Tarbijakaitse ja
Tehnilise Järelevalve
Amet



A guide to advertising gambling

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Introduction

Gambling is a game where a player makes a bet to participate. Both the amount of money paid and the financial obligation assumed are considered a bet. It is not the size of the bet that is important, but the conscious making of the bet to participate in the gambling. As a result of the game, the player may win, but at the same time, they may lose the entire bet, and the outcome is never known in advance. The outcome is determined in whole or in part by action based on randomness or depends on the occurrence of an event not known in advance.

According to the Gambling Act (GA), gambling is classified as games of chance, lotteries, totos, and games of skill. The permissibility and limitations of advertising depend on what they are. The guide outlines the requirements for each type of gambling.

In addition to the requirements applicable to gambling advertising, the general requirements of the Advertising Act must also be adhered to. For example, an advertisement must be clearly distinguishable from other information under ordinary attention, and its content, design, and presentation must ensure that it is understood to be an advertisement. Also, the advertisement must clearly contain the name of the person placing the advertisement and their registered Estonian or European Community trademark or domain name. Advertising must not be contrary to good manners or practices, and advertising must not provide false information.

This is a recommended guide. The purpose of the guide is to explain the gambling advertising requirements set forth in Section 29 [2] of the Advertising Act in order to achieve uniform fulfillment of the above requirements by entrepreneurs.

The guide has been drawn up based on the Advertising Act, the Gambling Act, and the Media Services Act in force at the time of drafting, but when applying the guide, requirements arising from other legislation must also be taken into account.

State supervision over the operation of gambling is carried out by the Tax and Customs Board. Compliance with advertising requirements of gambling is supervised by the Consumer Protection and Technical Regulatory Authority (CPTRA), which can also be approached for advice.

1 Definition of gambling and advertising of gambling

1.1 The definition of gambling

Gambling has three important characteristics:

1) **a bet** made by the player;
2) the game may or may not end with a **prize,** and
3) the outcome of the game is partly or fully determined by an activity based **on chance** or depends on the occurrence of a previously unknown event (§ 2 (1) of the Gambling Act).

Types of gambling are classified on the basis of game systems, distinguishing gambling with outcomes that depend only on chance (games of chance and lotteries) from games that depend partly on physical and partly on personal mental characteristics (totos and games of skill) (§ 3 of the Gambling Act).

The outcome of a game of **chance** (e.g., poker, roulette, slots) **depends on chance** - and the game of chance is divided into two:

1) Games organized on gaming tables and gaming machines – games, the outcome of which is determined by means of an electronic, mechanical, or electro-mechanical device with the help of the operator of the game;
2) Additional games of chance – games which, upon fulfillment of the conditions set by the rules of the game, grant an opportunity to win a prize collected out of the bets of the gaming machines or gaming tables (§ 4 (1) (1,2) of the Gambling Act).

The result of the lottery also depends on chance - and the lottery is divided into two:

1) Classical lotteries (e.g., draws with balls such as Bingo lotto, Eurojackpot) - the result will be revealed after the end of the offer of the opportunity to participate in the lottery, and the results will be determined a maximum of 3 times a day;
2) Instant lotteries (e.g., scratch lotteries such as SuperSumm, Kullapada) – the result is determined randomly and is revealed after the lottery ticket is purchased at the opening of the ticket field, and the lottery winnings account for up to 80% of the sale price of the lottery tickets (§ 4 (2) (1,2) of the Gambling Act).

In the case of **toto** (e.g., soccer world cup prediction, horse racing prediction), winning is not just a matter of chance, but an important component is the **player's prediction** of the course of the event. The result - winning and the size of the prize - depends on the prediction. The amount of a prize depends on the amount of the bet and the winning coefficient determined before the making of the bet (betting) or percentage of the total amount of the bets as determined by the gambling operator, the number of people who bet correctly and the amount of their bets (totalizer); (§ 3 (3) of the Gambling Act)

A game of skill (e.g., chess, memory game, darts) is an entertaining game whose outcome depends largely on the player's **skill, ability, and knowledge** (e.g., reaction speed, coordination). In addition, the organization of a game of skill requires the presence of a mechanical or electronic device (§ 3 (4) of the Gambling Act).

