



**GALA**  
GLOBAL ADVERTISING LAWYERS ALLIANCE

# **Global Advertising Law Year in Review 2024**

*December 10, 2024 – 1pm*

# Speakers



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# SLOVAKIA

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# New Legislation

- **New Consumer Protection Act**
  - Transposition of Directive (EU) 2019/2161 (Omnibus Directive)
- **New Act on representative actions for the protection of the collective interests of consumers**
  - Transposition of on Directive (EU) 2020/1828



# New Legislation



- **Consumer Protection Act**

- **Price Offers:**

- Obligation to disclose the lowest price during past 30 days

- **Reviews:**

- False reviews are considered as an unfair commercial practice
    - Merchants must verify that reviews come from consumers who have purchased the product.

- **Penalties:**

- Penalties up to 6% max. EUR 200,000 (up to 7% max. EUR 250,000 for repeated violation)



# Influencers, advertising collabs, statistics

- Survey of IAB Slovakia and ADMA
  - Comparison of years 2023, 2024
  - A sample of 75 influencers, 3100 posts
- Conclusions
  - 22% of posts were identified as commercial
  - 77% of commercial posts are marked as AD
  - 26% of influencers had all posts tagged correctly



Influenceri používali nasledovné formy označovania komerčnej spolupráce:

#/* spolupráca	49 %
Štítok plateného partnerstva	34 %
#/* barter/pozvanie/darček	8 %
#/* súťaž	4 %
#/* ambasádor	4 %

kim kódex influencer marketingu

# Interesting cases

## TIPSPORT

„All it takes is to begin!“

- Giving impression that betting is a form of leisure activity that brings fun and an intense positive experience
- Trivializing negative impacts and risks of gambling and encourages reckless participation in gambling

## Webber Legal

- Inducing non-compliance with contractual obligations towards banks
- Possible violation of the principles of legal ethics



# Interesting cases

## Motel Kotva



- A woman depicted as a sexual attraction
- Good manners need to be judged more strictly in the context of advertising as opposed to art
- AD should not present women as a thing, a commodity without freedom and will



# Interesting cases (EU)

## Meta "less illegal" but more annoying ?

- Since 2018, GDPR requires that EU users must consent to personalized ads
  - Until 2023 Ads without consent (contract, legitimate interest)
  - 2023 - 2024 **Pay or OK** (€240 p.a for opting out of personalized ads)
  - EDPB Opinion 08/2024
- New strategy for 2025
  - „Less personalized ads" – but location and date of birth will still be used
  - Ads will come as "full screen" ads that cannot be skipped
  - Is it a "dark pattern"?





# SOUTH AFRICA

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# Legislative developments

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# Draft regulations promulgated

- Regulations regarding the Classification, Packaging and Marking of Processed Meat Products and Certain Raw Processed Meat Products No. 4728 of 19 April 2024.



PHOTO CREDIT: I-STOCK / GETTY IMAGES;

COURTESY OF PLT HEALTH SOLUTIONS

# Draft regulations promulgated

- DALRRD published draft regulations in February 2024 for public comment in terms of the Liquor Products Act.
- Implications for beer, including traditional beer.
- Labelling affected.

Image credit: Sign Maven, Portland



# Anticipated legislation

- Shift since 2018 with a groundbreaking decision.
- Cannabis for Private Purposes Act signed into law.
- National Cannabis Master Plan.

Started growing my own pot...  
Not sure if I'm doing it right...



Image credit: @weed420memes

# Cases of interest - 2024

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# ***L'Oréal South Africa(Pty)Ltd v Nutriwomen (Pty) Ltd***

- Copycat case concerning packaging.
- First instance decision in May 2024 and subsequent appeal to the ARB's appeal committee, which was unsuccessful.



