



**COUNTRY
COMPARATIVE
GUIDES 2023**

The Legal 500 Country Comparative Guides

Mexico

ADVERTISING & MARKETING

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This country-specific Q&A provides an overview of advertising & marketing laws and regulations applicable in Mexico.

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MEXICO

ADVERTISING & MARKETING



1. How is harmful and offensive advertising regulated? [For example, advertising content that may be obscene, blasphemous, offensive to public morals or decency, or offensive to protected minorities or characteristics?]

The main pieces of Mexican legislation which regulate advertising do not contain specific rules in connection with offensive advertising. However, the Federal Law for Consumer Protection indicates that suppliers of goods and services may not establish discriminatory conditions. Under this basis it could be considered that advertising practices must be in accordance with this, so its content should not be offensive.

Furthermore, it should be considered that the Federal Law for the Prevention and Elimination of Discrimination indicates that “incite hatred, violence, rejection, ridicule, insult, persecution or exclusion” are considered as discrimination. In view of the foregoing, advertisers must not perform discriminatory practices.

2. How is unfair and misleading advertising regulated? [Briefly describe the law and regulation applying to unfair and misleading advertising in your jurisdiction. Cover any specific unfair or misleading practices that are prohibited, as well as the general category of misleading advertising]

Unfair and misleading advertising are mainly regulated by the Federal Law for Consumer Protection. In accordance with the same, the main purpose of advertising is to inform consumers so they can make proper consumption decisions. Consequently, it is established that advertising must be truth, verifiable, clear and without including any element (texts, images, sounds, among others), which might mislead or confuse consumers. Furthermore, this law indicates that is considered misleading or abusive advertising the one

“which refers to characteristics or information related to some good, product or service that may or not be true, misleads or confuses consumers due to the inaccurate, false exaggerated, partial, artificial or biased way in which it is presented”

3. Do any specific rules restrict advertising for the following product sectors? If so, how? a. Alcohol b. Tobacco and related products, such as vapes and nicotine pouches c. Medicines, medical devices and surgical or medical procedures d. High fat, salt and sugar foods e. Gaming and gambling services f. Adult and sex-related services

Alcohol

The General Health Law and its regulations in advertising matters contain specific dispositions applicable to alcoholic beverages. To publish advertising of alcohol products it is necessary to obtain a permit from the Commission to Prevent Sanitary Risks (COFEPRIS).

This authority must verify that the advertising (i) does not address minors; (ii) does not promote an irresponsible consume of alcoholic beverages; (iii) does not transmit ideas or images of success, fame, prestige, tranquillity, joy or euphoria as consequence of the consumption of alcoholic beverages, or as a triggering element of interpersonal relationships; (iv) does not attribute nutritional, sedative, stimulating or disinhibiting properties to the products; (v) does not associate the consumption of the products with creative, educational, sport, domestic or professional activities; (vi) does not associate the consumption of the products with religious or civic celebrations; (vii) does not exalt the social prestige, virility or femininity of the public to whom is directed; (viii) does not shows the product as an element that allows or facilitates the execution of any creative activity; (ix) does not appear recognized athletes or people wearing sports equipment or clothing; (x) does

not appear marks, symbols, emblems of the advertised products in sports clothing except in the case of brands of products classified as having low alcohol content which might appear only in the part of the back of the shirt and that their size is not larger than one sixth of their posterior surface; (xi) does not associate activities, conducts or characteristics of people under 25 years of age; (xii) does not show real or simulated consumption of the products or manipulation of the receipts that contain them; it could only be displayed the service of the product without the presence of any person; (xiii) does not use imperatives that induce consumption of the product; (xiv) does not promote the consumption of the product through raffles, contests or collectibles that address minors; (xv) does not involve promotional items address to minors related to scholar products or smoker items.

Tobacco and related products, such as vapes and nicotine pouches.

The regulations of the General Law for the Control of Tobacco Products prohibit any form of advertising, promotion, and sponsorship of tobacco, including the direct or indirect exhibition of tobacco products in points of sale.

Medicines, medical devices and surgical or medical procedures

The General Health Law and its regulations in advertising matters contain specific dispositions regarding these products and related services.

