

# Chambers

GLOBAL PRACTICE GUIDES

---

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

# Advertising & Marketing

## Romania

Ana-Maria Baciu, Cosmina Simion,  
Ana-Maria Coruga and Andrei Dumbrava  
Simion & Baciu

[chambers.com](https://www.chambers.com)

# 2020

# ROMANIA

## Law and Practice

Contributed by:

Ana-Maria Baciu, Cosmina Simion,  
Ana-Maria Coruga and Andrei Dumbrava  
Simion & Baciu see p.12



## Contents

<b>1. Legal/Regulatory Framework</b>	p.3	<b>5. Influencer Campaigns</b>	p.8
1.1 Source of Regulations	p.3	5.1 Trends	p.8
1.2 Regulatory Authorities	p.3	5.2 Special Rules/Regulations on Influencer Marketing Campaigns	p.8
1.3 Scope of Liability	p.3	5.3 Advertiser Liability	p.8
1.4 Self-Regulation	p.4	<b>6. Privacy and Advertising</b>	p.9
1.5 Private Right of Action	p.4	6.1 Email Marketing	p.9
1.6 Regulated Industries	p.4	6.2 Telemarketing	p.9
<b>2. Advertising Claims</b>	p.5	6.3 Text Messaging	p.9
2.1 General Standards	p.5	6.4 Targeted/Interest-Based Advertising	p.9
2.2 Actionable Advertising Claims	p.5	6.5 Marketing to Children	p.9
2.3 Claim Substantiation	p.5	<b>7. Sweepstakes and Other Consumer Promotions</b>	p.10
2.4 Testing	p.5	7.1 Sweepstakes	p.10
2.5 Clinical Studies	p.6	7.2 Contests of Skill	p.10
2.6 Regulated Claims	p.6	7.3 Regulatory Bodies	p.10
<b>3. Comparative Advertising</b>	p.6	7.4 Loyalty Programmes	p.11
3.1 General Requirements	p.6	7.5 Free and Reduced-Price Offers	p.11
3.2 Comparative Advertising Standards	p.7	7.6 Automatic Renewal/Continuous Service Offers	p.11
3.3 Challenging Advertising Claims	p.7		
3.4 Challenging Comparative Claims	p.7		
<b>4. Social/Digital Media</b>	p.7		
4.1 General Requirements	p.7		
4.2 Key Legal Issues	p.7		
4.3 Liability	p.7		
4.4 Disclosure	p.8		
4.5 Platform Requirements	p.8		
4.6 Native Advertising	p.8		

## 1. Legal/Regulatory Framework

### 1.1 Source of Regulations

#### Statutes

The primary laws and regulations that govern advertising practices in Romania are:

- Law 148/2000 on advertising (Law 148/2000);
- Law 158/2008 on misleading and comparative advertising (Law 158/2008), implementing into national legislation Directive 2006/114/EC concerning misleading and comparative advertising (Directive 114/2006);
- Law 363/2007 on combating unfair consumer practices and harmonising regulations with European consumer protection legislation (Law 363/2007), transposing into national legislation Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (Directive n29/2005);
- Audio-Visual Law 504/2002 (Audio-Visual Law);
- Decision 220/2011 on Audio-Visual Code (Audio-Visual Code); and
- Government Ordinance 99/2000 on the commercialisation of market products and services, republished.

#### Self-Regulation

The advertising field in Romania is also subject to industry self-regulation, with the Code of Advertising Practice developed by the Romanian Advertising Council (RAC) standing as the main set of ethical rules to be observed by all those involved in advertising and in any form of commercial communication.

The Code of Advertising Practice does not have normative power and is only mandatory to the economic operators who are members of the RAC, not erga omnes.

In addition to the main normative acts governing advertising practices in Romania, depending on the factual circumstances, general pieces of legislation in the wider field of consumer protection may also be applicable, including but not limited to:

- Government Ordinance 21/1992 on consumers protection, republished;
- Law 296/2004 regarding the Consumption Code, republished; and
- Law 449/2003 on the sale of products and their associated guarantees (Law 449/2003).

### 1.2 Regulatory Authorities

Under the applicable legislation, there are three main authorities that may verify compliance with the laws and regulations and apply sanctions. This will depend on the form and/or communication channel used for promoting the advertising communica-

tion in question, on the one hand, and on the affected interests in the market, on the other. Depending on whether there is (potential) prejudice to consumers' interests or to competitors, a different authority will be called to investigate and apply sanctions and measures. These authorities are:

- the National Audio-Visual Council (CNA);
- the National Authority for Consumers' Protection (ANPC); and
- the Ministry of Public Finance (MFP).

