

Legal Extranet

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Poland

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National Association:

Advertising Agencies Association in Poland (SAR)

General Legal Overview:

The principles of advertising in Poland are regulated by public law, except for corporation, in several acts. Since the accession to the EU in May 2004, Europeans regulations are also applicable.

A list of relevant Polish legislation in English can be found at the website of the National Broadcasting Council:

<http://www.krrit.gov.pl/stronykrrit/angielska/doc.htm>

The following categories of advertising are prohibited by law:

- Alcohol, except for beer that may be advertised between 8 p.m. and 6 a.m. if not directed to children nor associated with sexual attraction, recreation and leisure, science, work, professional success, health and life success;
- Tobacco;
- Medicines sold upon prescription;
- Political parties and propaganda, except for election campaign;
- Religion and religious messages, prohibited if it hurts good manners;

Basic Guide to Intellectual Property rights in the Territory:

Copyright

Copyright is covered by the Act of 4 February 1994 - Law on Copyright and Neighbouring Rights. This law covers not only the protection of traditionally understood copyrights, but also related rights.

The new law protects any manifestation of creative activity of an individual nature, no matter in what form it comes into being and regardless of its value, purpose or manner of its expression. It is mainly connected with works expressed in words and signs (literature, journalism, science, cartographic works), photography, music, industrial designs, architecture and urban works, theatre, choreography, pantomime, audio-visuals and cartography.

For legal purposes, computer programs are subject to protection as literary works. It encompasses all forms of its expression, including all forms of documentation pertaining to design, manufacture, and usage. The ideas and principles forming the basis of any element of the computer program, including the basis of interfaces, are not subject to protection. Economic rights to the computer program created by an employee within the scope of employment duties, vest in the employer, unless the employment contract specifies otherwise. In the event of the sale of the carrier (ie. diskette) of the program, its further dissemination is forbidden. Reproduction of the program in its entirety or in part, by any means and in any form, is only permitted if it's indispensable for the proper use of the software. Such copy may not be used simultaneously with the computer program, unless otherwise provided in the contract.

Unless this Law specifies otherwise economic rights may be transferred to other persons by inheritance or by contract and the acquirer of economic rights may transfer them to other persons. Transfer of ownership of copy of the work does not constitute a transfer of economic rights to the work.

The law also contains a general compensation mechanism of losses incurred by authors, performers, and producers due to uncontrolled mass reproduction for personal use (at home).

Manufacturers and importers of tape recorders, video recorders, and other similar devices, as well as blank carriers used for making fixations, with the aid of these devices, are obliged to make payments to creators, performers and producers of audio and video recordings, in the amount not exceeding 3 percent of the proceeds due from the sales of those devices and carriers (article 20).

The new law has considerably strengthened copyright protection in Poland. The creator may demand that the infringer of his rights return the profits made, or pay the double. The law also envisages criminal liability for infringement of intellectual property rights by imprisonment of not more than two years, restriction of liberty, or a fine.

The provisions of this Law also apply to works whose creator or co-creator is a Polish citizen, or that were originally published in Poland (or simultaneously in Poland and elsewhere), or which were first published in Polish. Works

protected by international treaties are similarly protected.

The co-creators of an audiovisual work are those persons who contributed creative material to its formation, in particular: the director, the creator of an adaptation of a literary work, the creator of musical works or works composed of words and music created for the audiovisual work, and the scriptwriter.

The term during which intellectual property rights are protected was expanded from 25 to 50 years after the author's death and for joint works from the date of death of the last surviving co-creator. If the creator is unknown - from the date of the first publication, and if the work is unpublished - from the date of its creation, unless, before the expiration of that time limit, the creator's name was disclosed with his or her consent.

The competent court shall order forfeiture for the State Treasury of illegally made copies, devices used in illegal production of copies, or devices used in the infringement. At the request of the injured party, the court may award the above mentioned devices to the injured party as part of the damages award.

Trade Marks

1/ Sources of law in Poland with regard to trade marks

The core regulations regarding protection of industrial property rights, including trade marks, are contained in the Industrial Property Law of June 30, 2000 (IP Law) that replaced the old Law on Trade Marks of January 31, 1985. The IP Law entered into force on August 22, 2002. Pursuant to art. 315 of the IP Law, trade marks registered before the entry into force of this act are governed by the old Law on Trade Marks of 1985, while trade marks registered under the new law are governed by the IP Law. In this way the so-called double regime has been created with regards to not only trade marks, but all industrial property rights.

The protection granted to trade marks under the IP Law may be combined with the protection given to these industrial property rights under the Polish Civil Code and under the Law on Combating Unfair Competition of 1993.

As of May 1, 2004, the law of the European Union is directly applicable and has direct effect in Poland. Consequently, legal acts of the law of the European Union pertaining to trade marks are the source of law in Poland. The new directive 2004/48/EC on the Enforcement of Intellectual Property Rights is binding for Poland as a new member of the EU.

Pursuant to the Polish Constitution of 1997, ratified international treaties are the sources of law in Poland. The most important international treaties binding for Poland in the field of protection of intellectual property rights are:

- Paris Convention on Industrial Property Protection of March 20, 1883 (Poland acceded to the Stockholm text of the Convention in 1975);
- Madrid Agreement of April 1891 on international registration of trade marks and Madrid Protocol which entered into force for Poland in 1997;
- Nice Agreement of June 15, 1957 on international classification of goods and services;
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of April 15, 1994.

2/ Territorial scope of protection offered to trade mark holders in Poland after accession

Extension of protection

Pursuant to Art. 142 (a) of the amended Regulation on the Community trade mark (CTMR) the protection accorded to the applications for registrations of Community Trade Marks (CTM), as well as registered CTMs existing on the date of Poland's accession to the EU, was extended upon enlargement to the new Member States automatically without any additional fee to be paid or any administrative formality to be performed.

Consequently, the CTM applications and registrations that have a filing date prior to May 1, 2004 may not be refused or declared invalid on any absolute or relative ground if these grounds became applicable merely because of the accession of a new Member State to the EU, i.e. if such grounds for a refusal were not applicable on the date of application for registration of the CTM concerned. An example for such situation may be the case when a trade mark registration should be refused after accession due to the descriptive character of the word filed for registration expressed in the language of a new Member State.

As a result, CTM applications and registrations that were filed before May 1, 2004 will be processed as if the accessions did not take place, while with regard to applications and registrations filed after the enlargement took place any reference to the European Community will be understood as the Community comprising 10 new Member States.

With regard to the relative grounds for refusal there exists one exception contained in Art. 142a (3). Pursuant to this provision it is possible to submit an objection to CTM applications which were filed within a term of 6 months preceding the date of May 1, 2004. Such a right may be executed by a holder of a national trade mark registration against CTM that was applied for between November 1, 2003 and April 30, 2004 if:

- a national trade mark was registered or acquired prior to the accession date;
- registration or acquisition was made in "good faith";
- the notification of objection was submitted within 3 months from the accession date;
- the priority date in Poland of the earlier trade mark precedes the filing/priority date of the CTM applied for.

