Country	Argentina
Contact	AMDIA
General legal framework	There are no specific regulation for discount coupons. So regulations on direct marketing and promotions could be of application to this matter.
Restrictions to the activity	There are no specific regulations.
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Activity	E-mail
Country	Argentina
Contact	CABASE is the Chamber of Electronic Commerce, Contents and Online services that unites the interests of most ISP (however, recently four of the most important service providers left the chamber).
General legal framework	Consumer Protection Act Number 24.240 include some restrictions on e-mail advertising. Besides, as Direct Marketing relies on databases, Law Number 25.326 of Personal can also be applicable in certain cases (see also upcoming changes).
General self-regulatory framework	CABASE has not issued a code of ethics or best practices. However the Code of Ethics of the Association of Direct and Interactive Marketing (AMDIA) is applicable and the "Best Practice Code for the Advertising" (CONARP) of AAAP can be applicable too.
Restrictions to the activity	According to the Consumer Protection Act, the one that makes the offer must include its address. The consumer can revoke the acceptance within five days from the receipt of the article acquired. It is forbidden to offer products or services that without being previously requested could generate an automatic charge, or may need an express denial in order to avoid a charge. According to the AMDIA code of ethics, offers are to be made clear, honest and complete. Fonts used in a document must be readable, offers must not be obscene, profane or offensive and the offerer of the product or service must be easily identified.
Upcoming changes	There is a project for an e-mail protection Act (Number 333/2001), mainly related to the use e-mail by employees, and there is another project for regulating the general use of e-mails (Number 338/2001), with several regulations for direct marketing, including fines for illegal or misleading uses. Both projects are under a consultation process to any interested party.
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Activity	Sponsorship
Country	Argentina
General legal framework	Consumer Protection Act Number 24.240
General self-regulatory framework	As there is not a specific National Association, there are no self-regulatory documents.
Restrictions to the activity	No specific restriction. All the regulations included on the Consumer Protection Act are applicable.
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Subject	Gaming & Betting
Country	Argentina
Contact	Lotería Nacional Sociedad del Estado
General legal framework	Every chance games are forbidden in the territory of the Federal Capital of the Republic, as well as any lottery that is not expressly authorized by law or created by the competent national authority. In this sense, chance games are defined as follows: 1. Every kind of game for money or other values in which profits o losses exclusively or partially depend on chance (e.g. casinos, etc) 2. Every gamble regarding horse races outside the racecourse or the permitted places.
Restrictions to the activity	There are no specific rules for advertisements on these matters.
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Activity	Prize Promotions
Country	Argentina
Contact	Lotería Nacional Sociedad del Estado
General legal framework	<p>In Argentina there are not many regulations affecting prize promotions. The main guidelines are contained on a federal law, which is the Fair Trade Act, that basically determines which promotional tools are not admitted in Argentina. The majority of the legal framework regarding sales promotions come from several decrees or regulations issued by the National Administration or its different organs, especially "National Lottery", which happens to be the competent national authority to exert the control of every promotional contest or game taking place in Argentina. The Argentine Fair Trade Act, prohibits the following commercial practices: a) Offering gifts or prizes, directly or indirectly related to a prior obligation of purchase of a certain good or service, when said gifts or prizes are submitted to the intervention of chance. b) Organizing or promoting any contest or competition where the participation to it is to any degree conditioned to a prior obligation of purchase of a certain good or service. c) Giving money or other goods in return to the rescue of packages, parts of them or the product itself, when the amount of money or value of the good given in return is higher than the regular value of the rescued objects or the prize they may represent to the person who rescue them. None of these practices are legal in Argentina. For that reason, organizers have to comply with certain requirements at the time they encourage the launching of a promotion. Thus, they have to arrange the free distribution of the coupons, packages or whatever is necessary to participate in the chance promotion. Therefore, there has to be at least one place where the needed element for participation is delivered free of charge, on every provincial capital city or city with more than 50,000 inhabitants. Furthermore, anyone who decides to organize a prize promotion must obtain an authorization issued by the National Lottery. Said authorizations lasts for the period of one year, during which the solicitor is allowed to organize as many promotions as he decides to, with the only requirement of informing the National Lottery about them.</p>
Restrictions to the activity	<p>Firstly, there is a general prohibition for inaccurate, deceitful or misleading advertising of any kind, that is of application on promotions. Thus, any advertising campaign that may lead consumers to mistakes, confusion or deceit about the nature, properties, quality, use, prize or any other characteristic of the product or service offered or promoted will be considered as an unfair trade practice, which can make the announcer liable to a fine that may reach US\$ 150,000. Each advertisement of a chance promotion must include the complete number of gifts or prizes to be awarded by the promotion, a specification of their main qualities or characteristics, the dates in which the promotion starts and ends and all the conditions or requirements needed to participate in the promotion. In addition, every advertising made on the promotion must include the expressions "No prior obligation of purchase" and "Seek advice on the sale premises", in a way that consumers could easily see them. The only exception to this rule are the radio announcements that do not last more than twenty seconds. On these cases, said expressions can be omitted. Finally, organizers must provide the complete list of the prize or gift winners during the following 10 days after the promotion is finished. Such information has to be divulged by the same means used to advertise the promotion.</p>
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Activity	Direct Marketing
Country	Argentina
Contact	Association of Direct and Interactive Marketing (AMDIA) www.amdia.org.ar
General legal framework	Consumer Protection Act Number 24.240 includes some restrictions to these kind of advertising. As Direct Marketing relies on databases, Law Number 25.326 of Personal Data Protection is applicable, which makes illegal to collect sensitive data, considering sensitive the ones related to racial or ethnic background, political, philosophical or moral beliefs, syndicate affiliation and health or sex life, unless consent -duly informed- is obtained from every member of the Database. Any person can request to be removed from a database used for advertising purposes.
General self-regulatory framework	The AMDIA has issued a code of ethics with several restrictions and regulations. (http://www.amdia.org.ar/etica_nuevo_codigo.htm) .
Restrictions to the activity	According to the Consumer Protection Act, the one that makes the offer must include its address. The consumer can revoke the acceptance within five days from the receipt of the article acquired. It is forbidden to offer products or services that without being previously requested could generate an automatic charge, or may need an express denial in order to avoid a charge. According to the AMDIA code of ethics, offers are to be made clear, honest and complete. Fonts used in a document must be readable, offers must not be obscene, profane or offensive and the offerer of the product or service must be easily identified.
Upcoming changes	There is a project for an e-mail protection Act (Number 333/2001), mainly related to the use e-mail by employees, and there is another project for regulating the general use of e-mails (Number 338/2001), with several regulations for direct marketing, including fines for illegal or misleading uses. Both projects are under a consultation process to any interested party.
Last updated	02 November 2004

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Disclaimer

The information set out above is only intended to provide a general overview of the subject matter covered. It is not a substitute for legal advice, which should be obtained for each individual situation, from a suitably qualified and experienced local lawyer.

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