



IP, Media & Technology

Heuking Kühn Lüer Wojtek

Heuking Kühn Lüer Wojtek is a law firm with lawyers, tax advisors and civil law notaries who practice in eight offices in Germany and in Zurich. The firm is one of the large independent German commercial law firms.

Our clients include medium-sized companies and large corporate groups, associations, public sector organizations and individuals with entrepreneurial interests. We collaborate across our offices and in project-based teams of specialists.

We support clients in their operative business and represent them before the courts and authorities

Patent Law **Intellectual Property**
Trademark Law and Design Law
Fair Trade Law and Advertising Law
Media Telecommunications
Media Law and Copyright Law
IT Law **Technology**
Outsourcing

The Practice Group

The IP, Media & Technology Practice Group is formed by some 40 legal experts practicing in relevant business sectors involving intellectual property, media, IT, fair trade and advertising, as well as data protection and privacy. We assist our clients in all business contexts, including, for instance, global sales expansions, trade shows, licensing or other cross-border activities.

We collaborate with specialized law firms in other countries and offer clients world-class services as a member in international networks, the World Services Group (**WSG**) and the Global Advertising Lawyers Alliance (**GALA**).

We cooperate closely with other practice groups of the firm, notably in matters involving transactional advice (M&A), antitrust issues, the interaction between tax and labor specialists, in particular on crossover topics such as the Law on Employee Inventions or Act against Restraints of Competition.

Compliance issues are becoming increasingly important in the areas of IP, media and technology. We develop compliance policies, assist in their implementation and advise in the event of infringements.



Our Expertise

In our IP, Media & Technology Practice Group, we advise clients in the following legal sectors:

Intellectual Property (IP) with the areas of

- Trademark Law and Design Law,
- Patent Law,
- Product Piracy,
- Fair Trade Law and Advertising Law.

The sector of **Media** covers

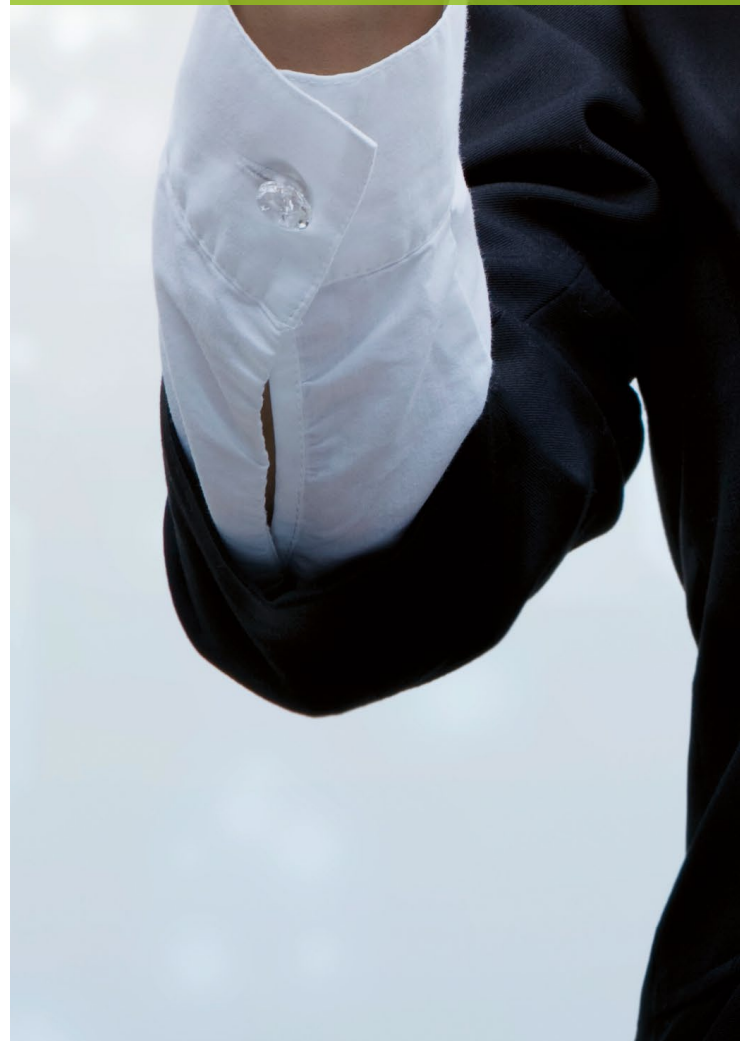
- Media Law (broadcast, press, web-based services) and Copyright Law, as well as
- Telecommunications.

