

# Advertising & Marketing

*Contributing editor*  
**Rick Kurnit**



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GETTING THE  
DEAL THROUGH

# France

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## Legislation and regulation

### 1 What are the principal statutes regulating advertising generally?

The advertising sector does not have one specific code, but rules are covered in several codes (ie, the Consumer Code, Commerce Code, Environmental Code, Public Health Code, Penal Code). Some other rules are not codified, and are written by decree or ministerial rule.

Regarding EU law, France has the duty to transpose directives (ie, in advertisement law, Directive 2005/29/EC on unfair business practices, dated 11 May 2005 and Directive 2006/114/EC on misleading advertising, dated 12 December 2006 apply). Some rules on advertising and promotional practices are regulated by Directive 2010/13/EU, dated 10 March 2010 (the Audiovisual Media Services Directive).

### 2 Which bodies are primarily responsible for issuing advertising regulations and enforcing rules on advertising? How is the issue of concurrent jurisdiction among regulators with responsibility for advertising handled?

Advertising is a self-regulatory sector. The Professional Regulation Advertising Authority (ARPP) is the advertising industry's self-regulatory organisation in France. It has three associated bodies: the Jury of Advertising Ethics (JDP), the Council of Advertising Ethics (CEP) and the Joint Advertising Council (CPP).

The ARPP makes recommendations with targeted organisations (eg, consumer associations and environmental associations) and issues advisory opinions, awareness campaigns and advice for consumers. The ARPP also provides decisions relating to complaints against advertising communications (commercials or otherwise). These decisions are taken through the JDP, which receives complaints from the ARPP or natural or legal persons. If the jury, which is the sanctioning body of the ARPP, rejects the complaint or considers that the ethical rules are violated, it asks the ARPP to stop the campaign and to publish the decision online.

The CPP (the concerting body) consists of advertising professionals and targeted organisations. Its tasks are to alert the executive board of the ARPP about relevant questions in debate or useful propositions, provide public opinion on the evolution or modification of professional rules and participate in the annual evaluation of the professional rules. The CEP has the function of providing opinions to enlighten the ARPP about the evolution of advertising. It is the anticipatory body of the ARPP.

Moreover, with advertising on the internet, there is also a problem with personal data. The National Commission on Informatics and Civil Liberties (CNIL) regulates and punishes violations of data protection.

### 3 What powers do the regulators have?

When consulted, if not compulsory, the ARPP can express a negative opinion about an advertisement and, generally, the advertiser then tries to modify it. The advertising networks have the choice of whether or not to use the advertisement. But if the advertising network takes this risk, a complaint before the JDP can be sued. After a decision of the JDP, the ARPP can stop a campaign or force the advertiser to modify the advertisement and will publish its decision online or in a press release.

For data protection, the CNIL has more power and can punish advertisers with penalties when they practice prohibited methods, for

example spamming, or if they fail to respect the rules on online targeted advertising (see question 29).

### 4 What are the current major concerns of regulators?

The three major concerns of the ARPP are in ensuring sincerity in advertising, keeping media and advertisers (eg, agencies) informed of developments and providing notices regarding visual advertisements complying with ethical rules in this sector.

Regarding personal data, the CNIL regulates targeted advertising campaigns and ensures data protection (eg, on social media).

### 5 Give brief details of any issued industry codes of practice. What are the consequences for non-compliance?

The ARPP's recommendations constitute the frame of ethical rules in this sector. These rules are based on the International Chamber of Commerce (ICC) Code consolidating advertising practices by engagement charters signed by professional representatives and ARPP and public authority representatives.

In the case of violation of these rules, the JDP can accept a complaint and ask the ARPP to stop the campaign.

### 6 Must advertisers register or obtain a licence?

Advertising is not a regulated profession. However, advertisers have to respect the rules on free competition.

### 7 May advertisers seek advisory opinions from the regulator? Must certain advertising receive clearance before publication or broadcast?

ARPP members can ask for legal advice regarding their advertising. Non-members must pay for this service.

The ARPP provides an opinion on TV advertising and on on-demand audiovisual media services advertising before refusing such advertising. The possible verdicts are: 'positive', 'to modify' or 'not to publish'.

