



**TAAN Global Meeting, Dublin,
19th of September, 2012
Clontarf Castle Hotel, Dublin, Ireland**

**Trends in international Law
relevant for Creative Agencies**

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Global Advertising



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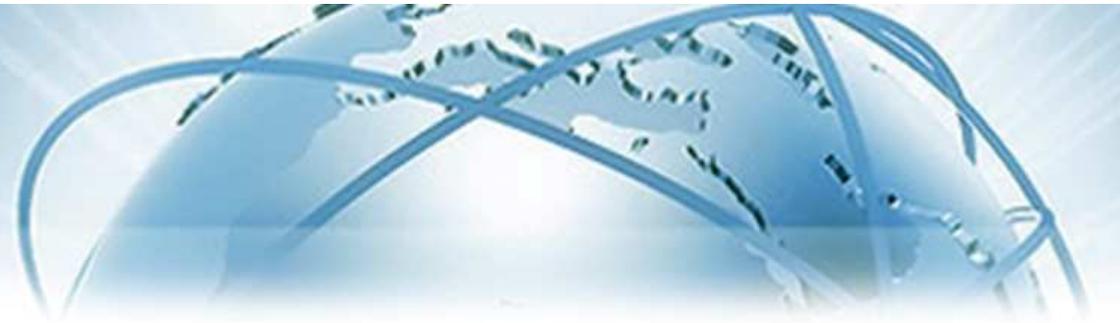
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GALA international survey on regulation of alcohol advertisements



GALA international survey on regulation of alcohol advertisements

GERMANY

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HEUKING KÜHN LÜER WOJTEK

What are the main legal controls on advertising and marketing of alcohol in your jurisdiction?

No general ban exists on advertising and marketing of alcoholic beverages in Germany. There are, however, rules and regulations scattered over a variety of laws for all different kinds of advertising that may affect the way alcoholic drinks can be promoted. Further, a set of self-regulatory rules ("Code of Conduct on Commercial Communication for Food and Beverages") by the German Advertising Standards Council are to be considered.

What are the main regulatory controls on advertising and marketing of alcohol in your jurisdiction?

Germany provides a framework for fair competition and ensures that advertising freedom is not used to the detriment of the public interest. An especially strict standard is applied to all promotional activities regarding minors. As a consequence, Article 6 JMSIV (Interstate Treaty on the Protection of Minors from Harmful Media) states that advertising for alcoholic beverages must not be directed at minors or be especially designed to appeal to minors by way of presentation. These restrictions also include sponsorship. In addition to that, advertising must not cause physical or mental harm to minors. It is also not permissible to target minors by using forthright purchase appeals exploiting their inexperience and credulity as well as to directly call on them to persuade their parents or third parties to buy a certain product. The Youth Protection Act (Jugendschutzgesetz) includes a number of provisions on where and how alcoholic beverages may be legally promoted and distributed. Similar restrictions can be found in Article 15 of EU Directive 89/552/EWG. There are also provisions for advertising of food (including alcoholic beverages). For example, Articles 11 et seq. LFGB (German Food and Feed Code) covers the advertising of food.

What are the main principles of alcohol advertising regulation in your jurisdiction?

Generally, advertising and marketing of alcoholic drinks must not be misleading. Nor may it be annoying for consumers or harmful to minors. It must not portray alcohol as indispensable nor criticise its avoidance, imply a drink may be preferred due to its alcohol strength, undermine a healthy and active lifestyle and encourage excessive drinking or link it to dangerous activities. In 2009, a set of self-regulatory rules, called the "Code of Conduct on Commercial Communication For Food and Beverages", has been adopted by the German Advertising Standards Council. The Code has similar provisions and aligns itself with the above-mentioned principles. Compliance with these rules is ensured by a 13-member panel of experts from all sectors of the advertising industry.

How would you assess the pressure for tighter regulation in your jurisdiction?

There have been several calls to further restrict advertising and marketing of alcohol in Germany. In 2008, the federal government introduced a national initiative for alcohol prevention. Inter alia, the debate focused on prohibiting the sale of alcohol at gas and train stations after 10 pm, lowering the blood alcohol level for drivers to 0.0 promille and banning advertising of alcoholic drinks on TV and in movie theatres before 8 pm. None of these have been implemented into law yet. Currently, there are no considerable calls for tighter regulation in this field.

Please describe any recent interesting, significant, or archetypal examples of an alcohol advertisement that has been banned in your jurisdiction.

There have not been recent important cases dealing with the banning of an alcohol advertisement.

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What are the main legal controls on advertising and marketing of alcohol in your jurisdiction?

In the United States, the advertising, marketing and sale of alcoholic beverages is strictly regulated at the federal level and by each of the individual states.

The Federal Alcohol Administration Act (FAA Act) requires:

- how products within each alcohol class (distilled spirits, wine and malt beverages) must be labeled, and requires certain mandatory disclosures to appear in all alcohol advertising;
- the types of imagery, claims and other marketing messaging that can or cannot be used in alcohol advertising;
- how members within each tier of the alcohol industry (supplier, wholesaler and retailer) can interact with one another.

The 21st Amendment to the U.S. Constitution gives the states the power to regulate the advertising, marketing and sale of alcoholic beverages within their states. As a result, each state has its own set of alcohol laws that must be adhered to when functioning within the state. In some states there may be further layers of regulation at the municipal or county level. State laws vary



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- **Intellectual Property (IP)** including trademarks and industrial design, patent law, other protected rights and competition law.
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- **Technology** includes particularly IT law, outsourcing and data protection. In addition, this field includes counseling services to the pharmaceutical and healthcare industries.
- Heuking Kühn Lüer Wojtek has been **nominated** for the JUVE Awards 2012 as **IP Firm of the Year**.



Trends in the Law relevant for Creative Agencies

- What is going on in advertising and trademark law?
- How does the law influence the daily work of agencies?



Ireland – *Junk Food*

- The new Broadcasting Authority of Ireland (**BAI**) Code of Practice on advertising to children has been revised and is due to be implemented in January 2013. There are some particularly stringent provisions contained therein especially relating to foods that are defined as having a high fat, sugar or salt content (**HFSS**).
- The draft Code proposes a **complete ban on ads** for such food or drinks **during children's programming** and also a complete ban on the use of or endorsement by **licensed characters** (e.g. movie characters), programme characters or **celebrities** and sports stars.
- It is also proposed to ban **promotional offers** on products that fall within the HFSS definition.
- A copy of the draft Code is available here:

http://www.bai.ie/wordpress/wp-content/uploads/201203_ConsultDoc_English_vFinal.pdf



Ireland – *Junk Food*

- Any chance to change the provisions of the new Code?
 - Yes, it is still only a draft.
 - The consultation process is closed, already.

