

BIRD & BIRD

**THE EVOLUTION OF NEW ADVERTISING
TECHNIQUES**

SWEDEN

SWEDEN

- SUMMARY -

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

Television

The Radio-and Television Act came into force on 1/12/1996 and applies to radio and TV-programmes directed at the general public.

1. Definitions

- **broadcaster** : is not defined
- **advertising**: advertising and other practices in the course of commercial activities which are intended to promote the sale of goods/services (a remuneration is not mentioned)
- **sponsoring** : is included in the definition of advertising
- **tele-shopping**: definition is similar to the definition in the Directive TVWF

2. Advertising

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

The rules are more severe than the rules of the Directive TVWF. Insertion of advertising is allowed in between 2 completed parts of a programme and their duration has to be 20 minutes minimum. From 01/04/2002 a system identical to the rules in the Directive will come into force. However it will remain prohibited to insert advertising in religious programmes or in programmes addressed at children below 12 years.

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

The rules are stricter than the Directive: maximum 8 minutes of advertising in 1 hour (between 7pm and 12pm this can exceptionally be extended to 10 minutes). It is also stated that the daily proportion of advertising shall not exceed 10%.

3. Tele-shopping

There are no pure tele-shopping channels in Sweden today. Broadcasters that have transmission licenses issued by the government may not transmit pure tele-shopping programmes. Other broadcasters, allowed to carry advertising, can also broadcast tele-shopping programmes. The rules on insertion of advertising in and between programmes also apply for tele-shopping.

4. Sponsoring

According to Swedish law programmes are sponsored when they are wholly or partly financed by someone who is not engaged in television broadcasting or in the production of audiovisual works. The right to transmit sponsored programmes is restricted for some broadcasters (SVT, UR). Programmes can be sponsored with the exception of programmes for children and news. Short programmes such as weather forecast or traffic information cannot be sponsored. Sponsoring of trailers is also not possible.

The sponsor message must be neutral and may not be mistaken with traditional advertising. Sponsored programmes should be identified at the beginning or at the end of a programme by the name/logo or brand. Slogans, address, opening hours are prohibited. The message may also be inserted during breaks.

5. Product Placement - Surreptitious advertising

Swedish law expressly prohibits surreptitious advertising. Programmes that are not advertising or tele-shopping shall not unduly favour commercial interests. The applied criterion is the rule of undue prominence (significant focus on a product while it is not justified by the content of the TV programme).

6. New advertising techniques

a) split screen techniques

There are no specific rules on split screen techniques. It has been used for programme-information but also to identify a sponsor during credits.

For advertising it would probably be considered as contrary to the separation principle.

b) virtual advertising

There is no specific regulation. The technique has been used by 1 broadcaster and is now under examination by the Swedish Broadcasting Commission.

c) interactive advertising (digital television)

There exists no specific regulation. The Swedish Broadcasting Commission however examined interactive services offered on digital television. It considered some of the services as TV-programmes. In case of shopping services, TV regulation does not apply.

Radio

The Radio and Television Act also applies to radio broadcasting. It contains specific rules on the amount, duration and content of advertising. Advertising can be inserted at any time during programming. There is however a prohibition to put advertising before or after a programme directed at children below the age of 12. A maximum of 8 minutes advertising per hour is allowed. The rules on sponsorship are similar to the rules for TV.

Internet, Mobile Phone and Cinema

There is no specific regulation on advertising for these media: general regulation on consumer protection and advertising applies (together with self-regulatory codes).

There is no general prohibition against unrequested marketing in Swedish legislation, but the general clause on improper marketing practices can be applied: particularly intrusive methods can be banned through application of these rules. For individual direct marketing by e-mail, sms, an opt-out solution is provided.

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This report has been drafted by Bird & Bird Stockholm

General remarks:

The Swedish Broadcasting Commission suggest a more consequent way of expressing the authority – either the whole name or the suggested abbreviation, SBC. Further the SBC suggests a more consequent use of the expression “undue favouring” in RTL 6:4 – now several expression are used for the same thing which would increase the risk of misinterpretation.

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TELEVISION

I. Advertising

A. General regulation

1. General law on consumer protection applicable to all media

Marketing Practices Act (1995:450)

On 1 January 1996 the present Marketing Practices Act, hereinafter referred to as MFL, came into force. It implements the EEC Council Dir. 84/450 relating to misleading advertising and EEC Council Dir. 97/36.

Furthermore, implementations of EEC Council Dir. 89/552 TV Without Frontiers (hereinafter referred to as TVWF) can be found in the Act.

The Marketing Practices Act comprises the general principles on the rules of commercial marketing. For the purpose of this Act **marketing** means; advertisement and other measures in the course of commercial activities which are intended to promote the sale of and access to products.

The Act does not for example regulate political propaganda, social information or religious proclamation.

The purpose of the Act is to promote the interests of consumers and trade and industry, in conjunction with the marketing of goods, and to counteract marketing practices which are unfair to consumers and undertakings.

It applies where an undertaking markets or itself makes inquiries with respect to products in the course of operating its business. The Act shall also apply to television broadcasts via satellite which are governed by the Radio and Television Act (sec. 1-3).

Furthermore the **general clause** states that marketing practices shall be consistent with generally accepted marketing practices and shall otherwise be fair with respect to consumers and undertakings (sec. 4).

Generally accepted marketing practices includes, besides good business practices (see ICC:s regulations on advertisement), legally binding as well as non-binding regulation for the purpose of the protection of consumers or undertakings in advertisement.

The requisite **fair with respect to consumers and undertakings** have in case law been interpreted as among other things prohibiting advertising containing violence and illegal advertising.

Undertakings shall, in the context of marketing, provide such **information** as is **of particular importance** from the point of view of the consumer (sec. 4).

There is a general principle on **identification** in advertising. It stipulates that all marketing shall be formulated and presented in such a way that it clearly appears that marketing is involved. The party responsible for the marketing shall also be clearly indicated (sec. 5).

In sec. 6 of the Act the rules on **misleading advertising** are stated. The section is written in the light of the dir. 84/450/EEG and is a non-exhaustive exemplification on marketing assertions and other representations which are misleading. Two of the exemplifications in the Swedish legislation have no equivalences in the directive, these relate to misleading advertising in relation to products influence on health or the environment.

According to Swedish case law the TVWF directive has not been able to prevent MFL from intervening when an undertaking advertises to a Swedish audience through broadcast from another EU-country (MD 2000:4).

