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# The Legal 500 Country Comparative Guides

## Japan

# ADVERTISING & MARKETING

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

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# JAPAN

## 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?]

In Japan, harmful and offensive advertising is primarily regulated through a combination of legal frameworks, industry self-regulation, and public standards.

**Legal frameworks:** Japan has laws and regulations in place that govern advertising practices, and some of these regulations are designed to prevent harmful or offensive advertising. For example, the Act against Unjustifiable Premiums and Misleading Representations ('AUPMR') prohibits false or misleading representations in advertising, and the Act against Unfair Competition addresses deceptive advertising practices.

**Industry Self-Regulation:** The advertising industry in Japan, through organizations like the Japan Advertising Review Organization (JARO), has established self-regulatory guidelines and codes of conduct. These guidelines provide standards for ethical advertising practices and seek to prevent offensive or misleading advertising.

**Specific Content Restrictions:** Certain types of advertising content, such as that which promotes tobacco, alcohol, and prescription drugs, are subject to specific regulations regarding how they can be advertised. These regulations aim to ensure that advertising for such products does not glamorize or promote harm.

### 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]

The AUPMR serves as the primary legislation governing advertising in a broad sense. It oversees the prevention of misleading information about the sale of goods or services, irrespective of the industry involved. It is important to clarify that the AUPMR does not mandate the labelling of particular substances or prohibit specific representations that could lead to misunderstandings.

Conversely, various other laws and regulations target specific sectors and their labelling practices. These laws either restrict exaggerated claims in particular fields or dictate the mandatory or prohibited labelling of certain items based on their respective legal objectives. Some notable laws in this regard include the Food Labeling Act, Food Sanitation Act, Health Promotion Act, Pharmaceuticals and Medical Devices Act (PMD Act), Unfair Competition Prevention Act, Act of Specified Commercial Transactions (ASCT), and Household Goods Quality Labeling Act.

### 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 Food Labelling Act is applied, and it requires advertisers to display some facts, such as information about the manufacturer, quantity, category, best-before date or expiration date, and so on.

In addition, the Act Concerning Liquor Business

Associations and Measures for Securing Revenue from Liquor Tax similarly requires advertisers to display some specific piece of information, such as regarding the manufacturer, quantity, category, the percentage of alcohol included, ingredients, etc. In addition, it requires advertisers to display some messages such as that it is prohibited for minors to drink alcohol, etc.

Other than legislation, there is a voluntary rule. It is broader than the legislation from the viewpoint of the facts which are required to be displayed in relation to the intoxicating nature of the beverages. It requires advertisers to write a message about the prohibition of drinking by persons under 20 years of age, the abstention of drinking alcohol by expectant and nursing mothers or drivers and the encouragement of drinking in moderation.

### **Tobacco and related products, such as vapes and nicotine pouches**

The Guidelines for Advertising Tobacco Products, regulated under the Tobacco Business Act, calls on advertisers to be mindful so as to prevent minors from smoking, to provide information on the connection between smoking and health and so on. In particular, it asks advertisers not to advertise tobacco products in public places other than places in which cigarettes are sold and smoking areas.

As a voluntary regulation, the Tobacco Institute of Japan prohibits advertisements on TV broadcasting and in public spaces. Regarding internet advertisements, it allows advertisers to display them solely in the case that the viewer is verified to be an adult.

### **Medicines, medical devices and surgical or medical procedures**

Regarding medicines and medical devices, the Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices ('PMD Act') regulates some kinds of advertising.

The PMD Act prohibits anyone from making:

- exaggerated or false advertisements
- advertisements that mislead to give a false impression that a physician or other person has certified the efficacy, effects or performance of a therapeutic good or service
- advertisements of pharmaceuticals, medical devices and regenerative medicinal products before their approval

Under the PMD Act, the Ministry of Health, Labour and Welfare ('MHLW') may specify necessary measures for maintaining the appropriate use of such pharmaceuticals or regenerative medicinal products and restrict the means of advertising.

There is also a standard for the appropriate advertisement of medicine, etc. by the MHLW.

Regarding medical procedures, the Medical Care Act regulates advertising.

It prohibits anyone from making:

- an advertisement to the effect that the hospital or clinic is superior to other hospitals or clinics
- an exaggerated advertisement
- an advertisement that undermines public order or corrupts good morals

Except when certain requirements are met, It limits the items that can be placed in an advertisement to items such as the clinical department name, the days and hours of practice, etc.

### **Foods with high fat, salt or sugar**

Regarding nutritional facts, the Food Labeling Act establishes standards and specifies other necessary information regarding the labelling of food. Under the Act, the Prime Minister established the Food Labeling Standards.