- The Code will be **mandatory** for any advertising on **terrestrial Irish TV stations** (about 5 to 6).
- Ads on **UK** or **European Channels** (e.g. Sky Sports, BBC, Channel Four, ESPN, etc.) **are not subject to the rules**.
- How is it going to be enforced?
 - The BAI generally enforce their Code by **ordering a ban** on the advertisement unless it is amended.
 - The Consumer Protection Act of 2007 allows the courts to take into account any regulatory Codes such as the BAI Code, but it would be very unusual for the BAI to pursue an offender to court.

- Information provided by Conor Griffin of Duncan Grehan, Dublin



Italy - *Junk Food*

- According to recent research by 2025 20 million Italians (almost 43% of the entire population) will suffer from obesity and nutritional disorder. The social costs necessary for facing side effects linked to diseases deriving from nutritional disorder are deemed to result in the range of 30 million Euro. The situation appears to be particularly worrying for kids aged between 6 and 9.
- Therefore the **Department of Public Health** is currently evaluating to introduce a special tax on junk food and food products high in salt and sugar as well as soft drinks and sweets in order to force Italians (and especially young people) to healthier nutritional habits.



Italy - *Junk Food*

- The situation is not country specific as identical problems are faced in:
 - **France** (where the Health Department is considering to reduce TV commercials during so-called 'protected air time)
 - **Germany** (where 30% of the entire population are suffering from obesity - considered as "national disease" - and where specific educational campaigns are performed at schools)
 - **Spain** (where also a specific educational campaign - "Mide Tu salud" - is performed)
 - **Denmark and Hungary** (where food products high in salt and sugar and soft drinks are hit with special taxes).

- Information provided by Felix Hofer of Hofer Loesch Torricelli, Firenze



Chile - *Junk Food*

- A new Law has recently been approved concerning the sale and advertising of **packaged food products** in Chile. The Law was originally launched in the year 2007, and after much discussion, Chilean Congress has approved it.
- The new Law concerns packaged food that is considered **high in calories, fat, salt** or **sugar**. The Ministry of Health has been given a year, from the date of publication of the Law, to determine the exact content that will make certain products to be considered “high” in calories, fat, salt or sugar.



Chile - *Junk Food*

- The most controversial points about this law can be summarized as follows:
 - Products that are determined by the Ministry of Health to be high in calories, fat, salt or sugar must be **identified** as such in the **product's label**.
 - It **bans** the sale and **advertising** of these types of products within school premises, including elementary, middle and high **school**.
 - Advertising of these products to **children below 14** years of age is prohibited.
 - The use of "**commercial hooks**" such as offering toys or prizes, in connection to the sale of these products is banned. Consequently, some marketing strategies that are common today such as Macdonald Happy Meals and Kinder Chocolates could no longer be used.
 - Advertising of food products in mass media must include a **message** drafted by the Ministry of Health to promote healthy habits.

- Information provided by Oscar Molina, Albagli Zalniasnik, Santiago, Chile.



Italy - *Direct Marketing*

- Since January 31st, 2011 subscribers to public phone directories may enrol into a “**do not call**” register in order to prevent unsolicited phone calls from direct marketing companies. The registration with such do-not-call list is free of charge and valid for unlimited time (it’s possible to change at any time and cancel the enrolment).
- According to press reports the Italian Privacy Commissioner (an independent Authority in charge of granting compliance with the local provisions governing processing of personal data) ascertained that three local direct marketing companies were infringing on registrations with the “do-not-call” list by making promotional phone calls to subscribers to such list and by using a non identifiable phone number to the purpose.
- In February 2012 the Commissioner served the three infringing companies with an **injunction**, blocking any further use of their collected data until exact compliance had been granted (and documentary substantiated to the Commissioner). In addition the Commissioner informed the companies that he was considering **applying fines**.



Italy - *Direct Marketing*

- In December 2011 the same Authority objected against illicit data processing performed by a local company, which had outsourced promotional calls by making **its clients' database** available to another company. The promotional calls were performed by an **automated calling system** which initiated multiple calls. The Commissioner found infringement of the Italian privacy provisions and therefore ordered:
 - an immediate halt of such practice,
 - a temporary block of the company's database (until compliance had been guaranteed),
 - to grant at least a 30 days period before repeating calls to previously contacted subjects,
 - to adequately instruct staff in order to avoid further illicit data processing.
 - In addition, the Commissioner warned the company that non-compliance with its instructions could lead to fines from Euro 30.000 up to Euro 120.000.

- Information provided by Felix Hofer of Hofer Loesch Torricelli, Firenze



UK - *Rooney and Social Media*

- UK's Advertising Standards Authority (ASA) condemned Wayne Rooney for failing to make clear the commercial nature of his Tweet.
 - Back in January, Wayne had tweeted "My resolution - to start the year as a champion, and finish it as a champion...#makeitcount [gonike.me/makeitcount,,](http://t.co/JD6HUzbl)
- Nike's defence pointed to the context of the Tweets. Their followers were likely to know that they and their teams are sponsored by Nike. The body of the tweets contained the Nike URL and campaign strap line, so it would be sufficiently clear that those tweets were advertising.



UK - *Rooney and Social Media*

- The ASA did not follow this argument.
 - ASA concluded that users follow several people and receive multiple tweets which they may scroll through quickly.
 - As each and every commercial Tweet must be obviously identifiable as a marketing communication, there was a breach because the Nike URL and strap line could be missed and “not all Twitter users” would be aware of the relevant sponsorship deals.
 - The ASA has insisted that a **hashtag** such as **#ad** should have been in the body of each Tweet.



UK - *Rooney and Social Media*

- The ASA is applying the CAP Code to the letter and consistently with other guidelines, such as those issued by ISBA and IAB.
- However, the Consumer Protection Regulations 2008 state that misleadingness should be assessed by reference to the average consumer from the relevant group. The average consumer is deemed to be reasonably observant and circumspect. Surely the average follower of Wayne and Jack respectively were not likely to be misled by these tweets.

