

Legal 500

Country Comparative Guides 2024

Peru

Advertising & Marketing

Contributor

Rodrigo, Elias &
Medrano Abogados

RODRIGO,
ELIAS
& MEDRANO
ABOGADOS

Maria del Carmen Alvarado

Partner | mcavlarado@estudiorodrigo.com

Ximena Aramburu

Partner | xaramburu@estudiorodrigo.com

Daniela Supo

Associate | dsupo@estudiorodrigo.com

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

For a full list of jurisdictional Q&As visit legal500.com/guides

Peru: Advertising & Marketing

1. Please provide a brief overview of the legal and regulatory framework governing advertising and marketing in your market. In particular, please explain if there is a self-regulatory system, a statutory system and/or ability for competitors or consumers to bring claims against advertisers.

In Peru, Legislative Decree No. 1044 – the Unfair Competition Law – governs all acts of unfair competition, including advertising. This law applies to any activity aimed at participating in the market, whether directly or indirectly. It covers a wide range of behaviors, including those carried out through advertising, and is enforceable regardless of whether the act occurred within or outside Peru, as long as it has effects in the Peruvian market.

INDECOPI's Commission of Unfair Competition¹ is responsible for ensuring compliance with the Unfair Competition Law, specifically regarding advertising practices. The commission has the authority to initiate investigations and issue rulings on potential violations, with decisions being appealable before the Defense Competition Chamber within INDECOPI's Tribunal. Importantly, advertising in Peru does not require prior approval from authorities, and regulatory supervision focuses on ads that have already been disseminated.

Advertisers are required to provide proof of the truthfulness and accuracy of any objective claims made in their ads, especially those related to the characteristics or benefits of the products or services being promoted. This proof must be available in advance of the ad's dissemination.

This Law includes a list of acts considered to involve unfair competition, including the following dealing with advertising specifically:

- Acts of deception: These consist of the performance of acts, the real or potential effect of which is to mislead other market agents as to the nature, method of manufacture or distribution, characteristics, capacity for use, quality, quantity, price, conditions of sale or acquisition and, in general, regarding the attributes, benefits or conditions corresponding to the goods, services, establishments or transactions which the economic agent performing such acts makes available in the market; or mislead as regards to the

attributes held by said agent, including everything represented by his entrepreneurial activity. Also, the dissemination of testimonial advertising not supported by authentic and recent experiences of a witness constitutes an act of deception.

For the dissemination of any message referring to characteristics of an announced good or service, that may be verified, the announcer shall have the proof in advance, which supports the fact that said message is true.

- Acts of confusion: These consist of the performance of acts, the real or potential effect of which is to mislead other agents in the market concerning the entrepreneurial origin of the activity, establishment, specific services or goods, such that these are considered to have an entrepreneurial origin different to that which they actually possess.
- Acts of undue exploitation of another person's reputation: These consist of the performance of acts which, while they do not constitute acts of confusion, may lead, in real or potential terms, to undue advantage being taken of the image, credit, fame, prestige or entrepreneurial or professional reputation that corresponds to another economic agent, including acts capable of generating a risk of association with a third party.
- Acts of denigration: These consist of the performance of acts, the real or potential effect of which, either directly or by implication, is to damage the image, credit, fame, prestige or entrepreneurial or professional reputation of another or other economic agent(s).

Now, these acts would be considered lawful, provided that:

- a. they constitute information that is true in terms of its objective, verifiable condition, in line with reality.
- b. they constitute information that is accurate in terms of its clear and current condition, presented in such a way that ambiguity or lack of precision is avoided as to the reality which pertains to the economic agent referred to or to what is being offered.
- c. they are carried out in relevant manner in a way such that, *inter alia*, unjustified irony,

satire, humor or sarcasm is avoided, in view of the circumstances; and,

- d. they are performed in a relevant context in order to avoid allusions to nationality, beliefs, sexuality or any other strictly personal circumstances of the owners or representatives of another firm, *inter alia* allusions which do not transmit information allowing the consumer to evaluate the economic agent referred to or what he is offering regarding efficiency parameters.

- Acts of comparison and equiparation: The acts of comparison consist of advantages presentation of the competing offer while the acts of equiparation consist of presenting only an adhesion of the own offer on the characteristics of the external offer. There shall be an unmistakable, direct or indirect allusion on the offer of another economic agent, even by external distinctive sign, to verify the existence of an act of comparison or equiparation. They will be considered lawful when they comply with the same requirements mentioned on the acts of denigration.
- Acts against the authenticity principle: These consist of execution of acts which have as effect, real or potential, prevent that the recipient of the advertisement recognizes it clearly as such.

It is a non-compliance to this principle to disseminate surreptitious advertising under news, journalistic opinions or recreational material appearance, without presenting its advertising nature clearly. Therefore, without consigning express and prominently that is an advertorial or a hired advertisement.

- Acts against the legality principle: These consist of advertising dissemination that do not respect mandatory regulations of the legal system which apply to the advertising activity.