The **Consumer Agency** and the **Consumer Ombudsman (KO)** together comprise the central governmental body responsible for consumer affairs. The Consumer Agency/KO enforces consumer market legislation in most areas, for instance regarding TV-advertising. Guidelines from the Agency are an example of generally accepted marketing practices.

The KO may, ex officio or if a complaint is referred to him, take a case to specifically appointed courts unless the advertising is not unfair from a general public point of view or trivial. A case may also be taken to the courts by a businessman who is affected by the advertisement or by an association of consumers, undertakings or wage-earners (sec. 38 MFL). The Market Court is generally the first and final instance. Only when the matter concerns a market disturbance charge or a claim for damages the first instance is The Stockholm City Court. The rules on sanctions available in MFL are also applicable to supplementary regulation.

Consumer Sales Act (1990:932)

The Consumer Sales Act came into force on 1 January 1991. The Act applies to sales of personal property which an undertaking sells in the course of its business to a consumer primarily for private use (sec. 1).

The act does not deal with advertising specifically. However sec. 19 states that the goods shall be considered defective if they do not conform to information relating to the characteristics or use of the goods which the seller provided in the context of marketing the goods or otherwise prior to the sale, and which may be assumed to have influenced the sale.

Consumer Services Act (1985:716)

On 1 July 1986 the Consumer Services Act came into force. Again, the act does not deal with advertising specifically. Sec. 10 states that the service shall be considered defective if the result deviates from any representations made in conjunction with entering into the contract, or otherwise in the course of marketing, which were relevant to an assessment of the nature or ultimate utility of the service and which may be assumed to have influenced the contract.

Consumer Contract Terms Act (1994:1512)

The Consumer Contract Terms Act came into force on 1 January 1995. The Act concerns contract terms regarding the offering of goods or services used by an undertaking towards a consumer.

The Act does not deal with advertising specifically. If a contract term is considered to be unfair towards the consumer with regard to the price and other circumstances, the Market Court (after an application from the KO) may prohibit the undertaking to use the contract term in the future. This is true if the prohibition is necessary out of concern to the general public or otherwise lies within the interest of consumers or competitive undertakings (sec. 1, 3-4).

Price Information Act (1991:601)

The Price Information Act came into force 1 April 1992. According to MFL advertisement must contain information that is of particular importance to consumers. Naturally this shall be seen in the light of the nature of the medium that is the carrier of the advertisement. It is always considered to be of specific importance that such information that is stated in law is given, for example information according to the Price Information Act. When an undertaking is advertising a product or a service, as a retailer to a consumer the price must be stated (sec. 4 and 14)

The Act on Names and Pictures in Advertising (1978:800)

The Act came into force 1 January 1979 and applies to advertisement in all mediums. It is not specifically aimed on protecting consumers, but provides general rules on the content of advertising in all mediums. The Act states that undertakings, when advertising (MFL:s definition of advertising is applicable to this Act), may not do a representation using an individual's name or picture without the consent of the individual.

2. Specific audiovisual regulation

On 1 July 1994 two new authorities were established on the radio and television field.

The Swedish Radio and TV Authority is the state licensing and supervisory authority in the media field. The authority keeps a register of all those making transmission in accordance with the Radio and TV Act. Licences are being granted for local and community radio transmissions and for temporary transmission activities. The authority also designates local cable broadcasting companies. No licence is required from the Radio and TV authority to broadcast over satellite or through cable, nevertheless the satellite- or cable-broadcasting company has to register with the authority.

The authority can decide on sanctions if certain rules governing transmission activities are not complied with. The Radio and TV authority also monitors developments in the media field.

The Swedish Broadcasting commission (SBC) is a state authority which examines radio and television programmes in Sweden. The Commission shall, on a strictly ex post facto basis, supervise the compliance of programme content with the provisions of the laws which regulate broadcasting services and the licences granted by the Government. No license is

required from the Radio and TV authority to broadcast over satellite or through cable, nevertheless the satellite broadcasting company or the cable broadcasting company has to register with the authority.

The Commission's mandate covers all Swedish radio and television broadcasters which offer services to the general public, be it on a local, regional or national basis. The Commission also monitors the new digital terrestrial television channels. The Commission additionally has the task of monitoring foreign satellite transmissions to the Swedish general public, for example TV3 and Kanal 5, which are based in the United Kingdom, and of judging whether these transmissions conform to the television directives adopted by the member states of the EU. Although the Commission has no jurisdiction over the radio and television companies based abroad, it can report its observations to the Government or the foreign authority concerned. (ZTV's place of establishment is currently being subject to investigation by the SBC).

The regulations on which the commission bases its monitoring function are to be found in the Radio- and Television Act and the transmission licences issued by the Government to certain programme companies. The most comprehensive rules are those for SVT, SR, UR and TV4. For example, the rules require these companies to conduct their operations in an impartial and factual manner. Furthermore they must take into consideration the media's extraordinary impact. The Commission mainly acts in response to reports from the general public, but may also do so on its own initiative.

The Swedish Broadcasting commission also monitors how those who transmit radio and television programmes adhere to the rules on advertising, sponsorship and undue favouring of commercial interests.

Radio- and Television Act (1996:844)

The Radio- and Television Act, hereinafter referred to as RTL, came into force 1 December 1996. The Act contains provisions for transmissions of sound radio and TV programmes directed at the general public and intended to be received with the technical aids. There are no special provisions for digital terrestrial TV in the Radio- and TV Act, but the general provisions applicable to TV shall apply. The act only applies to broadcasters under Swedish jurisdiction.

The rules in the Act which deals with TV-advertising are stated in sec.4 and 9 chap. 6 and chap. 7 RTL under the heading "Advertising and other announcements" and are divided in two categories. One category relates to the insertion and duration of advertising and the other category to the content of the advertising.

a) definitions (art 1 directive)

The Radio- and Television Act does not contain a specific list of definitions similar to the one in the TVWF directive.

Television Broadcasting for the purpose of RTL is the transmission of television programmes that are directed at the general public, and intended for reception through technical means. A broadcast is deemed to be directed to the public only where it is

simultaneously accessible, without specific request, to any person who desires to receive it (1:1 RTL).

In the legislative material to the enactment of the RTL it is stated that the meaning of “**television**” should be determined according to common parlance and the need to regulate this type of activity. It is also stated that in common parlance “television” means broadcasts that an indefinite amount of people can receive simultaneously with the aid of a television receiver. This means that the broadcast should be directed at a broad circle of recipients (point to multi-point) and that the broadcast must not be started by the recipient. By “directed to the general public” the Swedish legislator wished to exclude from the scope of the Act transmissions which are not intended for reception by the general public, such as V.O.D.

