



Global Advertising
Lawyers Alliance

ADVERTISING LAW: *A Global Legal Perspective*





ABOUT GALA

The Global Advertising Lawyers Alliance (GALA) is the leading network of advertising lawyers in the world. With firms representing more than 80 countries, each member has the local expertise and experience in advertising, marketing and promotion law that will help your campaign achieve its objectives, and navigate the legal minefield successfully.

GALA is a uniquely sensitive global resource whose members maintain frequent contact with each other to maximize the effectiveness of their collaborative efforts for their shared clients.

GALA provides the premier worldwide resource to advertisers and agencies seeking solutions to problems involving the complex legal issues affecting today's marketplace.

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FOREWORD

The world is shrinking. And fast. Not so many years ago, brands and their advertising agencies could create advertising that would only run in one country, usually their own. As this was their home territory, responsible businesses and their legal advisors would be well aware of the applicable laws and regulations.

But with the march of globalization and the growth of the internet, those simple ways of working have gone forever. Today, brands, agencies, and lawyers need to create advertising and marketing materials that will be compliant across several countries, or even entire continents, or perhaps even the whole world. The Global Advertising Lawyers Alliance has therefore created this book to give advertising professionals and their legal advisers an introduction to the laws and regulations that will affect their advertising around the world.

GALA is a best of breed network with members covering more than 80 countries of the world and this is the most comprehensive publication yet produced by GALA. Each country chapter starts with the background to the regulation of advertising in that country, setting out both the self-regulatory framework, which is a key part of advertising control in many parts of the world, as well as the basics of local advertising law. There is then further detail about key issues, such as price advertising, prohibited sectors and practices, branded content, social media, and rights of privacy/publicity. Special clearance concerns are also analyzed, together with cultural concerns which vary widely from country to country.

There are two huge challenges for all practitioners in both the advertising and legal professions dealing with global advertising - the wide range of applicable law and regulations and the marked lack of international harmonization. Some principles, such as the requirement for advertising to be recognizable as having a commercial purpose, are



reflected in the laws and regulations of most countries, but in other areas there are very wide discrepancies. These can be by sectors, such as alcohol and food, or in relation to particular issues, such as the portrayal of women and children. The purpose of this book is therefore to help brands, agencies, and their legal advisers navigate these myriad of widely varying challenges.

Some of these discrepancies in law and regulation are **procedural**. For example, in the United Kingdom, the self-regulatory organization, the Advertising Standards Authority, plays a key role in settling most complaints about misleading advertising between competitors. But in Germany, the enforcement of advertising and fair trade regulations is mainly in the hands of the courts, with “cease and desist” letters and with court injunctions being a frequent occurrence.

Other discrepancies concern substantive laws, such as **personality rights**. Many countries of the world will protect celebrities from the misappropriation of their image rights, but many countries stop short of giving ordinary citizens the same degree of protection. Some countries protect all living individuals from the unauthorized use of their name or likeness in broadcast advertising, but not in other media. In Sweden, on the other hand, there is a complete prohibition on use of the name or likeness of any living person, whether famous or not, in any media, unless their consent has been obtained. Furthermore, while these rights end on death in many countries, in some countries and in many states in the United States, these rights may be passed on to relatives or others, who may continue to enforce them long after the person has died.

Advertisers and agencies also have to contend with local laws concerning the **production** of advertising. In Ecuador, for example, advertisements to be broadcast or published in that country must be produced locally with 80% of the people involved either being Ecuadorian or foreigners residing in Ecuador. Argentina has similar local production requirements,



which are backed up by a requirement for registration with the relevant authority, not less than 10 days before the first air date.

Finally, there are wide discrepancies in **enforcement policies**. Most countries have laws governing sales promotions, usually designed to ensure that these do not morph into unregulated gambling, but in many of these countries, the laws are honored more in the breach than in the observance. In Poland, however, consumer regulations relating global promotions, especially on-line promotions, are enforced very strictly. The regulator maintains a list of abusive clauses; if any such clause is identified in a promotion, that may result in a fine for the promoter of 10% of its turnover for the preceding year. In practice, the fines are usually lower, but there is still a very significant exposure for foreign advertisers wanting to engage with Polish consumers.

We believe that this book is unique, covering 56 countries from 6 continents, as well as being written by some of the leading experts in advertising law from around the world.

Our thanks go to all of the authors and contributors to the book, as well as to Stacy Bess, Executive Director of GALA, and our editor, Catherine Liddell.

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Please note: The law stated in this book is correct as at autumn 2014. The contents of this book are for guidance only, and legal advice should be obtained in relation to specific matters.