

# ARGENTINA

**Dámaso A. Pardo**

**PAGBAM**

Peron 555, 3 A

C1038AAK

Buenos Aires

Tel: +54 11 5 032 3640

Fax: +54 11 5 032 3644

E-mail: [dap@pagbam.com.ar](mailto:dap@pagbam.com.ar)

Website: [www.pagbam.com.ar](http://www.pagbam.com.ar)



**Perez ALATI, GRONDONA,  
BENITES, ARNTSEN &  
MARTINEZ DE HOZ (h)**  
PROPIEDAD  
INTELLECTUAL

***Is there case law or any statutory regulation governing advertising and promotion incentives? Are there any special consumer protection laws? What role do free gifts, tie-in offers, sweepstakes, rebates and other benefits, play in this context?***

In the first place, it is worth mentioning that there is no specific law on advertising in Argentina. However, there are provisions for this matter scattered among different laws. The most relevant are:

- (i) The Defence of Competition Law 25.156, which provides that the subordination of the sale of a product or use of a service for the purchase of another, or for the obligation of using another service constitutes an act of unfair competition.
- (ii) The Fair Trade Practice Act 22802, which provides for a general prohibition of inaccurate, deceitful or misleading advertising of any kind. Any advertising campaign that may lead consumers to mistakes, confusion or deceit about the nature, properties, quality, quantity, use, price, conditions of commercialization or any other characteristic of the product or service offered or promoted will be considered an unfair trade practice.
- (iii) In April 2008, Argentina modified its Consumer Protection Act 24.420. The following articles are relevant in respect to advertising and promotion incentives, namely: Article 4 provides that the supplier is required by law to supply the consumers with exact, clear and detailed information about the essential characteristics of the goods and services provided, and the conditions of their commercialization. Article 8 provides that the statements mentioned in ads, leaflets or through any other means of diffusion compels the offeror to fulfil his offer, and to include it in the contract established with the consumer. Article 8 bis —incorporated by Law 26.361— describes abusive practices. In particular, suppliers must refrain from using any conduct that intimidates consumers. Such conduct may be sanctioned with punitive damages.
- (iv) Finally, Article 35 of the Consumer Protection Act rules out offers made by providers to consumers through any means regarding a good or service that has not been previously asked for, and that originates an automatic charge in any debit system that forces the consumer to expressly decline the acceptance of the offer in order that the charge is not effective.
- (v) Article 37 refers to the interpretation of the contract. It provides that if the offeror violates the duty of good faith before the conclusion of the contract or during its execution, or violates the duty of information or the principles set forth in the Fair Trade Practice Act or in the Commercial Loyalty Act, the consumer will have the right to seek the nullity of the contract, or any of its clauses.

The Fair Trade Practice Act prohibits the following commercial practices:

- (i) offering gifts or prizes, directly or indirectly related to a prior obligation of purchase of a good or service, when said gifts or prizes are submitted to the intervention of chance;
- (ii) organizing or promoting any contest or competition where participation therein is to any degree conditioned to a prior obligation of purchase of a certain good or service;
- (iii) giving money or other goods in return for the redemption of packages, parts of them or the product itself, when the amount of money or value of the good given in return is higher than the regular value of the redeemed objects or the prize they may represent to the person who redeems them.

***In your jurisdiction, are there any industry sectors which are subject to special regulations for advertising and promotion incentives (for instance the health products and pharmaceutical industries in some countries)? Please name applicable statutes and self-regulatory codes.***

Yes. Advertising of prescription-only medications directed to the general public is prohibited by Article 19 of Law 16.463. Moreover, Resolution 627/2007 bans the advertisement of prescription-only medicines which have not been approved of by the Argentine health authorities. On the contrary, advertising of non-prescription drugs (also known as over-the-counter medications) is allowed as long as the ethical rules set up in Disposition N° 4980/2005 are complied with.

In respect to tobacco, no promotions or free distribution of such product can be carried out in schools, colleges, universities and similar places or in shows in which the main public is constituted by minors.

Regarding the alcohol industry, contests or competitions of any nature that may require the drinking of alcoholic beverages for participation are not allowed unless they are expressly dedicated to sampling or tasting.

***Does industry self-regulation replace or supplement government and legislative regulation of advertising and promotion incentives? Is self-regulation an effective tool?***

Industry self regulation does not replace but supplement legislative and regulatory rules of the sector involved. In Argentina, self-regulation in advertising is a very efficient manner to solve disputes.

***To what extent do promotional incentives extended to staff in public institutions pose legal issues in your jurisdiction (i.e., paying for travel and accommodation costs on the occasion of conferences, personal entertainment, hidden education sponsoring, sponsoring of school snacks for promotional purposes)?***

Article 256 of the Criminal Code imposes sanctions of up to 6 years of imprisonment when a public officer receives money, gifts, or benefits to carry out, delay or refrain from doing any act related to his/her functions. Article 256 bis increases the sanction up to 12 years when the gift was directed to influence a magistrate of the judiciary or the public Ministry.

Law 25188 and decree 41/99 provide for ethics rules in public functions. Article 23 states that the public officer shall refrain from any conduct that may affect his/her independence of criterion for the performance of his/her duties.

Furthermore, Argentina has signed the Treaty against the bribery of foreign public officers by Law 25.319. Article 38 of the Ethics rules allows for the paying of travel and accommodations of public officers for conferences, courses or cultural activities when they are received from governments, international organizations or non-profit entities if the acceptance of those incentives are not incompatible with the functions of the officer or are prohibited by specific laws.

***Are there any formal disclosure requirements for promotional incentives (i.e., rule of separation of procurement from personal dealings, rules of employer consent requirements, written form requirements, adequacy of consideration granted for a service)?***

The principle of transparency is expressly mentioned in the Ethics rules. In case of doubt, the public officer should consult with the National Office of Public Ethic.