The area of **Technology** comprises, in particular

- IT Law and
- Outsourcing.

The range of our services includes finally

- Data Protection,
- Gambling Law, and
- Pharma Law and Health Advertising.



The background features a large, abstract 3D geometric composition. It includes a prominent green shape with a white outline, resembling a stylized letter 'L' or a complex polygon, set against a light grey circular base. Other grey geometric forms, including a rectangular block and a curved surface, are visible, creating a sense of depth and modern design.

IP – Intellectual Property

Trademarks and Designs

Products and services reach world markets quickly, often even before the necessary protection has been obtained. We help our clients in developing this protection in time, and enforcing their IP rights.

This includes

- research on conflicting existing marks and company names or designations,
- registering trademarks and designs,
- the administration of international portfolios of intellectual property rights,
- the monitoring of the registration of similar intellectual property rights by third parties.

Our team assists with the registration of unusual trademark forms. In the event of a conflict with other rights, we negotiate demarcation solutions and represent clients before the German Patent and Trademark Office or the European Office for Harmonization in the Internal Market in order to enforce your interests in opposition and other proceedings.

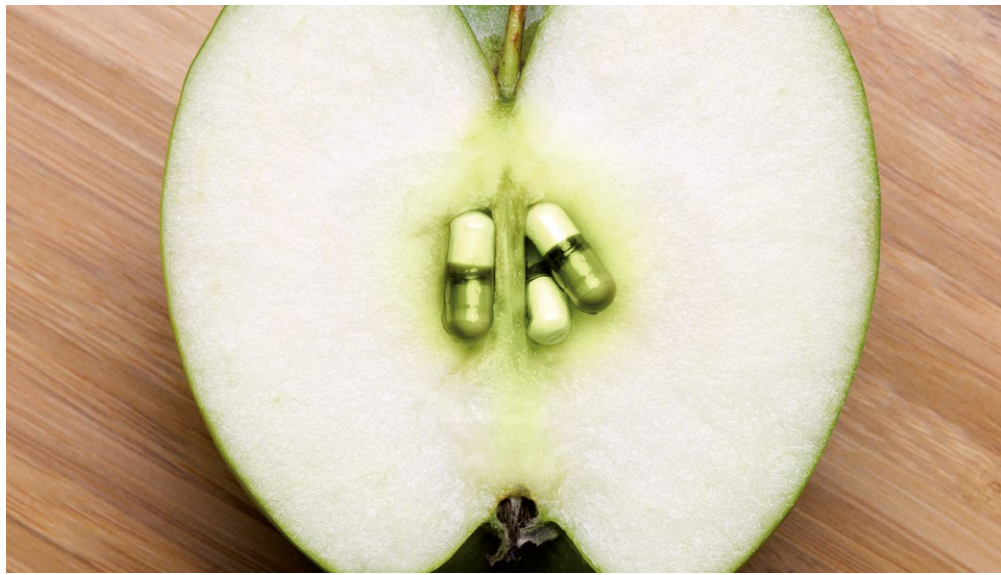
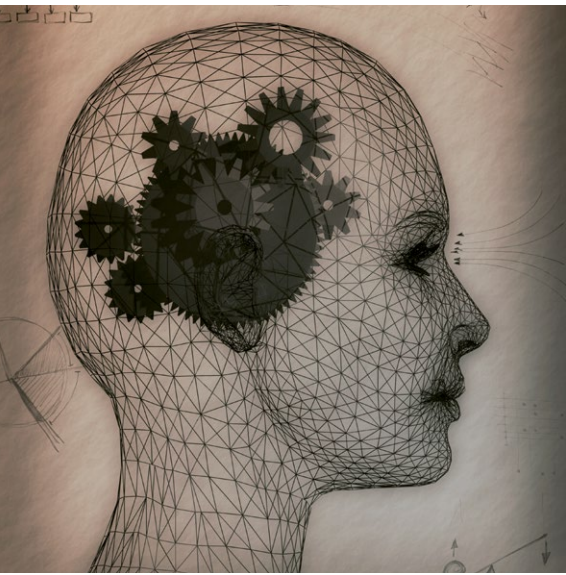
If a product is already on the market and a competitor finds its rights infringed upon, we work with you to develop a de-escalation and defense strategy.

