



**Comparative study concerning the impact of control measures on
the televisual advertising markets in the EU Member States and
certain other countries**

JAPAN

LEGAL REPORT

**Drafted by O'MELVENY & MYERS LLP
(Mr Dale ARAKI)**

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Introduction

In Japan, the regime of television advertising is primarily self-regulatory. The Broadcast Law, as amended (the “**Broadcast Law**”), sets out the basic legal framework of broadcasting in Japan, and very general rules on radio and television advertising.

The specific standards on advertising are established by the National Association of Commercial Broadcasters (“NAB”), which is a private, non-profit, self-regulating organization made up of commercial broadcasters including all terrestrial radio and television broadcasters as well as some of the satellite audio and television broadcasters.

The NAB Broadcasting Standards (the “**Broadcasting Standards**”) serve as guidelines for all of its member broadcasters. **Note that the Broadcasting Standards do not have the effect of law and failure to follow the Broadcasting Standards does not result in legal penalties for broadcasters.**

Based on our research, the grant of broadcast license and renewal thereof by the Ministry of Public Management, Home Affairs, Posts and Telecommunications are **not conditioned** on the applicant broadcasting station following the Broadcasting Standards.

In addition, self-regulating industry associations such as the Tobacco Institute of Japan, the association of alcohol manufacturers, the Japan Hygiene Products Industry Association, the Japan Direct Marketing Association, and the Federation of Pharmaceutical Manufacturers Association of Japan have all published internal rules on television and/or radio advertising.

Again, these internal rules are designed to regulate the conduct of member companies with respect to their advertising activities and do not have the effect of law.

Furthermore, the Japan Advertising Review Organization, Inc. (JARO) is a self-regulatory body of advertising. JARO handles complaints and inquiries from consumers, competitors and other sectors, and has also published guidelines on advertising.

I. Definitions

- Television broadcasting (Broadcast Law (Article 2 (ii)(5))

The broadcasting of transient images of fixed or moving objects, and voices and other sounds, accompanying them (including such that broadcasts characters, patterns, and other images or signals together) (≠ TVWF Directive)

- Broadcaster (Broadcasting Law (Article 2 (iii)(2))

Broadcaster means, with a few exceptions, an entity engaged in broadcast enterprise which has been granted license for a broadcasting station. (≠ TVWF Directive)

- Television advertising

Definition not available in the Broadcast Law or the Broadcasting Standards.

- Sponsorship

Definition not available in the Broadcast Law or the Broadcasting Standards.

- Teleshopping

Definition not available in the Broadcast Law or the Broadcasting Standards.

- And any other relevant legal definition for the analysis (for instance, self-promotion message, split-screen technique, product placement, virtual advertising, inevitable advertising, television programme, virtual advertising, inevitable advertising, etc.)

“Private Broadcaster” as used in the Broadcast Law means a commercial broadcaster who obtains funding through advertising.

- Conclusions

Unlike the TVWF Directive, neither the Broadcast Law nor the Broadcasting Standards contain definitions for “Television advertising”, “Sponsorship” or “Teleshopping”.

II. Advertising recognition and advertising/ programme separation (Article 10 TVWF Directive)

a. Regulations

- Examination of the rules related to advertising and teleshopping spots recognition (acoustic and / or optical means)

Article 51-2 of the Broadcast Law provides that if a private broadcaster broadcasts a paid advertisement, such broadcaster must take measures to enable the audience to clearly identify the advertisement (less restrictive than art. 10 TVWF Directive).

Section XIV (92) of the Broadcasting Standards provides that advertising broadcast must be clearly identified as advertising (less restrictive than art. 10 TVWF Directive).

- Examination of the rules related to the separation between the commercial content and the programme

Article 51-2 of the Broadcast Law provides that if a private broadcaster broadcasts a paid advertisement, such broadcaster must take measures to enable the audience to clearly identify the advertisement (// art. 10 TVWF Directive).

Furthermore, section XV (126) of the Broadcasting Standards provides that advertising can be inserted in a news program, and should be presented in ways clearly distinguishable from the program itself (≠ art. 11, 5 TVWF Directive).