A **commercial lottery** is a classic or instant lottery organized by a good or service provider to promote the sale of their goods or services or to advertise the goods, services, or their provider (§ 6 of the Gambling Act). A commercial lottery is gambling only if the prize pool of the commercial lottery **exceeds 10,000 euros** and if the game has **the characteristics of gambling: player's bet, the chance of winning, and randomness**. The requirements of the Gambling Act are not applied to a commercial lottery with a prize pool of fewer than 10,000 euros (§ 2 (5) (4) of the Gambling Act).

1.2 Definition of advertising for gambling

Advertising means information that is made public in any generally perceived form for a charge or without charge for the purpose of increasing the provision of services or the sale of goods, promoting an event, or directing the conduct of a person in public interests (§ 2 (1) (3) of the Advertising Act).

Information made public in a generally perceived form is information made public through any advertising channel (TV channels, newspapers, social media, internet, outdoor advertising media, etc.), regardless of whether such information is distributed for a fee or free of charge. The law does not define more precise requirements for the form of publication of the advertisement.[1] Consequently, any publicized information about a service or good, regardless of the form of publication of this information, the purpose of which is to increase the sale of that service or good, can be considered advertising in a sense set out in § 2 (1) (3) of the Advertising Act. For example, a person's Facebook posts with the purpose of increasing sales, creating demand and desire for consumption, promoting an event, or directing a person's behavior in the public interest can be considered advertising.

The Supreme Court has also found[2] that if there is no doubt that the information has been made public in a commonly understood form, then this information can have no other purpose than to make the goods more visible, which in turn inevitably serves the purpose of increasing the sale of the goods in the retail trade. Consequently, the displayed information in itself corresponds to the characteristics of the advertisement.

In another case, the Supreme Court has found[3] that since the poster included the "Casino V" logo in addition to the New Year's greeting, it is an advertisement. This is due to the fact that the "Casino V" trademark is also introduced along with the New Year's greeting, and in combination with the New Year's wishes, a positive attitude is formed in people towards the gambling places operating under the above-mentioned trademark. Therefore, it is information whose purpose is to increase the sale of the service, and therefore, in the case of its publication, it is an advertisement within the meaning of § 2 (1) (3) of the Advertising Act.

Advertising of gambling is any information made public in a generally understandable form, the purpose of which is to promote gambling, a gaming venue, or a gambling operator, both in the case of a game of chance, a lottery (except for a commercial lottery with a winning fund of up to 10,000 euros), totos and games of skill. § 29 [2] of the Advertising Act stipulates the requirements for advertising gambling. This means that in the case of the advertisement of gambling, in addition to the general requirements of the advertisement, the special requirements stipulated in Section § 29 [2] of the Advertising Act must also be followed.

1.3 The following is not considered advertising of gambling

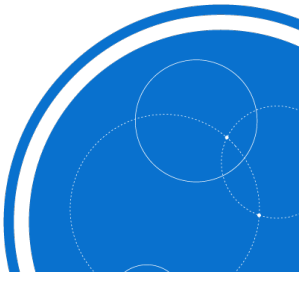
Marking of a gaming venue, which includes the company's name, trademark, type, and name of the gaming venue, as well as the domain name and opening hours, is not considered to be advertising of gambling. The marking can be located both on the building where the gaming venue is located, as well as at the entrance to the gaming venue, and in both places at the same time. The entrance to the gaming venue and its marking can also be located, for example, inside the building (§ 2 (2) (2) of the Advertising Act).

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[1] Kingisepp. M., Tarbijakaitseõigus Euroopa Liidus ja Eestis, Tallinna Raamatutrükikoda, p. 159.
[2] RKHKo, 3-3-1-7-16, p. 11
[3] RKKKo, 3-1-1-82-04 p. 9

The marking of a vehicle used in the economic or professional activities of a gambling operator with the person's name, contact details, trademark, domain name, and field of activity is also not considered advertising § 2 (2) (4) of the Advertising Act. A vehicle used in economic or professional activities can be treated as an advertisement if the information on the vehicle contains more than what is listed in § 2 (2) (4) of the Advertising Act. E.g., advertising slogans or starting amounts of gambling bets.

Neither the disclosure of information about a commercial lottery (§ 29 ^{2} (10) of the Advertising Act) with a prize pool of up to 10,000 euros is considered advertising of gambling.



