



# ***Football Legal***

*The international journal dedicated to football law*

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### EDITORIAL

In many football aspects, rules have been enforced and issues are increasingly taken to “courts”...

In this context, *Football Legal* aims to provide a clear and detailed picture of what the key legal issues are in Football around the world. It is intended to be a tool for lawyers and all Football stakeholders.

Other opportunities to get back on the latest cases and news:

The AIAF Congress 2016 in Abu Dhabi is dedicated to the Future of Justice in Football. A perfect opportunity to discuss and exchange views on this widely debated issue.

Later this year, the CAS Seminar will be held in September 2016 in Lausanne. This Seminar has established itself over the years as a not-to-be-missed event for football stakeholders.

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## Football and alcohol: a French perspective

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### **Presentation of the Evin Law**

As everybody knows, France is a country of paradoxes.

Year in year out, it is one of the world's largest producers of alcohol and the sale of these beverages constitutes one of the country's main sources of exportation.

The Gastronomic Meals of the French, including an *apéritif* and liqueurs, has been inscribed on the Representative list of the Intangible Cultural Heritage of Humanity.

At the same time, France has enacted the Law of 10 January 1991, the *Evin Law*, which is one of the toughest laws in the world regarding advertising for alcoholic beverages.

The mechanism provided for in this Law is that advertising for alcoholic beverages is only allowed if it complies with Articles L. 3323-2<sup>1</sup> (regarding the media) and L. 3323-4<sup>2</sup> (regarding the content) of the French Public Health Code.

These articles set out exhaustively what is allowed. All the media or contents that are not mentioned in them are in principle prohibited.

<sup>1</sup> [https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI00002089693\\_4&cidTexte=LEGITEXT000006072665&dateTexte=20160416&oldAction=rechCodeArticle&fastReqId=1480055855&nbResultRech=1](https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI00002089693_4&cidTexte=LEGITEXT000006072665&dateTexte=20160416&oldAction=rechCodeArticle&fastReqId=1480055855&nbResultRech=1)

<sup>2</sup> [https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=120EFDCCAAC31AACD05D906AABCE54FC.tpdila18v\\_2?idArticle=LEGIARTI000006688014&cidTexte=LEGITEXT000006072665&dateTexte=20160416&categorieLien=id&oldAction=rechCodeArticle](https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=120EFDCCAAC31AACD05D906AABCE54FC.tpdila18v_2?idArticle=LEGIARTI000006688014&cidTexte=LEGITEXT000006072665&dateTexte=20160416&categorieLien=id&oldAction=rechCodeArticle)

By simply reading the aforementioned articles, it appears that they can lead to more or less restrictive interpretations: for instance, how far can one go in evoking the way of drinking a whisky? Can we only mention that it should be drunk dry or with a small quantity of water? Is it allowed to specify that it can be drunk in a cocktail or served with a certain dish? Can we say that it will be relaxing to drink a glass of whisky after a day's work or that we will enjoy sharing it with our friends?

Until now, Courts and more specifically the Court of Cassation, had a restrictive approach to these notions, an approach that seems to widen a little bit in the light of the most recent decisions of the Court of Cassation<sup>3</sup> notably.

In a nutshell, there are real uncertainties over the options of communication for this kind of products.

These uncertainties are the same when we have to determine the constraints imposed by this law regarding the organization of a sporting event such as UEFA Euro 2016.

<sup>3</sup> *Jameson*: Cass. Crim., 15 May 2012, no. 11-83.686; *CIVB*: Court of Appeal of Versailles, 3 April 2014, no. 12/02102 and Cass. civ. 1, 1 July 2015, no. 14-17.368

### ***Sponsoring***

**>> *The presence of the sponsor's name, brand or logo, among those of other sponsors of the tournament, in the documents issued by UEFA and intended for a French public should be reprehensible in principle***

According to Article L. 3323-2 *"direct or indirect sponsorship is forbidden when it has for purpose or effect direct or indirect propaganda or advertising for alcoholic beverages."*

As a result, although nothing prohibits an alcohol brand from being a sponsor of the tournament, the brand cannot mention this status in a commercial communication broadcast on French territory (the *EVIN* Law is obviously not applicable in other countries).

Obviously, this prohibition does not prevent a sponsor from advertising in France during the tournament, but this advertising cannot mention this special status. This question is trickier regarding the presence of the sponsor's name, brand or logo in the media broadcast by UEFA.

If these media are intended for a foreign public, this reference will be possible as held by the Paris District Court<sup>4</sup> in a case about the presence of the *Heineken* brand on the website [www.rugbyworldcup.com](http://www.rugbyworldcup.com) during the Rugby World Cup, where the website was designed in English and was evidently not intended for a French public.