The competent authority may act ex officio, in consideration of a complaint submitted by a consumer or by an association for consumer protection and also based on a complaint filed by a competitor of the alleged infringer. In this respect, the CNA's competence is determined by the form and channel of commercial communication (everything in the audio-visual field, irrespective of the prejudiced interests), while the ANPC's and the MFP's competence is determined by the prejudiced subject.

The sanctioning mechanisms regulated by the law include fines as well as additional measures that may be imposed by the competent authorities, starting with imposing the obligation to cease the advertising practice and/or to publish the decision of administrative sanction and continuing up to suspension/closing of the relevant economic operator's activity.

### 1.3 Scope of Liability

Under the applicable legislation, as a general rule, persons that can be held liable for deceptive advertising include any natural or legal person acting for purposes falling within his or her commercial, industrial or artisanal activity and any person acting in the name and on behalf of the economic operator (generally regulated as "economic operators" under the applicable legislation within the advertising field).

In practice, where the economic operator responsible for a breach of applicable legal provisions in the field of advertising practices is a legal person, the sanctions and measures provided by the law are only established by the competent authorities for the legal person (as discussed in **1.2 Regulatory Authorities**). While a proposed amendment to the consumer protection legislation was intended to extend the liability to directors of the company, this amendment was ultimately not passed.

The situation is different, of course, if the breach exceeds the scope of administrative liability and qualifies as a criminal offence, in which case the liability of natural persons (eg, individual owners or shareholders) contributing to the infringements may also be triggered, under the applicable legal requirements.

As a rule, under the applicable legislation, the liability for infringements committed within the advertising field shall belong to the economic operator that benefits from the advertising material and thus no liability would be triggered for third parties who provide services to the advertiser. However, third-party service providers could end up being held liable if they themselves breach the law or measures imposed by competent authorities in the field. By way of example, the national authorities' practice reveals various situations where third-party service providers have been required to cease the provision of services for the benefit of the economic operator promoting advertising material and non-compliance with these obligations imposed by the authorities was to be qualified as distinct breach and sanctioned according to the law.

A different situation exists in the field of audio-visual services, where the CNA can only sanction the audio-visual service providers, and not the company whose products/services are advertised. Thus, for example, if a TV commercial is found to be in breach of the advertising legislation, the CNA will sanction the TV station and not the client. Of course, contractual mechanisms are in place that allow the TV station to have a recourse against the client for such cases.

## 1.4 Self-Regulation

At the national level, the representative self-regulatory organisation in the field of advertising practices is the RAC, which presents itself as a professional, non-governmental, non-profit and independent organisation with 72 members at the moment when the present organising document was written, including companies, advertising agencies, media and associations.

The RAC is a member of other European (EASA - the European Advertising Standards Alliance) and global (IAA - the International Advertising Alliance) organisations.

The Code of Advertising Practice, as developed by the RAC, does not have normative power and is only applicable to the members of the organisation. The document covers a set of principles and main rules to be observed in conducting advertising practices, while also addressing specific rules in relation to advertising material promoting categories of products or services (eg, cosmetic products, food supplements).

Concerning the investigation procedures conducted at the level of the RAC, it should be noted that meetings take place in front of an Ethics Committee, which shall pass a decision containing recommendations on how to return to compliance with the agreed rules of the Code of Practice.

We underline that the RAC is known as a representative self-regulatory organisation within the general field of advertising

practices and that the organisation does not represent any particular industry or domain of activity on the market. Specific self-regulatory organisations (sector-specific not advertising-specific) may also be found at the national level within specific fields (eg, pharmaceuticals) that impose rules and principles to be followed by their members in conducting their activity, including in relation to advertising practices.

## 1.5 Private Right of Action

Consumers that consider themselves to be (potentially) prejudiced by an advertising practice conducted by an economic operator may address a complaint in this respect to the attention of competent authorities.

The submission of (or failure to submit) the complaint does not prejudice the rights granted to the consumers by the law in order to ensure the protection of their interests in front of the competent courts. Thus, consumers may pursue contractual or tortious actions under the general provisions of civil law (depending on whether the advertising practice is intrinsically linked to an agreement concluded between the economic operator and the consumer). However, in the case of an action in tort, all conditions for tort liability must be fulfilled, including that the prejudice must be proven.

## 1.6 Regulated Industries

### Sectors Subject to Additional Regulation

Certain industries are subject to additional regulations.