2 Requirements for gambling advertising (§ 29[2] of the Advertising Act)

2.1 Operating permit

The prerequisite for the permissibility of advertising gambling (i.e., advertising of gambling, gambling venue, and gambling operator) is that the operator has both an activity license and an operating permit. **The activity license** gives the right to apply for an operating permit for the operation of gambling, and it is indefinite (§ 16 of the Advertising Act). **An operating license** is granted to a gambling operator to conduct a specific gambling or, in the case of so-called place-based gambling, to open a gaming venue at the corresponding address. The operating permit is granted for up to 20 years (§ 22 of the Gambling Act). A gambling activity license and operating permit can be applied for from the Tax and Customs Board (§ 16 (3) of the Gambling Act and § 22 (4) of the Gambling Act).

Therefore, if the gambling operator has the required operating permit according to the Gambling Act and the advertisement complies with the restrictions set out in the Advertising Act, their advertisement is generally allowed. Additional requirements apply depending on the type of gambling being advertised.

2.2 An invitation

An advertisement of gambling may not contain an invitation to participate in gambling or to visit a gambling venue or information that may give the impression that gambling increases social success (§ 29 [2] (3) of the Advertising Act).

Advertising is, according to the definition, "information made public for the purpose of /…/ providing a service or increasing the sale of /…/ goods".
However, advertising of gambling must avoid invitations that direct a person to participate in gambling or to visit a gambling venue. A commanding manner of speaking, but in certain cases also the **use of superlatives** and **other inviting actions** or such an effect in connection with different components of the advertisement, must be interpreted as a prohibited invitation. For example, the following phrases must be considered prohibited:

- come and play, come and try, come and see, try, visit the gambling venue, ask at the gambling venue, bet here, play now, take part in the game, be a part of the game;
- buy, use, take, win, play, bet, start, now;
- be the first, super offer, awesome games, mighty prizes, fast payout, payouts in x minutes.

The advertisement is evaluated as a whole, i.e., the combined effect of the presented text, design, and sound. Therefore, attention must be paid to how the advertising text works together with the visuals of the advertising. For example, an online casino advertisement that shows a working person holding a smartphone and the phrase "when there is no time, but you are in the mood" is problem-solution advertising. The problem is that you want to gamble, but you don't have time for it because you are at work. The solution to this problem is an advertised online casino that can be visited anytime and anywhere on your smartphone. Although there is no direct invitation, in essence, such an advertisement invites you to visit an online casino.[4]

Invitations to responsible behavior are not considered prohibited (including mandatory warning at § 29[2] (4) of the Advertising Act). This distinction applies to advertising of all types, venues, and operators of gaming on all channels.

[4] Minutes of the Advertising Council 09.11.2022. Available at:https://www.ttja.ee/reklaaminoukoda.

The law does not specify how "information which may suggest that gambling contributes towards social success" should be understood. The impression of increasing **social success** must be deemed any information that gives the impression that gambling or winning a game of chance is an achievement that is considered desirable and can lead to social approval.

2.3 Warning text

Advertising of gambling must contain the warning text "Attention! This is an advertisement of gambling. Gambling is not a suitable means for solving financial problems. Examine the rules and behave responsibly!". In case the advestisment is in Estonian the warnin text should also be in Estonian: “Tähelepanu! Tegemist on hasartmängu reklaamiga. Hasartmäng pole sobiv viis rahaliste probleemide lahendamiseks. Tutvuge reeglitega ja käituge vastutustundlikult!”

The purpose of the warning is primarily to draw the consumer's attention to important aspects arising from the specific nature of the gambling service. The target audience for advertising gambling is very diverse. Therefore, the warning text must be noticeable, understandable, and clearly distinguishable from other information with normal attention. In addition, it must be ensured that the text is presented in proportion to the entire advertisement, in a reasonable format, color, and font, and in the case of a commercial clip, with sufficient duration so that the consumer can actually understand its content (§ 29^2 (4) of the Advertising Act). Variations and abbreviations in the wording of the warning are not allowed.

The perceptibility of the warning must be checked before the advertising material is made public (e.g., in the case of a TV advertisement, watch it beforehand on the television at a reasonable distance, in the case of a print advertisement, print out a sample in the original size). Just looking at the design of advertising on the computer screen does not give the right overview since, in the case of TV advertising, the viewers of the computer screen are not as far away as when watching TV, and in the case of print advertising, a lot depends on the final result of the print and the actual size of the poster.