### **Gaming and gambling services**

There is no specific rule for gaming. Accordingly, advertisements need to follow self-regulation within the industry and platform.

Regarding gambling, firstly, the Criminal Law punishes crimes related to gambling. However, any conduct pursuant to legislation is not assessed as a crime related to gambling.

For instance, the Act on Control and Improvement of Amusement Businesses stipulates that a person running an amusement business must not advertise or promote the business in such a manner as to damage the wholesome social environment in the vicinity of the business office.

As to casinos, in particular, displaying advertisements in any area other than the specified integrated resort districts, excluding areas such as a facility that is mainly provided for the boarding and alighting of foreign visitors, is prohibited under Item 1, Paragraph 2 of

Article 106 of the Act on Development of Specified Integrated Resort Districts. According to the above-mentioned Act, no person may solicit a person under twenty years of age to the casino business or casino facilities.

#### **Adult and sex-related services**

The Act on Control and Improvement of Amusement Business regulates the advertisement regarding adult and sex-related services. It prohibits advertisement from the viewpoint of the area and the way of advertising. In addition, depending on the kind of business, it requires the entrepreneur to indicate that no person under the age of 18 may enter the place of business.

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

The AUPMR prohibits entrepreneurs from making a representation by which price or any other trade terms of goods or services could be misunderstood by general consumers to be significantly more advantageous than the actual goods or services, such as dual price representation.

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

Both endorsements and testimonials by third parties are regarded as a kind of representation. Therefore, they must be within the scope of the evidence.

It may be required to clearly write that it is a personal opinion depending on the content of representation. There is a report by the CAA on disclaimer practices, in accordance with which some cease-and-desist orders have been issued.

There are certification systems recognised by industrial organizations, but advertisers are not required to acquire certification. However, they can use those quality marks and certifications if the product or service meets the conditions for them. It is a question of whether or not the products or services conform to the standard of such marks and certifications.

#### **6. Do any specific rules apply to environmental or “green” advertising claims?**

The Ministry of Environment publishes the Guideline on Green Claims. However, it is not legally binding.

Therefore, the Consumer Affairs Agency enforces in general the AUPMR when the Agency finds any “green” advertising claim to be a misleading representation. The Agency issued a cease-and-desist order regarding “green” claims that were found to be misleading in December, 2022, for the first time since its establishment in 2009.

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

The AUPMR defines the representation as an advertisement or any other representations which an entrepreneur makes as a means of inducing customers, with respect to the substance of the goods or services which the entrepreneur supplies, or the trade terms or any other particulars concerning the transaction, and which are designated by the Prime Minister as such. Therefore, even if it is editorial content, it can be a representation that the AUPMR regulates if it falls under the above requirements.

#### **8. How is influencer/brand ambassador advertising regulated?**

Under the AUPMR, a new regulation on stealth marketing is about to be introduced in October 2023. It prohibits a representation made by an entrepreneur in connection with the transaction of goods or services that the entrepreneur supplies, which is recognized to be difficult for general consumers to distinguish as such.

Therefore, advertising must clearly indicate that it is made by an entrepreneur by using words such as “advertisement,” “publicity,” “promotion,” or “PR”, etc.

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

Subliminal representation is restricted by the self-regulation of the broadcasting industry.

The Act on Specified Commercial Transactions regulates the ways of advertising regarding some kind of transactions depending on how the transactions are conducted.

#### **10. Are there different rules for different advertising media, such as online,**

**broadcast, non-broadcast etc?**

There is no specific different rule.

However, TV broadcasters examine the contents and expressions of advertisements of their own accord and prohibit in some cases their broadcasting if it regards them as inappropriate.

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

The Act on Regulation of Transmission of Specified Electronic Mail regulates sending electronic mail as a means of advertisement for the sender's own sales activities or for those of others.

It prohibits an entrepreneur from sending such an email except in certain cases, such as when a person has notified the sender of the request or of the consent to send specified electronic mail prior to the transmission thereof. In addition, it requires entrepreneurs to display certain matters stipulated by a government ordinance.

In addition, the Act on Specified Commercial Transactions also prohibits for a seller or a service provider to advertise via e-mail regarding the goods or specified rights or services which are sold or provided through mail order sales, without the consent of the advertising target.

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

In Japan, there is currently no specific legislation or regulation concerning advertising and marketing targeted at children. The considerations regarding advertising aimed at children are primarily addressed through industry self-regulation, such as the "Guidelines for Commercials Targeted at Children" provided by the Japan Commercial Broadcasters Association (JBA), as well as voluntary codes of conduct established within various sectors of the industry.

**13. How is comparative advertising regulated?**

The Comparative Advertising Guidelines outline the principles and requirements for proper comparative advertising, as well as other important considerations.

