



**COUNTRY
COMPARATIVE
GUIDES 2023**

The Legal 500 Country Comparative Guides

Sweden

ADVERTISING & MARKETING

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

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SWEDEN

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 Swedish Marketing Act, hereafter abbreviated as “MPA”, aims to promote the interests of consumers and businesses while also protecting consumers and traders against what can be classified as unfair marketing practices. Therefore, the law does not seek to address marketing that may be perceived as discriminatory, offensive, or inappropriate from a societal perspective, which is why such matters fall outside the scope of the law’s application. However, according to the ICC Marketing Code, all marketing communications should respect human dignity and should not incite or condone any form of discrimination, including that based upon ethnic or national origin, religion, gender, age, disability or sexual orientation. If an advertiser does not comply with this rule, Reklamombudsmannen, which is a self-regulatory body in Sweden, may decide that the advertisement is inappropriate and contrary to the ICC Marketing Code. Such a decision can result in bad-will, but not in any other legal consequences.

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]

In Sweden, the primary legal framework governing advertising activities is the MPA. This regulatory framework applies to both business-to-business and business-to-consumer marketing and transposes the European Union’s Unfair Commercial Practices Directive

(2005/29/EC), commonly referred to as the “UCPD,” by incorporating its provisions into Swedish legislation.

Marketing must, as a general rule, adhere to good marketing practices. Marketing that goes against good marketing practices is considered unfair if it, to a significant extent, affects or is likely to affect the recipient’s ability to make an informed decision. As actions that are typically considered unfair marketing practices, one can mention misleading practices, discrediting and free-riding on the reputation of another trader’s business, or marketing that violates other laws or could potentially lead to legal violations.

Additionally, the MPA states that advertisers are not allowed to include incorrect claims or other representations that are misleading in marketing. Whether an advertising measure is misleading or not is determined by the overall impression that the advertisement evokes in an average consumer, who is reasonably well informed and reasonably observant and circumspect. As a general rule, in order for a marketing measure to be considered misleading, it must affect the consumer’s ability to make an informed business decision. There is no requirement that all information needs to be disclosed in an advertisement. An advertiser is free to decide what information is to be provided in the marketing. However, the marketing still needs to fulfil the requirements of not being misleading due to the lack of information provided in the advertisement.

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

There are several industries that are subject to specific

laws which govern their advertising and/or they have particular specific provisions that supplements the MPA.

a. Alcohol

The Swedish Alcohol Act stipulates that all marketing of alcoholic beverages (i.e., spirits, wine, and beer with more than 2.25% alcohol) directed at consumers must be conducted with particular moderation. This means that marketing should not be intrusive, solicitous, or encourage alcohol consumption. Commercial advertising for alcoholic beverages on television and radio in Sweden is prohibited. Moreover, advertising must not specifically target or portray children or young people under the age of 25. Further, companies primarily engaged in the production or sale of alcohol are not allowed to sponsor television or radio programs.

In periodical publications, commercial advertisements for alcoholic beverages containing less than 15% alcohol are allowed. However, the advertisement must be moderate and include information about the risks associated with alcohol consumption.

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

The Swedish Tobacco Act states that, as a general rule, the marketing of tobacco products is prohibited. However, limited marketing is allowed within the physical point of sale, provided that it is not intrusive or solicitous and does not encourage tobacco use. Retailers marketing tobacco products to consumers are not permitted to use commercial advertisements on television or radio. There are also additional restrictions on sponsorship activities. Furthermore, tobacco products must include pre-defined warning labels and product information on packages.

Under the Swedish Tobacco-Free Nicotine Products Act, businesses must exercise particular moderation when advertising tobacco-free nicotine products. The marketing should not be intrusive, soliciting, or in any way encourage the use of tobacco-free nicotine products. Commercial advertising for tobacco-free nicotine products is not allowed on television or radio. There are also further restrictions on sponsorship activities. Furthermore, packaging for tobacco-free nicotine products must include a content declaration and text that informs about the harmful effects of nicotine

c. Medicines, medical devices and surgical or medical procedures

Regarding medicine, the rules are found in the Swedish Medicines Act. Advertising of prescription-only pharmaceuticals to the general public is prohibited.