In connection with medicines, it is indicated that advertising aimed at the general population may include the description of human diseases, diagnosis, treatment, prevention, or rehabilitation expressed in the terms of their sanitary registration and in language appropriate to the public to whom it is directed. These messages must always identify the advertiser with the brand of the product or its company name. To publish advertising of medicines it is necessary to obtain a permit from COFEPRIS who will verify, among others, that the advertising does not (i) show the products as a definitive solution in the preventive, curative or rehabilitative treatment of a disease; (ii) suggest a use related to other symptoms different from those expressed in the sanitary registration of the product; (iii) modify the approved doses for the products; (iv) promote its consumption through draws, raffles, contests or other events that involve chance; (v) promote its consumption through the acquisition of other products or services; (vi) use declarations or testimonials which might mislead the public or are not properly supported; (vii) use caricaturizing techniques that might mislead children.

In connection with medical devices, it is indicated that advertising for these products must include messages that avoid self-treatment, must not promote harmful practices due to an inadequate use or attributes preventive, therapeutic or rehabilitation characteristics in the treatment of a disease except when it has been fully verified. It is also required to indicate the necessary precautions to follow in case that the products are used within body cavities or on the skin. Furthermore, it is required that advertising for these products must (i) be clear, concise, and easily understandable for the public sector to which is directed; (ii) use legends to hygiene education; and (iii) if it is the case, indicate that the use or consumption of the products implies a health risk.

In connection with medical procedures, it is indicated that their advertising must inform about the type, characteristics and purposes of the services and the general modalities of access to them; must not offer preventive, curative or rehabilitative techniques and treatments of a medical or paramedical nature by correspondence or through brochures, instructions, manuals or other information means, except in those cases in which there is authorization from the Health Ministry. The regulations also indicate that advertising for these services would not be authorized (i) if distorts or is contrary to applicable regulations for prevention, treatment or rehabilitation of diseases; (ii) if offers preventive, curative or rehabilitative treatments of a medical or paramedical nature whose effectiveness has not been scientifically proven; or (iii) if it is not proven that the establishment or person providing the service has the trained personnel, the appropriate technical and material resources, and other elements required by the applicable provisions.

High fat, salt and sugar foods

The General Health Law and its regulations in advertising matters contain specific dispositions regarding food in general. These dispositions indicate that advertising of foods, nutritional supplements and non-alcoholic beverages may not present these products as stimulants or modifiers of the physical or mental state of people, except in those cases that have been recognized by the Health Ministry. It is also established that advertising for these products must not (i) induce or promote unhealthy habits; (ii) affirm that the product alone meets the nutritional requirements of the human being; (iii) attribute to industrialized foods a superior or different nutritional value; (iv) make comparisons that undermine the properties of natural products; (v) express or suggest, through the use of real or fictitious characters, that the ingestion of these products provides people with extraordinary characteristics or abilities; (vi) be associated with the consumption of alcoholic or tobacco

products; (vii) declare properties that cannot be proven, or that the products are useful in preventing, alleviating, treating or curing a disease, disorder or physiological state.

It is also indicated that advertising of foods and non-alcoholic beverages must include precautionary messages about the condition of the product, as well as messages promoting a balanced diet or promoting good hygiene habits; however, the advertiser will have the option of not including audio messages, when the mentioned aspects are promoted in the advertisement itself.

Gaming and gambling services

The regulations of the Federal Law of Gambles and Raffles indicates that the advertising must (i) be expressed in a clear and precise manner so it does not mislead, deceive, or confuses the public regarding the services offered; (ii) include messages that indicate that gambling is prohibited for minors; and (iii) invite the public to game responsibly and with purposes of entertainment, fun or recreation.

Adult and sex-related services

No specific regulations are established for these types of services. However, the diffusion of the same could be restricted if its content is apt for (i) all public, (ii) teenagers, (iii) teenagers older than 15 years; or is not apt for people younger than 18 years or if its content is for adults.

4. Do any specific rules apply to advertising featuring prices?

PROFECO has established some guidelines in connection with advertising that compare prices. These guidelines indicate that:

- The prices to be compared must correspond to identical products or services.
- The comparison must indicate the prices in numbers and not in percentages.
- The prices must be supported by receipts, publications or certifications issued by a Public Notary.
- The comparison must be published on the day of the acquisition of the product/services, publication of the price or the day the certification was performed.
- A legend indicating "To date, the price being compared may have varied."