It is an inobservance of this principle, the non-compliance of any sectoral provision which regulates the advertising activity performance regarding its content, dissemination or scope.

- Acts against the social adequacy principle

They consist of advertising dissemination as a result of:

- a. Induce recipients of advertising message to make illegal acts or an act of discrimination or offense due to origin, race, sex, language, religion, opinion, economic condition or any other nature.
- b. Promote services of erotic content to a public different than adults. The dissemination of this

type of advertisement is only allowed in written press of restricted circulation for adults and, in case of radio and/or television, within the schedule from one (1:00) to five (5:00) hours.

The Law on Repression of Unfair Competition establishes that the administrative responsibility arising from the commission of unfair competition acts through advertising corresponds, in all cases, to the advertiser. However, in some cases the means of social communication (where the ad is disseminated) and/or the ad agency (which created the infringing ad) will also be responsible. Their responsibility is independent from such corresponding to the advertiser.

The Unfair Competition Law outlines several sanctions for non-compliance, including:

- Monetary Fines: Fines can range from a warning (with no monetary penalty) to approximately USD 1,020,000.00 depending on the severity of the infringement.
- Precautionary Measures: These can be ordered at any stage of the proceeding, including the suspension of infringing actions, the closure of establishments, or the immobilization of goods.
- Corrective Measures: These aim to reverse the effects of the violation or prevent further infringements, such as ordering a public correction or cessation of the offending conduct.
- Fines for Non-Compliance: Additional penalties can be imposed if the advertiser fails to comply with initial rulings.

In addition to INDECOPI's oversight, Peru also has a self-regulatory system through the National Council for Advertising Self-Regulation ("CONAR" for its acronym in Spanish) [*Consejo Nacional de Autorregulación Publicitaria*]. CONAR is a private body established by industry stakeholders to promote ethical advertising standards based on principles of legality, honesty, and social responsibility. While CONAR's rulings are not legally binding, they are respected within the industry. It provides a faster and more flexible alternative to formal legal proceedings, helping resolve disputes between advertisers and consumers.

The combination of INDECOPI's statutory enforcement and CONAR's voluntary compliance framework creates a dual-layered regulatory system that ensures fair and responsible advertising practices across all sectors in Peru.

Footnote(s):

¹ The National Institute for the Defense of Free Competition and the Protection of Intellectual Property (INDECOPI for its initial in Spanish), is Peru's main regulatory body responsible for overseeing free competition, consumer protection, and intellectual property rights. It serves as the primary authority enforcing laws that safeguard market fairness and prevent monopolistic practices, while also ensuring that advertising practices adhere to the country's legal standards. INDECOPI plays a crucial role in maintaining a level playing field in the marketplace and protecting consumers from deceptive or unfair business practices.

2. Please comment on how active the regulators are in your market, in practice, when it comes to regulating advertising and marketing.

In practice, Peruvian regulators, particularly INDECOPI, maintain a highly active role in the supervision and regulation of advertising and marketing activities. As the principal authority responsible for enforcing the Unfair Competition Law, the Commission for the Repression of Unfair Competition is tasked with ensuring that all advertising practices adhere to legal standards, particularly those aimed at protecting consumers from misleading, deceptive, or unfair business practices. This responsibility extends to both domestic companies and international advertisers whose activities impact the Peruvian market.

INDECOPI not only responds to complaints filed by consumers, competitors, or other stakeholders, but also frequently initiates investigations ex officio, acting on its own initiative. This proactive approach is designed to address potential violations before they escalate and to prevent unfair advertising practices from distorting the market. To reinforce its oversight capacity, the Commission for the Repression of Unfair Competition has established a dedicated section responsible solely for the supervision and monitoring of advertising content. This specific focus on advertising reflects the importance INDECOPI places on ensuring that commercial communications are truthful, accurate, and do not unfairly mislead consumers or create confusion among market participants.

Each year, INDECOPI also publishes a comprehensive enforcement plan, which details its regulatory priorities and highlights the sectors where enforcement activities will be most concentrated. This plan serves as both a roadmap for industry participants to ensure compliance and as a signal to the market that INDECOPI is actively monitoring specific areas of concern. The plan typically

focuses on sectors with higher risks of consumer deception, such as telecommunications, retail, financial services, and online advertising, ensuring that regulators can respond quickly and effectively to emerging trends or problematic marketing campaigns.

Beyond the formal regulatory framework provided by INDECOPI, Peru also benefits from the presence of a self-regulatory body, CONAR, which plays a complementary role in the oversight of advertising practices.

3. Do different rules apply to different media (e.g. television broadcast, streaming, online, cinema, print, out-of-home, email marketing, etc)?

In Peru, all advertising, regardless of the medium, is governed by the Unfair Competition Law. This law applies uniformly across various forms of advertising, whether it is broadcast on television, displayed online, printed in newspapers, or disseminated through other channels such as email marketing or out-of-home advertising.