Clearance before publication is also required in specific situations (eg, advertising medicines to the public needs an 'advertising visa' granted by the National Agency for Medicines (article L5122-9 of the Public Health Code)).

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## Private enforcement (litigation and administrative procedures)

### 8 What avenues are available for competitors to challenge advertising? What are the advantages and disadvantages of the different avenues for challenging competitors' advertising?

Competitors' advertising is principally challenged by filing a complaint before the JDP. This procedure offers the possibility to obtain a decision within two or three months, which may result in stopping the advertising, at no cost. The complaint cannot be anonymous. The principle disadvantage is that the ARPP is not allowed to pronounce penalties or to grant damages.

Competitors' advertising can also be sued in court. Advertising professionals are civilly liable in cases where they produced bashing advertisements or advertisements that constitute unfair competition. This court procedure offers the possibility to claim compensation of the

suffered damages. The duration of civil court proceedings in the first instance is around one year. It implies costs for the hiring of a lawyer.

### 9 How may members of the public or consumer associations challenge advertising? Who has standing to bring a civil action or start a regulatory proceeding? On what grounds?

Any legal or natural person may challenge advertising by filing a complaint before the JDP, if an advertisement seems to be inappropriate.

Also, in advertising law, advertisers, agencies, media companies and written press are criminally responsible. They can be sued if they commit misdemeanours (eg, misleading or prohibited advertising). Any person or association (eg, the Union of Outdoor Advertising, which enforces the rules for advertising in outdoor areas) can file a suit.

Advertising professionals also assume civil liability. A member of the public can take an action against an advertiser or media company if the publication of the advertising causes them damage.

### 10 Which party bears the burden of proof?

Under French procedural rules, the claimant bears the burden of proof. In consequence, it should be proven that the advertising is misleading. Nevertheless, the definition of misleading advertising is large. For example, it includes omissions, which are defined in articles L121-2 and L121-3 of the Consumer Code, the content of which implemented Directive 2005/29/EC (see question 1).

Moreover, French law provides a list of acts, which are considered as misleading (article L121-4 of the Consumer Code): for instance, when the seller falsely indicates that he or she is bound by a code of conduct.

It must also be noted that there are specific provisions concerning comparative advertising, which must not be misleading, as for all advertising. Such provisions require the advertiser to provide evidence as to the accuracy of factual claims in advertising, within a specified time after the request thereof (see question 18).

In case of summary proceedings, it must be proven that the advertising is obviously misleading.

### 11 What remedies may the courts or other adjudicators grant?

The successful party in court can obtain the following:

- the ceasing of the advertising; or
- civil remedies with the payment of damages, including the following:
  - the publication of the decision in reviews or on a website, or both, within a certain period of time;
  - the involved costs being borne by the losing party; or
  - compensation for the incurred fees, with the payment of a lump sum of €1,000 to €5,000.

If the action is brought before a criminal court, the judge can pronounce penalties or a term of imprisonment, or both (eg, for misleading information in pharmaceuticals advertising, the sanction can be two years of imprisonment and a penalty of €30,000).

The ARPP can stop or modify an advertisement, and would then publish its decision online.

### 12 How long do proceedings normally take from start to conclusion?

The typical time frame for a civil action at first instance is one year and at second instance (appeal), a further year. In the ARPP procedure, the JDP generally takes two or three months to publish a decision.

### 13 How much do such proceedings typically cost? Are costs and legal fees recoverable?

In a court procedure, the fees depend on the difficulty of the case and on the duration of the procedure. There is no official mandatory fee schedule. The official fees are paid by the losing party, unless the judge decides that they should be paid totally or partially by another party (article 696 of the Civil Procedure Code). Official fees are very low in France.

The attorneys' fees supported by each party are only partially reimbursed by the losing party. Each party requests to be reimbursed of its attorneys' fees and the judge decides what amount should be reimbursed, pursuant to article 700 of the Civil Procedure Code. The ARPP procedure is a free service for everyone.

### 14 What appeals are available from the decision of a court or other adjudicating body?

Parties can file an appeal against a judgment within one month of it being notified, unless they are domiciled in a foreign country. In this case, this deadline is extended by two months.