Advertising of over-the-counter medicines directed at the public should promote the correct use of the medicine. Further, consumers must not be misled into believing that the medicine has properties other than what it is approved or registered for. The advertising must also not discourage people from seeking appropriate medical care. It should be clearly indicated that the product is a medicine, and the message is an advertisement.

d. High fat, salt and sugar foods

Currently, there is no specific regulation in Sweden that targets and restricts the advertising of high-fat, salt, and sugar foods.

e. Gambling and gambling services

The Swedish Gambling Act contains specific provisions regarding games involving money and other prizes with a monetary value. Games include lotteries, betting, combination games, and pyramid schemes. When marketing games to consumers, advertisers must exercise moderation. To comply with the requirement of moderation, marketing must not convey the impression that gambling is socially attractive, that it is a solution to financial problems, or that an offer for gambling is free, risk-free, or similar if it is not the case. Additionally, marketing must not be specifically targeted at individuals under 18 years of age or to a player who has self-excluded from gambling. Marketing for gambling must also include clear information about the minimum age for participating in gambling.

f. Adult and sex-related services

Buying sexual services is illegal in Sweden and punishable by imprisonment. It is also illegal to promote or, in an improper manner, financially exploit another person's engagement in sexual relations in return for payment, known as procuring (Sw. "koppleri"). Procuring is punishable by imprisonment.

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

In addition to the requirements of UCPD and the MPA, prices must be presented in accordance with the Swedish Price Information Act. As a general rule, price indications for goods must include details of the price and unit price of the goods, as well as VAT.

Offering a product or service for free, or at a reduced price, is generally not prohibited. According to case-law, the use of terms such as "free," "for free," "SEK 0" and similar can be deemed misleading if the consumer is

expected to do something in return, e.g. if the consumer must purchase something else to gain access to the free product or service. However, it is permissible to require the consumer to cover avoidable expenses associated with the offer, such as delivery costs.

Advertisement may also not include the term "realisation" (rebate) or any other expression with equivalent meaning unless the sale in question concerns products that are part of the business's normal assortment, the sale is for a limited time and the prices are significantly lower than the business's normal prices for corresponding products. A discount/sale may only be offered for a limited period of time (usually only a couple of weeks and, in any case, no longer than two months during a calendar year). If a discount lasts for a longer period of time, the discounted price will become the regular price, and it will consequently be misleading to state that the price is reduced. In connection with discounts, the lowest previous price applied to the product/service during the last 30 days preceding the price reduction must be stated according to the Swedish Price Information Act.

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

The MPA does not contain specific rules regarding the use of endorsements or testimonials in advertising. The general rules regarding misleading advertising applies, which means that any endorsement or testimonial must be correct and accurate and be able to be substantiated. An advertiser may not use an endorsement or testimonial in way which is misleading.

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

The MPA does not generally bar the use of green claims. However, like any other claim made in marketing, a green claim must be veracious, accurate and substantiated in order not to constitute a misleading marketing practise. The Swedish Patent and Market Courts has established that the average consumer has difficulties in critically evaluating and assessing the plausibility of green claims and therefore sets very high evidentiary requirements on the substantiation of such claims. Compelling evidence must be presented, which essentially means that the supporting documentation must be based on the latest scientific findings and universally recognized calculation models.

A vague and undefined green claim must be supplemented by a prominent specification or explanatory statement, especially if the climate strategy consists of purchasing climate emission reduction units in projects abroad. If such specification or explanatory statement is not made, the advertiser must substantiate the claim as well as all reasonable interpretations of it. In other words, the risk of the claim being deemed misleading increases considerably without a prominent specification or explanatory statement. Normally, expressions such as carbon neutral, net zero, green are considered vague/undefined and must therefore be specified or explained.