However, while the Unfair Competition Law establishes the general regulatory framework, certain industries in Peru are subject to additional, specific regulations. For instance, the pharmaceutical industry, products aimed at minors, alcohol companies, and other sensitive sectors must comply with stricter rules that address particular concerns related to public health and consumer protection.

Thus, while the same general advertising principles apply across all media, industry-specific regulations govern sectors with greater public safety and health concerns.

4. Is it necessary to have advertisements pre-cleared/pre-approved in your market by a relevant authority, regulator or other body before they are published/broadcast, either generally or in relation to particular media, sectors, products, individuals/businesses, etc? If so, please provide a high-level overview.

In Peru, advertisements are not subject to pre-clearance or pre-approval by any authority or regulator before they are published or broadcast, whether generally or in relation to particular media, sectors, or products. The Unfair Competition Law does not require prior authorization for advertising dissemination. Instead, enforcement occurs after advertisements are made public.

5. Focusing on misleading claims/marketing, please explain how these are regulated in your market.

As mentioned in question 1, in Peru, misleading claims and deceptive marketing practices fall under the category of "acts of deception" as regulated by the Unfair Competition Law. This includes any advertisement that disseminates false or inaccurate information, potentially leading consumers to misunderstand key attributes such as the nature, price, quality, or origin of a product or service.

Advertisers are required to have objective proof to support the truthfulness of their claims, especially when making factual statements. They must have this evidence available before the advertisement is disseminated, particularly for claims related to the characteristics or benefits of their products or services.

If an advertisement is found to be misleading, INDECOPI can impose sanctions, including fines and corrective measures such as stopping the advertising campaign. The penalties are determined based on the severity of the violation and its impact on the market.

6. How is advertising that is (or may be) harmful or offensive managed in your market?

Advertising that is harmful or offensive is regulated under the Unfair Competition Law which includes the "social adequacy principle". This principle prohibits any advertising content that may harm societal values or offend public decency. Advertisements that encourage illegal behavior, promote discrimination, or contain offensive content related to race, gender, religion, sexual orientation, or other personal attributes are strictly prohibited.

Harmful or offensive advertising also includes content that targets vulnerable populations, such as minors, in inappropriate ways. For example, advertisements must avoid promoting violence, offensive language, or actions that could encourage socially harmful behavior.

Advertisements that promote adult products, such as alcohol or tobacco, are required to follow stricter guidelines to ensure they do not harm public health or encourage excessive consumption.

7. Are there special rules, or is there special guidance, relating to price claims in your market,

such as discounts, sales, limited offers? If so, please provide a high-level overview.

Yes, in Peru, there are special rules and guidelines governing price claims in advertising, including discounts, sales, and limited-time offers. These rules fall under the Unfair Competition Law and aim to ensure that consumers are not misled about pricing information or promotions.

General key aspects of price claim regulation include:

- **Accuracy and Transparency:** Advertisers must ensure that any price claim is accurate and transparent. This includes clearly stating the total price of the product or service, including any taxes, fees, or additional charges. Misleading consumers about the final price, through hidden fees or unclear terms, is considered an act of deception and is subject to penalties.
- **Discounts and Sales:** When advertising discounts or sales, the original price and the discounted price must be clearly indicated. The discount must be genuine, meaning the product or service must have been sold at the original price for a reasonable period before the discount is applied. Misrepresenting the true value of a discount or exaggerating the savings is prohibited.
- **Limited-Time Offers:** If an advertisement claims that a price or promotion is available for a limited time, the duration of the offer must be explicitly stated. This prevents "false urgency," where advertisers claim an offer is time-limited when, in reality, it is not. Advertisers must honor the terms of the limited time offer as advertised.
- **Stock Availability:** For sales promotions, advertisers must indicate the minimum stock of the products available at the promotional price. This ensures that consumers are not misled by advertisements for items that are in extremely limited supply or unavailable. If the promotion is tied to a specific number of units, this must be disclosed upfront.
- **Currency and Exchange Rates:** If prices are listed in foreign currencies, they must also be clearly displayed in the local currency (Peruvian Soles) in the same size and prominence. This ensures that consumers are fully informed about the actual cost of the product or service in their local currency, preventing confusion due to fluctuating

exchange rates.

Failure to comply with these guidelines can result in sanctions from INDECOPI, ranging from fines to corrective measures.

In this regard, in 2021, the Unfair Competition Commission issued a precedent of mandatory observance whereby it was established that, to determine whether advertising about prices or promotional discounts constitutes an "act of deception," the following will be considered:

- When a company wishes to broadcast advertising about a promotion consisting of a discount on the price or an equivalent modality, it must be exceptional and temporary.
- The promotional offer to be advertised must be calculated based on the regular offer of the product or service.
- To determine the value of the regular offer, the conditions (especially the price) under which the product or service is usually offered must be identified and compared with the promotional conditions in order to determine whether the promotion's advertisement is misleading.

8. How are misleading environmental claims regulated in your market? Are there special rules or is there special guidance relating to environmental claims in your market? If so, please provide a high-level overview.