For ARPP procedures, parties can request a review application within 15 days of the notice being received.

### Misleading advertising

#### 15 How is editorial content differentiated from advertising?

According to article 19 of Decree No. 92-280, dated 27 March 1992:

*Advertising messages or sequences of advertising messages must be easily identifiable as such and clearly separated from the rest of the program, before and after their broadcast, by screens recognisable by their optical and acoustic characteristics.*

Online advertising can finance editorial content in various forms (eg, pop-up, hypertext link, etc). To avoid misleading the web user, hidden advertising is forbidden (ie, to promote a product by writing fake notices on forums (article L121-15-1 of the Consumer Code)). In the fight against consumer notices that constitute hidden advertising, a regulation was introduced in 2016, in order to ensure that the presentation of content posted by web users is fair, clear and transparent (article L111-7-2 of the Consumer Code).

#### 16 How does your law distinguish between 'puffery' and advertising claims that require support?

Directive 2005/29/EC constitutes 'puffery' as being without prejudice to 'the common and legitimate advertising practice of making exaggerated statements or statements which are meant to be taken literally'. Even prior to the implementation of this Directive, French case law admitted hyperbolic advertising, which is characterised by parody or emphasis. The courts must check that the average consumer cannot be misled by the exaggeration of the advertising. In this case, no support must be filed. On the contrary, advertising claiming a more serious objective quality that the average consumer would consider as real requires support. If no support can be filed, it is misleading. Advertising claims that appear too general may also be sanctioned under certain circumstances. The assessment is, of course, made on a case-by-case basis.

#### 17 What are the general rules regarding misleading advertising? Must all material information be disclosed? Are disclaimers and footnotes permissible?

Advertising must not:

- create confusion with any products, trademarks, trade names or other distinguishing marks of a competitor;
- include false information in relation to one or more of the following elements:
  - the existence or nature of the product; or
  - the main characteristics of the product, such as its availability, the extent of the trader's commitments or the price; or
- unclearly identify the advertiser.

Advertising will be considered as misleading if it is likely to cause the average consumer to take a transactional decision that he or she would not have taken otherwise.

Moreover, advertising must not omit material information that the average consumer needs to take an informed transactional decision. In case of an invitation to purchase, the following are considered as material information:

- the main characteristics of the product;
- the address and identity of the trader;
- the price;
- the arrangements for payment and delivery when they are different from the common requirements; and
- the right of withdrawal or cancellation (if any).

Such information must be clearly mentioned on the medium used to communicate. Nevertheless, where the medium imposes limitations of space and time, these limitations and any measures taken by the trader

to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.

In application of these provisions, footnotes (as well as scrolling text in TV spots) are permissible, provided that they respect the conditions of readability.

With regard to misleading advertising, the ARPP has issued codes, in particular concerning notes and overlays. The ARPP also assesses all TV spots and on-demand audiovisual media advertising before their broadcast, in order to ensure their compliance.

Disclaimers are also permissible to a certain extent, provided that they comply with legal rules and that the consumer is clearly informed.

There are also specific rules for digital advertising in the Consumer Code as well as in ARPP codes in order to ensure that the consumer is clearly informed of the advertising nature of the electronic communication.

#### **18 Must an advertiser have proof of the claims it makes in advertising before publishing? Are there recognised standards for the type of proof necessary to substantiate claims?**

The general rules applying to advertising do not expressly require the advertiser to have proof of his or her claims before publishing. The provisions concerning comparative advertising require the advertiser to furnish evidence as to the accuracy of factual claims in advertising, within a short period of time after the request of such (article L122-5 of the Consumer Code), which means that the advertiser in that case must have proof of his or her claims before publishing.

There are no recognised standards for the type of proof necessary to substantiate claims, which will depend on the nature of the claims. Such evidence can be freely brought, by any means.

In practice, it appears necessary to have proof of the claims before publishing in order to be able to defend the validity of the advertising in case of a legal action grounded on misleading advertising.

#### **19 Are there specific requirements for advertising claims based on the results of surveys?**

There is no specific provision concerning advertising claims based on the results of surveys. Such claims must comply with the general rules of the Consumer Code.