Seniority

It is assumed that the seniority may be claimed of a national mark that was registered before the accession of a given state or even before a creation of the Community. The reason for this is that all the CTMs extended to the territory of new Member States have an earlier right effect as of May 1, 2004. Therefore, in order to claim seniority of a national mark over a CTM registered before May 1, 2004 it suffices that the earlier national mark has a filing date prior to the date of enlargement.

Consequently, a holder of an earlier national trade mark is entitled to prohibit use of the CTM registered before accession of Poland to the EU, unless the national trade mark registered before May 1, 2004 was registered in bad faith.

However, a holder of such national trade mark registration is neither authorized to demand cancellation of the CTM nor to object against its registration (Art. 142a (4) CTMR).

Concept of bad faith in Polish law

In civil law a person is regarded as acting in "bad faith" if when making reference to a specific right or a legal relationship such person knows that the right (legal relationship) does not exist or the lack of sufficient knowledge in this respect is not justified under the specific circumstances.

With respect to registration of trade marks it is understood that an application for registration of a trade mark is made in "bad faith" if the applicant requests protection for reasons other than its intention to use the trade mark to designate its products.

3/ Exhaustion of rights to the trade mark

Exhaustion of rights to trade marks means that the first act aimed at transferring possession of the product designated with a trade mark performed by a person being a title holder to the trade mark or a person authorized by it leads to automatic extinction (ex lege) of the exclusive rights to this trade mark.

Scope of rights influenced by exhaustion of rights to the trade mark

The title holder of the registered trade mark enjoys numerous exclusive rights to the trade mark:

- right to place the product bearing the registered trade mark on the market,
- right to put the registered trade mark on products,
- right to use the registered trade mark in advertising,
- right to use the registered trade mark on documents.

Not all of the above-mentioned rights are affected by the exhaustion of rights. Exhaustion concerns only those rights which by their nature are connected with the distribution of the genuine product and as a result allow the trade mark to properly fulfill its function, i.e. indication of the origin of the product, guarantee of its quality and advertising.

However, it should be noted that the trade mark holder may still monitor the integrity of the product and of the trade mark. Consequently, it may object against changes being made in the original product (e.g. further processing) or repackaging of the product by distributors.

Such objections are possible only if repackaging is detrimental to the indication of origin of the product and if such objection is not aimed at an elimination or restriction on competition.

The trade mark holder who himself introduced the product to the market may also object against such acts of the distributors regarding the original product bearing the trade mark that are detrimental to the advertising function of the trade mark or its function of guaranteeing the quality of the product. Therefore, what is authorized is only

such use of the trade mark by distributors for advertising purposes that ensures that consumers perceive the trade mark as relating to the original product for the purpose of distinguishing this product from other products placed on the market. For these reasons use of the trade mark by the distributors is not permitted when such use is aimed at building their own reputation or promoting their own enterprise. The European Court of Justice ruled in the Parfums Christian Dior judgment that the trade mark owner may oppose use of its trade mark by a reseller only when in the special circumstances of a given case the use of the trade mark for advertising purposes seriously damages the reputation of the trade mark.

See: Judgment of the European Court of Justice of November 4, 1997, C-337/95, Parfums Christian Dior SA and Parfums Christian Dior BV v. Evora BV (European Court Reports 1997 page I-06013)

Territorial scope of exhaustion of rights to the trade mark

Industrial Property Law, as from May 1, 2004, introduces to the Polish legal order regional exhaustion of rights (Art. 155 al.2). As a result, the following acts are not considered to be an infringement of the right to the trade mark:

- import,
- offering products for sale which bear the trade mark,
- introduction of such products to the market,

if such products were placed on the market in one of the state-members of the European Economic Area by the trade mark holder or by the person authorized by the holder.

Even though acts of pertinent EU law are in force since May 1, 2004, some national law supplements the EU legislation related to customs protection of intellectual property rights.

5/ Enforcement of a right to a trade mark within the framework of court and administrative proceedings:

An infringement of the right to trade mark is regulated in Art. 296 al. 2 of the IP Law. The law distinguishes the following forms of infringement:

- reproduction - the only condition that must be proved in the case of use of the same trade mark for the same kind of products is illegality of such use (Art. 296 al.2 p.1)
- imitation - in the case of use of the same or similar trade mark for the same or similar products the following two conditions must jointly be met: illegality of use and risk of confusion (Art. 296 al. 2 p.2)
- infringement of the rights to reputed trade marks - a person whose reputed trade mark was registered by the Patent Office may prohibit use of the trade mark that is identical or similar to its registered trade mark for any kind of products if such use may bring unjustified benefit to the user or damage the distinctiveness of the reputed trade mark or tarnish its image (Art. 296 al.2 p.3).

Pursuant to Art. 296 al.1 of the Industrial Property Law, the holder of a trade mark may raise the following claims against the infringer:

- claim of cessation of the trade mark infringement
- claim for restitution of the effects of infringement
- claim for publication of the appropriate announcement in the press.

Apart from the above non-pecuniary claims the holder of a trade mark is authorized to raise pecuniary claims:

- claim to redress the prejudice (Art. 361-363 and Art. 415 and the following of the Civil Code);
- claim to give back the unjustified benefit (Art. 405 and et seq. of the Civil Code)

Methods of calculating damages :

Indemnities for infringement of the right to trade mark shall comprise both prejudice suffered by the trade mark owner as a result of the infringement (*damnum emergens*) and lost profits (*lucrum cessans*).

Compensation for prejudice comprises in particular: a decrease of the market value of the trade mark and expenses incurred by the trade mark holder during the investigation regarding an infringement.

Lost profits usually comprise losses resulting either from the decrease of sales of products bearing trade marks or from the reduction in the price of the genuine goods.

There are three possible methods of calculating damages:

- 1/ Following the first method it is necessary to compare the financial situation of the title holder before and after the infringement occurred, a prejudice is the difference between the existing financial status of the injured party and the financial situation of same if the infringement did not take place;
- 2/ In the second case it is assumed that the prejudice is equal to the amount of remuneration that would be paid to the title holder if the infringing party, instead of violating its rights to the trade mark, signed the license agreement. This method, although relatively easy to apply, is at the same time more attractive to the defendant since the indemnities are relatively predictable. Therefore the title holder should be much more interested in seeking protection in the form of damages covering *damnum emergens* and *lucrum cessans*;
- 3/ The third method of calculating damages is based on the assumption that the prejudice is equal to the benefit obtained by the infringer as a result of violation of the rights of the trade mark holder. However, this method is not fully reliable since the benefit of the infringer is not the simple equivalent of the prejudice suffered by the trade mark holder.

A claim for a return of unfair profits may be raised by the injured trade mark owner together with the claim for damages. (Article 296 al. 1 of the IP Law). In the case of the claim for reimbursement of unfair profits the conditions that must be proven are prejudice suffered by the title holder, benefit for the infringer, as well as the link between these two facts. The most common example of the infringer gaining unfair profits is the situation when the infringer executed a number of commercial transactions to the detriment of the title holder thanks to misleading the consumers due to the trade mark infringement.

Other claims of the holder of a trade mark against an infringer:- claim for cessation of acts that carry the threat of an infringement of the right to trade mark (Art. 285 of the IP Law)

- pursuant to Art. 286 of the IP Law upon a motion by a trade mark holder the court may decide on the future destiny of the goods illegally designated with the trade mark and of the materials that were used for their manufacture. Pursuant to Art. 296 al.2 and 3 of the Industrial Property Law, the above listed claims may be raised against:
 - a person infringing the rights of a trade mark holder in one of the forms described in Art. 296 al. 2 of the Industrial Property Law;
 - a person who places on the market goods designated with the trade mark if there was no consent for such unauthorized introduction of the products to the market neither from the holder of the trade mark nor from a person authorized by him.

Claims of the trade mark holder against the infringer may be raised after the protection was granted to the trade mark owner by the Patent Office. If the infringer acted in good faith the claims may only be raised with respect to the period starting at the date of the publication by the Patent Office of the application for registration of the trade mark. If the infringer was advised by the title holder of the infringement before the official notification took place the claims may be raised with respect to the period starting at the date of the receipt of such advice by the infringer (Art. 298 of the IP Law)

Statute of limitation

Polish law provides for a 3-year period of a statute of limitation applicable to the claims regarding infringement of the rights to a trade mark. This statute of limitation period starts to run from the date when the title holder learnt about the infringement and about the identity of the infringer. Both these conditions have to be jointly met. However, in any case the statute of limitation expires after 5 years from the date when the infringement took place. The statute of limitation does not run during the term when the trade mark was applied for but before its registration.

The exhaustion of rights to the trade mark is now a consequence of the introduction of goods bearing trade marks to the market on the regional European level by the title holder or a person authorized by it.

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Thanks to direct effect of community law with respect to the rules of customs protection of intellectual property rights, decisions granting such protection to the applicants may be enforced in the European dimension following harmonized rules introduced to the national legal acts.

With regards to the enforcement of the rights to trade marks in Poland it should be stressed that harmonization of Polish law with the rules applied in the European Union requires not only introduction of the community standards to the Polish legal system but also a reform of the current practice of Polish courts not always willing to understand that expedite procedure is the best guarantee of effective protection of the rights of IP owners. Consequently, special protection offered to the title holders within the framework of Directive 2004/48 depends not only on the introduction of amendments to the national legal system but also on special training of the judges involved in applying these rights.

Unfair Trade Practices, Passing Off, Unfair Competition etc.

The Act of 16 April 1993 on combating unfair competition governs the prevention and combating unfair competition in the economic activity, in particular in industrial and agricultural production, construction works, trade and services - in the interest of general public, entrepreneurs and customers, in particular consumers (Article 1).

The act of unfair competition shall be the activity contrary to the law or good practices which threatens or infringes the interest of another entrepreneur or customer (article 3).

The acts of unfair competition shall be in particular:

- misleading designation of the company (in a way which may mislead customers in relation to its identity, due to the use of trade mark, name, emblem, letter abbreviation or another characteristic symbol already lawfully used to indicate another undertaking),
- labelling products or services with false or deceitful geographic indication, directly or indirectly indicating country, region or locality of their origin, or the use of such indication in the commercial activity, advertising, business letters, invoices or other documents,
- misleading indication of products or services,
- infringement of the business secrecy (the transfer, disclosure or use of third party information, which is company confidential or their receipt from an unauthorised person, if it threatens or violates the interests of the entrepreneur),
- inducing to dissolve or to not execute the agreement,
- imitating products (where it may mislead customers as to the identity of the producer or product),
- slandering or dishonest praise,
- impeding access to the market,
- corruption in the Public Service
- unfair or prohibited advertising,
- organising a system of pyramid selling,
- disseminating untrue or misleading information on oneself or another entrepreneur or undertaking in order to yield benefits or bring detriment,
- the introduction of difficulties to access the market,
- the sale to consumers of goods or services with the award of all or some purchasers of the products or services with a free bonus in the form of different products or services than those representing the subject of the sale.

In the field of advertising the act of unfair competition shall be, in particular, the following (article 16):

- 1) advertising contrary to provisions of the law, good practices or offending human dignity,

- 2) advertising misleading the customer, thus susceptible to influence his/her decision to purchase a product or service,
- 3) advertising appealing to emotions of customers by provoking fear, exploiting superstitions or credulity of children,
- 4) statement encouraging the purchase of products or services, creating the impression of a neutral information,
- 5) advertising significantly interfering with privacy, in particular arduous pressing customers in public places, sending on customer's expense unsolicited products or abusing use of technical means of communication.

When assessing the misleading advertising all its elements should be taken into account, in particular those related to quantity, quality, components, way of manufacturing, usefulness, possible use, repair or maintenance of the advertised products, as well as customer's behaviour.

The comparative advertising connected with a special offer should, depending on its terms, clearly and unequivocally indicate the date on which the offer expires or to contain information that the offer is valid till the stock of products is exhausted or till cessation of rendering services and, where the special offer is not binding yet, it should also indicate the date since which the special price or other specific terms of the offer shall be binding.

The act of unfair competition, may be committed also by the advertising agency or another entrepreneur who elaborated the advertisement.

Audio-visual Producers Society (ZPAV)
Ul. Kruczkowskiego 12/2
00-380 Warsaw

Polish Architects Association (SARP)
Ul. Foksal 2,
00-950 Warsaw

Polish Photographic Artists Association (ZPAF)
Plac Zamkowy 8,
00-277 Warsaw

Polish Popular Music Collecting Society (SAWP)
Al. Jana Pawła II 64,
00-170 Warsaw

Polish Software Programmers Collecting Society (PRO)
Ul. Zurawia 4a
00-503 Warsaw

Polish Stage Artists' Society (ZASP)
Ul. Hipoteczna 2,
00-092 Warsaw

Office for Competition and Consumer Protection
pl. Powsta Warszawy 1,
00-950 Warsaw, Poland
tel: +48 22 8263414, fax: +48 22 8266125
sp@uokik.gov.pl
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Trade inspection
Pl. Powsta Warszawy 1
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P.O. Box 247

Sponsorship	14 January 2005
Alcohol	05 April 2005
Comparative advertising	05 April 2005
Coupons	05 April 2005
Data Protection/Privacy	05 April 2005
Tobacco	

	05 April 2005
E-mail	06 April 2005
Gaming & Betting	06 April 2005
Pharmaceuticals	06 April 2005
Financial products and services	06 April 2005
Direct Marketing	15 April 2005

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Legislation Article

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Activity	Sponsorship
Country	Poland
General legal framework	<p>Sponsorship is not extensively regulated under Polish law. However, some provisions are set forth in the following acts:</p> <ul style="list-style-type: none"> • Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism, • Act of 9 November 1995 for the protection of public health against the effects of tobacco use, • The Regulation of the National Broadcasting Council of 6 July 2000 concerning sponsoring program items and other broadcasts. <p>Pursuing to the Law on Upbringing in Sobriety and Counteracting Alcoholism, sponsoring is defined as "<i>direct or indirect funding or co-funding of activities of individuals, legal entities, or organisational units without legal personality aimed at publicity, reinforcing or enhancing reputation of brands, manufacturers or distributors, of trade names and other symbols differentiating a business, business activity, a commodity or a service in exchange for the information on the sponsor</i>" (Article 2_1). The sponsorship is subject to strict restriction under the provisions of the Law: sponsorship of a mass event by a beverage manufacturer (distributor) with alcohol content from 8% to 18%, is allowed only by publishing the manufacturer's brand and logotype inside a newspaper or magazine, on an invitation, entrance ticket, poster, information product or billboard relative to a specific event. In radio and television broadcast only the name or the logotype may be communicated but not by an individual or using the image of an individual.</p> <p>In the Act for the Protection of Public Health Against the Effects of Tobacco use, sponsorship is defined as any financial or material help addressed to legal entities or individuals, associated with the exhibition of brand names, company names and logotypes. The sponsorship of sport, culture, health and social care is prohibited by this Act. Furthermore, sponsorship of radio programs or international events by companies with the aim of promoting tobacco products and the free distribution of them, as sponsorship of such events, is prohibited.</p> <p>Moreover, pursuant to the above mentioned Regulation concerning sponsoring program items and other broadcasts, the sponsor credits may not be shown during the transmission of a program item. If a program item or other broadcast is sponsored by way of providing goods (services) used for its production, the credits regarding the origin of the goods may be placed only at the end of the transmission of the program.</p>
Last updated	14 January 2005

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Subject	Alcohol	
Country	Poland	
General legal framework	<p>Pursuant to the provisions of the Act on sobriety and prevention of alcoholism, advertising of alcohol is forbidden in Poland. An exception is beer advertising, which is allowed if not targeted at youth or associated with sexual attractiveness, recreation and leisure, science, learning, work, professional success and health.</p> <p>Advertising and promotion of beer may not be executed :</p> <ul style="list-style-type: none"> ● on TV, radio, at theatres between 6 a.m. and 8 p.m., ● on video cassettes and any other carriers, ● in the press for young people and children, ● on a newspaper or magazine cover, ● on posts, billboards, and other fixed and mobile advertisement displays, unless 20% of the advertisement area is covered with visible and legible notices on the harmful effects of alcohol consumption or of ban of alcohol sale to the under aged. ● with participation of minors. <p>However, this may be changed, since the Sejm (lower chamber of the Polish Parliament) has recently accomplished the first reading of a bill changing the rules of alcohol advertising. It will be permitted, in case the amendment is accepted, to advertise grape wines (sparkling, semi-sparkling, carbonated and liqueurs) under the terms and conditions so far applicable for beer.</p> <p>The promotion of alcoholic beverages is defined as the public samplings of alcoholic beverages, free distribution accessories associated with alcoholic beverages, organising bonus sales of alcoholic beverages, and all other forms of public solicitation to purchase of alcoholic beverages (Article 21 (2)). The advertising of alcoholic beverages is defined as the public dissemination of alcoholic beverage trade marks and related logotypes, and of alcoholic beverage manufacturer brands or logotypes that are not different from alcoholic beverage trade marks or logotypes and are used to promote alcoholic beverage trade marks; information used for commercial purposes between businesses involved in the manufacture , wholesale and/or retail trade in alcoholic beverages shall not be considered advertisement (Article 2_1 (3))</p> <p>It is forbidden to advertise and promote any products and services whose name, trade mark, graphic layout or packaging takes advantage of a similarity or is identical to the marking of an alcoholic beverage or any other symbol that refers to an alcoholic beverage.</p> <p>It is forbidden to advertise and promote any business entities and other entities which, in their advertising image, make use of a brand, trade mark, graphic layout or packaging related to an alcoholic beverage, its producer or distributor.</p> <p>It is also generally forbidden to inform of sponsoring a sport event, music show, or another mass event by any beverage manufacturer or its distributor.</p>	
Restrictions to the media	<i>Cinema</i>	Only beer advertising is allowed between 8 p.m. and 6 a.m.
	<i>Outdoor</i>	Forbidden
	<i>Press</i>	Only beer advertising is allowed but not on magazine covers or in the press for young people and children.
	<i>Radio</i>	Only beer advertising is allowed between 8 p.m. and 6 a.m.
	<i>TV</i>	Only beer advertising is allowed between 8 p.m. and 6 a.m.
Upcoming changes	See above.	
Last updated	05 April 2005	

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Activity	Comparative advertising
Country	Poland
General legal framework	<p>I. The Act <i>on Combating Unfair Competition</i> of 16 April 1993 (Journal of Laws No. 153, item 1503 of 2003) sets forth the conditions of admissible 'comparative advertising'.</p> <p>II. According to the Law 'comparative advertising' is the advertising enabling to identify directly or indirectly the competitor or products or services offered by the competitor.</p> <p>III. The 'comparative advertising' shall be the act of unfair competition and therefore shall be prohibited where it is contrary to honest practices. It is not contrary to honest practices provided that the relevant advertising jointly fulfils the following prerequisites:</p> <ul style="list-style-type: none"> a. It is not misleading advertising (that means susceptible to influence the customer's decision to purchase a product or service) b. in a fair and verifiable way compares products or services meeting the same needs or intended for the same purpose, c. it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price, d. it does not create confusion in the market place between the advertiser and his competitor nor between their products or services, trade marks, trade names or other distinguishing marks, e. it does not discredit goods, services, activities, trade marks, trade names or other distinguishing marks and circumstances of a competitor, f. in relation to products with geographical designation or with designation of origin, it relates always to products with the same designation; g. it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the geographical designation or designation of origin of competing products; h. it does not present good or service as imitation or replica of goods or service bearing a protected trade mark, designation of origin or another distinguishing designation. <p>IV. If the 'comparative advertising' is connected with a special offer it should, depending on its terms, clearly and unequivocally indicate the date on which the offer expires or to contain information that the offer is valid till the stock of products is exhausted or till cessation of rendering services and, where the special offer is not binding yet, it should also indicate the date since which the special price or other specific terms of offer shall be binding.</p> <p>V. Not only the entrepreneur who directly performs the 'comparative advertising' that is contrary to honest practices is responsible for the breach, but also the advertising agency or another entrepreneur who elaborate the advertisement.</p>
Restrictions to the activity	Incompatibility with honest practices (for the purposes of the Law on Combating Unfair Competition it is defined in the article 16.3 - there is no general definition of this term).
Last updated	05 April 2005

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Activity	Coupons
Country	Poland
General legal framework	Coupons and money back offers are not regulated extensively under Polish law. However, all such promotions are subject to the Act on Combating Unfair Competition. Therefore, in particular, the promotion should be transparent for consumers and should not mislead them. In addition, according to Article 15 Section 2 Point 3 of the Act on Combating Unfair Competition, it is prohibited to issue, offer or cash instruments of entitlement (e.g. coupons) subject to exchange for goods or services offered by a single business entity or a group of business entities remaining in an economic relationship. Such activity will be treated as an act of unfair competition. However, the foregoing act will be prohibited only if certain additional requirements are met. Please see in others restrictions for further information.
Last updated	05 April 2005

