

Advertising & Marketing

in 19 jurisdictions worldwide

2014

Contributing editor: Rick Kurnit



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Getting the Deal Through is delighted to publish the first edition of *Advertising & Marketing*, a new volume in our series of annual reports, which provide international analysis in key areas of law and policy.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 19 jurisdictions featured.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are always referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

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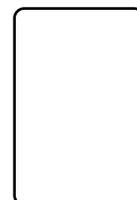
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Legislation and regulation

1 What are the principal statutes regulating advertising generally?

Advertising in Greece is regulated on a national level.

The principal legislative instruments that govern advertising Law in Greece are:

- articles 1 and 3 of Law No. 146/1914 on Unfair Competition. Article 1 introduces the general clause that all acts in the course of competition (including marketing communications) that are unfair are banned. On the other hand, article 3 of the law is a specific provision, according to which any advertisement that misleadingly gives the impression of an especially favourable offer is prohibited. This provision mainly aims to protect competitors from misleading advertising by providing their standing to sue for a cease and desist order or damages or both; and
- articles 9a to 9i of Law No. 2251/1994 on Consumer Protection (as amended in order to comply with Directive 2005/29/EU). This law prohibits unfair business to consumer commercial practices (such as misleading and aggressive advertising) and is the main legislative framework for the protection of consumers, by ensuring the right of both individual consumers and consumer associations to challenge unfair marketing communications.

The above-mentioned primary provisions are supplemented by a number of special provisions that regulate specific types of advertising (TV and radio advertising, billboard advertising etc) or introduce restrictions to the marketing communications of specific products and services (tobacco, alcohol, medicines, gambling etc).

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?

The main regulators of advertising in Greece are the following:

- The Ministry of Development and Competitiveness through the General Secretariat for Consumers is the state authority primarily responsible for developing the consumer policy in Greece and imposing administrative sanctions on those who infringe the legislation for consumer protection.
- The Greek National Council for Radio and Television (NCRTV), is an independent administrative authority that monitors compliance with the specific regulations of TV and radio advertising and is empowered to impose sanctions on said media in the case of infringements.
- The Hellenic Organisation for Medicines is a state authority that has jurisdiction over the advertising of medicines, medical devices and nutritional supplements. The Hellenic Food Authority has primary responsibility over foodstuffs and beverages advertising. Finally, the Hellenic Capital Market Commission monitors the marketing communications of investment firms and

undertakings for collective investment in transferable securities (eg, mutual funds).

Cases of concurrent jurisdiction between sectoral regulators and the primary advertising authority (the General Secretariat for Consumers) are not common in Greece.

3 What powers do the regulators have?

Generally speaking, Greek law has empowered the regulators with the authority to impose heavy sanctions if laws on advertising are violated.

The Minister of Development and Competitiveness may address a recommendation or impose a monetary fine varying from €1,500 to €1 million on any trader who infringes any provision of the Law on Consumer Protection. If more than three fines have been imposed on the same trader, the maximum fine is doubled and the Minister may order the shutdown of the infringer for a period ranging from three months to one year.

If an illegal advertisement is broadcast on TV, the NCRTV may address a recommendation or impose a monetary fine from €14,673.50 to €146,735 on the TV channel (for radio stations the fine ranges from €2,935 to €29,350).

If restrictions on the advertising of specific products or services are breached, the following fines are imposed by the regulators:

- the Hellenic Organisation for Medicines may penalise any illegal advertisement of medicines with a monetary fine up to €22,000;
- the Hellenic Food Authority may impose a monetary fine of between €20,000 and €1 million, for any violation of the legislation on food and beverages, including any advertisement that does not comply with the legislation; and
- the Hellenic Capital Market Commission has the authority to impose a fine of up to €3 million on investment firms or undertakings for collective investment in transferable securities (UCITS) for any infringement of the relevant legislation, including any marketing communication that disseminates information among clients or potential clients that is not fair, clear and truthful.

In all the above-mentioned cases, the entity on which a sanction was imposed may file a petition to the body that issued the decision or to the administrative courts asking for the annulment of the imposed sanction.

4 What are the current major concerns of regulators?

The current major concerns of regulators are to do with the fact that many nutritional or health claims made in the advertising of foodstuffs are held to be misleading due to poor substantiation.

