



FRANCE
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Country Report

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1. Legislation:	
Topic:	Consequences in France of the E.U. proposal of regulation on sales promotions
Who:	E.U. Parliament and Council
When:	October 2, 2001
Where:	E.U., France
What happened:	
Comment:	<p>If the regulation proposed is adopted as such, it will imply major changes in French promotion law, since for instance French regulations currently prohibit all kinds of sales at a loss (<i>vente à perte</i>) and only allow the organization of lotteries under very restrictive conditions.</p> <p>Further, the proposed regulation does not expressly deal with the practice of tie-ins (<i>ventes liées</i>), which is prohibited in France. Thus, it may be assumed that this prohibition would also be removed.</p> <p>Finally, French regulations impose a specific obligation of filing the rules of a promotional game with a <i>buisnier</i>, which does not appear in the proposal of regulation.</p>

2. Legislation:

Topic:	Television advertising, sponsorship and tele-shopping
Who:	
When:	Decree 2001-1331 of December 28, 2001
Where:	France
What happened:	<p>This Decree modified the Decree of March 27, 1992 and partially implemented the EU Directive “Television without frontiers” of October 3, 1989.</p> <p>The main aim of the 2001 Decree is to harmonize the regulations applicable to all supports of television : analogical or digital, paying or free.</p>
Comment:	

3. Legislation	
Topic:	Committee on commercial practices
Who:	
When:	Law of May 15, 2001, decree of December 31, 2001 and <i>arrêté</i> of March 26, 2002
Where:	France
What happened:	<p>This Committee will give advice on commercial and advertising documents which will be communicated to it for its review. If the author of the request agrees, the Committee’s advice may be published.</p> <p>It will also issue recommendations in the main fields of commercial practices, such as : discriminatory and abusive practices, sale at a loss, advertising of prices, terms and conditions, etc.</p> <p>Committee meetings will not be public, and all documents and surveys will remain anonymous.</p>
Comment:	The Decree of March 2002 provides the list of the members of the Committee, including lawyers, economists and members representing the professionals as well as the French administration.

4. Legislation	
Topic:	Mandatory use of the French language
Who:	<i>Ministère de la Culture et de la Communication</i>
When:	<i>Circulaire</i> of September 20, 2001
Where:	France
What happened:	<p>Further to a 1999 judgement of the European Court of Justice, the French authorities have issued a communication which softens the application of the French regulations on the use of the French language.</p> <p>The provisions which impose the use of the French language for the presentation of goods and services should be proportionate to the consumer protection objective. Consumer information may therefore be conducted through the use of drawings, symbols and pictograms. Minor pieces of information may be left untranslated.</p>
Comment:	

5. Case Report	
Topic:	Premium sales and regulations on the sale price of books
Who:	<i>Société Esso v. Société Dargaud Editeur</i>
When:	<i>Cour de Cassation</i> , January 29, 2002
Where:	France
What happened:	<p>In 1997, the oil company Esso offered to those of its clients, who had purchased over 30 liters of gas for their car, to buy a Lucky Luke cartoon album for 6 Francs (0.91 Euros).</p> <p>The editor of the Lucky Luke cartoons disputed the promotional operation on the ground that French laws regulate the price at which books may be sold in France and that such laws were not complied with in the present instance.</p> <p>Esso argued that the operation constituted a premium sale with an auto-paying premium. The book constituting the premium, it was consequently not being sold.</p> <p>The Appellate Court of Paris considered that, as the buying of the gas did not automatically result in the purchasing of a book, the obtaining of the premium</p>

	<p>therefore constituted a purchase <i>per se</i> of the cartoon book.</p> <p>As a result, the judges considered that the regulations applicable to the price at which books may be sold should have been complied with in the present instance.</p>
Comment:	<p>This is a new way of analyzing a premium operation, by separating it into two distinct operations. This decision may have an impact on future promotional operations which were often considered as a whole instead of looking at each part of the operation separately (<i>e.g.</i>, a similar solution could apply to bundle sales for instance).</p>

6. Case Report	
Topic:	Disparaging advertising
Who:	Société EC de Witt v/ Syndicat National de l'Industrie et du Commerce du Café
When:	<i>Cour de Cassation</i> , January 15, 2002
Where:	France
What happened:	<p>An advertising on the packaging of toothpaste was based on the stains which coffee may cause. The issue was to determine whether this ad was disparaging.</p> <p>The Court ruled that it was not disparaging because it reported on objective properties of a product, which were presented in a moderate manner, even if the product aims at repairing the damages caused by another non-competing product.</p>
Comment:	This is a new solution which puts limits to disparaging advertising and therefore allows for an adequate information of the consumers.

