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LAW FIRM

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

<u>USA</u>

<u>LEGAL REPORT</u>

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TABLE OF CONTENT

N.B. The present national report is completed by various Network Guidelines in annex. These Network Guidelines have already been communicated with the First Interim report.

I. Definitions (Article 1 Directive TVWF)

Television broadcasting

Broadcasting, although not specifically referring to television as the medium, is defined as "the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations" by the Communications Act of 1934 which created the Federal Communications Commission ("FCC") and, pursuant to which the FCC established its regulations (≠ art. 1 a. TVWF Directive).

Broadcaster:

In lieu of the term "broadcaster," the Communications Act refers to *a Television Broadcast Station* which is defined as a "station in the television broadcast band (defined as certain frequencies) transmitting simultaneous visual and aural signals intended to be received by the general public. 47 C.F.R. 73.681 (≠art. 1 b. TVWF Directive).

Television Advertising:

There is no "official" definition of this term per the FCC, Federal Trade Commission ("FTC") or any federal statute (≠art. 1 c. TVWF Directive).

Surreptitious Advertising or Subliminal Advertising:

The FCC defines such activities as a "technique of projecting information below the threshold sensation or awareness." (U.S.Congress House, Transportation, Aviation, and Materials Subcommittee of the Committee on Science and Technology, Statement of Dr. John Kamp; ≠art. 1 d. TVWF Directive).

Sponsorship:

There is no "official" definition of this term per the FCC, FTC or any federal statute (≠art. 1 e. TVWF Directive).

Teleshopping:

There is no separate set of rules governing teleshopping, referred to in the U.S. as an "infomercial" or program-length commercials which generally appear on cable and independent television stations; rather, they are governed by the same rules as all other types of advertising (≠art. 1 f. TVWF Directive). Infomercials have the look, feel and duration of real TV programs, often imitating the format of genuine talk shows or investigative news programs. The product being sold is often discussed as part of the program, which may last 15 minutes or longer and may be interrupted by realistic-looking "advertisements" with ordering information for the product.

Conclusions :

The relevant definitions are not contained in one text such as the TVWF Directive. The definitions are different.

II. Advertising Recognition/Program Separation

a. Regulations

Identification as Advertising

The "announcement" need not be verbal and is adequate if the distinction between programming and advertising is clear in the context of the broadcast (±// art. 10.1 TVWF Directive).

47 CFR 1212 requires sponsor identification for commercial advertising, although there is no specific statutory authority further interpreting it in relevant part or requiring that the distinction between advertisements and programming be clear.

Separation from Programming

a. The U.S. does not generally regulate the interface between advertising and programing (such as by requiring a blank screen in between them) except that advertising during programs targeted towards children must observe a five-second gap or "bumper" between program and advertising (≠ art. 10.1 TVWF Directive).

b. Network Guidelines

The four major networks, the American Broadcasting Company ("ABC"), the Columbia Broadcasting System ("CBS"), the National Broadcasting Company ("NBC") and the Fox Broadcasting Network ("Fox"), have a special responsibility to children age 12 and under. Accordingly, there are a special set of guidelines for advertising that is designed primarily for children. See guidelines attached for ABC, CBS, NBC and Fox Kid's.

Isolated spots

The United States does not prohibit airing of isolated commercials (≠art. 10.2 TVWF Directive).

Subliminal Advertising

a. See definition in section I. above. Subliminal advertising, or "covert advertisements" (typically of extremely short visual length or extremely low auditory volume) are prohibited by 47 U.S.C. Section 317 (// art. 10.4 TVWF Directive).

b. Network Guidelines

All advertising claims must be substantiated with scientific, valid and reliable research. Substantiation may include such research methods as laboratory testing, clinical studies, market research, surveys, and field test. See guidelines attached for ABC and CBS. NBC's guidelines deal mostly with testing data to support claims. While Fox does not have written guidelines, they generally comply with ABC, CBS and NBC standards.

Surreptitious Advertising

Outright product placement in entertainment programming is permitted, and is not regulated. However, if a network is being paid by a sponsor or receiving something of value, this must be disclosed, e.g., actors' wardrobes or promotional travel allowances for actors appearing in a program. Also, promotion of a venture in which the responsible individual (for instance, the on-camera personality or someone responsible for programming) has an interest is prohibited without full disclosure (47 U.S.C. 317; ≠ art. 10.4 TVWF Directive).

b. Conclusion

As the above indicates, the U.S. is **less restrictive** than the TVWF Directive in this area.