- Should this lead to court proceedings, we will represent you in court. The lawyers in our Practice Group are reputable practitioners acting before all important German IP courts. They are familiar with the regional and local customs and court practices relating to preliminary injunction proceedings.
- For clients exposed to frequent counterfeiting issues, we prosecute infringers in specially tailored civil litigation strategies. We have implemented enforcement programs which help to avoid dilution of valuable rights in trademarks and designs.
- Additionally, we advise and represent you in domain disputes before national courts and arbitration courts and are also acting as arbitrators on arbitral panels.



Apart from litigation, we advise in contract matters, draft licensing agreements, manage licensing relationships, or assist in designing distribution systems: Together with the Distribution Law and Antitrust Law Practice Groups, we develop distribution agreements, for example for franchising or shop-in-store concepts.

Patents – Technical Know-how



Protecting technical innovation and product development allows for competitive advantage, and increases the shareholder value. The fight against counterfeit products and know-how theft in Germany and abroad provides short-term and long-term benefits to our clients.

Technical innovation often requires cooperation with a manufacturer. The relevant contracts will support any such collaboration and protect the inventor's rights. They must be practical and easy to monitor. We support you in drafting and negotiating these contracts and observe any legal and practical particularities of the German and international markets.

Manufacturers may be exposed to unjustified claims, or may be confronted with market dominating technical standards and powerful patent pools that can disrupt the business development. Reverting to antitrust claims and enforcing these in court may remove these obstacles.

In the European Union, each year about 1,400 patent infringement cases are filed. 1,100 of these are tried in Germany, 650 before the Düsseldorf Regional Court and 300 before the Mannheim Regional Court. Even many foreign parties prefer German courts to enforce their patents. In Germany, we are the right local partners to enforce your interests.

Product Piracy



Successful products are often copied which not only causes loss of revenue, but also poses a risk for the reputation of a product or its manufacturer which both often suffer from the poor quality of a counterfeit product.

A team of our Practice Group specializes in combating product piracy. This includes strategic consultation on technical product identification solutions, assisting manufacturers and prosecution authorities in successfully prosecuting the manufacturing and distribution of counterfeit goods, illegal parallel imports or other illegal activities. Illegal imports are prevented by Customs confiscation. We act as our clients' contact in the daily routine of customs confiscations in Germany, and are familiar with the processes and people involved: the courts, the responsible customs investigation offices, and the public prosecutor's offices.

We train customs employees on your products, the features of counterfeit items and the security technologies that you employ. We arrange criminal charges against infringers and represent you as a joint plaintiff in criminal proceedings. Together with our criminal law specialists, we perform adhesion procedures in order to remove the profits of criminal actions.

If there is evidence of larger inventories or imminent imports, we arrange for suitable access together with the investigating authorities. If requested, we will be present on site and use the findings obtained there: Thus, from tracking numbers on seized packages, we are able to identify an entire series of products used by counterfeiters. With the assistance of courier services, of the Customs Criminal Office, the Customs Investigation Offices and the Prosecutors' Offices, tons of counterfeit products have been confiscated, and several hundred investigations were initiated against resellers of counterfeit goods. The Federal Criminal Police Office recommended us as experts for product identification technologies, saving our clients' employees to have to appear in court.

Competition Law and Advertising Law



Advertising is competition, and competition is subject to legal rules. We help our clients to design product packaging, catalogues and promotional materials so as to meet regulatory requirements and avoid disputes and disruptions.

Business operations are subject to a variety of legal requirements. Whether it is telemarketing, cold calls in the workplace, advertising with sweepstakes, the use of certification marks, or advertising with test results: almost everything is possible - you just need to know how. Industry-specific regulations must be observed, in particular, in medicinal product advertising or the labeling of food, cosmetics and textiles.

The content of general terms and conditions, any price advertising, marketing by press, radio and in the internet, all that needs to comply with applicable law which requires truthful statements, transparency, and above all fair competition, for the benefit of consumers and other market participants. In Germany, this is monitored by associations and competitors entitled to pursue competitive violations by market participants.

The measures available in Germany are effective and respected.

If it is not possible to find a suitable out-of-court solution in a timely manner, violators may be exposed to a preliminary injunction within a few hours. Such court orders will oblige you to cease a given violation immediately. Careless remarks about competitors may lead to Orders for information, revocation or correction thus becoming a boomerang attack that can damage the reputation. We avoid legal injunctions with the right strategy and may, therefore, gain important time for you.