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

According to the MPA, all advertisement must be designed and presented in such a way that it is easily identifiable as being advertisement. Hence, advertisement that has the look or feel of editorial or entertainment content is contrary to the MPA. The advertiser responsible for the marketing shall also, as a general rule, be clearly stated in the ad. In the case of well-known brands, use of a trade mark may suffice in this regard. As for mere teasers, whose sole purpose is to generate attention for subsequent advertisements, such indications are not necessary. The rules on identification in advertisements apply regardless of the medium used.

Case-law suggests that the average consumer, from whose perspective all marketing is assessed, shall be able to, after a fleeting contact with the content in question, understand that the content contain marketing. For example, the Swedish Patent and Market Courts have concluded that the expression "in collaboration with" (Sw. "i samarbete med") on posts on social media platforms is not a sufficient identification.

8. How is influencer/brand ambassador advertising regulated?

There are no special rules or regulations that apply to the use of influencer/brand advertising, which means that the general rules of the MPA are applicable. For example, this means that content and posts by influencers/brand ambassadors that contain advertising must be designed and presented in a manner that makes it clear it pertains to advertising. For instance, advertising should not be designed in a way that leads the average consumer to believe that the advertising is of an editorial nature.

The Swedish Patent and Market Court of Appeal has stated that an advertiser can be held liable for content posted by its influencers, provided that the ad in question can be considered to originate from the advertiser. A marketing measure taken by an influencer is generally considered to originate from an advertiser if the marketing measure is carried out on behalf of the advertiser in accordance with an agreement and, as a general rule, for remuneration. The scope of such an agreement is determined by general principles of contractual interpretation, which includes an assessment of whether the influencer's marketing measure constitutes a performance of an obligation arising out of an agreement between the advertiser and the influencer. There is no requirement for the agreement to have a certain form, written, oral and implied agreements are covered.

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

The MPA is supplemented by a so-called black list (Annex 1 to the Unfair Commercial Practices Directive), which includes examples of practices that are always to be considered unfair and thus directly eligible for prohibition. Examples of such practices include directly urging children in advertising to make purchases or persuade their parents to buy advertised products, demanding immediate or deferred payment for products that have been supplied but not ordered by the consumer, or the trader giving a false impression that the consumer has won a prize and, when the consumer claims the prize, making it conditional on the consumer paying money or incurring some cost.

As per the Audio-Visual Media Service Directive, subliminal techniques are prohibited in audiovisual commercial communications.

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

Regarding broadcasts in audiovisual media, such as TV, and video-sharing platforms, there are a few rules that may be relevant from a marketing perspective. The perhaps most important is the Swedish Radio and Television Act, containing provisions related to broadcasts in audiovisual media, including rules concerning marketing. However, it's important to note that the MPA also applies to TV broadcasts, pay-tv, and video-sharing platforms that fall under the scope of the Radio and Television Act. Furthermore, there are

provisions in special laws that prohibit the promotion of certain products in media covered by the Radio and Television Act, such as the Alcohol Act, which restricts the advertising of alcoholic beverages in these media.

There are no special rules in Swedish marketing law with regard to advertising online or social media. Therefore, the general rules in the MPA are applicable. This means, among other things, that the advertising must be designed and presented in such a way that it is easily identifiable as being advertisement, and that it must be clear who the responsible advertiser is.

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

The use of e-mail, text-messaging and direct mail for individual communication, in the course of marketing to a natural person, requires as a general rule, according to the MPA, that the natural person has given prior consent thereto (i.e. has opted in). Furthermore, according to GDPR, in the case of direct marketing by e-mail, text messages or other electronic communication, as a general rule, a prior consent from the consumer is required.