#### *Tobacco*

Specific advertising rules are laid down in Law 201/2016 and Law 457/2004, including restrictions on advertising on cigarette packaging, on the shelves where tobacco is displayed, in the written press, and on radio and TV stations.

#### *Gambling*

Governmental Emergency Ordinance 77/2009 provides a set of rules around commercial communication addressed to consumers (eg, advertising by sending unsolicited electronic messages that contain information regarding games of chance to an unlimited number of persons is prohibited).

#### *Pharmaceuticals*

Order 194/2015 issued by the Ministry of Health, on the approval of the rules for the evaluation and approval of advertising for medicinal products for human use, contains a detailed set of rules aimed at making sure that advertising is exact, balanced and objective.

#### *Alcoholic drinks*

Law 148/2000 imposes certain restrictions and rules on advertising for alcohol.

## Major Cases

A notable case in the past 12 months concerned a well-known online retailer, which received a warning from the National Agency for Fiscal Administration due to its use of search engine optimisation (SEO) tactics to acquire internet users searching for a competitor within the online market. The case has been intensively publicised.

## 2. Advertising Claims

### 2.1 General Standards

The applicable legislation states that whether advertising claims are deceptive or misleading is decided on a case-by-case basis, with special consideration given to a set of determined criteria and parameters, including but not limited to the following.

- The characteristics of the goods and services, such as their availability, nature, method of execution, composition, method and date of manufacture of goods or provision of services; if they correspond to their purpose, quantity, technical-functional parameters, geographical or commercial origin; the results expected from their use; or the essential results and characteristics resulting from tests or controls performed on them.
- The price, or method of calculating the price, and the conditions under which the goods are distributed, or the services are provided.
- The nature, duties and rights of the advertiser, such as:
  - (a) their identity and products;
  - (b) their qualifications and their ownership of industrial, commercial or intellectual property rights; or
  - (c) their awards or distinctions.

### 2.2 Actionable Advertising Claims

Any claim aiming to describe and/or promote a product or service shall be subject to the regulations applicable to advertising and also observe the general principles regulated by Government Ordinance 21/1992, according to which the consumer must be provided with precise, exact and complete information on the product or service offered.

Both express and implied claims are to fall under the imperative requirements applicable in the field of advertising practices.

An analysis of whether a claim included in a commercial communication (express or implied) is in accordance with the applicable legal provisions shall be made on a case-by-case basis. It should be noted that the ANPC is quite rigorous and conservative in analysing the compliance of commercial communication and applies severe criteria in qualifying an advertising practice

as being conducted in accordance with the law. The MFP may show more flexibility, but the analysis is still quite strict.

Specific claims that qualify as commercial practices that are considered incorrect in any situation under Law 363/2007 will not be subject to a distinct analysis, and would be sanctioned irrespective of the potential defences used by the relevant company.

### 2.3 Claim Substantiation

There are no express legal provisions regulating the criteria and parameters under which a claim may be considered as sufficiently supported by proof of any kind. The practice of the competent authorities and the courts may, however, offer some guidance as to what kind of claim substantiation used within an advertising practice needs to be provided by the economic operator so as to ensure that the authority ascertain that the relevant advert is compliant with the applicable legislation.

In principle, any advertising claim must be included within the commercial communication in a manner that ensures complete, correct and precise information is made available to the consumer, while not prejudicing third party competitors on the market. If necessary, said claim shall be accompanied by explanatory mentions/disclaimers or indications displayed in the same visual field as the main commercial communication. In any situation, however, the economic operator must be able to present the documentation necessary to support the claim used within the advertising practice.

As a general rule, claims such as “the true [product]”, “the best [product/service]”, “number one” are regarded with scepticism by the competent authorities and must be seriously supported with evidences in order to not trigger liability for the economic operators using them.

The Code of Advertising Practice issued by the RAC (without normative power), expressly indicates that affirmations used within a commercial communication cannot be exclusively based on testimonials, opinions or subjective experiences of individuals and must be based on adequate substantiation documents.

### 2.4 Testing

The legislation provides no general standards for the testing to be used in advertising. According to the law, each claim will be assessed on a case-by-case basis to determine whether it is sufficiently substantiated.

The practice of competent authorities in the field has revealed that supporting documents and information may differ in nature in consideration of various criteria, including:

- the type of product/service promoted;
- the channel used in communication; and
- the diligence and knowledge required from the average consumer (especially in specific industries, as in automotive field).

However, as a rule, these supporting documents shall originate from objective sources (and not sources related to, or under the control of, the economic operators using the advertising claim) and shall cover a wide range of relevant subjects in order to be considered by the competent authorities as proof for the advertising claims used.

