

## Legal Extranet

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Costa Rica

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### General Legal Overview:

There is no general Law regulating advertising in Costa Rica. Some specific laws that directly or indirectly affect the advertising industry.

Most relevant regulations on advertising deal with consumer protection issues, use of the image of women, and other general regulations. In addition, some regulations deal with specific products such as alcohol, tobacco, medicines, and cosmetics.

General principles of advertising can be found in the Rules issued to protect consumers. Basically, advertising must be truthful and fair, and information given to consumers must be sufficient and prior to the purchasing decision.

There is no self-regulation code currently in force in Costa Rica.

### Basic Guide to Intellectual Property rights in the Territory:

#### Copyrights

Law 6683 (Ley de Derechos de Autor y Derechos Conexos), protects the creators of any artistic or literary works, regardless of the form or medium which the work is expressed. Protection is granted to the expression of ideas, plans or concepts, but not to the ideas, plans or concepts themselves.

This Law regulates issues such as who owns the protected work, scope of protection, rights of the owners and limits to such rights, as well as term of protection.

In summary, Copyrights are divided into Moral Rights and Patrimonial Rights. The former grants the author the personal and non-transferable right to be mentioned as the creator of the work, to allow or deny alterations, and to define whether or not the work will be published.

Patrimonial rights, on the other hand, may be transferred, and comprise the rights to edit, reproduce, translate, adapt, exhibit, distribute, and obtain monetary compensation for the exercise of such rights.

Term of protection is - with some exceptions - 70 years after the end of the life of the author.

Other ancillary issues related to copyrights may also be found in this Law.

#### Trade Marks

Trademark rights are regulated by Law N° 7978 (Ley de Marcas y otros signos distintivos). In addition, Costa Rica is a party to the Paris Convention, the Lisbon Convention, the Nice Classification, the Vienna agreement, and the WTO agreements.

According to the abovementioned Law, a trademark is any sign or combination of signs capable to distinguish a good or service. In particular, a trademark may be a word, group of words, letters, numbers, designs, monograms, drawings, combination of colours, etc. It can also be the shape, presentation or container of a product.

Priority rights for the registration of a trademark belong to the first user, unless the use has been for a period of less than three months, in which case the priority is held by the first applicant.

Trademarks are classified in classes in accordance with the Nice Agreement. The procedure of registration involves an examination of formal requirements, and a period for oppositions from

third parties.

Registration period of a trademark is ten years, and it may be renewed for unlimited equal periods. Request for renewal must be filed within the last year of each ten-year period.

The rights of the owner of a trademark are exhausted once the goods are legally put in commerce. Additionally, other limits on ownership permit others to mention in good faith someone else's trademark in advertising, labelling, and others.

There is no prior use required for registration of a trademark. However, a trademark may be cancelled if it is not used in commerce within five years after registration, or in five consecutive years thereafter.

Other grounds to cancel a trademark are generalization, elapsing of its term, and invalidity of the registration.

Special provisions protect famous and well known marks as well.

Unfair Trade Practices, Passing Off, Unfair Competition etc.

Enforcement of intellectual property rights - including copyrights, patents and trademarks - is regulated by a special Law (Law 8039 "Procedimientos de Observancia de los Derechos de Propiedad Intelectual").

This Law imposes civil and criminal liability upon infringers, detailing the different procedures to be followed and penalties to be imposed depending on the nature of the infringement. This Law also enables the imposition of preliminary measures, and sets forth the criteria for the determination of damages.

In addition, Law N° 7472 (Promocion de la competencia y Defensa Efectiva del Consumidor) defines what should be considered as unfair competition. This Law describes the conducts that are considered unfair and thus prohibited, and also sets out the procedure to prosecute those actions.

#### Image Rights:

There is no specific legislation on image rights, which are regulated by some general basic provisions of the Civil Code.

Very little case law exists, and some of the cases have dealt with commercial use of personal image. The rulings have established some very basic principles only.