III. Insertion of Ads/Teleshopping Between Programs

a. Regulations

1.

U.S. regulations regarding the insertion of advertising and teleshopping spots, and with regard to quantitative issues relating to such advertisements are generally non-existent.

The current state of the law is that there can be no restrictions among the broadcasters as to most quantitative advertising issues (≠ art. 11 TVWF Directive). The following details the history of this development.

In *U.S. v. National Association of Broadcasters,* ("NAB") 1982-93 Trade Cas. (CCH) ¶ 65,049 (D.D.C. 1982), the United States District Court for the District of Columbia held that an agreement among the major broadcasters limiting, among other things, time standards, program interruption standards, and the number of minutes of advertising that a TV broadcaster could run in any given hour was a violation of antitrust law in that higher prices would result for television advertising.

The U.S. Department of Justice and the NAB agreed to a consent decree under which the NAB was enjoined from advocating or enforcing any limitation or restriction on:

a. the quantity, length or placement of non-program material appearing on broadcast television; or

b. the number of products or services presented within a single non-program announcement on broadcast television." *Id*., 553 F. Supp. 621, 626.

Currently, advertising is self-regulated through networks and individual stations. While there are no specific network guidelines, the standards are market-driven. It has to be said that insertion of advertising and teleshopping are matters which are not addressed by Network Guidelines.

2.

Infomercials

Infomercials (defined in Section I above) were introduced in the 1980's after the FCC deregulated the amount of time a station could dedicate to commercial advertising. The FTC's concerns with respect to infomercials are generally the same as those applied to other advertising, with emphasis on the following:

a. False product claims;

b. False endorsements or paid endorsements without adequate disclosure;

c. See Network Guideline No. 26, Program – Length Commercials.

d. Misrepresentation as to nature of program (see Section II above).

b. Conclusion

The U.S. has **little or no government regulation over the insertion** of advertising between or within programming and the self-regulatory guidelines among the networks and stations are **less restrictive** than in the TVWF Directive. (See Network Guidelines attached hereto)

IV. Quantitative Restrictions

a. Regulations

In the U.S., there are few restrictions by law pertaining to the transmission time devoted to commercial matter and advertising. The only codified restrictions relate to children's programs pursuant to Title 47 of the rules and regulations under the Federal Communications Commission.

1. Section 73.670 - Television Broadcast Stations:

> *Commercial limits in children's programs. No commercial television broadcast station licensee shall air more than* ***10.5 minutes of commercial matter per hour during children's programming on weekends****, or more than* ***12 minutes of commercial matter per hour on weekdays****.*

2. Section 76.225 – Cablecasting:

> *Commercial limits in children's programs. (a) No cable operator shall air more than* ***10.5 minutes of commercial matter per hour*** *during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays. (b) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control…*

("Commercial matter" is defined as "air time sold for purposes of selling a product or service;" "children's programming" is defined as "programs originally produced and broadcast primarily for an audience of children 12 years old and younger.")

3. There are no other statutorily imposed restrictions on television advertising time.

b. Conclusion

As the above indicates, the U.S. is **less restrictive** than the TVWF Directive in this area. The only quantitative restrictions are related to the amount of advertising between children programs.

V. Quantitative Restrictions on Teleshopping

There are no federally imposed quantitative restrictions on televised shopping programs.

VI. Sponsoring

a. Regulations

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

a. Per Section 326 of the Communications Act of 1934, the FCC is prohibited from regulating the content of programming as such content censorship is a violation of the First Amendment protecting free speech. It cannot be inferred from Section 326 of the Communications Act that a rule providing for the editorial independence of the broadcaster and from the absence of influence form the sponsor on the editorial content would qualify as censorship.

b. There are specific guidelines regarding the broadcasting of political campaign advertisements:

   (i) If a television station allows a political candidate to broadcast an advertisement (as opposed to a news program or talk show) promoting his/her election, the station shall afford equal opportunities to all other candidates for that position; however, there can be no censorship over the material broadcast. (Title 47, Section 315 of the Communications Act)

   (ii) Although stations cannot censor the contents of a political advertisement, they can refuse to run an advertisement all together [which is different from political issues which can be censored – see network guidelines].

