

CHILE

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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?

Chile's Tobacco Advertising and Consumption Law No 20,105, bans any kind of incentives in advertising or promotion incentives for tobacco related products.

According to Article 35 of our Consumer Protection Law No 19.496, it is mandatory to inform consumers about the rules and duration of any promotion or offer. The latter must be accomplished when the prize, contest or draw is advertised by any means. Free gifts are permitted, except in circumstances strictly prohibited by law (for example, tobacco related products for minors under 18 years old). It is a common legal practice in Chile to register the regulations of a prize, contest or draw before a public notary, even though it is not legally mandatory. Nevertheless, please note that by exclusively registering the regulations of a prize, contest or draw before a public notary, a company would not be complying with Article 35 of our Consumers Law. When a prize involves the opportunity to participate in a contest or draw, the prize advertiser must clearly state the number of prizes and the deadline to collect the prize. The prize adviser must also inform the public results of the contests and draws.

Tie-in offers, sweepstakes, rebates and other benefits are allowed, but they must follow the rules of information contained in the Consumer Protection Law. However, please bear in mind that only a special law may authorize individuals or institutions to provide lottery or sweepstake services, so this is a regulated market. At this time there are only two institutions with due authorization to conduct such activities (lotteries - sweepstakes) in Chile: Polla Chilena de Beneficiencia (under regulatory body Decrete 120/60) and Lotería de Concepción (Law 18568). Individuals or institutions that don't have this authorization are banned from conducting the already mentioned activities.

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.

The Tobacco industry is regulated by Tobacco Advertising and Consumption Law N°20,105. According to this law tobacco related products can only be advertised within a point of sale. Outside of these points of sale, tobacco can be advertised exclusively using ads designed by the Ministry of Health. Tobacco related products are also banned on the internet (.CL Chilean domain name) and on any broadcast issued by a Chilean radio or television channel.

Advertisement of medicinal products is mainly regulated by Supreme Decree N° 1876/95 dated July 5 1995, which contains the "Pharmaceutical Products Regulation", and to a lesser extent by other bodies of Law, such as Supreme Decree N° 404/83 dated November 2, 1983, which contains the "Stupefacient Regulation"; and Supreme Decree N° 405/83 dated November 2, 1983, which contains the "Psychotropic Products Regulation". Additionally, some dispositions of the Consumer Protection Law N° 19.496, the Unfair Competition Law N° 20.169 and the Antitrust Law, Supreme Decree N° 211, may be applicable to some advertising and promotional practices involving medicinal products.

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 government and legislative regulation, but it does complement this area. The self-regulating activity has been proved necessary and successful. The CONAR organization, through its Chilean Code of Advertising Ethics, has become the lead agency in this area and its rulings and guidelines are complied with by the industry and consumers, as well as received and recognized as a valuable contribution to welfare of markets.

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 64 number 5 of Chile's Constitutional Law that Regulates the Civil Service Administration, clearly bans any form of promotional incentive directly targeted towards staff in public institutions.

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)?

As explained in the answer to the first question, according to the Consumer Protection Law all the terms, conditions and requirements related to a certain promotion must be clearly informed to the public.