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Activity	Data Protection/Privacy
Country	Poland
General legal framework	<p>The Polish law on personal data protection applies to the entities which have their seat or place of residence in Poland, or which do not have their seat or place of residence in Poland but which process personal data using technical facilities situated in Poland.</p> <p>The Polish system of data protection is based on the general rule of a personal decision about disclosing any personal data. The system is, in general, consistent with analogical EU regulation. However, recently proposed changes to the Personal Data Protection Act are aimed at even further compliance with EU standards. The main problems to be discussed within the subject are as follows:</p> <p>Legal grounds for personal data protection (selected acts):</p> <ul style="list-style-type: none"> - Constitution - Act on Personal Data Protection, which apply (among others) to: <ul style="list-style-type: none"> - information technology systems, - index card files, - indexes, books, - lists, - other records, - the obligations resulting from the Act on Personal Data Protection which apply to business entities. <p>The processing of personal data shall be permitted only where:</p> <ul style="list-style-type: none"> - the person whom the data concern has given his/her consent; Please note: with respect to minors, according to the prevailing opinion of legal commentators, a minor (individuals under 18) does not have legal capacity to grant a consent for processing its personal data, and thus such processing would require also a separate approval from a minor's parents or guardians, - it is consistent with the provisions of law, - it is necessary for the fulfilment of a contract, where the person whom the data concerns is a party to the contract, or it is indispensable in order to perform requisite actions prior to entering into a contract, - it is essential for the execution of certain tasks which are laid down in the law and carried out in the public interest. <p>Data processing for purpose other than those for which they have been collected is allowed if:</p> <ul style="list-style-type: none"> - the rights and freedoms of persons are not infringed, - the action in question is conducted for the purposes of scientific, didactic, historical or statistical research and in accordance with general rules established by the Act on Personal Data Protection. <p>The Polish law does not allow for processing sensitive data, such as data revealing racial or ethnic origin, political opinions, religious or philosophical belief or trade union membership and data concerning health or sexual life as well as data relating to offences, criminal convictions or security measures.</p> <p>The obligations of the data administrator are as follows:</p> <ul style="list-style-type: none"> - submitting the data collection for registration with the General Inspector, - adopting technical and organizational measures ensuring the security of the processed personal data, - processing the data in a lawful manner, - at the request of a given person, informing that person in writing, within 30 days, of his/her rights and particularly indicating: <ul style="list-style-type: none"> - the content of data collection, - the purpose and scope of processing, - to whom and to what extent the data have been made available. <p>The data administrator can share the information with other data recipients in case an interested</p>

	<p>person has agreed in advance that its personal data will be transferred to recipient of such data. Otherwise, such transfer to a third party requires a separate consent of the data subject. The rights of the person whose data is being processed are as follows:</p> <ul style="list-style-type: none"> - right to inspect the processing of data, - right to be informed about the existence of such a collection and details of the data administrator, - right to be informed about the purpose, scope and manner of data processing, as well as source of the data, manner in which access is given to the data, - right to demand that person data to be supplemented, updated, corrected, that processing thereof be discontinued, or that data be removed. <p>Personal data processing control is performed by the General Inspector. The latter is entitled (among others):</p> <ul style="list-style-type: none"> - to refuse registration (decision must be based on statutory grounds exclusively), - to issue an order to discontinue processing or to remove data (the order shall be immediately enforceable), <p>after removal of a defect, the administrator may re-submit collection.</p> <p>Any extension of the scope of processed information, or substitution of an entity processing personal data, or purpose of the processing, requires a separate consent from the data subject.</p>
Restrictions to the activity	<p>Every person has the right to demand the correction of untrue information, as well as to obtain its source and the exact substance of such information. Also the privacy of data subjects must be protected.</p> <p>The act on the protection of personal data contains the detailed and precise provisions on these issues</p>
Last updated	05 April 2005

