



GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

Social Media: A Global Legal Perspective





ABOUT GALA

The Global Advertising Lawyers Alliance (GALA) is the leading network of advertising lawyers in the world. With firms representing more than 90 countries, each member has the local expertise and experience in advertising, marketing and promotion law that will help your campaign achieve its objectives, and navigate the legal minefield successfully. GALA is a uniquely sensitive global resource whose members maintain frequent contact with each other to maximize the effectiveness of their collaborative efforts for their shared clients. GALA provides the premier worldwide resource to advertisers and agencies seeking solutions to problems involving the complex legal issues affecting today's marketplace.

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1. What are the main social media platforms that advertisers use in your jurisdiction for advertising and marketing to consumers? Are there any important global social media platforms that are not available for use (or are not widely used) in your jurisdiction?

Russian social media landscape is represented by Vkontakte, with around 100,000,000 active users, and OK.ru, with around 50,000,000 active users, that dominate in this area. International players Facebook and Instagram are also popular in Russia.

Among the video hosting platforms, YouTube, and its Russian analogue RuTube, are widely used by advertisers.

As for non-available platforms, LinkedIn is the most significant one, which was blacklisted in the territory of Russia in 2016 due to non-compliance with Russian personal data laws.

2. What are the main laws and regulations governing advertising and marketing via social media in your jurisdiction?

Russian laws do not contain specific regulation with regard to social media. The Federal Anti-monopoly Service of the Russian Federation ('FAS'), a state advertising regulator, considers advertising campaigns on social media in the same manner as advertisements in general. The Federal Law on Advertising provides a list of key principles to be followed in order to comply with the laws.

First of all, advertising must be truthful, ie it must contain correct information, including information on the advantages of the purchased goods/services, any characteristics of the goods, price of the goods, purchasing terms, product warranty liabilities and so on.

Second, the advertising should be 'fair and trustworthy'. Advertisements must not contain incorrect comparisons or discredit the honor, dignity or business reputation of third parties, including competitors. Advertising of third parties' goods in a manner intended to discredit such third parties' reputation is prohibited and may be recognized an unfair competition in accordance with the antimonopoly legislation.

An advertisement shall be deemed inaccurate if it contains, inter alia, inaccurate information on:

- advantages of the advertised goods or services;
- any characteristics of the goods;
- prices/discounts;
- intellectual property rights, etc.

It is strictly prohibited to use swear words, rough and offensive images, as well as comparisons and expressions, inter alia, in respect of sex, race, nationality and age in advertisements.

Special regulations are set out with respect to the advertising of tobacco and alcohol, including on the internet.

3. What are the main self-regulatory rules on advertising and marketing via social media in your jurisdiction?

There are no specific self-regulatory guidelines developed in Russia with respect to advertising and marketing in social media. Certain guidance for online sources is provided by the ICC (International Chamber of Commerce)'s Code of Advertising and Marketing Communication Practice (<https://iccwbo.org/content/uploads/sites/3/2016/10/ICC-Consolidated-Code-of->

Advertising-and-Marketing-2011-English.pdf) (which underpins much of self-regulation worldwide), which is also applicable to social media, namely:

- When collecting personal data from individuals, care should be taken to respect and protect their privacy by complying with relevant rules and regulations. In particular advertisers should ensure that the individuals concerned are aware of the purpose of the collection and of any intention to transfer the data to a third party for that third party's marketing purposes. No collection of personal data is allowed other than collected for specified and legitimate purposes and not used in any manner incompatible with those purposes (Article 19);
- Websites devoted to products or services that are subject to age restrictions such as alcoholic beverages, gambling and tobacco products should undertake measures to restrict access of minors to such websites (Article D5);
- Digital marketing communications directed at children in a particular age group should be appropriate and suitable for such children (Article D5).

It was announced in September 2017 that the Russian Code of Advertising and Marketing Communications Practice was adopted during the IAA International Ad Issues Summit in St Petersburg; however, this has not yet been published.

4. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to influencer marketing via social media?