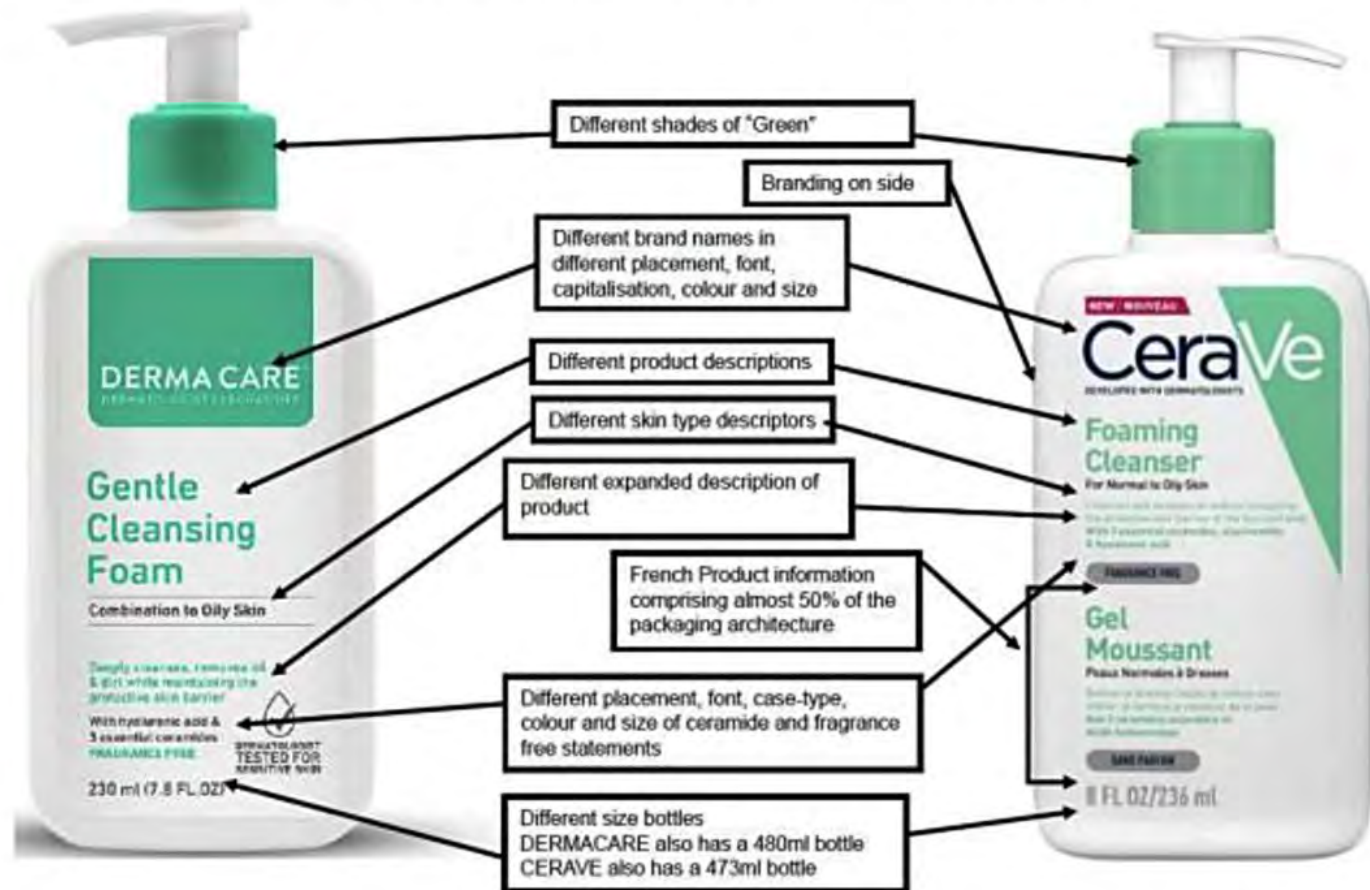
# L'Oréal South Africa(Pty)Ltd v Nutriwomen (Pty) Ltd

Clauses 8.1 and 9.1 of the Code of Advertising Practice relating to exploitation of advertising goodwill and imitation.