The definition on **television advertising** according to RTL is the same as in MFL, i.e. there has to be an intention to promote sale of and access to products. On the other hand there is no demand on any remuneration. Advertising in the traditional sense as well as self-promotion, sponsorship messages and tele-shopping can normally be considered to come under the definition of advertising for the purpose of RTL (Bill 1995:96:160 p. 109 f).

The advertising definition does not include announcements other than commercial advertising and other programmes that cannot be considered as advertising, but which are broadcasted on the behalf of someone else. Nevertheless these programmes shall be broadcasted under the same conditions as commercial advertising.

The concept **broadcaster** is not defined in RTL. It should be understood as the natural or legal person that compiles and is responsible for the programme service in question. The Broadcasting Commission have found that only the company that holds editorial control can be the broadcaster. It has also found that editorial control could rest with only one of several companies (Decisions SB 202 –203/00).

b) authorisation to distribute advertising

According to RTL the Government must grant a licence for those who want to transmit a TV-programme through radio waves on a frequency below 3 gigahertz. Transmission licences have been issued to the programme companies SVT, UR and TV4.

SVT and UR are public service TV-broadcasters and are according to the licences not allowed to carry advertising. TV4 is a commercial broadcaster and does carry advertising, but is prohibited from discriminating between advertisers.

A number of national and regional licenses have been granted for digital terrestrial TV-broadcasting. All licenseholders are enabled to carry advertising except *public service-companies* (i.e. SVT and UR).

Local cable-broadcasting companies designated by the Swedish Radio and TV authority (*public access-channels*) are not allowed to transmit advertisement, unless it is a sponsorship message (7:11 RTL). However, other local cable-broadcasters can carry advertising as well as sponsorship messages.

c) **General rules on the content of TV advertising (see art.12, 16 directive)**

The rules on TV advertising are designed to meet the demands that are drawn up by Dir. 89/552/EEC and 97/36/EC.

Anyone who is licensed by the Government to transmit TV-programmes has a responsibility to make sure that the programme activity is in line with the fundamental ideas of the democratic state and not prejudice to the principle of **equality, freedom and respect for human dignity** (6:1 RTL). (This Section also aims to meet the requirements in art. 12 TVWF.)

Transmissions that are licensed by the government may be combined with conditions which provide that the right to transmit shall be exercised impartially and objectively (3:1 RTL). However these requirements do not apply to advertisement.

Programmes transmitted in television containing detailed **violence** of a realistic nature or containing **pornographic** pictures shall either be preceded by a warning identified in sound or contain a continuous warning identified in vision throughout the entire transmission. Programmes of this nature shall not be transmitted during a time of the day or in a way which provides a significant risk for children to see the programmes, unless it for particular reasons is justified (6:2 RTL).

RTL prohibits persons that play a significant part in news or current affairs programmes to appear in advertising (7:3) This probably includes **news correspondents** but also e.g. programme presenters.

The Directives do not prevent Sweden to apply more restrictive rules with regard to advertising. This can be seen with regard to the total ban on television advertising addressed to **children** below 12 years of age and the prohibition for a person or a character, that plays a prominent part in programmes that mainly addresses children under that age, to appear in a TV-advertisement (7:4 RTL); (Directive art. 16). The ban on children advertisement only applies to broadcasters under Swedish jurisdiction.

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

➤ identification of advertising (art.10.1/2 Directive)

There is a general principle on identification of advertising provided for in sec. 5 MFL. It states that all marketing shall be formulated and presented in such a way that it clearly appears that marketing is involved. The party responsible for the marketing shall also be clearly indicated.

In RTL there is a complement to the section above. It states that for other announcements in the course of marketing than advertisement it shall be identified in whose interest it is being transmitted (7:2). (This section aims to implement the directive).

The Directive has also been implemented in sec. 1 chap. 7 RTL. It states that before and after each and every transmission of advertising there has to be a **specific signature** to clearly distinguish the advertisement from other transmissions. The signature shall in television consist of acoustic as well as optical means. For transmissions that are licensed by the government the government may grant an exemption to the rules on signatures (art 10.1). (See self-promotion below.)

Sec. 6 chap. 7 RTL states that the total transmission of TV-advertising at a particular moment may not go below one minute counting only the interval between the specific signatures (art 10.2).

➤ insertion between programmes (art.11,1 Directive)

TV-advertising shall be inserted between programmes (7:7 RTL); (art. 11.1).

➤ insertion during programmes (art.11..1/2/3/4)

Television advertising may be inserted during programmes in the following circumstances:

- i) in natural breaks during sports programmes containing longer intervals or in similarly structured events or performances containing breaks for the audience or
- ii) between programmes that consists of two completed parts of a programme if the duration of the parts of the programmes, that are preceded or followed by advertising, is at least 20 minutes.

For the purpose of the application of the first paragraph a **programme** which, besides the indication of title or source, does not consists of anything but a simple message concerning time, weather, news or equivalent shall not be treated as a separate programme (7:7 RTL); (art 11.1-3).

When the Broadcasting Commission decides on whether a transmission constitutes a separate program it additionally takes into account; the presentation of the transmission, own vignette, specific program host, specific theme, a to the public previously known transmission time and the length of the programme.

According to the SBC different parts of a transmission can constitute separate programmes.

The Swedish legislation allows for programmes, films etc. to be interrupted by one or even two other *programmes* that are surrounded by advertising. The interruptions that follow herewith become significantly longer then if interruptions during programmes would be allowed. Additionally many broadcasters that are broadcasting through satellite have established themselves in the UK where among other things the legislation on insertion of advertising during programmes is less restrictive.

The Government has de lege ferenda proposed that the advertising regulation should be adjusted to bring it more in line with the Directive. New, less restrictive, legislation on insertion of advertising during programmes will subsequently come into force 1 April 2002. These rules stipulate that advertising may be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced (art 11.1).

However, it will not be permitted to insert advertising in any broadcast of a religious service or in programmes addressed to children under 12 years of age (art 11.5).

➤ prohibition to insert advertising (art.11.5 Directive)

Advertising shall not be transmitted directly before or after a programme or a part of a programme that mainly addresses children below 12 years of age, unless it is a sponsorship message (7:7 RTL).

➤ duration (art.18 Directive)

The Swedish rules on duration are applicable to all kinds of advertising (including programmes that consist of the sale of products or services). It is subsequently broader than the TVWF. The prohibited time for advertising is nevertheless shorter than what is allowed according to the directive.