## 2.5 Clinical Studies

Romanian legislation does not require human clinical studies for any type of claim.

However, within the pharmaceutical field, it should be noted that national legislation prohibits any type of advertising being made in relation to medicinal products that have not been previously authorised for marketing in Romania (while marketing authorisation is only issued after human clinical trials have been successfully performed). The same principle applies to medical devices in the sense that only the devices fulfilling all the conditions provided by the law in order to be placed on the market may be subject to advertising addressing the general public.

## 2.6 Regulated Claims

There are certain type of claims that are subject to specific rules, as set forth in normative acts or as revealed by consistent practice endorsed by the competent authorities in the field.

While not aiming at providing an exhaustive list of the types of claim considered to be sensitive under the applicable legislation and the advertising authorities' typical practice, the following represent specific examples of such sensitive claims.

- Nutrition and health claims for food products – these may only be used in the labelling, presentation and advertising of food placed on the market in full observance of the special legal framework applicable in this respect at European Union level; the competent authorities in the advertising field, as well as the Romanian Ministry of Health have quite a proactive policy regarding the nutritional and health claims made in relation to food products.
- Origin related claims – as a rule, such claims are to be provided on a voluntary basis, however, mentions of the product origin are mandatory for specific product categories (eg, especially in the field of food products); national legislation in Romania seems to place particular focus on origin-related claims in the field of food labelling, whereby references to “(place of origin) type”, “(place of origin) style”

are prohibited so as to ensure that the package/label of the product does not include references capable of creating confusion among consumers with respect to the origin of the product.

- Explicit or implicit references to the characteristics of the product, which refer to “natural”, “peasant”, “rustic” or “in house” qualities, are to be used with precaution since the competent authorities tend to be increasingly sceptical with respect to such claims accompanying products (especially food), which are manufactured in industrial quantities.
- Free – under the provisions of the applicable legislation, the term free is prohibited for use in situations where there are costs incurred by the consumer (except for inevitable costs resulting from the response to the commercial practice and from the payment for delivery or picking-up of the product); in practice, however, the ANPC is reluctant to accept any use of the claim free within commercial communication (the most common example is “buy one, get one free” which has triggered various sanctions for economic operators using the claim).

## 3. Comparative Advertising

### 3.1 General Requirements

Under the national legislation, in line with the European Union regulations in this area, comparative advertising is permitted, provided that all the legal requirements set forth in this respect for such advertising are fully observed.

- It is not misleading, according to the provisions of Law 363/2007 on combating the incorrect practices of traders in relation to consumers.
- The goods or services compared meet the same needs or are intended for the same purposes.
- The comparison is done objectively and it refers to one or more essential, relevant, verifiable and representative characteristics of the respective goods or services, which may also include the price.
- It does not discredit or denigrate the trademarks, other distinctive signs, goods, services, activities or situation of a competitor.
- In the case of products with a designation of origin, it refers, in each case, to products with the same designation.
- It does not take unfair advantage of a competitor's trademark or other distinguishing marks or designation of origin of competing products.
- It does not present goods or services as imitations or reproductions of goods or services bearing a protected trademark.
- It does not create confusion between merchants; between the advertiser and a competitor; or between brands, trade-

marks and other distinctive signs, goods or services of the advertiser and those of a competitor.

While not expressly prohibited by the law (on the contrary, the wording of the law seems to expressly permit it), identifying a competitor by name must be considered with caution since the practice of the authorities reveals a strong reticence to qualify material that identifies a competitor by name as compliant with the legal requirements. Moreover, the very recently amended Law 84/1998 regarding trademarks and geographical indications expressly qualifies as trademark infringement the use of a competitor's trademark in a manner that breaches the legislation regarding comparative and misleading advertising.

### 3.2 Comparative Advertising Standards

Standards that apply to general advertising claims also apply to comparative advertising claims. In addition to these, the specific legal requirements for comparative advertising, as discussed in 3.1 General Requirements, must be observed.

### 3.3 Challenging Advertising Claims

Assessment of whether comparative advertising claims are truthful or not is done on a case-by-case basis by the relevant authorities or the courts, as the case may be, on the basis of the general legal requirements regarding lawful advertising practice and in consideration of the information and documents provided by the economic operator in support of the claims included within the advertising material. The applicable legal framework only provides the general criteria to be followed in ensuring the compliance of comparative advertising with the law, while remaining silent over what specific standards/requirements are to be considered in analysing advertising material.

