



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

SLOVENIA

LEGAL REPORT

**Drafted by JANKO PUCNIK Lawfirm
(M. Odvetnik PUCNIK)**

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Introduction

The Mass Media Act¹ ("hereafter the Act") adopted in 2001 incorporates the rules laid down in the Council Directive relating to TV advertising. There are no major deviations from the Directive.

At the moment there are no court decisions relating to advertising recognition, advertising/programme separation or quantitative restrictions.

The Slovenian Advertisement Chamber, which is a voluntary, independent professional and non – profit chamber, has issued a small number of decisions relating to advertising but none which applies directly to the issues described in chapters I – V.

Therefore the following chapters include only the comparative study concerning the TVWF Directive and the Slovenian Mass Media Act.

The Mass Media Act includes special provisions relating to TV and radio advertisement. Electronic publications are subject to general provisions of the Act (Articles 1 -55).

Particularities:

- Distinction between the public broadcaster and the others
- Special rules for local TV
- The case law is mainly arbitration sentences

¹ Official Gazette of Republic of Slovenia, No. 35-2043/2001

I. Definitions

The definitions below are given by the Mass Media Act.

- Television broadcasting

Means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by public. It includes communication services providing items with a view to their being relayed to the public (// art. 1 a. TVWF Directive);

- Broadcaster

"Issuer" means any legal or private person who broadcasts programmes in accordance with this Act. Every issuer creates a programme scheme and is responsible for its execution (// art. 1 b. TVWF Directive);

- Television advertising

“advertising content” means any advertisement or other paid notice (hereinafter: advertisement) ordered by legal or private person in order to encourage legal transfer of goods, service, immobile estate, rights or obligations, to gain business partners or to establish a reputation or good name. Advertisements are announced whether in return for payment or similar consideration or broadcast for self-promotion purposes (±// art. 1 c. TVWF Directive);

The following programming shall not be deemed advertising:

- Reporting by a publisher in connection with programming (e.g. previews of the publisher's own issues or programmes);
- Programming side products directly derived from the programming of the mass medium;
- Free-of-charge publications in connection with the execution of public services, cultural events, charitable campaigns and campaigns of general importance to public safety in the Republic of Slovenia;
- Free-of-charge presentation of works of art;
- Free-of-charge citation of the producers, organisers, sponsors and donors of works of art, arts and culture events, and charitable campaigns, within the framework of media presentation of such works, events and campaigns.

- Surreptitious advertising

Means any advertising whose intention is to mislead readers, listeners or viewers in to believing that the particular advertisement has no advertising content. The ordering party and chief editor are liable for surreptitious advertising. Such advertising is considered to be intentional (±// art. 1 d. TVWF Directive);

- Sponsorship

means any contribution made by a legal or private person to the financing of programmes in order to promote its name or trade name, trademark or its image (±// art. 1 e. TVWF Directive). The sponsor is not allowed to be engaged in television broadcasting activities or the production of audio-visual work.

- Teleshopping

means direct offers broadcast to the public with the intention of supplying or renting goods, immovable property, or supplying services or to transfer rights and obligations in return for payment (// art. 1 f. TVWF Directive);

- "Electronic publications"

means media which serves for distribution of programme contents by computer connection and are approachable to broader public irrespective to their extend??;

- "TV-shopping window"

means broader TV-shopping of a minimum uninterrupted duration of fifteen (15) minutes, broadcast by the issuer ??of the TV programme?? ??which is not entirely specialized for TV – shopping??;

- "Local TV programme"

means a programme intended for an audience of one or more local community or intended for covering an area with not more than 10% of the population of RS. At least 30% of the content must include local issues in its own production;

- "Regional TV programme"

means programme intended for population of an area with more than 10% but less then 50% of the population of RS. At least 30% of the broadcast between 8.00 and 24.00 hour must include regional issues in its own production;

- "Non – profit programme"

means a programme who's day broadcasting includes at least 30% of its own production of news, artistic, educational and cultural entertainment contents;

- Conclusions

There are no major deviations of Slovenian law from the Directive. The Act includes a broader definition of "television broadcasting" by explicitly listing programme contents, which are not considered to be "television advertising". The Act also contains some other definitions, such as: "electronic publications", "local TV programme", "regional TV programme" and "non – profit programme", some of which are subject to special provisions.