# L'Oréal South Africa(Pty)Ltd v Nutriwomen (Pty) Ltd

DERMACARE GENTLE FOAMING CLEANSER vs NEW CERA VE FOAMING CLEANSER



# **Fossil Free South Africa v TotalEnergies Marketing South Africa (Pty) Ltd**

- First greenwashing case in South Africa
- Appendix G dealing with environmental claims- 'any direct or indirect claim, representation, reference or indication in an advertisement relating to the immediate or future impact or influence on the environment of a product or its packaging or a service'.
- Other legislation impacting green claims and other recourse.

# Fossil Free South Africa v. Total Energies



[Home](#) > TotalEnergies Partners with Sanparks to #FuelYourExperience

Summer is here at last! And what better way to spend it than in the bush?

Share your favourite summer moments at a [SA national park](#) with us and you could win R2500 voucher and a spectacular weekend getaway for your family with SANParks!

How to enter:

- Upload a photo of yourself at a SANParks park
- Tag TotalEnergies and @SANParks
- Use #FuelYourExperience

Make sure you're following TotalEnergies and SANParks on social media. (Ts and Cs apply).

Our #FuelYourExperience campaign is just another way in which we're partnering with SANParks to encourage people to visit South Africa's magnificent national parks.

We're committed to sustainable development and environmental protection. That's why we have partnered with Sanparks for over 60 years, so that South Africans can appreciate our country's natural heritage and pass on a love for the environment to their children.

TotalEnergies operates 21 service stations in national parks and also sponsors several environmental projects. These include the annual SANParks Keep the Kruger Clean campaign and the SANParks Walk and Learn on The Wild Side project, for rural school children to learn more about conservation.

# Other developments

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# **META- morphosis**

- On 28 October 2024, the ARB announced that Meta had created an access point allowing it to share decisions with Meta.
- Meta is not a member of the ARB, but this is expected to expedite the implementation of decisions on social media platforms owned and operated by Meta.



# CANADA

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# Greenwashing

- The act of providing misleading or false information to the public or investors about the environmental benefits of a company's products or operations
- Bill C-59 amendments to the Competition Act
  - Section 74.01(1) – Tests for products and benefits
    - Product Provision – “adequate and proper testing”
    - Benefit Provision – “adequate and proper substantiation in accordance with internationally recognized methodology”
  - Section 124.3(1) – Collaboration agreements and environmental certificates
  - Increased administrative monetary penalties for corporations and individuals
  - Expanded access for private actions to the Tribunal





# Drip-Pricing: Lessons from Cineplex

- Drip-pricing involves advertising an unattainable price due to mandatory charges or additional fees
- Amendments to Competition Act - sections 52, 74.01
- Cineplex
  - Ordered to pay \$38.9 million
  - Changes to the general impression test: ordinary consumer of the product or service which may be refined based on the context of the case
  - Important to itemize and disclose mandatory fees clearly and encourage consumers to review information relevant to their decision



# Quebec Updates

- Most changes slated to come into effect on June 1, 2025
- Trademark Exemption
  - Any recognized trademark (registered or non-registered) within the meaning of the Trademarks Act does not need to be translated as outlined below as long as there is not a registered French language version of the trademark
- Packaging and Labelling
  - Any generic term or product description included within a trademark must be translated to French
  - Name of the enterprise, name of the product, designations of origin, and distinctive names of a cultural nature are not considered generic terms or a description
  - Grace period until June 1, 2027 with some further exceptions



Source : Government of Québec

# Quebec Updates

- Public Signage
  - “Markedly predominant”



Source : Government of Québec

- Contracts of Adhesion
  - Came into force July 11, 2024



# MEXICO

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# Mexico: Legislative changes

- Influencers Guide by Consumer Protection Agency: to promote regulation in digital media
- Influencer Advertising Roles and Responsibilities Guidelines by Mexican FDA: related to health products and services and their marketing.
- Responsibilities of the advertiser, the advertising agency and the media hub (influencers).
- Certain type of products must comply with specific and special regulations.
- Avoid ambiguous references and abbreviation
- > #Ambassador #Partner #IA
- Outdoor Advertising Law



# Legislative changes

- Outdoor Advertising Law
- Regulation to the General Health Law regarding advertising.