The proportion of transmission time devoted to advertising spots shall not exceed eight minutes during an hour within given clock hours. For TV-transmissions between 7 PM and 12 PM and in exceptional cases this time limit may be extended to ten minutes. If the transmission does not comprise an hour within given clock hours, advertisement may be transmitted at a maximum of ten percent of that time.

The proportion of advertising in a TV-transmission shall not exceed 10 percent of the daily transmission time (7:5 RTL).

e) Surreptitious advertising (Art.10 Directive)

Programmes that are not advertising shall not unduly favour commercial interests (6:4 RTL); (art. 10.4).

B. Regulation for Specific Products

As mentioned above The Swedish Broadcasting Commission is generally the authority which monitors how broadcasters adhere to the rules on advertising. Nevertheless when advertisement concerns specific products, such as alcohol, tobacco and medicines (child advertisement included) the Consumer Agency is responsible for the control. For some products, as is the case with medical products, there are additional bodies responsible for such a control.

1. Alcohol

The present marketing regulations are found in a great number of different regulation sources, legislation, practises, guidelines and other application regulations issued by various authorities as well as voluntary commitments within the trade industry. For the purpose of this report the most important regulations are listed below.

The Marketing Practices Act applies to all areas which are regulated through special legislation (for more information see A.1. General regulation above).

The Radio- and Television Act refers to the Alcohol Act on regulation concerning advertisement for alcohol beverages.

The Alcohol Act (1994:1738)

The Alcohol Act came into force 1 January 1995. From January 1st rules on advertising are included in the Act. The act is connected with MFL and its sanctions. Chap. 4 contains certain stipulations about the marketing of alcoholic beverages. Regulations exist for marketing of spirits, wine, strong beer and beer. _The Act is applicable only to alcoholic beverages. An alcoholic beverage contains more than 2,25% alcohol by volume. The Act applies to marketing directed at consumers for the products mentioned above.

The Act stipulates certain direct bans on certain types of advertising. Among other things it states that that the use of commercials in television programmes to advertise alcoholic beverage is prohibited (4:10).

The Code of Statues of the Swedish Consumer Agency 1979:6

The regulations in the Alcohol Act have not been made concrete to any great extent, and the consumer agency has therefore drawn up guidelines for the marketing of regular beer. Although they are not to be regarded as legislation they must be regarded as extremely authoritative statements on the practical meaning of the legislation. Regular beer is an alcoholic beverage and is therefore covered by the Alcohol Act which prohibits advertising in television.

The agreement between the Swedish Brewers' Association and the member companies regarding the advertising of low alcohol beer and other low alcoholic drinks.

These guidelines contain detailed stipulations concerning prohibited and permitted advertising media, format limits for advertising and detailed stipulations regarding the design of text and images in advertising. The following must be observed in order to fulfil the requirement according to The Code of statues of the Swedish Consumer Agency:

1. Clarity

The marketing must clearly indicate that it advertises low alcohol beer, and that other low alcohol drinks won't be mistaken for stronger drinks.

In advertisements, television and film commercials, on posters and billboards or similar media, the word "lättöl" (low alcohol beer) or the product term, "Klass I" must be used at least once in a sufficiently large type size and be shown for a sufficient length of time to enable the viewer to easily read/interpret it in its entirety. If the trademark's name is spoken or sung in television, radio or film commercials this must be immediately followed by "lättöl" or "Klass I". Regarding advertisements for other low alcohol drinks the term low alcohol drink, low alcohol cider, actual alcohol content or similar has to be added.

2. The content of the advertising

In order to eliminate doubt as to whether the advertising is for low alcohol beer or other low alcohol drinks, the following must be observed:

Advertising must not be associated with alcohol consumption and its effects. Examples of elements not permitted in advertising are presented in the enclosed list.

Advertising must not present low alcohol beer in packaging which is not available in the entire area where the company producing the advertising sells low alcohol beer.

Advertising must not show situations where, according to conventional opinions, alcohol consumption should not occur.

Appendix to the agreement on low alcohol beer advertising:

The following elements are prohibited in the advertising of low alcohol beer or other low alcohol drinks:

- the depiction of people who are clearly, through expressions or behaviour, affected by alcohol
- the use of words such as "beer", or other words used in such a way that they are associated with beverages stronger than low alcohol beer.
- the use of images from other situations where it is obvious that alcohol consumption takes place
- the use of models who are or appear younger than 25 years of age
- the depiction of interiors or other environments and situations which may offend
- the expression of disparaging opinions about alcohol-free beverages
- the insinuation that sexual performance is stimulated by the consumption of alcohol

2. Tobacco

The Marketing Practices Act applies.

The Radio- and Television Act refers to the Tobacco Act on regulation concerning tobacco products.

The Tobacco Act (1993:581)

The Act came into force 1 July 1994. It is prohibited to advertise tobacco products in television. The prohibition also regards TV-broadcasting over satellite that is regulated in the Radio- and Television Act (sec. 14 Tobacco Act).

3. Medicines

The Marketing Practices Act applies.

the Radio- and Television Act where it is stated that television advertising for medicinal products and medical treatment available only on prescription is prohibited, unless it is a sponsored programme (See sponsoring below), (7:10 RTL); (art. 14)

The Pharmaceutical Act (1992:859),

The Act came into force 1 July 1993 and states that information that constitutes part of marketing a medical product shall be up-to-date, objective, balanced. It shall not be misleading (Sec. 21). The section constitutes a complement to the Marketing Practices Act.

The Association of the Swedish Pharmaceutical Industry (LIF) has adopted rules based on codified laws and case law, as well as on regulations about drug information and drug advertising contained in pharmaceutical legislation and other enactments or in directives issued by government agencies - and partly on non-statutory provisions, such as the International Code of Advertising Practice drawn up by ICC and the Code of conduct adopted by EFTA's Pharmaceutical Industries Association. The rules are concordant with WHO's ethical rules for marketing drugs and the IFPMA and the EFPIA Codes of Pharmaceutical Marketing Practices.

Compliance with the rules is kept under constant scrutiny by the pharmaceutical Industry's Information Examiner. Questions as to whether the information supplied and other marketing measures are compatible with the rules are examined by the Pharmaceutical Industry's Information Examiner and the Information Practice Committee. This committee also has the ongoing task of establishing further rules in this area.