In Peru, misleading environmental claims, or greenwashing, are specifically addressed through the "Environmental advertising Guide", which provides guidelines for advertisers to ensure that environmental claims are truthful and transparent. This guide complements the general rules found in the Unfair Competition Law, focusing on avoiding misleading claims about the environmental benefits of products or services.

General Key aspects of the Guide include:

- Clear and Specific Claims: Environmental claims must be clear and specific, avoiding vague or ambiguous terms such as "green" or "eco-friendly" without further explanation. Advertisers must provide detailed information about the actual environmental benefits of the product.
- Substantiation of Claims: Advertisers must be

able to substantiate any environmental claim with reliable evidence. For example, if a product is labeled as "biodegradable" or "carbon-neutral," the advertiser must have scientific proof to back these claims.

- Avoiding Misleading Labels: The use of environmental labels, logos, or certifications must be legitimate and come from recognized, independent authorities. Misusing or creating deceptive eco-labels that are not based on verifiable standards is prohibited.
- Transparency: Advertisers are required to be transparent about the scope of any environmental claims. For example, if a product has certain components that are environmentally friendly but others that are not, this must be disclosed to avoid misleading consumers.
- Overall Environmental Impact: Claims must consider the overall environmental impact of a product, not just one aspect. Advertisers must avoid highlighting one environmental benefit while concealing other significant negative environmental effects.

The Environmental advertising Guide provides a structured approach for businesses to make credible and verifiable environmental claims, ensuring that consumers are not misled. INDECOPI oversees the enforcement of these guidelines, and any violation may result in sanctions.

9. What are the main sectors or product types where advertisements are either prohibited or tightly restricted (e.g. alcohol, tobacco/smoking, gambling, crypto, unhealthy food and drink). Please provide a high-level overview.

In Peru, several sectors and product types are subject to stringent advertising restrictions or outright prohibitions due to their potential impact on public health, safety, and consumer protection. These regulations, enforced through various laws, aim to protect vulnerable groups, including children, and ensure transparency in how products are marketed. Below is a high-level overview of the key sectors where advertising is either prohibited or tightly restricted:

1) Alcohol: In Peru, the advertising of alcoholic beverages is regulated under Law No. 28681, known as the "Law for the Commercialization, Consumption, and Advertising of Alcoholic Beverages". This law establishes various restrictions on alcohol advertising, including the

requirement to include the warning "TOMAR BEBIDAS ALCOHÓLICAS EN EXCESO ES DAÑINO" ("DRINKING ALCOHOLIC BEVERAGES IN EXCESS IS HARMFUL") in all advertisements. This warning must be displayed in a space no smaller than 10% of the total area of packaging, wrappers, or labels used for the commercialization of any alcoholic beverage, and it must be written in legible characters.

Additionally, the law places limits on the timing and placement of alcohol advertisements, especially in media where minors are likely to be exposed, ensuring that such ads are not broadcast during times or in spaces where children form a significant part of the audience.

Key restrictions include:

- **Placement and Timing:** Alcohol ads are restricted from airing during times when minors are likely to be exposed, such as children's programming or school-related media. These ads cannot appear in media that is predominantly consumed by younger audiences, such as youth-targeted websites or social media platforms.
- **Prohibited Imagery and Messages:** Advertisements must avoid images or messages that glorify excessive consumption. For example, portraying binge drinking or associating alcohol with athletic success, youthfulness, or sexual prowess is strictly forbidden. Alcohol cannot be marketed as a solution to stress or social isolation.
- **Sponsorships:** Alcohol companies are allowed to sponsor events, but only under tight restrictions. Sponsorship is banned for events that primarily involve minors, and sponsored events must include clear, visible messaging about responsible drinking.

2) Tobacco/Smoking: Tobacco advertising in Peru is governed by Law No. 28705, the "General Law for the Prevention and Control of Tobacco Consumption". This legislation sets stringent restrictions on where and how tobacco products can be promoted. The aim is to minimize exposure to minors and prevent misleading information about the health risks associated with smoking.

Key restrictions include:

- **Packaging Warnings:** Tobacco product packaging must prominently display health warnings, covering 50% of the surface area. These warnings must include both text and

images prescribed by the Ministry of Health. Additionally, the warning "PROHIBIDA SU VENTA A MENORES DE 18 AÑOS" ("SALE PROHIBITED TO MINORS UNDER 18") is mandatory on all packaging.

- **Prohibited Terminology:** Terms like "light," "mild", and "ultralight" are banned from tobacco product labeling, advertisements, and trademarks. These terms mislead consumers into thinking that certain tobacco products are less harmful than others, and their use is strictly forbidden.
- **Advertising Channels:** Tobacco advertising is prohibited in media where minors make up a significant portion of the audience, including television, radio, and online platforms. Tobacco companies cannot advertise their products at public events or sponsor activities where minors are likely to be present.
- **Sponsorships and Promotions:** Sponsorship of events by tobacco companies is severely restricted, especially when these events could reach young audiences. Promotion through sponsorships of sports teams or cultural events is heavily regulated to prevent indirect tobacco advertising.