7. Case Report	
Topic:	Pyramidal and snowball sales on the Internet
Who:	SA Pointop.com v/ SA Free.
When:	<i>Cour d'Appel de Paris</i> , June 15, 2001

Where:	France
What happened:	<p>The French <i>Code de la Consommation</i> (Section L 122-6) prohibits the offer to a person to collect memberships by letting him/her hope for a geometrical progression of the number of new members.</p> <p>In this instance, the court prohibited the offer by a web site to earn small amounts of money in exchange for reading e-mails, and the possibility to increase those earnings by introducing friends who will themselves receive e-mails and have the opportunity to introduce friends etc... Every operation is linked to a purchase on a catalogue.</p> <p>The return is obviously illusory, since the constant geometrical development of the pyramidal system quickly becomes impossible to satisfy.</p>
Comment:	This decision is interesting because, although such practices are very frequent, court decisions are very seldom.

8. Case Report	
Topic:	Definition of a consumer
Who:	Cape SNC v/ Idealservice
When:	CJCE, November 22, 2001
Where:	European Union
What happened:	<p>French regulations on consumers' protection, although they were recently modified (<i>ordonnance</i> of August 23, 2001, see our previous report), were still unclear on the notion of consumer.</p> <p>This EU decision provides help, by stating that consumers in the sense of the 1993 Directive on abusive terms are exclusively individuals, as opposed to legal entities.</p>
Comment:	

9. Case Report	
Topic:	Comparative advertising on prices : car dealing markets

Who:	Société Groupe Volkswagen France v/ Société Espace Import International.
When:	<i>Cour de cassation</i> December 4, 2001.
Where:	France
What happened:	<p>The advertising campaign at stake compared the prices offered by car dealers and the prices offered by companies supplying cars to these dealers.</p> <p>The court quashed an appellate court decision which had considered that there was no comparative advertising on the grounds that the comparison did not apply to competing economic operators.</p> <p>The court considered, on the opposite, that both the supplier and the dealer operated on a same market and that the appellate court should have examined the issue of comparative advertising.</p>
Comment:	The ad would in our view also be deemed to be a comparative ad nowadays, since the new applicable regulations (see our previous report) do not provide a specific system for ads which compare prices. These ads now fall under the general system, which requires that the ad objectively compares one or more material, relevant, verifiable and representative features of the goods and services. The price may be one of these features.

10. Case Report	
Topic:	A trademark prevails over a pre-existing commercial name
Who:	Celio v. Seelio
When:	<i>Cour de Cassation</i> April 25, 2001
Where:	France
What happened:	<p>Two companies were opposed in this instance :</p> <ul style="list-style-type: none"> - A company which registered the trademark “Celio” in 1978 in class 18 and 25 (ready-to-wear and accessories) ; - A shirt company named Frontere which had been using the commercial name “Seelio” for its Biarritz store since 1920. <p>The Court overruled the Appeal decision, considering that the situation could cause a trademark infringement as long as there was a potential confusion for the public.</p>
Comment:	A surprising decision, according to which the pre-existence of a commercial

	name is not sufficient to avoid trademark infringement.
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11. Case Report	
Topic:	Abusive provision in lottery rules
Who:	Association Familles de France v/ SA Bionic
When:	<i>Tribunal de Grande Instance de Paris</i> February 13, 2002
Where:	France
What happened:	<p>Regarding a set of lottery rules, the court considered that linking the acceptance of a prize to the authorization of the use of the winner's name, likeness, voice and photograph for advertising and promotional purposes constituted an abusive provision.</p> <p>The provision was deemed abusive on the ground that it compelled the winner to renounce to his privacy rights under Section 9 of the French Civil Code in exchange for his/her prize.</p>
Comment:	<p>This decision may have serious consequences on a provision which is frequently used in such promotions.</p> <p>Please note, however, that this is only a first instance decision and an appeal has been lodged.</p> <p>Further, the decision has been criticized on the ground that the regulations on abusive provisions only apply to bilateral contracts, whereas in this instance the contract was unilateral, since only the organizer of the lottery has an obligation (to deliver the prize).</p>

12. Case Report	
Topic:	Electronic privacy on the workplace
Who:	Nikon France v. Frédéric O.
When:	<i>Cour de Cassation</i> October 2, 2001
Where:	France
What happened:	The Court recognizes privacy (secret of the correspondence) on the workplace

