



Recent Global Advertising Law Developments

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GALA

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Argentina

Draft Bill No. 1358/20, "Legal Regime for Influencers," which was submitted for preliminary approval of the Senate on June 30, 2020, is currently under study in two Congressional committees. If this bill is passed, influencers' activity will be regulated by law and disclosures such as "PaidAD" won't be optional anymore. In addition, in August 2020, the Advertising Self Regulatory Council issued a Guide called, "Influencers — Guide for use in Commercial Communication." New rules are also being considered for food labeling. If passed, the rules will significantly restrict the ability of marketers to advertise food, especially to children, and will prohibit the use of promotional gifts and contests and sweepstakes as an incentive in connection with the marketing of foods covered by the rules.

Australia

On 10 February 2020, the Australian Competition and Consumer Commission ("ACCC") was directed by the Australian Government to conduct an inquiry into markets for the supply of digital advertising technology services and digital advertising agency services. The ACCC is required to provide an interim report to the Government by 31 December 2020 and a final report by 31 August 2021. The ACCC published an issues paper on 10 March 2020 which set out the inquiry's focus and included such issues as the competitiveness and efficiency of markets for the supply of digital advertising technology services and digital advertising agency services, the availability to advertisers, publishers and other market participants of information on activities in those markets, and the distribution of digital display advertising expenditure between publishers, digital advertising technology services providers and advertising agencies. More recently 1 July 2020 saw New South Wales ("NSW"), the most populous State of Australia with Sydney as its capital city, bring into effect the Community Gaming Act 2018 and the Community Gaming Regulations 2020. The effect of this legislation fundamentally changes the way trade promotion games of chance (commonly referred to elsewhere as "sweepstakes") are regulated in NSW. Some of the key changes include replacing "permits" with "authorities" of varying duration (1, 3 or 5 years), increasing the dollar value threshold for requiring an "authority" for a single trade promotion game of chance to a total prize pool of more than AU\$10,000 and the introduction of a new penalty regime in the form of penalty notices for minor breaches. Lastly, in September 2020 the Australian Association of National Advertisers introduced a new Code of Ethics ("Code") which comes into effect on 1 February 2021. The new Code will replace the existing Code administered by Ad Standards and forms the backbone of Australia's advertising industry self-regulatory system. Changes to the Code include the introduction of an obligation on advertisers to avoid harm to consumers and society, the prohibition of unlawful gender stereotypes and the imposition of a positive obligation on influencers to disclose commercial relationships clearly, upfront and in a manner that can be easily understood.

Austria

Since the beginning of 2020, online advertising services provided for a fee are subject to a 5% digital tax. The tax liability comprises advertising services like banners, key-word advertising, and similar services if they can be received on the device of an Austrian user and are directed also to Austrian

users in terms of content and design. Tax liability is restricted to companies with a turnover of at least € 750 million worldwide and € 25 million in Austria.

Brazil

On September 18, 2020, the Brazilian Data Privacy Law ("LGPD") came into force. Even though the Brazilian Data Protection Authority will only start applying penalties in August 2021, Brazilian courts have already started to apply penalties — such as compensation for moral damages — based on the LGPD, for cases in which personal data was being used without consent from the subjects for advertising purposes.

Bulgaria

The Interactive Advertising Bureau Bulgaria, the Bulgarian Association of Advertisers, and the Bulgarian Association of Communication Agencies have agreed to jointly monitor internet ads in Bulgaria with the aim to reduce fraudulent traffic, fraudulent impressions, and other fraud and flaws in the digital advertising supply chain, which will inevitably improve user experience and penetration of digital ads. The latter initiative could result in the creation of a digital advertising self-regulation mechanism that will supplement the general self-regulation mechanism implemented by the National Council for Self-regulation (www.nss-bg.org/en), which has already proven to be ineffective.

Canada

New private sector privacy laws have been introduced in Ontario and Quebec, bringing EU-style rights and governance, as well as mandatory breach notification, a private right of action, and significant administrative monetary penalties for non-compliance. Incoming changes to broadcasting regulation will expand existing oversight to online entertainment streaming services, likely capturing both over the top subscription services and original content published by social media platforms. The broadcasting regulator will have significant discretion to implement "conditions of service," such as financial contributions to the Canadian creative industry, and operational obligations aimed at promoting diverse, Canadian content.

