

COLOMBIA

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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?

Articles 14, 16, 23, 24, 31 and 32 of the Decree 3466 of 1982 establishes the responsibility of producers for the advertising with promotional incentives in two (2) special cases: a) When advertising does not correspond to the reality which is understood by the fact that the incentives offered are not granted to the consumer in the opportunity indicated for it, or within the term by which this kind of advertising or commercial propaganda is used or broadcasted, whenever the period for it was not determined and, b) When this type of advertising, induced or might be induced to cause error to the consumer as to the price, quality or suitability of the goods or services, which will be understood by the circumstance of that, simultaneously with the offering of the incentives and even six (6) months after such offering was removed, the price of goods or services increases, as well as when the quality or the suitability of the good or service are unfavorably affected due to the incentive or concurrently with it. Free gifts and rebates are allowed. Tie-in offers, sweepstakes, contests and other benefits are permitted but subject to some formal requirements that the producer must comply beforehand.

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 for pharmaceutical products is regulated by the Decree 677 of 1995 and the Resolution No. 4320 of 2004; Homeopathic medicaments by Decree 3554 of 2004; Products of specific use by Decree 3636 of 2005; Food and Alcohol Beverages by the Laws 9 of 1979, 30 of 1986, 124 of 1994 and, also by the Agreement 001 of 2006 from the National Television Commission (CNTV- for Spanish acronym); Tobacco by the Law 30 of 1986 and the Agreement 001 of 2006 from CNTV; Advertising and promotional incentives made by insurance companies, financial entities, pension funds and fiduciary societies must observe what has been stipulated in the Articles 97 and 99 of the Decree 663 of 1993, as well as in the Chapter Six, Section I of the "Circular Básica Jurídica" of our Financial Superintendence. On the other side, our Self Regulatory Code establishes special rules for some of the aforementioned topics such as tobacco, cigarettes, alcohol, medicines, financial services, public services, health and advertising for persons under age.

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

Please be informed that there is no industry self-regulation in advertising and promotion incentives in Colombia.

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)?

Promotional incentives for public employees are legally established to increase the levels of efficiency, satisfaction, development and welfare of them in the performance of their work and also with the purpose of contributing the effective compliance of the institutional results. The regulatory principles of this system are equity, justice, synergy, impartiality, transparency and coherence and they always must be oriented to a) create favorable conditions for the development of the work so that the labor performance can comply with the objectives predicted and, b) recognizing the results of the performance of the best employee of the entity in levels of excellence. Regarding the private employees, by virtue of the free willing principle, the entity can establish all the incentives desired. Depending on what is determined as an incentive, its nature (legal or extralegal) and the frequency in which it is caused, the incentives will be constituted as an integral part of the salary.

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)?

Regarding private employees, promotional incentives must be established expressly within the terms and conditions of their labor contract. In relation to public employees, according to the Decree 1567 of 1998, the Director of each public entity must create and execute annual incentives plans in conformity with the law. Such plans should contain at least six (6) of the following non-pecuniary incentives: promotions, assignments, commissions, scholarships for formal education, participation in special projects, publication of works in national and international level, public recognitions for meritorious work, financial support for investigations and, social tourism programs. As for pecuniary incentives, they will be assigned and distributed among the best work teams of the entity and cannot exceed the amount of forty (40) minimum legal wages. This depends upon the entity's availability of resources.