	<p>for employees using the company's IT resources.</p> <p>As a consequence, employers may not, without infringing the fundamental right of the secret of the correspondence, read the personal e-mails sent and received from and on the workplace by their employees, even if the employers had previously prohibited any personal use of the computers.</p> <p>This decision goes against the previous case-law, which granted to the employers a certain control over the employees' activity during the working time. Such a control was allowed, provided that it was proportionate to the purposes and that the employees were informed of this control.</p>
Comment:	<p>The interpretation of this decision is still unclear but employers should show cautiousness. Employers may for instance require that their employees and their correspondents provide a term such as "private" in the title of the e-mail, which would enable the employer to consider that any other e-mail is professional and may therefore be checked.</p>

13. Self-regulation	
Topic:	Recommendation on "the image of the human being" (women in advertising)
Who:	BVP (<i>Bureau de Vérification de la Publicité</i> , the French self-regulatory body which clears many adverts)
When:	September 6, 2001
Where:	France
What happened:	<p>The ethical recommendation aims at promoting decency and at banning any kind of discrimination.</p> <p>The BVP recommendation may be found at : http://www.bvp.org/documents/deonto/femme/mn_femme.htm.</p> <p>The issue of discrimination in advertising, especially the use of women's image, is a rather sensitive one in France and advertisements are currently under particular scrutiny from a point of view of decency.</p> <p>The last few years have been marked by a tightening of the French authorities' approach towards the use of women's image in advertising, probably in reaction to an excessive use of such image during the previous years.</p> <p>In its recommendation, the BVP considers the image of the human person as a whole, without specific distinction for women or any other group which</p>

	<p>may be subject to discrimination, and provides various rules, among which</p> <ul style="list-style-type: none"> - The recommendation provides general principles for decency and for instance prohibits all abusive uses of the image of the human person, which should be appreciated according to the sensitivity of the population at a given moment. Please note that the sensitivity in France on such issues is currently rather high. - The recommendation provides that advertisements should not bring down human persons to the function of an object, in particular women. - The recommendation provides that ads should not use stereotypes supposed to represent certain groups or violence, whether direct or not, whether physical or moral. - Finally, the recommendation provides that advertisers should also avoid creating an idea of submission, or of dependence, degrading the human person, and women in particular.
Comment:	If the recommendations of the BVP are not binding, however, they provide a good sense of the standards to be followed in France.

14. Self-regulation	
Topic:	Recommendation on the use of subliminal pictures on television
Who:	CSA (<i>Conseil Supérieur de l'Audiovisuel</i>)
When:	February 27, 2002
Where:	France
What happened:	<p>Clandestine advertising and the use of subliminal pictures are prohibited in France by Sections 9 and 10 of the Decree of March 27, 1992.</p> <p>However, the CSA recently noticed the use of subliminal pictures, introduced into certain television programs through the use of digital techniques.</p> <p>In its recommendation, the CSA reminds television channels, whether or not they produce their own programs, that they may be held liable for their programs. The CSA advised them to ensure that no subliminal techniques were used to produce them, and to adapt their checking to the digital means which may be used to insert such pictures.</p>
Comment:	

15. Self-regulation	
Topic:	Recommendation on children in advertising
Who:	BVP (<i>Bureau de Vérification de la Publicité</i>)
When:	March 14, 2002
Where:	France
What happened:	<p>The BVP issued a recommendation applicable to advertising with and for children.</p> <p>The recommendation reminds the professionals of the basic rules, such as those relating to the identification of the ad, decency, violence, safety, loyalty, etc.</p> <p>New rules, however, deal with issues such as interactive advertising. When an ad invites children to spend money, for instance through a special phone number or through any other means, the ad should explicitly call for the parents' intervention.</p>
Comment:	<p>The BVP recommendation may be found at :</p> <p>http://www.bvp.org/documents/deonto/enfant/mn_enfant.htm</p>

16. Self-regulation	
Topic:	Report on random and money games
Who:	Senator François Trucy
When:	February 13, 2002
Where:	France
What happened:	<p>The senator issued a report presenting the new legislation which seems necessary nowadays on the matter of random games.</p> <p>This report is particularly interesting regarding the organization of random games on the Internet. Indeed, although French regulations on random games are extremely strict, many companies located in more "tolerant" countries offer illegal games on the Internet. Such games are very unsafe, especially for children and regarding the users' personal (including bank) data. Further, these games avoid all taxation and seem to be often used for</p>

	<p>money laundering.</p> <p>In order to ensure an optimal safety of the users and legality of the practices, the report suggests that laws be passed in order to legalize and control such games on the Internet.</p>
Comment:	