Chile

The draft legislation for Drugs (Drugs Law II or Ley de fármacos II) is a modification of the Chilean Sanitary Code that has been discussed in the Chilean Congress since its presentation in 2015. The long legislative process of the proposed legislation is now reaching its final part, with a Mixed Commission (formed by deputies and senators) preparing a final text that will be voted by both the Chamber of Deputies and the Senate. The Commission approved the following text as a part of the new article 100 of the definitive bill: "notwithstanding the patient and professional information brochures, the advertising and any other activities that lead to consumption of pharmaceutical products are prohibited." This prohibition heavily modifies the current text of the Sanitary Code that establishes that: "The advertising and the others activities destined to raise awareness in the consumers about a pharmaceutical product will only be permitted regarding OTC drugs and in the terms of the respective Sanitary Registration." Even when the proposed bill is still being revised by the Commission, it is expected to be submitted for Congressional approval during 2020.

China

Personal information protection and the right to privacy have

for the first time been codified as clear rights by being included in the new Chinese Civil Code, which will come into force on January 1, 2021. There has been a new regulatory and enforcement focus on live-stream marketing and ads on mobile apps and social media accounts, including new rules and enhanced supervision by relevant agencies. There are also new rules driven by COVID-19; advertisements for all drugs, medical devices, health foods, and “foods for special medical purposes” must get prior approval, and health food advertisements must not make any disease prevention or treatment claims.

Colombia

The Colombian Consumers Protection Authority issued a document called: “Good Practices Guide for Advertising through Influencers.” The importance of the Guide is that it addresses how the Consumer Protection Statute applies to influencer advertising activities.

Cyprus

The Consumer Protection Service amended its 2018 directive regarding the advertising of housing loans. The directive required the use of a representative example regarding the instalments to be paid for the repayment of the loan on the assumption that the loan amount was EUR 100,000. With the new directive, the mentioned criteria are abolished and the representative example to be used by credit institutions when advertising housing loans should also take into account factors such as the characteristics the average duration and total amount of credit advertised, the characteristics of the market targeted by the advertisement, and the expected customer base. Following a proposal by the Ministry of Energy, Commerce and Industry, the Council of Ministers approved a bill which unifies seven existing laws regulating issues of consumer protection. The bill, which is pending to be approved by the Parliament, contains provisions which will enable the Consumer Protection Service to file applications to court for the issuance of prohibition decrees in cases of infringement. In addition, the bill introduces increased obligations on the seller to include the pre-discounted price of goods during sales together with the discounted price to combat misleading advertising. Another obligation contained in the bill is for service providers to display the pricing of the main services they provide.

Czech Republic

We have the first signs of regulation of Native Advertising in the Rules of Cooperation between the Sponsor and the Influencer, which were issued by a self-regulatory body. In addition, following the new Act on Medical Devices, the Chamber of Deputies is also discussing an amendment to the Act on the Regulation of Advertising, which introduces the regulation of advertising for medical devices and in vitro diagnostic medical devices. A completely new bill aimed at video-sharing platforms has also been delivered to the Czech Parliament. In the Czech Republic, current legal regulation of media services on the Internet is contained in several laws, which, however, do not sufficiently cover the platforms for sharing user-created video recordings. Platforms such as YouTube, Instagram or TikTok are thus significantly favoured over traditional media or audio-visual media services on demand (i.e. Netflix or HBO GO), which are subject to a number of obligations. However, given the current situation related to the COVID-19 epidemic, it is difficult to predict when

and in which wording the proposed bill will finally be approved (if approved at all).

Denmark

As of the 1st of July 2020 a new marketing prohibition has been introduced into the Danish Marketing Act to protect consumers from getting drawn into spirals of debt. The prohibition aims at consumer loan companies and will limit their access to market their services greatly. Firstly it will be prohibited to market any consumer loans that has an annual percentage rate (APR) at 25% or above. Secondly the consumer credit companies are prohibited from marketing the company itself or any consumer loan deals (including loans with an APR below 25%) when it happens in connection to adverts of gambling or gambling providers. It is thus e.g. prohibited for a consumer loan company to appear in an advert during the commercial break for a TV program sponsored by a gambling provider.