Images and footages, opening music, chimes and other sound effects that may be confused with that of news programs should be avoided. In addition, the tone of the words used in commercials shall not be similar to news programs as may cause confusion. Care and discretion shall be exercised, particularly with respect to the commercials broadcast before, after and during journalistic programs including but not limited to news and other similar programs. Actual examples include the following: (1) In a tissue paper commercial, the following advertising wording was requested to be reworded: “(Ding Dong (chime)) Here is a breaking news. Outbreaks of pollen allergy attacks are occurring everywhere in Japan now.” (2) The following advertising wording with a narrative tone reminiscent of the news, was requested to be reworded: “According to the news that is just in, the usage rate of XXX (name of company) appears to have dropped significantly.” (3) The following advertising wording was requested to be reworded: “We are in the middle of a commercial break, but here is a good news.” (4) A commercial for a cosmetics product reminiscent of a weather forecast was requested to be reworded.

- Examination of the rules related to the isolated advertising and teleshopping spots (allowed/ prohibited; specific conditions, etc.)

See below for quantitative restrictions on spot advertising.

- Prohibition of the use of "subliminal techniques"

Section VIII (60) of the Broadcasting Standards prohibits the use of “subliminal techniques” in broadcasting in general (// art. 10, 3 TVWF Directive).

- Prohibition of surreptitious advertizing and teleshopping

Section XIV (104) of the Broadcasting Standards prohibits the use of “coded message” in advertising (≠ art. 10, 4 TVWF Directive).

Section XVIII (150) of the Broadcasting Standards prohibits the use of subtitles superimposed on the TV screen during the showing of programs, with the exception of sporting and special events programs (≠ TVWF Directive).

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive:

There are general rules on advertising recognition and separation in the Broadcasting Standards, but these are in general less restrictive than the Directive.

- Identification of specific rules not included in the Directive

Non applicable

III. Rules related to insertion of advertising and teleshopping spots between and within the programmes (Article 11 TVWF Directive)

a. Regulations

- Examination of the rules related to the insertion of advertising and teleshopping spots between the programmes

There is no provision on this matter in the Broadcast Law or the Broadcasting Standards.

- Examination of the rules related to the insertion of advertising and teleshopping spots within the programmes (allowed or prohibited; specific rules regarding the type of programme)

There is no provision on this matter in the Broadcast Law or the Broadcasting Standards.

- Possible prohibitions of insertion of advertising and teleshopping spots within certain types of programme

None in the Broadcast Law. But as stated above, section XV (126) of the Broadcasting Standards provides that advertising can be inserted in a news program, and should be presented in ways clearly distinguishable from the program itself (≠ art. 11, 5 TVWF Directive).

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

There are quantitative restrictions on the total length of advertising during prime time TV (see below). However, there are no specific restrictions on when and how advertisements should be shown vis-à-vis TV programs in the Broadcast Law or the Broadcasting Standards.

- Identification of rules not included in the Directive

Non applicable

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

- Examination of the legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots and for other forms of advertising (20% in the TVWF Directive)

Section XVIII (148) of the Broadcasting Standards provides that the total volume of commercials per week shall be 18% or less of the total broadcast hours of such week (≠ TVWF Directive).

- Examination of the maximum daily transmission time devoted to advertising messages (15% in the TVWF Directive)

A broadcaster appears to have discretion in characterizing a teleshopping spot as a “program” rather than an “advertisement”, which means that the transmission time devoted to such spot would fall outside the quantitative restriction on advertising (less restrictive than TVWF Directive).

- Examination of the maximum daily transmission time devoted to advertising and teleshopping spots within a given clock hour (20 % in the TVWF Directive)

Section XVIII (149) of the Broadcasting Standards provides that during prime time (defined to mean any consecutive three hours and thirty minutes period between 6:00 p.m. and 11:00 p.m. determined by a broadcaster), the transmission time devoted to advertising shall not exceed the following standards:

<u>Program within</u>	<u>Advertising Time</u>
5 minutes	1 minute
10 minutes	2 minutes
20 minutes	2.5 minutes
30 minutes	3 minutes
40 minutes	4 minutes
50 minutes	5 minutes
60 minutes	6 minutes

However, the transmission time devoted to advertising inserted in sports programs and special event programs broadcasted during prime time shall be determined by individual broadcaster in its discretion.

The transmission time devoted to advertising outside of prime time shall be determined based on the above standards.

Section XVIII (151) of the Broadcasting Standards sets forth standards for spot commercials (which are commercials for which there is no agreement between the advertiser and the broadcaster as to when or in conjunction with which program that they be shown) as follows:

<u>Type of Spot</u>	<u>Time</u>	<u>Syllables</u>
5 seconds	within 3.5 seconds	21
10 seconds	within 8 seconds	48
15 seconds	within 13 seconds	78
20 seconds	within 18 seconds	108
30 seconds	within 28 seconds	168
60 seconds	within 58 seconds	348

- Examination of the other possible quantitative restrictions

There is no other provision in the Broadcast Law or the Broadcasting Standards.