It arises from case law that advertising claims based on the results of surveys may be considered as misleading if those results do not correspond to the advertising claims, totally or partially. Moreover, the results of the surveys must not be too old. The advertising must also clearly mention the author and the date of the surveys, so that the consumer can know if it is an independent study from the advertiser or not.

#### **20 What are the rules for comparisons with competitors? Is it permissible to identify a competitor by name?**

Comparative advertising is defined as any advertising that explicitly or implicitly identifies a competitor of goods or services offered by a competitor. It is regulated by articles L122-1 to L122-4 of the Consumer Code.

Such advertising is permitted, provided that the following requirements are fulfilled:

- it is not misleading;
- it compares goods or services meeting the same needs or intended for the same purpose; and
- it objectively compares one or more material, relevant, verifiable and representative feature of such goods and services, which may include price.

It is thus possible to identify a competitor by name, and even to mention in the comparative advertising the competitor's trademark, provided that:

- it does not take unfair advantage of the reputation of the competitor's trademark, trade name, other distinguishing mark or designation of origin of competing products;
- it does not discredit or denigrate the competitor's trademark, trade name, other distinguishing marks, goods, services, activities or circumstances;
- it does not create confusion between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor; and

- it does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name.

Moreover, for products with a designation of origin, comparative advertising must relate to products with the same designation.

Furthermore, under French law, comparative advertising cannot be included on packaging, invoices, travel tickets, means of payment or tickets for shows.

#### **21 Do claims suggesting tests and studies prove a product's superiority require higher or special degrees or types of proof?**

According to the general rules applying to advertising, claims suggesting tests and studies prove a product's superiority are of course considered as misleading if no test or study has been made. Where tests and studies are actually made, they must be correctly used in the advertising. For instance, the actual advertised product (rather than a different one) must have been tested.

Moreover, the consumer must be informed in the advertising if the tests and studies have been made by the advertiser or by an independent body. The advertising will of course be considered as misleading if it mentions that the tests and studies have been made by an independent body, where this is untrue.

It has also been ruled by the French Supreme Court that an advertisement grounded on a study that is the subject of scientific controversy, is misleading.

#### **22 Are there special rules for advertising depicting or demonstrating product performance?**

Like any advertising, advertising depicting or demonstrating product performance must not be misleading for consumers (in text as well as in pictures).

Moreover, the protection of the dignity of the person is very important. Such advertising must not show humans, especially women and children, in bad conditions. Animals are also protected against images showing bad treatment.

In addition to the French legal provisions, the ARPP has issued several recommendations – 'Image and Respect of Human Beings Code', 'Safety Code: dangerous behaviours and situations' and 'Children's Code' – notably in order to protect children. For instance, even to demonstrate product performance, advertising must not show dangerous situations, except for the promotion of health or security. In any case, children should not be encouraged to participate in dangerous or violent situations.

#### **23 Are there special rules for endorsements or testimonials by third parties, including statements of opinions, belief, or experience?**

There is no specific rule. Any information communicated to the public has to be fair and true and shall not be misleading.

In article 13 of the ICC Code, the ARPP published a recommendation that provides that:

*the communication for business purposes shall not reproduce or refer to any certificate, endorsement or support documentation that is not true, verifiable and relevant. Using certificates and endorsements that have become obsolete or misleading with the time is prohibited.*

#### **24 Are there special rules for advertising guarantees?**

Under the Consumer Code, advertising must not include false information concerning the extent of the trader's commitments, the need for a service, part, replacement or repair as well as the consumer's rights and the treatment of his or her claims.

Moreover, the following are deemed to be misleading:

- advertising that presents the rights granted by law to consumers as a specific characteristic of the proposal made by the trader; and
- advertising that falsely creates the impression that the after-sale service in relation to the product is available in a member state of the EU other than the one in which the product is sold.

If the advertiser offers more guarantees than stipulated by law, he or she must clearly and completely inform the consumer, and respect his or her commitments.

### 25 Are there special rules for claims about a product's impact on the environment?

According to the Consumer Code, advertising must not include false information concerning the main characteristics of the product, which means that claims about a product's impact on the environment must not be misleading for the average consumer. For instance, it has been ruled that the term 'biodegradable' was misleading for a product that contained a substance toxic to fish.

