

BIRD & BIRD

**THE EVOLUTION OF NEW ADVERTISING  
TECHNIQUES**

**FINLAND**

**FINLAND**  
**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

<b>Television</b>
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The Finish audiovisual regulation is specified in the Act on Television and Radio Operations, referred hereinafter as TVRO.

## **1. Definitions**

### **➤ Advertising:**

Television and Radio advertising is defined as “*any form of announcement in television and radio broadcasting in return for payment or other consideration by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property or rights and obligations, or in order to promote its own operation*”. This definition is similar to the one of the directive TVWF.

### **➤ Sponsorship:**

The TVRO states the same definition as the one of the Directive TVWF.

### **➤ Teleshopping:**

The TVRO states the same definition as the one of the Directive TVWF.

## **2. Advertising**

### **a) Rules on insertion in and between programmes**

The Finish regulation makes a distinction between the public and the private broadcasting. The public broadcaster may not broadcast advertising in connection with its programmes. The Council of State shall, however, have the right to grant the broadcaster, for a special reason, a programmes-specific right to broadcast advertising.

The private broadcaster may broadcast advertising.

Regarding the rules on insertion in and between programmes, the finish law provides the same provisions as the ones of the directive TVWF.

**b) Rules on the maximum amount of advertising**

Regarding the rules on the maximum amount of advertising, the finish law provides the same provisions as the ones of the directive TVWF. It is specified that this time limit (the same as the directive TVWF) shall not include announcements made by broadcasters in connection with its own programmes and ancillary products directly derived from those programmes nor public service announcements and charity appeals broadcast free of charge.

**3. Tele-shopping**

**a) Rules on insertion in and between programmes**

The Finish rules are the same as the one of the directive TVWF.

**b) Rules on the maximum amount of teleshopping**

The Finish rules are the same as the one of the directive TVWF.  
There are special rules for channel exclusively devoted to teleshopping.

**4. Sponsoring**

The finish provisions on the sponsoring are the same as the one of the directive TVWF.

**5. Product placement – Surreptitious advertising**

N/A

## 6. New advertising techniques

### a) **Split screen technique**

Is not used by Finish television broadcaster and there is no specific legislation regarding this technique.

### b) **Virtual advertising**

Is not used by Finish television broadcaster and there is no specific legislation regarding this technique.

### c) **Interactive advertising.**

Is not used by Finish television broadcaster and there is no specific legislation regarding this technique.

<b>Radio</b>
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Advertising on radio is subject to the same regulation as advertising on television.

## Internet and mobile phone

There is no specific legislation concerning advertising on the Internet. However, the Nordic, Consumer Ombudsmen have given a position paper to trading and marketing on the Internet and similar communication systems (the Nordic Consumer Ombudsmen, December 1998) containing rules on identification, information obligations, electronic conclusion of the contracts, binding communication, payment, performance and complaints procedure, e-mails, registration and processing of data, marketing directed at children and young persons, etc.

Regarding the advertising on the mobile telephone, the general law on consumer protection and the Act on the Protection of Privacy and Data Security in Telecommunications are applicable. For example, the Telecommunication Act states that telecommunications may not be used for direct marketing without the prior consent of the subscriber if the calls to the called subscriber are made by means of automated calling systems or facsimile machines unless otherwise decided by the Ministry.

**FINLAND**  
**- REPORT -**

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## TELEVISION

### I. Advertising

#### A. General regulation

##### 1. General law on consumer protection applicable to all media

General law on consumer protection in Finland is the Consumer Protection Act (Kuluttajansuojalaki 38/1978), hereinafter referred as "CPA".

CPA applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. CPA applies also where a business acts as an intermediary in the transfer of goods or services to consumers.

- For the purposes of CPA, consumer goods and services are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

CPA includes general regulation of marketing as follows:

##### Inappropriate marketing (Section 1):

No conduct that is inappropriate or otherwise unfair from the point of view of consumers shall be allowed in marketing. Marketing that does not convey information necessary in respect of the health or economic security of consumers shall always be deemed unfair.

##### False or misleading marketing (Section 2):

False or misleading information shall not be conveyed in marketing.

##### Price information (Section 3):

The price of consumer goods or services shall not be advertised as being more reduced than it actually is.

##### Several consumer goods being marketed at one price (Section 4):

If several consumer goods or services are being offered for one price or so that the purchase of a good or service entitles one to another good or service at a reduced price or to another specific benefit, the following information shall be clearly noted in the marketing:

- (1) the content and value of the offer and, for goods and services marketed at one price, their individual prices, unless the individual price of a good or service is less than EUR 10;
- (2) the conditions of the offer, especially its duration and the volume restrictions and other restrictions applying to it.

Comparative advertising (Section 4a):

Comparative advertising is defined as advertising where a competitor or a good or service marketed by a competitor can be directly or indirectly recognised.

Comparative advertising shall be allowed, in so far as concerns the comparison, provided that:

- (1) it is not false or misleading;
- (2) it pertains to goods or services that are used for the same purpose or for the fulfilment of the same need;
- (3) the comparison is impartial and pertains to essential, significant, verifiable and representative characteristics of the goods or services, or to the price of the goods or services;
- (4) it does not give rise to a danger of confusing the advertiser and the competitor, their trademarks, trade names, other distinguishing marks or goods and services;
- (5) it does not belittle or dishonour the competitor's trademark, trade name, other distinguishing mark, good or service, operations or circumstances;
- (6) it does not take unfair advantage of the reputation of the competitor's trademark, trade name or other distinguishing mark, nor of the original appellation of the good or service marketed by the competitor;
- (7) it does not represent a good or service as a copy or reproduction of another good or service protected by a trademark.

In so far as does not concern the comparison, comparative advertising shall be subject to the provisions elsewhere in the law on advertising and other marketing.

Benefit based on chance (Section 5):

No benefit based on chance shall be promised in marketing if the obtaining of such benefit presupposes consideration, the purchase of consumer goods or services or the making of a purchase offer. This provision does not apply to ordinary recreational competitions in newspapers and magazines.

## **2. Specific audiovisual regulation**

Directive 89/552 (as amended by directive 97/36) has been enforced in Finland by separate Act of Parliament, named Act on Television and Radio Operations (Laki televisio- ja radiotoiminnasta, 774/1998) referred hereinafter as "TVRO". TVRO has been amended by Act of Parliament 778/2000.

Scope of application:

TVRO applies to television broadcasting carried out by a natural person or an organization or foundation established in Finland if the operations are carried out in one or more Member States of the European Economic Area or States party to the European Convention on Transfrontier Television, as well as in cases referred to in sections 38 and 42 to the retransmission of television and radio programmes. TVRO also applies to radio broadcasting if a radio frequency granted by Finland or a distribution network established in Finland is used in the operations. TVRO does not apply to television or radio broadcasting in the Province of Åland.