Dominican Republic

In September 2020, it was introduced to Congress a Bill of Media law to rule on public spectacles, movies, radio, tv and internet. The bill includes right to be forgotten and rules on the defamation legal process and liability of the media.

Finland

In Finland, extended enforcement powers to the consumer protection authorities were introduced. Such powers include extended investigatory powers, including dawn raids at a company's premises and the right to order penalty payments. Also now, as a rule, the prohibitions issued by the consumer authorities will be in force until the Market Court revokes such prohibition.

France

Linear TV channels are now allowed to broadcast ads promoting movies to be broadcast in cinemas. This new rule is to be implemented for a test period of 18 months. French national channels are also now allowed to broadcast, at the same time, different ads depending on where the targeted audience is located. The French SRO updated its Guidelines pertaining to Sustainable Development; the main change is the scope of these Guidelines, which has been extended to all ads, irrespective of whether they contain a direct or indirect “sustainable development” claim. The looming concerns are sustainable development and environment protection, which inspire attempts to legislate to restrict or ban advertising for products and services that are considered harmful for the environment or health, e.g., air travel, automobiles and certain categories of food products, on all media. A draft bill is in the making and should be examined by the Government in December 2020.

Germany

While in the past the risk of sending out unsolicited emails was more or less limited to receiving a warning letter requesting a cease-and-desist letter with the contractual promise to pay a penalty in case of a future violation, this risk has substantially changed under the GDPR. The sponsor of a sweepstakes had not obtained a valid consent from all of the participants for the use of the data for promotional purposes. The sponsor sent out promotional emails which were not related to the sweepstake to the participants. Accidentally the mingled personal data of entrants who had consented with personal data of entrants that

had not granted their consent. This was certainly a violation of the law against unfair trade practices prohibiting the sending out of promotional emails to recipients which had not granted explicit consent (for which a fine could not be issued). But the data protection authority also held that the processing of the personal data of the participants (sending out emails) for purposes other than the sweepstakes constituted a violation of the GDPR stipulation prohibiting the processing of the personal data without a legal basis, since the required consent for this purpose was not granted. They especially assumed that the organizational measures of the sponsor were not sufficient to prevent the illegal data processing and issued a fine of more than one million Euro.

Ghana

The Advertising Council Bill seeks to establish the Advertising Council granting it power to regulate the practice of advertising, register practitioners and license advertising companies in Ghana. This Bill has been pending before the Parliament since 2016. There was however some progress this year as the members of the Parliamentary Select Committee and the Advertising Association of Ghana had a dialogue in July with a view to expediting the process such that the Bill is passed into law so that advertising practitioners are guided accordingly.

Greece

New rules were passed in relation to outdoor advertising. In addition, the Hellenic Gaming Commission has opened the application procedure for the new online gambling licenses. On this occasion, the rules for the commercial communication of the games of chance have been updated.

Guatemala

The Trademark and Patents Office finally had a formal approach to start developing an e-system in which filings, mainly trademarks, can be made, which will hopefully be launched in the first quarter of 2021.

Honduras

An important fact that has resulted from the COVID-19 pandemic is to face the challenges generated by the backwardness of public institutions in terms of their workload. As a way to modernize the State of Honduras and to be able to give a "normal" course to the processes that citizens manage before these institutions, the Regulation on Electronic Government was promulgated.

Hong Kong

There has been zero movement over an 18 month period regarding legislation intended for outreach control in various areas of the market including particularly vaping. However, Article 43 of the New Security Law provides that the law enforcement authorities, including the Hong Kong Police, when handling any cases concerning offences endangering National Security, may search premises – including electronic devices – or require a person or a relevant service provider who has published (by any means including advertising) information that such publishing person must delete the information or provide assistance to the police.