Moreover, the mention of a trust mark, a quality mark or equivalent without having obtained the necessary authorisation is deemed to be misleading. Such a provision could apply to environmental labels.

There are also specific provisions in the Environmental Code that prohibit misleading advertising on a product's impact on the environment.

In addition to these legal provisions, the ARPP enacted a Sustainable Development Code, which recalls that the advertiser must be able to prove his or her claims about a product's impact on the environment, and that the message must be clear and proportionate to the characteristics of the product. More generally, advertising must not trivialise or value practices or ideas that are contrary to the purposes of sustainable development.

### 26 Are there special rules for describing something as free and for pricing or savings claims?

Under French law, advertising must not include false information concerning the price or method of calculation of the price, the promotional character of the price and the conditions of sale, payment and of delivery of the goods or services.

Moreover, the presentation of a product as 'gratis', 'free', 'without charge' or similar is deemed to be misleading if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the product.

There are also specific provisions that apply to savings. In particular, the consumer must be informed of the reference price as well as of the reduced price, except when the savings apply to several products that are clearly identified. In this case, the indication of the reduced price is not necessary.

In addition to these general legal requirements, the ARPP enacted a Price Advertising Code, which stipulates that the information regarding price in advertising must be clear for the average consumer. Specific rules have also been issued for each means of communication (eg, television or cinema, press, poster, digital communication and radio), and for different kinds of price advertising (eg, the presentation of several prices in the same advertising, the price with or without tax, etc).

### 27 Are there special rules for claiming a product is new or improved?

According to the Consumer Code, advertising must not include false information concerning the main characteristics of the product, and notably its essential qualities, its composition, its method and date of manufacture and the results to be expected from its use.

In these conditions, the terms 'new' and 'improved' must be very carefully used in advertising.

## Prohibited and controlled advertising

### 28 What products and services may not be advertised?

There are many products and services that may not be advertised, as follows:

- tobacco products, including electronic cigarettes and accessories;
- medicaments reliant on medical prescription and not refundable by the obligatory health insurance; and
- firearms, except on TV channels dedicated to hunting, fishing and shooting sport.

There are specific rules regarding TV (ie, regulating advertising for alcoholic beverages containing more than 1.2 per cent alcohol by volume (article 8 of Decree No. 92-280, dated 27 March 1992, as modified)).

### 29 Are certain advertising methods prohibited?

France prohibits subliminal and surreptitious advertising (articles 9 and 10 of Decree No. 2003-960). Hidden advertising is prohibited (see question 15).

Targeted advertising is regulated. One type of targeted advertising is the spamming method: it is forbidden to send emails with advertising and commercial purposes without the consent of the mail recipient (article L34-5 of the Postal and Electronic Communications Code and EU Directive 2009/136/EC of 25 November 2009). If the recipient expressively gives its consent, the spamming technique is allowed. In case of any violation, the CNIL can, for example, pronounce penalties. The government created Signal Spam, an association that delivers a platform for the online notification of illicit behaviours and practices, which can be used to notify email addresses used for spamming. For any other targeted advertising, rules on personal data apply.

### 30 What are the rules for advertising as regards minors and their protection?

Advertising in schools is forbidden. On TV, advertising must respect children and not harm them by moral or physical damage.

Advertising cannot incite children to buy a product or a service by exploiting their inexperience and credulity, cannot incite children to persuade their parents or third parties to buy these products or services and cannot exploit the particular trust of children on their parents or teachers, or show minors in danger without any reason (article 7 of Decree No. 92-280). There are also specific rules about minors with regard to gambling advertising (see question 36).

### 31 Are there special rules for advertising credit or financial products?

The advertising of credit products is strictly regulated in France. Each type of credit-related product or service has its own rules.

Law No. 2010-737 of 1 July 2010 provides a framework for advertising regarding consumer credit to avoid aggressive commercial practice and enhance better information for the client. Advertising of financial products must be clear and not misleading (article L533-12 of the Monetary and Financial Code).

Directive 2008/48/EC lists the compulsory specific information to be included in the advertising of credit-related products (a risk statement, interest rate, total amount of the credit (article 311-4 of the Consumer Code)).