- Information provided by Brinsley Dresden of LewisSilkin, London



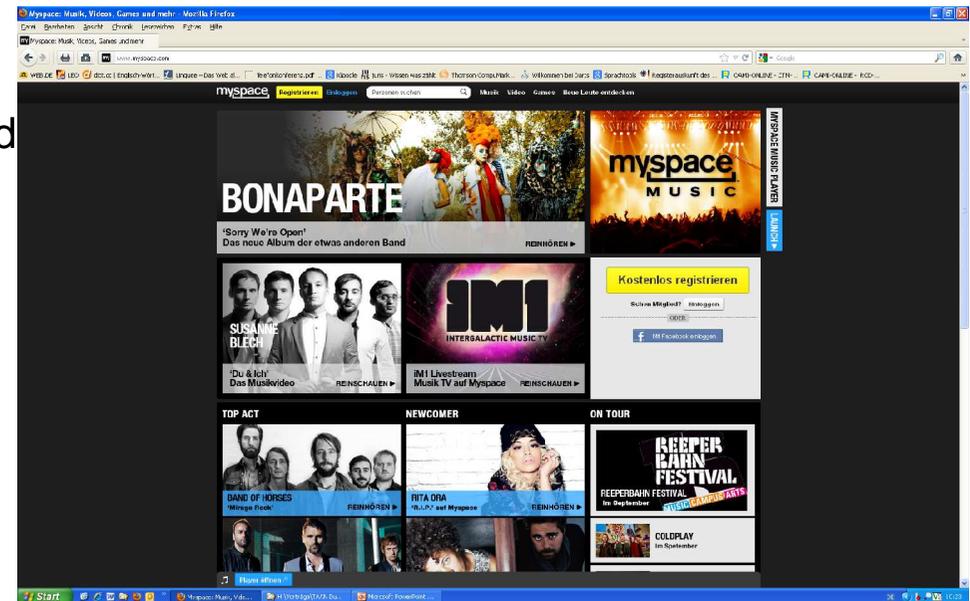
USA - *Trademarks*

- A Federal appeals court in Manhattan held that the **distinctive red soles** of Christian Louboutin shoes can be protected as trademarks.
- The 2nd U.S. Circuit Court of Appeals on 5 September, 2012 ruled in favor of the French luxury shoes producer.
- Competitor YSL may not provide its shoes with a red sole.
- Exception: if the shoes are red itself.



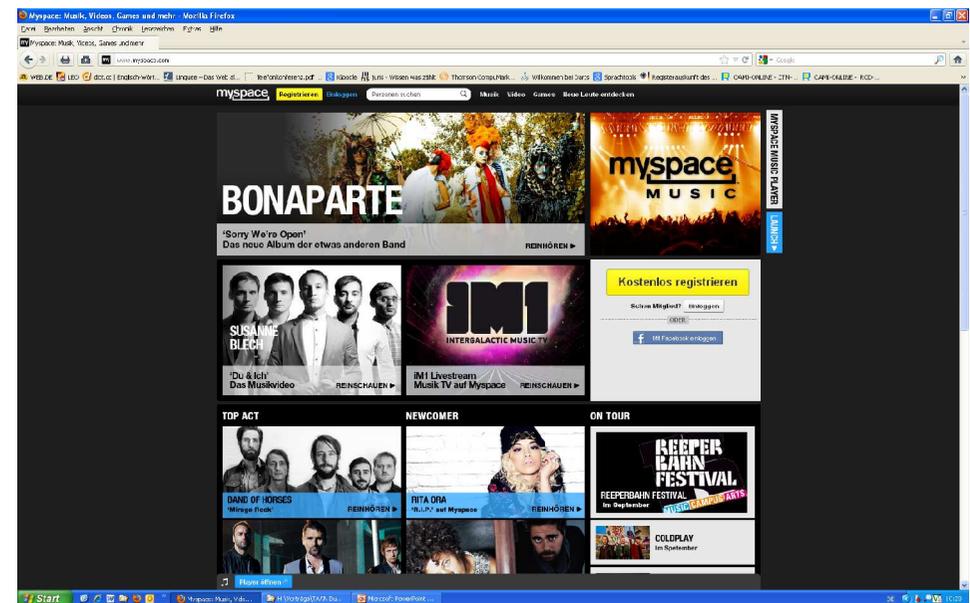
USA - *Consumer Data*

- **Myspace Settles Charges That It Improperly Shared User Information with Advertisers**
- In May, 2012 the social network Myspace agreed to settle charges by the Federal Trade Commission (the “FTC”) that Myspace inappropriately disclosed its users’ personally identifiable information. Specifically, the FTC charged that Myspace did not honor its own promises to consumers in its privacy policy.
- Myspace assigns a unique identifier (a “**Friend ID**”) to each consumer profile. The profile can contain all sorts of personally identifiable information about a user, such as that user’s full name, age, picture, interests, friends, etc.. Myspace’s privacy policy promised it “**would not share users’ personally identifiable information**, or use such information in a way that was inconsistent with the purpose for which it was submitted,” without giving notice, and getting permission from users.



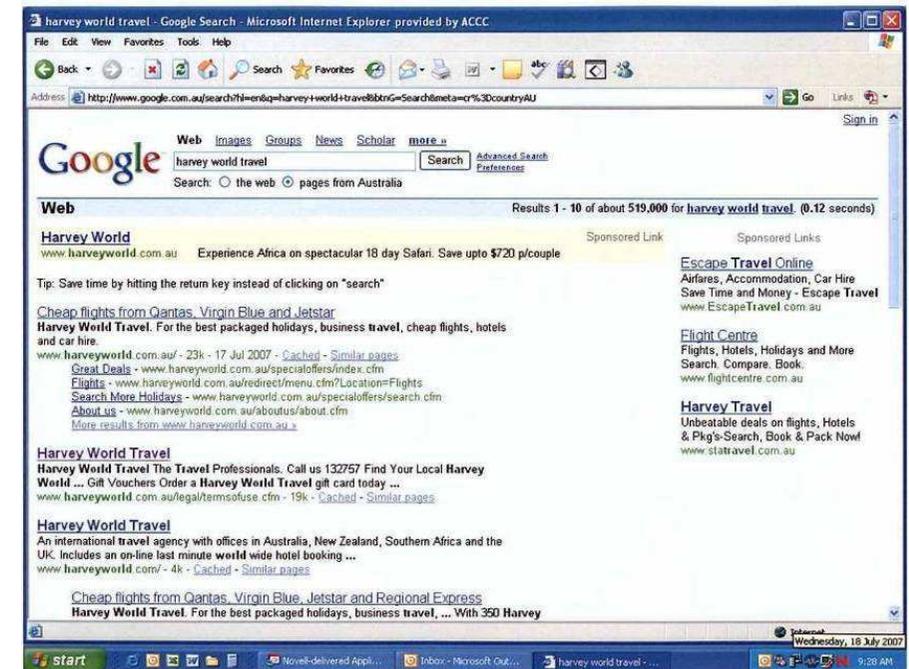
USA - *Consumer Data*

- **Myspace Settles Charges That It Improperly Shared User Information with Advertisers**
- **Myspace provided advertisers the Friend IDs**, which advertisers could then match up with users' profiles to serve targeted behavioral ads and track user activity. The FTC thus alleged that the privacy policy's deceptive promises violated federal law.
- Myspace will be barred from future privacy misrepresentations, must implement and maintain a comprehensive privacy program, and **must provide periodic independent privacy assessments for 20 years**. Notably, Myspace will not pay any penalty.
- The settlement is a reminder that privacy concerns are at the forefront of the FTC's "to do" list, and that privacy policies actually do matter. Just in the last year, the FTC has agreed to privacy-related settlements with Twitter, Google and Facebook, so even the big players are not exempt from scrutiny.
- Information provided by Claudine Wilson, Frankfurt Kurnit Klein & Selz, New York