Sponsor Identification:

a. Political campaigns: The Federal Election Campaign Act (FECA) requires that whenever a person makes an expenditure for the purpose of financing communications expressly advocating the election of a political candidate, or solicits contributions, must clearly state who paid for the advertisement and by whom it was authorized if not by the candidate him/herself.

b. If a station broadcasts paid-for material, it must announce during the broadcast, that it is paid for or sponsored, and by whom. (Section 317 of the Communications Act) (less restrictive than article 17 TVWF Directive). Stations must announce, at the time of broadcast, the fact that the material is paid for or sponsored and identify the sponsor, or the name of the sponsor's product (47 CFR 1212).

c. The above rule also applies to the broadcast of programs concerning political or controversial issues, if the materials were provided without charge. (Section 317 of the Communications Act) – see Section II.A.5.

Examination of rules related to the insertion of the sponsor's name or logo within the program:

Alcohol manufacturer's name and location must be disclosed in ads which it sponsors-see Section IX regarding alcoholic beverages for more detailed information.

Identification of the programs that cannot be sponsored:

a. Tobacco: FCC regulations prohibit advertising of tobacco products-see Section IX re: Tobacco Products for further details (±// art. 17.2 TVWF Directive)

b. Prescriptions: see Section IX re: medicines and applicable FDA regulations.

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

There are no rules in the U.S. regarding this issue.

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

There are no restrictions in the U.S. regarding this issue.

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

There are no limitations in the U.S. regarding this issue. Note that it is most likely illegal to impose such a special tax in the U.S. Indeed any "special" tax imposed upon advertising relating to a certain type of content would constitute a content-based restriction which is illegal under US law.

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

Outright product placement in entertainment programming is permitted and is not regulated (see Section II of the present report – Surreptitious advertising). However, the following regulations relate to the mention of price in advertisements:

a. Truth in Lending Act: this act establishes certain requirements for advertisers of credit terms.

b. Other "Fair Credit" acts are enforced by the FTC such as the Fair Credit Reporting Act, the Fair Credit and Charge Card Disclosure Act and the Fair Credit Billing Act, which regulate the practices of credit card companies, credit bureaus and reporting agencies.

c. The Children's Advertising Review Unit ("CARU"), a self-regulatory body, prohibits advertisers from stating or implying that price is not a material or important consideration when purchasing the advertised product-see Section IX for further information regarding restrictions on advertising aimed at minors.

Network Guidelines

Advertising which does not contain proper sponsorship identification is not acceptable. See guidelines attached for ABC, CBS, NBC and Fox.

b. Conclusion

The U.S. does not have many restrictions on sponsored programs generally, and does not generally allow the content of any truthful advertisement to be censored under the First Amendment.

While the Network Guidelines prohibit sponsorship which is not identified, there is no regulatory obligation to do so, except for programs sponsored by politicians.

Restrictions do relate to specific products such as tobacco, alcohol, prescription medications or political advertisements.

Overall, regulations on sponsorship of television advertisements are **less restrictive** than those set forth in the TVWF Directive.

VII. New Advertising Techniques

a. Regulations

<u>Split Screen Advertising</u>

Split-screen advertising does not have a significant presence in the U.S., although the mechanism is sometimes used at the close of television programs. There are no specific regulations pertaining thereto, although individual networks and stations may restrict this in agreements with third parties.

<u>Interactive TV and Virtual Advertising</u>

Neither of these advertising techniques has become a significant presence in U.S. television advertising. As the problems specific to these techniques have not yet made themselves clear, there is at present no federal or private regulation governing them.

b. Conclusion

The new advertising techniques targeted in the TVWF Directive have not yet become a focal point in U.S. advertising regulation.

VIII. General Rules Related to Advertising and Teleshopping Content

a. Regulations

1. There is generally little or no governmental regulation over content due to the existence of the First Amendment to the U.S. Constitution which prohibits Congress from abridging the freedom of speech. As a general rule, broadcast media have a First Amendment right to determine what they broadcast, barring violations of other statutes. There are very few US statutes which regulate the content of advertising. There are certain statements and omissions in advertising which may be prohibited by specific statutes regarding, for example, Equal Opportunity Employment, Equal Housing, Truth In Lending or restraints on acceptance of advertising which may violate anti-trust laws. In addition, in order to be granted and maintain a broadcast license from the FCC, a station is required to operate in the public interest, convenience and necessity. Furthermore, the FCC can prohibit material prior to broadcast which features obscenity, fighting words or the movement of troops during wartime as these limited circumstances have been excluded from the ambit of protection provided by the First Amendment, pursuant to US case law.

Other statutory provisions that have an impact on and limit content are contained within the Lanham Act and the FTC. The Lanham Act, 15 U.S.C. §1125, states that "any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which . . . (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act." Please refer to Section VIII herein for a detailed view of the FTC's provisions regarding same.

