

## Legal Extranet

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### Portugal

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**National Association:** Associação Portuguesa das Empresas de Publicidade e Comunicação (APAP)

Web link: <http://www.apap.co.pt/>

**General Legal Overview:** The advertising industry in Portugal is mainly regulated by the Advertising Code and other legal diplomas. However, some self-regulation and codes of practice have gained importance in recent years.

A list of relevant legislation can be found at [www.apan.pt](http://www.apan.pt) and [www.icap.pt](http://www.icap.pt)

The advertising of the following categories are prohibited by law:

- Tobacco Products
- Prescription only medicine
- Games of chance
- Miracle products

**Basic Guide to Intellectual Property rights in the Territory:** Copyright

Copyright exists in an original artistic, literary, scientific or musical composition. Copyright in that original work belongs to the creator of that work and subsists for his/her lifetime and for a period of 70 years after their death.

It is a breach of copyright to use the work beyond the authorisation of the creator - usurpation - or the use of the work of another as its own - counterfeiting or pelage.

#### Trade Marks

The trademark may consist of a sign or set of signs, which may be represented graphically, namely words, designs, letters, numerals, sounds, the shape of the product or its packaging and which distinguish the products or services of a company from the products or services of other companies. A trademark may also consist on an advertising slogan for products or services, irrespective of copyright and as long as the slogan has distinctive character.

Trademark law in Portugal complies with European Directive n.º 89/104/CE of December 12th. Trademarks may be registered at the Industrial Property Institute (INPI) or the European Community Registry (OHIM). They are registered within certain categories according to the product or services to which the mark relates. Portugal is also a member of the Madrid Arrangement and Protocol.

It is a violation of trademark law to use a sign which is identical to a registered trademark in the same category in which the trademark is registered. It may also be a violation of trademark if you use a similar sign in the same category as the registered trademark or an identical sign in a different category to the registered trademark. Whether it will be a violation depends on whether there is a likelihood of confusion or association on the part of the consumer public.

#### Unfair Competition

The Industrial Property Code considers as unfair competition any act of competition contrary to the norms and honest uses of any branch of economic activity, for instance: acts that are susceptible of creating confusion with the company, establishment, products or services of the competitors, whatever the means used; false statements made in an economic activity, with the goal of discrediting competitors; unauthorized claims or references made with the purpose of benefiting from the credit or reputation of a name, establishment or trademark of others; false indications of credit or own reputation, to the company share capital or financial situation, to the nature or scope of its activities or businesses and the quality or amount of clients; false indication or description on the nature, quality or use of the products or services, as well as false indications of provenience, locality, region or territory, factory, workshop, land or establishment, whatever the means use; the suppression, occultation or alteration by the salesman or intermediary, of the denomination of origin or geographical indication of the products or of the registered trademark of the producer or manufacturer of product on sale and that have not been modified in their conditioning.

APAN - Associação Portuguesa de Anunciantes

Av. da República, 62F - 6º 1050-197 LISBOA Tel. +351 21 796 96 92 Fax: +351 21 793 85 76 e-mail: [apan@apan.pt](mailto:apan@apan.pt)

APAP - Associação Portuguesa de Empresas de Publicidade e Comunicação

R. Rodrigo da Fonseca, 204 - 4º Dtº 1070-245 LISBOA Tel: 213 854 672 Fax: 213 856 518

Web link: [www.apap.co.pt](http://www.apap.co.pt)

APMP - Associação Promoção Multimédia em Portugal

R. de Santa Justa 38 -3º 1100-485 LISBOA Tel: 213 476 981 Fax: 213 476 982

Web link: [www.apmp.pt](http://www.apmp.pt)

APPM - Associação Portuguesa dos Profissionais de Marketing

Av. Elias Garcia, 172 - 2º Esq 1050-103 Lisboa Tel: 217803550 Fax: 217803559

Web link: [www.appm.pt](http://www.appm.pt)

ICAP - Instituto Civil da Autodisciplina da Publicidade

Av. da República, 62 F - 6º 1050-197 LISBOA Tel: 217 969 692 Fax. 217 938 576 [icap@icap.pt](mailto:icap@icap.pt)

Web link: [www.icap.pt](http://www.icap.pt)

Alta Autoridade para a Comunicação Social

Av.D.Carlos I, 130 - 6? - 1200 Lisboa Tel: +351-21-392 91 30 Fax: +351-21-395 14 49 e-mail: [info@aacs.pt](mailto:info@aacs.pt)

Web link: [www.aacs.pt](http://www.aacs.pt)

ANACOM

Av. Jos?alhoa, 12 1099-017 Lisboa Tel: 217 211 000 Fax: 217 211 001

Web link: [www.anacom.pt](http://www.anacom.pt)

CNPD - Comissão Nacional de Protecção de Dados

R. de S. Bento, 148 - 3? 1200-821 LISBOA Tel: 213 928 400 Fax: 213 926 832

Web link: [www.cnpd.pt](http://www.cnpd.pt)

ICS - Instituto da Comunicação Social

Pal?o Foz Restauradores 1250-187 LISBOA Tel: 213 321 200 Fax: 213 321 209

Web link: [www.ics.pt](http://www.ics.pt)

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Pal?o Foz Restauradores 1250-187 LISBOA Tel: 213 321 200 Fax: 213 321 209

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Web link: [www.ics.pt](http://www.ics.pt)

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## Legislation Article

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Subject	Alcohol	
Country	Portugal	
General legal framework	According to article 17 of the Advertising Code, advertising to alcohol is only permitted when: it is not specifically addressed to under-aged, and particularly does not show them consuming those beverages; it does not encourage excessive drinking; it does not despise non-consumers; it does not suggest success, social achievement or special capacities deriving from consumption; it does not suggest the existence of therapeutic properties or stimulating and sedative effects in alcoholic beverages; it does not associate the consumption of these beverages with exercise or driving; it does not underline alcohol as a positive quality.	
General self-regulatory framework	A group of entities (including APAN - Portuguese Advertisers Association) has subscribed a Code of Good Practices in Commercial Advertising of Alcohol appealing to responsible drinking and focusing its concern on vulnerable groups (under aged, pregnant women, elderly, handicapped) and high-risk situation (driving and working) as well as a recommendation for the use of the phrase - BE RESPONSIBLE, DRINK MODERATELY - in all media advertising. The Code of Conduct of the ICAP - the Civil Institute for Self-Regulation of Advertising - has an entire section (Part III) dedicated to self-regulation of the advertising of alcohol in very similar terms.	
Restrictions to the activity	According to number 4 of article 17 of the Advertising Code it is forbidden to associate the advertising of alcohol to national symbols. Also according to number 5 of article 17 of the Advertising Code, any events in which under aged participate, such as sports, recreational, cultural, or other events, should not show or mention, implicitly or explicitly, trademarks of alcoholic beverages, nor should any advertising of any kind be made to those beverages.	
Restrictions to the media	<i>Cinema</i>	Should not be shown in the intermissions right after or before sessions for under aged
	<i>Press</i>	Should not be inserted in press directed to under aged
	<i>Radio</i>	Forbidden between 7am and 22.30pm; should not be broadcasted right after or before programs for under aged
	<i>TV</i>	Forbidden between 7am and 22.30pm; should not be shown right after or before programs for under aged
	<i>Others</i>	Forbidden in Schools and Teaching Institutions
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<b>Subject</b>	Tobacco
<b>Country</b>	Portugal
<b>General legal framework</b>	According to article 18, advertising to tobacco is forbidden in all kinds of media, notwithstanding special regulations that may permit it. The advertising of tobacco products at international sports car events, namely Formula 1 racing, is presently authorised by Decree-Law n.º 178/2000, until December 31st, 2005. The advertisement of tobacco products at international motor racing events is at the moment authorised by a special Decree Law (178/2001) until 31 December 2005 (This date will need to change to conform to the new European Directive 2003/33/CE of the European Parliament and Council, of 26th May, 2003 which requires all tobacco related sponsorship to come to an end by 31 July 2005). This special regime applies to the period of duration of the event, which includes the training sessions that precede racing events held in Portugal and that are part of the event.
<b>Other conditions</b>	There is an exception in what concerns the prohibition of advertising of tobacco products at the tobacco sale points or at sale points of tobacco objects, where the mere commercial information is allowed.
<b>Last updated</b>	16 November 2004

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<b>Subject</b>	Financial products and services
<b>Country</b>	Portugal
<b>General legal framework</b>	The Advertising Code, Consumer Law, Consumer Credit Law and the Financial Institutions Regulation establish the applicable legal framework. Advertisement must be, in a general way respectful of the law and of the principles of veracity and protection of consumers. The principles of competition and of defence of legal protected values must be accomplished.
<b>Restrictions to the activity</b>	It is forbidden to issue misleading advertisement and to violate the veracity principle. The advertisement of financial services and products cannot in itself contribute to an over debt phenomena of consumers and it should make and appeal to the companies social responsibility duties. It must contribute to the loyal and healthy development of the banking and financial activity. It is a highly controlled area, which control processes can be initiated by private persons, by associations, by public entities or enterprises and lastly by the Institute for Consumers.
<b>Last updated</b>	16 November 2004

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Subject	Health & Beauty
Country	Portugal
General legal framework	Advertisement for Health & Beauty products is not regulated in particular under Portuguese Law but only in general terms. The following diplomas regulate health & Beauty advertising issues: Portuguese Advertising Code, Decree Law n. 170/92, August 8 on the labelling, display and advertisement of food products and special regulation on Milk Products, Decree Law n. ° 115/93 April 12; Regional Decree regarding Mineral Water, Regional Decree n. ° 18/92 of August 13; Decree Law n. ° 82/95 of April 22, lastly updated in April 14, 2003 on the labelling and packaging of dangerous substances for the Human Health and Environment. Under article 13 of the Portuguese Advertising Code, it is forbidden to advertise products and conducts that endangered human health and security.
Restrictions to the activity	It is forbidden to advertise food products and usages in a manner that may mislead the consumer, namely, by advertising that one cannot benefit from a balanced food diet composed by nutritive substances; that a certain food product has all the nutritive substances unless this is established by Law; issuing medical, pharmaceutical and public health entities opinions not stated by Law; that states that a food product has acquired nutritive value by means of merely technological enhancement. Regardless of the legal dispositions concerning diet products, mineral and table water products, it is forbidden to label any preventive and healing properties. The advertisement to milk products must be specialized and restrictive for children health care purposes and by means of science publications. It is forbidden to advertise any dangerous substance established by Law.
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<b>Subject</b>	Gaming & Betting
<b>Country</b>	Portugal
<b>General legal framework</b>	According to article 21 of the Advertising Code, advertising to games of chance is forbidden if it is the main object of the advertising message, with the exception of the games promoted by the Santa Casa da Misericórdia de Lisboa (e.g. Totoloto, Totobola, Euromilhões, etc.). Fortune games are regulated by Decree-Law n.º 10/95, which has a general principle of prohibiting games of chance, unless in licensed areas such as casinos. The unauthorised exploration (outside casinos or similar facilities) of games of chance is a crime subject to a penalty of 2 years of imprisonment or a fine up to 200 days. According to article 1 of Decree-Law n.º 10/95, fortune games are the ones dependent on luck. Nevertheless, it is possible to structure a promotion in Portugal, namely sweepstakes, raffles, lotteries, contests and publicity contests as long as they are subject to a previous authorisation from the competent Local Authority (Governo Civil), determined according to the head office of the promoter or, in case it has none in Portugal, of a legal representative. Please refer to prize promotions.
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Subject	Motors
Country	Portugal
General legal framework	Advertising to motor vehicles is permitted subject only to the restrictions set out in article 22°-A of the Advertising Code - please see below
Restrictions to the activity	According to article 22-A of the Advertising Code, advertising to automobiles is forbidden whenever it contains: a) Situations or suggestions of use of vehicle that may threaten the personal safety of the user or third parties; b) Situations or suggestions of use of vehicle damaging to the environment; c) Situations of infringement of the Traffic Code Rules, including speeding, reckless driving, non-use of safety devices and disrespect for signalling or pedestrians.
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Activity	E-mail
Country	Portugal
