

ITALY

Avv. Felix Hofer
Hofer Lösch Torricelli
via Giambologna 2/rosso
50132 - Florence
Tel: +39 055 5535166
Fax: +39 055 578230
E-mail: fhofer@hltlaw.it
Website: www.hltlaw.it



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?

There is no Consolidated Act on advertising; sector regulations do apply, one of them (Presidential Decree no. 430 of 2001) governs 'sales promotions' and specifically prize contests and premium operations. Sales promotions are subject to certain legal and administrative requirements, have to grant free entry and equal conditions to all participants and may not alter fair competition in the market. Free gifts are admitted as long as they consist in items of minimum value (no exact or legal definition available, assessment on a case-by-case basis).

Italy has adopted a 'Consumer Code' (Legislative Decree no. 206 of 2005, amended by L.D. no. 146 of 2007) applicable to B2C relations and containing provisions on misleading and unfair practices. The Code considers as 'aggressive' any commercial practice, apt both, to limit consumers' free choice or purchase behaviour as well as to induce them into commercial decision, which they wouldn't have taken otherwise; among others are considered as unduly 'aggressive' all practices: (a) delivering the impression that consumers should not leave commercial premises without a purchase, (b) involving visits at consumers' private home against their will, (c) resulting in repeated unsolicited e-mails, phone calls, faxes or use of other means of distance communication, (d) steering children to exercise their pester power against parents in order to induce them to purchases.

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.

Sector regulations do apply for:

- Alcoholic Beverages (Law no. 283/1962 and L.D. no. 109/1992 - special provisions for advertising in Radio, TV, Audio and Videotext services),
- Tobacco products (covered by a general, strict ban originating from Law no. 165/1962, confirmed through Law no. 52/1983),
- Cosmetics are subject to specific regulations (contained in Law no. 713/1986 and L.D. no. 126/1997),
- Food Supplements and Dietetic Products also face restrictions (set by: Legislative Decrees nos. 111/1992, 109/1992, 169/2004),
- Financial Products and Services are regulated by the Consolidated Acts on banking, financial brokerage and investment services,
- Pharmaceuticals: no advertising or free distribution to the public is allowed (L.D. no. 541/1992) for products subject to medical prescription, special requirements and limitations are set as to advertising for OTCs.

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

In Italy there is one general industry self-regulation Code for (formerly advertising now) commercial communication, which is binding to all those adhering to the system and becomes applicable through a standard clause inserted by members in their contracts with clients. The system does not cover specific industry areas and is not structured according to advertising techniques or means of diffusion: relevant is the category the adhering member is in. Currently the system covers basically Radio, TV and print advertising. The Federation of Web Operators has recently joined the advertising self-regulation system and therefore adopts the Code. This system has been in place for over 40 years and is quite effective (even though it's exclusively based on a contractual agreement).

Additional self-regulations do exist (governed by special ethic codes) with respect to:

- Minors and TV programs (this code contains provisions on advertising) ,
- Internet and Minors (this code, even if not directly dealing with advertising, may become relevant via the obligations on content control),
- 'premium services' delivered by Mobile providers (but this code is primarily focused on protection of minors).

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)?

A highly critical issue: the contracts of Public Administrations' / Institutions' employees as well as the respective area agreements establish an exclusivity principle and prohibit any outside interference; hidden promotions or sponsorships are out of question and would be considered – if discovered – as a serious infringement; any initiative would require in-advance authorization from the employer; reimbursement would usually go to the Administration, which takes care of employees' travel expenses.

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)?

In the private sector sales promotions (and specifically prize contests and premium operations) may be targeted to third parties' employees, but are supposed to not interfere with the fidelity principle, governing the employer-employee relationship; in addition, in most cases prizes/premiums would be considered as part of employees' remuneration and would therefore result subject to income tax (forcing the employer to perform as a withholder); therefore it's absolutely advisable to seek for employers' in-advance consent.