Hungary

The Hungarian Competition Authority recently focused its attention on the commercial practices of multinational IT companies, resulting in larger fines than ever before. Both

Facebook and Viber were inspected. Both communicate that their services are free, however, in reality registration is a precondition of using them, where consumers must provide their personal data. Therefore, it can be argued that consumers generate profit for businesses by their user activity and personal data, and that they pay a certain consideration in such a form. Facebook was fined in the amount of approx. EUR 3,5 million for unfair commercial practices, and the procedure against Viber is still ongoing. A fine of approx. EUR 7 million was also imposed on Booking.com for communicating in its ads that consumers may withdraw from their booking free of charge, however, such option was available in many cases only for a limited period of time and for a higher price. A procedure is ongoing against TikTok, as the authority suspects that TikTok has not made available the information on the most important conditions of the operation of the platform. The authority is also examining whether TikTok acts with the expected professional diligence in order to moderate the exposure of children and minors to advertisements when using the app.

India

The Consumer Protection Act, 2019, which came into effect on July 20, 2020, established the Central Consumer Protection Authority (CCPA). The objective of the CCPA is to promote, protect, and enforce the rights of consumers as a class. It will be empowered to conduct investigations into violations of consumer rights and institute complaints, order the recall of unsafe goods and services, order the discontinuation of unfair trade practices and misleading advertisements, and impose penalties on manufacturers, endorsers, and publishers of misleading advertisements.

Ireland

A Commencement Order to give effect to the Gaming and Lotteries (Amendment) Act 2019 has been signed in June 2020 and the Act will come into operation on 1 December 2020. In a long sought for change for brands and marketing agencies who run prize draws as part of marketing campaigns marketing promotions featuring prize draws will not need a licence or permit, provided that the total value of the prizes is €2,500 or less and there is no charge for taking part in the lottery or redeeming the prize (aside from the purchase price of the product).

Israel

The Israeli parliament, the Knesset, is in the process of legislating a law titled the "Don't Call Me Law." If the bill matures to legislation, the government will form a database with a list of individuals who are barred from receiving marketing phone calls. The bill is designed to protect senior citizens and other targeted individuals from receiving aggressive marketing calls.

Italy

A new law has been adopted in Italy regulating ambush marketing for the first time. Before the adoption of such law, besides the enforcement of general provisions of law (mainly those on advertising and unfair practices), temporary provisions had been issued on a case-by-case basis to prevent ambush marketing in connection with specific events (e.g., the 2006 Winter Olympics in Turin and the Milan Expo in 2015). The new law also includes provisions targeting specific events (i.e., the Olympic and Paralympic Winter Games Milan Cortina 2026 and the ATP Turin 2021–2025 finals). In case of

breach, monetary fines may be imposed by the Italian Competition Authority from EUR 100.000 to EUR 2,5 million.

Luxembourg

The Luxembourg Government has recently presented a long-awaited draft bill of law (Bill n°7650) which will extend legal actions initiated by consumers. As its direct neighbours (i.e. France and Germany), the bill aims to introduce a class action procedure allowing for the compensation of damages suffered by a group of consumers resulting from an illicit behaviour or practice of a professional. The bill is still under discussion but it is believed that the law will be voted before the Parliament in the course of 2021.

Mexico

A new Federal Law on the Protection of Industrial Property ("FLPIP") and a new Law on Quality Infrastructure ("LQI") entered into force in 2020. Among other things, while FLIP prohibits disparaging another party's products, it permits comparative advertising when the purpose is to truthfully inform the public. The LOI allows for the authorities to now stop the sale of products due to false advertising. The mandatory Technical Standard "NOM-051-SCFI/SSA1-2010" was also modified in 2020 and it now states that, starting in April 2021, unhealthy packaged foods or non-alcoholic beverages shall not include in their packaging characters directed to minors, animations, animated cartoons, celebrities, athletes, pets, interactive elements such as games or digital downloads. The new regulations to the Federal Law on Consumer Protection, which entered into force in 2020, provide specific details on how to comply with the new law.