### 3.4 Challenging Comparative Claims

An advertiser that believes that a competitor's advertising practice prejudices them may address a complaint to the CNA (if the relevant advert was made within the audio-visual environment) and the MFP, and may also initiate a legal action with the competent court of law.

The competent authorities may impose administrative fines on an economic operator responsible for unlawful advertising, ranging from RON3,000 (approximately EUR650) to RON30,000 (approximately EUR6,500) and may also order measures obliging the economic operator to cease the illegal advertising practice. These measures may also be imposed by the competent courts of law.

At the national level, there are insufficient jurisprudential precedents to truly attest to a trend in the field of comparative advertising. However, according to the publicly available information, the MFP has sanctioned advertising claims including

implicit comparative claims such as "cheaper than competitors", "the highest standards", "not the only one, but the best one" and "the lowest price worldwide". The list of sanctioned advertising claims, including comparative claims, may be viewed on the official webpage of the MFP, within the specific interface dedicated to incorrect advertising practices on the national market.

## 4. Social/Digital Media

### 4.1 General Requirements

In Romania there are no special national normative rules or regulations that apply specifically to advertising on social media. As such, the general legal provisions in the field of consumer protection and advertising remain applicable.

### 4.2 Key Legal Issues

Lacking express legal provisions to regulate social media content and the advertising practices conducted on social media platforms, marketers face specific challenges when, for example, implementing an advertising campaign through social media with respect to various issues.

- Issues regarding protection of their intellectual property rights and know-how.
- Issues related to the protection of third-party rights, where a significant challenge derives from the use of user generated content (UGC); thus, an important aspect when developing social media marketing that aims at taking advantage of UGC is to obtain the consent of the content's owner, since content simply being posted does not make it part of the public domain (consent may be explicit or implicit, depending on the case).
- Liability issues with respect to the content of in the advert, especially when discussing influencer marketing.

### 4.3 Liability

Under the applicable legal framework in Romania, the liability for advertising practices is incumbent upon the economic operator who benefits from the relevant commercial communications addressed to the public.

Under the applicable national legal framework in the field of information society services, in line with the European Union legislation in place, the service provider shall not be held liable for the information stored at the request of a recipient of the service, provided that specific conditions are fulfilled, including the condition that the provider does not have actual knowledge of illegal activity or information and, concerning claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent.

Thus, the advertiser should display an increased diligence and to ensure constant monitoring of the content generated within an advertising practice conducted through social media in order to avoid potential liability issues deriving from non-compliant content, including liability-related risks regarding the global context in which the advertising practice could be incorporated, given the product/services promoted and the manner in which the promotion is made.

This does not preclude the possibility that liability could be triggered for third parties that provide unlawful content which is incorporated within an advertising practice on social media. This is the reason why the advertiser should have in place clear and unequivocal terms and conditions under which content may be generated by third parties so as to be able to exercise, at their own discretion, a right of recourse against third parties who fail to observe the applicable legal requirements or prejudice, through their content and/or the manner of its dissemination, third parties' rights.

#### 4.4 Disclosure

Since the general rules applying to traditional advertising are also applicable to social media advertising, the provisions regarding deceptive or misleading advertising regulate social media advertising as well. Thus, disclosures that prevent an advert from being deceptive or misleading are to be included in the advert to the maximum extent possible.

#### 4.5 Platform Requirements

There are no normative dedicated rules or regulations that apply to the use of any social media platform in Romania. Users should consider the applicable general legal requirements depending on the activity intended to be performed on the social media platform, while also taking into consideration the terms and conditions governing the use of the online platform under discussion.

#### 4.6 Native Advertising

The applicable legislation provides that using editorial content in the media to promote a product – where a trader has paid for that promotion without making that clear in the content, or by images or sounds clearly identifiable by the consumer – is presumed to be an incorrect commercial practice.

## 5. Influencer Campaigns

### 5.1 Trends

Recent trends include greater reliance on less scripted content, especially with the rise of social media platforms such as Instagram, Snapchat and, recently, TikTok. Influencers have also

started to play a role due to the increased use of social media as a result of the current pandemic.

In a context of an unprecedented increase in the number of advertising practices implemented through influencer campaigns, the lack of specific legal provisions regulating this field is felt especially among advertisers. They must identify the challenges arising from a commercial relationship with an influencer in order to correctly and completely reflect these within the contracts concluded, while also efficiently allocating their resources in order to ensure a high level of diligence on the part of the influencer and be aware of any potential to harm to their brand(s).