There is a new law (Law No. 4002/2011) that prohibits advertisements of illegal games of chance and the regulators are currently concentrating on the enforcement of its provisions.

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

National self-regulation of the advertising industry plays an important role in advertising practices. The self-regulation of the advertising industry in Greece is handled by an SRO named the Advertising Self-Regulation Council (SEE), created by the Hellenic Association of Advertising and Communication Agencies (EDEE) and the Greek Advertisers Association (SDE). The SEE monitors compliance with the Hellenic Code of Advertising and Communication Practice (HCACP), the structure and content of which is almost identical to the ICC Consolidated Code of Advertising and Communication Practice. Both consumers and competitors are entitled to file complaints before SEE committees challenging a marketing communication (broadcast or printed) for breaching the Code.

In addition, the Hellenic Bank Association has issued the Code of Practice on Advertising of Financial Products and Services Offered by Banks, but does not provide any consequences for non-compliance.

- 6** Must advertisers register or obtain a licence?

Advertising companies are not obliged to obtain a special licence from Greek authorities. Exceptionally, advertising companies that wish to provide advertising services to public entities must be accredited by certification bodies that have been established for this purpose (article 13, paragraph 3 of Law No. 3688/2008).

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

Pre-clearance of advertisements by the regulator is not obligatory in Greece, with the exception of over-the-counter medicines, the marketing communications of which must be submitted to the Hellenic Organisation for Medicines for monitoring before publication or broadcasting.

The advertisers or advertising agencies before the publication or broadcasting of any advertisement may voluntarily seek the advice of the SEE. The opinion of the SEE is only of an advisory nature and is not binding on the SEE Committee, which may later examine a complaint filed by a third party (a competitor or consumer) against the advertisement.

Private enforcement

- 8** What avenues are available for competitors to challenge advertising? What are the advantages and disadvantages of the different avenues for challenging a competitor's advertising?

Competitors may challenge advertising either by filing a complaint with the SEE, or by taking legal action before courts on the basis of the Unfair Competition Law (Law No. 146/14), namely article 1, which prohibits any unfair act among competitors (including unfair advertising), and article 3, which prohibits misleading statements.

The advantage of following the self-regulatory out-of-court procedure is the swift resolution of the dispute by persons having knowledge of marketing methods and advertising business at a low cost. The main disadvantages are that the complainant may not seek damages and that the decisions of the SEE are not legally binding (although they are usually respected by the involved parties).

The main advantage of the judicial route is that the complainant may also seek any damages caused (direct, indirect, monetary or moral). However, court proceedings last for a long period of time and usually entail significant costs. In cases of imminent danger, however, the plaintiff may file an injunction petition asking for preliminary measures.

- 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?

According to the Consumer Protection Law (Law No. 2251/1994) in case of infringement of the provisions of such law, any consumer or consumer association may request a court to issue a cease-and-desist order against any unfair commercial practice and seek damages suffered by reason of that practice (article 9i). Individual consumers or consumer associations may challenge any advertisement that may be considered aggressive or misleading.

Consumers and consumer associations may also file a complaint to the SEE challenging an advertisement for violating the self-regulatory code (HCACP). The filing of a complaint to the SEE does not exclude the possibility of also taking legal action.

Finally, in cases of unfair commercial practices, consumers may address a complaint to the Hellenic Consumers' Ombudsman, which is an independent authority for extrajudicial dispute resolution in the area of consumer disputes.

- 10** Which party bears the burden of proof?

According to the general rule on civil proceedings, the plaintiff bears the burden of proof (article 338 of Code of Civil Procedure). However, article 9i of Law No. 2251/1994 on Consumer Protection provides for the possibility of an exception to that rule. If the court deems it necessary, based on the circumstances of the case at hand and the interests of litigant parties, it may oblige the alleged infringer to present to court evidence supporting the accuracy of its advertising claims. If the evidence requested is not submitted or is deemed insufficient, the allegations of the plaintiff are considered to be proven. Such potential reversal of the burden of proof provided under the Law on Consumer Protection in favour of consumers and consumer associations should apply in analogy in legal disputes among competitors, according to the opinion expressed by scholars.

- 11** What remedies may the courts or other adjudicators grant?