3) Unhealthy Food and Drinks: The advertising of foods and beverages high in sugar, salt, or fats is regulated under Law No. 30021, the "Law on the Promotion of Healthy Eating for Children and Adolescents," along with its accompanying regulations approved by Supreme Decree 017-2017-SA and subsequent modifications. This law establishes strict guidelines for the advertising of unhealthy foods, particularly those targeting children, to address the increasing rates of obesity and related health issues among minors.

Key restrictions include:

- **Health Warnings:** Advertisements for unhealthy food and beverages must include visible health warnings that clearly inform consumers of the potential risks associated with excessive consumption. For example, ads for sugary snacks or high-fat foods must contain warnings about the risks of obesity, diabetes, and other related health conditions.
- **Restrictions in Children's Media:** Unhealthy food advertisements are prohibited from airing during children's programming or in any media where children form a significant portion of the audience. This includes television channels, websites, and social media platforms that cater specifically to younger viewers.

- **Prohibited Marketing Techniques:** Advertisements aimed at children for unhealthy foods are not allowed to use techniques that appeal directly to minors, such as animated characters, mascots, or celebrity endorsements. The law prohibits these tactics to prevent undue influence on children's dietary choices.

4) Pharmaceuticals and Medical Products: In Peru, the advertising of pharmaceuticals is regulated under Law No. 29459, the "Law on Pharmaceutical Products, Medical Devices, and Sanitary Products". The law distinguishes between prescription drugs and over-the-counter (OTC) medications, imposing different advertising restrictions on each.

Key restrictions include:

- **Prescription Drugs:** Prescription drugs cannot be advertised to the general public. All marketing efforts for these drugs must be directed solely at healthcare professionals, such as doctors and pharmacists. This ensures that consumers do not self-diagnose or misuse prescription medications based on misleading advertisements.
- **Over-the-Counter (OTC) Medications:** Advertisements for OTC medications are allowed but must include clear warnings about potential side effects and risks. For instance, an ad for an OTC pain reliever must mention possible contraindications and cautionary measures. Additionally, any billboard or large public ad must ensure that these warnings are clearly visible and proportionate to the rest of the ad content.
- **Promotional Items:** Marketing strategies using branded promotional items, such as pens or notepads featuring a pharmaceutical trademark, are also regulated. Depending on the product and the context of the promotion, these items may be restricted, particularly for prescription drugs, to ensure compliance with ethical marketing practices.

5) Breast Milk Substitutes: Advertising regulations for breast milk substitutes are outlined in Decree No. 009-2006-SA, also known as the Infant Feeding Regulation. This regulation covers the marketing of breast milk substitutes and other products used for infant feeding, such as bottles and teats, for children up to 24 months old. The primary focus of these regulations is to protect and promote breastfeeding while restricting the advertising of substitutes that may encourage bottle

feeding.

Key restrictions include:

- **Prohibited Images and Claims:** Advertising, labeling, and packaging for breast milk substitutes cannot include images of children, toys, or anthropomorphized animals. These visuals are seen as idealizing the product, creating a perception that it is superior to breastfeeding. The use of such imagery is strictly prohibited to avoid misleading consumers and to encourage natural feeding practices.
- **No Promotional Claims:** Advertising cannot contain claims that imply the product will make a child healthier or happier than breastfeeding would. For example, statements suggesting that infant formulas are equivalent or superior to breast milk in promoting growth or immunity are banned.
- **Restrictions on Bottles and Teats:** The advertising and packaging of bottles and teats are also regulated. Any images or text that promote the use of these products over breastfeeding are prohibited. This includes any language that suggests the use of a bottle is convenient, safe, or a superior feeding method.
- **Marketing Limitations:** The law specifies that products marketed as breast milk substitutes must clearly indicate that they are replacements for breast milk and cannot be presented as suitable for children under the age of two. If any product implies it is a complete or partial substitute for breast milk, the above restrictions on advertising and packaging apply.

6) Gambling: Gambling advertisements in Peru are regulated under Law No. 31557, which ensures that gambling promotions are responsible and do not encourage harmful behavior. The law focuses on protecting consumers, especially vulnerable populations, from the negative impacts of gambling addiction.

Key restrictions include:

- **Prohibited Messaging:** Gambling advertisements must not suggest that gambling is a viable financial solution or a guaranteed path to wealth and success. Advertisements that glorify excessive gambling or imply that it is a safe way to overcome financial problems are strictly prohibited.

- **Placement and Timing:** Gambling ads are restricted from being aired during times when minors are likely to be exposed. For example, gambling ads cannot be shown during family-friendly TV shows or on platforms with a high percentage of young users. Additionally, gambling advertisements are strictly prohibited from targeting minors in any form.
- **Mandatory Disclaimers:** All gambling advertisements must include clear disclaimers about the risks of gambling addiction. These disclaimers must be prominently displayed and not hidden in fine print. Furthermore, advertisements must include a warning that excessive gambling can lead to ludopathy.