Australia - *Google*

- The Australian Competition and Consumer Commission (ACCC) sued Google for misleading and deceptive conduct in relation to its **online advertising** and **sponsored links**.
- There are two parts to the ACCC's case against Google. The **first part** of the case is concerned with the overall layout and appearance of the results page which, it is said, fails to distinguish sufficiently between organic search results and advertisements. This part of the ACCC's case extends to both advertisements which might appear on the left hand side of the results page immediately above the organic search results and to those advertisements which appear to their right, on the right hand side of the results page.
- The **second part** of the case is concerned with the use of what are said to be misleading keywords in the headlines of particular advertisements which may also appear on the left or right hand side of the results page.



rechtsanwalt - Google-Suche - Mozilla Firefox

rechtsanwalt - Google-Suche

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Australia - *Google*

- **Google** was being held responsible for misleading or deceptive conduct by the Australian Full Court of the Federal Court (3 judges) in relation to **online advertising** and **sponsored links**.
- Google got off at first instance (before a single Federal Court judge) and then the ACCC (Australia's government competition and consumer watchdog) appealed to the Full Court.
- Google has now appealed to the High Court (Australia's highest appellate court). It has potentially massive international ramifications for Google (and online advertising generally) if they lose.
- The Full Court Federal Court decision can be located at [http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCAFC/2012/49.html?stem=0&synonyms=0&query=title\("2012%20FCAFC%2049"\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCAFC/2012/49.html?stem=0&synonyms=0&query=title()
- Information provided by Peter LeGuay, Thomson Lawyers, Sidney



ECJ on responsibility of Google for Adwords

- **ECJ C-236/08-238/08** (Google France SARL et. al. ./ Louis Vuitton Malletier SA ...), 23.03.2010:
 - European trademark law grants the proprietor of a trade mark to prohibit an advertiser from advertising, on the basis of a **keyword** identical with that trade mark which that advertiser has, without the consent of the proprietor, selected in connection with an internet referencing service, goods or services identical with those for which that mark is registered, in the case where that advertisement does not enable an average internet user, or enables that user only with difficulty, to ascertain whether the goods or services referred to therein originate from the proprietor of the trade mark or an undertaking economically connected to it or, on the contrary, originate from a third party.
 - An **internet referencing service provider** which stores, as a keyword, a sign identical with a trade mark and organises the display of advertisements on the basis of that keyword does not use that sign within the meaning of Article 5(1) and (2) of Directive 89/104 or of Article 9(1) of Regulation No 40/94.



ECJ on responsibility of Google for Adwords

- **ECJ C-236/08-238/08** (Google France SARL et. al. ./ Louis Vuitton Malletier SA ...), 23.03.2010:
 - The Directive on Electronic Commerce must be interpreted as meaning that the rule laid down therein (excluding the liability of a host provider in case it has no knowledge of a TM infringement) applies to an internet referencing service provider in the case where that service provider has not played an **active role** of such a kind as to give it knowledge of, or control over, the data stored. **If it has not played such a role, that service provider cannot be held liable for the data which it has stored at the request of an advertiser, unless, having obtained knowledge of the unlawful nature of those data or of that advertiser's activities, it failed to act expeditiously to remove or to disable access to the data concerned.**
 - **So, what to do?**
 - ... After having obtained knowledge of the unlawful nature of those data, to act expeditiously to remove or to disable access to the data concerned **“Notice and take down”**.



ECJ on responsibility of marketplaces

- **ECJ C-324/09** (L'Oréal SA, et. Al. ./ eBay International AG et. al.), 12.07.2011:
 - 5. The operator of an online marketplace does not 'use' – for the purposes of trademark law – signs identical with or similar to trade marks which appear in offers for sale displayed on its site.
 - 6. Article 14(1) of Directive 2000/31/EC ('Directive on electronic commerce') must be interpreted as applying to the operator of an online marketplace where that operator has not played an active role allowing it to have knowledge or control of the data stored.

The operator plays such a role when it provides assistance which entails, in particular, **optimising the presentation of the offers for sale** in question or promoting them.

Where the operator of the online marketplace has not played an active role ..., the operator **none the less** cannot, in a case which may result in an order to pay damages, rely on the exemption from liability provided for in the Directive on Electronic Commerce, if it **was aware of facts or circumstances** on the basis of which a diligent economic operator should have realised that the offers for sale in question were unlawful and, in the event of it being so aware, failed to shut down the offers.



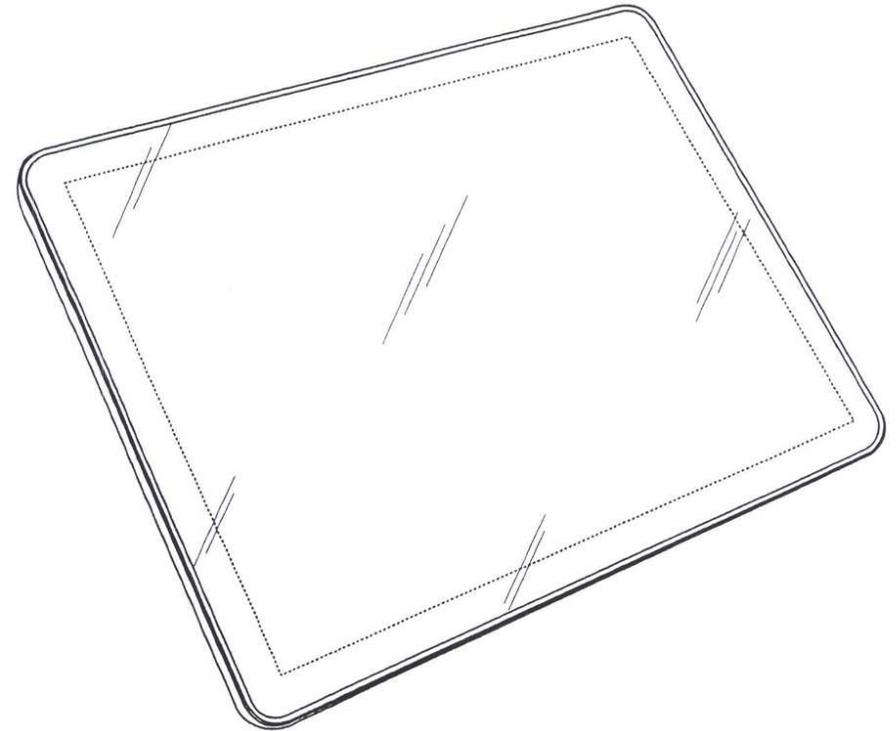
ECJ on liability and social networks

- **ECJ C-360/10** (Belgische Vereniging van Auteurs, Componisten en Uitgevers (SABAM) v Netlog NV), 16.02.2012:
 - The owner of an **online social network** cannot be obliged to install a **general filtering system**, covering all its users, in order to prevent the unlawful use of musical and audio-visual work.
 - Such an obligation would not be respecting the prohibition to impose on that provider a general obligation to monitor nor the requirement that a fair balance be struck between the protection of copyright, on the one hand, and the **freedom to conduct business**, the right to protection of personal data and the freedom to receive or impart information, on the other.



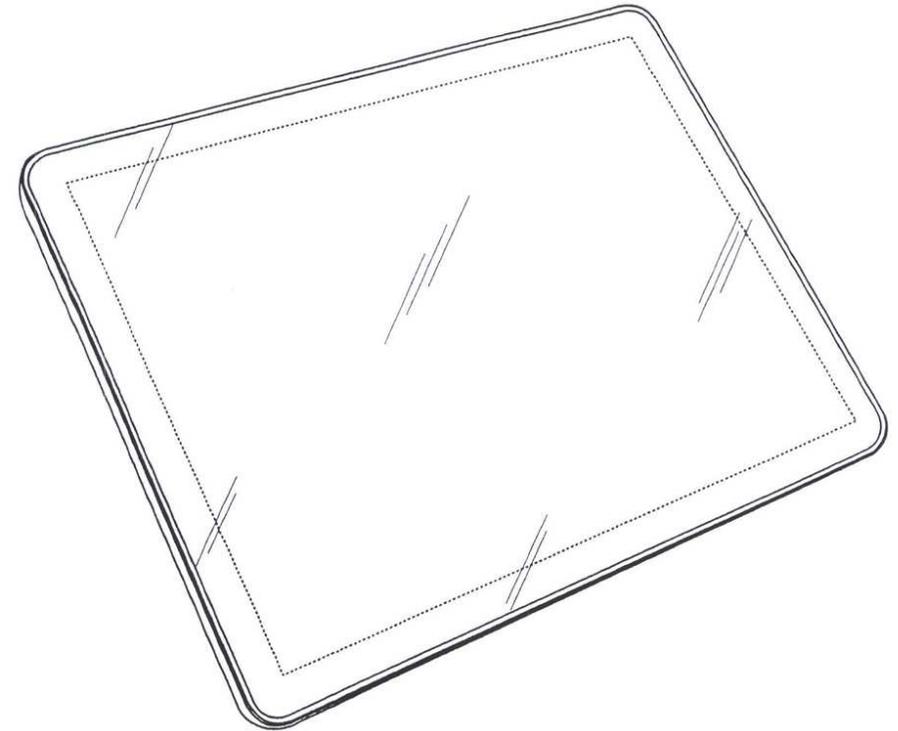
Higher District Court of Düsseldorf on *Designs*

- **The Higher District Court of Düsseldorf** (Apple versus Samsung, 24.07.2012, I-20 W 141/11) held that Samsung's "**Galaxy Tab 7.7**" may not be distributed in the EU.
- Apple had sued Samsung Electronics Co. Ltd., South Korea on the basis of an Apple Community Design in Düsseldorf.
- Earlier, the District Court had argued that the existing German Samsung company is not a **branch** of the parent company Samsung Electronics Co. Ltd.



Higher District Court of Düsseldorf on *Designs*

- Earlier, the District Court had argued that the existing German Samsung company is not a **branch** of the parent company Samsung Electronics Co. Ltd.
- However, the Higher District Court overruled upon Apple's appeal, as it got the impression, that the German subsidiary is acting on behalf of its parent company.
- **Consequence:** Once you are located in a EU country, you can be sued for TM or design infringement with effect for the whole EU.



Russia - *Alcohol Advertising*

- **Currently the advertising of alcohol in Internet is not prohibited in Russia.**
- 2 changes to this situation to be expected:
 - **Interim regulation** on alcoholic and beer advertising: Advertising of alcohol & beer, containing more than 5% of spirit, will be permitted only in printed materials, at permanent sales points and via Internet.
 - On July 06, 2012 the State Duma of Russia has adopted a bill under which it is fully **prohibited** to advertise any kind of alcohol in **periodical printed materials** and **Internet**.

- Information provided by Yulia Gurieva, Alrud, Moscow.



Romania - **Alcohol Advertising**

- The introduction of a new annex to the Code of the Romanian Advertising Council (“**RAC**”)
- The RAC is a self-regulatory organization, whose purpose is to ensure the conduct of fair business in advertising through the observance of a set of rules assembled in a code of practice (the “**Code**”).
- On 11 April 2012, RAC approved the adoption of a new annex to the Code, *i.e.* the Rules of responsible commercial communication for spirit drinks. This document was drafted by, *i.a.*, the Romanian producers of spirit drinks.
- Its provisions are applicable to **all marketing communications**, regardless of the media type or communication channel, including digital communications. They specifically aim at youth protection.
- the RAC may **mediate** complaints regarding commercial communications, in order to reach amicable **settlements**.
- Information provided by Miruna Hascu, Wood, Oltenasu & Associates SCPA, Bucharest.



Turkey - *Alcohol Advertising*

- The **Advertisement Board** examined advertisements of **non-alcoholic beers** in order to determine if they mislead the consumers. The Board requested the opinion of **TAPDK** (Tobacco and Alcohol Market Regulatory Authority) on the matter as guidance.
- If TAPDK declares that non-alcoholic beers using **same bottles** as alcoholic beers mislead the consumers or encourage them to consume alcohol, the Board will be able to **stop** the advertisements and **impose** high **fin**es on the advertising companies.
- Information provided by Başak Gürbüz, Gün, Avokatlık Bürosu, İstanbul.



Argentina – *Tobacco Advertising*

- **DO NOT SMOKE – DO NOT PROMOTE**
- On June 13, 2011, a new Tobacco law was passed by the Argentine Congress. This Bill proposes significant restrictions regarding advertising, marketing and smoking practices.
 - It is **prohibited** to **advertise, promote** or **sponsor** any product manufactured with tobacco.
 - No more “**Lights**” or “**Milds**”. The Law tries to avoid people’s misperception that those products are somehow less harmful.
 - Notwithstanding, advertising and marketing of tobacco products is still allowed at **sale points**, in **commercial publications addressed to companies** involved in manufacturing, distributing, importing, exporting and sale of these products; and through **direct communication** to people **over 18**, only with their **previous consent**.



Argentina – *Tobacco Advertising*

- **DO NOT SMOKE – DO NOT PROMOTE**
 - Each package must contain one of the following health messages: “**smoking causes cancer**”, “**smoking causes sexual dysfunction**”, “**pregnant women who smoke may cause irreparable damage to the baby**”, “**smoking makes life shorter**”, and others.
 - **Warnings messages** must be written in a black rectangle on a white background with black lettering and must occupy 50% of one side of the package.

- Effectiveness expected end of the year 2012.

- Information provided by Paula Fernandez Pfizenmaier, Perez Alati, Grondona, Benites, Arntsen & Martinez de Hoz, Capital Federal.



Germany - *TM clearance*

- **Higher District Court Berlin** (04.02.2011, 19 U 109/10) on responsibility of creative agencies for **trademark clearance**

- **The case**

- Agency developed a product logo for a client.
- The logo infringed third party's trademark (TM) rights.
- Client requested compensation of damages, because it is of the opinion that the agency should have done a TM search (clearance).
- No contract on TM clearance between the parties.

- **Is the client right?**



Germany - *TM clearance*

- **Higher District Court Berlin** (04.02.2011, 19 U 109/10) on responsibility of creative agencies for **trademark clearance**
- **The Judgment**
 - **Generally (!!!)**, the client can expect a clearance in these kind of assignments.
 - However, the agreement of the parties has to be interpreted. If it is **unacceptable** for the agency to execute a TM search, and, therefore, could not be expected by the client, there is no liability.
 - Criteria for the consideration?



Germany - *TM clearance*

- **Higher District Court Berlin** (04.02.2011, 19 U 109/10) on responsibility of creative agencies for **trademark clearance**
- **The Judgment**
 - Efforts to run the search
 - Scope of planned campaign
 - Remuneration of the agency (€ 700)
- **Here:**
 - As a sound TM search would cost more than the complete remuneration, **no TM search obligation of the agency** was agreed upon.



Germany - *TM clearance*

- **Higher District Court Berlin** (04.02.2011, 19 U 109/10) on responsibility of creative agencies for **trademark clearance**
- **Consequences ?**
- Always put in the client agreement
 - that a sound TM search (covering images, similarity, etc.) might be necessary,
 - is not included, but
 - can be offered by separate request.
- **Question:** Why is a TM internet search not sufficient?



International Sweepstake/Raffle/Competition Clearing

■ Belgium

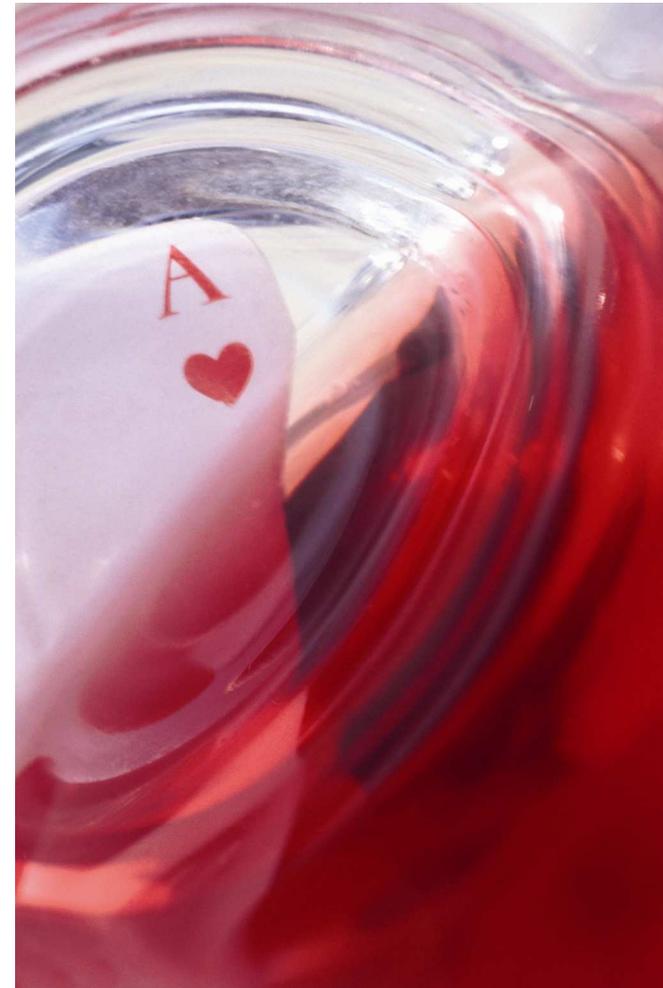
- permitted games of chance must be free of any costs (no stakes to be lost)
 - Participation must consist of more than just simple registration, clicking, lifting an arm, screaming a word like “Bingo”
- Otherwise, such sweepstake would be regarded an illegal lottery or tombola in Belgium.
- Eventually the collection and processing of private data must be filed with the Privacy Commission (the Belgium DPA).



International Sweepstake/Raffle/Competition Clearing

- **Switzerland**
 - In so far as there is a free entry, such sweepstakes are legal
 - No permit or license is required prior to the launch of such sweepstake.

- Very relaxed



International Sweepstake/Raffle/Competition Clearing

■ UK

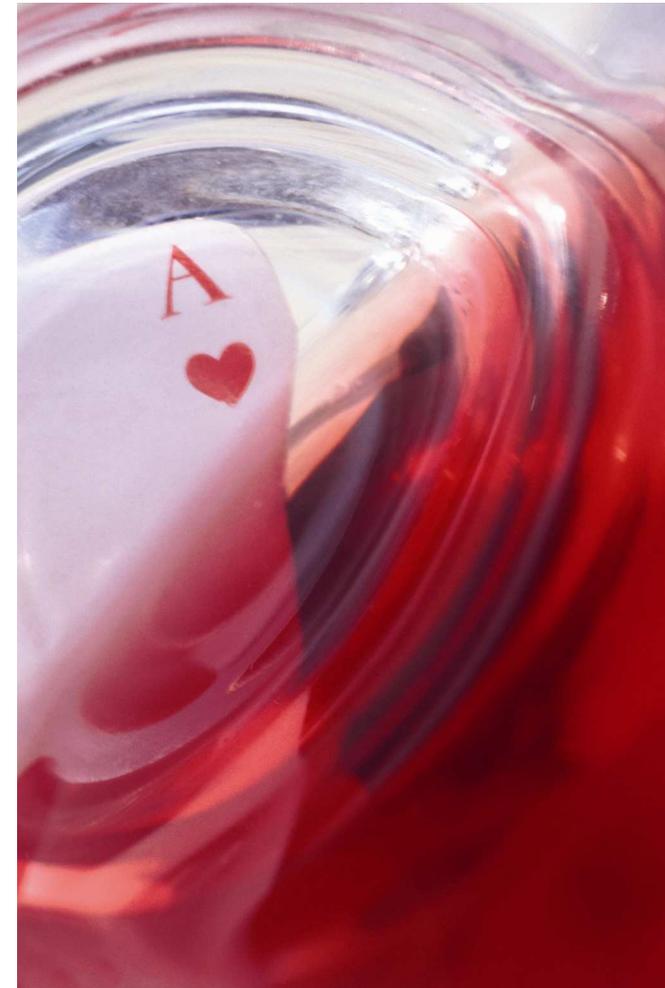
- In so far as there is a free entry, such sweepstakes are legal
- No permits or licenses are required
- However, the promotion must be called “**Free prize draw**” and not “Raffle”. A raffle implies in UK that participants have to pay to enter.



International Sweepstake/Raffle/Competition Clearing

■ Netherlands

- The entry should be free of charge, communication costs may not exceed € 0.60 per participant.
- The value of the **most expensive prize** may not exceed € 2,300.00.
- There is a **code of conduct** for promotional games of chance, under which raffles are permitted, e.g. a certain total amount of the value of all prizes is to be complied with.



International Sweepstake/Raffle/Competition Clearing

■ France

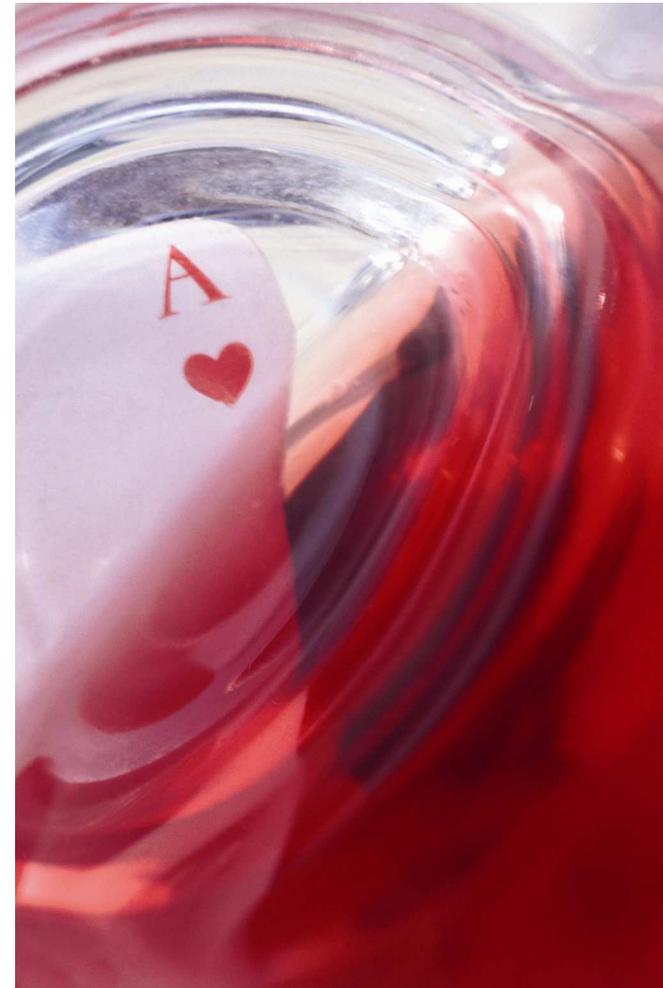
- Free entry has to be granted
- The rules of the raffle have to be filed with a **French Huisser** (process server) prior to the launch of the raffle
- a fee has to be paid (some € 200)
- The rules must be available in French



International Sweepstake/Raffle/Competition Clearing

■ Italy

- **Italian law does not automatically apply** to internet raffles, even if Italians are open to participate.
- However, if Italian law applies, foreign companies running such raffles would have to designate a **local representative** in Italy.



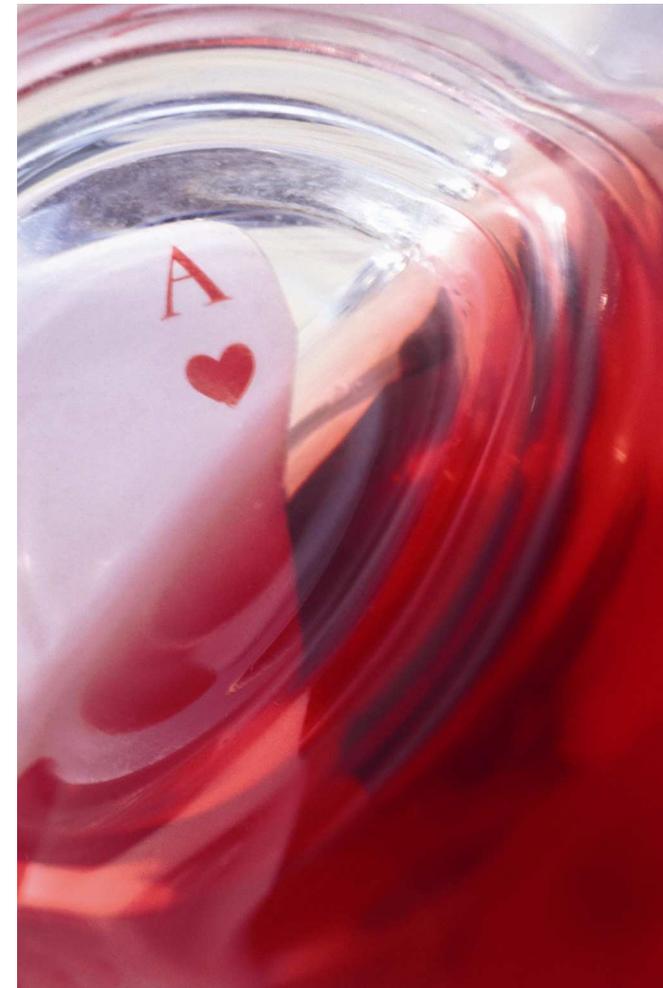
International Sweepstake/Raffle/Competition Clearing

■ Spain

- Tax has to be paid on the value of the prizes (10% tax of the value of all prizes within 30 days after the beginning of the prize draw)
- Any game decided by random draw (sweepstakes, prize draws, lotteries, etc.) must exclusively be limited to the territory of Spain and to Spanish residents
- The raffle must be organized by a company with a Spanish tax number.

■ not that relaxed

■ No international sweepstakes with Spain



International Sweepstake/Raffle/Competition Clearing

■ South Africa

- South Africa is very sensitive with respect to the requirement of paying money to enter a raffle. Even internet costs could be regarded as illegal. Thus it is recommended to reimburse participants for such costs
- It is further recommended not to offer money as a prize, as this could lead to the appliance of the South African Lottery Act
- Further restrictions on data of consumers (e.g. person must not directly/indirectly inform another person that a participant has won a competition).

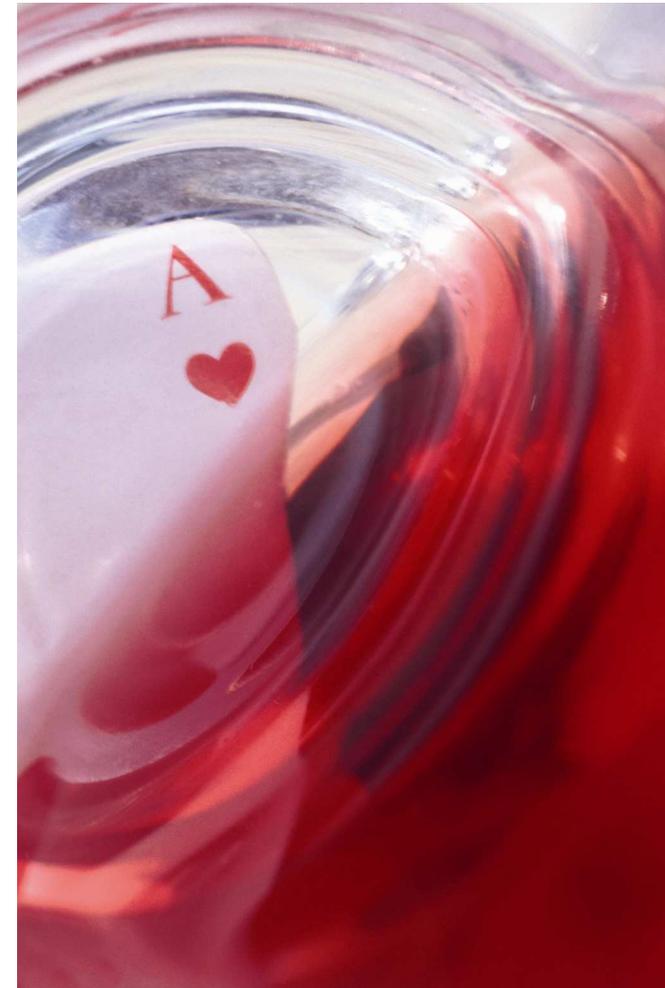
■ Not that relaxed



International Sweepstake/Raffle/Competition Clearing

- **Additional information on UK**
 - It is wise to add a clause to the terms that using certain technologies to influence results of a sweepstake is not permitted and may lead to disqualification.

- Otherwise such disqualification may not be rightful.



International Sweepstake/Raffle/Competition Clearing

- **Additional information on Poland**
- Consumer organizations question the legal compliance of various types of provisions of promotions addressed to consumers and have filed **masses of law suits**.
- They demand that such provisions be placed on the so-called „Register of Prohibited Clauses“, and demand a **refund of legal costs** (several hundred thousand zlotys (100T Zlotys = 25T€).
- This refers to both clauses of current promotions **and** those terms, still present in the Internet although the promotion is already finished. Examples:
 - “The picture of a prize in advertisements could differ from their actual appearance.”
 - „The Organizer is not liable for delays or any other obstacles arising out of the operation of the Postal Service.”



Social Media and Compliance

- Many companies are making use of the opportunity to utilize social networks such as Facebook or Twitter as cost-effective and efficient marketing tools.
- This is done by creating a company page on social media platforms, and also by encouraging employees to use social networks for the benefit of the company and thus become “marketing ambassadors” for their employer.



Social Media and Compliance

- However, instead of the desired marketing boost, a PR disaster may rapidly arise if the general legal framework is not observed. “**Social media compliance**” is therefore the order of the hour.
- An important tool in this respect are so-called “**social media policies**” company-internal guidelines that regulate and/or specify what is permitted and what is not.



Social Media and Compliance

- A policy should serve as the standard for communication with a view to company values and brand image. Among other things, mandatory guidelines for the use of social networks in company business should be set.
- A good social media policy must make clear the conduct that is legally permissible. Here, the same legal limits as in the analog world apply as a rule. Internet users all too often seem unaware of this, however. This is dangerous when employees use social networks for company business because the company is liable for the actions or statements of its employees. In any event, when the company has influence over the conduct of its employee and his conduct benefits the company commercially, such claims are likely. A policy can help prevent this.



Social Media and Compliance

- Care is required in the **drafting of the policy**, as there are a number of legal aspects that must be considered or regulated:
 - Avoid libelous statements or statements harming reputation
 - Preserve business secrets
 - Observe the rights of third parties as well as those of the company (above all, trademarks and copyrights)
 - Observe the personality rights of third parties (above all, the right to one's own image)
 - No hidden advertising (**viral marketing**)



Social Media and Compliance

- Care is required in the **drafting of the policy**, as there are a number of legal aspects that must be considered or regulated:
 - Advertising messages may not be false or misleading
 - Send advertising mail only with **prior express agreement**
 - Observe restrictions on comparative advertising
 - Observe data protection
 - Avoid liability for the content of **linked internet pages**
 - Observe the terms of use of the respective social media platform



Social Media and Compliance

- It is important to clearly set out when social media are being used for **professional** and for **private purposes**. The social media policies of some companies explicitly urge employees to be active (such as on blogs) as **brand ambassadors** of the company or to use social networks as work instruments. In such cases, it is hardly possible for companies to escape liability.



Social Media and Compliance

- In other policies, employees are asked to **expressly tag private statements as such**. This should avoid giving the impression of an official company communication.
 - However, a disclaimer does not provide the company with full assurance that such tagged statements will not be attributed to the company under certain conditions.
 - This depends in particular on the function or role in the company of the person making the statement. As a rule of thumb: the higher the position of the person acting in the company hierarchy, the more likely it is that liability of the company exists.





Thank you very much for your attention!

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- German and English

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- Law of Distribution, contracts, development of distribution structures (online and offline)
- Intellectual Property Law (Patents, Trademarks, Designs, Copyrights)
- Unfair Competition Law

Education and former activities

- Partner PricewaterhouseCoopers Veltins (Landwell) (2000 – 2004)
- Associate Heuking Kühn Lüer Wojtek (1997 – 2000)
- Legal Trainee in New York (1995-1996)
- Universities of Cologne, Hamburg (1989 – 1994)

Clients (Examples)

Retailers, internet companies, brand owners such as Mäurer & Wirtz (“4711”), “Baldessarini”), technologically driven companies; Cirque du Soleil, Jägermeister

Affiliations

- Head of Working Group “Copyright and Media Law at the Cologne Lawyers Association
- Arbitrator at Czech High Court, Prague (for eu.domains and UDRP disputes)
- Expert with the Start up-Forum of the German Federal Ministry of Economics and Technology
- International Bar Association (IBA)
- INTA (International Trademark Association (Member of the Committee for famous and well known trademarks

Publications (Examples)

- Author: “Top Priority - IP”, handbook on IP in Germany, 2006
- Author: “Employee Inventions Law”, in Hümmerich Spirolke, since 2. Edition 2003, current: 6. Edition 2011
- "Revised Berne Convention for the protection of literary and artistic works", Commentary, in World Intellectual Property - Rights and Remedies, Oceana Publications, 2008

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