General legal framework	Portuguese Advertising Code, Decree-Law 7/2004, of January 7, on electronic communications and commercial transactions that implements the European Parliament and Council Directive n. ° 2000/31/CE of 8 June 2000. The sending of E-mail messages for direct marketing purposes, commonly known as SPAM, which reception is regardless of the receiver's action or will depends on the previous consent given by the receiver ("opt-in"). This is not applicable to E-mail messages that are sent to corporate entities that, in order not to receive this kind of advertising must deny it's sending ("opt-out").
Restrictions to the activity	It is forbidden the sending of advertisements trough E-mail (marketing direct) whilst hiding or misleading the sender identity. Each unsolicited communication should indicate an address and an electronic technical mean, easy to identify in order to allow the receiver of the service to refuse future communications. The entities that promote the sending of unsolicited advertisement communications which reception is regardless of the receiver's intervention must keep a current list of people who do not want to receive this type of communications. It is therefore forbidden to send these messages to this list of people.
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Activity	Comparative advertising
Country	Portugal
General legal framework	Article 16 of the Advertising Code sets out the main regulation on comparative advertising. Number 1 of article 16 of the Portuguese Advertising Code describes comparative advertising as advertisement that identifies, indirectly or directly, a competitor or the goods or services provided by a competitor. This type of advertisement is only allowed under certain conditions. The burden of proof of the veracity of the comparative advertisement is on the side of the company advertising the product. Further to this, every time that the comparison makes a reference to a special offer it must be clearly displayed when this offer is ending or, in certain cases, if it is depending or not on the products or services availability. In case the special offer period has not yet been initiated, the indication of the start of the period or any other specific condition must be also stated. It is established that precautionary measures can be used to suspend, cease or forbid misleading advertising, illegal comparative advertising or advertising witch object, form or end can cause or causes risks to the health, security, rights or interests of its receivers.
Restrictions to the activity	Comparative advertisement in any mean is only allowed in what regards the comparison that is made, under certain conditions. In this way, comparative advertising is only permitted if: - It does not constitute misleading advertising as established in article 11° of the Portuguese Advertisement Code; - It compares goods or services that respond to the same needs or that have the same goals; - It makes objective comparisons between one or more essential, comparable and representative characteristics of this goods or services, including price comparison; - It does not cause confusion on the market between the advertising and a competitor or between brands, commercial names, other distinctive signs, goods or services of the advertising or of a competitor; - It does not diminish or criticise brands, commercial designations, other distinctive signs, goods, services, activity or situation of a competitor; - It refers to products with the same denomination in all the cases of designation of origin products; - It does not take unlawful advantage of the reputation of a brand, commercial name or other distinctive sign of a competitor or a designation of origin competitor products; - It does not present a good or service as an imitation or reproduction of a good or service witch brand or commercial name is protected.
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Activity	Direct Marketing
Country	Portugal
General legal framework	Applicable laws and regulations: Portuguese Advertising Code, Decree Law n. 7/2004 of January 7 that implements Directive n. 2000/31/CE of the European Parliament and Counsel on certain legal aspects of the information society services, specifically regarding E-business in the common market as well as article 13° of the Directive n. ° 2000/58/CE of July 12 related to the processing of personal data and protection of privacy on the electronic telecommunications sector; Law n.° 6/99 of 27 January related with domiciliary advertising; Law n.67/98 of October 26 on the protection of personal data; Law n.° 69/98 of October 28 that establishes the regulation of personal data and protection of privacy on the telecom sector; Law n.° 24/96 of July 31, Consumer protection Law. The advertising that is delivered to the consumers home or domicile, by means of mail or other form of delivery has to contain in a precise and clear manner the name, domicile and other necessary identification elements; the indication of the place where the receiver can obtain the informations that are needed; a detailed and faithful description of the advertised good or service and its characteristics; the price of the good or service and its way of payment as well as purchase conditions, guaranty and post sail assistance. This type of advertisement can only be completed in reference to products that contain obtainable samples for the receiver's examination. The receiver of this advertisement is not obliged to purchase, keep or return any goods or samples that have been send or delivered without any solicitation.
