

Legal Extranet

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Venezuela



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General Legal Overview:

In Venezuela there is no specific Act about advertising. However, this matter is regulated in various legal texts, such as the “Ley de Protección al Consumidor y Usuario”, which contents norms about protection of consumers, and specially regulates the misleading and fake advertising; the “Ley de Responsabilidad Social en Radio y Televisión”, which regulates the social liability of TV and Radio services and the advertising activities; and the “Ley para Promover y Proteger el Ejercicio de la Libre Competencia”, which is the legislation about competition law and also regulates the misleading and fake publicity. Due to the fact that Venezuela is a member of the Andean Community, the Decision 351, the Common Regime about Copyright and Neighbouring Rights, and the Decision 486, the Common Regime about Industrial Property, also applies.

There is also a private regulation: the ANDA-FEVAP Ethical Code, which object is to establish general ethical rules that advertisers, advertising agencies and media should comply in the development, production and broadcasting of publicity.

Basic Guide to Intellectual Property rights in the Territory:

COPYRIGHT

In Venezuela, the Copyright protects any original literary, scientific or artistic work, no matter it gender, expression or destination. The protection of the work arises by the simply fact of the creation, which means that there is no need for registration.

The legislation recognizes both patrimonial or economic rights, such as reproduction, public communication, etc; and the moral rights, such as the right of attribution and paternity and the right of integrity. These rights last the lifetime of the author, and sixty years after his/her death.

Also is recognized the Neighbouring Rights granted to the performers, phonographic producers and broadcasting organizations.

INDUSTRIAL PROPERTY

In Venezuela, the Trademark regulation is content in the Decision 486 of the Andean Community, which defines it as every sign that can distinguish goods or services in the market, like words, images, logos, labels, monograms, sound and smells, letters and numbers, combination of colours, etc. The trademark registration will be valid for ten years, and can be renewed in consecutives 10 years periods.

The Patents protection is also regulated in this Decision. It establishes that an invention will be protected as long as they are new, have an inventive level and industrial applicability. This protection last twenty years.

UNFAIR COMPETITION

The “Ley para Promover y Proteger el Ejercicio de la Libre Competencia” (the Act that regulates Competition Law) does not give a definition of unfair competition, but establishes a general prohibition: every conduct, practice, agreement or decision that impedes or restricts the free competition. Then, the Act establishes particular prohibitions of practices that restrict free competition, like the economic concentrations or agreements oriented to determine prices or condition for commercialization by the dominant companies, among others.

However this Act prohibits the development of commercial policies oriented to eliminate competitors through unfair competition, an especially: the misleading or fake advertising oriented to limit the free competition; the promotion of products based on fake declarations, and related to disadvantages or risks of the competitor goods and services; and the commercial bribery, the violation of trade secrets and product simulation.

ANDA- Asociación Nacional de Anunciates

Urbanización Santa Eduvigis 1ra Avenida de Santa Eduvigis Residencias Primavera - PB - Oficina B. Apartado 61762.
Caracas informacion@andaven.org
Web link: www.andaven.org

FEVAP- Federación Venezolana de Agencias de Publicidad

Av. Diego Cisneros, Edif. Centro Monaca, Piso 1, Ala Norte, Los Ruices. Caracas contacto@fevap.com
Web link: www.fevap.com

CONATEL-Comision Nacional de Telecomunicaciones

Calle Veracruz, Las Mercedes. Caracas conatel@conatel.gov.ve
Web link: www.conatel.gov.ve

INDECU-Instituto Aut ónomo para la Defensa y Educaci ón del Consumidor y Usuario
Av. Libertador, Centro Comercial Los Cedros, P.B. Caracas
Web link: www.indecu.gov.ve

PROCOMPETENCIA-Superintendencia para la Promocion y Proteccion de la libre Competencia
Torre Oeste, Piso 11, Parque Central. Caracas
Web link: www.procompetencia.gov.ve

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Pharmaceuticals	24 January 2005
Health & Beauty	01 June 2006
Tobacco	01 June 2006
Alcohol	01 June 2006