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

There are special rules that are related to advertising to children, some of which are mentioned below:

- According to the MPA, it is not allowed to include in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or adults to buy advertised products for them.
- Marketing may not be directly addressed to children under the age of 16, without the consent of a guardian. This includes direct marketing in all media, including but not limited to e-mails, texts and calls.
- According to the Swedish Radio and Television Act, it is not allowed to include advertising in television broadcasts that targets children under the age of 12.
- According to the Swedish Alcohol Act, marketing of alcohol may not specifically target or depict children or young people under the age of 25.
- According to the Swedish Gambling Act, gambling advertiser may not target children under 18.

- According to the Swedish Act on Tobacco-free Nicotine Products, advertising of tobacco-free nicotine products may not specifically target or depict children or young people under the age of 25.

13. How is comparative advertising regulated?

Comparative advertising is regulated in various legal frameworks, including the MPA, Swedish Trademarks Act, the Act on Copyright in Literary and Artistic Works, and other intellectual property laws and regulations. Depending on the specific circumstances of each case, these laws and regulations may be applicable to comparative advertising. For example, if the competitor's trade mark or packaging enjoys copyright protection, the advertiser would generally need to have a consent from the competitor before running the ad. Comparative advertising does not constitute an exemption to copyright protection.

For comparative advertising to be allowed, there are certain specific requirements outlined in the MPA. One fundamental requirement is that the comparison, whether it involves direct or indirect references to a competitor's product, must be truthful. This means that the statement or representation should be accurate, relevant, representative, and provide a fair overall picture of the products being compared. In addition to this, a trader may, directly or indirectly, refer to another trader or such trader's products provided the comparison:

1. is not misleading;
2. relates to products which fulfil the same need or are intended for the same purpose;
3. objectively refer to essential, relevant, verifiable and representative characteristics of the products;
4. does not cause confusion between the advertiser and the competitor's or between their products, trade marks, company names or other marks;
5. does not discredit or disparage the competitor's business, relationships, products, trade marks, company names and other marks;
6. in regard to products bearing a designation of origin, at all times pertains to goods or with the same designation;
7. does not take unfair advantage of the competitor's reputation associated with the trademark, company name or other distinguishing marks of the competitor or

their designation of origin; and

8. does not present the product as an imitation or copy of a product bearing a protected trade mark or company name.

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

Consumer promotions are considered a specific type of marketing measures and encompass various offers of special benefits made for sales purposes, typically with a limited time frame. Examples of such measures include discount offers, prize competitions, and advertising lotteries. The assessment of these promotion measures is conducted according to the fundamental prohibition of unfair and misleading marketing as outlined in the MPA. Consumer promotions typically take the form of purchase offers, which means that the rules in the MPA regarding information requirements about price and terms, among others, must be observed to avoid being seen as misleading.

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?

Swedish gambling law distinguishes between contests of skill and games of chance. There is no legal definition of a contest of skill in Sweden. However, a contest of skill is generally defined as a game where the outcome is determined by mental or physical skill. It is important to note that a contest where the outcome is determined by both skill and chance usually is considered a type of game of chance (Sw. kombinationsspel) that falls within the scope of the Swedish Gambling Act.

Organizing games of chance requires a license according to the Swedish Gambling Act, if participants have to pay a stake to participate. No license is needed if there is not a requirement to pay a stake in order to participate. Contests of skill is not regulated by the Gambling Act but by the MPA. According to the MPA, such contests are allowed provided that all essential information about the contest, such as terms and conditions and time limits, is provided to the participants prior to entering the contest. There is no requirement for registration or filling of a skill-based contest. Anyone who knowingly or through gross negligence provides a game without the necessary license is liable for illegal gambling and can be sentenced to fines or imprisonment for up to two years.

according to Swedish law.

Please note that advertisers, regardless of whether they require a license or not, must adhere to the MPA and the provisions of the Gambling Act when advertising the game. This includes ensuring that marketing to consumers is moderate, not unfair, and not misleading. Moreover, alcohol and tobacco products, or other products for which use is restricted (e.g. prescription drugs, weapons, etc.) should not be used as prizes in neither game of chance nor skill competitions.