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

a. Regulations

- Examination of the rules relating to advertising and teleshopping spots recognition

According to paragraph 3 of Article 46 of the Act the advertising content shall be clearly recognised as such and separated from other parts of the programme (// art. 10 §1 TVWF Directive).

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

Special provisions (Article 93) relate to TV advertising and provide that in principle TV advertisements shall be separated from other parts of the programme service by optical and acoustic means (\neq art. 10 §1 TVWF Directive).

This provision is more restrictive than the Directive

- Examination of the rules relating to the isolated advertising and teleshopping spots

There is no related provision

- Prohibition of the use of "subliminal techniques"

Article 47 prohibits any subliminal techniques of advertising.

During advertising it shall be prohibited to employ techniques that prevent readers, listeners and viewers from consciously recognising advertising as such (// art. 10 §3 TVWF Directive)

- Prohibition of surreptitious advertising and teleshopping

Article 47 prohibits any use of surreptitious advertising (// art. 10 §4 TVWF Directive)

b. Conclusions

While the first paragraph of Article 10 of the Directive allows separation by optical and/or acoustic means, the Article 93 of the Mass Media Act explicitly provides that separation shall be insured by optical *and* acoustic means.

There is no provision on isolated advertising

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

a. Regulations

The rules relating to insertion of advertising are set forth in Article 93 of the Mass Media Act. These rules also apply to teleshopping.

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

Article 93 paragraph 2 states that the programmes shall not be interrupted, unless certain conditions are respected. Therefore, one may deduce that the insertion of advertising or teleshopping spots *between* programmes is the accepted practice (// art. 11 §1 TVWF Directive).

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

According to the second paragraph of Article 93 of the Act, advertisements and TV - shopping shall not be inserted:

- during programmes unless inserted in such way that the integrity of the programme, taking into account the duration and nature of the programme and for that purpose the anticipated breaks, are not prejudiced (// art. 11 §1 TVWF Directive);
- with prejudice to the rights of the rights holders

According to paragraph 3 of Article 93 in programmes consisting of autonomous parts (e.g. sports events) advertisements shall only be inserted between the parts or in the intervals and during breaks (// art. 11 §2 TVWF Directive).

According to paragraph 5 of Article 93 the transmission of audiovisual works such as feature films and films made for television and artistic audiovisual work (excluding series, serials and entertainment programmes), provided their programmed duration is more than 45 minutes, may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their programmed duration is at least 20 minutes longer than two or more complete periods of 45 minutes (// art. 11 §3 TVWF Directive).

Provisions of paragraph 5 of Article 93 do not apply to RTV Slovenia programmes (The public Television Service) or to local, regional, student and non-profit TV programmes.

According to paragraph 6 of Article 93 where programmes, other than those covered by paragraph 3, 4 and 5 are interrupted by advertisements, a period of at least 20 minutes should

elapse between each successive advertising break within the programme (// art/ 11 §4 TVWF Directive).

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

According to paragraph 7 of Article 93 news and current affairs programmes, documentaries, religious programmes, and children's programmes, when their programmed duration is less than 30 minutes shall not be interrupted by advertisements. If their programmed duration is of 30 minutes or longer, the provisions of the previous paragraphs shall apply (// art. 11 §5 TVWF Directive).

Paragraph 4 of Article 93 also prohibits advertising during national celebrations and religious ceremonies.

b. Conclusion

The provisions of the Directive have been correctly implemented. Some stricter rules however apply.