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Subject	Tobacco	
Country	Poland	
General legal framework	<p>The Law for the protection of public health against the effects of tobacco use was adopted on November 9, 1995. Some of the key areas covered by the act are:</p> <ul style="list-style-type: none"> • A total ban on advertising tobacco products in radio, television, theaters, schools, medical centers, in the press for young people and children, other print media, billboards and public places. • Publication of warnings on all cigarette packagings. • The sponsorship of sport, culture, health and social care is forbidden. <p>Please note: the Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the tobacco advertising and sponsorship of tobacco products - covers advertising that crosses national borders (such as press, radio or internet advertising) and sponsorship of sport, but does not apply to indirect advertising (brandsharing) or advertising within member states (e.g. billboards). In general terms, the advertising of tobacco products is prohibited by the Directive in</p> <ul style="list-style-type: none"> • the print media (newspapers and other publications); • information society services; • radio broadcasting. <p>Furthermore, sponsorship of radio programs or international events by companies with the aim of promoting tobacco products and the free distribution of them, as sponsorship of such events, is prohibited.</p> <p>The "Television without Frontiers" Directive prohibits all forms of television advertising for cigarettes and other tobacco products and the sponsorship of television programs by tobacco companies).</p>	
Restrictions to the activity	Advertising of tobacco products in radio, television, theaters, schools, medical centers, print media and billboards is prohibited.	
Restrictions to the media	<i>Cinema</i>	Prohibited
	<i>Outdoor</i>	Prohibited
	<i>Press</i>	Prohibited
	<i>Radio</i>	Prohibited
Upcoming changes	See above. Member states will be required to fully implement the directive 2003/33/EC by July 2005.	
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Activity	E-mail
Country	Poland
General legal framework	<p>As of May 1, 2004, the law of the European Union is directly applicable and has direct effect in Poland. Consequently, legal acts of the law of European Union pertaining to the area of electronic commerce and communication are binding for Poland as a new member of the UE. As a result of the process of transforming the Polish legal system, Law of 18 July 2002 on the Provision of Services by Electronic Means was adopted.</p> <p>The Act determines:</p> <ul style="list-style-type: none"> • obligations of a service provider related to providing services by electronic means, • rules of releasing service providers from legal liability concerning the providing of services by electronic means, • rules for the protection of personal data of natural persons using the services provided by electronic means. <p>Pursuant to article 10 of the Law, sending unsolicited commercial information addressed to the specified recipient by electronic communications means, in particular electronic mail, is prohibited and is considered as unfair competition in the meaning of the Act of 16 April 1993 on Combating Unfair Competition, if two following conditions are met:</p> <ol style="list-style-type: none"> 1) first, the action must have an unlawful character. 2) the action must infringe the collective consumer interests. This circumstance requires that the action threatens the interest of the wide circle of market participants, however unidentified as to the number and identity. <p>See: decision of the Chairman of the Office for Competition and Consumer Protection of September 30, 2003.</p>
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Subject	Gaming & Betting
Country	Poland
General legal framework	<p>I. 1. In conformity with the provisions of the Law of 29 July 1992 on Games and Mutual Wagering (Journal of Laws No. 4, item 27 of 2004), advertising of chance games, mutual wagering, slot machine games and slot machine games with low prizes is restricted.</p> <ul style="list-style-type: none"> • It is forbidden to advertise video lotteries, cylindrical games, card games, dice games, mutual wagering, slot machine games, slot machine games with low prizes. However, above mentioned prohibition shall be exclusive at the game salons and bookmakings points. <p>(The minister responsible for public finance exercises the supervision and control over the compliance with the above mentioned restrictions. In case of incompliance with the prohibition of advertising, the minister gives the instruction in a form of a decision, to exclude the incorrectness. If the entity does not comply with the instruction given, the minister withdraws the permit to conduct the economic activity).</p> <ul style="list-style-type: none"> • It is allowed to advertise without any restrictions number games, cash lotteries, telebingo, award lotteries, cash bingo, raffle bingo, promotion lotteries, audiotele lotteries. <p>2. The 'advertisement' under the provisions of the Law means <i>encouraging participation in these games, convincing about their advantages, informing about the places where they are held and about the possibility of participation</i>.</p> <p>3. The organisation and conduct of the economic activity within the scope games of chance, mutual wagering, slot machine games or slot machine games with low prizes is allowed <u>exclusively</u> on the principles stipulated in the Law on games and mutual wagering.</p> <p>II. Games that are not defined in the Law <i>on Games and Mutual Wagering</i> may be advertised according to the Polish law without special restrictions (except for so called promotional lotteries). General conditions are defined in the Act on Combating Unfair Competition (Journal of Laws No. 153, item 1503 of 2003) in article 16. These restrictions refer to means of advertising and not the products that are advertised. The following acts are therefore forbidden:</p> <ol style="list-style-type: none"> a) advertising contrary to provisions of law, honest practices or offending human dignity b) advertising misleading the customer thus susceptible to influence his/her decision to purchase a product or service c) advertising appealing to emotions of customers by provoking fear, exploiting superstitions or credulity of children d) statement encouraging the purchase of products or services, creating the impression of neutral information e) advertising significantly interfering with privacy in particular arduous pressing customers in public places, sending on customer's expense unsolicited products or abusing use technical means of communication. <p>Under the provisions of the Law on <i>Combating Unfair Competition</i> (Article 17b), acts within the scope of promotional lotteries are unfair competition if the offer is formulated in such a way - regardless of the result of the lottery or the knowledge of the consumer- that winning is certain if the customer places an order for the goods or services or pays the bidder any amount in advance (especially if the offer is formulated in a document issued to the consumer by name, having the features of an official letter). Key general restrictions It should be remembered that according to the European Court of Justice judgement (C- 6/01 <i>Asociación Nacional de Operadores de Maquinas Recreativas (ANOMAR) and others</i>) games of chance and gambling constitute economic activities within the meaning of Article 2 EC. The activity of operating gaming machines must, irrespective of whether or not it is separable from activities relating to the manufacture, importation and distribution of such machines, be considered a <u>service</u> within the meaning of the Treaty and accordingly, it cannot come within the scope of Article 28 EC and 29 EC relating to the free movement of goods. Therefore, the Polish law on gaming and betting can not be incompatible with the EC Treaty rules on free movement of service (it concerns also advertising issues).</p>
Restrictions to the activity	<p>It should be remembered that according to the European Court of Justice judgement (C- 6/01 <i>Asociación Nacional de Operadores de Maquinas Recreativas (ANOMAR) and others</i>) games of chance and gambling constitute economic activities within the meaning of Article 2 EC. The activity of operating gaming machines must, irrespective of whether or not it is separable from activities relating to the manufacture, importation and distribution of such machines, be considered a <u>service</u> within the meaning of the Treaty and accordingly, it cannot come within the scope of Article 28 EC and 29 EC relating to the free movement of goods. Therefore, the Polish law on gaming and betting can not be incompatible with the EC Treaty rules on free movement of service (it</p>

	concerns also advertising issues).
Upcoming changes	There is a draft amending certain provisions of the Law in the lower chamber of the Polish Parliament (form no 2599). If it is binding, the slot machine games with low prizes will be removed from the scope of the Law. Therefore, there will be no restrictions in advertising slot machine games with low prizes. However, the draft is now after the first reading in the Commission of Public Finances, so it is impossible to predict when it comes into force.
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Subject	Pharmaceuticals	
Country	Poland	
General legal framework	<p>All advertising relating to a medicinal product:</p> <ul style="list-style-type: none"> ● is forbidden if the medicinal product has not been granted a marketing authorization in the country, ● is forbidden if contains information contrary to the product's characteristics, ● is forbidden if directed to children or containing any element that may be directed to children, ● for intoxicants and psychotropic substances is forbidden, ● is prohibited, in advertising to the general public, when the advertising contains a mention that: <ul style="list-style-type: none"> ● it is possible to avoid a medical advice, ● taking the medical product will improve the state of health, even in the case of a person in good health, ● the state of health will worsen if the person doesn't take the product, ● is permitted if it does not concern a medicinal products sold only upon prescription, ● must not be misleading. <p>Law on Combating Unfair Competition defines misleading advertising. Pursuant to Article 16 al.1 point 2 of the Law, an advertising is misleading if consumers are misled by the advertising and they are encouraged by such advertising to make an erroneous decision to acquire a product. The advertising is considered to be misleading if at least 10% of the consumers understand its contents incorrectly,</p> <ul style="list-style-type: none"> ● is permitted if it is not released within 20 minutes preceding or following a program discussing the therapeutic properties of the product or its scope of application, ● the distribution of free samples to the general public, as well as offers of gifts and bonuses, are prohibited. <p>Advertising, that is not prohibited, directed to the general public must be set out to make clear that the message is an advertisement, and that the product is a medicinal product. The advertising must also include a message informing that, before applying the medical product, the purchaser shall consult the attached leaflet carefully, or contact a physician or a pharmacist. Furthermore the advertising must include information on correct administration of the medicinal product. Medical sales representatives must collect from visited persons, and transmit to the proper person, any information about the medicinal product and especially its detrimental effects . Inducements to prescribe or supply of medicinal products (such as gifts, pecuniary advantages or benefits in kind, including invitations to travel or to congresses, with the exception of objects of an insignificant intrinsic value) are prohibited. The supply of free samples to persons qualified to prescribe or supply medicinal products is subject to strict controls.</p>	
Restrictions to the media	<i>Cinema</i>	Prescription medicines: prohibited
	<i>Web</i>	Prescription medicines: prohibited except for specialized magazines
	<i>Outdoor</i>	Prescription medicines: prohibited
	<i>Press</i>	Prescription medicines: prohibited except for specialized magazines
	<i>Radio</i>	Prescription medicines: prohibited
	<i>TV</i>	Prescription medicines: prohibited
Last updated	06 April 2005	