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]

If a promotional prize competition requires a license or not depends on whether the arrangement involves any form of skill from the participant and whether the participant is required to pay a stake. In the event that the promotional prize competition is considered a contest of skill, no license is required. In the event that the promotional prize competition is deemed a lottery, and thus a game of chance, no license is required if there is no requirement for the participant to pay a stake. Therefore, in many cases, advertisers of promotional prize competitions will not be subject to licensing requirements.

Promotional prize competitions, that is considered a game of chance and where the participant has to pay a stake in order to entry, requires a license to be organised or operated. Applications for a license are made to the Swedish Gambling Authority. The application process is available online, and what information that is required to be included in the application varies depending on the type of game intended. A license is valid for at most five years at a time. There are also limitations on certain types of games, regarding for example, the maximum number of organisers at a time. The license fee to be paid depends on both the type of game in question and the turnover.

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?]

There are specific rules concerning the use of other's intellectual property in advertising. Such specific rules are contained in the intellectual property legislation,

which consist mainly of the Swedish Act on Copyright in Literary and Artistic Works, the Trade Marks Act, the Design Protection Act and the Patents Act. An advertiser must, when designing an ad, consider both the MPA and other advertising legislation as well as intellectual property legislation. The MPA and the intellectual property laws are applicable side-by-side, which means that it offers both an alternative and an additional enforcement mechanism. There is a possibility to, in certain situations, combine cases of intellectual property infringement with a claim of misleading advertising.

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?]

According to Swedish contract law, it has long been the prevailing view that advertisements targeting the general public do not constitute binding offers. Instead, these are typically regarded as non-binding offers. However, the information provided by the advertiser can, depending on the circumstances of the individual case, be of such a nature that it has sufficient specificity and is directed towards a particular recipient and thus to be considered a binding offer.

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?]

Commercial statements are, as a starting point, covered by freedom of expression, but this freedom has been restricted through the provisions of the MPA that prohibit misleading and unfair advertising. In case law, questions have arisen about whether a representation should be considered within the scope of the constitutionally protected freedom of expression, or if it falls under the MPA. The assessment has been that if the statement has been made in a commercial context, for commercial purposes, and has purely commercial relationships as its subject matter, it has been evaluated under the MPA. However, if it has been aimed at imparting values to the general public or influencing the behavior of the general public in a certain direction, it has been considered to enjoy constitutionally protected freedom of expression. Non-commercial marketing can encompass various practices, such as religious messages, consumer education, public information, or general public opinion formation.

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 Sweden, the Swedish Consumer Agency is the main regulatory body with regard to advertising and its overall task is to safeguard consumer interests. Its responsibilities include, among other things:

- to ensure that companies comply with advertising regulations;
- to receive complaints from consumers;
- to ensure safety of products and services; and
- to provide information to consumers on, inter alia, advertising rules

The Swedish Consumer Agency is headed by a Director General who is also the Consumer Ombudsman. The Consumer Ombudsman has the power to issue injunctions subject to conditional fines prohibiting advertisers from continuing with unlawful advertising

practices and to order advertisers to include all material information in their advertising. The Consumer Ombudsman can also pursue legal action in the Swedish Patent and Market Courts against companies that do not abide by the advertising regulations and request the court to impose the aforementioned injunctions and orders to include information and market disruption fees. The market disruption fees are determined to a minimum of 10,000 SEK and a maximum of four percent of the business turnover for the financial year preceding the cessation of the infringement or when the business was served with a lawsuit, unless it ceased before that.

As a general rule, there is no private right of action available for individual consumers to challenge advertising practices. However, a group of consumers can bring an injunction proceeding against an advertiser and request the court to impose a prohibition under a conditional fine on the advertiser. An individual consumer who has suffered a loss as a result of a misleading advertising practice may, however, initiate court proceedings and claim damages. A business affected by a specific marketing measure has the right to bring an action for prohibition or injunction. If the Consumer Ombudsman has decided not to bring an action for a market disruption fee, a business affected by the matter may also initiate such legal action.

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