10. Are there special protections for children? If so, please provide a high-level overview.

Yes, in Peru, there are special protections for children when it comes to advertising, recognizing them as a vulnerable audience.

Key aspects of these protections include:

- **Content Restrictions:** Advertisements directed at children must avoid content that could harm their physical, mental, or moral well-being. This includes avoiding the promotion of violence, unsafe behavior, or inappropriate content. Additionally, certain products like alcohol, tobacco, gambling and unhealthy foods are heavily restricted or prohibited in children's programming or media primarily consumed by minors.
- **Misleading Advertising:** Advertisements targeting children must be particularly cautious in avoiding misleading or deceptive claims. Children are less capable of critically evaluating marketing messages, so ads must not exaggerate product benefits or create unrealistic expectations, especially for toys, food, or entertainment products.
- **Unhealthy Food and Beverage Advertising:** Under Law No. 30021 and its Regulation, advertisements for foods high in sugar, salt, or fats must include warnings about the potential health risks of overconsumption, particularly when targeting children. Ads for these products are restricted from being shown during children's programming or in media where minors are a significant part of the audience.

Ads targeting children often use animated characters, mascots, or celebrities to capture their attention. However, when promoting products like unhealthy food or beverages, these tactics are prohibited to avoid undue influence on children's purchasing decisions.

11. Are there particular rules or restrictions relating to unhealthy food and drink, such as 'junk food'? If so, please provide a high-level overview.

In Peru, there is no specific regulation that governs the advertising of "junk food" as a distinct category. However, the advertising of foods and beverages high in sugar, sodium, and fats is regulated under Law No. 30021, the "Law on the Promotion of Healthy Eating for Children and Adolescents", and its accompanying regulations, approved by Supreme Decree 017-2017-SA and subsequent modifications. Commonly known as the "Healthy Eating Law", this legislation aims to address rising childhood obesity and other health issues linked to poor nutrition by imposing strict rules on the advertising of unhealthy food products, particularly when directed at children.

Key aspects of the Healthy Eating Law and its regulations include:

- **Mandatory Warnings:** Under this law, products that exceed the recommended levels of sugar, sodium, or fat must carry clear warnings in advertisements, including phrases such as "High in sugar", "High in sodium" or "High in saturated fat." These warnings must be prominently displayed, helping consumers, especially parents, make informed choices about the health risks associated with these products.
- **Limiting the Use of Marketing Tactics:** The law also restricts the use of marketing techniques that specifically appeal to children. Ads for unhealthy food products cannot feature animated characters, mascots, or celebrities targeting children. This measure is designed to protect children from being unduly influenced by marketing strategies that exploit their vulnerability and trust, particularly in making purchasing decisions.

12. Are there particular rules or restrictions relating to influencer marketing? If so, please

provide a high-level overview.

In Peru, influencer marketing is specifically addressed by the "Guide for Influencers" published by the Commission for the Repression of Unfair Competition under INDECOPI. This guide provides a framework for both influencers and brands to ensure compliance with the Unfair Competition Law, when engaging in influencer marketing.

Below is a high-level overview of the key aspects of the guide:

- **Transparency in Advertising:** Influencers are required to clearly disclose when their content is sponsored or paid for by a brand. The guide emphasizes the importance of transparency, ensuring that influencers explicitly inform their audience that the post is part of a commercial arrangement. This must be done by using terms such as *#ad*, *#sponsored*, or similar labels that clearly indicate the nature of the content as paid advertising.
- **Truthfulness of Claims:** Influencers must ensure that any claims they make about a product or service are truthful and can be substantiated. They should avoid making exaggerated or misleading statements about the effectiveness, benefits, or qualities of a product. The guide reinforces the need for influencers to only endorse products that they have personally used and can vouch for.
- **Responsibility of Both Parties:** The guide holds both the influencer and the brand accountable for ensuring that influencer marketing is compliant with advertising laws. Brands must make sure influencers they work with are aware of their obligations under the Unfair Competition Law, and influencers must follow the guidelines to avoid engaging in deceptive practices.
- **Avoiding Hidden Advertising:** The guide prohibits hidden advertising, where promotional content is not clearly labeled as such. It is crucial that followers can distinguish between organic content and paid advertisements, ensuring there is no confusion about the nature of the promotion.

By following these guidelines, influencers and brands can avoid falling into deceptive advertising practices and ensure their marketing efforts are compliant with Peruvian advertising laws.

13. Do influencers require a licence, permit or other official permission before they can operate in your market as advertisers/marketers/brand ambassadors or similar?

No, influencers in Peru do not require a license, permit, or official permission to operate as advertisers, marketers, or brand ambassadors. However, they must comply with the general advertising regulations set forth in the Unfair Competition Law and the Guide for Influencers published by INDECOPI's Commission for the Repression of Unfair Competition.