2. The networks have adopted their own policies with respect to general acceptability standards in broadcast advertising (see Network Guidelines annexed hereto). Some are more prohibitive than others, such as advertising to minors (see Section IX herein) and drugs while other types of advertising may be entirely prohibited, such as subliminal advertising and advertising for distilled beverages.

b. Conclusion:

This area of television broadcasting is self-regulated by networks and individual stations. In terms of government regulation, the U.S appears less restrictive than as referenced in the TVWF Directive. See Network Guidelines annexed hereto.

One must also precise that the International Code of Advertising Practice, estalished by the International Chamber Of Commerce (ICC), has little or no impact on the regulation of content in the US. The ICC is a business lobbying institution which provides a self-regulatory body to enforce the code, but has no "official" authority. However, as previously advised, the Network Guidelines address the relevant content restrictions.

IX. Specific Products and Targets

a. Regulations

Tobacco

a. Federal law prohibits advertising for cigarettes and most other tobacco products on television. (15 U.S.C. 1331 *et. seq.*; // art. 13 TVWF Directive). However, tobacco companies may still air advertising promoting the company itself or any products unrelated to tobacco (less restrictive than the Directive).

b. Network Guidelines

Advertising for cigarettes is unacceptable. However, the acceptability of advertising for cigars, pipe tobacco and tobacco paraphernalia varies among the networks. See guidelines attached for ABC, CBS and Fox.

c. Master Settlement Agreement

In order to settle claims arising from class action suits filed by the Attorney Generals of several U.S. states, seven of the largest U.S. tobacco companies agreed to restrictions regarding the marketing of tobacco products. Under the "Master Settlement Agreement," the companies paid the states an estimated $206 billion, and further agreed to finance a $1.5 billion anti-smoking campaign, open previously secret industry documents, and disband industry trade groups which Attorneys General claim conspired to conceal damaging research from the public. While the settlement largely pertains to advertising activities targeting children, it also prohibits tobacco companies from paying for product placement in television, movies, performances, video games and other multi-media outlets.

Medicine

a.Prescription drug advertising

Prescription drug advertising is regulated by the Food and Drug Administration ("FDA"), which requires, and strictly monitors, the following minimum disclosures (≠ art. 14 TVWF Directive).

(1) Major Statement

If prescription drug advertising included the name of the drug, it must disclose the product's major risks (in either a auditory or visual manner).

(2) Adequate Provision

This category of advertising must also include information as to how consumers can access the information provided on the product's packaging and label.

(i) Acceptable means of access include providing a toll-free number to call for the relevant information; making a reference to print ads containing the disclosures in particular consumer magazines or in brochures available in public places; making a statement that additional product information is available from a doctor or pharmacist; and giving an Internet address where product package labeling can be found (1997 Draft FDA Guidance).

Note: Neither of the above requirements is triggered if:

- The ad is designed to raise public awareness of the advertiser rather than the product;
- "Help-seeking ads": The ad tells consumers only that there are treatments available for a particular condition and encourages them to talk to a health-care professional; or
- "Reminder advertising": the ad promotes a drug but does not identify its use or discuss dosage.

(ii) Many broadcast drug ads will also be subject to case-specific restrictions (Ex: use of terms such as "safe" and "harmless"; products with "boxed warnings" on packaging..)

(3) Network Guidelines

The Food and Drug and Cosmetics Act (FDCA) sets forth complex disclosure requirements for consumer-directed prescription drug advertising on television. The networks will accept consumer-directed prescription advertising provided that it complies fully with the provisions of the FDCA, as well as any other applicable regulations or guidance issued by the FDA. See guidelines attached for ABC, CBS, NBC and Fox.

(4) Conclusion: the U.S. is less restrictive, as the TVWF Directive prohibits prescription drug advertising entirely. In the U.S., prescription drug advertising is permitted, provided the above restrictions are observed.

b. Non-prescription medicines

(i). Overview

The FTC pursuant to Section 5 of the Federal Trade Commission Act, and the FDA pursuant to the Food, Drug, and Cosmetics Act, have overlapping jurisdiction with regard to advertising, labeling and promotion of over-the-counter ("OTC") and prescription drugs, foods, cosmetics and medical devices.

- FTC: Regulation of All Drugs/OTC and prescription
- FTC Framework Concerning Deceptive Advertising
- Section 5 of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce," 15 U.S.C. §45, and Section 12 prohibits the false advertisement of "food, drugs, devices, services, or cosmetics." 15 U.S.C. §52.