Special provisions of Article 94 apply to national television – RTV Slovenia. According to paragraph 1 RTV Slovenia shall not interrupt by advertising breaks TV programme units such as feature films, films made for television (except series, serials and entertainment programmes) or broadcasts of a cultural, artistic, scientific or educational nature irrespective of the duration of the programme.

The third channel of RTV Slovenia² shall not be interrupted with any advertisement at all. Different rules also apply to local, regional, student and non-profit broadcasters.

² At the moment RTV Slovenia operates with two channels – Slovenia 1 and Slovenia 2

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

These questions are dealt with by Article 97 of the Act.

- 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)

Article 97 stipulates that the amount of advertising (including teleshopping spots and other forms of advertising) shall not exceed 20 % of the daily transmission time (// art. 18 §1 TVWF Directive).

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

The transmission time of advertising which does not include TV - shopping and other paid notices shall not exceed 15 % of the daily transmission time, except if stated otherwise by the Act (+/-// art. 18 §1 TVWF Directive. The Slovenian regulation foresees the possibility of an exception).

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

The amount of spot advertising within a given one-hour period shall not exceed 20 % unless the Act states otherwise (+/-// art. 18 §2 TVWF Directive. The Slovenian regulation foresees the possibility of an exception).

- Examination of factors to be taken into account and factors not to be taken into account in the calculation of advertising time

Article 97 does not apply to contents which are not considered as advertising according to article 46 of the Act. For the purposes of this Act, advertising does not include:

- notices made by the issuer regarding programme contents of the media (// art. 18 §3 TVWF Directive);
- accessory products directly originated from the programme contents of the media (// art. 18 §3 TVWF Directive) ;
- gratuitous publications in relation to exercising public services, cultural events and charity actions, which are of general importance to the people of RS (// art. 18 §3 TVWF Directive);
- gratuitous representation of artistic works (additional element comparing to the Directive);
- gratuitous listing of producers, organisers or sponsors or listing of donators of artistic works and cultural – artistic events and charity actions, during media representation of this works, events or actions (additional element comparing to the Directive).

Gratuitous advertisements shall be clearly recognised as such.

Video notices, included in local, regional, student and non – profit programmes which cover not more than 50 % of the population of Slovenia and are visible and audible only within the barriers of Slovenia, are not considered as advertisement for the purpose of this Act, provided that their overall duration per day doesn't exceed a duration of other broadcasts (with exception of advertisements).

b. Conclusions

The national regulation generally corresponds to the provisions of the Directive.

However, provisions of paragraphs 1-4 of Article 97 shall not apply to RTV Slovenia programmes and to local, regional, student and non – profit programmes.

Special provisions apply to those programmes.

According to Article 98 the amount of advertisement broadcast by RTV Slovenia programmes shall not exceed 15 % of the daily transmission time. The amount of advertising in RTV Slovenia programmes shall not exceed 10 % of the daily transmission time. The amount of advertising within a given one-hour period shall not exceed 12 minutes. The amount of advertising within a given one-hour period between 18.00 and 23.00 shall not exceed 9 minutes.

The amount of advertising in local, regional, student and non – profit programmes shall not exceed 15 % of the daily transmission time and not 12 minutes per hour. TV – shopping is prohibited.

The Slovenian regulation states specific rules regarding to the following programmes:

- TV programmes specialized for teleshopping (with the exception of teleshopping window):

The amount of advertising shall not exceed 20% of the daily transmission time. The transmission time of advertising which does not include teleshopping and other paid notices shall not exceed 15% of the daily transmission time.

- TV programmes specialized for self-promotion (with the exception of téléshopping window):

The amount of advertising shall not exceed 20% of the daily transmission time. The transmission time of advertising which does not include teleshopping and other paid notices shall not exceed 15% of the daily transmission time. The amount of spot advertising within a given one-hour period shall not exceed 20%.