14. What are the main or most common IP considerations advertisers should keep in mind in your market?

In Peru, advertisers must be aware of several key intellectual property (IP) considerations to avoid infringing on the rights of others and to protect their own assets. Below are the most common IP issues that advertisers should keep in mind:

- **Trademark Infringement:** Advertisers should ensure that the trademarks they use in their campaigns are either owned or licensed for use. Unauthorized use of another party's trademark, logo, or brand name can lead to trademark infringement claims. This applies not only to the advertisement itself but also to product packaging, promotions, and digital content. Additionally, trademarks that are confusingly similar to existing registered marks could lead to legal challenges under Decision 486 of the Andean Community and Legislative Decree No. 1075.
- **Copyright Compliance:** Any creative work used in advertising, such as images, music, videos, or text, is protected by copyright. Advertisers must either create original content or secure the appropriate licenses for third-party material. Using copyrighted works without permission can lead to legal action under Legislative Decree No. 822 (Copyright Law). Copyright also covers content shared online, so digital ads must respect the same protections as traditional media.
- **Use of Celebrity Likeness and Public Figures:** Advertisers must obtain written consent from individuals, including celebrities or public figures, before using their likeness in an advertisement. This protection extends to both private individuals and public personalities.

under civil law.

- **Domain Names and Online Branding:** In the digital space, advertisers must ensure that their domain names and digital branding do not infringe on the trademarks of others. Advertisers should also ensure that the use of their brand in online advertising, such as Google Ads or social media platforms, respects the trademark rights of others.
- **Content Produced by Influencers:** When collaborating with influencers, advertisers should ensure that all content created respects IP rights. Influencers must avoid using copyrighted materials (such as music or photos) without permission. Additionally, both the brand and influencer share responsibility for ensuring that all trademarks and copyrighted content used in promotional posts comply with legal requirements.

15. Is comparative advertising permitted in your market? If so, please provide a high-level overview.

Yes, comparative advertising is permitted in Peru, but it is subject to specific regulations under the Unfair Competition Law. Comparative advertising involves making direct or indirect references to a competitor's products or services to highlight differences or advantages. However, certain rules must be followed to ensure that the comparisons are fair, accurate, and not misleading.

Comparative advertising is lawful in Peru as long as it adheres to the following conditions outlined by Unfair Competition Law:

- **Truthful Information:** The advertisement must provide objective, verifiable information that accurately reflects reality.
- **Accuracy:** The information must be clear and up to date, avoiding any ambiguity or imprecision regarding the competitor or its offering.
- **Appropriate Form:** The comparison must be respectful and relevant, avoiding unjustified irony, satire, mockery, or sarcasm.
- **Appropriate Content:** The advertisement must refrain from making allusions to personal characteristics such as nationality, beliefs, or privacy of the competitor's representatives, focusing instead on objective business parameters that allow consumers to assess the competitor's efficiency.

As long as these criteria are met, comparative advertising is considered a legitimate practice within Peru's regulatory framework.

16. Are there particular rules relating to 'image rights' in your market that advertisers should be aware of?

In Peru, image rights are protected, and advertisers must obtain explicit consent before using a person's image, name, or likeness for commercial purposes. This applies to both public figures and private individuals. For minors, parental or guardian consent is mandatory, and extra care is required to avoid exploitation.

17. Are there rules relating to perpetuating potentially harmful stereotypes, such as gender stereotypes, racial stereotypes, religious stereotypes, and so on in your market? If so, please provide a high-level overview.

Yes, in Peru, advertisements that perpetuate harmful stereotypes -such as those based on gender, race, ethnicity, or religion- are prohibited under the Unfair Competition Law. Advertisements must comply with the social adequacy principle, ensuring they respect moral and social values. Any content that promotes discrimination, incites harmful attitudes, or reinforces negative stereotypes is considered unlawful and can be subject to regulatory action. Advertising must also respect the dignity of individuals and groups, avoiding depictions that degrade or dehumanize people based on their personal characteristics.

18. What has been the main impact AI has had on the advertising and marketing content and regulation in your market so far, and what impact is it likely to have in the coming year or two?

AI has significantly impacted advertising and marketing in Peru, primarily through its ability to enhance content creation, personalized marketing, and data-driven strategies. AI enables advertisers to analyze consumer behavior more precisely, leading to highly targeted and personalized ads, which improves engagement and conversion rates. However, this also raises concerns around consumer privacy, data protection, and the transparency of AI algorithms. While Peru lacks specific regulations for AI in advertising, existing laws, such as the Unfair Competition Law and Law No. 29733 on data protection, govern the use of AI-driven content, ensuring

that it meets standards of transparency, fairness, and compliance with privacy laws.

Looking ahead, AI's influence on Peru's advertising landscape is expected to grow, particularly in areas like programmatic advertising, automated content generation, and customer interaction via chatbots. In the coming years, regulators, including INDECOPI, are likely to place greater emphasis on AI's role, potentially issuing guidelines or regulations to address ethical concerns, transparency in content creation, and the responsible use of consumer data.

19. Are regulators in your market currently utilising AI or new technologies in their regulatory activities in your market?