No body exists yet

Comision Nacional de Consumidor

San Jose, Ave. 3, calles 30-32 Tel: (506) 256-9611 Fax: (506) 255-2467

Consejo de Control de Propaganda del Tabaco

San Jose, detras del Hospital San Juan de Dios. Tel: (506) 222-0960 Fax: (506) 256-2768

Consejo Nacional de Espectaculos Publicos

Barrio Lujan costado norte de autosoda Dos Pinos Tel: (506) 255-3654 Fax: (506) 221-4406

Instituto sobre Alcoholismo y Farmacodependencia

San Pedro Barrio La Granja, del Banco Popular 100 Sur, 25 Oeste y 200 Sur. Tel: (506) 224-6122 Fax: (506) 224-6762

Ministerio de Salud

San Jose, detras del Hospital San Juan de Dios. Tel: (506) 222-0960

Oficina de Control de Propaganda

San Pedro de Montes de Oca, 75 mts. al Norte de Bagelmens. Tel.: (506) 280-8917 Fax: (506) 283-0741

None

<a href="#">Collateral Gifts</a>	03 November 2004
<a href="#">Gaming &amp; Betting</a>	03 November 2004
<a href="#">Prize Promotions</a>	03 November 2004
<a href="#">Alcohol</a>	03 November 2004

Health & Beauty	03 November 2004
Comparative advertising	03 November 2004
Financial products and services	03 November 2004
Pharmaceuticals	03 November 2004
Tobacco	03 November 2004

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Weinstok Abogados

Uri Weinstok

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## Legislation Article

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Activity	Collateral Gifts	
Country	Costa Rica	
Contact	Uri Weinstok M. (uweinstok@niehauslaw.com)	
General legal framework	Most applicable regulations derive from the consumer protection principles established by Law N° 7472 (Promoción de la Competencia y Defensa Efectiva del Consumidor).	
The subject of the rules	Subject to particular conditions, the use gifts and premiums as a promotional strategy is permitted. In summary, consumer previously must be clearly informed about the advantages to be obtained and the conditions to access the gift or premium. It is permitted to tie the free gift to a purchase as long as it's clearly and conspicuously disclosed in advance. Special precautions must be taken when dealing with products with regulated prices. When we are looking at these products, any free gift could be interpreted as a way to modify the sales price of the product and thus fail to comply with the regulation. Additionally, caution must be taken when the products offered as gifts may not be obtained independently. In such cases, we could be facing a tied or conditioned sale (i.e. a sale that requires the purchase of another or a distinct product). This is also subject to specific regulations both from the antitrust and consumer protection concerns.	
Restrictions relating to products or services	<i>Tobacco</i>	No gifts can be given, except for items used in the consumption of tobacco products.
	<i>Alcoholic beverages</i>	Same restrictions applicable to the sale of the product apply to the gifts or premiums given.
	<i>Pharmaceuticals</i>	Same restrictions applicable to the sale of the product apply to the gifts or premiums given.
Last updated	03 November 2004	

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Subject	Gaming & Betting
Country	Costa Rica
Contact	Uri Weinstok M. (uweinstok@niehauslaw.com)
General legal framework	Ley de Juegos (Law N° 3) Ley de Rifas y Loterías (Law N° 1387) Ley de Loterías (Law N° 7395) Civil Code (Law N° 30 - Article 1409) Reglamento para el Registro de las Empresas de Enlace de Llamadas de Apuestas Electrónicas (Decree N° 30972-H-MEIC) Ley de Creación del Instituto Costarricense del Deporte y la Recreación y del Régimen Jurídico de la Educación Física, el Deporte y la Recreación (Law 7800)
The subject of the rules	In General, legislation is unenthusiastic about bets and gaming. On the one hand, the organization and administration of betting systems is (with some exceptions) expressly prohibited. On the other hand, private transactions between individuals which create obligations depending on luck cannot be enforced in Courts. Specifically, lotteries are forbidden by Law, except for the one carried out by the State through a charitable organization called "Junta de Protección Social". This institution carries out all legal lotteries. A lottery is defined as "any operation destined to procure gains by means of luck between people who have paid or agreed to pay their part in the game of chance". Raffles are also prohibited, except the ones carried out for the benefit and with the authorization of the Red Cross. Betting on Sports is also reserved to a governmental institution in charge of promoting Sports and recreational activities. However, an official betting system has not been implemented. There are few exceptions to the abovementioned prohibitions, mainly the following: a. Licensed casinos operating in hotels with 4 or more stars. b. Raffles made in connection to promotions to increase the sale of products. In addition, in the last years, Internet gambling operators and sportsbooks have been authorized, as long as Costa Rican consumers are unable to bet, and all exchanges of money is made abroad. In these conditions, it has been interpreted that the bet does not occur in Costa Rica. Thus, the bet operators have been authorized.
Last updated	03 November 2004

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Activity	Prize Promotions	
Country	Costa Rica	
Contact	Uri Weinstok M. (uweinstok@niehauslaw.com)	
General legal framework	Most applicable regulations derive from the consumer protection principles established by Law N° 7472 (Promoción de la Competencia y Defensa Efectiva del Consumidor).	
The subject of the rules	<p>In general terms and with the exception of specific regulations applicable to certain products or certain modalities, the following basic rules apply to promotions: a. There is no previous clearance or official control of the promotion. The rules need not be approved by any authority. It is the responsibility of each company to make sure that the promotion complies with applicable rules. The sole exception is the so-called "Sales of future goods" which are subject to special regulations. b. Consumers must be informed about the restrictions applicable to the promotion prior to their decision to participate in the same. This obligation is usually complied with by the massive communication of the rules of the promotion. c. As from the moment in which a consumer decides to participate in the promotion, a contract has been created. This contract will be subject to the conditions that the consumer could reasonably have known in advance. Everything that is being offered must comply with those conditions. d. The contents of the advertising are considered part of the contract as from the moment when it is published for the first time. e. The rules of the promotions may not be changed without justified cause. f. The regulations must be applied uniformly. It is not possible to deny the participation of anyone unless there is a reasonable justification. It should also be analyzed whether the granting of the prize is due to the abilities of the participant or if in practice it is rather chance that is involved as a determining element. This distinction is important because if the promotion legally qualifies as a raffle or a lottery, the activity is subject to stricter regulations. On the other hand, if the activity qualifies as an ability game or a competition, these regulations do not affect it. As an exception, the Law permits gifts from raffles or lottery, without intentions of profit and for promotional purposes performed by commercial undertakings among their clients or consumers. Therefore, contrary to other legislations, in Costa Rica the conditioning of the participation in the game for the purchase of a product is not prohibited. Our legislation rather considers this relation game-product a means to legitimate what under other conditions would be an illegal game of chance. Thus, in order for promotions involving games of luck to be legal in Costa Rica, they shall have to comply with one of the following two requirements: a) The raffle has to be totally free of charge (not associated with the purchase of any product and without any payment required for participation) or b) the raffle must not generate a direct profit and must be directly associated with the promotion of sales of a product or a service.</p>	
Restrictions relating to products or services	<i>Tobacco</i>	Restricted to adults over 18 years of age.
	<i>Alcoholic beverages</i>	Restricted to adults over 18 years of age.
Last updated	03 November 2004	

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## Legislation Article

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Subject	Alcohol	
Country	Costa Rica	
Contact	Uri Weinstok M. (uweinstok@niehauslaw.com)	
General legal framework	Ley sobre Venta de Licores (Law N° 10) Reglamento sobre Regulación y Control de Propaganda de Bebidas Alcohólicas (Decree N° 4048-SPPS)	
The subject of the rules	All advertising of alcoholic beverages must be previously cleared by a governmental agency called "Instituto sobre Alcoholismo y Faramacodependencia (IAFA)". The following is forbidden when advertising alcoholic beverages: a. Showing images or sounds of people drinking. b. Showing satisfaction towards the anticipation of drinking, or after having a drink. c. Relating the consumption of alcohol to the increase of any physical, moral or intellectual ability. d. Showing stimulating effects (physiological, psychological or sociological) of an alcoholic drink. e. Using sport players or relating the product with any sport. f. Using famous or publicly recognized person. g. Using national symbols or folkloric music. h. Showing persons under the age of 18 or elements particularly appealing to them. Ads coming from abroad are also subject to these regulations. IAFA may issue individual exceptions to foreign ads in materials printed abroad. All labels must include one of the following messages: "Drinking is harmful to your health", or "The abuse of alcohol is harmful to your health". If the second message is chosen, then it must also be included in the advertising.	
Restrictions to the media	<i>Outdoor</i>	Prohibited in or around sports facilities.
	<i>Press</i>	Prohibited on Sundays and holidays. Prohibited in sections directed to children or Sports.
	<i>Radio</i>	Prohibited on Sundays and holidays. Prohibited during programs directed to children or Sports, nor immediately before or after them.
	<i>TV</i>	Prohibited on Sundays and holidays. Prohibited during programs directed to children or Sports, nor immediately before or after them.
Restrictions to the public	<i>Children and adolescents</i>	No advertising of these products may be directed or particularly appealing to children.
Last updated	03 November 2004	

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Subject	Health & Beauty
Country	Costa Rica
Contact	Uri Weinstok M. (uweinstok@niehauslaw.com)
General legal framework	Ley General de Salud (Law N° 5395) Reglamento Orgánico del Ministerio de Salud (Decree N° 30921-S)
The subject of the rules	All beauty products require a prior registration and authorization in order to be legally elaborated, imported, sold, and advertised in Costa Rica. Once registered, beauty products may be advertised without prior clearance from the authorities. The content of the advertising of this type of products is not regulated in particular. Advertising of this kind must abide by the general rules applicable to all advertising.
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Activity	Comparative advertising
Country	Costa Rica
Contact	Uri Weinstok M. (uweinstok@niehauslaw.com)
General legal framework	Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor (Law N° 7472).
The subject of the rules	Comparative advertising must comply with the following: a. The information compared must be relevant. b. All information must be objectively verifiable. c. Comparison must be made between products of the same kind. d. The comparison must be made with reference to products known by the public, or with significant participation in the market. Comparisons are inadmissible when they are limited to a general proclamation of the own product's superiority. Information necessary to determine the real value of the products cannot be omitted.
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<b>Subject</b>	Financial products and services
<b>Country</b>	Costa Rica
<b>Contact</b>	Uri Weinstok M. (uweinstok@niehauslaw.com)
<b>General legal framework</b>	Ley Orgánica del Banco Central (N° 7558). Ley Orgánica del Sistema Bancario Nacional (N° 1644). Ley Reguladora del Mercado de Valores (N° 7732). Reglamento sobre la regulación de la publicidad y la propaganda de títulos valores y de servicios de intermediación bursátil (Session N° 51 of October 11, 1991) Reglamento General Sobre Sociedades Administradoras y Fondos de Inversión (Session N° 266-2001 of November 26, 2001) Normas Para Regular la Publicidad de los Servicios Financieros que Ofrecen las Entidades y Grupos Financieros Supervisados por la Superintendencia General de Entidades Financieras (Agreement SUGEF 28-02)
<b>The subject of the rules</b>	Banks and other financial institutions • Only authorized Banks and Financial institution may use in their advertising the words "Bank", "Financial", or similar. • General Superintendent of Financial Institution has the powers to suspend all misleading advertising carried out by a supervised institution. • Advertising showing costs of the services must include all costs associated to the transaction. • Interest rates shown must be calculated through a special formula. • Superintendent may order the suspension and/or rectification of the advertising. In case of misleading ads, rectification must be made in equivalent means of the original ads. Securities • Advertising of securities is supervised and regulated by the National Securities Commission and the Securities Superintendent. They may issue rules and regulations on content and control mechanisms. • Some mandatory disclaimers must be included in all advertising materials of these products. • It is forbidden to create false expectations on the profitability or the future results of investments. • A copy of all advertising materials must be sent to the Securities Commission for their information. • All media operators must verify that the advertiser is authorized to offer securities, before publishing or broadcasting an ad. • Media operators must verify that the advertising is not misleading or otherwise illegal. The commission may serve as a consulting body in that regard. • Securities Commission may order the modification or suspension of any ad that they believe is illegal or misleading. They may also order the rectification in means equivalent to the original ads. • In case of infringement of the rules regulating advertising, penalties may range from the imposition of fines, to the suspension of the activities of the advertiser. Investment Funds • Selling agents may not advertise any investment fund unless the advertising is made together with the administrator of the fund. • All advertising of funds must include some mandatory disclaimers. Disclaimers differ for national and foreign investment funds. • Advertising may not make any projection on future profitability. • If past profitability is mentioned, at least the information of the last 12 months must be included. Data must be calculated by a special formula. • Earnings must be shown on a yearly basis. • Superintendent of Securities may require additional disclaimers, and regulate the way they must be shown to guarantee their legibility. • Advertisers must keep copies of all advertising.
<b>Last updated</b>	03 November 2004