V. Quantitative restriction 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)

The minimum uninterrupted duration of a teleshopping programme shall be 15 minutes (// TVWF Directive)

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

The maximum number of windows per day shall be eight. They must be clearly identified as TV - shopping windows by optical and acoustic means (// TVWF Directive).

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

The transmission time shall not exceed three hours per day (// TVWF Directive).

b. Conclusion

The Directive has correctly been transposed in Slovenian law.

On the State broadcasting channel, RTV Slovenia, TV – shopping shall not be allowed between 18.00 and 23.00.

VI. Sponsoring (Article 17 TVWF Directive)

Sponsorship is any form of contribution to funding programming by a legal or natural person done with the intention of promoting that person's name or business name, brand names, or public image.

a. Regulations

Sponsoring is dealt with by the Article 52 and 53 of the Mass Media Act

- Examination of the rules related to editorial independence of the broadcaster

A sponsor may not influence sponsored programming and its distribution in the programming scheme and restrict the editorial independence of the mass medium.

A sponsor of television stations may not perform activities of disseminating programming or producing audio-visual works. (// art. 17 §1 a. TVWF Directive)

- Sponsor identification

Each sponsored programme unit must be clearly designated as such, including citation of the sponsor's name or logo (// art. 17 §1 b. TVWF Directive).

- 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)

The sponsor's name or logo must be cited at the beginning and end of a sponsored programme on television stations (a little more restrictive than art. 17 §1 b TVWF Directive).

- Identification of the programmes that cannot be sponsored

News and current affairs may not be sponsored. (// art. 17 §4 TVWF Directive).

Other informative programming may only be sponsored in cases stipulated by the act governing election campaigns.

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

Sponsored programming may not promote the sale or rental of the sponsor's products and services or the products and services of a third person, particularly through special presentation of such products and services (// art. 17 §1 c. TVWF Directive).

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

There are no specific provisions regarding this question.

b. Conclusions

It is our understanding that sponsoring under Mass Media Act in connection with the Law on tobacco product and in connection with Law on medical products reflects the requests from Article 17 of Directives. (cfr infra)

The Mass Media Act is more restrictive than the Directive when imposing the identification of the sponsor at the beginning *and* at the end of the broadcast.

Sponsored programme may not promote the sale or rental of the sponsor's products and services or the products and services of a third person, particularly through special presentation of such products and services.

Each sponsored programme unit (e.g. article, programme) must be clearly designated as such, including citation of the sponsor's name or logo.

The sponsor's name or logo must be cited at the beginning and end of a sponsored programme on television stations.

According to the presented regulations and their interpretations sponsored programs can have the logo and brand of the company or person in the beginning and at the end. During the program it is not allow to show the products and or services, as sponsoring is different than advertising, therefore sponsor can be marked as brand or name at the beginning and at the end only. No intersections, split-screen, bumpers and others showing sponsor brand or logo or products and services are allowed if program is sponsored. If any of this happened within the sponsored program it is considered advertising.

Following current legislation the whole program may be sponsored except news and current affairs that may not be sponsored.

VII. New advertising techniques

The new advertising techniques are not regulated by the Law but a self-regulation is in place. The general practise is that new advertising techniques can be used and there is a document covering this matter. The document shall be approved and signed between TV stations and Broadcasting council.

As these techniques are not regulated by the presented regulations, the televisions broadcasters in Slovenia have entered into negotiations to self regulate the new advertising techniques.

The negotiations are leaded and supervised by the Broadcasting Council. The first drafts of the Agreement have been prepared and it is expected that parties will have additional comments on the draft. As the Agreement is mutual understanding between the parties it is not a public document and it will have effect just between parties signing it. According to the information in our possession, the Agreement shall constitute a rules on "Split Screen" and similar techniques. At this stage it is not possible to define what exactly shall be included in the Agreement and what would be the quality and quantity restrictions.