# Mexico: Important cases

- Labeling problems related to the new regulation to the General Health Law regarding advertising.
- Consumer Protection Agency against Influencers



# Mexico: What should we expect

- FIFA WORLD CUP 2026

New Transparency Law in relation to the acquisition of media spaces.







# TURKEY

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# Legislative Changes

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**1- The administrative fines imposed by the Advertising Board have been increased.**

*To ensure deterrence, fines of up to 22 million Turkish Lira can now be imposed.*



**2- Settlement option introduced for administrative fines imposed by the Advertising Board.**

*“The Law amending the Consumer Protection Law has removed the provision that previously prevented settlement with the Ministry.*



**3- The Advertising Board will now have the authority to impose access restrictions again.**

*“The Law amending the Consumer Protection Law has enacted the Advertising Board's authority to impose block of access.*

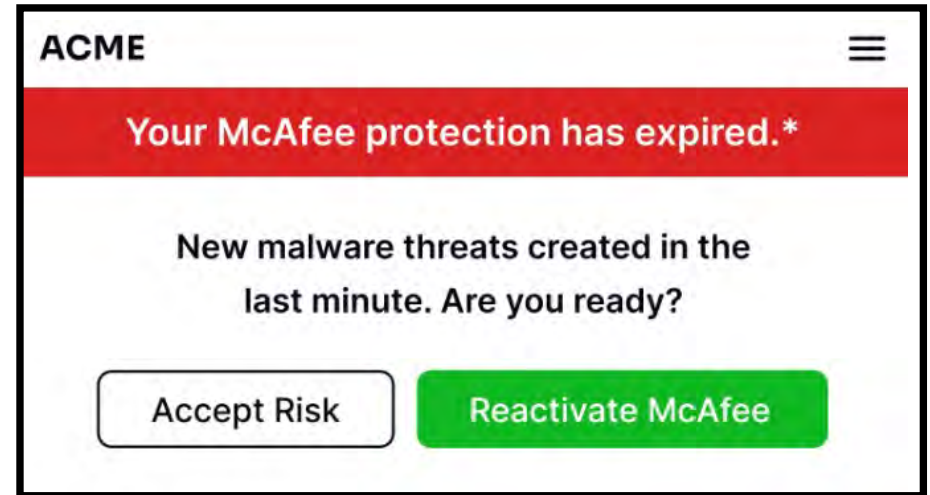


# Dark Patterns in terms of website interface

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# Dark Patterns

*«use of methods that adversely affect consumers' free will to make decision or choice through means such as interface designs directing to a product or service on Internet or that aim to change consumer's decision in favor of seller or provider»*



The Ministry of Trade draws attention to design traps and pre-selected options in subscription services



# Decision No. 2024/5161

Advertising Board: Dark pattern!



The screenshot displays three subscription options for Google One. The 'Individual' plan is selected with a radio button. The 'Family' plan has an 'X' mark in the top-right corner of its 'Try it for 1 month for ₪0' button. The 'Student' plan also has an 'X' mark in the top-right corner of its 'Try it for 1 month for ₪0' button.

Plan Type	Monthly Price	1 Month Trial	Additional Info
Individual	₪79,99/mo	1 month trial: ₪0	Free trial available to eligible new members only. Restrictions apply.
Family	₪159,99/mo	1 month trial: ₪0	You can add up to 5 family members (ages 13 and up) living in your household. Free trial only available to new eligible members. Restrictions apply.
Student	₪52,99/mo	1 month trial: ₪0	For eligible students. Annual verification required. Free trial available to eligible new members only. Restrictions apply.



The "Individual" subscription option is pre-selected.

In addition to that, for the "1-month free trial" offer through the mobile application, the option to decline was only presented as an "X" mark in the top-right corner, not presented equally with accept option.

# Decision No. 2024/5159



Advertising Board: Dark pattern!