### 5.2 Special Rules/Regulations on Influencer Marketing Campaigns

There are no special normative rules or regulations within the national legal framework that apply to influencer campaigns in Romania, the general legal requirements remain applicable in full.

Express provisions regarding the legal regime for influencer marketing campaigns are provided, however, through the Code of Advertising Practice issued by the RAC and may be considered as a point of reference by non-members as well. According to the self-regulatory document, the following rules shall apply in relation to influencer marketing campaigns.

- The commercial relationship between the influencer and the advertiser must be clearly and visibly disclosed within the commercial communication, with the disclosure to be made in each article, post, video, etc.
- Any affirmation made by the influencer must be true, verifiable and not misleading.
- In posts related to the use of the products the influencers must present their genuine opinion, based on available evidence.

### 5.3 Advertiser Liability

While influencer campaigns are not regulated as such by the legislation, under the general legal provisions in place, the beneficiary of the advertising practice (ie, the advertiser) may be held liable for content posted by its influencers.

The principle is expressly iterated within the Code of Advertising Practice issued by the RAC.

In order to limit liability, it is recommended that the advertiser provide precise guidance to its influencers, monitor the activity thereof, while also providing a special attention to the contracts used to govern their relationship with influencers.

Where influencer behaviour exceeds the terms and conditions agreed with the advertiser in relation to the implementation of the commercial practice, the advertiser should be able to exercise, depending on the contracts in place, a right of recourse against the influencer.

## 6. Privacy and Advertising

### 6.1 Email Marketing

Communication falling within the scope of advertising is forbidden if done without the express consent of the recipient, the rule being thus opt-in.

However, according to Law 506/2004, transposing into Romanian law the provisions of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), if a natural or legal person obtains the electronic address of a client, in a direct manner, while providing a service or selling a good, that natural or legal person may use the electronic address to contact the client with respect to similar services or goods that the natural or legal person provides, without obtaining separate prior explicit consent. The natural or legal person must provide the client with the possibility to opt out of such use of their contact details, both when the electronic address is obtained as well as with every subsequent use (opt out).

The practice of sending electronic communication in which the sender's identification data is hidden, or in which the address used to request that such communications ceases is hidden, is also forbidden.

According to Law 506/2004, the sanction for breaching those rules is a fine ranging from RON5,000–100,000 (approximately EUR1,000–20,500), and for commercial companies with a turnover of over RON5 million (approximately EUR1 million), a fine of up to 2% of the turnover.

If rules on proper consent under the GDPR (EU Regulation 2016/679) are not respected, sanctions provided therein may also become relevant.

### 6.2 Telemarketing

Outbound telemarketing is permitted under Law 506/2004 to the extent that cold calls involve human intervention. Commercial communications that use automatic calling systems are forbidden, except where the user has specifically consented to this in advance. The same opt-out rules discussed in **6.1 Email Marketing** apply to telemarketing.

Good market practice involves taking several measures, that include, at a minimum:

- easy access to call histories and number look-ups, so callers know and can explain exactly where the data they are using came from;
- easy opt-out for call recipients;
- clear privacy policies that explain how data is processed; and
- the provision of clear information on who the caller is and why are they calling.

Under the GDPR, mechanisms for individuals to easily exercise their “right to object”, their “right to be forgotten” and their “right to rectification” (as well as to submit a data subject access request) should also be provided.

### 6.3 Text Messaging

The definition of electronic commerce includes any form of communication, as such, text messaging falls under the rules described in **6.1 Email Marketing**.

### 6.4 Targeted/Interest-Based Advertising

The GDPR rules on consent apply for participation in marketing campaigns and direct marketing rules for electronic communication, as described throughout **6. Privacy and Advertising**.

In terms of profiling for advertising purposes, the prohibitions provided under the GDPR on fully automated decision making processes apply with the allowed exemptions, such as a legitimate interest pursued by the advertiser/controller. The legitimate interest is to be established under a balancing test in accordance with GDPR provision and other secondary legislation or guidance.

### 6.5 Marketing to Children

#### General Restrictions

Law 148/2000 defines minors as persons under 18 and contains several provisions regarding them.

With respect to advertising for children, Law 148/2000 on advertising offers some general rules, stating that:

- advertising that contains elements that harm children physically, morally, intellectually or mentally is forbidden;
- advertising that indirectly encourages children to buy products or services, taking advantage of their lack of experience or credulity, is forbidden;
- advertising that affects the special relationships that exist between minors, on the one hand, and parents or teachers, on the other, is forbidden; and
- advertising that unjustifiably presents minors in dangerous situations, is forbidden.