Russian legislation does not contain special regulation on influencer marketing. The Federal Law on Information, Information Technologies and the Protection of Information used to contain provisions developed specifically for bloggers mandated to comply with advertising laws if they meet the criteria established by this Law. However, these are no longer in force, and therefore only general rules and regulations apply to influencer marketing.

5. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to native advertising via social media?

There are no specific laws or rules on native advertising. General advertising self-regulation, and the Federal Law on Advertising will apply. This means that native advertising must comply with general legal principles and must be fair, true and accurate. Such advertising should not promote any illegal content.

6. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to the use of user generated content when advertising and marketing via social media?

There are no specific laws or regulations on user generated content. However, despite the lack of specific legislation, Russian authorities are now paying considerable attention to activity on the internet and treat information of any nature disseminated through sources targeting Russian users very carefully. To illustrate, the Federal Service for Supervision of Communications, Information Technology and Mass Media issued an official letter in August 2017 stating that users must adhere to legal requirements when publishing user generated content.

From 2012, breach of Russian legal requirements (ie information laws, personal data regulation or other legal rules) may result in an official ban of the information source (such as a website or webpage) and the inclusion of the source in the official blacklist managed by a Russian authority.

7. What are the specific laws, regulations, and self-regulatory rules in your jurisdiction related to conducting sweepstakes and contests via social media?

Promotional events, including sweepstakes and contests, are subject to general requirements of Russian legislation, such as civil laws as well as advertising, data protection regulations etc.

Certain requirements regarding the advertisement of promotional events are established by the Federal Law on Advertising, namely, that the advertisement must:

- refer to timeframes of the event;
- refer to the source (ie not to the information itself) where information about the organizer of the event, the event's rules as well as information as to the number of prizes awarded within the event, deadlines, the place and procedure for receipt of these prizes is disclosed.

From the perspective of Russian law, skill-based promotions may qualify as public contests or gambling activities. In such a case, civil law or gambling laws will apply.

8. What are some other important issues to consider in your jurisdiction when advertising and marketing via social media?

In addition to general principles of advertising regulation, the following requirements should be noted:

- all placed advertising must be translated into Russian or supported with a translation, except for trademarks protected in Russia that do not require translation;
- Russian law has specific provisions aimed at protection of minors. The key regulations are the Federal Law on Advertising and Federal Law on the Protection of Children against Information that may be Harmful to their Health and Development;
- advertising that comprises remote/distance selling must include the seller's name, registered address and the registration number of its entry in the State Registry of Legal Entities;
- special rules were adopted due to the upcoming FIFA World Cup in Russia aimed at protection of FIFA rights.

9. What are the most important, recent cases relating to advertising and marketing via social media in your jurisdiction?

Nowadays, one of the hottest topics in online advertising area is: 'Is one's web-page advertising or not?'. It is a trend for companies to have an official group in social media providing information about their business. From a practical standpoint, website/social media page content is deemed to be general information and cannot be classified as advertising.

However, there are cases when this issue was considered adversely. For example, under Russian laws it is prohibited to promote alcohol on the internet, as well as any corresponding activity, unless it is general information about the company and the goods it offers. A Russian alcohol retailer posted news on a new product—vodka—and illustrated this news with a banner. The banner attracted attention to a particular product and had a promotional nature. Therefore, it might not be considered general information about the seller or its goods and the FAS decided that website materials should be classified as advertising.

In another case, a Russian bank posted an advert targeting teenagers through Instagram, which contained a slang word referring to a certain criminal subculture. The FAS initiated proceeding against the bank claiming use of foul language in advertising. The case is currently under consideration.

10. What are some key 'best practices' for advertising and marketing via social media in your jurisdiction?

Due to lack of any clear regulation of native advertisement, VKontakte, a major social media in Russia, requested the official opinion of the FAS with respect to paid messages regulation. The FAS confirmed that it is not required to distinguish such messages from any other by marking them with 'ad' or 'advertising' notice if posted in social media.

Facebook users complained to the FAS due to disseminating of an unlawful advertisement of smoking blends (drugs) over social media. According to Facebook policies, any advertisement of drugs is prohibited. Facebook took proper measures to remove such illegal content and no penalties or other liability issues, such as blacklisting the social media in Russia, were raised against Facebook.



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