

# FRANCE

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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?***

French law dated January 3, 2008 amended the French Consumer Code and added additional references to the previous “*misleading advertising*” concept.

There is now a general notion of “**commercial practices**” (instead of the reference to the concept of “*advertising*”) which should:

- **not be unfair** (this notion contains both the reference to the positive acts of “*misleading commercial practices*” and the passive acts, which are notably the fact to voluntarily hide an information to the recipients);
- **nor aggressive** (which is defined as the repeated and insistent requests or the use of a moral or physical constraint which can corrupt the **(i)** choice of the consumer, **(ii)** his/her consent or **(iii)** impede the exercise of his/her rights.

The law of May 21, 1836, recently amended by the law of March 9, 2004 prohibits the games of chance (*e.g., sweepstakes*) which present the four criteria (exhaustive list): a public offer, the hope of a gain, the role of chance (contrary to a contest) and the financial contribution.

Contests, tie-in offers, rebates, free gifts and other benefits are allowed subject to the compliance with the French Consumption Code and other public order rules (for instance, the prohibition of the offer, as a gift, of alcoholic beverages or weapons...etc).

***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 advertising/promotion of tobacco products and alcoholic beverages is strictly regulated by the French Health Code, which notably limits the media used to promote such kind of products and prohibits their offer, as a gift, to the minors.

In addition, the advertising/promotion of other specific products is regulated by the French Consumption Code. For instance, the advertising of food destined for children under 4 months (“*préparation pour nourisson*”) is only allowed in the press (written press) destined for health professionals. Samples should not be freely distributed to the public and the promotional operations are prohibited.

The French advertising self-regulatory body (*Bureau de Vérification de la Publicité, BVP*) also issued Recommendations in connection with certain industry sectors (for instance, the Recommendations destined for advertising of alcoholic beverages, the health and beauty products, the motor vehicles...etc).

***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 supplements the legislative and regulatory rules. Self-regulation is an effective tool in France, insofar as the BVP:

- (i) encourages agencies, advertising medias and advertisers to become members of BVP,
- (ii) regularly issues sets of rules called Recommendations which draw the outlines of the loyal advertising in a large number of specific areas and
- (iii) tries to promote its Recommendations as much as possible, notably by attending conferences, drafting newsletters on its website (a part of its web site is easily accessible to the public, while another part of the web site is reserved to the professional members).

***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)?***

The offer of promotional incentives to people working in the public sector (the *civil servants*) may raise the issue of the corruption which is prohibited by the French Criminal Code.

The French Health Code also prohibits the offer, by the companies manufacturing or selling medicines products, of advantages in kind or money to health sector' professionals.

***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 offer of gifts, by a company, to the employees of another company, has to comply with:

- (i) the regulation governing advertising and promotion (for instance the prohibition of the financial contribution in the case of games of chance),
- (ii) the general rule of the prohibition of the unfair competition,
- (iii) the general prohibition of the abuse of a dominating position,
- (iv) the tax rules (the gift is likely to be considered as benefits subject to the income tax to be paid by the beneficiary), and
- (v) the social contributions rules (the gift is likely to be considered as an indirect revenue subject to social contribution to be paid by the company offering the gift, in the event this company can be regarded as the employer of the beneficiary of the gift (i.e., if there is a subordination's relationship between them).