

Legal Extranet

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Luxembourg



National Association
 General Legal Overview
 Basic Guide to Intellectual Property rights in the Territory
 Specific Legislation

National Association:

Association des Agences Conseils en Marketing et Communication (MarkCom asbl)

General Legal Overview:

Advertising in Luxembourg has to comply with the law of 30 July 2002 concerning commercial practice, unfair competition and comparative advertising (as amended). This law implements the EU-directives 97/55/CE and 84/450/EEC concerning misleading and comparative advertising. In addition, rules are provided as regards the different kinds of sales as winter and summer sales, clearance sales or e.g. pyramidal sales ("vente en chaîne") and sales below retail price (the last two sales are forbidden in Luxembourg). Furthermore, lotteries and gaming are governed by the law of 30 July 2002.

In the case of a violation of the provisions of the law of 30 July 2002 an injunctive relief may be applied for at the commercial court ("magistrat président la chambre du tribunal d'arrondissement siégeant en matière commerciale"). As self-regulatory body, the Luxembourg commission for ethics in advertising ("Commission luxembourgeoise pour l'éthique en publicité asbl", no own website, refer to <http://www.clc.lu>) enforces the professional code of ethics relating to advertising. However, so far, the code has not been extensively used. A further organized public control is conducted via the "Union Luxembourgeoise des Consommateurs nouvelle asbl", the Luxembourg consumer association.

Other institutions in relation to advertising:

Broadcast: see <http://www.mediacom.public.lu>
 - Independent Broadcast Commission ("Commission Indépendante de la Radiodiffusion")
 - National Council of Programmes ("Conseil National des Programmes")
 - Advisory Committee of Medias ("Commission Consultative des Médias")
 - National Audio-visual Centre ("Centre National de l'Audiovisuel")

Telecommunication and Information Society:

- Luxembourg Institute of Regulation ("Institut Luxembourgeois de Régulation")
<http://www.ilr.lu>
 - Association of Professionals of the Information Society ("APSI - Association des professionnels de la Société de l'Information")
<http://www.apsi.lu>

Press:

- Press Council ("Conseil de presse")
<http://www.press.lu>

Data Protection:

- National Committee for Data Protection ("Commission Nationale pour la Protection des Données")
<http://www.cnpd.lu>

Financial Products and Services:

- Financial Supervisory Authority ("Commission de Surveillance du Secteur Financier - CSSF")
<http://www.cssf.lu>

Basic Guide to Intellectual Property rights in the Territory:

Copyright:

The law of 18 April 2001 concerning copyrights, neighboring rights and data bases as amended by the law of 18 April 2004 concerning copyrights, neighboring rights, data bases and patents governs the field of intellectual and industrial property rights with the exception of the trademarks in Luxembourg. All literary and artistic works in every genre, form and expression give rise to a copyright with a period of 70 years under Luxembourg law. Only the copyright holder may disseminate its work. The neighboring rights with a protection period of 50 years relate to interpreting artists, performers or e.g. film producers who have the exclusive right to record or reproduce their presentation. Finally, the law of 30 April 2001 provides rules for the producer of databases and gives them a right sui generis comparable to the copyright and the neighboring right.

A seizure upon request at the local court ("président du tribunal d'arrondissement du lieu de la contrefaçon") and an injunctive relief are sanctions foreseen in case of a violation of the provisions of the law of 18 April 2001.

Trademarks:

According to the Benelux Convention on Intellectual Property (“Convention Benelux en matière de propriété intellectuelle”), trademarks serve to distinguish the products or services of a business from those of another business as e.g. denominations, letters, numbers or all signs that may be graphically described. The trademark right arises from the registration of the sign for different services and products at the Benelux Office for Intellectual Property (former Benelux Trademark Office) in The Hague (<http://www.boip.int>). As Luxembourg is a party to the Madrid protocol, international trademarks may be registered in order to grant the particular trademark the needed protection for the territories of Luxembourg, Belgium and the Netherlands.

A violation of the provisions of the Benelux unified law on trademarks leads to an injunctive relief and claims for damages.

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Pharmaceuticals	09 October 2006
Health & Beauty	09 October 2006
Comparative advertising	09 October 2006
Financial products and services	09 October 2006
Direct Marketing	09 October 2006
Data Protection/Privacy	09 October 2006
Tobacco	09 October 2006
E-mail	09 October 2006
Gaming & Betting	17 October 2006

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Subject	Alcohol
Country	Luxembourg
General legal framework	There is no detailed regulation relating to alcohol. Certain laws merely contain general principles. For instance, the law of 29 June 1989 merely prohibits the consumption and the selling of alcohol to children under 16 in pubs and other places authorized to serve alcohol. Only quite a recent draft, discussed in the parliament, if adopted, will prohibit alcohol sales to children under 16 in other places (such as supermarket or gas stations).
The subject of the rules	Advertising of alcohol is not regulated by any specific legislation in Luxembourg, but is just under the supervision of a self regulatory entity (the Commission for ethics in advertisement, "CLEP"), which edicted a code of advertising practices. The exception to this is TV advertising which is covered by the Règlement Grand Ducal of 5 April 2001 implementing the "Television without Frontiers Directive" (89/552/EEC) amended by the Directive 97/36 EC. Article 4-3 of this law edicts that the TV ad of alcohol must not target children under 16, for instance showing a teenager drinking alcohol, the ad must not associate the image of drinking to any possibility of improvement of performance in physical exercises, in driving, social success and must not be inducing or appealing the idea that a strong alcohol is a positive quality of drinks.
Last updated	09 October 2006