VIII. General rules related to advertising and teleshopping content

The rules related to the content of advertising and teleshopping are contained in Articles 46 and 51 of the Mass Media Act.

a. Regulation

Advertising may not:

- prejudice respect for human dignity;
- incite discrimination on the grounds of race, sex or ethnicity, or political or religious intolerance;
- encourage behaviour damaging to public health or safety or to the protection of the environment and the cultural heritage;
- give offence on the grounds of religious or political beliefs;
- damage consumers' interests (\pm // art. 12 TVWF Directive).

The person that commissions an advertisement shall be responsible for the veracity and accuracy of any statements or figures therein; the responsible editor shall be responsible for the advertisement's compliance with the present act and with the programme concept of the mass medium.

It is obligatory to disseminate advertisements in Slovene or in a Slovene translation, unless disseminated in a foreign language in accordance with the present act.

Mass media for the Hungarian and Italian ethnic communities may publish advertisements in the language of the ethnic community.

Article 74 of the Constitution of the Republic of Slovenia prohibits any act of unfair competition restricting competition in breach of the law. Unfair competition is subject to the Law on the Protection of Competition³. According to Article 13:

Unfair competition shall be prohibited.

An act of unfair competition shall be deemed to be any company's act of access to the market which is contrary to good business practices and will or might cause damage to other entities engaged in market operations.

Acts of unfair competition referred to in the previous paragraph shall include in particular:

- *promotion, advertising or offering of goods or services by stating untrue data or information and terms which will or could lead to a confusion on the market, or by abuse of ill-informed or gullible consumers;*
- *promotion, advertising or offering of goods or services by stating untrue data or making use of the terms allowing the prestige of another company, its products or services to be used or allowing the quality of products of another company to be evaluated or undervalued;*
- *promotion, advertising or offering of goods or services or belittling of another company by making reference to a national, racial, political or religious affiliation;*

³ Official Gazette of Republic of Slovenia, No. 18/93

- *procuring the information on another company, when such information will or might be harmful to the reputation or business of another company;*
- *sale of goods bearing designations or data which will or might lead to a confusion concerning the origin, method of production, quantity, quality or other properties of goods;*
- *concealing the faults in goods or services or any other acts of misleading the consumers;*
- *acts aiming at breaking business relations between other companies or at preventing or hindering such relations;*
- *unjustified failure to abide by or breaking of a contract concluded with a company with a view to conclude an identical or similar contract with another company;*
- *advertising a supposed clearing sale or apparent lowering of prices and similar acts (of) misleading the customers with respect to the prices;*
- *unjustified use of a name, business name, mark or any other designation of another company regardless of whether that company granted approval for this, when this will or might lead to a confusion on the market;*
- *giving or promising gifts or financial or other benefits to another company, its employee or person working for such a company with a view to provide the donor with an advantage to the prejudice of some other company or consumers;*
- *unauthorized use of services of a salesman, sales agent or agent of another company;*
- *attracting the buyers of goods or users of services by giving or promising awards or any other financial benefits or advantages whose value exceeds substantially the value of goods or services allowing the buyer the possibility of obtaining the award;*
- *unlawful acquisition of a business secret of another company or unjustified making use of an entrusted business secret of another company.*

Unfair advertising includes:

- *Untrue advertising; superlative advertisement is not considered to be unfair (e.g. "ORA – the best at the moment");*
- *Misleading advertising (e.g. data with more than one meaning – "Camelhair");*
- *Advertisement abusing the consumers;*
 - Comparative and leaning advertisement
 - Discriminating advertisement;
 - Slander;
 - Untrue designations of goods and services;
 - Concealing the faults in goods or services or any other acts (of) misleading the consumers;
 - Supposed clearing sale;

Advertising Arbitration

Arbitrament of Advertising Arbitration No. 49/ 07.08.2000

COMPLAINT:

Slovenian Consumer Union (ZPS) has put a complaint at Advertising Arbitration on account of brewing industry LAŠKO's TV advertisement »Faithfulness till death – brewing industry LAŠKO«, which has been designed by advertising agency Studio ZODIAC. Slovenian Consumer Union believes that this specific advertisement violates Article 11 of the Act for Health irreproachability of food products and objects in general use, Article 12 of the