- Examination of the factors to take into account or not for the calculation of the advertising time

There is no provision regarding this matter in the Broadcast Law or the Broadcasting Standards

b. Conclusion

- Emphasis placed upon existence of other rules more or less restrictive than the TVWF Directive

The overall percentage of advertising permitted under Japanese standards is **lower** than that under TVWF Directive. However, the length of commercials as to the broadcaster itself or its own programs can be determined by individual broadcasters (see Section XVIII (147) of the Broadcasting Standards), and as discussed above, the length of commercials outside of prime time and the length of commercials broadcasted during sports shows or special event shows can be decided by individual broadcasters.

- Identification of specific rules not included in the Directive, in particular rules aimed to the reduction of the advertising volume (for instance, the imposition of a special tax on advertising)

Section XV (120) of the Broadcasting Standards contains a general warning that advertising should be broadcast at appropriate times so as not to create unpleasant feeling on the part of the audience.

V. Quantitative restrictions related to teleshopping programmes (Article 18 bis TVWF Directive)

a. Regulations

- Examination of the minimum duration of windows devoted to teleshopping programmes (15 minutes in the TVWF Directive)

There is no provision regarding this matter in the Broadcast Law or the Broadcasting Standards

- Examination of the maximum number of windows (8 in the TVWF Directive)

There is no provision regarding this matter in the Broadcast Law or the Broadcasting Standards

- Examination of the maximum daily duration (3 hours in the TVWF Directive)

There is no provision regarding this matter in the Broadcast Law or the Broadcasting Standards

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

Non applicable

- Identification of specific rules not included in the Directive, for instance rules aimed to the reduction of teleshopping programmes (special tax on advertising, ceiling for maximum annual advertising profits, etc.)

There does not appear to be quantitative restrictions on teleshopping in the Broadcast Law or the Broadcasting Standards, except for Section XIV (118) of the Broadcasting Standards, which provides that teleshopping must abide by the relevant laws and must be based on facts, and use expressions that are simple and clear, and not harmful to the interests of the audience.

VI. Sponsoring (Article 17 TVWF Directive)

a. Regulations

The Broadcast Law prohibits a private broadcaster from entering into contractual arrangements pursuant to which a single sponsor supplies exclusively all the programs. The purpose of this prohibition is presumably to maintain editorial independence of the broadcaster.

The Broadcasting Standards prohibit exclusive advertising arrangements in violation of antitrust laws.

- Sponsor identification

There is no provision regarding this matter in the Broadcast Law or the Broadcasting Standards

- Examination of the rules related to the insertion of the sponsor's name or logo within the programme (beginning/end, break bumper, during all the programme)

Section XIV (119) of the Broadcasting Standards gives the broadcaster discretion as to where to insert in a program advertisement of program sponsors (less restrictive than TVWF Directive).

- Identification of the programmes that cannot be sponsored

There is no provision regarding this matter in the Broadcast Law or the Broadcasting Standards.

- Examination of the rules related to the content of the message (moving images, mention of the product, slogan, etc.)

There is no provision regarding this matter in the Broadcast Law or the Broadcasting Standards. The technique of “product placement” is used by some sponsors, but currently is not subject to any specific regulations. The only restriction that we found which has some connection with “product placement” is in Section XII (83) of the Broadcasting Standards, which provides that prize should be reasonable in light of current social conditions, and should not arouse speculation.

- Examination of the maximum duration of the mention and/or maximum daily/per hour volume

There is no provision regarding this matter in the Broadcast Law or the Broadcasting Standards.

- Examination of other rules eventually limiting the volume of sponsorship (ceiling for sponsorship profits, special tax, etc.)

None in the Broadcast Law or the Broadcasting Standards.

- Examination of other relevant rules related to product placement, price mentioning during TV shows, sponsorship linked to schedule/points indication during sport broadcasts, etc.)

There is no provision regarding this matter in the Broadcast Law or the Broadcasting Standards (see above).

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive:

Unlike the TVWF Directive, there are no specific restrictions on sponsorship in the Broadcast Law or the Broadcasting Standards. However, pursuant to the Broadcasting Standards, program sponsors may not use advertisements to hinder fair market competition and enhance their own market power.