The remedies available when following the judicial route are the cease and desist order, the publication of the court decision and the publication of a corrective advertisement or corrective declaration and indemnity in case of damages suffered due to the illegal advertisement. For the payment of indemnity the plaintiff must prove that infringement occurred by intention or negligence of the infringer.

The SEE addresses recommendations for the cessation or modification of the advertisement. If the infringer does not comply, it may request the media to interrupt the broadcasting or publication of the advertisement in question.

The Consumers' Ombudsman does not issue legally binding rulings but only recommendations against traders who violate consumer laws.

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

For actions filed before civil courts, a first instance court decision is normally issued within 18–24 months from filing. If action is filed by a consumer association, the decision may be issued within 12–18 months from filing. In case of an injunction petition, the court decision is normally issued within six to eight months from filing.

By contrast, the SEE issues its decision on the day of the hearing, which must take place within six days after the notification of the complaint to the alleged infringer.

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

Costs for civil proceedings of this kind normally range from €7,000–€15,000. If the action includes a claim for damages, a judicial fee of

1.1 per cent on the indemnity requested is also payable. For proceedings before the SEE costs normally range from €2,000 to €3,000. The party challenging a marketing communication before the SEE must pay a fee of €750 to have his or her complaint examined by the first degree committee. A fee of €1,300 is payable to the SEE if an appeal is filed before the second degree committee.

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

Court decisions of first instance civil courts may be appealed before the Court of Appeals.

Decisions of the SEE's first degree committee may be appealed before the second degree committee. Nevertheless, the decisions of first degree committee are immediately binding and enforceable.

Misleading advertising

15 How is editorial content differentiated from advertising?

The use of editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer qualifies as a misleading commercial practice per se and is therefore forbidden under the Law on Consumer Protection (article 9f).

Apart from the above provision that covers all media, hidden commercial communication is prohibited in audio-visual media, according to the specific provision of article 10, paragraph 1a of Presidential Decree No. 109/2010, which implemented into Greek Law Directive No. 2010/13/EU on Audiovisual Media Services. The same ban is valid for radio advertising.

Finally, sponsoring and product placement in audio-visual media and radio should also be clearly identified.

The same rule is set out in article 9 of the HCACP, according to which all marketing communications should be clearly distinguishable as such, whatever their form and whatever the medium used. When an advertisement appears in a medium containing news or editorial matter, it should be presented so that it is readily recognisable as an advertisement and the identity of the advertiser should be apparent.

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

Under the Law on Consumer Protection, the common advertising practice of making statements that obviously exaggerate (puffery) cannot be considered as a misleading commercial practice. Nevertheless, Greek law does not define the criteria under which puffery is distinguished from the advertising claims that require substantiation.

Some guidance on this issue can be found in the Best Practice Recommendation on claims substantiation issued by the SEE. According to the recommendation, advertising claims that the average consumer is likely to regard as objective and that can be verified require substantiation. On the contrary, puffery is a claim that the average consumer cannot treat seriously.

An example of this difference is provided in the recommendation: the claim that a glass-cleaning liquid 'is the most economic in its category' is verifiable and requires substantiation, while the claim that 'it makes glass invisible' is obvious puffery.

17 What are the general rules regarding misleading advertising?

Must all material information be disclosed? Are disclaimers and footnotes permissible?

Misleading advertising is forbidden by the Law on Consumer Protection. According to the general rule provided in article 9d of the law, a commercial practice (including marketing communication)

is regarded as misleading if it contains false information and is therefore untruthful or if, in any way, including its total presentation, it deceives or is likely to deceive the average consumer, even if the information is objectively correct in relation to one or more pieces of material information about the product or service, and in either case leads or is likely to lead the average consumer to make a transactional decision that he or she would not have taken otherwise.

Under article 9e of the law, it is considered misleading also to carry out the commercial practice of omitting material information that the average consumer needs to make a well-founded transactional decision, thereby causing or being likely to cause the consumer to make a decision that he or she would not have taken otherwise.

The above-mentioned general provisions are supplemented by a blacklist of 31 commercial practices that are considered misleading per se (article 9f).

The basic principle of truthfulness in advertising is also adopted in the HCACP (article 5).

Disclaimers and footnotes are permitted to the extent that they do not mislead the average consumer, namely they are used to clarify the advertising claim and do not contradict it or alter the general impression created by the main body of the advertisement.