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Subject	Financial products and services
Country	Poland
General legal framework	<p>The Act <i>on Combating Unfair Competition</i> of 16 April 1993 (Journal of Laws No. 153, item 1503 of 2003) exemplary describes illegal advertising. Article 16.1 states that in the field of advertising, the act of unfair competition shall be, <i>in particular</i>, the following:</p> <ol style="list-style-type: none"> 1. advertising contrary to provisions of the law, honest practices or offending human dignity 2. advertising misleading the customer, thus susceptible to influence his/her decision to purchase a product or service 3. advertising appealing to emotions of customers by provoking fear, exploiting superstitions or credulity of children 4. statement encouraging the purchase of products or services, creating the impression of neutral information 5. advertising significantly interfering with privacy, in particular arduous pressing customers in public places, sending on customer's expense unsolicited products or abusing use of technical means of communication <p>General self-regulatory framework There is no general prohibition on advertising financial services and products under the Polish law. Certain restrictions aim mainly at safeguarding consumer's interests.</p> <p><u>1. BANKS.</u> According to <i>The Banking Act</i> of 29 August 1997 (Journal of Laws No. 140, item 939 of 1997) in advertisements the terms bank and kasa may be used solely in the names of banks complying with the definition described in the Act (a bank shall constitute a juridical person, established pursuant to the provisions of statute, operating on the basis of authorisation to conduct banking operations that expose to risk funds which have been entrusted to the bank and which are in any way repayable). There are two exceptions to this provision:</p> <ol style="list-style-type: none"> a) if the activity thereof explicitly indicates that these establishments are not engaged in banking operations b) as regards the term 'kasa' it may be used in the name of establishment and to describe or advertise the activities thereof, where such establishments, pursuant to separate legislation, take savings deposits from natural persons affiliated with the given establishment and extend cash advances to them. <p>If the Commission for Banking Supervision decides that a particular form of advertising is not compliant with banking law, it may issue recommendations to banks. This kind of advertisement is the advertisement contrary to the provisions of law on the basis on the <i>Act on Combating Unfair Competition</i> (see above). Anyone, who in conducting gainful activity in contravention of the provisions of the Banking Act, employs the terms <i>bank</i> or <i>kasa</i> in the name of establishment which is not a bank or to describe or advertise the activities thereof, shall be liable to a fine up to 5,000,000 zloty and to imprisonment for a term of up to three years,</p> <p><u>2. CONSUMER CREDIT.</u> According to the <i>Law on Consumer Credit</i> of 20 July 2001 (Journal of Laws No. 100, item 1081 of 2001), in advertisements and publicities concerning consumer credits and containing credit terms, the creditor or the entity being an intermediary to the agreement must state the real annual percentage rate of charge calculated on the basis of the entire credit cost.</p> <p><u>3. INVESTMENT FUNDS.</u> According to the <i>Act on Investment Funds</i> of 27 May 2004 (Journal of Laws No. 146, item 1546 of 2004), an investment fund advertisement should genuinely present the financial situation of the fund and risk associated with participation in the fund. All advertising related to the acquisition of participation units or investment certificates shall indicate the existence of an information prospectus, an issue prospectus or the terms and conditions of issuance, as applicable, and specify the place where a given document is available to the public. If the Polish Securities and Exchange Commission determines that the publications mentioned above are or could be deceptive it may prohibit their publishing and prescribe publishing of relevant corrections within a set period. If this prohibition or order is not executed, the Commission may impose a fine up to PLN 500,000 on the investment corporation. The Commission shall publish then relevant corrections at the expense of the investment corporation. Similarly to provisions on banks, the designation <i>investment fund</i> or an abbreviated form must and may be included in their business name, in their advertising, exclusively by investment fund formed in accordance with the Act (with the exception of national investment funds established in accordance with the Act on <i>National Investment Funds and</i></p>

their Privatisation of 30 April 1993 (Journal of Laws No. 74, item 202 of 1994). The same rule applies to investment corporations. If advertising of investment funds does not fulfil the above mentioned rules it is contrary to the provisions of law on the basis of the Act on Combating Unfair Competition (see above).

4. INSURANCE ACTIVITY.

Similar provisions as regards use of the business names in the Banking Act contains the Act on Insurance Activity of 22 May 2003 (Journal of Laws No. 124, item 1151 of 2003). It stipulates that whoever conducting economic activity not as insurance undertaking uses words in advertising, indicating the pursuit of insurance activity, shall be subject to a fine, limitation of liberties or imprisonment for a term of up to one year.

5. PENSION FUNDS.

According to the Law on Organisation and Operation of Pension Funds of 28 August 1997 (Journal of Laws No. 159, item 1667 of 2004), in advertisements of open funds, universal pension associations ("*powszechnie towarzystwo emerytalne*") and employee associations there is an obligation to include **reliable information**. Such an advertisement shall clearly present the fund's financial standing and the risks involved in membership in the fund. Where the Insurance and Pension Funds Supervisory Commission establishes that the published materials or information are misleading or open to misconstruction, it may forbid the same to be published or made available and order that appropriate corrections be published or made available by an appointed date. Failing the compliance with the above mentioned ban or order, the Insurance and Pension Funds Supervisory Commission shall impose upon the association a fine of up to 500,000 PLN and the Office shall have suitable corrections published or made available for cost to the association.

In the described act, there is a similar provision as regards using the name of general association in advertisements. The Act states that the trade name of a general association shall include the designation general pension association and that of an employee association shall include the designation employee pension association. No association other than that created pursuant to this Act shall use the designations referred above.

General self-regulatory framework

There is no general prohibition on advertising financial services and products under the Polish law. Certain restrictions aim mainly at safeguarding consumer's interests.

1. BANKS.

According to *The Banking Act* of 29 August 1997 (Journal of Laws No. 140, item 939 of 1997) in advertisements the terms bank and kasa may be used **solely** in the names of banks complying with the definition described in the Act (a bank shall constitute a juridical person, established pursuant to the provisions of statute, operating on the basis of authorisation to conduct banking operations that expose to risk funds which have been entrusted to the bank and which are in any way repayable). There are two exceptions to this provision:

- a) if the activity thereof explicitly indicates that these establishments are not engaged in banking operations
- b) as regards the term 'kasa' it may be used in the name of establishment and to describe or advertise the activities thereof, where such establishments, pursuant to separate legislation, take savings deposits from natural persons affiliated with the given establishment and extend cash advances to them.

If the Commission for Banking Supervision decides that a particular form of advertising is not compliant with banking law, it may issue recommendations to banks. This kind of advertisement is the advertisement contrary to the provisions of law on the basis on the Act on Combating Unfair Competition (see above).

Anyone, who in conducting gainful activity in contravention of the provisions of the Banking Act, employs the terms *bank* or *kasa* in the name of establishment which is not a bank or to describe or advertise the activities thereof, shall be liable to a fine up to 5,000,000 zloty and to imprisonment for a term of up to three years,

2. CONSUMER CREDIT.

According to the Law on Consumer Credit of 20 July 2001 (Journal of Laws No. 100, item 1081 of 2001), in advertisements and publicities concerning consumer credits and containing credit terms, the creditor or the entity being an intermediary to the agreement must state **the real annual percentage rate of charge** calculated on the basis of the entire credit cost.