- Identification of specific rules not included in the Directive, in particular rules aimed to the reduction of teleshopping broadcast (special tax on advertising, ceiling for maximum annual advertising profits, etc.)

None in the Broadcast Law or the Broadcasting Standards.

VII. New advertising techniques

a. Split screens

None in the Broadcast Law or the Broadcasting Standards.

b. Interactive advertising

None in the Broadcast Law or the Broadcasting Standards.

c. Virtual advertising

None in the Broadcast Law or the Broadcasting Standards.

d. Other new advertising technique

None in the Broadcast Law or the Broadcasting Standards.

e. Conclusion

Based on our conversation with the relevant personnel at JARO, new advertising techniques such as the ones listed above are being used, but at this point are not subject to any specific regulations.

VIII. General rules related to advertising and teleshopping content (Article 12 TVWF Directive)

a. Regulations (more detailed than TVWF Directive)

- Indication of the rules related to the content of commercial messages (human dignity, discrimination, religious or political beliefs, health and safety, environment, and eventually other rules)
 - Article 52 of the Broadcast Law provides that a private broadcaster who allows one candidate for public office to broadcast his/her political views must also allow such candidate's opponents (upon application) to broadcast under the same conditions with or without charge.
 - Section XIII (89-91) of the Broadcasting Standards calls for responsible advertising in general terms.
 - Section XIV (93) of the Broadcasting Standards provides that a commercial should identify the name of the advertiser, products, product names, trademarks, logos, catchwords, types of business, and other business details of the advertiser.
 - Section XIV (96) of the Broadcasting Standards prohibits advertisements that do not identify clearly the advertising party or the responsible party.
 - Section XIV (98) of the Broadcasting Standards prohibits commercials that do not clearly identify the advertiser or the product advertised.
 - Section XIV (99) of the Broadcasting Standards provides that advertisers may not broadcast commercials outside the scope of the relevant advertising agreement.
 - Section XIV (100) of the Broadcasting Standards prohibits exaggerated advertising which may create unrealistic expectations on the part of the viewing audience.
 - Section XIV (101) of the Broadcasting Standards prohibits advertising that defames, slanders or segregates.
 - Section XIV (102) of the Broadcasting Standards prohibits false claims regarding products and services advertised.
 - Section XIV (103) of the Broadcasting Standards prohibits one-sided advertisements on controversial issues.
 - Section XIV (106) of the Broadcasting Standards prohibits advertising of food products that may be hazardous to health.
 - Section XIV (107) of the Broadcasting Standards prohibits misleading advertisements in connection with academic and career developments.

- Section XIV (108) of the Broadcasting Standards prohibits advertising which encourage superstitious beliefs and deny science.
- Section XIV (109) of the Broadcasting Standards prohibits advertising private detective related activities.
- Section XIV (110) of the Broadcasting Standards prohibits advertising services or products objectionable to public morals.
- Section XIV (111) of the Broadcasting Standards provides that advertisements for products unsuitable for family viewing (such as contraceptives) should be handled discreetly, taking into consideration showing time and effect on children.
- Section XIV (112) of the Broadcasting Standards provides that special care should be given to advertisements that deal with matters relating to funeral and death.
- Section XIV (113) of the Broadcasting Standards provides that special attention should be paid to advertisements by amateur athletes.
- Section XIV (114) of the Broadcasting Standards sets forth restrictions on advertisements soliciting donations.
- Section XIV (115) of the Broadcasting Standards prohibits advertisement that publicizes individuals.
- Section XIV (116) of the Broadcasting Standards prohibits advertisement that features members of the Imperial Family or the Imperial emblem without prior permission.
- Section XIV (117) of the Broadcasting Standards prohibits ambiguous “help wanted” advertisement.
- Section XV (121-127) of the Broadcasting Standards calls for accurate and truthful advertising in general terms.
- Section XVI (128-136) of the Broadcasting Standards deal specifically with advertising of medical treatment and products, cosmetics, and health foods.

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

Even though the provisions of the Directive are not exactly implemented in the Japanese regulation, there are a significant number of restrictions on the content of advertisements in Japan.

- Identification of specific rules not included in the Directive

Non applicable

IX. Specific products and targets

a. Regulations

- Tobacco products (Articles 13 and 17 TVWF Directive) : (less restrictive than TVWF Directive)

Section III (22) of the Broadcasting Standards provides that smoking or drinking by minor should not be shown in a favorable light. This restriction is general and not specifically directed towards advertising.