(ii) Advertising is deceptive if it contains a representation or omission that is likely to mislead consumers acting reasonably under the circumstances, and the representation or omission is material, i.e., it is likely to affect consumers' determinations with respect to products or services. The two basic principles of FTC advertising standards are that:

- the advertisement must not be misleading and therefore must be truthful; and
- before circulating an advertisement, there must be "adequate substantiation for all objective product claims." *FTC Policy Statement on Deception and FTC Policy Statements Regarding Advertising Substantiation.*

  Opinions, popular magazine articles and inadequately controlled open label studies are not considered adequate substantiation as a substitute for controlled scientific studies. *Dietary Supplements: An Advertising Guide for Industry* (Nov. 1998)

(iii) Weight Loss Advertising

Weight loss products and service advertising is governed by the same standards as indicated above in Section IX(2) (i) and (ii)(a).

(iv) Network Guidelines

Advertising for OTC drugs and medical devices should provide factual information about such products, avoid overstatements of their capabilities, and advise consumers to read and follow label directions. See guidelines attached for ABC, CBS, NBC and Fox.

Alcoholic Beverages

a. Alcoholic beverages can be broken down into three distinct industry categories: (i) Malt Beverages (ii) Wine (iii) Distilled Alcoholic Beverages.

(i) Malt Beverages

There are no statutorily imposed restrictions specific to television advertising for malt beverages.

The beer industry, however, is self-regulated, and some of the standards of conduct bear on television advertising. The beer industry code of conduct is set forth in the guidelines published by The Beer Institute. The codes of conduct are generally applicable to all forms of advertising, and primarily dictate that advertisers employ good taste, promote responsible drinking and target audiences of legal age. With respect to broadcast media, including television, the guidelines recommend that advertising and marketing materials only be placed where at least 70% of the audience is expected to be adults of legal age. The guidelines also place the burden on the advertiser/brewer to police appropriate placement and conduct periodic audits, at least semi-annually, to ensure that the 70% adult market threshold is met. In addition, the guidelines dictate that actors in television advertisements should be no less than 25 years old, and reasonably appear over the legal drinking age (21 years old).

(ii) Wine

There are no statutorily imposed restrictions specific to television advertising for wine and wine products.

The wine industry, however, is self-regulated, and some of the standards of conduct bear on television advertising. The wine industry's code of conduct is set forth in the Wine Institute's Code of Advertising Standards. These codes are meant to promote socially responsible drinking, and generally apply to all forms of media.

With respect to television advertising, the code requires that actors appear at least 25 years old, avoid any music or imagery/depictions associated with children, and never appear during programs oriented for persons under the legal drinking age or in any media where more than 30% of the audience is underage. In addition, the code stands against the use of amateur or past or present professional sports celebrities and the placement of television advertisements directly adjacent to programs that dramatize or glamorize over-consumption or inappropriate use of alcoholic beverages. The code also recommends that when television advertisements depict scenes or settings where wine is to be served, such advertising should include foods and show that they are available and are being used or are intended to be used with wine consumption.

(iii) Distilled Alcoholic Beverages

There are no statutorily imposed restrictions specific to television advertising for distilled alcoholic beverages. This industry, however, is self-regulated, and its standards of conduct are stated in the Code of Responsible Practices for Beverage Alcohol Advertising and Marketing published by the Distilled Sprits Council of the United States. The standards are mostly parallel to those promulgated by the beer and wine industry and are primarily meant to promote socially responsible drinking and avoid exposure of advertisements to the underage population. However, this industry and the broadcasting industry have a 60 year-old self-imposed ban on advertising distilled alcoholic beverages on television and, except for rare occasions, this prohibition has been maintained.

b. Network Guidelines

Hard liquor (distilled spirits) advertising is unacceptable. Beer and wine advertising is acceptable, subject to federal, state, and local laws and applicable network guidelines. See guidelines attached for ABC, CBS, NBC and Fox c. Conclusion:

Minors:

a. Overview

(i) Advertising directed at children is regulated on many levels as it is of significant concern to advertisers and the federal government. While U.S. regulations mirror EU Directives to an extent, the U.S. structures its guidelines even further and in a more restrictive manner through government regulation via the Federal Trade Commission and CARU. The guidelines for advertising to minors is extensive and is annexed hereto for reference.

CARU

CARU was established by the National Advertising Review Council ("NARC") to promote responsible children's advertising and to respond to public concerns. The NARC Board sets policy for CARU's self-regulatory program which is administered by the Council of Better Business Bureaus ("CBBB") and is funded directly by members of the children's' advertising industry.

CARU, among other things, provides guidelines for advertisers and advertising agencies for advertising directed at minors. The guidelines cover many areas of advertising to children and are set forth in further detail in the attachment herein. Generally, some, but not all, of the main areas of concern are as follows:

- Product presentations and claims;
- Sales pressure, See Section VI, Sponsorship, herein;
- Disclosures and disclaimers;

- Comparative claims;
- Endorsement and promotion by program or editorial characters;
- Premiums, promotions and sweepstakes;
- Safety; and
- Interactive electronic media

At the federal level, the FTC has brought numerous actions against advertisers and advertising agencies regarding children's advertising. Restrictions already exist regarding cigarette advertisements and currently, the FTC is investigating alcohol advertisements allegedly directed at youth.

b. Network Guidelines

The networks have a special responsibility to children age 12 and under. Accordingly, there are a special set of guidelines for advertising that is designed primarily for children. See guidelines attached for ABC, CBS, NBC and Fox Kid's.

One should note that advertising during programs targeted towards children must observe a five-second gap or "bumper" between program and advertising (≠ art. 10.1 TVWF Directive).

There is codified restrictions relate to <u>children's programs</u> pursuant to Title 47 of the rules and regulations under the Federal Communications Commission.

1. Section 73.670 - Television Broadcast Stations:

*Commercial limits in children's programs. No commercial television broadcast station licensee shall air more than **10.5 minutes of commercial matter per hour during children's programming on weekends**, or more than **12 minutes of commercial matter per hour on weekdays**.*

2. Section 76.225 – Cablecasting:

*Commercial limits in children's programs. (a) No cable operator shall air more than **10.5 minutes of commercial matter per hour** during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays. (b) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control…*

("Commercial matter" is defined as "air time sold for purposes of selling a product or service;" "children's programming" is defined as "programs originally produced and broadcast primarily for an audience of children 12 years old and younger.")

c. Conclusions

Similar to the European Union Directive, the United States takes appropriate measures to ensure that its programming does not carry content which may impair the physical, mental or moral development of minors. The United States restricts advertising that may contain discriminatory content as well. However, as shown above and in the attachments herein, government and self-regulation of children's advertising is highly regulated and more restrictive than the directive.

Other-see attachment regarding other Network Guidelines

The network guidelines also cover a vast array of product categories and commercial techniques. The remaining product categories and commercial techniques which are regulated by the networks are listed below. The guidelines relating to the below categories are attached.

1.	American Flag	Acceptable in advertising provided that it is treated in a dignified manner. See guidelines attached for ABC and NBC. CBS and Fox do not have written guidelines, but generally comply with ABC and NBC standards.
2.	Community Sensibilities	The networks will not accept advertising which misrepresents, ridicules, or attacks an individual or group on the basis of age, color, national origin, race, religion, sex, sexual orientation, or handicaps. See guidelines attached for ABC, NBC and Fox. While CBS does not have written guidelines, they generally comply with the other networks' standards.
3.	Comparative Advertising	Comparisons and demonstrations must be based on specific differences between the products or services advertised, comparing similar or related properties or ingredients, dimension to dimension, feature to feature and be significant and meaningful. See guidelines attached for ABC, CBS, NBC and Fox.
4.	Contraceptive Advertising	The acceptability of contraceptive advertising varies among the networks. See guidelines attached for ABC, NBC and Fox.
5.	Contests and Sweepstakes	Advertising for advertiser-sponsored contests is acceptable if the contest offers a fair opportunity for all contestants to win, does not constitute a lottery, and complies with all applicable federal and state laws. Such advertising must not falsely or unfairly raise hopes and expectations of winning. See guidelines attached for ABC, CBS, NBC and Fox.
6.	Controversial Issues	The networks do not sell time for advertising that discusses controversial issues. See guidelines attached for ABC, CBS, NBC and Fox.
7.	Criminal Activities	Advertising must not contain the portrayal of specific, detailed techniques that provide instruction in the commission of crimes, the use of weapons, or the avoidance of detection. See guidelines attached for ABC. While CBS, NBC and Fox do not have written guidelines, they generally comply with ABC's standards.

8.	Dramatizations, Reenactments and Simulations	Advertising which utilizes a dramatization, reenactment, or a simulation must clearly and conspicuously disclose the use of these techniques. See guidelines attached for ABC, NBC and Fox. While CBS does not have written guidelines, they generally comply with the other networks' standards.
9.	Endorsements and Testimonials	Endorsement must reflect the honest opinions, beliefs, findings, or experience of the endorser. All endorsements must comply with the Federal Trade Commission Final Guides Concerning Endorsements and Testimonials in Advertising, 16 C.F.R. 255. For purposes of the FTC Guides, endorsements and testimonials are treated identically. See guidelines attached for ABC, CBS, NBC and Fox.
10.	Food	Advertising may not overstate the nutritional value of foods. All food advertising must comply with the provisions of the Nutrition Labeling and Education Act of 1990 (NLEA). See guidelines attached for ABC, CBS, NBC and Fox.
11.	Free	An offer may be described as "free," provided that all conditions for obtaining the "free" product or service are clearly and conspicuously disclosed. Advertising must comply with Federal Trade Commission Guidelines covering "free" offers. See guidelines attached for ABC.
12.	Gambling	The acceptability of advertising for gambling varies among the networks. See guidelines attached for ABC, NBC and Fox.
13.	Guarantees and Warrantees	References to guarantees, warranties, or similar terms in advertising copy must comply with all applicable laws and governmental rules and regulations, particularly with the Magnuson-Moss Warranty Act and the rule promulgated thereunder by the Federal Trade Commission. See guidelines attached for ABC, NBC and Fox. While CBS does not have written guidelines, they generally comply with the other networks' standards.
14.	Mail Order, Telephone, Internet and Direct Response Advertising	Mail order, telephone, Internet and direct response advertising is advertising which permits the consumer to order by mail, telephone or computer. Such advertising must conform to all applicable legal and regulatory guidelines, including the Federal Trade Commission's Mail and Telephone Sales Order Rule. See guidelines attached for ABC, CBS and Fox.
15.	Motion Picture, Videocassette, Theatrical and Event	The networks will accept motion picture, videocassette, theatrical and event advertising. See

	Advertising	guidelines attached for ABC, CBS and Fox. While NBC does not have written guidelines, generally speaking they comply with the other networks' standards.
16.	Multiple Product Announcements	Multiple product announcements are those in which two or more products or services from the same advertiser are presented within a single commercial unit. See guidelines attached for ABC, CBS and Fox. While NBC does not have written guidelines, generally speaking they comply with the other networks' standards.
17.	"New" Use of	Use of the term "new" is limited to no more than six months from the time a product achieves substantial distribution in the relevant market. See guidelines attached for ABC, NBC and Fox. While CBS does not have written guidelines, they generally comply with the other networks' standards.
18.	Nutritional Supplements	Before the passage of the Dietary Supplement Health and Education Act (DSHEA) in 1994, the term "dietary supplement" referred only to products made of one or more of the essential nutrients, such as vitamins, minerals, and protein. In 1994 the DSHEA expanded the definition stating that herbs, or other botanicals (except tobacco), and any dietary substance that can be used to supplement the diet by increasing the total dietary intake were to be included in the definition. This new definition includes many substances that the FDA previously classified as drugs or unapproved food additives and these have become readily available as dietary supplements. See guidelines attached for ABC, CBS and NBC.
19.	Perception Testing	In determining the express and implied claims in commercials, perception testing submitted by advertisers bearing upon the perceived meanings which consumers derive therefrom will be considered. See guidelines attached for ABC and NBC. While CBS and Fox do not have written guidelines, they generally comply with the other networks' standards.
20.	Personal Products	Personal products should be presented with a special degree of care and sensitivity. All copy and visuals must be in good taste and not be overly graphic. See guidelines attached for ABC, CBS, NBC and Fox.
21.	Pet Food	Advertising for pet food must accurately disclose the product's composition, form, suitability, quality, identity, origin and nutritional properties so that consumers may make responsible decisions. See guidelines attached for ABC. While CBS, NBC and

		Fox do not have written guidelines, they generally comply with ABC's standards.
22.	Political Advertising	Acceptance of political advertising is governed by the "equal opportunities," "lowest unit rate," " reasonable access" and other provisions of the Communications Act of 1934, the Federal Election Campaign Act, and in some cases, state law. See guidelines attached for ABC.
23.	Privacy and Publicity Rights	The laws of most states prohibit the use of a person's name, voice or likeness for trade or advertising purposes without the written consent of such person. When advertising is submitted to the networks containing an endorsement or other use of a person's name or other identification, including a picture or footage, the networks reserve the right to require written evidence that such name, voice or likeness is used with the specific consent of such person or organization. See guidelines attached for ABC.
24.	Product Demonstrations	When a commercial demonstrates the attributes of a product, the demonstration must be performed with actual examples of the product as available to consumers and the results must be accurately represented. The use of mock-ups or enhanced or altered products is not permitted. See guidelines attached for ABC, NBC and Fox. While CBS does not have written guidelines, they generally comply with the other networks' guidelines.
25.	Professional Advertising	Advertising for the services provided by duly accredited lawyers, doctors and persons in other generally recognized professional occupations is acceptable, provided it does not overstate the efficacy of the service being offered. See guidelines attached for ABC and CBS.
26.	Program - Length Commercials	Except with respect to programming produced and broadcast primarily for an audience of children 12 years of age and under, a program that would have been defined as a program-length commercial under prior FCC rules and policies may be accepted at the discretion of the networks as long as the commercial content and goals of the sponsor are outweighed by the public's likely interest in the program. See guidelines attached for ABC.
27.	Psychics and Other Pseudo-Sciences	Acceptability of advertising for psychics and other pseudo-sciences (astrology, character reading, fortune-telling, etc.) various among the networks. See guidelines attached for ABC, CBS and Fox.

28.	Public Service Announcements	Public Service Announcements are meant to inform the public of the work of charitable, governmental, and on-profit organizations and other services available to the public. See guidelines attached for ABC, CBS and NBC. Fox only accepts PSA's that are produced in-house.
29.	Public Symbols	Heads-of-state, other public officials, religious leaders, and public buildings and/or monuments must be treated with appropriate respect and dignity when mentioned or depicted in advertising. See guidelines attached for ABC and Fox. While CBS and NBC do not have written guidelines, generally they comply with the other networks' standards.
30.	Religious Time	The networks may sell time to religious organizations for spot announcements to call attention to occasional lectures, meetings, or crusades. These announcements may in no way present religious doctrine, utilize religious music, sell religious publications, or solicit funds. See guidelines attached for ABC and Fox.
31.	Safety	All advertising which disregards normal safety precautions is unacceptable. See guidelines attached for ABC, NBC and Fox. While CBS does not have written guidelines, generally they comply with the other networks' standards.
32.	Simulation of News Techniques	Advertising may not contain language, visual techniques, or sound effects associated with newscasts when such advertising is likely to confuse or alarm the audience, or trivialize actual newscasts. See guidelines attached for ABC, CBS, NBC and Fox.
33.	Solicitations of Funds	Absent special public interest considerations, the networks will not sell time for the solicitation of funds. See guidelines attached for ABC, NBC and Fox.
34.	Supers	The networks have specific production guidelines with regarding to supers. See guidelines attached for ABC, CBS, NBC and Fox.
35.	Videogames	Advertising for videogames should accurately represent the actual content of the game. However, depictions of extreme violence, sexual themes and profanity are unacceptable. See guidelines attached for ABC, NBC and Fox. While CBS does not have written guidelines, generally they comply with the other networks' standards.

36.	Vitamin Supplements	Advertising for vitamin supplements should be directed only to adults as dietary supplements which may help prevent nutritional deficiencies. See guidelines attached for ABC, CBS, NBC.
37.	Weight Reduction and Control	The advertising of products and services for the reduction, gain and control of weight must comply with established nutritional evidence and medical opinion, as well as network guidelines. See guidelines attached for ABC, CBS and NBC.

b. Conclusion

As the U.S. and the European Community effectively prohibit the advertisement of tobacco products, the regulations in this area are **comparable**, except for what concerns the sponsoring.

The U.S. regulation is **less restrictive** than the Directive when allowing advertising for medicines available only on prescription and when merely imposing that advertising for medicines not available on prescription should be fair and non deceptive.

Due to self-imposed bans by the industry and networks on distilled alcoholic beverages, and industry adherence to standard codes of conduct relating to the advertisement of wine and beer, the U.S. **is more restrictive** than the TVWF Directive. However, no restriction is statutorily imposed.

Similar to the European Union Directive, the United States takes appropriate measures to ensure that its programming does not carry content which may impair the physical, mental or moral development of minors. The United States restricts advertising that may contain discriminatory content as well. However, as shown above and in the attachments herein, government and self-regulation of children's advertising is highly regulated and **more restrictive** than the directive.

Regarding obesity and fast food, we note that there have been some cases objecting to the failure of the fast food industry to disclose the truth about the effects of fast food on obesity, although none have been successful to date. Generally speaking, there are no express restrictions on advertising relating to dieting or obesity; however network guidelines specify that weight loss-related advertising must adhere to general truthful advertising principles. At present, the weight loss industry is under heightened scrutiny by the FTC and other regulators.

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