A screenshot of a Spotify advertisement for a Premium offer. The background is dark purple. The main text reads "Premium 0.00 TL for 3 months" in large white font. Below it, in smaller white font, is "Enjoy ad-free music, offline playback, and more. Cancel anytime." There are two buttons: a purple "Start using" button and a white "View all plans" button. At the bottom, in small white font, is the disclaimer: "Valid for Premium Individual only. €0 for 3 months, then €59.99 per month. Only those who have never tried Premium before can take advantage of the offer. [Conditions apply](#). Offer ends December 31, 2024." On the right side of the ad, there is a blurred image of a person sitting on a sofa in a dimly lit room.

- Users were required to provide credit card details for 1 month free trial.
- Account deletion was more complicated than account creation.

Advertising Board: 'Free trial' expression has used misleadingly. Also, consumers were forced to take certain actions to access a specific function, negatively influencing their decision-making or choices.

# Influencer Certification Program

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# Influencer Certification Program

Advertising Board announces:



- Organized by the Ministry of Commerce, the Ministry of Treasury and Finance, and the Advertising Self-Regulatory Board.
- Influencers with more than 300 thousand followers on Instagram were welcome to participate.
- It was not a requirement to be an influencer, but a program to raise awareness.

# Alcohol Advertising on Social Media

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# Alcohol Advertising Ban



- According to “Tobacco and Alcohol Regulation” any advertising, promotion, or similar activities that could encourage the consumption and sale of alcoholic beverages are prohibited in all types of media.

Alibi marketing conventionally involves using the key components of an alcohol brand's identity in marketing communications, but without explicitly mentioning the core brand name.

## EXAMPLES

#BİRLİKTE  
#GÜZEL



meaning:  
“together, beautiful”

# Advertising Board Decision No: 2023/646



- In the program titled "Alo Evrim Ağacı Hattı // Bozuk Mikrofon #15", it was found that the **alcoholic beverage branded "Efes Malt Beer"** was placed on the set **decoration** and although it was not consumed throughout the 34-minute program, its label was displayed facing the camera.
- In the video titled "Sürekli Masaj İstiyorum // Bozuk Mikrofon #13", it was determined that the **registered brand logo "+1"** was continuously used in the upper right corner of the program, and **hidden advertising of the "+1" brand** were carried out in the description section of the video, which stated, "Whether you are for or against tropical fruits entering the fridge, +1 your enjoyment while watching this episode!"

## The Advertising Board:

- It was concluded that the **hidden advertisement** activity for the alcoholic beverage "Efes Malt Beer" in the aforementioned first video was carried out as part of an agreement/collaboration between the company and the YouTube channel under investigation.
- In this regard, it was determined that advertising of alcoholic beverage products, which is prohibited by regulations, was conducted using **demand-creating visuals** and implications and that the advertising activity was carried out covertly.

347,128 TL administrative fine  
and a decision to stop the  
mentioned advertisements.

# Advertising Board Decision No. 2024/4151:



Sibil Çetinkaya shared photos on her Instagram account featuring the **alcoholic beverage brand "Casamigos"** with the bottle and glass with following caption:

*"We set a record in the country rankings for the global @casamigos events that I hosted for the second time. I had a great time at this event as well."*

According to the Advertising Board, the images are **promotional and encouraging for alcohol**, deliberately drawing the audience's attention to the mentioned alcoholic beverage brand.

Additionally, it was stated that the event was organized with the sponsorship of the company to promote the "Casamigos" alcoholic beverage brand. Therefore, the social media account acted as a platform facilitating an event that **encouraged the use and sale of alcoholic beverages** from the advertising company.

**550,059 TL administrative fine  
and decided to stop the  
mentioned advertisements.**



# INDIA

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# Environmental/Green Claims: ASCI Released Long-Awaited Guidelines

- ASCI released the 'Guidelines for Advertisements Making Environmental/Green Claims' on January 15th, 2024, which came into effect on February 15th, 2024.