Rules Governing Drug Information to the general public (see the list of adopted rules for completeness)

- i) the rules **apply** to any media in connection with the marketing of drugs in Sweden as addressed to the general public;
- ii) **objectivity**; Drug information shall contain meaningful and balanced particulars dealing adequately with the favourable and unfavourable properties of the drugs. This fundamental principle is further defined in the following rules of conduct and may serve as a guide in the interpretation of these rules;
- iii) drug information shall conform to **professional standards of ethics and good taste**. Offensive presentations are not permitted;

- iv) drug information shall be **fair** and **trustworthy** and may not contain any presentation in words or pictures that directly or indirectly - by implication, omission, exaggeration or ambiguity - is intended to mislead;
- v) drug information shall be **easy to recognize** as such; this applies irrespective of the form of the information and of the medium used. Information disseminated through media, which also contain scientific or other editorial materials, shall be so presented that it will be readily recognized as a marketing activity. Written drug information shall clearly show the name as well as the address or telephone number of the manufacturer concerned or of his representative in Sweden;
- vi) drug information shall be **up-to-date**. This means, among other things, that information given about therapeutic results, side-effects and contra-indications shall reflect up-to-date scientific views;
- vii) information as to the qualities and effects of a drug shall be capable of substantiation by means of **documentation**. Documentation is here understood to mean any written or visual presentation containing reports on scientific facts and discoveries. Documentation to which reference is made in drug information shall be of a high scientific standard. It shall have been published or accepted for publication in a scientific journal or made public or accepted for public presentation at a scientific congress or symposium. Other documentation may be cited in exceptional cases, but only on condition that it may be judged to be of great value to those to whom it is addressed. Unpublished documentation shall meet the same quality requirements as published documentation in both contents and form and must be dated and signed by the investigator in charge. Testimonials from individual patients may not be cited as documentation. Case studies shall be formulated as typical cases so that the identity of the individual patient is kept anonymous and the studies shall remain free from subjective evaluations from the patient;
- viii) documentation shall be cited in a balanced and fair way. The criterion for fair and balanced presentation, means among other things,
 1. that the results of a study, which are contradicted by another study, may not be cited without reservation and that results that have been refuted must not be used,
 2. that a study should not be cited in such a way that it could convey an incorrect or misleading impression of the nature, scope, implementation or importance of the study,
 3. that a study performed in vitro or a study based on animal tests should not be cited in such a way that it could give an incorrect or misleading impression of the clinical value of the investigation,
 4. that statements of comparisons between different drugs or alternative treatments should be expressed in such a way as to make clearly evident their statistical validity,
 5. that the report of a study should not be cited or abstracted in such a way that the citation or abstract gives an inaccurate or misleading impression of the contents of the report and the conclusions stated therein.

4. Cars

The Marketing Practices Act applies.

As already stated, sec. 4 MFL provides that advertisement must contain information of particular importance to consumers.

According to Swedish case law and guidelines drawn up by the Consumer Agency, information on the **fuel consumption** on private cars is to be considered as information of particular importance to consumers. Anyone who advertises a specific model of a private car, in advertising media, shall therefore provide such information.

There are on going discussions led by the Swedish Environmental Protection Agency to prohibit advertising of cars **driving** in the **terrain**, since such driving is not in correspondence with Swedish law.

5. Media

There are no regulations on the advertisement of media. It can be mentioned that broadcasters might have a policy of not allowing direct competitors to advertise in their transmissions.

6. Religions, politics and parties, social issues and groups.

The Swedish Broadcasting commission also supervises announcements other than commercial advertising. Such announcements come outside the scope of MFL, but RTL is applicable.

Sec. 5 chap. 6 RTL prohibits transmissions governed by the condition of impartiality (SVT, UR and TV4) to insert announcements by or on behalf of any body whose objects are to win support for a political or religious view or a matter related to interested parties on the labour market. Sec. 1 chap. 7 provides that such announcements shall be deemed to be advertisements.

The preliminary works state that this rule does not prevent organisations or communities to advertise on public activities, events or collections to charity. Neither does it prevent an announcement if its objectives are other than to win support for an opinion just referred to, for example an announcement for a book which opposes a specific political opinion.

C. Self-Regulation

Ethical rules for public service TV and radio and the press exist. These rules, among other things, stipulate a policy on *editorial advertisement*.

The **general rule** is to let no suspicion arise with the general public, that a third party might have unduly influenced the content of the programme. Avoid therefore to publish material on an editorial spot if it cannot be journalistically motivated. This means that when editorial material is published it may not be understood as an advertisement message, without having news- or information value or be motivated out of an entertainment or artistic perspective.

General rules of application;

- i) never design editorial material with the intention to promote products or services and never publish it in a way so it can be mistaken for advertising;
- ii) reject ideas, information and propositions to programmes, if they are connected with requirements on performances which include advertisement in any form, also reject offers like free or greatly discounted journeys to editorial staff, reject gifts and other privileges and never give advance promises on publicity;
- iii) consumer information programmes shall explain how the selection/comparison/testing of the products/services in the programme has been done;
- iv) give advance information on cultural works and events normal news coverage, examine the material critically and carefully examine if information and pictures from new companies and business premises have journalistic news value;
- v) do not mention companies or organisations by name which give or distribute prizes or in other ways participate for example as sponsors or arrangers in contests, parties, charity events or similar, unless journalistic motives exist (for sponsorship which is mentioned in RTL and the transmission licenses, the rules that are stipulated there apply);
- vi) reject information on a company's activity, such as opening hours, product demonstration, prize competitions, or other events, unless they are journalistically motivated;
- vii) a broadcaster advertising for its own sale of products and services and own events shall be designed as an announcement;
- viii) when using material (cars, boats, clothes, furniture, kitchen equipment etc) for photography, names of manufacturers and retailers may not be mentioned, unless it is journalistically motivated.

II. Tele-shopping

A. General regulation

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

For general law on consumer protection see I. A. 1. above.

Consumer Protection in Respect of Distance Contracts and Home sales Act (2000:274)

The Act (Distance Act) came into force 1 June 2000 and implements EEC Council Dir. 97/7. The act applies to distant contracts between an undertaking and a consumer. The act also applies to marketing for the purpose of distant contracts.

In the preliminary works techniques that can be used for the purpose of distant communication are listed in correspondence with the directive. The list contain tele-shopping as a possible technique for such communication (see Bill 1999/2000:89 p. 27 f. and p. 75).

Sec. 9 stipulates that the undertaking shall provide the following information when advertising for the purpose of distant contracts:

- i) name and address of the undertaking;
- ii) a description of the main characteristics of the goods or service;
- iii) the price of the product or service including all taxes and fees;
- iv) delivery costs;
- v) the arrangements for payment, delivery or performance;
- vi) the existence of a right of cancellation according to the Distance Act;
- vii) the cost of using the means of distance communication, unless the cost is calculated after a normal charge;
- viii) the period for which the offer remains valid;
- ix) the minimum duration of the contract, if the contract regards returning deliveries of goods or regards a service that is performed continuously.