In Peru, the use of AI by regulators like INDECOPI is still in a developmental phase, and there is no widespread or official deployment of advanced AI tools for regulatory activities at this time. While there is growing interest in leveraging new technologies for more efficient monitoring and enforcement, particularly in areas like online advertising and e-commerce, most regulatory activities still rely on traditional methods.

INDECOPI has focused on improving its digital presence and utilizing online tools to handle complaints, monitor compliance, and enforce advertising regulations, but the adoption of AI for these tasks remains limited. For now, technological advancements have mostly centered on improving public access to regulatory services and increasing transparency in enforcement processes through digital platforms.

In the near future, as AI technologies become more accessible and integrated into global regulatory practices, it is likely that INDECOPI and other Peruvian regulators will begin exploring AI more actively to enhance efficiency in monitoring, compliance, and enforcement. However, as of now, AI usage by regulators in Peru is minimal and in an exploratory stage.

20. What are the main hot topics, challenges and opportunities facing advertisers in your market (now or in the near future) from a legal/regulatory point of view? Also, there any significant updates or changes to the law, rules, sanctions, regulators or anything else due in your market in the near future that readers should keep in mind?

The advertising landscape in Peru is undergoing

significant change, driven by the rapid growth of digital marketing and the increasing importance of online platforms. As consumers increasingly shift towards digital spaces for shopping, entertainment, and social interaction, advertisers are finding new opportunities to engage audiences through platforms like Facebook, Instagram, Google, and YouTube. The rise of programmatic advertising -where automated systems buy and place ads based on consumer data- has opened up highly efficient ways for brands to reach their target demographics. However, this also brings a host of challenges, especially when it comes to compliance with transparency and advertising regulations.

One of the key challenges in digital marketing is ensuring that ads are not misleading and that consumers fully understand what is being promoted. INDECOPI is becoming more vigilant in overseeing programmatic ads and digital platforms to ensure that advertisers respect the principles of fairness, truthfulness, and transparency. The rise of personalized ads also creates the risk of data misuse, and advertisers must be careful to operate within the framework of existing regulations.

Another pressing issue is the potential for greenwashing in digital advertising. With consumers increasingly drawn to products that claim environmental benefits, brands are tempted to market themselves as sustainable. However, Peru's Environmental advertising Guide places strict limits on such claims, requiring that any environmental benefit advertised is based on verifiable evidence. Digital platforms offer extensive reach for eco-friendly products, but brands must back up these claims with scientific proof.

Digital marketing also brings opportunities for AI-driven campaigns, which allow advertisers to deliver more tailored and data-driven ads. Through advanced algorithms, platforms like Google Ads or Facebook can segment audiences based on preferences, behavior, and browsing history, enabling businesses to send highly relevant content directly to potential customers. For instance, a retailer can show a specific product to a user who has previously searched for similar items, increasing the chances of conversion. However, advertisers must be cautious about how they collect and use consumer data, ensuring that their digital strategies are ethical and compliant with regulatory standards.

One major opportunity is the rapid growth of e-commerce in Peru. Digital platforms have become essential channels for businesses to promote products, especially in the wake of the pandemic, which significantly accelerated the shift to online shopping. Platforms like "Mercado Libre", "Linio", and other local e-commerce

sites are seeing a surge in traffic, creating prime advertising space for brands looking to capture a growing online audience. The challenge for advertisers, however, is to stay compliant with advertising regulations, particularly in areas like pricing transparency, stock availability, and promotional accuracy.

The digital transformation has also amplified the importance of video marketing on platforms like YouTube and Facebook. Video content is highly engaging, and advertisers are capitalizing on its potential to create compelling narratives and product demonstrations. However, like all forms of advertising, video ads must adhere to the Unfair Competition Law. Any claims made in these ads, whether about pricing, product features, or promotions, must be truthful and backed by evidence. As video marketing continues to grow, it is likely that regulators will pay closer attention to the claims made in these formats, ensuring that consumers are not misled.

Looking ahead, advertisers in Peru should expect increased regulatory scrutiny on digital marketing practices. INDECOPI is likely to strengthen its enforcement around transparency in online ads and programmatic advertising, ensuring that platforms and brands maintain high standards of honesty and clarity. The rise of artificial intelligence and automated ad placements will also likely come under greater regulation, as ethical considerations around data use and consumer privacy gain prominence.

In conclusion, digital platforms and marketing strategies offer substantial opportunities for growth in Peru, but they also come with regulatory hurdles. As the digital space becomes more integral to advertising strategies, businesses must ensure they are compliant with the evolving legal framework. By focusing on transparency, accuracy, and fair competition, advertisers can take full advantage of Peru's digital marketing boom while avoiding the pitfalls of regulatory breaches.

Contributors

Maria del Carmen Alvarado
Partner

mcavlarado@estudiorodrigo.com



Ximena Aramburu
Partner

xaramburu@estudiorodrigo.com



Daniela Supo
Associate

dsupo@estudiorodrigo.com