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Ricardo Alberto Antequera

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Activity	E-mail
Country	Venezuela
Contact	INDECU-Instituto Autónomo para la Defensa y Educación del Consumidor y Usuario
General legal framework	The "Data Messages and Electronic Signature" Act, defines the data message (which includes the e-mail) as every intelligible information in an electronic or similar format, that can be stored or interchanged by any way. According to this Act, the data message will have the same probatory value than the regular evidences. However is the Consumer Protection Act that determines the rules respect SPAM and undesired messages. It establishes that the providers must develop and set easy and effective procedures that allows the consumers to choose between receiving or not unrequested messages, and when a consumers points out that he does not want to receive those messages, this decision must be respected.
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Activity	Comparative advertising
Country	Venezuela
Contact	Comite de Etica ANDA-FEVAP (Ethical Committee ANDA-FEVAP)
General legal framework	In Venezuela there is no specific Act about comparative advertising. However this matter is regulated by various legal texts like the Competition Act, which establishes that the promotion of product and services related to risk or disadvantages of the competitors goods and services is prohibited. The Consumer Protection Act also prohibits the discriminatory advertising. The Decision 481 of the Andean Community establishes that the owner of a trademark can not prohibit a third party to use such trademark to announce, even in comparative advertising, products and services duly marked, as long as this use is in good faith, only for informative purposes, and does not cause confusion in the audience about the origin of said product or service. There is also the Ethical Code ANDA-FEVAP, a private document that establishes the general principles by means of which the advertising agencies and advertisers should carry out their activities
General self-regulatory framework	The Ethical Code establishes that comparative advertising is: a) The advertising that specifically mention the name of the competitor; b) The advertising that suggest the name, package or characteristics, that can be clearly associated to the competitors products. It establishes that this kind of publicity must be objective, and it purpose must be to inform consumers about the advantages over the goods and services of the competitors. It should never denigrate the competitors products, trademarks or names. The comparative advertising will be accepted only: a) When the confrontation is made between comparable products; b) In those cases when the comparison is based on scientific or statistics elements, and should be support by test made by technical companies; c) When the comparison is presented in respect of the advantages of the advertised product, and not in respect of the disadvantages of the product being compared.
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Activity	Direct Marketing
Country	Venezuela
Contact	INDECU-Instituto Autónomo para la Defensa y Educación del Consumidor y Usuario
General legal framework	The Consumer Protection Act regulates the activities related to e-commerce and direct marketing. It defines e-commerce as any kind of business, commercial transactions or information interchange with commercial purposes, being executed thru information and communications technologies, made between providers and consumers directly. The providers must have to develop easy and effective procedures, that will allow the consumer to choose between receiving or not the unrequested electronic messages. Also the will have to pay special attention in the advertising directed to minors and elderly people. When the provider belongs to any kind of association, self-regulatory bodies, etc; should gives to the consumers enough information to make contact with those institutions and to verify such membership. This Act also establishes that, once the consumer finishes his operation, he has to be able to verify all the products and services he is about to purchase, correct or cancel his order if is the case, and to keep a precise register of the transaction. In respect of the payment, there should be easy and safe mechanisms, and the provider must send a receipt to the consumer. Also the provider is obligated to keep an electronic register of these payments, with a safety backup.
Restrictions to the activity	There are no special restrictions, but the providers of this kind of services must be very careful fulfilling the conditions established
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Activity	Prize Promotions
Country	Venezuela
Contact	INDECU-Instituto Autónomo para la Defensa y Educación del Consumidor y Usuario
General legal framework	As well as the collateral gifts, there is no specific Act about prize promotions. However every promotion should be notified to INDECU, which is the institution in charge of the protection of the consumers. The Consumers Protection Act establishes that every promotion or especial offer should be indicated in the respective advertising, the duration of such promotion and the general conditions
Restrictions to the activity	Without the notification to INDECU, the promotion of free gifts or premiums can not take place.
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Activity	Collateral Gifts
Country	Venezuela
Contact	INDECU-Instituto Autónomo para la Defensa y Educación del Consumidor y Usuario
General legal framework	There is no specific Act about collateral gifts. However every promotion should be notified to INDECU, which is the institution in charge of the protection of the consumers. The Consumers Protection Act establishes that every promotion or especial offer should be indicated in the respective advertising, the duration of such promotion and the general conditions.
Restrictions to the activity	Without the notification to INDECU, the promotion of free gifts or premiums can not take place
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Activity	Data Protection/Privacy
Country	Venezuela
Contact	INDECU-Instituto Autónomo para la Defensa y Educación del Consumidor y Usuario
