

SWEDEN

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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?

The main act of interest is the Swedish Marketing Practices Act (MPA), which regulates most aspects of advertising and promotional activities. Marketing must never be misleading; therefore an issue of great importance is to provide sufficient and clear information regarding the offer the marketing concerns. Free gifts and purchase requirements are generally allowed, "free" gifts must however really be free, otherwise the advertising may be judged misleading. Sweepstakes, lotteries and contest where chance influences the outcome to an appreciable extent require a license. Licenses are usually only given to state-owned gambling companies. Licenses are never given to lotteries/sweepstakes arranged for marketing purposes.

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.

There are special rules on the marketing of alcohol, tobacco and pharmaceuticals. Regarding alcohol the main provisions are found in the Swedish Act on Alcohol (AL). There is also a self-regulatory code adopted jointly by interest organizations representing the Swedish advertisers, the Swedish brewers and the Swedish providers of spirits and wines. Regarding tobacco the main provisions are found in the Swedish Tobacco Act (TA). As far as we are aware there is no self-regulatory code. When it comes to pharmaceuticals the act of most importance is the Swedish Act on Pharmaceuticals (AP). In addition to this, the Swedish pharmaceutical industry and the Association of Representatives of Foreign Pharmaceutical Industries have adopted governing rules regulating drug information. The Council for Health Foods, a cooperative agency for the health related industry, has devised a set of rules regarding the marketing of health products.

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

Self-regulation supplements, but does not replace, legislation. Self-regulation is fairly effective since it is often developed by interest organizations; this in turn means that the acceptance of the regulation is rather high and the compliance good. On the other hand, actors within the industries are aware of the stakes and if the positive effect of a promotion that could be questioned is higher than the negative effect of a decision then the promotion will often be carried out anyway. Interim measures are not available based on self-regulatory codes.

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)?

If a promotion is open to persons in their capacity as employees, it must be designed with care. Otherwise it risks coming into conflict with the rules on bribery. According to Swedish law it is a criminal offence to offer an employee (public or private) a bribe or other undue compensation for the exercise of his/her duties. A bribe is any offering that is objectively intended to influence an employee's exercise of his/her duties. According to Swedish court precedence gifts, study tours and dinner offers are examples of activities that are considered to be bribes. Special precautions must be observed when offering such activities to public employees.

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)?

No, there are no such formal disclosure requirements according to Swedish law. There are however rules regarding information. A marketing message must be designed and presented so that it is clear that it is marketing. It must also be clear who is responsible for the marketing.