5. Do any specific rules apply to the use of testimonials and endorsements in advertising?

The Federal Law for Consumers Protections indicates that it is forbidden to include in the commercial information or advertising content any legend or information that indicates that the product or service has been endorsed, approved, recommended or certified by professional associations, when they lack appropriate documentation supported by scientific, objective and reliable evidence.

The General Health Law indicates that people who perform professional, technical and auxiliary activities and medical specialties must post a notice to the public indicating the institution that issued their Title or Diploma, as well as the number of their professional license in the advertising they make.

The regulations of the General Health Law in advertising matters indicate that advertising related to medicines and herbal remedies, would not be authorized if it contains declarations or testimonials which might mislead consumers or are not properly supported. Regarding advertising of alcoholic beverages, the referred regulations indicate that the same must not disseminate testimonials or interventions related to the consumption of these type of products by athletes, celebrities, or public figures of recognized prestige.

6. Do any specific rules apply to environmental or "green" advertising claims?

There are no specific rules for environmental or "green" advertising claims. However, if the same are related with the offering of products or services and can interfere with consumer's purchasing decisions, these advertising must be truth, verifiable, clear and without including any element (texts, images, sounds, among others) which might mislead or confuse consumers.

7. What rules apply to the identification of advertising content - for example, distinguishing advertorial from editorial?

The Federal Law for Consumer Protection indicates that to avoid misleading or confusing consumers, information should be analyzed and verified in accordance with the context of time in which the content is transmitted, the moment in which is published with respect to other content disseminated in the same channel as well as in accordance with the economic or special circumstances

of the market. Under this basis, it would be irrelevant if a content is presented or is identified as editorial if the purpose of the same is misleading or causing confusion among consumers.

8. How is influencer/brand ambassador advertising regulated?

There is no specific regulation for influencer/brand ambassador advertising. However, PROFECO recently published an advertising guide for influencers which encourages them to observe the various legal provisions applicable to the type of products or services to be advertised. The guide indicates that advertising content must be clear, truthful, verifiable, and not misleading or confusing. Furthermore, the guide provides several suggestions and recommendations to influencers for informing the public, through their publications, whether they maintain a commercial relationship with the mark that distinguishes the products or services covered by the publication. It is also specified that a publication must be considered as advertising even if no monetary benefit was received but in kind.

9. Are any advertising methods prohibited or restricted? [For example, product placement and subliminal advertising]

In general, no advertising methods are prohibited or restricted. However, the regulations of the General Health Law in advertising matters include some restrictions. For instance, for advertising of medicines and herbal remedies, it is indicated that the publicity of such products would not be authorized when the consumption of the same is promoted with basis in contests, raffles, offer in exchange other product or service. It is also established that advertising related to an event or activity endorsed by a mark which distinguishes alcoholic beverages must not promote the consumption of the same.

The mentioned regulations also establish that advertising related to alcoholic beverages would not be authorized if the same refers to contests, raffles, use of promotional items related to school or smoking articles which address minors.

10. Are there different rules for different advertising media, such as online, broadcast, non-broadcast etc?

The regulations of the General Health Law in advertising matters indicate that the legends or sanitary messages

that must be included in the advertising of food, food supplements, non-alcoholic and alcoholic beverages, medicines, herbal remedies, medical equipment, health services, among others must comply with the following:

- In advertisements broadcasted on television and cinema, the written legends must have a minimum duration equivalent to a quarter of the total duration of the advertisement, appear in contrasting colours, be placed horizontally, with regular non-condensed Helvetica font and with a size equivalent to 40 points per letter, in proportion to a 14-inch television screen. The audio legends must be pronounced at the same pace and volume as the announcement, in clear and understandable terms.
- In printed advertisements, the legends must have the characteristics referred to in the previous section and their size must be:
 - For billboard advertisements measuring at least 1290mm x 360mm, the legend will be 60 points high, which must be adjusted proportionally to the size of the advertisement.
 - For any other printed advertisement, the texts must appear in a size no less than 20 points in height in proportion to a page of 21.5 cm x 28 cm and
 - In the case of continuous electronic advertisements, for every four spaces there must be one with the precautionary legend placed in similar conditions of size and proportion to the product advertisement.
- In advertising broadcast on radio, the legends will be an integral part of the advertisement and will be pronounced at the same rhythm and volume of voice as it, in clear and understandable terms, and
- Advertising that appears in computer or telecommunications media must include legends or messages in accordance with the previous sections and according to the auditory or visual means used.