The information shall be provided in reasonable time before the contract is concluded.

The information shall be clear and understandable and provided through means appropriate to the distance communication that is being used.

The undertaking shall take particular consideration to the need of protection for minors.

Information considered above constitutes information of particular importance for consumers according to sec. 4 MFL (sec. 12 Distance Act).

2. Specific audiovisual regulation

a) definition

According to Swedish legislation pure tele-shopping channels are permitted, but there is no specific regulation on tele-shopping programmes in ordinary TV-channels.

Sec. 5 chap. 7 RTL defines tele-shopping programmes as “programme services” that are exclusively intended for programmes where the general public is being offered to order goods or services (sales programmes). The term “programme services” is in turn defined as “a compiled range of programmes that are broadcasted under a common designation”.

The preliminary works state that a “programme service” usually means the content in a programme channel.

For such “pure” tele-shopping programme services defined in sec. 5 RTL, specific regulation is available regarding to duration of advertising and identification of advertising (see below).

The specific regulation for sales programmes subsequently only comprises pure tele-shopping *channels* and not tele-shopping *programmes* that make use of only parts of a channel.

Thus, there are no specific rules governing tele-shopping programmes inserted in conventional TV-channels. According to the preliminary works tele-shopping in “mixed” transmissions shall be subordinated to the normal regulations on duration of advertisement. (See also definition on TV-advertising I. A. 2. a. above.)

b) authorisation

There are no pure tele-shopping channels under Swedish jurisdiction today.

Broadcasters that have transmission licences issued by the government (SVT, UR and TV4) may due to their public service character or/and transmission licence not transmit pure tele-shopping programme services referred to above.

There is no prohibition for broadcasters allowed to carry advertising to transmit tele-shopping *programmes*, these will consequently be subordinated to the normal regulations on duration of advertisement.

Since local cable-broadcasters designated by the Swedish Radio and TV Authority are not allowed to transmit advertisement (unless it is a sponsorship message), they should

consequently not be permitted to transmit tele-shopping in any form (7:11 RTL). Other local cable-broadcasters could however broadcast tele-shopping.

c) general rules on content

See I. A. 2. c.

d) rules on duration and insertion in and between programmes

➤ identification of advertising (art.10.1/2 Directive)

The directive has been implemented in RTL. It states that for pure tele-shopping programme services a particular signature has to be continuous. This means the signature has to remain through the entire transmission of the advertisement. The signature needs only to consist of optical means (7:1).

The designation of the tele-shopping channel has to be stated in the beginning and at the end of the transmission (7:5:3 RTL).

This section is a complement to sec. 9 chap. 6 that stipulates that anyone who is transmitting a programme according to RTL shall use a name for its transmissions which has been approved by the Radio- and TV Authority. The name shall be shown at least once every transmission hour or, if that is not possible, between the programmes.

➤ insertion between and during programmes (art. 11.1-4 Directive)

As already mentioned RTL provides a distinction between tele-shopping programme services and other forms of tele-shopping. The rules, concerning insertion between and during programmes, applicable to advertising also apply to “other” forms of tele-shopping, whereas they for natural reasons do not apply to tele-shopping channels (7.5.3).

See under Advertising for rules on insertion between and during programmes and for prohibition.

➤ prohibition to insert advertising (art.11.5 Directive)

See I. A. 2. d. (Television)

➤ duration (art.18 Directive)

The Swedish rules on duration are stipulated in RTL and are applicable to all kinds of advertising (including programmes that consist of selling products or services). It is subsequently broader than the TVWF. Also here the rules are different for tele-shopping channels and other forms of tele-shopping.

B. Regulation for Specific Products

1. Alcohol

The regulations of the RTL apply in full to tele-shopping.

2. Tobacco

The regulations of the RTL apply in full to tele-shopping.

3. Medicines

Tele-shopping programmes for pharmaceuticals and for medical treatment shall not be transmitted in television.

For the purpose of this Act pharmaceuticals are preparations that shall be approved or recognised for sale according to sec. 5 the Pharmaceutical Act or EEC Council Regulation nr 2309/93 (7:10:3 RTL).

4. Cars

See I. B. 4. (Television)

5. Media

See I. B. 5. (Television)

6. Religions, politics and parties, social issues and groups.

See I. B. 6. (Television)

III. Sponsorship

A. General regulation

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

See I. A. 1. (Television)

2. Specific audiovisual regulation

a) definition

Sponsorship comes under the definition of advertising for the purpose of RTL (see I. A. 2. a. Television)

A programme is sponsored if it is wholly or partly financed by someone not engaged in television broadcasting or in the production of audiovisual works (7:8 RTL).

According to the transmission license for SVT sponsorship is defined in sec. 23, which explains it as when a sponsor contribution have gone directly to SVT or led to a significant cost reduction for the programme.

b) authorisation

The right to transmit sponsored programmes is limited for SVT and UR. The transmission license for SVT and UR states that the broadcasters may not transmit such sponsored programmes where the sponsor contribution have gone directly to SVT or UR or led to a significant cost reduction for the programme.

Neither is it permitted to transmit sponsored programmes that mainly are directed at children below 12 years of age.

The transmission license for SVT (but not for UR) states that SVT is permitted to transmit sponsor messages in connection with sport events and programmes that involve a transmission of a public gathering or official event where SVT is the arranger, under the condition that it regards an arrangement within an undertaking towards the European Radio Union (EBU) or an arrangement of similar importance and that the programme is broadcasted live to many countries.

If without being a question of prohibited sponsorship according to sec. 23 p. 1 (transmission license) a contribution to the financing of programmes has been given by someone not engaged in radio or television or in the production of audio-visual works, information about this shall be given according to the principles in sec. 8 chap 7 RTL. Such information need not to be given if it cannot be given without complication or it is obvious that it should lack importance for the viewers.

TV4, and other commercial broadcasters may sponsor all programmes with the exception for news and children programmes. For other broadcasters all programmes may be sponsored except for news.

c) general rules on content (in principle these will be the same as for advertising)

(See also I. A. 2. c.)

The license for SVT states that a logo may be used only if there is no risk of mistaking it with a service or product that the sponsor is marketing. The sponsor message, that shall be short, may not be followed by music and shall also in other respects be given a neutral design.

There are no specific rules on content in sponsor messages in the legislation. Sec. 8 chap. 7 RTL states that a broadcaster has to appropriately inform the public about the sponsorship. It is agreed that the intrinsic meaning of this term is that a sponsor message may not be designed so that it will be mistaken with traditional advertisement and that it in other respects shall be given a neutral design.