Advertising campaigns are often of a global dimension. Advertising agencies instruct us to review their customers' campaigns under applicable German law, or organize reviews by foreign counsel. We work together with 60 specialized and well-established firms in the Global Advertising Lawyers Alliance (GALA).



Media



Media Law and Copyright Law

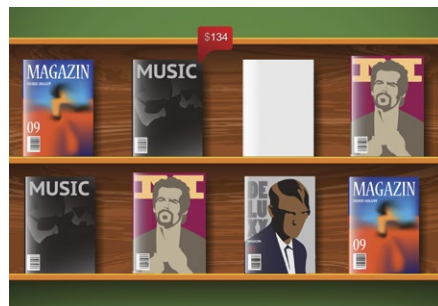
The media world has changed fundamentally. Convergence is now not only a buzzword at conferences, but represents a daily challenge for the media and creative industries.

New distribution methods for content have emerged in recent years which has prompted users to change their consumption habits. Audiovisual media are provided in classic linear form on TV or as on-demand services using the internet. Journalistic content is distributed in print versions as newspapers and magazines, or online as websites, or in apps. Users want opportunities to interact.

On this background, new legal issues have emerged: As a provider or user of a platform, which rights do you need to secure? What regulatory requirements must be complied with if you are providing a service or want to broadcast a program? Is it permitted to exclude the resale of eBooks or audio books?

We assist you in managing these challenges and support you in designing your offers on the market, securely navigating your project in the relevant legal environments.

In the world of new media, your rights can be violated easily - either by simply using your content without proper license, or by breaching privacy and other rights. The response to any infringement be it in the press, a blog, or any other media, requires careful consideration of the right strategy. Our specialists will assist you in making sure that your steps to enforce rights will not backfire.



Telecommunications



Telecommunications service providers move between the poles of European and national regulations, consumer protection, antitrust law, and streamlined contractual arrangements.

Drastic sanctions are impending in the case of non-compliance with regulatory and consumer protection rules. Issues may arise from illegal disconnection of a telephone service, invoicing and collection bans, penalties or the absorption of generated revenues.

Emerging technologies such as internet TV, the integration of media content in Web 2.0 or cloud computing require high bandwidth. Significant infrastructure investment is necessary to guarantee the functioning of a smooth collaboration between network operators, service providers and the public authorities. The refinancing of these infrastructure investments prompts questions of merger control and particularly issues of network neutrality. For the benefit of our clients, we bring together in these contexts our specialist knowledge and experience in the sectors of subsidy funding, public and private procurement, antitrust regulations, as well as telecommunications law.

We advise

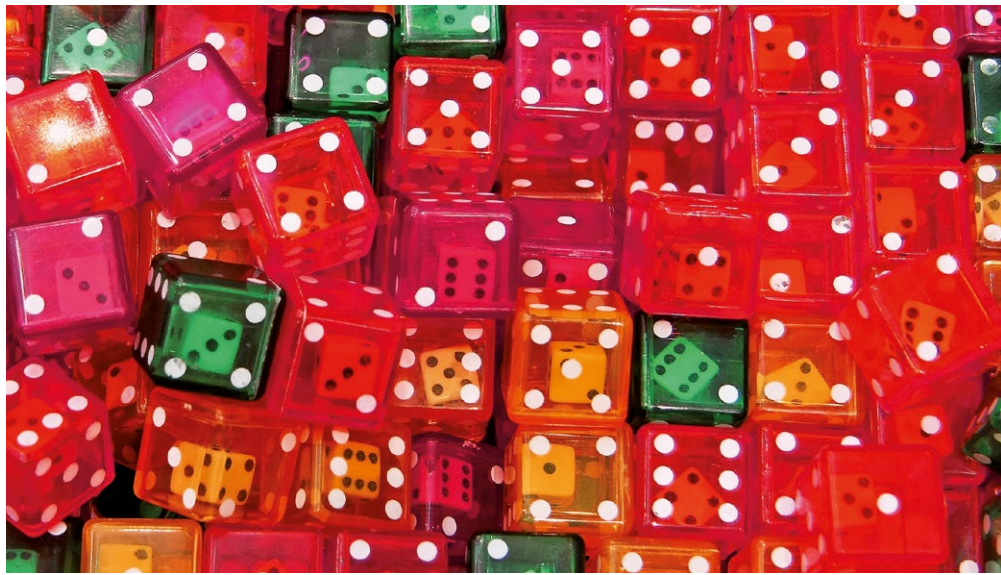
comprehensively on regulatory issues in telecommunications, including consultation on:

- access and fee regulation,
- billing and collection agreements,
- telephone number allocation and the design of business models involving legal use of telephone numbers, as well as defense against threats of telephone number cancellations,
- frequency allocation proceedings (mobile communications, fixed wireless, satellite), including consultation on business mergers resulting in a combination of frequencies,
- technical conformity requirements (e.g., in accordance with the Radio and Telecommunications Terminal Equipment Act and the Electromagnetic Compatibility Act);

Comprehensively on the drafting of telecommunications agreements, including advice on:

- merger agreements,
- legally compliant structures of business models in the telecommunications industry, in particular taking into account consumer protection requirements,
- the expansion of broadband cable networks,
- mobile payment services,
- mobile entertainment services (music portals, games, etc.).

Gambling and Gaming Law



Highly regulated gaming law in Germany has matured into an important interdisciplinary sector of business law. In September 2010, the European Court of Justice has ruled that the state-owned companies' monopoly of the German Lotto and Toto Block in the Interstate Gambling Treaty infringes upon European Union law. This has opened up new opportunities, in particular to foreign providers. The German Interstate Gambling Treaty has since provided for a moderate market opening in the area of sports betting. When it comes to practical implementation, however, there are more questions than answers.

We assist you in obtaining access to the German market and advise you on relevant complex issues of administrative, criminal and antitrust law.

Our Gaming and Betting Task Force takes into account the developments in European law that were prompted by the Commission Green Paper on Online Gambling, and it pursues your interests locally. The online distribution channel is in the foreground of our work as it opens up the opportunity for international business activities as a pan-European service. We provide counsel jointly with selected partner firms abroad.



Technology

IT Law

```
23 // Create the
24 SqlCommand command = new SqlCommand("spInsert",
25 connection);
26
27 try
28 {
29     connection.Open();
30     SqlDataReader reader = command.ExecuteReader();
31     while (reader.Read())
32     {
33         Console.WriteLine("\t{0}\t{1}\t{2}",
34                             reader[0], reader[1], reader[2]);
35     }
36 }
37 catch (Exception ex)
38 {
39     Console.WriteLine(ex.Message);
40 }
41 finally
42 {
43     connection.Close();
44 }
```

The creation and implementation of new software is cost-, time- and resource-consuming. Risks must be analyzed and taken into account when drafting pertinent contracts.

The provision of agile processes is today a standard concept in contract drafting because hardly any static project plan will be implemented as originally planned.

New options for using software do give rise to additional questions: Is it necessary, from a legal point of view, to provide for on-site installation, or can software provided by external service providers in the “cloud”? - the keywords “cloud computing” and “software as a service” come to mind. If the answer is yes, what about IT security? Are open source components used? If so, has it been checked whether there is a risk of “infection” of proprietary codes? In relevant contracts, are open source licenses taken into account as needed?

We assist you in the licensing of software, and likewise in the drafting of project contracts. Should there ever arise a dispute, it is important to make sure the wealth of information and documentation is properly reviewed and sorted out and summarized all in a focused manner.

An experienced team collates relevant information and looks after enforcing your rights.