With regard to TV commercials, the SEE has defined that the superimposed text should occupy 5 per cent of the screen size and they should be timed (the minimum is two words per second) to ensure that they are legible.

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?

According to the recommendation on claims substantiation issued by the SEE, the advertiser has the burden to prove the truth or accuracy of the advertising claim. Therefore, before publishing or broadcasting an advertisement, the advertiser must have proof available to substantiate the objective (verifiable) advertising claims. According to article 8 of the HCACP, such substantiation should be available without delay and upon request of the SEE committee, which will examine a complaint challenging the advertisement.

The type of proof required depends on the type of the advertising claim and the characteristics of the advertised product. The recommendation of the SEE stipulates the following means of proof: statistical surveys, market shares or sales data, certificates or accreditations issued by the competent public authorities, and scientific studies and testimonials (though testimonials are accepted only if they are supplemented by impartial evidence).

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

There is no specific legal provision setting requirements with respect to advertising claims based on the results of surveys; therefore the relevant issue would fall within the basic principle of creating truthful marketing communications.

In the framework of advertising self-regulation, the general rule is that marketing communications should not misuse research results and should not present statistics in such a way as to exaggerate the validity of a product claim (articles 6a and 6b of the HCACP).

Furthermore, the recommendation of the SEE sets forth the requirements that should be met in order for statistical surveys to be accepted as proof for substantiating advertising claims that have been challenged before the SEE committees.

The survey must be performed by a company that is a member of the Association of Greek Market and Opinion Research Companies or ESOMAR.

If the advertiser does not submit the full text of the survey, it must submit, as a minimum requirement, the methodology applied and an executive summary of the survey.

In any case, the sample of the survey must be adequate in size and appropriate. In addition, the statistical methods or models applied in the survey must be generally accepted.

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

Under article 9, paragraph 2 of the Law on Consumer Protection, comparative advertising is permitted (including the option to identify a specific competitor) if the following conditions are met:

- it is not misleading;
- it compares goods or services meeting the same needs or intended for the same purpose;
- it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- it does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- for products with designation of origin, it relates in each case to products with the same designation;
- it does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- it does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name; and
- 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.

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

The recommendation of the SEE lays down the requirements with respect to proof of establishment claims (or 'tests prove' claims):

- underlying tests or studies must be recent and not contradicted by other newer studies;
- when appropriate, these studies must have been conducted by a competent and reliable organisation;
- depending on the nature and the object of the study, it must include blind tests, control groups, placebos (fake medicines) and adequate participants to achieve a statistically significant result; and
- the scientific studies must be evaluated based on standards generally accepted in the relevant scientific field.

Finally, the HCACP provides that research results or quotations from technical and scientific publications should not be misused in commercial communications (eg, inaccurately reported).

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

No special rules apply to demonstrations of product performance. In the framework of the general principle of truthfulness, any such demonstration must present the actual qualities of the product without exaggerating its performance.

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

Any claim that a trader or a product has been approved, endorsed or authorised by a public authority or private body, when actually he, she or it has not, qualifies as a misleading commercial practice per se and is forbidden (article 9f of the Law on Consumer Protection).

In addition, Ministerial Decision No. F1-218/30.01.1998 forbids the use of the term 'ecological' or 'eco' in advertising of goods, unless said goods are granted the EU Ecolabel, according to the EC Regulation No. 66/2010.

In the framework of the civil law provisions concerning the protection of the name, image or likeness of individuals from unauthorised commercial use, the unauthorised use of testimonials and endorsements is outlawed.

Under special legislation on the advertising of medicines, endorsements and testimonials must not be used in this sector of commercial communications.

According to the HCACP guidelines, marketing communications should not contain or refer to any testimonial or endorsement unless it is genuine and verifiable. Testimonials or endorsements that have become obsolete or misleading with the passage of time should not be used (article 13).

24 Are there special rules for advertising guarantees?

Any advertising claim that presents rights given to consumers by law (such as the two-year guarantee provided by law when new goods are purchased) as a distinctive feature of the trader's offer is considered misleading per se (article 9f of the Law on Consumer Protection).

The HCACP provides similar guidance to advertisers, namely that a marketing communication should not state or imply that a 'guarantee', 'warranty' or other expression having substantially the same meaning, offers the consumer rights in addition to those provided by law when it does not. The terms of any guarantee or warranty, including the name and address of the guarantor, should be easily available to the consumer and limitations on consumer rights or remedies, where permitted by law, should be clear (article 7).

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

Special provisions with regard to environmental claims in advertising can be found in the HCACP both in annex III and in chapter E. Chapter E is identical to the relevant chapter of the ICC Consolidated Code of Advertising Practice. Under article E1, strict criteria are laid down for the presentation of environmental claims, such as the need for a higher degree of proof for its substantiation.

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

According to Ministerial Decision Z1-404/2001 (by which Greek Law complied with Directive 1998/6/EU), advertisements that include the price of goods are required to indicate both the sale price and the unit price, unless the latter is identical to the selling price. The sale price should be indicated including VAT and other taxes (total price).

With regard to the claim that something is offered for free or without charge (or similar expressions), the following rules apply: said claims are permissible only if the consumer does not have to pay anything other than the unavoidable cost of responding to the commercial practice and of collecting or paying for delivery of the item (article 9f of the Consumer Protection Law). A similar guideline has been introduced in the HCACP (article 7). Furthermore, if pricing or saving claims disseminate inaccurate or unproved information, the respective marketing communication may be considered misleading. The General Secretariat for Consumers has imposed fines for saving claims that omitted material information such as the fact that the discount was either valid only for a limited time period or was provided only under certain conditions, which were not mentioned in the advertisement and only few consumers could meet.

Finally, the Law on Consumer Protection (article 9, paragraph 3) provides that any comparative advertising referring to a special offer must indicate in a clear and unequivocal way the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the goods and services. Where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions shall apply must also be indicated.

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

No special rules apply with respect to these claims. Nevertheless, under certain circumstances it may be regarded as contradictory to the general principle of truthfulness in advertising to claim that a product is 'improved' if the change is totally insignificant or to claim that a product is 'new' if it has been in the market for a long time or if it is not made from new materials.

Prohibited and controlled advertising

28 What products and services may not be advertised?

It is illegal to advertise products and services that are themselves illegal (eg, narcotics) or acts that are forbidden by law (eg, acts of terrorism, racist acts).

29 Are certain advertising methods prohibited?

Advertising methods such as subliminal messages, shock tactics, dangerous sounds or visual effects qualify as unfair commercial practices, which are outlawed according to the Law on Consumer Protection (article 9c). In addition, subliminal advertising in audio-visual media and radio is expressly forbidden by law (article 10, paragraph 1b of Presidential Decree No. 109/2010 and article 3, paragraph 3 of the NCRTV Code of TV/radio advertising).

Unsolicited marketing communications (such as spam e-mails) may only be allowed in respect of consumers who have given their express prior consent (article 11 of Law No. 3471/2006 that implemented into Greek Law the Directive 2002/58/EU on the processing of personal data and protection of privacy in the electronic telecommunications sector). When such communications use harassment or involve persistent and undesirable pursuit of customers, they qualify as aggressive commercial practices and fall within the provisions of articles 9g and 9h of the Law on Consumer Protection.

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

A basic restriction, covering all means of advertising, is that marketing communications must not directly induce children to buy the advertised products or convince their parents or others to purchase said products (article 9h of the Law on Consumer Protection). Any advertisement of over-the-counter medicines must not be directed at children.

Several restrictions apply to advertising for children in audio-visual media.

According to article 10, paragraph 1b of Presidential Decree No. 109/2010, advertisements offered in all audiovisual media should not cause physical or moral detriment to minors. Therefore they should not:

- directly induce minors to buy or hire a product or service by exploiting their inexperience or credulity;
- directly encourage them to persuade their parents or others to purchase the goods or services being advertised;
- exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations; or

- encourage excessive intake of food and beverages that contain nutrients and substances such as fat, trans-fatty acids, salt or sodium, and sugars.

In addition, the following restrictions apply with regard to TV advertising and teleshopping:

- it is forbidden to advertise toys on TV between 07:00 and 22:00;
- it is forbidden to advertise war toys at all times;
- advertising for alcoholic beverages must not be aimed specifically at minors or, in particular, depict minors consuming these beverages; and
- teleshopping must not encourage minors to buy or rent the advertised products and services.

Analogous restrictions apply with regard to radio advertising, sponsoring and product placement in programmes offered on the radio.

Further guidelines on advertising for children are provided in annex I of the HCACP (eg, advertisements encouraging children to buy products by phone or mail order are not allowed).

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

Special rules provided in Ministerial Decision No Z1-699/2010 (by which Directive 2008/48/EU on credit agreements for consumers was implemented into Greek law) determine the conditions under which the advertising of credit products is permitted. According to this decision, any advertising concerning credit agreements that indicates an interest rate or any figures relating to the cost of the credit to the consumer must include standard information (eg, the total amount of credit, the annual percentage rate of charge) in a clear way by means of a representative example.

With regard to the advertising of investment services, all marketing communications addressed by the investment firm to clients or potential clients must be fair, clear and not misleading (article 25 of Law No. 3606/2007). In addition, marketing communications must be clearly identifiable as such. Further specifications on the method of disseminating information to investors (including marketing communications), are provided in article 4 of Decision No. 1/452/1.11.2007 of the Hellenic Capital Market Commission, by which Directive 2006/73/EU on operating conditions for investment firms was implemented into Greek law.

Similar restrictions apply also in respect to advertisements of UCITS such as mutual funds (article 79 of Law 4099/2012). Furthermore, any advertisement (printed or broadcast) of UCITS should include the following warning message in a clear and legible way: 'UCITS have no guaranteed performance and past performance does not guarantee future results.' Finally, all advertising materials of UCITS must be submitted to the Hellenic Capital Market Commission for review.

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

Any advertising of medicines that are available on medical prescription only or that contain substances defined as psychotropic or narcotic is prohibited.

Advertising of over-the-counter medicines is in principle permitted under Greek law but certain restrictions apply: any advertisement of an over-the-counter medicine must include the following information as a minimum: the name of the medicine, as well as the common name if the medicine contains only one active substance; the information necessary for the correct use of the medicine, such as the main therapeutic indications and main precautions for use; and the following warning message: 'The Ministry of Health and the National Organisation for Medicines advise you to read carefully the instructions and consult your doctor or pharmacist.' In

addition, advertising of over-the-counter medicines shall encourage their reasonable use and shall present them without exaggerating their properties and in accordance with the summary of product characteristics.

Any kind of advertising of medical services is prohibited in Greece, according to article 6 of Law No. 2194/1994. Nevertheless, doctors may post an announcement in the print media with some very basic information (doctor's name, title, office address and opening hours). Doctors may also create a webpage, the content of which should be truthful, accurate and comply with the standards of professional diligence (articles 17 and 18 of Law No. 3418/2005).

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

Articles 10 and 11 of the Greek Code of Food and Beverages and EU Regulation No. 1924/2006 on nutrition and health claims made on foods, which is enforceable in Greece, introduce specific restrictions on the advertising, presentation and labelling of food and beverages. Said legal instruments set detailed rules on the conditions that must be met in order for a foodstuff to be advertised as 'light', 'excellent/good source of protein', 'suitable for diet', 'low fat', 'fat free', etc. Advertisements directly or indirectly insinuating that a food product has therapeutic qualities are prohibited as misleading.

Further, annex VI of the HCACP sets detailed guidelines on food advertising that apply across all media (eg, that the advertisements concerned should not mislead consumers or induce excessive consumption of food). According to said annex, any nutritional claims must be supported by strong scientific findings and advertisements must reproduce with accuracy the true characteristics of the products, such as taste, size, content and nutritional value, without misleading consumers.

With regard to food products intended for use in energy-restricted diets for weight reduction (products replacing one or more daily meals), advertising and presentation of the products concerned shall not make any reference to the rate or amount of weight loss that may result from their use. Finally, certain restrictions are also imposed on the advertising of nutritional supplements.

34 What are the rules for advertising alcoholic beverages?

According to Greek Law (article 22 of PD 109/2010, article 9, paragraph 4 of the NCRTV Code of TV/radio advertising), advertising of alcoholic beverages in audiovisual media and radio (including teleshopping) shall not:

- be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- link the consumption of alcohol to enhanced physical performance or to driving;
- create the impression that the consumption of alcohol contributes to social or sexual success;
- claim that alcohol has therapeutic qualities or that it is a stimulant, sedative or means of resolving personal conflicts;
- encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; and
- place emphasis on the high alcoholic content being a positive quality of the beverages.