3. INVESTMENT FUNDS.

According to the Act on Investment Funds of 27 May 2004 (Journal of Laws No. 146, item 1546 of 2004), an investment fund advertisement should genuinely present the financial situation of the fund and risk associated with participation in the fund. All advertising related to the acquisition of participation units or investment certificates shall indicate the existence of an information prospectus, an issue prospectus or the terms and conditions of issuance, as applicable, and specify the place where a given document is available to the public.

If the Polish Securities and Exchange Commission determines that the publications mentioned above are or could be deceptive it may prohibit their publishing and prescribe publishing of relevant corrections within a set period. If this prohibition or order is not executed, the Commission may impose a fine up to PLN 500,000 on the investment corporation. The Commission shall publish then relevant corrections at the expense of the investment corporation.

Similarly to provisions on banks, the designation *investment fund* or an abbreviated form must and may

be included in their business name, in their advertising , exclusively by investment fund formed in accordance with the Act (with the exception of national investment funds established in accordance with the Act on *National Investment Funds and their Privatisation* of 30 April 1993 (Journal of Laws No. 74, item 202 of 1994). The same rule applies to *investment corporations*. If advertising of investment funds does not fulfil the above mentioned rules it is contrary to the provisions of law on the basis of the Act on *Combating Unfair Competition* (see above).

4. NATIONAL INVESTMENT FUNDS.

According to the Act on *National Investment Funds and their Privatisation* of 30 April 1993 (Journal of Laws No. 74, item 202 of 1994), the only restriction in the field of advertising refers to the obligation to use the business name of fund. Such a name may be chosen freely, however, it shall contain the phrase *National Investment Fund- Joint Stock Company*. Such a name may be used exclusively by a *joint stock company established pursuant to the Act*.

If advertising of investment funds does not fulfil the above mentioned rules it is contrary to the provisions of law on the basis of the Act on Combating Unfair Competition (see above).

5. INSURANCE ACTIVITY.

Similar provisions as regards use of the business names in the Banking Act contains the Act on Insurance Activity of 22 May 2003 (Journal of Laws No. 124, item 1151 of 2003). It stipulates that whoever conducting economic activity not as insurance undertaking uses words in advertising, indicating the pursuit of insurance activity, shall be subject to a fine, limitation of liberties or imprisonment for a term of up to one year.

6. PENSION FUNDS.

According to the Law on Organisation and Operation of Pension Funds of 28 August 1997 (Journal of Laws No. 159, item 1667 of 2004), in advertisements of open funds, universal pension associations ("*powszechnie towarzystwo emerytalne*") and employee associations there is an obligation to include **reliable information**. Such an advertisement shall clearly present the fund's financial standing and the risks involved in membership in the fund.

Where the Insurance and Pension Funds Supervisory Commission establishes that the published materials or information are misleading or open to misconstruction, it may forbid the same to be published or made available and order that appropriate corrections be published or made available by an appointed date. Failing the compliance with the above mentioned ban or order, the Insurance and Pension Funds Supervisory Commission shall impose upon the association a fine of up to 500,000 PLN and the Office shall have suitable corrections published or made available for cost to the association. In the described act, there is a similar provision as regards using the name of general association in advertisements. The Act states that the trade name of a general association shall include the designation general pension association and that of an employee association shall include the designation employee pension association. No association other than that created pursuant to this Act shall use the designations referred above.

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Activity	Direct Marketing
Country	Poland
General legal framework	<p>The basic means used within direct marketing practices (namely: email, fax and telemarketing tools) are subject to the distance-selling regulation in Poland. The latter provides a high standard of consumer protection which is correlated to certain duties imposed on business entities. Emphasis shall be also put on the new regulation regarding e-commerce, as well as new rules on issuing an offer by means of electronic communication. All the above regulation constitute a successful implementation of EU directives. The basic problems to be discussed on the subject are as follows: Basic legal acts within the discussed field:</p> <ul style="list-style-type: none"> ● Act on the Protection of some consumer rights and liability for damages inflicted by defective products (Distance-selling Act) ● Combating Unfair Competition Act ● Act on Providing Services by Electronic Means ● Civil Code <p>The regulation comprises an example of the list of means of communications. The latter is as follows:</p> <ul style="list-style-type: none"> ● unaddressed and addressed printed matter, ● standard letter, ● press advertising with order form, ● catalogue, ● telephone (with or without personal intervention), ● radio, ● videophone, ● electronic mail, ● facsimile machine, ● television, <p>There are also certain obligations of business entity in respect of distance selling:</p> <ul style="list-style-type: none"> ● it is obligated to acquire the prior consent of the consumer in order to be entitled to conclude a contract by means of distance communication, ● a high standard of transparency and sufficient information vis-à-vis the consumer must be also met; the latter consist of: <ul style="list-style-type: none"> ● identification of the offeror, ● details of the subject of the transaction ● information on the right of withdrawal from the contract, ● costs imposed due to the use of distance-communication tools, ● prohibition on imposing an obligation to make payment prior to the delivery of the subject of transaction, ● there is also a general prohibition on sending non-ordered commercial information to a specified receiver, ● an abusive advertisement may constitute a prohibited infringement of privacy, ● a described misuse of technical devices constitutes an offence within the meaning of the Combating Unfair Competition Act. <p>The key point of consumer protection within the analysed subject is the consumer's right to withdraw from the contract concluded at a distance. The effect of the latter right is that:</p> <ul style="list-style-type: none"> ● the contract is considered null and void, ● the consumer is free of obligation, ● the supplier shall reimburse all sums paid by the consumer (with interest), ● a prohibition exists on imposing additional payments on the consumer in relation to the withdrawal from the contract,

- all costs related to credit card use in respect of conclusion of the distance contract shall be reimbursed by the supplier
- termination of the main agreement causes a simultaneous termination of any accessory loan agreement.

The latest amendments to the Polish Civil Code introduced new provisions relating to an offer issued by means of electronic communication. However, the latter provisions do not apply to the offer made by e-mail or similar means of individual communication. Parties may also exclude application of the below provisions:

- an offer made electronically shall be binding for the maker of the offer if the other party confirms its receipt without delay,
- before concluding a contract, a business entity making an offer electronically shall be obliged (among others) to inform the other party of technical actions covered by the procedure of concluding a contract, legal effects of the receipt of an offer, as well as languages in which a contract may be concluded.

A special regime is provided in the case where an offer is made between business partners. An offer may be revoked before the contract is concluded if the declaration of revocation was submitted to the other party before his sending of the declaration of acceptance of the offer. However, the offer may not be revoked if such condition results from the content of the offer or a dead line has been fixed therein. Passive selling is also regulated within Polish law. The whole liability in respect of the latter lies with the supplier. The consumer is free of obligation and is not responsible for the return of the subject delivered by the supplier. In this case the offeree's silence does not create a contractual relationship.

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