The demand on neutral design is less restrictive for commercial broadcasters, including TV4.

d) rules on duration and insertion in and between programmes

➤ identification of sponsorship

When a program is sponsored the broadcaster has to *appropriately* inform the public on the identification of the sponsor as such at the beginning and/or the end of the programme and on the fact that the programme is being sponsored (7:8).

It is not enough just to show a bumper with the name of the sponsor. Neither can “thanks to”-bumpers alone constitute sufficient information on that the programme is being sponsored.

The Broadcasting Commission has in its decisions stated that the sponsor might be identified by the name, logo and/or name of its product, however a company name and the name of a product from the same company may not appear as a sponsor of the same programme.

Inappropriate identifications according to the Commission are for example slogans or the sponsors telephone number and address or opening hours.

A sponsor message may not be designed as advertising, if this notwithstanding would be the case it could be regarded as an attempt to promote commercial interests in an unwarranted manner according to sec. 4 chap. 6 RTL. (See V. a. Television)

A sponsor message does not have to be surrounded by a specific signature (7:8).

Most licenses to broadcast digital terrestrial television contains a prohibition clause on sponsoring children’s programmes.

➤ insertion between programmes

Due to the fact that sponsor messages are considered to come under the definition of advertising they should generally be inserted between programmes or in breaks.

When the SBC decides on whether a transmission constitutes a **separate program** it takes into account; the presentation of the transmission, an own vignette, specific program host, specific theme, a to the public previously known transmission time and the length of the programme.

For example the SBC has asserted that it is not possible to sponsor a short message about the present time, a short weather forecast or traffic information, especially if the same presenter presents these messages as well as the surrounding transmissions. Neither is it permitted to insert a sponsor message in a trailer for the following programme, regarding the identification of the sponsor for the following programme.

According to the SBC different parts of a transmission can constitute separate programmes. However the Commission has in many cases asserted that programmes which are interrupted by other short programmes still are to be considered as *one* programme all together and that a sponsor message therefore may not be transmitted in the interruption but only in the beginning and at the end of that programme (SB 219/94 and 72/96).

Case law provides that a **change of channels** constitutes a new programme for the purpose of inserting sponsor messages (Administrative court of appeal case nr. 3144-1998).

Sponsor messages may be inserted directly before or after a programme or a part of a programme that mainly addresses **children** below 12 years of age, but the message as such may not have the purpose to catch the attention of children below 12 years of age (7:7 and 4).

➤ insertion during programmes

The SBC have asserted that sponsorship messages that are inserted on other occasions than at the beginning and/or the end of a programme, e.g. in breaks in performances or events (7:7), shall comply with the rules on advertising and herewith among other things be surrounded by a specific signature (SB 330/97).

In relation to this decision the broadcasters SVT and TV4 have requested a change in the legislation with the meaning that the exemption from a demand on a specific signature shall include *all* sponsorship messages and that such messages shall not be counted towards the permitted time limit for advertising.

Additionally the SBC have claimed that only broadcasters that are permitted to advertise (i.e. not public-service broadcasters) have the right to insert sponsor messages on other occasions than at the beginning and/or end of programmes. The right to transmit sponsor messages is according to SVT:s transmission license connected to sec. 8 chap. 7 RTL. The SBC asserted that this means that only sponsor messages complying with the rules in this section are permitted. Two courts of instance have dismissed the claim and the SBC has appealed to the highest court of instance.

The Radio- and TV Act Committee, appointed by the Government, will revise RTL and if necessary make amendments to clarify the rules on sponsor messages in connection with long breaks in programmes.

➤ prohibition to insert sponsorship

A program mainly concerning news or current affairs may not be sponsored (7:8).

➤ rules on duration

A sponsor message between programmes does not have to count towards the time limit on advertising (7:8).

B. Regulation for Specific Products

1. Alcohol

A programme may not be sponsored by someone whose main activity involve the production or sale of alcoholic beverages (7:9 RTL).

2. Tobacco

A programme may not be sponsored by anyone whose main activity involves the production or sale of tobacco products (7:9 RTL).

3. Medicins

If a pharmaceutical company sponsors a TV-program the sponsorship may only promote the company name or reputation, but not medicinal products or medical treatment available only on prescription (7:10 RTL).

4. Cars

There are no specific regulations.

5. Media

There are no specific regulations.

6. Religions, politics and parties, social issues and groups.

(See I. B. 6. Television)

IV. Self-promotion

According to RTL self-promotion is a form of advertising. However it is stated in sec. 12 chap. 7 that the chapter does not apply to advertisement for a broadcaster's own program activity, such as trailers etc. Such advertisement does therefore not have to be transmitted during the permitted time for advertisement.

If however self-promotional trailers are transmitted during regular advertisement transmissions they shall nevertheless count towards the whole permitted time for advertisement.

The transmission licenses for the public service broadcasters also state that the ban on advertisement does not include advertisement for trailers, education material or other similar products with direct connection to the programmes.

For transmissions that are licensed by the government the government may grant an exemption to the rules on signatures (7:1 RTL). This exemption is aimed particularly at the public service broadcasters, due to the fact that self-promotion is considered to be advertising. Their self-promotion consists of e.g. course books, which is accepted for a public service channel.

According to the ethical rules that exist for public-service TV broadcasters must design the sale of their own products and services as advertisement. (see Ethical rules for public service TV and radio and the press.)

V. Other promotion techniques

e) presentation of products/services in programmes (product placement, prize offers, "inevitable advertising",...)

RTL does not contain particular provisions regarding the different forms of product placement. In addition to the rules on sponsorship the **general prohibition on undue prominence**, contained in sec. 4 chap. 6 covers product placement. It states that programmes that cannot be considered to be advertising may not unduly favour commercial interests.

An interaction between the rules on sponsorship and undue prominence can be seen where the rules on sponsorship are not applicable because the marketing has occurred during a program and not before or after it.

The transmission licenses for the terrestrial broadcasters also contain an applicable provision which states that the transmission right shall be practised impartially and objectively.

MFL applies to all forms of marketing in all mediums and works on a different level than RTL. While RTL prohibits surreptitious advertisement, MFL provides that such advertisement must be clearer. Through the provisions on marketing- and advertiser identification and improper marketing practices, product placement which does not clearly appear as advertisement will not comply with MFL (sec. 5 MFL).

If a product placement would comply with MFL, the chances are high that it would constitute an undue favouring of commercial interests according to RTL. On the other hand a relatively hidden product placement would probably comply with both MFL and RTL, due to the fact that it would neither be regarded as an undue favouring of commercial interests nor as commercial information that is regulated by MFL.