Restrictions in the scope of application:

Unless provided for otherwise in sections 19 (Programmes which may cause detriment to the development of children) and 38 (Suspension of retransmission), TVRO shall not apply to:

- (1) operations where the transmissions may be received only in a building or adjacent buildings of an educational unit, a hospital, a hotel, a department store or corresponding activity forming part of the operations, or if the network for the distribution of the television or radio programme consists of no more than 250 subscriptions; and to
- (2) television or radio broadcasting considered to be of minor importance for the application of TVRO in other telecommunications networks than those mainly meant for the distribution of television or radio programmes.

a) Definitions (TVRO Section 2)

In the TVRO

*Television broadcasting* shall refer to the initial transmission or provision by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public;

*Television broadcaster* shall refer to a party who has editorial responsibility for the composition of the television programmes and who transmits television programmes or has them transmitted by a third party;

*Television and radio advertising* shall refer to any form of announcement in television and radio broadcasting in return for payment or for other consideration by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property or rights and obligations, or in order to promote its own operations;

*Surreptitious advertising* shall refer to the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration;

*Sponsorship* shall refer to any contribution made by a public or private undertaking not engaged in television or radio broadcasting or in the production of audiovisual works, to the financing of television programmes transmitted in television or radio broadcasting with a view to promoting its name, its trade mark, its image, its activities or its products; and

*Teleshopping* shall refer to direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

b) Autorisation to distribute advertising

According to TVRO, public broadcasting has been separated from commercial broadcasting. Oy Yleisradio Ab (YLE) is Finland's national public service broadcasting company. YLE operates five national television channels and thirteen radio channels and services complemented by 25 regional radio programmes. There are three digital radio and five digital television channels in operation. YLE's operations are financed mainly by television fees. According to the Act on Yleisradio Oy (746/1988, Section 12), YLE may not broadcast television or radio advertising in connection with its programmes. The Council of State shall, however, have the right to grant the company, for a special reason, a programme-specific right to broadcast such advertising. The company may not produce sponsored programmes.

Advertising and other marketing by commercial broadcasters in Finland are covered by TVRO.

c) General rules on the content of TV advertising

Ethical principles of advertising and teleshopping spots (TVRO Section 23):

Television and radio advertising or teleshopping spots shall not prejudice respect for human dignity nor be offensive to religious or political beliefs. They shall not

encourage behaviour prejudicial to health, public safety or the environment and nor shall they include any discrimination on grounds of race, sex or nationality.

Protection of minors (TVRO Section 25)

Television and radio advertising shall not cause moral or physical detriment to minors. Television and radio advertising shall not:

- (1) exhort minors to buy a product or service by exploiting their inexperience or credulity;
- (2) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- (3) exploit the special trust minors place in parents, teachers or other persons; nor
- (4) unreasonably show minors in dangerous situations.

Teleshopping spots shall correspondingly comply with these provisions. In addition, they shall not exhort minors to contract for the sale or rental of goods and services.

d) Rules on duration of advertising and insertion in or between programmes

➤ Identification of advertising (TVRO Section 21):

Television and radio advertising shall be readily recognizable as advertising and teleshopping as teleshopping. They shall be kept separate from other parts of the programme service by optical or acoustic means.

The images or voices of persons appearing regularly in news or current affairs programmes may not be used in advertising.

Isolated advertising and teleshopping spots shall remain an exception.

➤ Insertion between programmes (TVRO Section 22):

Advertising and teleshopping spots shall be inserted between programmes in television programme service. Provided the conditions set out in paragraphs 2 to 5 of Section 22 (see below) are fulfilled, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced (TVRO Section 22.1).

➤ Insertion during programmes (TVRO Section 22):

In programmes consisting of autonomous parts, in sports programmes and similarly structured programmes containing intervals, advertising and teleshopping

spots shall only be inserted between the parts or in the intervals (TVRO Section 22.2).

The transmission of feature films and films made for television as well as of other audiovisual works, provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption shall be allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes (TVRO Section 22.3).

Where television programmes, other than those covered by paragraph 2 (see above), are interrupted by advertising or teleshopping spots, a period of at least 20 minutes shall elapse between each successive advertising break with the programme (TVRO Section 22.4).

➤ Prohibition to insert advertising (TVRO Section 22):

Advertising and teleshopping shall not be inserted in any television broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping. If their scheduled duration is 30 minutes or longer, the provisions of paragraphs 1 to 4 above shall apply (TVRO Section 22.5).

➤ Duration (art.18 Directive, TVRO Section 29):

With the exception of teleshopping windows within the meaning of section 31 (Time limits for teleshopping), the proportion of transmission time devoted to teleshopping spots and television advertising shall not exceed 20 % of the daily transmission time. The transmission time for television advertising spots shall not exceed 15 % of the daily transmission time (TVRO Section 29.1).

The proportion of advertising spots and teleshopping spots with a given clock hour shall not exceed 20 % with the exception of channels exclusively devoted to teleshopping spots (TVRO Section 29.2).

Advertising referred to in paragraphs 1 and 2 above and included in the time limits shall not include announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes nor public service announcements and charity appeals broadcast free of charge.

e) Surreptitious advertising



Surreptitious advertising and teleshopping shall be prohibited. Advertising and teleshopping shall not use subliminal techniques (TVRO Section 21).

## B. Regulation for Specific Products

### 1. Alcohol

The marketing and advertising of alcoholic beverages are regulated by the Alcohol Act (Alkoholilaki 1134/94, amended 1477/94). The Alcohol Act supplies to alcoholic substances, their production, importation, exportation, sale and other delivery, use, possession and transport, as well as to advertising alcoholic beverages. In regard to alcoholic substances which are medicines or pharmaceutical preparations specific provisions are enacted.

For the purposes of the Alcohol Act

- (1) *alcoholic substance* means a substance or product which contains more than 2.8 percentage by volume ethyl alcohol;
- (2) *denaturation* means treatment of an alcoholic substance by adding to it other substances in order to make the substance unfit to be drunk;
- (3) *non-alcoholic beverage* means beverage which contains a maximum of 2.8 percentage by volume ethyl alcohol; and
- (4) *Alcohol Company* means a limited company wholly owned by the State whose task is to carry on retail trade stipulated in the Alcohol Act to be its sole right.

Alcoholic substances are alcoholic beverages, alcoholic preparations and spirits, by which it is meant in the Alcohol Act:

- (1) by *alcoholic beverage* a beverage which contains maximum of 80 percentage by volume ethyl alcohol;
- (2) by *mild alcoholic beverage* a beverage which contains maximum of 22 percentage by volume ethyl alcohol;
- (3) by *strong alcoholic beverage* a beverage which contains more than 22 percentage by volume ethyl alcohol;
- (4) by *spirits* ethyl alcohol or an aqueous solution of ethyl alcohol where the proportion of ethyl alcohol exceeds 80 percentage by volume and which is not denatured; and
- (5) by *alcoholic preparation* an alcoholic substance which is not an alcoholic beverage or spirit and which can be denatured.

Advertising of strong alcoholic beverages (Chapter 5, Section 33):

It is prohibited to advertise, indirectly advertise or otherwise promote the sales of *strong alcoholic beverages*.

Advertising of mild alcoholic beverages (Section 33):

Advertising, indirect advertising and other sales promotion of *mild alcoholic beverages and beverages containing at least 1.2 percentage by volume of ethyl alcohol*, other sales promotion of such alcoholic beverages aimed at consumers and linking it to advertising or sales promotion of another product or service is prohibited if;

- (1) it is aimed at minors or other persons to whom according to Section 16 (see below) no alcoholic beverages may be sold, or if such persons are depicted in it;
- (2) consumption of alcohol is there linked to driving a vehicle;
- (3) the alcohol content of an alcoholic beverage is there emphasized as a positive quality;
- (4) an abundant consumption of alcohol is described there in positive terms, or temperance or moderate consumption of alcohol in negative terms;
- (5) it gives an idea that alcohol increases the functional capacity or makes one socially or sexually more successful;
- (6) it gives an idea that alcohol has medical or therapeutic properties or that it refreshes, calms or is a means to settle conflicts; and if
- (7) it is contrary to good manners, is uses methods that are inappropriate from the viewpoint of the consumer or otherwise gives untruthful or misleading information about alcohol, its use, effects or other properties.

According to Section 16 alcoholic beverages shall not be sold to persons who are under twenty years of age, however so that mild alcoholic beverages may be sold to those aged eighteen and over. Neither shall alcoholic beverages be sold to persons who behave disturbingly or are clearly intoxicated, or if there is reason to suspect illegal use of alcoholic beverages or their illegal delivery or procurement for other persons.

As indirect advertising shall be considered in particular promotion for the sales of alcoholic beverages in connection with that of another commodity so that as the distinctive mark of the other product is used, as such or modified so that it can be identified, *such a distinctive mark* that has been established for the alcoholic beverage, or so that it otherwise conveys the image of a certain alcoholic beverage.

Without prejudice to the provisions above, it is allowed to advertise or promote the sales of strong alcoholic beverages as prescribed in greater detail by the Ministry of Social Affairs and Health (Sosiaali- ja terveystieteiden ministeriö);

- (1) in trade journal of the hotel or catering business or retail trade approved by the Product Control Agency (Tuotevalvontakeskus), or in another printed matter distributed to those participating in the sales of alcoholic beverages whose circulation and manner of circulation is in compliance with the regulations issued by the Ministry of Social Affairs and Health; and
- (2) on licensed premises and on premises where alcoholic beverages are retailed or produced.

The provisions of Section 33 shall not apply to advertising in foreign printed manner circulated in Finland whose main purpose is not the advertising of alcoholic beverages.

The regulation of alcoholic beverages in Finland is more severe than regulation included in TVWF, as advertising of other than mild alcoholic beverages is prohibited.

## 2. Tobacco

Advertising of tobacco is regulated by the Act on Measures to Reduce Tobacco-Smoking (Laki toimenpiteistä tupakoinnin vähentämiseksi 693/1976), hereinafter referred as "Act on Tobacco".

The Act on Tobacco prescribes measures aimed, through the reduction of tobacco-smoking (smoking), at preventing origination of the dangers and injuries to health caused by smoking, or whose risk of origination smoking increases.

In the Act on Tobacco,

- (1) *tobacco* refers to a stimulant manufactured from or containing leaves, stalks or stems of tobacco plants (nicotiana);
- (2) *substitute tobacco* refers to stimulants which correspond to tobacco in their intended use but do not contain tobacco;
- (3) *tobacco products* refers to products manufactured entirely or partially from tobacco and intended for smoking, inhalation into the nose, sucking or chewing;
- (4) *orally used tobacco* refers to products manufactured entirely or partially from tobacco which is in the form of powder or some other form, or a combination thereof, excluding products intended for smoking or chewing;
- (5) *smoking accessories* refers to equipment or supplies intended for smoking or mainly for the preparation thereof, such as cigarette paper or other wrapping, cigarette rolling machines, mouthpieces, filters, pipes and pipe cleaners, in

accordance with more detailed regulations laid down by the Ministry of Social Affairs and Health (Sosiaali- ja terveystieteiden ministeriö);

- (6) *tobacco imitations* refers to products intended for enjoyment which closely resemble tobacco products or smoking accessories and which do not contain tobacco or a substitute thereof;
- (7) *tobacco smoking* refers to smoking or other utilization of tobacco products as a stimulant;
- (8) *tar* refers to raw, water-free and nicotine-free condensation of tobacco smoke;
- (9) *nicotine* refers to nicotine alkaloids.

#### Advertising of Tobacco products (Section 8):

Advertising, whether direct or indirect, of tobacco products is prohibited. The sales promotion of tobacco products through the advertising of other commodities by exploiting the established symbol of a tobacco product or an altered but identifiable version thereof, or which otherwise creates an impression of a particular tobacco product, is specifically considered to constitute indirect advertising of tobacco products. What is provided above concerning tobacco products shall also apply to tobacco, a tobacco imitation and smoking accessories. What is provided above concerning advertising shall also apply to other sales promotion activity.

What is provided above shall not, however, apply to advertisements in foreign printed publications whose main purpose is not the advertising of tobacco, tobacco products or imitations, or smoking accessories.

### **3. Medicines**

The marketing of medicinal products has to comply with the provisions of Consumer Protection Act (CPA, 38/78), the Medicines Act (395/87) as well as Administrative Regulation 3/1997 and 3/1999 of National Agency of Medicines (Lääkelaitos) regarding the marketing of medicinal products.

According to the Medicines Act (Section 3) the term "medicinal product" refers to a preparation or substance used internally or externally to cure, alleviate or prevent disease or symptoms of disease in man or animals. A preparation or substance used internally or externally to investigate state or health, to determine the cause or a disease or to restore, correct or modify physiological functions in humans or animals shall also be considered to be a medical product.

It is stated in the Medicines Act (Section 91) that marketing of medicinal products shall not be inappropriate, motivate people to unnecessary use of medicinal products or give erroneous or exaggerated impressions of their compositions, origins or medicinal values. Only medicinal products in the Medicines Act may be advertised or marketed as medicinal products.

It is also stated in the Medicines Act that the National Agency for Medicines will issue detailed regulations concerning the marketing of medicinal products.

The Administrative Regulation 3/1997 given by National Agency for Medicines includes regulation of marketing of medicinal products:

General provisions for the marketing of medicinal products:

The purpose of the Administrative Regulation is to present the provisions of the marketing of medicinal products with particular regard to the EC Council Directive 92/28/EEC concerning the marketing of medicinal products for human use.

Scope:

Besides the marketing of medicinal products for human use, the Administrative Regulation shall also, where applicable, govern the marketing of veterinary medicinal products. Herbal remedies and preparations prepared by pharmacies are considered to be medicinal products. The Administrative Regulation correspondingly applies, where applicable, to the marketing of homeopathic and antroposophical medicinal products that are subject to registration.

The marketing of a medicinal product for which a marketing authorisation has not been granted in Finland, or which has not been registered in accordance with the Medicines Act, is prohibited. It is prohibited to market products subject to the Foodstuffs Act as medicinal products.

In the marketing of homeopathic or antroposophical products that are subject to registration, no therapeutic indications must be mentioned.

The marketing of medicinal products refers to any form of providing information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of medical products. It particularly includes the advertising to the general public, advertising and sales promotion aimed at persons qualified to prescribe or supply medicinal products, the activities of sales representatives and the supplying of samples.

The provisions do not apply to:

- (1) the labelling of medicinal products and the accompanying package leaflets;
- (2) correspondence of a non-promotional nature;
- (3) factual, informative announcements and reference material relating, for example, to package changes, or adverse-reaction warnings as part of general drug precautions;
- (4) trade catalogues and price lists, provided they include no product claims;
- (5) statements relating to human health or diseases, provided there is no reference, even indirect, to medicinal products.

General provisions for all marketing of medicinal products:

The marketing of medicinal product shall in all respects comply with the particulars listed in the summary of product characteristics approved in connection with the granting of the marketing authorisation and with later amendments thereto, if any.

No reference shall be made to clinical trials in a way that gives a false impression of the conclusions, scope or significance of the trials.

The marketing of a medicinal product shall encourage the correct and safe use of the medicinal product by presenting it objectively and without exaggerating its properties. The product information may not contain outdated information or omit any fact where its omission could give a false impression of the medicinal product, its composition, origin, medicinal significance or quality. The emphasizing of less important facts relating to the properties or use of the medicinal product shall be avoided in the marketing.

General limitations to the marketing to the general public:

The marketing to the general public of medicinal products which are available on medical prescription only is prohibited. The marketing to the general public of medicinal products containing psychotropic or narcotic substances, within the meaning of international conventions, is prohibited.

Information on vaccination campaigns approved by the competent authorities may be given to the general public.

The following therapeutic indications must not be used in the marketing to the general public: tuberculosis, sexually transmitted diseases, other serious infectious diseases, cancer and other neoplastic diseases, chronic insomnia or diabetes and other metabolic illnesses.

Distribution to the public of samples of medical products for promotional purposes is prohibited.

Contents of marketing to the general public:

The following applies to all marketing of medicinal products to the general public:

- (1) the advertisement must clearly identify the advertised product as a medicinal product;
- (2) the advertisement shall state the name of the medicinal product as well as the generic name of the active substance if the product contains only one active ingredient;
- (3) the advertisement shall contain the information necessary for the correct and safe use of the medicinal product, such as therapeutic indications and precautionary measures, as well as interactions and adverse reactions;
- (4) the advertisement shall contain an express, legible invitation to carefully read the instructions on the package leaflet or on the outer packaging.

The marketing of a medicinal product to the general public shall not contain any material which:

- (1) gives the impression that a medical consultation or treatment recommended by a physician is unnecessary;
- (2) suggests that the effects of taking the medicine are guaranteed, are unaccompanied by adverse reactions or are better than, or equivalent to, those of another treatment or medicinal product;
- (3) suggests that the health of the subject can be enhanced by taking the medicine or that the health of the subject could be affected by not taking the medicine (this does not apply to the approved vaccination campaigns mentioned above);
- (4) is directed exclusively or principally at children;
- (5) refers to a recommendation by scientists, health professionals or celebrities;
- (6) suggests that the medicinal product is a foodstuff, cosmetic or other consumer product;
- (7) suggests that the safety or efficacy of the medical product is due to the fact that it is natural;
- (8) could, by a detailed representation of a case history, lead to erroneous self diagnosis or treatment;
- (9) refers, in improper, alarming or misleading terms, to claims of recovery;
- (10) uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a medicinal product on the human body or parts thereof;

- (11) mentions that the medicinal product has been granted a marketing authorisation.

Reminder marketing:

Reminder marketing is allowed notwithstanding what has been mentioned above. Only the name of the medicinal product, or the name of the medicinal product and the holder of the marketing authorisation, can be mentioned.

Marketing to the general public of medicinal products prepared by pharmacies:

The Administrative Regulation applies, where applicable, to marketing of medicinal products prepared by pharmacies (as referred to in the Administrative Regulation concerning medicinal products manufactured by pharmacies), which are intended for patients served by the pharmacy. A pharmacy is not, however, required to establish a scientific service to provide information on the medicinal products. The responsibilities of a holder of a marketing authorisation for a medicinal product apply, where applicable, to pharmacies with regard to medicinal products prepared and sold by them.

The marketing of medicinal products prepared by pharmacies is allowed on the pharmacy premises. Medicinal products shall be marketed only for those therapeutic indications the preparation is obviously intended, based on its composition and prevailing scientific knowledge.

The marketing of over-the-counter medicinal products or products which are available on medical prescription only, and which are prepared by pharmacies for individual patients (known as *ex tempore* preparations), is prohibited.

Marketing to the general public of veterinary medicinal products:

All the above applies to the marketing of veterinary medicinal products. The material for the marketing of veterinary medicinal products shall, in addition to the above-mentioned, name the holder of the marketing authorisation for the product, list the animal species the preparation has been approved for and the withdrawal periods set for the product.

Reminder marketing is allowed notwithstanding what has been mentioned above. Only the name of the medicinal product, or the name of the medicinal product and the holder of the marketing authorisation, can be mentioned.

The marketing of medicinal product refers to any form of disseminating information, canvassing activity, or inducement designed to promote the prescribing, supply, sale or consumption of medicinal products.



#### 4. Cars

No special regulation exists concerning advertising of cars. However, Consumer Ombudsman (kuluttaja-asiamies) has given guidelines regarding price information of used cars.

#### 5. Religions, politics and parties, social issues and groups.

No special regulation exists. However, the commercial broadcasters as MTV 3 has self-regulation concerning political advertising. According to these rules, the advertising of parties etc. may include critical and comparative elements. Negative critic of persons is although prohibited. Political advertisements shall not include other advertisements or commercial messages, either shall there be any signs etc. of sponsors.

## II. Tele-shopping

### A. General regulation

#### 1. General law on consumer protection containing rules on distance sale, applicable to all media

General law on consumer protection Consumer Protection Act (Kuluttajansuojalaki 38/1978), referred as "CPA".

CPA applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. CPA applies also where a business acts as an intermediary in the transfer of goods or services to consumers.

For the purposes of CPA, consumer goods and services are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

CPA includes regulation concerning distance sale (etämyynti):

Definition of distance selling (Chapter 6, Section 4):

*Distance selling* is defined as the offering of consumer goods for sale to the consumer by way of distance offering, arranged by the business, so that the conclusion of the contract and the preceding marketing effort are carried out exclusively through one or more means of distance communication.

*Distance offering* is defined as a method of marketing or selling so arranged that its primary purpose can be deemed to be the conclusion of contracts through a means of distance communication.

*Means of distance communication* is defined as telephones, post, televisions, information networks or other devices that can be used for the conclusion of contracts without the parties being simultaneously present.

Chapter 6 of CPA also includes regulation concerning, among other things, advance information in distance selling (Section 13) and Confirmation of information in distance selling (Section 14).

## 2. **Specific audiovisual regulation**

*Act on Television and Radio Operations* (Laki televisio- ja radiotoiminnasta, 774/1998) referred as "TVRO". TVRO has been amended by Act of Parliament 778/2000.

### a) Definition

According to TVRO, *teleshopping* shall refer to direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

### b) Autorisation

See above the regulation concerning television advertising.

### c) General rules on content

Ethical principles of advertising and teleshopping spots (Section 23) and protection of minors (Section 25) as defined more closely above.

### d) Rules on duration and insertion in and between programmes

#### Identification of advertising (TVRO Section 21):

Television and radio advertising shall be readily recognizable as advertising and teleshopping as teleshopping. They shall be kept separate from other parts of the programme service by optical or acoustic means.

The images or voices of persons appearing regularly in news or current affairs programmes may not be used in advertising.

Isolated advertising and teleshopping spots shall remain an exception.

#### Insertion between programmes (TVRO Section 22):

Advertising and teleshopping spots shall be inserted between programmes in television programme service. Provided the conditions set out in paragraphs 2 to 5 of Section 22 (see below) are fulfilled, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced (TVRO Section 22.1).

Insertion during programmes (TVRO Section 22):

In programmes consisting of autonomous parts, in sports programmes and similarly structured programmes containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals (TVRO Section 22.2).

The transmission of feature films and films made for television as well as of other audiovisual works, provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption shall be allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes (TVRO Section 22.3).

Where television programmes, other than those covered by paragraph 2 (see above), are interrupted by advertising or teleshopping spots, a period of at least 20 minutes shall elapse between each successive advertising break with the programme (TVRO Section 22.4).

Prohibition to insert advertising (TVRO Section 22):

Advertising and teleshopping shall not be inserted in any television broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping. If their scheduled duration is 30 minutes or longer, the provisions of paragraphs 1 to 4 above shall apply (TVRO Section 22.5).

Duration (TVRO Section 29):

With the exception of teleshopping windows within the meaning of section 31 (Time limits for teleshopping), the proportion of transmission time devoted to teleshopping spots and television advertising shall not exceed 20 % of the daily transmission time. The transmission time for television advertising spots shall not exceed 15 % of the daily transmission time (TVRO Section 29.1).

The proportion of advertising spots and teleshopping spots with a given clock hour shall not exceed 20 % with the exception of channels exclusively devoted to teleshopping spots (TVRO Section 29.2).

Advertising referred to in paragraphs 1 and 2 above and included in the time limits shall not include announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes nor public service announcements and charity appeals broadcast free of charge.

Time limits for teleshopping (TVRO Section 31):

Windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes. The maximum number of windows per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified as teleshopping windows by optical and acoustic means distinguishing them clearly from other programme service.

Channels exclusively devoted to teleshopping (TVRO Section 32):

Sections 16 (European works), 17 (Programmes by independent producers) and 22 (Insertion of advertising and teleshopping spots) as well as section 29, paragraph 2 (Proportion of advertising spots and teleshopping spots) of TVRO shall not be applied to television channels exclusively devoted to teleshopping. Advertising on such channels shall, however, be governed by the time limits provided for in section 29 (see above).

**B. Regulation for Specific Products**

**1. Alcohol**

See the regulation of the Alcohol Act as defined more closely above.

**2. Tobacco**

See the regulation of the Act on Tobacco as defined more closely above.

**3. Medicines**

See the regulation concerning medicines as defined more closely above.

**4. Cars**

See above.

**5. Religions, politics and parties, social issues and groups.**

See above.

### III. Sponsorship

#### A. General regulation

##### 1. **General law on consumer protection containing rules on sponsorship, applicable to all media**

General law on consumer protection Consumer Protection Act (Kuluttajansuojalaki 38/1978), referred as "CPA".

CPA applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. CPA applies also where a business acts as an intermediary in the transfer of goods or services to consumers.

For the purposes of CPA, *consumer goods and services* are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

##### 2. **Specific audiovisual regulation**

*Act on Television and Radio Operations* (Laki televisio- ja radiotoiminnasta, 774/1998) referred as "TVRO". TVRO has been amended by Act of Parliament 778/2000.

###### a) Definition

According to TVRO *sponsorship* shall refer to any contribution made by a public or private undertaking not engaged in television or radio broadcasting or in the production of audiovisual works, to the financing of television programmes transmitted in television or radio broadcasting with a view to promoting its name, its trade mark, its image, its activities or its products.

###### b) Autorisation

See the regulation concerning advertising above.

###### c) General rules on content

###### Requirements set for sponsored programmes (Section 26):

A sponsor may not influence the content and scheduling of sponsored television or radio programmes in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes.

Sponsored television and radio programmes must be clearly identified by the name or logo of the sponsor at the beginning or end of the programmes.

Sponsored television or radio programmes must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

Ban on sponsorship of news and current affairs programmes (Section 28):

News and current affairs programmes broadcast on television or in the radio may not be sponsored.

B. Regulation for Specific Products

**1. Alcohol**

See the regulation of the Alcohol Act as defined more closely above.

**2. Tobacco**

See the regulation of the Act on Tobacco as defined more closely above.

Forbidden sponsorship (Section 27):

A programme sponsored by an undertaking whose principal activity is the manufacture of tobacco products may not be transmitted on television or in the radio.

**3. Medicines**

Forbidden sponsorship (Section 27):

If the sponsor of a programme is an undertaking whose activities include the manufacture or sale of medicinal products and medical treatment, the name or logo of the undertaking may be shown in connection with the programme taking into consideration the provisions of section 26 (see above). However, a medicinal product or medical treatment available only on prescription in Finland may not be promoted in this connection.

**IV. Self-promotion**

Channels exclusively devoted to self-promotion (TVRO Section 33):

Sections 16 (European works), 17 (Programmes by independent producers) and 22 (Insertion of advertising and teleshopping spots) of TVRO shall not be applied to television channels exclusively devoted to transmitting programmes relating to the self-promotion of the television broadcaster. Advertising on such channels

shall, however, be allowed in accordance with the provisions of section 29, paragraphs 1 and 2 (see above).

**V. New advertising techniques**

According to our knowledge, new advertising techniques such as split screen techniques, interactive advertising, virtual advertising or other new advertising techniques are not used by Finnish television channels. No special regulation or projects of regulation exists concerning these techniques.

<b><u>RADIO</u></b>
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## VI. Advertising

### A. General regulation

#### 1. **General law on consumer protection containing rules on advertising, applicable to all media**

General law on consumer protection in Finland is *Consumer Protection Act* (Kuluttajansuojalaki 38/1978), hereinafter referred as "CPA".

CPA applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. CPA applies also where a business acts as an intermediary in the transfer of goods or services to consumers.

For the purposes of CPA, *consumer goods and services* are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

#### 2. **Specific audiovisual regulation**

See the regulation included in Act on Television and Radio Operations (Laki televisio- ja radiotoiminnasta), referred as TVRO, defined more closely above concerning television.

##### a) Definition

See the regulation included in Act on Television and Radio Operations (Laki televisio- ja radiotoiminnasta), referred as TVRO, defined more closely above concerning television.

##### b) Autorisation

See above what has been said concerning television.

##### c) General rules on content

See the regulation included in Act on Television and Radio Operations (Laki televisio- ja radiotoiminnasta), referred as TVRO, defined more closely above concerning television. The regulation concerning Identification, Surreptitious advertising, Ethical principles and Protection of minors included in TVRO also apply on Radio advertising.



d) Rules on duration and insertion in and between programmes

According to TVRO Section 30 (Time limits for radio advertising), the transmission time devoted to radio advertising shall not exceed ten percent of the daily transmission time. The duration of advertising spots inserted in radio broadcasts may, however, not exceed a total of 24 minutes within two consecutive hours.

B. Regulation for Specific Products

1. **Alcohol**

See regulation of the Alcohol Act as defined more closely above.

2. **Tobacco**

See the regulation of the Act on Tobacco as defined more closely above.

3. **Medicines**

See the regulation concerning medicines as defined more closely above.

**VII. Shopping**

According to our knowledge, no technique similar to teleshopping exists on radio. However, should there be any advertising and marketing concerning this, the regulation of General law on consumer protection in Finland *Consumer Protection Act* as well as *Act on Tobacco* and the *Alcohol Act* would apply to this.

**VIII. Sponsorship**

A. General regulation

1. **General law on consumer protection containing rules on sponsorship, applicable to all media**

See above the regulation concerning television.

2. **Specific audiovisual regulation**

a) Definition

See above the regulation concerning television.

b) Autorisation

See above the regulation concerning television.

c) General rules on content

See above the regulation concerning television.

B. Regulation for Specific Products

**1. Alcohol**

See the regulation of the Alcohol Act as defined more closely above.

**2. Tobacco**

See the regulation of the Act on Tobacco as defined more closely above.

**3. Medicins**

See the regulation as defined more closely above.

**IX. New advertising techniques**

Advertising messages on the radio display are used in Finland. No special regulation exists concerning this. According to our knowledge no proposals for new regulations exists.

<b><u>CINEMA</u></b>
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## **I. Advertising**

### **A. General regulation on advertising**

No specific regulation or self-regulation exists for cinema.

However, General law on consumer protection in Finland *Consumer Protection Act* (Kuluttajansuojalaki 38/1978) applies for advertising for cinema.

CPA applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. CPA applies also where a business acts as an intermediary in the transfer of goods or services to consumers.

For the purposes of CPA, *consumer goods and services* are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

### **B. Rules on Specific Products**

#### **1. Alcohol**

See the regulation of the Alcohol Act as defined more closely above.

#### **2. Tobacco**

See the regulation of the Act on Tobacco as defined more closely above.

#### **3. Medicines**

See the regulation as defined more closely above.

## **I. Sponsorship**

### **A. General regulation**

No specific regulation or self-regulation exists for cinema.

General law on consumer protection in Finland is *Consumer Protection Act* (Kuluttajansuojalaki 38/1978), hereinafter referred as "CPA".

CPA applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. CPA applies also where a business acts as an intermediary in the transfer of goods or services to consumers.

For the purposes of CPA, *consumer goods and services* are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

B. Rules on Specific Products

**1. Alcohol**

See the regulation of the Alcohol Act as defined more closely above.

**2. Tobacco and Medicines**

See the regulation of the Act on Tobacco and regulation concerning medicines as defined more closely above.

## INTERNET

General law on consumer protection in Finland is *Consumer Protection Act* (Kuluttajansuojalaki 38/1978), hereinafter referred as "CPA".

CPA applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. CPA applies also where a business acts as an intermediary in the transfer of goods or services to consumers.

For the purposes of CPA, *consumer goods and services* are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

### The Nordic Consumer Ombudsmen's position paper:

There is no special legislation concerning advertising on the Internet. However, the the Nordic Consumer Ombudsmen have given a position paper to trading and marketing on the Internet and similar communication systems (The Nordic Consumer Ombudsmen, December 1998):

#### Introduction:

The Nordic consumer ombudsmen have noted the rapid development in the use of information technology. In that connection, the consumer ombudsmen have ascertained a need to adopt a common position in connection with trading and marketing on the Internet and in similar communication systems. The consumer ombudsmen have found it desirable to express their views at a common Nordic level. These views are intended to form the basis of a common Nordic position in national as well as international contexts. National negotiation situations may, however, make it necessary to modify the principles in the spirit of compromise. This common position reflects the current knowledge of and expectations about the Internet. The rapid development of the Internet may necessitate an adjustment from time to time of some of the views expressed. The common position should therefore be considered a dynamic work intended to ensure the consumers a good legal position in the information society. The consumer ombudsmen note that the consumers' confidence is a prerequisite for regarding the Internet as a serious medium. Moreover, the consumers' confidence is an important prerequisite for realising the potential for electronic trading. Consequently, it is very much in the interest also of trade and industry that trade and industry observe the principles expressed in this common position.

The term "should" is used consistently in this common position. The reason for this is partly that what is expressed is a joint recommendation, partly that not in all cases is the legal position the same throughout the Nordic countries. In some

cases, a "should" may thus cover a "shall" in national legislation. The consumer ombudsmen further note that within the EU a number of initiatives have been taken to regulate areas comprised by this common position. Among other measures, a Directive on the Protection of Consumers in Respect of Distance Contracts (97/7EC), a Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (95/46EC), a Directive on Treatment of Personal Information in the Telesector (97/66EC) and a Directive on Injunctions for the Protection of Consumers' Interests (98/27EC) have been adopted. These directives will be implemented as part of the legislation of the Nordic countries and thus - like any other legislation - have to be complied with by businessmen using the Internet for trading and marketing.

#### Scope of application:

The common position comprises trading and marketing on the Internet and in similar communication systems.

The common position comprises cases in which it must be assumed that the trader through his/her marketing intends to affect supply and demand on the Nordic market. This common position shall thus apply to e.g. the use of World Wide Web, to the transmission of e-mails and to the use of news groups, etc. This common position comprise marketing which from an overall point of view is directed at the Nordic market. Especially the following criteria can be taken into account in connection with the evaluation:

- (1) which languages, currencies or other national characteristics are used,
- (2) to what extent the business or the service in question is otherwise being marketed in the Nordic country concerned,
- (3) whether there is a connection between marketing on the Internet and other marketing activities in the Nordic market concerned,
- (4) whether the businessman accepts concluding contracts with consumers resident in the Nordic country concerned.

The marketing laws of the Nordic countries apply in accordance with case law when the marketing is directed at the market in question. The provisions applying to trading and marketing in the physical world, including existing legislation governing contracts, purchases, distance selling, marketing, electronic data processing, etc shall also apply to trading and marketing on the Internet. Provisions governing international choice of law also apply to the Internet. Pursuant to the Rome Convention, a mandatory civil regulation cannot be derogated from if this is detrimental to the consumer, when a contract is concluded on the basis of marketing directed at the consumer. Norway have not acceded the Rome Convention, since Norway is not a member of the EU. Internet suppliers have to allow for the fact that in certain situations they may also be held liable for unlawful marketing material deriving from their purchasers. Such liability might arise especially in cases

where the Internet supplier is aware of the infringements (e.g. as a result of a complaint made by one of the Nordic consumer ombudsmen), but allows such infringements to continue. Among other remedies, the consumer ombudsmen have the possibility of issuing different types of prohibitions. If occasion should arise, such prohibitions may also be issued to the Internet suppliers.

#### Identification:

Marketing material should be elaborated and presented in such a way that it is obvious to the consumer that it is marketing. It should be possible to separate marketing material from other material.

Information about the businessman's name, physical address, form of organisation and e-mail address, if any, should be easily accessible to the consumer in a clear and comprehensible manner.

When a businessman uses hyperlinks to material other than his/her own, the businessman is, basically, liable also for the content of such material.

Businessmen should not use hyperlinks to material that does not comply with the legislation of the Nordic country in question and with the recommendations put forward in this common position. When hyperlinks are used, it should furthermore be made clear to the consumer when the businessman's marketing material is being left. When marketing material is transmitted by use of a technique whereby a sender address is naturally generated (especially newsgroups and e-mails), the sender address should be the same as the address to be used by the consumer for getting in touch with the businessman or his/her representative.

#### Information obligations:

In connection with trade and marketing, the businessman should in a clear and comprehensible form provide all relevant information in order to enable the consumer to evaluate the marketed service and any offers made.

The marketing material on the Internet should be updated on a constant basis and be dated. If the marketing material is valid for a limited period of time, this should appear clearly from the material.

The businessmen should retain for a sufficient period of time relevant marketing material that has been published on the Internet. The businessman should provide information enough to enable the consumer to evaluate both the product and the offer. The information to be provided by the businessman should include the following:

- (1) the price of the product/service including all taxes and duties,
- (2) the main characteristics of the product/service,
- (3) limitations, qualifications or conditions, if any, applying to the product,
- (4) terms of payment,
- (5) existence of a right of withdrawal from the contract, including information on how to exercise such right,
- (6) costs and terms of delivery, and the normal time of delivery,
- (7) guarantee, if any, terms of guarantee and after-sales services,
- (8) how and where the consumer can complain,
- (9) duration of the contract in case of contracts to be performed recurrently,
- (10) any other information necessary for evaluating the service or the offer,
- (11) how the consumer can get into contact with the businessman prior to ordering, if the consumer has questions he/she wishes to ask the businessman.

Electronic conclusion of the contracts:

The contract function should be clearly separated from other functions.

The businessman should give proper and reasonable directions about the properties of the product/service, including its useful qualities, its durability, safety risks and maintenance.

Prior to an electronic conclusion of a contract, the consumer should be fully aware of all terms and conditions of the contract, including what the consumer orders and at what prices (including costs of transportation, taxes, duties, etc.). Furthermore, the businessman should fully and clearly inform the consumer whether he/she has any agreed or statutory right of withdrawal.

The businessman should give the consumer an order confirmation. The order confirmation should be sent by ordinary or electric mail, if the consumer so requests.

The consumer should have easy access to keeping all the information supplied in a physical or machine-readable form. It is up to the complaints boards and the law courts to establish when a contract has been concluded and how much it takes to regard the contract terms as having been agreed upon. It should be noted that especially standard conditions can be of such an extent, be formulated in such a way or can enter into the material (e.g. through hyperlinks) in such a way that the contract terms are not binding on the consumer.

The businessman should thus ensure that the consumer is provided with all relevant information in respect of the contract prior to the conclusion of the contract.



This may be ensured e.g. by requiring the consumer to "pass" and "accept" a page of information prior to the conclusion of the contract.

Binding communication:

Businessmen should send binding electronic communication - i.e. notices, orders, etc that may contain a duty to act or a legal obligation on the part of the receiver - to the consumers only when it appears unambiguously from the circumstances that the consumer has accepted it.

Businessmen using electronic mail as means of communication should ensure that any messages received from consumers are collected from the electronic mailbox and made accessible to the business as soon as possible. This also applies when the addressee because of holidays, illness or for any other reason is absent from the business.

The businessman should not regard an e-mail as having been received by the consumer until the consumer has collected the e-mail from his electronic mailbox with the Internet supplier. When messages are allowed to be sent by e-mail, and when these can be said to have a binding effect must be determined by the complaints boards or by the courts of law on the basis of a number of concrete circumstances.

It should be noted that the person sending binding messages prima facie bears the risk of the message reaching the receiver.

In relation to the transmission of e-mail to the consumers, the businessmen should pay special attention to the fact that consumers do not necessarily collect their e-mail from their electronic mailboxes as often as consumers collect their physical mail from their ordinary mailboxes. This entails that consumers do not necessarily react as quickly to electronic mail as the businessman might expect in the case of traditional, physical mail.

Payment:

Payment via the Internet presupposes that the consumer has expressly accepted that the businessman can debit the consumer's account and that the security requirements set up by the country in question in respect of such payment are complied with.

Payment on the Internet should not entail bigger risks to the consumer than the risks connected with other means of payment.

The fact that the consumer uses electronic payment should not make it more difficult for the consumer to have defects, if any, remedied or the contract cancelled.

If the consumer has paid before the product/service is delivered, the businessman should charge back the whole amount immediately if the consumer claims not having received the purchased item or if the consumer uses his/her agreed or statutory right of withdrawal. It should be noted that in certain cases consumers may address their claims for having an amount charged back to the issuer of the credit card for defects in the services/products for which the consumer has paid by means of the credit card. The consumer can thus raise a claim against the supplier of credit if the seller fails to fulfill his obligations.

Performance and complaints procedure:

Businessmen should execute an order within the time period agreed upon or as quickly as possible. Digital services to be supplied electronically should be supplied on receipt of order, unless otherwise agreed.

If, within a reasonable time, a consumer claims that a digital product to be supplied electronically has not been received or does not function, the businessman should take measures immediately to remedy or to redeliver. The fact that the businessman has remedied or redelivered, however, does not exclude the consumer from pleading other remedies for breach of contract.

It should be possible for the consumer to give notice to exercise his right of withdrawal or right of complaint in a way that is not any more difficult than the procedure for ordering the product, and immediately upon receiving such notice, the businessman should issue receipt for the notice.

All reasonable mail expenses connected with the return of defective products/services should be paid by the seller. Exercising a right of withdrawal or a right of complaint need not involve the use of the same technique as the technique used for concluding the contract. The decisive factor is whether the technique indicated is relevant in the situation in question. When consumers have access to concluding contracts via the Internet, it should generally be expected, however, that their right of withdrawal and right of complaint can be exercised electronically.

E-post etc:

Businessmen should send marketing material via e-mail or by similar means of distance communication only when the consumer has given his/her consent.

Marketing material to a consumer should be clearly identified as marketing. As a minimum, this should appear from the heading.

Businessmen should not encourage consumers to send on the businessman's marketing material to other consumers.

Businessmen should not send marketing material via systems set up with a view to exchanging information between private parties (e.g. news groups and list-servers). This does not apply, however, if it appears explicitly from the circumstances that the system may be used for transmitting or exposing such material. The request for consent should be formulated in such a way that the consumer knows what forms of marketing material he/she can expect to receive - and the extent hereof.

The businessman should set up the system in such a way that the consumer can easily decline to receive further marketing material.

#### Registration and processing of data:

Consumers should be able to operate freely on the Internet. Data concerning identified or identifiable persons should only be registered if the consumer (the data-subject) has specifically consented hereto.

Businessmen registering data on the Internet should give information on the Internet about how the businessmen register and process data on consumers. This information should be provided for registering and processing of data concerning identified and identifiable persons as well as for data concerning non-identified and non-identifiable persons.

This information should include information about what data are registered, how the data are registered, what the registered data are used for, for how long the data are retained, whether the data are passed on and, if so, to whom, as well as other information of relevance to the consumer.

Businessmen registering data on the Internet concerning identified and identifiable persons should enable the consumers to exercise electronically the rights they have pursuant to data-processing legislation. Businessmen should provide adequate information on the Internet about these rights (right of objection, right of erasure etc.). The provisions of the electronic data processing legislation in force at any time in the Nordic countries should be complied with.

It is recommended that businessmen see to it that data concerning identified and identifiable persons to be used for specially adapted marketing are primarily collected from the consumer (the data-subject) directly. Hereby, it is ensured that the consumer him/herself has influence on the criteria according to which data on the consumer are processed.

#### Marketing directed at children and young persons:

The recommendations of this common position apply to marketing directed at children and young persons subject to the more rigorous rules contained in this section. Moreover, specific provisions of the country in question applies.

The marketing should be elaborated in such a way that it is obvious to that age group - which is the target group - that it is a question of marketing.

The businessman should take into account the development stage of the target group and therefore should not take advantage of children's and young persons' credulity and lack of experience. If entertainment features form part of the marketing - in the form of, e.g., play, games and the like - this entertainment should not be combined with or interrupted by advertising features.

Children and young persons should not be encouraged to give information about themselves, the household or about any other persons. Giving information may not be made a condition of gaining access to contents.

Children/young persons should not be offered rewards (money, gifts or anything else of a monetary value) for staying on or participating in activities on the Internet. This rule does not prevent the holding of prize competitions that neither directly nor indirectly have the effect that the child/young person stays longer on the businessman's homepage.

Businessmen should use the techniques available at any time for allowing parents to limit the material to which their children have access via the Internet.

Children and young persons should not be encouraged to buy goods or conclude contracts via the Internet, and appropriate precautions should be taken to ensure that children and young persons do not make purchases or conclude contracts via the Internet.

Businessmen, whose marketing is directed at children and young persons should not use hyperlinks to places containing material that is not suited for children and young persons, or which do not comply with existing legislation. Interactive marketing on the Internet is especially problematic in relation to children and young persons. Interactive advertising is more than just product presentation and product orientation. It is sophisticated forms of advertising such as games, play instruments and competitions where animal figures, dolls and other images and trade marks affiliated with the products typically form part of the marketing. This marketing method has a tendency to be hidden to the child, and trade marks etc are thus played into the child's subconsciousness. Businessmen should not use techniques fit for affecting children's and young persons' subconsciousness.

Businessmen should bear in mind that marketing targeted to adults may also be of the interest to children. Furthermore, contracts entered by minors are prima facie not valid.

Marketing of Medicines on the internet:

National Agency for Medicines (Lääkelaitos) has specified how to apply the regulations on the marketing of medicinal products to promotional material made available on the internet (1492/63/99).

The letter given by National Agency for Medicines concerns primarily Internet pages (web pages) in Finnish, and the pages that are targeted for the citizens of Finland. Finnish Regulations have to be complied with also when the server distributing such information is situated in Finland. Internet pages in Finnish may be hyper-linked only to other web pages to which the Finnish regulations and the Medicines act apply, even if they are in a language other than Finnish.

The letter states, that according to the Medicines Act and the Administrative Regulation 3/1997, the marketing of prescription-only medicines (POM) to the general public is prohibited. This prohibition also applies to the promotion of prescription-only medicines to the general public on the Internet.

Any information on prescription-only medicines on the Internet shall generally be protected with a password, so that only physicians, dentists, veterinarians and pharmacists have access to such web pages. The obligation to restrict access with the use of a password shall not be bypassed with the publication of the notice "these pages are intended for health care professionals only" or with any other analogous solution.

Unmodified and unabridged information on medicinal products, as authorised by competent authorities (e.g.: the Summary of Product Characteristics, and the package leaflet of a medicinal product) are normally not considered as advertising, unless the presentation clearly constitutes a "covert inducement" to promote the prescribing, supply, sale or consumption of the medicinal product. This principle applies also to prescription-only medicines, and access to such information need not be restricted with a password. The Summary of Product Characteristics or the package leaflet may not be hyper-linked to any promotional material or advertisement. The publication of instructions on the use of medicinal products is also allowed, when users may need special guidance (e.g. inhalations and insulin pens).

It is permitted to mention briefly in articles and published reports that a named prescription-only medicine is used to treat a certain disease. The full introduction of therapeutic indications, mode of action, efficacy or other such properties (so-called therapeutic claims) of a medicinal product can be considered as promotional material. Published articles or reports on diseases and their treatment can also contain information of prescription-only medicines, if all the products on market are introduced objectively. If only one product designed to treat a certain disease is on market, its presentation in this manner can be deemed to constitute promotional material.

The overall presentation of drug information determines whether the material is promotional or not. There is no legal impediment to mentioning the medicinal product by name. In contrast, the omission of the name of the medicinal product will not render the article or Internet page lawful, if the content can be considered promotional in other respects. The marketing authorisation holder of medicinal product is also obliged to ensure that the hyper-links from the Internet page conform with the Finnish Medicines Act and Administrative Regulations, in the event that the hyper-linked pages are in a foreign language, for example in English.

Electronic publications, Internet pages of patient organisations and other similar web pages:

Editorial articles shall be based on the editor's initiative, discretion and conclusions. They shall not be written with a bias to the advantage of a single pharmaceutical company and its marketing efforts. The borderline between editorial and promotional material has to be clear, and advertisements shall be identifiable as such in every mode of presentation using any medium.

#### Pharmacies:

According to Administrative Regulation 3/1999 of the National Agency for Medicines, pharmacies may advertise medicinal products only on the pharmacy's premises. In other words, if a pharmacy has its own Internet pages, it may not use them for advertising any medicinal products.

## MOBILE TELEPHONY

General law on consumer protection in Finland *Consumer Protection Act* (Kuluttajansuojalaki 38/1978), hereinafter referred as "CPA".

CPA applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. CPA applies also where a business acts as an intermediary in the transfer of goods or services to consumers.

For the purposes of CPA, *consumer goods and services* are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

The Act on the Protection of Privacy and Data Security in Telecommunications (Laki yksityisyyden suojasta televiestinnässä ja teletoiminnan tietoturvasta 565/1999) includes regulation concerning telecommunications in direct marketing.

According to Section 21,

Telecommunications may not be used for direct marketing without the prior consent of the subscriber if the calls to the called subscriber are made by means of automated calling systems or facsimile machines unless otherwise decided by the ministry (paragraph 1).

Without prejudice to the provisions of paragraph 1, telecommunications may be used for direct marketing by means of automatic systems if a subscriber who is not a natural person has not forbidden it unless otherwise decided by the ministry. However, a telefax may be used for direct marketing to a subscriber who is not a natural person (paragraph 2).

Telecommunications used for the purposes of direct marketing to a natural person by other means than those referred to in paragraph 1 shall be allowed unless expressly forbidden by him. The subscriber must have a way of forbidding the direct marketing referred to in this subparagraph free of charge (paragraph 3).

The ministry shall, where necessary, taking into account the functionality and security of the telecommunications network and telecommunications services as well as the reasonableness of obligations ensuing on the providers of direct marketing, decide in more detail on the means of telecommunications which (paragraph 4):

- (1) would be allowed in telecommunications referred to in paragraph 1 without the consent of the subscriber provided, however, that the subscriber is able to

forbid or prevent the telecommunications referred to in this subparagraph; as well as which

- (2) in telecommunications referred to in paragraph 2 require the prior consent of the subscriber.

Direct marketing directed at a consumer shall further be governed by the provisions of the Consumer Protection Act (paragraph 5).