For mortgage loans, there are also restrictive rules with regard to the right to time for reflection (article L312-4 to L312-6 of the Consumer Code).

### 32 Are there special rules for claims made about therapeutic goods and services?

Misleading advertising for therapeutic goods and services is prohibited (article L5122-2 of the Public Health Code). The presentation of the product has to be objective and must encourage its appropriate use. The National Security Agency for Medicines and Health Products can prohibit advertisements if the arguments about the effects of the medicine used for the promotion are not proven. For misleading information, the penalty can be two years of imprisonment and a fine of €30,000.

Moreover, advertising is authorised only if the medicines are not reliant on medical prescription and are not refundable by the obligatory health insurance. If the advertising is authorised, it must be obvious that it is an advertisement and some mentions of this are necessary (article R5122-3 of the Public Health Code).

### 33 Are there special rules for claims about foodstuffs regarding health and nutrition, and weight control?

EU Regulation (EC) No. 1924/2006 regulates nutrition and health claims. The nutritional claims cannot be false, ambiguous or misleading.

In French law, there are specific rules for the advertising of certain types of foodstuffs (ie, artificial sweeteners, powdered infant milk and food supplements).

France also regulates advertising in the fight against dangerous eating-related behaviours, notably childhood obesity. Companies selling beverages with sugar, sweeteners or salt have to advertise with a health message. If companies do not insert this message, they have to pay a retribution amount of 5 per cent of the sum of the advertising (article

L2133-1 of the Public Health Code). There is a list of health messages (ie, 'for your health, eat at least five pieces of fruit and vegetables per day' and 'for your health, do not eat products that are high in fat, sugar or salt') in a ministerial ruling of 27 February 2007. To fight against anorexia, there is a transparency obligation with regard to 'modified photography' in advertising in which models have been modified by software (article L2133-2 of the Public Health Code), with a penalty of €37,500 for violation.

#### 34 What are the rules for advertising alcoholic beverages?

The EVIN Law (Law No. 91-32, dated 10 January 1991) provided the first framework for advertising alcoholic beverages and a new law, dated 26 January 2016, completes it.

Advertising of alcoholic beverages is strictly limited, and any violation is penalised. There has been a restrictive list of the media in which the advertising of alcohol is permitted (ie, written press, radio, delivery vehicles and internet), since 2016 (L3323-2 of the Public Health Code).

All advertising must contain specific text and a health message. The purpose of the advertising is to show the product and not to valorise alcohol.

To promote French terroir, the new legislation does not consider some content, images, geographical indication or terroir information linked to some alcoholic beverages as advertising or propaganda (article L3323-3-1 of the Public Health Code).

#### 35 What are the rules for advertising tobacco products?

All direct or indirect advertising or propaganda of tobacco products (including electronic cigarettes and accessories) is forbidden. In case of any violation, there is a penalty of €100,000 (article L3511-3 of the Public Health Code).

Since January 2016, all cigarette packets must be neutral and must not contain the supplier's logo or trademark. The packets still contain a health message (Directive 2014/40/EU).

#### 36 Are there special rules for advertising gambling?

All commercial communication made by an operator of gambling and games of chance is authorised if the advertising is accompanied by a message cautioning against excessive games, addictive games, the debt risk and gambling addiction as well as a message informing that a help service is available.

The advertising shall not be addressed to minors and is forbidden on any audiovisual media aimed minors, online communication accessible by minors and at the cinema during films accessible to minors (article 7 of Law No. 2010-476, dated 12 May 2010 on the regulation of the sector of gambling and games of chance online). The penalty is a fine of €100,000.

The Regulation of Online Games Authority can be consulted for questions about this type of advertising and has the power to bring cases before the JDP.

#### 37 What are the rules for advertising lotteries?

Advertising lotteries is forbidden (article L322-1 of the Internal Security Code) except for lotteries for charities, arts support or the finance of non-profit sports activities (article L322-3).

The qualification of the lottery is essential in establishing whether the advertising is allowed.

#### 38 What are the requirements for advertising and offering promotional contests?

If the results of the contest depend on chance (even partially), it is not a contest but a lottery and the above rules apply. For real contests, the rules regulating advertising have to be respected (eg, a contest to promote tobacco is forbidden).