Netherlands

On 11 February 2020, the Netherlands Authority for Consumers and Markets ("ACM") published its guidelines, "Protection of online consumers." The guidelines are aimed to mark the boundaries of where online persuasion turns into deception. Two examples of guidance offered in the guidelines: (1) online reviews and likes must be real, and not fictional or manipulated, and (2) it needs to be clear to consumers if the offer is personalized. On 22 September 2020, the ACM published for consultation its guidelines for sustainability claims that businesses use when selling their products and services. The guidelines contain five rules of thumb for sustainability claims that businesses use when selling their products and services: (1) make clear what sustainability benefit the product offers, (2) substantiate your sustainability claims with facts, and keep them up-to-date, (3) comparisons with other products, services, or companies must be fair, (4) be honest and specific about your company's efforts with regard to sustainability, and (5) make sure that visual claims and labels are useful to consumers, not confusing. On 15 October 2020, the Advertising Code for Alcohol-free and Alcohol Low Beer came into force. The code states, among other things, that advertising for alcohol-free and low-alcohol beer may not be aimed at young people under the age of 18, that advertising for low-alcohol beer may not be aimed at pregnant women, and that advertising for low-alcohol beer may not be linked to active traffic participation. Low-alcohol beer is beer containing up to 0.5% of alcohol.

New Zealand

Although advertising law in New Zealand has not undergone any significant changes this year, there has been increased

activity in a number of key areas, attracting the focus of New Zealand's Advertising Standard's Authority (the industry organisation for the self-regulation of advertising in New Zealand). As a result of the COVID-19 pandemic, the ASA has published a number of decisions and detailed guidance relating to the application of Advertising Standards Code rules on the substantiation of Therapeutic Purpose and Health Benefit claims in advertisements. The ASA has also released specific guidance on the identification of Influencer advertising content, due to growing awareness of the role of Influencers in advertising. Advocacy advertising has also been a topical area, with advertisements relating to referenda held during the New Zealand 2020 General Election (concerning euthanasia and cannabis legalisation) prompting numerous complaints from the public.

Nicaragua

The Nicaraguan Trademark Law has been amended. The relevant changes include the reduction of the terms, creation of new official fees, and an increase in most of the existing official fees.

Nigeria

Following widespread protests across cities in different states of Nigeria, calling for an end to police brutality and bad governance, the Federal Government appears to have reawakened moves to clamp down on social media freedom in the country. This targeted action against social media by the Government is considered by many as a direct move to undermine freedom of expression and the possibility of future protests — contrary to the Fundamental Rights of citizens enshrined in the 1999 Constitution which is the country's number one law. There have been increased talks about the resuscitation of two existing bills, the "Protection from Internet Falsehood and Manipulation Bill" and the "National Commission for the Prohibition of Hate Speech Bill," which address issues of "disinformation," "hate speech," and "fake news" currently circulating freely on social media. As Nigeria currently occupies the position of Africa's largest internet market, the use of internet-enabled devices is constantly on the rise, implying that online advocacy will not whittle down soon. However, the awareness of our digital rights is key to forestalling any future violations by regressive laws aimed at regulating online expression.

Norway

We have seen updated rules on sales-advertising in the form of a soft-law guidance from the Consumer Authority. The update regards to core of sales-advertising, namely what constitutes a real former-price when advertising sales and discounts. The new guidance states that the lowest price in the last 6 weeks constitutes the real former price in which the sales advertising may compare against when setting % discount. A much debated issue in Norway, whether discounted prices in customer loyalty schemes shall be taken into account in stating the lowest sales price the last 6 weeks, has been confirmed.

Paraguay

The most important update regarding advertising would be the recently issued Law No. 6534 – ON PROTECTION OF PERSONAL CREDIT INFORMATION. The new law prohibits the broadcasting or diffusion of certain information pertaining to persons explicitly individualized or that may be individualized, determines that every person has the right to be expressly

and clearly informed with respect to the purpose that shall be given to the his/her personal information and has to expressly consent to the attainment and utilization of such information, and that the preservation of personal data with respect to its owner shall not exceed five years from the date of the occurrence of the registered deed, by which the right to oblivion of credit data is expressly consecrated.

Peru

Although there have not been any changes in advertising law, regulatory authorities have had many issues regarding the control of advertising. Due to the emphasis on advertising issues through social networks, a very strong campaign has been carried out regarding the use of hashtags in Instagram or Facebook. In addition, the authorities have begun to exercise control over the online retail sales, requiring that the sale of perishable products indicate on the web the expiration dates of each product.