General legal framework	Although there is no specific Act about Data Protection and Privacy, the Constitution of Venezuela establishes that every person has the right to the protection of his honor, private life, image, confidentiality and reputation. The laws will limit the utilization of computer resources in order to guarantee the honor and the private life of the citizens. Additionally, the Consumers Protection Act establishes that in electronic transactions the provider must use the necessary resources in order to guarantee the privacy on the consumers, as well as the confidentiality of the transactions, so that the information can not be understood by unauthorized third parties that obtain access to it voluntary or accidentally. In respect to this matter, when the provider is going to transmit the information to third parties, he must point clearly the purpose of this transmission, and the circumstances when this situation can occur.
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Subject	Financial products and services
Country	Venezuela
Contact	SUDEBAN-Superintendencia de Bancos y otras Instituciones Financieras
General legal framework	According to the Banks and Financial Entities General Act, The Commission in charge of controlling the financial activities, SUDEBAN, has the competence to establish the regulation about advertising and propaganda related to financial products and services; and to suspend such advertising, when it can confuse the audience about their activity, when it can promote serious distortions in the normal unfolding and competition of the financial markets; or if the same one can affect its patrimony negatively.
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Subject	Gaming & Betting
Country	Venezuela
Contact	Comisión Nacional de Casinos, Salas de Bingo y Máquinas Traganíqueles
General legal framework	There is a special Act that regulates the activity of casinos, bingo rooms and slots machines. It determines that these establishments need the authorization of the "Comisión Nacional de Casinos, Salas de Bingo y Máquinas Traganíqueles", in order to operate. According to the Act, the Casinos and Bingo Rooms only can operate in five star Hotels, located at tourist areas, and can not be close to hospitals, schools or churches. This Act also establishes that advertising and promotion of bingos and casinos is strictly prohibited. The "radio and TV social liability Act" establishes that advertising about lottery games that denigrates the work as a social need or including minors, except for benefit raffles, is prohibited
Upcoming changes	There is an Act named " National Lottery Act" that is being introduced in the National Congress
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Subject	Motors
Country	Venezuela
General legal framework	There is no specific Act about advertising of vehicles and motorcycles. The advertising of these products should be in compliance of the general principles of publicity established in the different legislation
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Activity	Coupons
Country	Venezuela
Contact	INDECU-Instituto Autonomo para la Defensa y Educacion de Consumidor y Usuario
General legal framework	The Consumer Protection Act establishes that every promotion related to the offer of products and services must be notified to INDECU and requires it authorization
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Subject	Pharmaceuticals
Country	Venezuela
Contact	Ministerio de Salud y Desarrollo Social (Health Department)
General legal framework	There is a Resolution that regulates the promotion and advertising of pharmaceuticals. According to this legal text, only the non prescription medicines can be advertised in the media. Also there is the requirement of authorization of the Health Department. The advertising message related to the medicine, must be accompanied by an educational message, and must include the phrase: "If the indisposition does not cease with the treatment, interrupt it and consult a physician". The words "harmlessness" or "quality" can not be use, in the promotion or advertising, and it is mandatory the use of Spanish for these activities.
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Subject	Health & Beauty
Country	Venezuela
Contact	INSTITUTO NACIONAL DE HIGIENE "RAFAEL RANGEL"
General legal framework	Every product that is appropriate for human consumption must obtain a sanitary license in order to be commercialized, whether they are cosmetics or health products. There is no specific Act about the advertising of this kind of goods, so the publicity of these products should be in compliance of the general principles of advertising established in the different legislation
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Subject	Tobacco	
Country	Venezuela	
Contact	CONATEL-Comisión Nacional de Telecomunicaciones	
General legal framework	The advertising of Tobacco is prohibited by four legal texts. Two presidential decrees from 1981, the "Radio and TV Social Liability" Act, which prohibits the advertising of tobacco in radio and TV services at all times, and an Administrative Resolution of the Health Department which prohibits any kind of advertising that promotes or stimulates the consumption of tobacco products. As well as the advertising of alcohol, CONATEL is entitled to impose fines in case of broadcasting advertising about tobacco. Also, the "Special tax on the manufacturing and commercialization of tobacco" Act, establishes that in promotions of such products, the message: "It is determine that the consumption of tobacco is harmful for the health", should be said or shown.	
Restrictions to the media	<i>Cinema</i>	The advertising about tobacco is prohibited
	<i>Outdoor</i>	The advertising about tobacco is prohibited
	<i>Press</i>	Thae advertising about tobacco is allowed in press media
	<i>Radio</i>	The advertising of tobacco is strictly forbidden at all times
	<i>TV</i>	The advertising of tobacco is strictly forbidden at all times
	<i>Others</i>	Is also prohibited in parks, zoos, sport establishments and gyms, sport events.
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Subject	Alcohol	
Country	Venezuela	
Contact	CONATEL-Comisión Nacional de Telecomunicaciones	
General legal framework	According to the "Radio and TV Social Liability" Act, the advertising of alcohol in Radio and TV services, including subscription TV, is strictly forbidden. CONATEL, which is the National Commission of Telecommunications, is entitled to impose fines to radio and TV services, even the advertisers, in case of broadcasting advertising about alcohol.	
Restrictions to the activity	According to article 9, by reason of public health, the broadcasting of advertising about alcohol is not permitted, in the TV and radio services.	
Restrictions to the media	<i>Cinema</i>	Advertising about alcohol is permitted in cinemas
	<i>Outdoor</i>	Strictly Forbidden
	<i>Press</i>	Advertising about Alcohol is permitted in press media
	<i>Radio</i>	Strictly Forbidden at all times
	<i>TV</i>	Strictly Forbidden at all times
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