Environmental claims: Claims suggesting or creating an impression that a product (and/or its packaging) or a service as a whole:

- has a neutral or positive impact on the environment;
- is comparably less damaging to the environment than a previous version; or
- is less damaging to the environment than competing goods or services; or
- has specific environmental benefits.

# Green Guidelines

- Absolute claims to be substantiated by **robust data** and/ or **well-recognised and credible accreditations**, **NOT** to be diluted by disclaimer or QR code or website link etc.
- Comparative claims require supporting **evidence** and basis of comparison.
- General environmental claim must be based on the **full life cycle**, unless otherwise stated.
- Environmental claim to clarify whether it refers to the product, the product's packaging, a service, or just to a portion.
- Highlighting the absence of an environmentally damaging ingredient **not permitted**, if that ingredient is not usually found in competing products or services.



- For certifications or seals suggesting environmental claims, product or service attributes assessed by the certifier to be clarified. Certifying agency to be nationally/internationally accredited by a certifying authority.
- Ads not to claim an environmental benefit resulting from a **legal obligation**.
- Use of visual elements conveying a false impression, not permitted.
- Refrain from making aspirational claims about future environmental objectives in absence of clear and actionable plans.
- Advertisers must clearly disclose if carbon offsets won't occur within two years.
- Advertisers must qualify *compostable, biodegradable, recyclable, non-toxic, or 'free-of'* **claims**, specifying their scope, supported by scientific evidence.

# CCPA Guidelines on Preventing and Regulating Greenwashing and Misleading Environmental Claims

- CCPA released 'Draft Guidelines for Prevention and Regulation of Greenwashing' for public comments.
- After considering the suggestions of stakeholders, CCPA notified the finalized Guidelines on 15<sup>th</sup> October 2024.
- "Environmental claims" is defined in the guidelines as any representation in any form regarding:
  - any goods (either in its entirety or as a component), the manufacturing process, packaging, the manner of use of the goods, or its disposal; or
  - any service (or any portion thereof) or the process involved in providing the service:-  
Suggesting environmentally friendly attributes aimed to convey a sense of **environmental responsibility** or **eco-friendliness**.

- **Guidelines explain that "Environmental claims" may include claims:**
  - having a neutral or positive impact on the environment or contributing to sustainability;
  - causing less harm to the environment compared to a previous version;
  - causing less harm to the environment than competing goods or services;
  - being more beneficial to the environment or possessing specific environmental advantages;
- **"Greenwashing" has been defined as-**
  - any deceptive or misleading practice, which includes concealing, omitting, or hiding relevant information, by exaggerating, making vague, false, or unsubstantiated environmental claims.
  - use of misleading words, symbols, or imagery, placing emphasis on positive environmental aspects while downplaying or concealing harmful attributes.

- Not "Greenwashing":
  - use of obvious hyperboles, puffery, or
  - use of generic colour schemes or pictures not amounting to any deceptive or misleading practice, or
  - a company mission statement that is not specific to any product or service.
- Substantiation of environmental claims
  - Generic terms not to be used without **adequate, accurate** and **accessible qualifiers** and **substantiation** and **adequate disclosure**.
  - Use of technical terms in consumer-friendly language and the meaning or implications to be explained.
  - Claims to be supported by accessible verifiable evidence based on independent studies or third-party certifications.

## • **Disclosures**

- All material information in the ad to be disclosed by inserting a QR Code or URL.
  - Do not highlight only favorable observations while obscuring unfavourable ones.
  - Specify scope of claims.
  - Comparative claims must disclose specific aspects being compared and to be based on verifiable and relevant data.
  - Specific environmental claims must be supported by disclosure about credible certification, reliable scientific evidence, internal verifiable evidence, certificates from statutory or independent third-party verification.
  - Disclosure NOT to contradict the claim and be easily accessible to the consumer.
- 
- **Aspirational or futuristic environmental claims permissible only with clear and actionable plans.**

# Uniform Codes Released by Department of Pharmaceuticals

- Department of Pharmaceuticals under Ministry of Chemicals and Fertilizers, has issued Uniform Code for Pharmaceutical Marketing Practices (UCPMP) 2024 and Uniform Code for Marketing Practices in Medical Devices (UCMPMD) 2024.
- Uniform Code for Pharmaceutical Marketing Practices (UCPMP) 2024:
  - Promotion of a drug must be consistent with the terms of its marketing approval
  - Information about drugs must be balanced, up-to-date, verifiable, must not mislead either directly or by implication; accurately reflect current knowledge or responsible opinion; and must be capable of substantiation, which must be provided without delay, at request.