Poland

In July 2020, specialized courts were established dedicated to intellectual property cases, including copyright, advertising law and unfair competition. Cases involving copyright infringement, as well as unfair or prohibited advertising, and cases for the protection of personal rights, including the use of image in advertising, are ruled by such specialized courts, in accordance with a separate procedure introduced to the Polish Code of Civil Procedure. In addition, since January 2020, the regulation on the rules of advertising of dietary supplements, resulting from self-regulation has been in force. According to this self-regulation, good practices in this area will apply not only to the signatories, but all other entities advertising dietary supplements on television. According to the regulations an advertisement cannot mislead audiences by indicating therapeutic properties or any therapeutic use, may not refer to the results of studies without a clear indication of their source, and must be marked with graphic information with text: "Food supplement. Contains ingredients that support body functions by supplementing a normal diet. It has no therapeutic properties."

Portugal

In the context of the COVID-19 pandemic, the Consumer General Directorate ("DGC"), in joint cooperation with the Advertising Self-Regulating Entity, issued a number of recommendations in order to remind all professionals that advertising cannot falsely claim that a good or service is capable of curing or helping to prevent COVID-19. Otherwise, it would be considered a misleading practice under current legislation. In the same context, due to the necessity of reliable information through the media, the Government issued Decree-Law 20-A/2020, establishing an exceptional and temporary regime for the purchase of institutional advertising space that will allow advertising campaigns related to good practices and prevention measures associated with this pandemic, but also minimizes the loss of revenue by the media, creating conditions for them to maintain their activity. Finally, also noteworthy is the activity of DGC against Portuguese influencers, with 40 administrative offence proceedings regarding advertising messages and social network posts related to online gambling, alcoholic beverages, toys, gender equality, air fares, college trips and tobacco. The DGC had never taken any enforcement actions against influencers, so an increase in the monitoring of this type of advertising is notable and expected to continue.

Romania

Since the beginning of the COVID-19 outbreak, the regulations enacted by the Romanian legislator in the field of advertising were limited. In this respect, the Romanian government focused on the pandemic context and issued an Emergency Ordinance on the organization and conduct of public information campaigns in the context of the epidemiological situation caused by the spread of COVID-19. Another novelty, although it did not lead to the amendment of the legislation in the field of advertising, it contributed to the discussion of some legislative initiatives, is related to the phenomenon of influencer marketing campaigns. The already existing expansion of the online environment boosted by the pandemic switched the attention to the influencer marketing campaigns. This area of advertising does not benefit from specific binding rules, but is regulated by the primary laws and regulations that govern advertising practices in Romania. Express provisions regarding the legal regime for influencer marketing campaigns are provided only through the Code of Advertising Practice issued by the Romanian Advertising Council. The insufficiency of the regulation of influencer marketing campaigns by the Code of Advertising Practice consists in the fact that this document is only mandatory to the economic operators who are members of the Romanian Advertising Council. In this context, given the numerous concerns to establish specific legal provisions to regulate more rigorously this cutting-edge field, it is expected that in the near future changes will be made and new provisions will be adopted.

Russia

Russian Federal Antimonopoly Service (FAS Russia) continues to monitor the Life Sciences market players. In June 2020 FAS Russia issued a new guidance on advertising of medicines, medicine devices and services. On the one hand, this clarification confirmed the need to comply with a number of requirements, namely obtaining licenses to medicines, placing the special disclaimer on the package and advertising of a certain range of products only at medical events. On the other hand, it was pointed out by FAS Russia that the ways how to comply with the advertising requirements remains at the independent discretion of advertisers, which shows certain freedom in exercising rights by advertisers.

Singapore

The Personal Data Protection (Amendment) Bill was tabled in Parliament, and is expected to be passed by the end of 2020. The changes brought about by the Bill include a mandatory data breach notification, an expanded deemed consent framework, new exceptions to the express consent requirement, a right of data portability, and increased financial penalties.