In the case of advertising of alcoholic beverages, the referred regulations establish that advertising materials of said products must also comply with the following:

- In cinema and television, its visual duration will be equal to that of the commercial advertisement, and it will mention on one

occasion in audio a message of social responsibility regarding the consumption of said products; and

- In printed advertisements, the legends must be an integral part of it and have a placement that allows them to be always visible.
- Advertising of alcoholic beverages on radio and television may only be broadcasted during the hours authorized by the Ministry of the Interior, and in cinemas only in films for adults.

In the case of advertising of medicines and herbal remedies, the referred regulations indicate that advertising materials of said products must also comply with the following:

- Include in visual form for print, auditory for radio, as well as visual and auditory for film and television the legend: Consult your doctor, as well as express the corresponding caution when the use of medications represents any danger in the presence of any coexisting clinical or pathological condition.
- In cinema and television, one of the legends may be included in visual form and the other in auditory form.

11. Are there specific rules for direct marketing such as email, SMS and direct mail?

The Federal Law for Consumer Protection indicates that in the advertising sent directly to consumers, the name, address, telephone number of the advertiser or the electronic address of the supplier who sends the advertising on behalf of the advertised company must be indicated.

12. Is advertising to children and young people restricted beyond general law and regulation? If so, how?

The regulations of the General Health Law in advertising matters indicate that advertising of prepacked foods and non-alcoholic beverages must not include children's characters, animations, cartoons, celebrities, athletes or pets, interactive elements, such as visual-spatial games or digital downloads, aimed at children that incite, promote, or encourage the consumption, purchase, or choice of these products.

Regarding the advertising of medicines or herbal remedies, the mentioned regulations indicate that the advertising of the same would not be authorized if the

same uses caricature techniques that may confuse or mislead minors to consume the products.

Regarding alcoholic beverages, the mentioned regulations indicate that the advertising materials must not address minors; must not be associated with activities, conducts or characteristics of people under 25 years of age.

13. How is comparative advertising regulated?

The Federal Law for Consumer Protection indicates that comparative advertising should not be misleading. Furthermore, the regulations of the referred law establish that comparative advertising must confront or compare similar or identical products/services.

It is worth mentioning that adverse competitive advertising is not allowed in Mexico because the main purpose of advertising materials should be to provide accurate information to the consumers, which help them take an informed consumption decision. In this regard, it should be considered that as other advertising materials the content of the same should be true, verifiable, not misleading, or unfair. For such purpose products of a competitor must not be shown in inequality of conditions or appearances. Consequently, comparative advertising materials require to clearly identify which are the products and the characteristics that are being compared.

14. Are consumer promotions specifically regulated as advertising (as distinct from contract law)? If so, how?

The Federal Law for Consumer Protection contains specific dispositions which regulate consumer promotions. Said Law defines as promotions the commercial practices that offer to the public products or services with: (i) the incentive of promote other product or service for free, at a reduced price or at one price; (ii) an additional content in the usual presentation of a product for free or at a reduced price; (iii) figures, legends in the packaging of the products, or inside the packaging different to those that usually appear in the same; and (iv) the incentive to participate in raffles, contests or other similar.

It must be highlighted that a notice before the Federal Bureau for Consumer Protection (PROFECO) must be filed when the consumer promotions require the purchase of a product from consumer to (i) acquire a figure, toy, or other object that integrate a collection; or (ii) to participate in raffles, contests or other similar.

The referred Law also orders that the advertising materials related to the consumer promotions must inform about the terms and conditions of the same, the period or number of incentives available. In case that no period or number of incentives are determined, it will be understood that the same are unlimited until an announcement is made about the conclusion of the promotion. Is important to mention that since all advertising materials related to the promotions address consumers, the same must be truth, clear, verifiable, not misleading, or confusing.

15. Are there specific rules on promotional prize draws and skill competitions? If incorrectly executed, can these be classed as illegal lotteries? If so, what are the possible consequences?