Restrictions to the activity	In what regards advertising made by post, telephone or any other mean that not E-mail or electronic communication, it is established that it is forbidden if not addressed to someone in particular or if it is not identifiable as such throughout the adequate legal means made available. It is forbidden to send addressed advertising to someone's residence, by mail or any other form of direct mail when the receiver has expressly stated that is does not want to receive advertisement. The receiver and holder of the personal data can oppose, at its request and freely, the access to its data within the scope of direct marketing. The receiver is also entitled to be informed on the first transmission of personal data to third parties as regards to direct marketing and he also has the right to oppose to this, in a free of charge manner. Regarding the existence of direct marketing trough E-mail or by means of electronic communications, it is also forbidden in the same manner to advertise without the prior consent of the receiver.
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Activity	Prize Promotions
Country	Portugal
General legal framework	It is possible to structure a promotion in Portugal, namely sweepstakes, raffles, lotteries, contests and publicity contests as long as they are subject to a previous authorisation from the competent Local Authority (Governo Civil), determined according to the head office of the promoter or, in case it has none in Portugal, of a legal representative. According to article 159 of Decree-Law 422/89 of December 2nd, as amended by Decree-Law 10/95 of January 19th, these are the similar types of fortune games in which the hope to win is dependent on luck and in which the prize that can be obtained has an economic value. Concerning the monetary expression of the contests, the aforementioned Decree-Laws establish on the one side that the prizes must have an economic value, and therefore precludes the possibility of delivering money prizes and, on the other side, that the contests or promotions may not originate any expenses to the contestee than the current courier or telecommunication expenses (with no value added, whatsoever), or expenses higher than the cost of the product or service that the contestee is intended to claim. Thus being, it is possible to consider that the only "extra" costs allowed to the costumer are the ones with courier, facsimile or telephone to communicate the elements to submit to the promotion. According to the advertising code, any special offer must be mentioned (as well as the period of validity of the offer and applicable special conditions). It is necessary to bear in mind the Advertising Code rules concerning, essentially, the criteria of misleading publicity. According to the Publicity Code, the advertising of the contest or promotion must refer all its main aspects and may not induce the consumers that a prize will be obtained regardless of any monetary compensation
Other conditions	These games can only be conducted by newspapers, magazines, radio stations, televisions or by companies to promote their goods or services. There is a limitation to the theme of these games: they cannot have a theme similar to the traditional games of chance, namely poker, fruits, bells, roulette, dice, bingo, number lotteries or other lotteries, or substitute the prizes by money or playing chips.
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Activity	Collateral Gifts
Country	Portugal
General self-regulatory framework	There are no specific provisions regarding the value or type of gifts or premiums allowed, nor on the consumers targeted through these promotions. The only applicable legislation is the general principles of advertising: legality, identification, truthfulness and respect for the rights of consumers. There is, however, a specific diploma related to free gifts, Decree-Law 291/2001 of November 20th, regarding the sale of food with premiums mixed directly, i.e., in direct contact with the food which is being sold. The referred Decree Law prohibits these premiums, unless they do not put the consumers' health and security at risk. According to the said diploma the premiums should be clearly distinguishable by colour, size, consistency and presentation and meet the requirements set out in specific legislation concerning that object. The premiums should also be conceived in such a way that that the health and security of consumers is not put at risk, namely through the poisoning, asphyxia, perforation or obstruction of the digestive tube. The packaging used for the sales of food with premiums should contain labels informing the consumer, in Portuguese language, correctly written with easily readable letters, the characteristics of the premiums that give a clear image of it and is not susceptible of creating a wrong impression on the consumer. The label should also state if it is good for eating, any specific indications, if applicable, and the name and address of the producer, importer, transformer or trademark.