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Subject	Pharmaceuticals	
Country	Luxembourg	
General legal framework	The law of 11 April 1983 concerning the marketing authorization procedures and the advertising of medicinal products (as amended) as well as the Grand-Ducal Regulation of 15 December 1992 concerning the marketing authorization procedure for medicinal products (as amended) govern the advertising for medicinal products and pharmaceuticals.	
The subject of the rules	In general, all advertisements need to obtain the prior approval of the Minister of Health in Luxembourg. Only an advertisement that exclusively mentions the name and the composition of the product, the name of its producer and its address without adding any promotional slogans, is not subject to this rule. The mere presentation of a pharmaceutical is, hence, in principal, allowed. However, all advertising in relation to pharmaceuticals are also subject to the law of 30 July 2002 concerning commercial practice, unfair competition and comparative advertising as amended, i.e. the information presented must be especially true and not misleading.	
Restrictions to the media	<i>Cinema</i>	The rules apply for all advertising in all media.
Last updated	09 October 2006	

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Subject	Health & Beauty	
Country	Luxembourg	
General legal framework	The law of 25 September 1953 concerning the reorganization of the control of aliments, drinks and commercial products as well as several regulations, especially the last regulation of 14 December 2000 concerning the labeling, the presentation of aliments and their advertising as amended, govern the advertising of aliments/nourishments.	
The subject of the rules	The advertising of aliments is strictly regulated. Just as examples the following: the advertising may not indicate features of the aliments that are likely to mislead the customer as e.g. in relation to the origin, the quality or the composition. All effects that are attributed to the aliments must actually occur. Furthermore, advertising with a reference to health is forbidden as e.g. the representation of people in clothes relating to the medical professions. Additional indications as regards for example vitamins are forbidden if the vitamins have been added for technological purposes; other indications may only be used if they meet certain requirements as for example the indication "nature" only if the aliment contains no pesticides, no additives and no chemical products.	
Restrictions to the media	<i>Cinema</i>	The rules apply for all advertising in all media.
Last updated	09 October 2006	