Slovakia

The Ministry of Health of the Slovak Republic proposed a change to the Act on Narcotic and Psychotropic Substances, according to which CBD shall be excluded from the list of narcotic and psychotropic substances. If this change is adopted, the sale and advertising of CBD products will become legal in Slovakia. Meanwhile, as a reaction to the significant developments in the audiovisual media services market in the recent years, the Ministry of the Culture of the Slovak Republic currently works on a completely new Act on Audiovisual Services in order to implement the EU Directive 2018/1808 of 14 November 2018. Among other changes, the new legisla-

tion is expected to bring new regulation for TV and other audiovisual media platforms advertising.

South Africa

After a process that lasted several years, South Africa now finally has effective data protection legislation. Numerous sections of the Protection of Personal Information Act, 2013 (POPIA) commenced on 1 July 2020. Although the entire POPIA did not enter into force, most of the important substantive sections took effect. In order for organizations to get their compliance in order, there will be a 12 month phase in period. POPIA is quite similar to the (former) EU Data Protection Directive. All businesses that process personal information in South Africa should review their personal information processing and ensure that they will be able to comply with POPIA's requirements. Personal information is any information that relates to a living, identifiable natural person or an existing juristic person (e.g. a company). In order to process such information, one must comply with the information processing conditions contained in POPIA. Compliance with new law requires a comprehensive and ongoing information management process.

Spain

Legal pressure increased in 2020 for two economic sectors in Spain. In banking, the Spanish Central Bank published in September a new procedure that all banks and financial entities must follow before doing any advertising in the Spanish market. In the gambling sector, which due to the increase of on-line gambling during the lockdown was severely restricted, the government announced that restrictions will remain through a new specific regulation. Indeed, the new regulation (Royal Decree 958/2020) was finally published on November 4th and entered into force the next day (with some transitional periods for contracts signed under the former regulations). Several rules for the protection of minors as well as responsible gaming policies and gaming consumer protection were included. Restrictions on sponsorship and promotional activities both on the content and broadcasting hours were adopted. Sports clubs may not sponsor game activities on t-shirts and sports equipment and the inclusion of people or characters of public notoriety is forbidden. On the privacy side, the Spanish Data Protection Agency published a new guide for the use of cookies, changing its previous flexible position on this matter. Finally, the Spanish Supreme Court has rendered some important rulings regarding surreptitious advertising and product placement.

Sweden

There is work in process on various fronts with the purpose of introducing new and modernised legislation on consumer protection and marketing within coming years. For instance, a governmental report was delivered in 2020 proposing a new Consumer Protection Act on purchases and certain other agreements to enter into force on 1 January 2022. The new act is supposed to apply to consumers' purchases of goods, regardless of whether it takes place in a store or online and is suggested to include several new features, e.g., the allocation of warranties. Additionally, the Swedish government has issued directives for a review on how to implement the EU directive 2019/2161 (amending several EU directives relating to consumer protection) as regards the better enforcement and modernisation of Union consumer protection rules in Sweden."

Switzerland

Strong measures against unsolicited telephone marketing. Unsolicited telephone calls for marketing purposes will become more risky as from January 1, 2021: it will be a criminal offence to make use of information gathered in the course of an unsolicited telephone call (i.e. not only the call itself is illegal but also the subsequent making of use of the information gathered in the call). Telephone marketing will only be permitted from E.164 numbers registered in Switzerland to existing customers for products and/or services similar to those that the existing relationship pertains to. The new regulation is part of the Unfair Competition Act that has been revised in the course of the revision of the Telecommunications Act. It targets not only call center operators (often operating from outside of Switzerland) but also their customers (often insurance companies or telecom operators domiciled in Switzerland). Telephone numbers used for illegal telephone marketing can be revoked by OFCOM.

Turkey

In 2020, the Unfair Price Assessment Board was established and empowered for market surveillance to prevent exorbitant price increases and stockpiling practices of manufacturers, suppliers, and retail businesses. Due to COVID-19, the Advertisement Board focused on misleading health claims in the advertising of food supplements and imposed heavy sanctions to those advertising food supplements as preventing or curing COVID-19.

Ukraine

The Ukrainian Advertising Law 1996 is not the top priority for regulation by the Ukrainian Government. However, two important amendments were made to it; one addresses comparative advertising and the other covers gambling advertising. Late in 2019, the Advertising Law was amended with respect to regulation of comparative advertising. It established several key requirements that any comparative advertising should meet to qualify as lawful. In particular, the amended law permits comparing only similar goods that meet the same needs or are intended for the same purpose, or activity in the same industry, or the same type of activity; more than one material, comparable and representative features of similar products or activities, including the price, where information about them may influence a consumer's decision whether to buy a product, etc. Last summer, after more than a decade-long ban on gambling in Ukraine, a new Ukrainian Gambling Law was adopted. It is quite logical that it triggered relevant amendments to the Advertising Law. Now gambling advertising is limited. In the instances when gambling advertising is allowed, each promo item must be accompanied by or contain a warning "Participation in gambling may become addictive. Follow the rules (principles) of the responsible play."

United Arab Emirates

In general, the lockdown has deeply affected the media and advertising industry, which has meant few changes of note and little interesting movement judicially. The local production industry worked closely with the Abu Dhabi Film Commission and the Dubai Film and Television Commission to finalise the guidelines to re-open after our lockdown, and they continue to be refined as needed. Advertising regulation remains largely unchanged, with the focus of the government regulation shifting to medical advertising and in particular the role that

influencers have chosen to play in spreading information and materials regarding COVID-19 and general health and immune matters. We also await news on the restructuring of the regulatory authorities in the country, with the National Media Council slated for change and the Telecommunications Regulatory Authority being tasked with a more extensive oversight of digital media generally.

United Kingdom

Green issues are back at the top of the agenda, with The Guardian newspaper refusing to carry ads for oil companies, the Advertising Standards Authority (ASA) censuring Ryanair for “greenwashing claims,” and the Competition and Markets Authority launching its own action on Greenwashing. In addition, the government has launched a consultation about banning all advertising online for foods that are High in Fat, Sugar and Salt, following on from an existing consultation about extending the restrictions on their advertising on television. During the lockdown, concerns have grown about problem gambling online by people stuck in isolation. This has led to various initiatives, with ASA issuing more guidance and taking concerted action against gambling advertising.

United States

The Federal Trade Commission (“FTC”) and the states continue to aggressively enforce laws, rules, and regulations prohibiting false advertising, and in particular, have brought many cases challenging companies’ false and misleading claims related to the prevention, mitigation, and treatment of COVID-19. There has also been a steady stream of private class actions targeting false or misleading advertising claims, telephone and text message marketing, recurring billing (subscription) programs, and pricing and sales claims. The United States Supreme Court will review two cases, FTC v. Credit Bureau and FTC v. AMG Capital, that will determine the FTC’s ability to file suit in federal court for past conduct and obtain monetary redress in false

advertising and consumer protection cases. In addition, the FTC has indicated its intent to review certain of its guides and potentially codify them into binding rules that can be enforced with civil penalties, including the “Guides Concerning the Use of Endorsements and Testimonials in Advertising,” which govern influencer advertising, customer reviews, and social media marketing. At the state level, the California Consumer Privacy Act (“CCPA”) went into effect in 2020, and enforcement of the CCPA began with the California Attorney General’s office issuing warning letters and private plaintiffs filing lawsuits in connection with data breaches. In November, the California Privacy Rights Act was passed, which will broaden the privacy rights available to California consumers, impose heightened compliance obligations on covered businesses, and establish a new consumer privacy enforcement agency. The law will go into effect in 2023.

Uruguay

As of February 2021, packaged food will be required to include up to four black octagons on their labels when the nutritional values exceed certain technical parameters. The black octagons will indicate whether said food has “excess” of fats, saturated fats, sodium or sugars.

Zimbabwe

The Medicines Control Authority of Zimbabwe (MCAZ) has an authorization process for the marketing of new drugs, biologics, medical devices, over-the-counter medications, and other medicinal products. It mainly consists of the submission of an application form together with supporting documents. Thereafter the Licensing and Advertising Committee of MCAZ considers all advertising material submitted before approval. The advertisements should always contain certain standard requirements, e.g., standard warnings where applicable, and any other requirements as may be seen to be necessary by MCAZ.

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