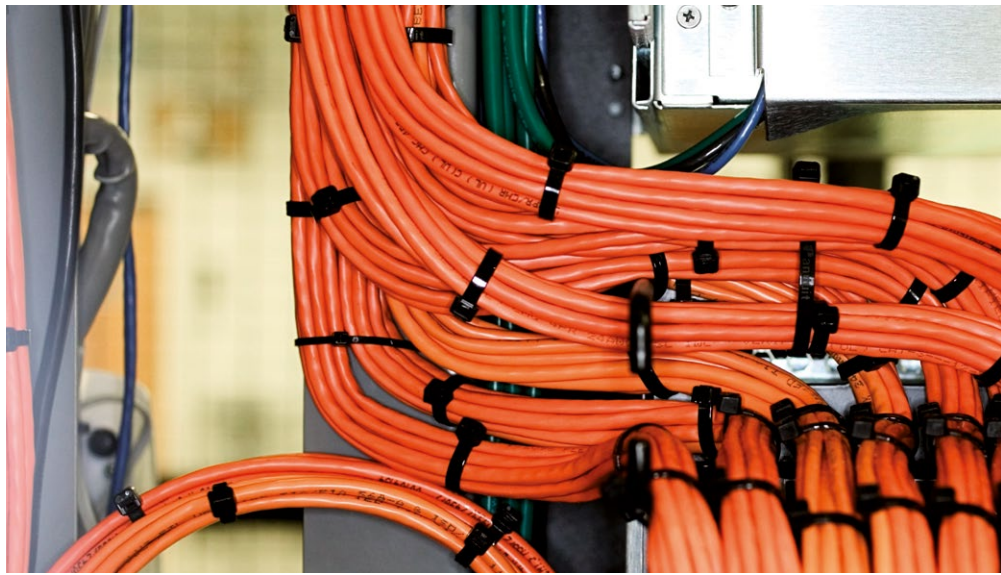
We advise on

- the procurement and implementation of software, IT services, and IT systems,
- enforcing copyrights under civil and criminal law,
- projects in crisis situations, including pertinent disputes,
- the drafting of license agreements,
- the acquisition and sale of software,
- questions pertaining to the creation of software,
- the use of open source components.

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Outsourcing



In a global economic system, businesses find themselves under increasing competitive pressure. That requires optimization of business models along the lines of relevant core processes. In the interest of greatest possible efficiency, certain operational tasks can be transferred to a third party.

The outsourcing of such sub-functions and sub-ordinated operations would typically extend to infrastructure services and/or administrative processes. What originally started with company-unspecific functions (such as canteen operations or cleaning services) has now also reached business-critical infrastructures and processes.

That means the operation of data centers, telecommunications infrastructures or workstations can be outsourced, as well as payroll or receivables management.

Offshoring services involving particularly projects for application development which are transferred to other countries, play an ever-increasing role in this context.

We advise

- on national and international outsourcing of IT infrastructure or platforms,
- in computing services, the range extends from the outright transfer of colocation space to the hosting and operation of applications, the implementation of software as a service and other cloud computing solutions,
- in business process outsourcing, particularly on billing services, supply chain management services and billing solutions.

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Data Protection

Big data is a current topic – the opportunities which data analysis and data transfers offer for companies of all kinds are enormous. It is precisely for this reason why it is necessary to observe the legal framework when analyzing big data. That is a condition for exploiting its advantages.

Access to personal data of customers, users of electronic services and employees is a sensitive issue. However, working with these data is necessary for many reasons, to be able to provide a service, and for billing purposes.

In most businesses, employees are permitted to use the internet for e-mails and other permitted purposes. This entails significant consequences for the employer, often curtailing its own monitoring rights. It often makes sense to regulate the use of private mobile devices in a “bring your own device” guideline.

Outsourcing and cloud computing always involve data protection issues that need to be addressed.

Targeted advertising is an important element in modern marketing campaigns. In order to operate successfully applicable data protection regulations must be observed. This applies particularly to the creation of online user profiles and profiles regarding the use of smartphone apps, particularly when the latest functions of Google-Analytics, Piwik, etc. are used.



What data can be transmitted by “beacons” via RFID, WLAN or infrared in retail trade and in the smart-home? The smart-home collects and analyzes a wide range of personal information about inhabitants. Comprehensive consent declarations are required to use this data for targeted marketing.

A violation of the data protection rules may lead to criminal sanctions and substantial fines, it may also do considerable damage to your company's image. Legally compliant handling of personal data is, therefore, most important. We assist you with the privacy-compliant design of outsourcing projects, the implementation of big data services, and privacy policies for sales and customer management, and support you in developing solutions for private internet and e-mail use by your employees.

Pharmaceuticals/Healthcare



The pharmaceutical and healthcare industries are highly regulated in terms of drug admission procedures, market authorizations, pricing, drug advertising and other aspects. All that requires solid monitoring and compliance processes in place. Many sectors of law are overlapping in respect of the pharmaceutical and medical products industries. Our clients in the pharmaceutical, biotechnology and medical device industries benefit from our expertise in these sectors.

We also advise these clients in the fields of patent law, competition law and regarding clinical studies in preparation of marketing authorizations.

As a full-service law firm, we offer industry-specific advice that goes beyond traditional industrial property law. The full-service concept extends, in particular, to the interfaces of distribution law, antitrust law and issues of product safety.

We advise

- in connection with patent-protected drugs,
- on procedures against counterfeiting,
- on the sale and use of compassionate-use medications,
- on liabilities in case of adverse side effects,
- on the handling of patient data,
- on drug advertising issues (ad clearances),
- on self-regulatory codes in the pharmaceutical industry.

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is available at:

