

POLAND

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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?

Advertising and promotion methods are addressed mainly by the Law on Unfair Competition. Art. 3 thereof provides that an act of unfair competition is i.a. an unfair or illegal advertisement. Art. 16 further develops on this and lists as unlawful practices advertising offending human dignity, appealing to emotions (e.g. fear), or pretending to be neutral information. Art. 17a defines as unlawful act also adding free gifts or offers to seal of goods or provision of services (does not encompass gifts of little value and samples).

A quite recent judgment of the Competition and Consumers Protection Court concerns the last mentioned act. It concerned an advertising campaign including over 20 TV spots, designed to look like a typical information service with a well-known TV presenter. Such campaign was considered as an act of an unfair competition and infringing interest of the consumers.

Additional regulations concerning advertising are included in the Broadcasting Act, pursuant to which sponsored programs have to be clearly marked and advertisement cannot aim directly at minors.

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.

Special regulations bind tobacco producers (Law on Protection Against Tobacco Usage Effects), pharmaceutical industry (Pharmaceutical Law), alcohol producers (Law on Protection Against Alcoholism) and games (Law on Games and Mutual Wagering)

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

An example of a self-regulation is the Code of Pharmaceutical Marketing Ethics created by few pharmaceutical firms acting in Poland. The effect of such regulations is hard to judge, but they certainly cannot replace statutory regulations.

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)?

Criminal issues may arise where "persons performing public functions" within the meaning of Art. 228 of Polish Criminal Code are involved. Pursuant to Art. 296a of the Code, it is illegal to accept a material benefit by a person working in a commercial enterprise, in return for preferential treatment, its promise or for an act of unfair competition. Please note that a concept of material benefit is very broad.

Special regulations are included in Art. 58 of the Pharmaceutical Law, pursuant to which it's illegal to approach persons authorized to issue prescriptions and persons selling pharmaceutical products with material benefits, gifts, prizes (except for low value gifts up to 100 zloty) and travel offers. Organisation and financing of trips as well as organisation and financing of promotional meetings in relation to medicinal products, where manifestation of the hospitality exceeds the main aim of such a meeting are forbidden. Section 2 of the above mentioned Art. 58 of Pharmaceutical Law, forbids accepting promotional gifts as described above.

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)?

For certain professional groups statutory regulations create a requirement to disclose received benefits in a so-called Registry of Material Benefits. Obligation to disclose covers i.a. gifts exceeding certain value, trips' costs covered by third parties etc. As for now Registry was formed for Medical Practitioners, other persons performing public functions and persons creating lists of pharmaceutical products and medical devices reimbursed form public funds.