To avoid misunderstandings, CPTRA always recommends choosing a larger warning text rather than a smaller one. Regardless of the design of the advertisement, it is important that the mandatory call-to-action is not overshadowed by the rest of the advertising text or is otherwise unreadable.

As a general rule, a warning must be added separately to any advertisement for gambling. On the gambling operator's website, it is sufficient to display the warning on the main page and on each subpage in such a way that it is noticeable, understandable, and clearly distinguishable from other information. Therefore, it is not necessary to display a warning on each banner and advertising space separately on the gambling operator's website.

If several gambling banners are published on one website outside of the gambling operator's website, the warning must be on each banner separately. The difference to the above applies in the case of so-called flash, where the banner images alternate without additional movements by the consumer, i.e., no further clicking occurs. In the case of such banners, making mandatory information public in one frame is sufficient. Stopping once and for all on one particular frame, i.e., on the "stop frame," it is this that must have a mandatory warning. Therefore, it is forbidden to stop permanently flashing advertising image if it does not have mandatory information.

The warning text requirement must also be kept in mind when promoting bonuses (registration bonus or welcome bonus). CPTRA recommends avoiding sentence structures when advertising bonuses that would conflict with the mandatory warning text established for gambling advertising or would

minimize the importance of the warning text. According to the CPTRA, the phrase **"risk-free bet"** can be considered such a verbal structure. This is precise because there are often no explanatory terms for the consumer attached to the bonus advertisement with this structure. Gambling is dangerous by its very nature and due to possible side effects. This is also confirmed by the fact that there are restrictions on the advertising of gambling in the Advertising Act.

2.4 Advertising for a game of chance

Advertising of the game of chance is permitted only in the places listed in §29 ^{2} (5) of the Advertising Act:

1) at the venue of the game of chance;
2) on board a watercraft or aircraft used for international passenger transport;
3) in the building of the passenger terminal of the airport and port serving the scheduled transport of international passengers;
4) in the hotel where the venue of the game of chance is located;
5) on the website of a gambling operator.

2.5 Advertising of toto

Advertising of toto is mostly allowed, except in the places listed in §29^{2} (6) of the Advertising Act:

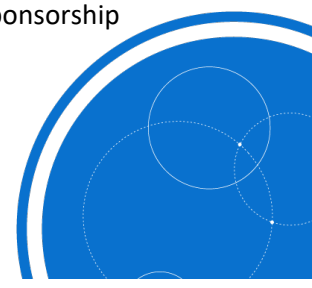
1) in and on the buildings and territories in the use of a preschool, child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps, and youth project camps and in close proximity thereof, on websites directed at children, at the place and during the time of holding an event which is mostly directed at children and on the tickets for such event;
2) in television and radio programmes;
3) on the front and back covers of newspapers or magazines unless published together with the sponsor's announcement;
4) as outdoor advertising unless published together with the sponsor's announcement.

In accordance with § 2 (2) (6) of the Advertising Act, the name and trademark of the sponsor disclosed in the sponsor's announcement and information concerning the material support granted thereby are treated as the sponsor's announcement. Therefore, as a minimum, the sponsor's announcement must clearly and unambiguously show who (including the company name or trademark) is supporting whom in what amount. For example, company X supports company Y, the name of the sponsor (company X), the trademark of the sponsor (trademark A of company X), and information about the provision of material support (support xxxxx euros).

The sponsor's announcement must be included in the advertisement or be directly related to it. In the case of the publication of a sponsor's announcement, the sponsorship must be true and verifiable.

A newspaper and a magazine are treated as one item for each separate copy. Therefore, the main publication and the special publication (e.g., business supplement, etc.), which are initially between the same covers, but still separable, are generally treated as independent publications, and their front and back pages must be treated accordingly.

We emphasize that a distinction must be made between buying advertising, for example, on the front cover of a newspaper, and sponsoring a newspaper, i.e., financial support. Buying advertising space on the front cover of a newspaper is not the same as sponsoring a newspaper. The person placing an advertisement must be able to prove sponsorship if necessary (for example, with a sponsorship contract).