Note that the Tobacco Institute of Japan has published internal rules to regulate the advertising activities of member companies, which, among other things, prohibit member companies from advertising tobacco products on TV, radio, or over the Internet.

- Medicines (Article 14 TVWF Directive) : Examination of the specific and/or restrictive rules related to medical products (advertising, teleshopping, sponsorship and other advertising forms) (less restrictive than TVWF Directive)

Section XVI (128-136) of the Broadcasting Standards provides the following: (I) advertising of medical treatment, products, and equipment, and cosmetics must abide by applicable laws (e.g., the Pharmaceutical Law), and all advertising suspected of violating such laws are prohibited, (ii) special care should be given to advertisements that invite audience to participate in clinical trials, (iii) advertisement of medicines and cosmetics must avoid superlative expressions, (iv) advertisement of medical treatment must not cause undue anxiety, fear or optimism, (v) testimonies by doctors, pharmacists, and beauticians advertising medicines, medical appliances or cosmetics are prohibited, (vi) advertising which offers medicines as prize is prohibited, and (vii) advertisements for health foods should avoid expressions suggesting medical effectiveness.

Note that the Federation of Pharmaceutical Manufacturers Association of Japan has published internal rules to regulate the advertising activities of member companies, e.g., advertising of medical products must state clearly that such products must be used only as directed.

Also note that the Ministry of Health also issues from time to time guidance on advertisements by hospitals, doctors, or other medical services.

Related consumer protection legislations are Medical Treatment Law (*Iryo-ho*); Physicians Law (*Ishi-ho*); Law Concerning Massage, Acupuncture, Moxibustion Therapists (*Amma Massage Shiatsu-shi Hari-shi Kyu-shi to ni kansuru Horitsu*); Judo Manipulation Therapists Law (*Judo Seifuku-shi-ho*); and Veterinary Treatment Law (*Ju-iryō-ho*).

- Alcoholic beverages (Article 15 TVWF Directive) : (less restrictive than TVWF Directive)

Section III (22) of the Broadcasting Standards provides that smoking or drinking by minor should not be shown in a favorable light. This restriction is general and not specifically directed towards advertising.

Note that the self-regulating association of alcohol manufacturers has published internal rules to regulate the advertising activities of member companies, e.g., advertising of alcohol products must state clearly that minors are not permitted to drink, and advertising of alcohol products cannot be shown in programs targeted to minors.

- Minors (Article 16 TVWF Directive) :

Article 52-2 of the Broadcast Law provides that if a broadcaster broadcasts educational programs intended for schools, such programs must not include advertisements deemed to be obstructive to education.

Section XIV (94) provides that care must be given to ensure that advertising will not overly stimulate children's desire to obtain advertised product (less restrictive than 16, 1 b TVWF Directive).

Section XIV (95) provides that advertising in programs oriented to schooling should not interfere with learning.

- Other product/services categories subject to a specific regime :

There is a special section in the Broadcasting Standards on "financing and real estate advertising". Section XVII (137-143) of the Broadcasting Standards provides the following: (i) advertising by financiers that may adversely affect the audience is prohibited, (ii) advertising of consumer finance loan companies should not encourage reckless borrowing and should pay particular attention to the effect of such advertisement on youth, (iii) advertising that promises or hints undetermined profit is prohibited, (iv) broadcaster must give serious consideration to advertisements for speculative products and services, (v) advertising by dealers not registered under the Housing Business Law or the Construction Law is prohibited, (vi) advertising of real estate that may incite speculation is prohibited, and (vii) advertising of real estate in violation of law or which fails to clearly explain the nature of the product advertised is prohibited.

Related consumer protection legislations are Law Concerning Regulation of Lending Business (*Kashikingyo no Kisei-to ni kansuru Horitsu*); Interest Rate Limitation Law (*Risoku Seigen-ho*); Drafts and Notes Law (*Tegata-ho*); and Checks Law (*Kogitte-ho*).

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

Unlike the TVWF Directive, there are no specific laws and regulations on advertising of tobacco or alcohol products in Japan. However, if one examines the internal rules published by self-regulatory industry associations as a whole, television advertising on tobacco and alcohol products in Japan appears to be extensively regulated. In Japan, there are also special restrictions on advertisements of speculative business opportunities and real estate investment. This is not surprising given the collapse of the real estate market in Japan over the past 15 years.

- Identification of specific rules not included in the Directive

Section XIV (105) of the Broadcasting Standards prohibits advertisements by advertisers who do not have requisite licenses to conduct their businesses.

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