Consumer Protection Act and the Article 2 of Slovenian Advertising Code. Furthermore this advertisement is being destined – by the opinion of ZPS – to youth as it also performs in this advertisement. ZPS also believes that because of reasons mentioned above and the fact that in this specific advertisement viewer can detect symbols by which the youth can be identified, Articles 12 and 21 of Slovenian Advertising Code are being violated. By the opinion of ZPS the advertising message violates both Articles of Slovenian Advertising Code as the advertisement not only to parallel its allegories – faithfulness to alcoholic drink (LAŠKO beer) with faithfulness to the most frequent symbols of value (such as clothes, hairstyle, culture etc.) by which the youth identifies, but also this advertisement do puts its slogan to a superior position (»however the LAŠKO beer rules«).

SLOVENIAN ADVERTISING CODE DEFINITIONS

***Article 12* CHILDREN AND THE YOUTH**

It is need to pay special attention forming and spreading those messages which are being devoted to youth or to those messages in which the young people are performing as actors or models. The advertising messages must not abuse nature credulity of children neither lack of their life experiences.

***Article 21* ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS**

...Advertisement of alcoholic beverages or tobacco products must not be oriented to the youth, the advertising messages must not present young people at using of alcoholic beverages or at smoking of tobacco products, neither the messages must stimulate the youngsters to use of alcoholic beverages or to smoke tobacco products by showing specific individuals - their role models in advertisements.

ARBITRATION:

Advertising Arbitration has discussed this case on July the 12th and August the 7th 2000 and has accepted the following arbitration: **The case is not founded.**

Advertising Arbitration assessments on the basis of gathered information and after examination of both brewing industry LAŠKO's advertisements »However dude, the LAŠKO beer rules«, that the above mentioned advertisements are not in opposition to Slovenian Advertising Code, as formally the subject under discussion is not advertisement of alcoholic drinks (Article 21 of Slovenian Advertising Code), neither there is the subject under discussion advertisement of alcoholic beverages to children and under age individuals who have not appeared in any of performed advertisements (Article 12 of Slovenian Advertising Code). The advertiser is avoiding very skilful to all violations of Slovenian Advertising Code definitions, for this reason he can not be sanctioned by Advertising Arbitration.

Advertising Arbitration

Arbitrament of Advertising Arbitration No. 50/ 07.08.2000

COMPLAINT:

Slovenian Consumer Union (ZPS) has put a complaint at Advertising Arbitration on account of brewing industry UNION's TV advertisement »...before I fall asleep, I wish for...« which has been designed by advertising agency Studio Marketing JWT. ZPS believes this advertisement violates Article 11 of the Act for Health irreproachability of food products and objects in general use and Article 12 of the Consumer Protection Act. ZPS estimates this advertisement leads viewers astray, as it contains in its final shot the image presentation of many with beer filled up glasses with written symbol of Pivovarna UNION (brewing industry UNION). Music refrain evidently addresses consumers to buy or to use of alcoholic drink before going to bed as the beer suppose to be a tranquilliser.

SLOVENIAN ADVERTISING CODE DEFINITIONS

Article 12 FAIRNESS

The advertisements must not be formed in a way they can abuse consumers' trust, to exploit their lack of experiences or lack of their knowledge and lead them astray.

ARBITRATION:

Advertising Arbitration has discussed this case on July the 12th and August the 7th 2000 and has accepted the following arbitration: **The case is not founded.**

Advertising Arbitration assessments on the basis of gathered information and after examination of brewing industry UNION's advertisement »...before I fall asleep, I wish for...« that the above mentioned advertisement is not in opposition to Slovenian Advertising Code definitions as the advertisement does not lead consumers astray. By looking the advertisement it is evidently it advertises product UNI – beer without alcohol substance.