Regarding audio-visual commercial communications, regulated by Law 504/2002, these must not cause any moral, physical or mental harm to minors, and they especially must not:

- exploit the lack of experience and the credulity of minors in order to convince them to buy a product or service;
- encourage the minors in a direct manner to convince their parents or other persons to buy products or services;
- exploit the special kind of trust that minors have in their teachers and parents; and
- unjustifiably present minors in dangerous situations.

Collection and use of minors' data is subject to parents' consent for children younger than 14, while children between 14 and 16 may consent themselves, but parents' approval is also required. Minors between 16 and 18 may grant consent by themselves for the collection and use of their data.

### Sector-Specific Restrictions

Furthermore, according to both Law 148/2000 and Law 504/2002, concerning advertising for tobacco and alcohol products, such publicity is not permitted in publications aimed at minors or in performance spaces intended for them. This kind of advertising is also prohibited if it is aimed directly at minors or presents minors consuming such products.

Breaching the rules set out in Law 148/2000 is punishable by a fine ranging from RON500–1,500. Breaching the rules set in Law 504/2002 is punishable by a fine ranging from RON10,000–200,000.

## 7. Sweepstakes and Other Consumer Promotions

### 7.1 Sweepstakes

The legal regime covering sweepstakes and contests under the applicable legislation differs depending on the mechanism used within the promotional action.

- A mechanism involving the selection of winners by drawing lots shall qualify as an advertising lottery (*loterie publicitara*) under the provisions of GO 99/2000.
- A mechanism that does not involve drawing lots does not qualify as advertising lottery, and, as such, does not trigger the obligation to observe the legal requirements provided by GO 99/2000 for such actions; the promotional action is, however, subject to regulations in place in the field of consumer protection and advertising.

Irrespective of the mechanism used within the promotional action, the consumer may be required to make a purchase in

order to participate. In practice, promotional campaigns usually include the condition of a prior purchase of one or more participating products or services. However, in order not to fall under the legislation regulating gambling, no additional expense/cost may be imposed on the participants in the campaign.

### 7.2 Contests of Skill

#### Games of Chance

National legislation on gambling expressly distinguishes between contests of skill and games of chance. Games of chance are defined as any activities that cumulatively fulfil the following conditions.

- Material prizes, generally monetary, are awarded following a public offer and acceptance of this offer by the participant through direct or indirect payment of a participation fee.
- Winnings being awarded:
  - (a) on the basis of game rules approved by the Romanian National Gambling Office;
  - (b) on the basis of a random selection of the results of the events to which the game relates; or
  - (c) regardless of how these results are achieved.

Emergency Government Ordinance 77/2009 regarding gambling activities expressly mentions that amusement and sports games, where the players must show knowledge or skills, and which are not based on chance, are allowed and do not qualify as gambling.

#### Contests of Skill

Lacking a legal definition or criteria to determine the sphere of applicability of games of skill, these shall be identified on a case-by-case basis, considering the mechanism used in conducting the promotional action involving games of skill, while also having in mind the potential for them to be qualified as games of chance under the legal definition provided by the law in this respect.

Note should be made that, under the applicable legal framework in the field of games of chance, the organisation of actions for the promotion of traded goods and services by operators is forbidden if the denomination of the promotional action induces clients to participate in games of chance or if the effective manner of its performance contravenes the provisions of the applicable gambling law.

### 7.3 Regulatory Bodies

Under the special regulatory framework applicable in this field, games of chance may be offered only if organisers are duly licensed and authorised by the Romanian gambling regulator: the National Gambling Office. Performing gambling operations

in the absence of the necessary licence and authorisations is expressly qualified as a criminal offence.

Contests of skill whose mechanisms do not involve elements of chance, and which therefore do not fall under the gambling regime, do not require regulatory approval in this respect. These actions must, however, observe the applicable requirements in the fields of consumer protection and advertising.

## **7.4 Loyalty Programmes**

No special laws or regulation are in place at the national level for loyalty programmes.

In practice, such loyalty programmes are conducted on the basis of formal regulations or specific terms and conditions, provided to the consumer so as to ensure that correct, precise and accurate information, with respect to the parameters under which the loyalty benefits are granted, is available to the consumer. They also cover the obligations incumbent on the consumer in this respect and the forms of execution (eg, periodical payment, right of withdrawal), in accordance with the applicable legal provisions.

## **7.5 Free and Reduced-Price Offers**

Free and reduced-price offers within promotional actions conducted by economic operators are subject to specific regulations.