Additional sponsorship requirements are stipulated in § 30 of the Media Services Act. Pursuant to § 30 (8^1) of the Media Services Act, a gambling operator may exhibit only the name and trademark of the company in the sponsored audiovisual media service (TV service, on-demand audiovisual media service). The conditions arising from § 29 ^{2} (9) of the Advertising Act apply when displaying the trademark. A media service or program may not be sponsored by a gambling organizer who does not have an operating permit issued in Estonia to organize gambling.

2.6 Advertising for a game of skill

Advertising of the game of skill game is mostly allowed, except in the places listed in §29^2 (7) of the Advertising Act:

1) in and on the buildings and territories in the use of preschool child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps, and youth project camps and in close proximity thereof, on websites directed at children and before and during television and radio programmes which are mostly directed at children;
2) on the front and back covers of newspapers or magazines unless published together with the sponsor's announcement;
3) as outdoor advertising unless published together with the sponsor's announcement.

Similar to the requirements for advertising of toto, advertising of a game of skill is allowed on the front and back pages of newspapers and magazines and as outdoor advertising only with the publication of a sponsor's announcement (see requirements from the previous point).

2.7 Advertising of lotteries

Advertising of lotteries is mostly allowed, except in the places listed in § 29^2 (8) of the Advertising Act:

1) in and on the buildings and territories in the use of preschool child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps, and youth project camps and in close proximity thereof,
2) on websites directed at children,
3) at the place and during the time of holding an event that is mostly directed at children and on the tickets for such event § 29^2 (8) of the Advertising Act.

Pursuant to §2 (5) (3) of the Gambling Act, the requirements of the Gambling Act are not established for lotteries with a value of the prize pool of up to 1000 euros, which are not organized more often than once a week. However, in the case of such a lottery, it is still gambling within the meaning of the Gambling Act. According to § 29 ^{2}(2) of the Advertising Act, gambling is deemed to be the same as within the meaning of the Gambling Act. Since a lottery with a prize pool of fewer than 1,000 euros is gambling, all the requirements of the Advertising Act apply to it.

2.8 Exposure of the trademark of the gambling operator

Only the trademark of a toto, game of skill, or lottery operator may be displayed that does not contain an invitation to participate in gambling or to visit a venue of gaming or information that may give the impression that gambling increases social success.

If the advertising of gambling is allowed only in the cases specified in § 29 ^{2} (5) of the Advertising Act, then outside the mentioned listed places, the trademark of the game of chance operator may be displayed, which does not express in words or in the image a game of chance, the venue of the game

of chance and the chance of winning, and does not contain an invitation to participate in gambling, visit a gaming venue or information that may give the impression that gambling increases social success. The word "casino" in the trademark does not refer to a specific place for playing games of chance, but the address of a specific casino is prohibited.

Disclosure of the gambling operator's brand is prohibited in and on the buildings and territories in the use of preschool child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps, and youth project camps and in close proximity thereof, on websites directed at children and before and during television and radio programmes which are mostly directed at children;

At its meeting on 02.10.2014, the Advertising Council expressed the opinion that if additional images are disclosed in the background of the trademark, which is not part of the trademark, then it is no longer just disclosure of the trademark but advertising. Registration of an advertising design as a trademark does not exempt it from the requirements of the Advertising Act.[5]

A distinction must be made between advertising gambling and the display of the gambling operator's trademark. In the event that only the trademark is exhibited, it is not required to submit the warning specified in § 29^2 (3) of the Advertising Act.

2.9 Advertising of activities taking place at the gaming venue

Advertising of the activities taking place at the gaming venue is subject to the rules established for the advertising of gambling. Therefore, stricter rules are prescribed for all advertising of events taking place in a casino or other gaming venue (for example, entertainment or charity events, restaurant or fashion evenings, etc.) (§ 29^2 (11) of the Advertising Act).

2.10 Practical examples

An expert committee (Advertising Council) has been formed at the CPTRA, whose task is to advise the CPTRA on an ongoing basis on issues related to advertising. Also, if necessary, the Advertising Council provides evaluations of advertisements in respect of which the CPTRA has initiated a supervision procedure. The Advertising Council has also assessed advertisements of gambling. From the solutions, advertisement creators can learn under what considerations experts consider controversial advertisements to be non-compliant or compliant with the law. The minutes of the Advertising Council can be found on the website of the CPTRA. The list of minutes will be updated over time.

[5] Minutes of the Advertising Council 02.10.2014. Available at:https://www.ttja.ee/reklaaminoukoda.