#### 39 Are there any restrictions on indirect marketing, such as commercial sponsorship of programmes and product placement?

TV news and political TV programmes cannot be sponsored. Other TV shows must respect the following conditions:

- the content cannot be influenced by the sponsor;
- the content cannot directly incite viewers to buy sponsors' products; and
- the sponsor has to be identified (discretely and in a one-off mention) (article 18 of Decree No. 92-280, dated 27 March 1992 and modified in 2017).

The Higher Audiovisual Council (CSA) had the power to set the rules on product placement; however, in Deliberation No. 2010-4, dated 16 February 2010, France prohibited product placement for goods for which the advertising is forbidden or regulated (ie, alcoholic beverages containing more than 1.2 per cent alcohol by volume, tobacco and tobacco products, medicines, firearms and powdered infant milk). However, product placement is allowed in films and fictional TV. For all other products, product placement must abide by the same rules as for sponsorship. Viewers have to be informed that it is product placement, with the use of a banner or a pictogram 'P', according to the CSA Deliberation No. 2012/35 and the CSA Plenary Assembly, dated 23 October 2012.

#### 40 Briefly give details of any other notable special advertising regimes.

France allows advertising in other languages but imposes a visible translation of the foreign terms in the advertising (the Toubon Law (Law No. 94-665 of 4 August 1994)).

Advertising cannot be contrary to morality according to the Penal Code and ethical rules (ie, any violent or pornographic message constitutes a misdemeanour (article 227-24 of the Penal Code)). The ARPP ensures that violence is not present in advertising.

Political advertising and propaganda is prohibited by the Electoral Code during the six months preceding an election (article L52-1).



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Selling advertisements for jobs is prohibited. It is, however, permitted to pay for an advert to be published in a publication or in any other paid means of communication (article L5331-1 of the Labour Code).

Lawyers can advertise for legal assistance (since 2014) under three conditions:

- the advert must contain true information about the offered services;
- the advert must respect the essential principles of the profession; and
- the advert must not compare or denigrate (article 10 of the French National Lawyer Rule).

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## Social media

### 41 Are there any rules particular to your jurisdiction pertaining to the use of social media for advertising?

Rules were recently introduced for reporting on online advertising (Decree No. 2017-159 of 9 February 2017 on digital advertisement services). The goal is to enhance transparency.

The Digital Republic Bill (Bill No. 2016-1321 of 7 October 2016) introduced a regulation that applies to online platforms (article L111-7 and 111-7-I of the Consumer Code) and it provides a definition of 'online platform operators'. These operators shall provide fair and clear information on their ranking and deranking rules in terms of how they list and rank the content and services that they host.

Any violation of article L111-7 of the Consumer Code is punished by an administrative fine of up to €75,000 for an individual and up to €375,000 for a legal entity (article L131-4 of the Consumer Code).

Online platforms offering comparisons of prices and characteristics of goods or services offered by professionals to consumers shall explain the comparison process and identify what is to be considered an advertisement, in the meaning of the 2004 law on confidence in the digital economy (article 20 of Law No. 2004-575 of 21 June 2004), which says that any online advertisement has to be clearly identified as such and must clearly provide the identity of the advertiser. The information to be provided for the purposes of comparison platforms shall be defined by decree.

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### 42 Have there been notable instances of advertisers being criticised for their use of social media?

It is not the advertisers that have been criticised but the social media directly.

In February 2016, the CNIL gave Facebook a deadline to comply with France's Data Protection Act. If social media platforms do not respect the recommendations of the CNIL and do not change their rules within provided deadlines, the CNIL is allowed to take remedies. Among other requirements, the CNIL requested that Facebook offered a mechanism that allowed users to refuse targeted advertising. Facebook has modified its rules accordingly.

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### 43 Are there regulations governing privacy concerns when using social media?

In 2015, the ARPP published the following recommendation on digital advertising: [www.arpp.org/nous-consulter/regles/regles-de-deontologie/communication-publicitaire-digitale/](http://www.arpp.org/nous-consulter/regles/regles-de-deontologie/communication-publicitaire-digitale/).

## Getting the Deal Through

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