- Sales with bonuses offered to consumers are forbidden under the applicable legislation, thus economic operators are not allowed to offer the consumer – free of charge, immediately or at a specific point in time after the purchase by the later of a product/service – a bonus in the form of products/services, except for cases where the product/service offered as prime is of the same type as the product/service that has been purchased.

- Conditioned/bundled sales are also forbidden, economic operators not being allowed to condition the sale of a product on the purchase of a determined quantity of that product or of another product/service at the same time; exceptions include sale of different products/services for a global price or of identical products in the same collective package, provided that each product/service may be purchased separately at the corresponding price and the consumer is duly informed of this possibility.
- Reduced-price offers are subject to specific legal requirements regarding the manner in which the communication of the financial benefit offered to the consumer is made; thus, the economic operator is bound to ensure that the old and new price, or the discount applied, as the case may be, are displayed in accordance with the requirements set forth by law.

## **7.6 Automatic Renewal/Continuous Service Offers**

The general legal framework in the field of consumer protection, GO 21/1992, expressly provides for the right of consumers to be notified thirty days in advance of the date on which the contract is automatically extended for a determined or undetermined period of time, and for the consumer to have the possibility to provide a written answer regarding their choice to accept, or not, the prolongation of the contract.

**Simion & Baciu** unites a team of seasoned attorneys, with the drive and passion to deliver the best results for its clients. With more than 20 years of experience, spanning over several areas of law, the team offers a business-oriented approach and successfully assists clients time and again. Clients whose business is mainly about advertising and selling goods or providing services to consumers need to understand and comply with consumer protection legislation. While Romania generally

complies with EU legislation, the Romanian authorities' practices may prove challenging at times. Simion & Baciu provides guidance through these often-complex legal requirements and also translates, into business-friendly language, the specific local conditions that businesses need to be aware of and observe to enable smooth and compliant operations in Romania. The firm's consumer protection practice covers the full spectrum of consumer protection and advertising matters.

## Authors



**Ana-Maria Baciu** is a regulatory, consumer protection and intellectual property lawyer, who has been assisting clients in various industries for more than 20 years. Before setting up Simion & Baciu, Ana-Maria headed the intellectual property practice (as well as co-heading

the gambling, consumer protection and advertising practices) at Romania's largest and oldest law firm. A regular representative presence in task forces, and events, in front of public authorities, discussing consumer protection issues for businesses directly facing consumers and trade associations, Ana-Maria is the Deputy Chair of the AmCham Trade Legislation Task Force for the 2020–21 mandate.



**Cosmina Simion** is a regulatory, intellectual property, technology and consumer protection lawyer with more than 20 years of professional experience and expertise in various industries, particularly the media and entertainment, online and gaming industries. Prior to setting up Simion &

Baciu, Cosmina was an intellectual property partner and co-head of the gambling, consumer protection and advertising practices at the largest and oldest law firm in Romania. She combines her strong advisory expertise, acquired during her co-ordination roles in leading law firms, with the specific approach built during her in-house role (at a US group that was a leader in the regional media sector).



**Ana-Maria Coruga** is a senior lawyer whose expertise spans several practice areas, including consumer protection, advertising, life sciences and IP. Within the consumer protection and advertising field, Ana-Maria advises clients from the retail and FMCG sectors on a regular basis

regarding issues such as labelling and product recalls, promotions and sweepstakes, as well as distance sales. Ana-Maria is an active presence within working groups and task forces in the consumer protection field, participating in debates and meeting with representatives of various industry sectors, as well as relevant authorities in the field of FMCG.



**Andrei Dumbrava** provides assistance on consumer protection matters as well as other legal and regulatory matters for clients active in the retail sector. He also handles various other civil, commercial and gaming law matters, as well as representing clients in front of the relevant

Romanian authorities. In addition, he acts as an IT assistant at ELSA (the European Law Students' Association) International. Prior to working at Simion & Baciu, he was an intern with [juridice.ro](http://juridice.ro), a well-respected online legal publication, while also working at [grile.juridice.ro](http://grile.juridice.ro), a project aimed at providing online support for graduates preparing to sit the Bar exam or the exam for becoming a magistrate.

## **Simion & Baci**

11 Maior Alexandru Campeanu St  
1st floor, Unit 3  
Bucharest 011235  
Romania

Tel: +40 31 419 04 88  
Fax: +40 31 419 04 88  
Email: [office@simionbaci.ro](mailto:office@simionbaci.ro)  
Web: [www.simionbaci.ro](http://www.simionbaci.ro)