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Subject	Pharmaceuticals
Country	Costa Rica
Contact	Uri Weinstok M. (uweinstok@niehauslaw.com)
General legal framework	Ley General de Salud (Law N° 5395) Reglamento de Inscripción, Control, Importación y publicidad de medicamentos.
The subject of the rules	Pharmaceuticals require prior registration and authorization in order to be legally elaborated, imported, sold, and advertised in Costa Rica. Advertising of prescription medicines must be previously cleared by the Ministry of Health. Non-prescription medicines may be advertised without prior clearance, but are subject to the same rules regarding their contents. This regulations apply to all products that - even if technically do not qualify as medicines - are used for the treatment of diseases or their symptoms. In addition to general rules regarding truthful advertising and presentation of the product, all ads must be made in accordance to the nature of the medicine and its uses. Authorities may require the use of mandatory disclaimers if deemed appropriate.
Last updated	03 November 2004

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<b>Subject</b>	Tobacco	
<b>Country</b>	Costa Rica	
<b>Contact</b>	Uri Weinstok M. (uweinstok@niehauslaw.com)	
<b>General legal framework</b>	Ley de Regulación del fumado (Law N° 7501) Reglamento a la Ley Reguladora del Fumado (Decree N° 25462-S) Reglamento de Promociones, Patrocinios y otras Actividades Relacionadas con Productos de Tabaco y sus Derivados (Decree N° 31613-MEIC-S)	
<b>The subject of the rules</b>	All tobacco advertising must be cleared in advance by the "Consejo de Control de Propaganda del Tabaco", which is part of the Ministry of Health. The following is forbidden in Tobacco advertisement: a. The use of persons under the age of 18. b. The use of contents particularly appealing to people under the age of 18. c. The mention of stimulating effects of cigarettes or other tobacco products. d. The use of sports players, scientists, professionals, or people representing those characters. e. Testimonials of famous or publicly recognized people. f. Highly erotic contents. g. Showing people smoking. In addition, all claims related to the quality of the product or the process of elaboration must be substantiated. All advertising materials must include the message "Smoking is harmful to your health". Promotions must only be directed to people over 18 years old. Proof of age must be required to take part in the promotion. Promotional events sponsored by any tobacco brand must be exclusive to people over 18 years old. Merchandising products are forbidden.	
<b>Restrictions to the media</b>	<i>Cinema</i>	Permitted only when movies are exclusive for people over 18 years of age.
	<i>Direct Mail</i>	Permitted only when directed to people over 18 years old.
	<i>E-mail</i>	Permitted only when directed to people over 18 years old.
	<i>Outdoor</i>	Prohibited within 200 meters of the perimeter of any school ground (except for educational centres directed to people over 18 years old). Prohibited in or around sports facilities, or facilities specially devoted to the use by persons under the age of 18. Billboards may not be larger than 35 square meters.
	<i>Press</i>	Permitted only on products directed to persons over 18 years old. Prohibited on Sundays and holidays. Prohibited in sections directed to children or Sports.
	<i>Radio</i>	Prohibited between 6:00 a.m. and 9:00 p.m. Prohibited during programs directed to children or Sports, nor immediately before or after them.
	<i>TV</i>	Prohibited between 6:00 a.m. and 9:00 p.m. Prohibited on Sundays and holidays. Prohibited during programs directed to children or Sports, nor immediately before or after them.
<b>Restrictions to the public</b>	<i>Children and adolescents</i>	Advertising of this product is prohibited when directed to children.
<b>Last updated</b>	03 November 2004	

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