- **Uniform Code for Marketing Practices in Medical Devices (UCMPMD) 2024**

- Medical Device must not be promoted prior to receipt of the product approval (wherever applicable) by the Regulatory Authority, authorizing its sale or distribution.
- Product Information must be up-to-date, verifiable and must not mislead either directly or by implication, and must be capable of substantiation.

# Indian Medical Association & ANR. Versus Union of India & ORS

- A writ petition was filed against Patanjali Ayurved for publishing misleading ads that promoted ayurvedic products as cures for diseases while disparaging allopathic medicine.
- Hon'ble Supreme Court vide its order dated May 07, 2024 held:
  - Advertisers/advertising agencies and endorsers are equally responsible for issuing false and misleading ads.
  - Mandatory submission of a 'Self-Declaration Certificate' regarding compliance of relevant laws and regulations, before publishing or broadcasting any ad.
- Consequently, Ministry of Information and Broadcasting (MIB) issued a notification on 03.06.2024 that all advertisers/Advertising Agencies must submit a 'Self-Declaration Certificate' before publishing or broadcasting any ad.

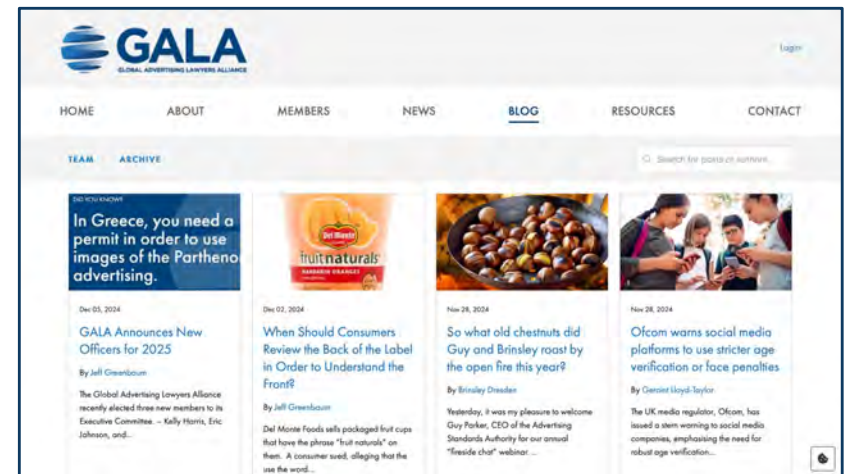


- Following Industry uproar, MIB issued a new advisory dated 3rd July, 2024-
  - **Advertisers/advertising agencies issuing ads for products and services related to Food and Health sectors are required to upload an annual self-declaration certificate.**
  - Proof of uploading the self-declaration to be made available to the concerned media stakeholders, such as TV channels, newspapers, entities involved in publishing of ads on the internet, etc. for the record.
  - It is the responsibility of the advertisers/advertising agencies to ensure that every ad being issued by them is in adherence to the applicable Indian laws, rules and regulations in letter and spirit.

# Resources

- GALA Website - [www.galalaw.com](http://www.galalaw.com)

- GALA Blog - [blog.galalaw.com](http://blog.galalaw.com)



# Thank you!



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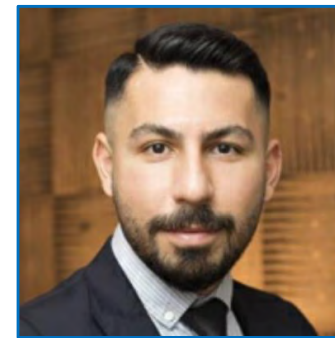
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