Advertising Arbitration

b. Conclusion

By our opinion the Mass Media Act covers Article 12 from Directive in respect to general rules related to advertising and teleshopping content completely. Moreover, it contains specific rules relating to the cultural heritage, the protection of the consumer and the use of specific languages.

IX. Specific products and targets

The regulation of these products is set forth in Articles 48, 49 and 51 of the Act.

a. Regulations

- Tobacco products (Articles 13 and 17 TVWF Directive)

The advertising of tobacco products and drugs is prohibited. Sponsorship by the tobacco industry is prohibited (// TVWF Directive).

Arbitrament of Advertising Arbitration No. 47/ 12.1.2000

COMPLAINT:

Advertising and production agency Studio MI has put a complaint at Advertising Arbitration on account of TV advertisement »Life without drugs is beautiful« of advertiser Slovenian Republic Ministry of Health and which has been published audio and video by Fatamorgana production. The advertisement has been published on Slovenian TV. In the complaint an applicant quote, that this specific TV advertisement presents to children and youth how the »joint« must look like and how the toxic substance can be taken. This advertisement is supposedly in contrast with the Article 15 of the Consumer Protection Act, with the 3rd paragraph of an Article 10 of the Act of gradual restricting use of tobacco products and with the Article 8 of Slovenian Advertising Code. In the complaint it is being quoted, that this specific TV advertisement promotes using of soft drugs and indirect use of tobacco and tobacco products.

ARBITRATION:

Advertising Arbitration has discussed this case on January the 12th 2000 and has accepted the following arbitration:

The case is not founded.

Advertising Arbitration ascertaining that handled TV advertisement »Life without drugs is beautiful« is not opposite to Slovenian Advertising Code. The advertising Arbitration has an opinion, that handled TV advertisement does not present using the drugs in a way which could stimulate this occurrence or it is approving it directly or indirectly, but quite on the contrary. The Advertising Arbitration believes the handled TV advertising presents in the correct manner a call against abusing the drugs. The message of handled TV advertisement is clear as well the presentation of using the drugs, which has obviously been put into negative context.

The evaluation, does the TV advertisement is or is not in opposition with the law, is not in the competence of Advertising Arbitration.

- Medicines (Article 14 TVWF Directive)

The medical accessories are allowed to be advertised by the special law and special warning shall be included.

- Alcoholic beverages (Article 15 TVWF Directive)

The advertising of alcoholic beverages via mass media is prohibited. (≠ TVWF Directive)

- Minors (Article 16 TVWF Directive)

Advertisements that are targeted primarily at children or in which children appear may not contain scenes of violence, pornography or any other content that could damage their health or mental and physical development or otherwise have a negative effect on the impressionability of children.

Advertising may not be morally or mentally prejudicial to children. Advertisements may not therefore:

- encourage children to purchase products or services by exploiting their inexperience or credulity;
- encourage children to convince their parents or any other person to purchase products or services;
- exploit children's special trust in parents, teachers or any other persons;
- unjustifiably show children in dangerous situations (// art. 16 TVWF Directive).

b. Conclusion

We understand that Mass Media Act combined with Act on tobacco products and Act on medical products together the Regulations covering consummation, selling and promoting alcoholic beverages meets all requested conditions stated within Directive. In some elements the local regulations can be defined as more restrictive as those specified in Directive.

The absolute prohibition of alcohol advertising shall be deemed to be more restrictive than the Directive, which allows alcohol advertising under certain conditions.

The regulation devoted to minors' protection also targets their "mental protection".

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Sources:

1. Mass Media Act, Official Gazette of Republic of Slovenia, N°. 35-2043/2001
2. Amendment to Mass Media Act, Official Gazette of Republic of Slovenia n° 113-4932/2003
3. Advertising Codex, Advertising Chamber of Republic of Slovenia
4. Opinions of Radio Diffusion Counsel
5. Decisions of Advertising Arbitration