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Activity	Data Protection/Privacy	
Country	Portugal	
General legal framework	Data Protection is regulated in Portugal by means of Law 67/98 of October 26th, 1998; Law 69/98 of October 28th, 1998 and Decree-Law 7/2004 of January 7th, 2004. When obtaining data it is mandatory to comply with the provisions of these laws. Essentially, this breaks down into two distinct requirements. The first requirement is that it must be made clear on the marketing communication who is collecting the individual's information, why it is being collected and whether it is intended to pass the information on to a third party or to use the information for a use which is significantly different from that for which it was provided (the "privacy statement"). The second requirement is for the consumer to give his/her agreement to the processing of the information (and to being included in future marketing communications). Under certain circumstances, the consumer is obliged to give his specific consent to the information being processed ("opt-in") - please see below. In other circumstances it is simply enough to give the consumer the option to request that it not be processed in the way set out in the privacy statement ("opt-out")	
Restrictions to the activity	Any processing of personal data should be priory notified to the National Data Protection Commission or, in the case of sensitive personal data (e.g. information on racial or ethnic origin, political opinion, religious beliefs, health, sex life or criminal records), an authorization must be obtained.	
Restrictions to the media	<i>Direct Mail</i>	The consumer should be given the right to refuse to have the information provided processed ("opt-out"). If they do not opt-out, the gatherer is entitled to use the information for the purposes set out in the privacy statement.
	<i>E-mail</i>	If it is intended to send marketing communication by e-mail, the explicit consent of the consumer to receive such a communication is required ("opt-in"). However, a marketer is allowed to market similar products to existing costumers without their explicit consent, but they must be given the option to object to further marketing on each occasion. This is not applicable to E-mail messages that are sent to corporate entities that, in order not to receive this kind of advertising must deny it's sending ("opt-out").
	<i>SMS</i>	If it is intended to send marketing communication by SMS, the explicit consent of the consumer to receive such a communication is required ("opt-in"). However, a marketer is allowed to market similar products to existing costumers without their explicit consent, but they must be given the option to object to further marketing on each occasion.
	<i>Others</i>	FAX - If it is intended to send marketing communication by fax, the explicit consent of the consumer to receive such a communication is required ("opt-in"). However, a marketer is allowed to market similar products to existing costumers without their explicit consent, but they must be given the option to object to further marketing on each occasion. This is not applicable to E-mail messages that are sent to corporate entities that, in order not to receive this kind of advertising must deny its sending ("opt-out").
Last updated	16 November 2004	

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## Legislation Article

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Activity	Sponsorship	
Country	Portugal	
General legal framework	According to article 24 of the Portuguese Advertising Code, sponsorship is understood as the participation of single and corporate persons in the financing of any audio visual works, programmes, journalistic coverage, etc, regardless of the mean of communications used in order to promote is name or image, as well as its activities, goods or services.	
Restrictions to the media	TV	It is not allowed to sponsor TV programmes when the main activity of the sponsors is the production or sale of alcoholic beverages and Tobacco. The news reports and TV information programmes cannot be sponsored. The contempt, programming of a sponsored emission cannot, in any way by influenced by the sponsor or having as an effect the damaging and disturbance of the editorial responsibility and independence of the TV station.
Last updated	16 November 2004	

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