The promotional prize draws, and skill competitions must be executed in accordance with the terms and conditions issued by the advertiser. In case that the same are not executed accordingly with the same, it is possible that a consumer will express the inconformity with the advertiser. If no response or a not acceptable response is received, the consumer could file a complaint before PROFECO, which can verify if the advertising promotion was correctly executed. It should be considered that PROFECO may conduct this verification ex officio.

As will be indicated in the following section, consumers promotion that involve raffles or other mechanisms that involve chance to determine the winner must obtain a permit from the General Direction of Games and Raffles of the Ministry of Interior to be executed. Said authority will verify the compliance with the terms of the permit issued and if there is an inconsistency a sanction will be imposed.

16. Must promotional prize competitions be registered with a state agency or authority? [If so, briefly explain the process, typical time from application to approval, and any costs]

Prize competitions that involve inly skills of participants to obtain the prize or win the competition must be notified to PROFECO in case that participants must purchase a product to participate. The notice must be filed before PROFECO at least three working days prior to the execution of the consumer promotion. At the moment the notice is filed, PROFECO issues the corresponding receipt.

As previously indicated, consumers promotion that involve raffles or other mechanisms that involve chance to determine the winner must obtain a permit from the General Direction of Games and Raffles of the Ministry of Interior to be executed. For such purposes, the information regarding the execution of the promotion, of the prizes to be awarded and the corresponding terms and conditions, among other information, must be submitted. The request and the information provided will be reviewed and a response will be issued in the following ten working days.

17. What is the relationship between IP law and advertising law? [For example, can IP law provide an alternative enforcement mechanism in addition or alternatively to advertising-specific law and regulation?]

Even that the Federal Law for Consumers Protection or the General Health Law does not indicate that advertising materials must respect IP rights, if a non-authorized use of the same is made, an infringement action could be filed before the Mexican Institute of the Industrial Property (IMPI). However, the scope of the infringement would be related to the violation of IP rights.

It is worth mentioning that the Federal Law for the Protection of Industrial Property indicates that the registration of a denominations, phrases, figures, legends, and other will be refused if the same are susceptible to mislead or confuse. The law indicates that these will be understood as those that constitute false or misleading indications about the nature, composition, qualities or business or government origin of the products or services that they are intended to distinguish.

In addition, the Law considers as an administrative infringement the attempt or discrediting the products, services, industrial or commercial activity or establishment of other person. However, the comparison of products or services covered for the purpose of informing the public will not be considered as infringement as long as said comparison is not biased, false or exaggerated in the terms of the Federal Consumer Protection Law.

18. What is the relationship between contract law and advertising law? [For example, if an "offer" made in advertising content is accepted by a third party, can

this form a binding contract?]

Advertising contents are considered as unilateral declarations of will that bind advertisers to the consumer public. Under this basis, if an advertiser does not comply with the terms of an offering, the consumer may choose to demand compliance, accept another equivalent good or service or terminate the contract and, in any case, will have the right to claim the payment of the economic difference between the price to which the good or service object of the promotion or offer is offered and its normal price, without prejudice to obtain an additional compensation.

19. What is the relationship between human rights law and advertising law? [For example, can advertisers rely on a right to freedom of speech to justify otherwise prohibited advertising?]

It is not considered that the regulations related to advertising materials are contrary to freedom of speech. This because in one hand, the purpose of such regulations is to protect consumers and freedom to compete; and, on the other hand, the purpose of such contents is economic or commercial. Consequently,

advertisers could not rely on right to freedom of speech to try to justify breach to the applicable regulations.

20. How are breaches of advertising law and regulation enforced? [Briefly outline the process, including significant stages of the dispute, time to resolution and likely penalties]

In case that PROFECO notices the existence of an advertising material which does not comply with the corresponding regulations (as a result of a denouncement or ex-officio verification) will require the responsible of the advertising to provide information that supports the content of the material. In case that the response and evidence provided does not supports that the material complies with the corresponding regulations, PROFECO will start a proceeding for infraction to law (proceeding usually identified as PIL). The responsible of the advertising will be able to provide additional information or evidence. PROFECO will process the response to issue its decision. In case that PROFECO considers that there is an infringement to the law it could impose a sanction, which might consist in the payment of a fine, closure or prohibition of commercialization of products.

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