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Activity	Comparative advertising	
Country	Luxembourg	
General legal framework	Comparative Advertising is covered by Section 2 of the law of 30 July 2002 concerning commercial practices, unfair competition and comparative advertising as amended.	
The subject of the rules	Article 18 states that comparative advertising is allowed if the advertisement does not mislead the consumer, the comparison relates to similar products and objectively takes into account several, essential features of the products as for example the price and does not create confusion between marketers and competitors or between e.g. trademarks of the marketer and the competitor. In addition, the advertisement may not discredit e.g. other trademarks or products of the competitor, may not take unfair advantage of the reputation of e.g. other trademarks or trade names of the competitor and may not present goods as imitations of goods bearing a protected trademark. Finally, the advertisement for products with a designation of origin may relate only to products with the same designation.	
Restrictions to the media	<i>Cinema</i>	The rules apply for all advertising in all media.
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Subject	Financial products and services	
Country	Luxembourg	
General legal framework	<p>1. The advertising of financial products and Services is, in addition, to the general rules, covered by the law of 20 December 2002 concerning undertakings for collective investments. 2. A law dated 10 July 2005 relating to prospectus for securities now complete the existing legal framework. It stipulates that once the prospectus is approved by the CSSF, it has to be made available to the public by means of any of the following way : by printing in newspaper largely distributed in the Member State in which the public offer is done; by printed prospectus made available free of charge to the public in the offices of the selling agents; in an electronic version on website of the regulated market where securities will be negotiated; in an electronic version on the website of the CSSF. Additionally, a printed version should be made available on demand of the investor in case of electronic version. 3. The bill dated 18 October 2004 implementing the EU Directive 2002/65/CE relating to the distance marketing of consumer financial services excludes financial services from the scope of the e-commerce law of 14 August 2000. Its Article 11, however, contains the same principle as in the e-commerce law, i.e. the service provider has to obtain a prior consent from the customer to use its data for promotional and commercial purpose, and the potential customer has the possibility to oppose to this using of data when he provides the vendor with his personal data while ordering.</p>	
The subject of the rules	<p>If an advertisement is made as a public offer in relation to the investment of financial interests, the prior approval from the Financial Supervisory Authority ("Commission de Surveillance du Secteur Financier - CSSF") is necessary. The criteria for the qualification of the advertisement as a public offer are not clearly defined under Luxembourg law. There are only some guidelines to serve as a first orientation. If the marketing effort is made towards potential, yet not-existing clients and the number and circle of targeted clients is not determined or limited one can assume, in general, a public offer. However, each single case has to be decided according to its special conditions and circumstances. Hence, it is recommendable not to launch general advertisements in relation to financial products as an advertisement, in principle, is addressed to the public.</p>	
Restrictions to the media	<i>Cinema</i>	The rules apply for all advertising in all media.
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Activity	Direct Marketing
Country	Luxembourg
General legal framework	At the moment, there are no other rules in relation to direct marketing than the general rules of the law of 30 July 2002 concerning commercial practice, unfair competition and comparative advertising as amended.
The subject of the rules	However, for the sector of direct marketing and insurances, a law dated 13 July 2005 modifying the law of 6 December 1991 concerning the insurance sector provides for the opt-in system as regards sales via phoning i.e. a consumer has to give its prior consent to be contacted by the insurance via telephone. The law does not regulate the door-to-door sale that will be still possible.
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Activity	Data Protection/Privacy	
Country	Luxembourg	
General legal framework	1. All advertising has to comply with the law of 2 August 2002 concerning the protection of persons with regard to the processing of personal data that implements the directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. 2. A new draft bill regarding data protection has been submitted to the Parliament by the Government on 16 March 2006 in order to clarify cases in which personal data can be used as exceptions. However, no new developments which could influence advertising rules can be foreseen for the time being.	
The subject of the rules	If the advertising company intends processing of personal data of persons who participated in the advertisement as for example recording of the data of these persons, the relevant persons have a right of information, a right of access and a right to object to the processing under certain conditions.	
Restrictions to the media	<i>Cinema</i>	The rules apply for all advertising in all media.
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Subject	Tobacco
Country	Luxembourg
General legal framework	Advertising in relation to tobacco is governed by the brand-new anti-smoking law of 11 August 2006 implementing the EU Directive 2003/33/CE and WHO's convention regarding tobacco control. This anti-tobacco law mainly focuses on the following issues: 1 total ban on tobacco advertising and sponsoring; 2 duty of tobacco makers and importers to properly inform the public; 3 Government's duty to implement measures to strengthen public awareness of health risks (addictive characteristics and exposure to tobacco smoke) and to promote effective educational programs; 4 prohibition of smoking in certain public places (hospitals, schools, sporting clubs, trains & planes, cinemas, restaurants). As for coffee shops /pubs, prohibition under certain conditions; 5 possibility left to restaurants to keep smoking area (with now specific protection measures of non-smokers dealing with air quality); 6 a "light" regulation regarding workplace, by a mere reference to another law relating to security and health of workers, modified to put an obligation to the employer to take appropriate steps to protect workers against tobacco smoke; 7 prohibition to sell tobacco products to children under 16; 8 prohibition to sell or to import articles showing tobacco part of children's everyday life; 9 list of criminal sanctions in case of contravening the law (fines).
The subject of the rules	Article 3 stipulates a general ban on advertising (direct and indirect advertising) of tobacco or tobacco products, as well as a general ban on free distribution of tobacco products: 1.The prohibition covers "all form of advertising and promotion", by any kind of media. The list of media is indicative: print media, radio and television, billboard, commercials in cinema and other public places, prospectus, flyers, stickers, by means of plane or boat... 2.Are only expressly excluded from this prohibition: a) signs of places where tobacco products are manufactured or stored, commercial vehicles of tobacco manufacturers/ distributors, b) trade papers and on-line communication by non-EU residents, when these communications are not primarily targeting EU inhabitants. The comments by the Chamber of deputies explain that this exception is necessary to avoid any restriction of distribution of international press in the EU on the ground that it contains some advertising prohibited in the EU. 3.Brand stretching is also prohibited ("advertising by the usage of the tobacco brand names on articles other than tobacco products"). 4.Finally, Article 3 of the bill also prohibits sponsoring "in favor of" tobacco and tobacco products, thus complying with the provisions of WHO's convention and going further than the EU Directive.
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Activity	E-mail
Country	Luxembourg
General legal framework	The advertising via e-mail is covered by the law of 14 August 2000 concerning electronic commerce as amended by the law of 5 July 2004 concerning electronic commerce. The law of 30 May 2005 concerning the protection of persons with regard to the processing of personal data in the field of electronic communications applies on specific issues as well.
The subject of the rules	Under the new Luxembourg law, the so-called opt-in system applies to all advertising via e-mail. Hence, every customer has to provide its prior consent to the use of its data for promotional and commercial purposes. As soon as a potential customer orders goods via the internet and, therefore, provides data such as its name and e-mail address, the vendor must provide a clear and expressly stated possibility to oppose to the further use of the provided data. Only if the customer does not oppose, i.e. does consent, the vendor may use the data for further promotional and commercial purposes of similar goods.
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Subject	Gaming & Betting	
Country	Luxembourg	
General legal framework	Advertising of Gaming and Betting is covered by section 4 of the law of 30 July 2002 concerning commercial practice, unfair competition and comparative advertising as amended.	
The subject of the rules	Especially, all promotional documents may not mislead in relation to the number and the value of the prize to be won as well as in relation to the conditions of its attribution. Furthermore whoever creates the wrong impression that the consumer has won a prize must provide the prize.	
Restrictions to the media	<i>Cinema</i>	The rules apply for all advertising in all media.
Last updated	17 October 2006	

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