The Hellenic Association of Drinks Distributors has voluntarily adopted similar restrictions that apply across all media (including social media) and has introduced the slogan 'enjoy responsibly' to all marketing communications of spirits distributed in Greece. These restrictions can be found in annex V of the HCACP.

35 What are the rules for advertising tobacco products?

The advertising of tobacco products has been gradually prohibited in Greece, in conformity with EU directives and the World Health Organization Framework Convention on Tobacco Control (WHO FCTC). Initially (in 1992) all tobacco advertising and sponsorship was forbidden on TV and in 2005 this ban was extended to cover press and other printed publications, radio broadcasting and the internet. As a result, the main marketing tool of the tobacco industry became the direct marketing of cigarettes in cafés and clubs, where packs of new flavours or products were distributed to smokers for free. Law No. 3730/2008 banned this kind of direct promotion and also forbade the advertising and sale of tobacco products in schools, universities and hospitals. Additionally, a ministerial decision (issued on 30 June 2009) prohibited all forms of billboard advertising with effect from 1 September 2009. The same ministerial decision clarified that tobacco advertising shall be permitted only inside tobacco stores.

36 Are there special rules for advertising gambling?

Gambling services and advertising them is strictly regulated in Greece, mainly by Law No. 4002/2011.

One of the priorities of the legislation is to set the rules for the commercial communication of games of chance: Such communications must state the persons not allowed to gamble (eg, anyone below 21 years of age) and the helpline for gambling addiction, while any advertisement of credit offered to players that they can use for gambling is forbidden. The law, as a general principle, provides that such advertisements must provide a very strict level of consumer protection and must be responsible. They should not be aimed at strengthening the natural inclination of consumers to participate in games of chance by encouraging active participation in them, making the games commonplace or presenting a positive image of them in relation to the fact that the earnings may be used for purposes of general interest, or by increasing the attraction of gambling through misleading advertisements promising significant profits. According to the law, criminal sanctions (imprisonment of at least two years and a fine of between €100,000 and €200,000) shall be imposed on advertisers and advertising agencies if they promote illegal games of chance.

37 What are the rules for advertising lotteries?

Advertising of state lotteries is subject to restrictions similar to those applying to the advertising of games of chance (see question 36). Recently the Greek state assigned its exclusive right to operate and promote state lotteries to a consortium of private companies. No other entity is entitled to operate or advertise lotteries in Greece.

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

Promotional contests are an advertising tool used excessively in Greece. Said marketing practices are outlawed if:

- no prize is awarded (misleading, according to article 9f of Law on Consumer Protection);
- they create the false impression that the consumer has already won, will win, or will on doing a particular act win a prize, when in fact either there is no prize or taking any action in relation to claiming the prize is subject to the consumer paying money or incurring a cost (aggressive, according to article 9g of said Law).

In addition, the HCACP specifies the information that must be disclosed to the consumer before participation in a promotional prize contest:

- eligibility rules;
- costs associated with participation, other than for communication at or below standard rate (mail, telephone, etc);

- the number, value and nature of prizes to be awarded and whether a cash alternative may be substituted for a prize;
- in the case of a skill contest, the nature of the contest and the criteria for judging the entries;
- the selection procedure for the award of prizes;
- the closing date of the competition;
- when and how the results will be made available;
- whether the beneficiary may be liable to pay tax as a result of winning a prize;
- the time period during which prizes may be collected;
- where a jury is involved, the composition of the jury; and
- any intention to use winners or winning contributions in post-event activities.

In the framework of promotional contests that involve processing of personal data of participants, the sponsor (advertiser) would qualify as a personal data controller. Under Greek personal data law, the data controller must obtain the informed consent of the participant before any processing.

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

Article 11 of Presidential Decree No. 109/2010 sets forth the following restrictions with regard to commercial sponsorship in audiovisual media.