According to the Comparative Advertising Guidelines,

comparisons may be used if (i) the claims made in the comparative advertising are objectively substantiated, (ii) the substantiated figures and facts are accurately and appropriately cited, and (iii) the method of comparison is fair. Pointing out the shortcomings of a competitor's product precisely to lower its reputation may constitute slander and be illegal under the AUPMR.

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

While consumer promotions are generally regulated pursuant to the AUPMR and the Unfair Competition Prevention Law, there are no specific regulations as advertising.

The claims do not fall within the mandate of the AUPMR if they are targeted for business instead of consumers. The AUPMR prohibits any promotional acts that may impede independent and rational choice by general consumers in order to prevent inducement of customers by means of unjustifiable premiums and representations in connection with transactions of goods and services. In addition, the Unfair Competition Prevention Law regulates the injunctions and compensation for loss or damage when a person whose business interests have been infringed on or are likely to be infringed on through unfair competition, and compensation for damage when a person intentionally or negligently infringes on the business interests of another person through unfair competition.

**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?**

Promotional premiums offered through prize draws and skill competitions are regarded as prizes regulated under the AUPMR.

Pursuant to Article 4 of the AUPMR, the maximum amount of the premiums offered as a result of a promotional contest shall not exceed twenty times the value (or 100,000 yen in the case where such value exceeds 100,000 yen) of the transactions pertaining to the prize. Moreover, the total amount of the premiums offered as a result of a promotional contest shall not exceed 2% of the estimated total value of the transactions pertaining to the prize.

Meanwhile, there are no specific restrictions on lotteries.

For instance, general lotteries are supervised by the Ministry of Internal Affairs and Communications, and sports promotion lotteries by the Ministry of Education, Culture, Sports, Science and Technology. They are permitted to be advertised under the related ministerial supervision.

**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 are not always needed to be registered with an authority. Meanwhile, when it comes to general lotteries and sports promotion, they are supervised by the Ministry of Internal Affairs and Communications, and by the Ministry of Education, Culture, Sports, Science and Technology, respectively.

**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?]**

While the AUPMR is enforced by the government (the Consumer Affairs Agency), the Unfair Competition Prevention Law and IP laws such as the Trademark Law and the Copyright Law are regulated as civil law. Violations of the Unfair Competition Prevention Law and IP laws can also be subject to criminal penalties.

Meanwhile, the Unfair Competition Prevention Law is considered as part of IP laws as well, as it was originally enacted as an implementation of the Paris Convention covering patents, trademarks and other industrial property rights. The Unfair Competition Prevention Law complements IP laws in certain points of view. That is to say, while other IP laws seek to protect intellectual property by granting rights to the subject (creation of rights), the Unfair Competition Prevention Law seeks to protect intellectual property by regulating acts that fall under the category of “unfair competition” (regulation of acts).

**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 the Guideline of the Specified Commercial Transactions Act, constituting the advertising law, “advertisement” that is to be regulated under the law means an advertisement in which the trader clearly intends to accept an offer to enter into a contract by means of communication based on the advertisement and the consumer is able to make an offer to enter into a contract based on such indication. It can be said, thereby, once the offer from the advertisement is accepted by the consumer to enter into the contract, it forms generally a binding contract between the seller and the consumer.

However, in consideration of the disparity in the quality and quantity of information and negotiating power between consumers and traders, the Consumer Contract Act permits a consumer to rescind the manifestation of an intention to be bound by the offer of a contract or by the acceptance of the 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?]**

There is no specific relationship between human rights law and advertising law. However, all advertisements are prohibited to infringe on each person’s right to be honoured, constituting the personality right. Such advertisement that impedes the right of honour falls under both criminal law and the regulation of compensation for damages under civil law. In addition, such infringement will be receive social censure on conventional media and social media and SNS.

**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]**

The Secretary General of the Consumer Affairs Agency and the governor of each prefecture have the authority to enforce the AUPMR. As a result of an investigation implemented by the authority, if an advertisement is recognized to be misleading, the authority can order the advertiser to cease the advertisement and to take appropriate measures to prevent a reoccurrence, disclosing the name of the advertiser. In addition, when an advertiser misrepresents the quality and/or the value of its products or services, the authority issues the advertiser a “Payment Order for Surcharge” to pay three

percent of the sales value of the targeted products or services if their sales during the period of misrepresentation is more than 50 million yen.

Any person who violates the above-mentioned order for action is subject to punishment by imprisonment for not

more than two years or by a fine of not more than three million yen.

Even if no violations are found, the authority takes guidance measures if there is a possibility of violations of the AUPMR. The guidance measures are not disclosed.

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