It can be also noted that this same decision has considered that the presence of *Heineken* advertising on nearby posters of the Rugby World Cup or on a pamphlet of the City of Paris called *"Paris, essai transformé"* should not be condemned.

However, the presence of the sponsor's name, brand or logo, among those of other sponsors of the tournament, in the documents issued by UEFA and intended for a French public should be reprehensible in principle.

<sup>4</sup> Paris District Court, 4<sup>th</sup> ch., 2<sup>nd</sup> sect., 18 December 2014, no. 09/03254

### ***Advertising in stadiums***

Article L. 3323-2 authorizes advertising on various media, including billposting.

In this respect, there is no restriction (when the *EVIN* Law was passed in 1991, billposting was only possible in the *"production zones"* but this restriction has since been abolished).

As a consequence, there is nothing that legally prohibits the presence of advertisements for alcohol in a stadium.

Some difficulties can nevertheless arise when such an advertisement is filmed and broadcast on television, which does not constitute an authorised media.

The status of the billboards around stadiums, when they can be seen on television, is uncertain.

The European Court of Justice (ECJ) has considered that these billboards were not advertisements within the meaning of the *"Television without Frontiers"* Directive.

Therefore, they are not subject to any specific regulation but led to the drafting of a code of good conduct by the French Audio-visual Council (FAC) in 1995 whose validity was accepted by the ECJ on 13 July 2004.

For the sports trials taking place in France, the broadcasters are asked to proceed in accordance with the principles of good faith and public health.

More precise provisions are made regarding the sports trials taking place abroad, among which a distinction has to be made between multinational events and binational events.

For the multinational events, it is considered that they are not intended exclusively for the French public and therefore they can be freely broadcast by French broadcasters, whatever billboards are around the stadiums.

Concerning a multinational tournament taking place on French territory, the issue is obviously more complicated and in principle any show of favour of an alcohol brand should be avoided, as mentioned in the code of good conduct of the FAC.

Consequently, in practice, there are some reasons to think that the managers of the media around the stadiums and the French broadcasters would hardly accept the presence of billboards for alcohol brands during UEFA Euro 2016.

### **Media developed by the UEFA**

Advertising for an alcohol brand can be present in the different media broadcast by UEFA for Euro 2016, provided that:

- these media are listed in Article L. 3323-2;
- the content of the advertisements complies with what is allowed by Article L. 3323-4.

But again, these advertisements should not mention the sponsor's status of the advertiser.

However, could judges go further and consider that the mere presence of such an advertisement in a media developed by UEFA could be assimilated to a sponsorship that would thus be promoted unlawfully?

It seems logical to consider that this analysis would only be possible if these advertisements were the counterpart of a sponsorship contract or if the presence of advertisements in the concerned media was only dedicated to sponsors of the event.

### **Indirect advertising**

In the case opposing the French Association of Alcohol and Addiction Prevention to *Heineken* on the occasion of the Rugby World Cup, the dispute concerned the presence of logos displaying a red star on a green background and in some cases of a "H" that could evoke rugby goal posts, in various media.

The National Association of Alcohol and Addiction Prevention argued that it was an alibi logo that constituted an indirect advertising for the beer brand *Heineken*.

Article L. 3323-3<sup>5</sup> provides that indirect advertising is subject to the same rules as direct advertising.

However, in this case, the Court dismissed the plaintiff's claims considering that the similarities existing in the shape of the logos and the presence of the red star on a green background in both cases were not enough to manifestly conjure the *Heineken* brand and so to create assimilation or an actual confusion in the mind of the public.

This last criterion seems necessary and it seems to us that it is essential that an important part of the French public is able to recognise the logo of a brand of alcohol in order for sanctions to be taken.

### **Traditional advertising**

The existence of the UEFA Euro 2016 does obviously not prevent brands from communicating under the conditions authorized by Articles L. 3323-2 and subsequent of the French Public Health Code, as they usually do.

It is only forbidden for them to refer to this event and, for the brands that signed a sponsorship contract, to present themselves as a sponsor of the UEFA. •

<sup>5</sup> [https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=120EFDCCAAC31AACD05D906AABCE54FC.tpdila18v\\_2?idArticle=LEGIARTI000006688012&cidTexte=LEGITEXT00006072665&dateTexte=20160416&categorieLien=id&oldAction=rechCodeArticle](https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=120EFDCCAAC31AACD05D906AABCE54FC.tpdila18v_2?idArticle=LEGIARTI000006688012&cidTexte=LEGITEXT00006072665&dateTexte=20160416&categorieLien=id&oldAction=rechCodeArticle)