The basic principle is that the sponsor must respect the autonomy of the media service provider. Viewers must be clearly informed of the sponsorship at the beginning, during or at the end of the programmes. Sponsored programmes must not directly encourage the purchase or rental of goods or services. Said programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products and programmes addressed to minors may not be sponsored by alcoholic drinks. Sponsorship of programmes by undertakings whose activities include the manufacture or sale of medicines may promote the name or the image of the undertaking, but not specific medicines available on prescription. Sponsorship of news is not allowed. Similarly, the appearance of a sponsorship logo during children's programmes, documentaries and religious programmes is prohibited.

Analogous restrictions apply to product placement, which is an advertising method permitted in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, with the exception of programmes directed at children (article 12 of Presidential Decree No. 109/2010).

In the field of industry self-regulation, the HCACP includes an entire chapter on best practices in sponsorship (chapter B).

Update and trends

- Unsolicited marketing communications (through phone calls, SMS or e-mails) that violate the relevant law are frequent and have created major concern for consumers.
- The awareness about behavioural (targeted) advertising is increasing among the public. In addition, the Hellenic Personal Data Authority has recently made efforts to educate consumers with respect to the risks posed by this marketing strategy.
- Mobile advertising will gain more importance, since the use of smartphones and tablets is rapidly increasing in Greece. It is expected that some campaigns will be challenged, probably due to the violation of guidelines on disclaimers.

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

Political advertising

Greek law sets out detailed rules on advertising of both political parties and candidates during election campaigns (articles 44–47 of Presidential Decree No. 26/2012). Such rules basically relate to the forms of advertising (eg, outdoor advertising of MP candidates is forbidden). With regard to election advertising in TV and radio, the NCRTV publishes its guidelines for each election, which usually include restrictions such as: political advertisements should be clearly distinguishable from the TV or radio programme, and they should not insult other political parties or candidates.

Religious advertising

Religious advertising is not common in Greece, and is expressly prohibited on TV and radio (article 8, paragraph 1 of the NCRTV Code of TV and radio advertising).

Decency in advertising

Advertisements must not offend public morals. The Greek Supreme Administrative Court has ruled that a nude outdoor advertisement was unfair because it offended the standards of decency prevailing in Greece (Decision No. 1319/2004).

The issue of decency in advertisements offered by audiovisual media and radio is basically regulated in article 10 of Presidential Decree No. 109/2010 and article 4 of the NCRTV Code of TV and radio advertising. More specifically, broadcast advertisements shall respect human dignity and shall not include discriminations based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. In addition, advertisements should not play on consumers' superstitions and fear. Concerning the issue of the exploitation of superstitions, the NCRTV has repeatedly sanctioned TV stations for broadcasting advertisements of fortune-tellers, astrologers etc.



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Use of Greek antiquities in advertising

Under article 46, paragraph 4 of Law No. 3028/2002, the Greek state has a special right on photos, slides and depictions of Greek antiquities that is similar to copyright. As a result, any use of, for example, a photo of a Greek antiquity for advertising purposes (irrespective of the media used), is subject to a prior licence by the Greek Ministry of Culture and payment of the relevant fees.

Social media**41** Are there any rules particular to your jurisdiction pertaining to using social media for advertising?

With regard to online commercial communications, the rule that advertisements should be clearly identifiable as such is stipulated in article 5 of Presidential Decree No. 131/2003, which implemented into Greek Law the Directive 2000/31/EU (the e-Commerce Directive). Apart from this provision, there is no specific regulation governing marketing communications via social media; these being ruled by the provisions of the Law on Consumer Protection and the general principles of legal, decent, honest, truthful and socially responsible advertising.

It is noted that the HCACP includes a special chapter on advertising and communication using electronic media and the telephone (chapter D).

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

Advertising through social media is a relatively new tool in the Greek advertising industry. This probably explains the fact that, to our knowledge, consumer complaints with respect to the unlawful use of social media by advertisers have not yet been submitted to regulators.

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

In the framework of advertising through social media, the basic rule is that the user or subscriber's informed consent must be obtained before:

- any personal data is processed by the advertiser (Law No. 2472/2997 on the protection of personal data);
- any unsolicited electronic communication is addressed to the user or subscriber (article 11 of Law No. 3471/2006 on the protection of personal data and privacy in the electronic telecommunications sector); and
- any access to information that is already stored on a computer system (ie, installation of 'cookies') takes place (article 5, paragraph 4 of Law No. 3471/2006 as amended in order to comply with Directive 2009/136/EU (the e-privacy directive).

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