

# SWITZERLAND

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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 incentives are regulated by the Swiss Law Against Unfair Competition (Bundesgesetz gegen unlauteren Wettbewerb, "UWG"). Art. 2 UWG defines unfair competition as "every deceiving or other conduct against good faith which affects the relationship between competitors or between offerors and buyers". According to Art. 3 UWG, aggressive selling methods which affect the consumer's freedom of decision are prohibited as well as the deceit of the customer regarding the real value of an offer by giving supplements. In so far, tie-in offers, rebates and other benefits are additionally restricted by Art. 3 UWG. The UWG furthermore contains extra sanctions for violation of this law, in completion of the Swiss Penal Law. Sweepstakes and lottery are regulated by the Swiss Law regarding lotteries and commercial bets (Bundesgesetz betreffend die Lotterien und gewerbsmässigen Wetten). Lotteries are prohibited in Switzerland except for charitable purposes. Also prohibited are the commercial offer, procurement and acceptance of bets regarding horse and boat races, soccer games or similar events. The operation of a betting agency is prohibited as well.

***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 is a Swiss Regulation regarding the Advertising of Medicaments (Verordnung über die Arzneimittelwerbung). In addition, the Swiss pharmacy industry has created a "pharmacodex" resp. a codex regarding the conduct of the pharmaceutical industry which can be regarded as self-regulatory code. Furthermore, there are self-regulatory codes of different professions such as medical practitioners and lawyers which also contain rules regarding advertising. Regarding food and drinks there are regulations concerning the description of a product but also regarding its advertising (Lebensmittelverordnung; Regulation on foodstuff) and especially alcohol is excluded from sales promotions.

***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 substitute but complement governmental regulation. Self-regulation can be a very effective tool as sanctions may be imposed quickly. Above all, the sanctions of a professional guild tend to be more efficient; a medical practitioner for instance may lose his membership to the guild. However, whether a self-regulation is effective or not finally depends on the particular content of a self-regulation and the person or association which is responsible for its implementation and application.

***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)?***

Any public institution has to comply with the principles of equality, proportionality, legality and public interest. The salary and the payment for expenses are regulated by national or regional law. The expenses for public staff are public and therefore transparent. In a nutshell, promotional incentives for staff in public institutions would have to comply with the above mentioned principles, especially with the equal treatment of the staff members. Any unequal treatment (i.e. special benefits) would be considered bribing. As far as promotions in connection with a forthcoming election or voting are concerned, a public institution must not affect the free forming of opinion as a basic right.

***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)?***

Such requirements exist only in connection with regulations regarding the financial accounting. However, the financial accountings are public and therefore have to be transparent. Eventually, the above mentioned principles have to be respected as well.