RTL does not literally prohibit surreptitious advertising, but states that

1. advertising should be clearly distinguished from other content by an optical and acoustic signature,
2. programmes that are not advertising may not give undue prominence to commercial interests.

This is supposed to mean that not advertising may appear in programmes. A surreptitious advertisement in a programme thus violates both the RTL and the MFL. If an obvious advertisement appears in a programme it violates the RTL and, for the sake of unlawfulness, also the MFL.

The only **party** that can be held **responsible** according to RTL is the broadcaster. However the product placer or anyone that has contributed to the marketing (in theory the broadcaster) can be held responsible according to MFL.

According to the preliminary works the rule on undue prominence in RTL covers the situation where there has been a significant focus on a company name, product, service or a logo and where this cannot be justified from a **news-, information- or entertainment perspective**. For the purpose of this rule it is not important if the public consider the marketing informative or if the program is popular and has a numerous audience.

An example on game shows and the exposure of brands and **prizes** is given. A quick exposure of the prizes is permitted, but a noticeable and for the situation unjustified exposure will constitute an unlawful product exposure and result in an undue favouring of commercial interests.

The SBC have accepted mentioning of some brands in game shows, such as for cars. It seems as if an information perspective is justified when there are many kinds of a product or when there is a big economical difference between these kinds. Also programmes that give attention to new books, films or records etc. have in general been accepted due to their informative- or entertainment value.

A distinction has to be made between audiovisual works produced for and by the television broadcaster and works for which the broadcaster bought the TV-rights, for example cinematographic films. In the latter it is questionable if it is possible for the broadcaster to avoid undue prominence without prejudicing the copyrights of the rights holders.

On answering the question of what is to be considered as “**commercial interest**” the SBC has stated that such interest exist when the product is provided by someone who is running an activity of economical nature, with or without the purpose to profit.

SBC has also stated that special caution should be taken when exposing logos and company names in **children programmes**, due to the ban on children advertisement. (SB 239/96)

The transmission licences granted to SVT, UR and TV4 are as mentioned above combined with conditions which provide that the right to transmit shall be practised **impartially and objectively**. This condition is limited to the editorial programme material. Subsequently this condition does apply to neither advertising nor sponsorship. The rule in 6:4 RTL means among other things that a favouring similar to advertisement of a certain product or a specific company may not occur. This is of interest for the regulation on product placement. A strong focus on products etc. is not permitted according to the rule on undue favouring in 6:4 RTL. *(There seem to be a misunderstanding in this – impartiality has nothing to do with e.g. product placement, but instead it's the rule in 6:4 RTL that prohibits product placement.)*

Hence this rule in RTL also regulates the editorial content and is therefore very important since not all broadcasters are bound by a transmission licence.

According to the decisions of SBC a broadcaster favouring of its **own sale activity** is not an undue favouring of commercial interests as long as it regards a transmission for which there are no demands on impartiality (i.e. local- and community radio, cable- and satellite transmissions and terrestrial digital TV-transmissions).

f) co-production or co-financing with promotional intent

There are no particular provisions in the RTL as regards co-production or co-financing of audiovisual productions for promotion purposes, although the rules on sponsorship may be applicable in such a case.

As regards the public service broadcasters the transmission license for SVT stipulates that if, in cases that do not constitute sponsorship, a contribution to cover the cost of production has been made by a person or organization not primarily engaged in broadcasting or the production of audiovisual works, the contribution shall be acknowledged as sets out in sec. 8 chap. 7 RTL. Such acknowledgement is not required, however, if it is difficult to ascertain the identification of the donor or the information is clearly of no consequence to the viewing public.

The ethical rules for public service broadcasters additionally recommend rejecting ideas, information and propositions to programmes, if they are connected with requirements on performances which include advertisement in any form. They also recommend to reject offers like free or greatly discounted journeys to editorial staff, to reject gifts and other privileges and never to give advance promises on publicity.

g) Merchandising

The Swedish broadcasters frequently use merchandising. There are no regulations prohibiting for example the public service broadcasters to use merchandising, but they may not use the funding granted to them through their agreements with the Government for the purpose of merchandising.

It should be mentioned that it has been questioned if merchandising is permitted according to the public service transmission licences. Nevertheless SVT regards it as permitted financing.

A general requirement for public service merchandising according to SVT is that the products hold the same high standard as the programmes.

V. New advertising techniques

a) split screen techniques

There are no particular regulation for this technique and thus general rules on advertising laid down in chapter 7 RTL should apply.

Split screen techniques have been used for sponsorship and self-promotion purposes and for the purpose of displaying latest news, stock market, sporting updates during news or sports programmes and incoming e-mails and text messages from the viewing audience.

Split screen have not been used for advertising purposes by Swedish broadcasters. However, it has been used for sponsoring purposes by Swedish broadcaster TV4 (broadcasting of sponsor credits in parallel with the credits of a film).

b) interactive advertising

No specific regulation exists on interactive advertising.

The technique is used by a Swedish broadcaster Cell Internet Commerce Development AB (under the designation eTV). eTV has been granted a transmission license to transmit digital terrestrial television (the introduction of digital TV-transmissions in Sweden did not necessitate amendments to RTL:s rules on advertising).

eTV transmits music videos, entertainment news combined with interactive tele-shopping services and other interactive services. General information related to interactive services offered by eTV is constantly being broadcasted over the digital network and stored in the memory of a set top box. This information is constantly updated and always available for viewers to click around in. When the viewer uses the remote control to order (an individual – specific activity), the return channel is used.

A question relating to whether eTV adheres to the rules on advertising in RTL has appeared and the SBC have ex officio examined and decided in this matter (SB 378/01). According to the SBC, eTV did not comply with the rules on advertising volume and signature claiming they were a pure tele-shopping channel and as such did only need to comply with specific, less restrictive rules on advertising. Three main questions arose in front of the Commission.

- i) *Shall interactive services be regarded as TV-transmissions and subsequently be subordinated to RTL:s rules on advertising?*
The Commission asserted that eTV:s interactive services contained features of TV-transmissions aimed at the general public and subsequently the transmissions must comply with RTL.
- ii) *Is eTV a pure tele-shopping channel and if not do the transmissions break the rules on advertising?*
The Commission stated that the channel transmitted interactive tele-shopping services as well as other programmes and could subsequently not be considered a pure tele-shopping channel. It therefore had to comply with normal rules on advertising.
- iii) *Are the rules applicable to interactive tele-shopping services?*
The Commission stated that in the case of interactive tele-shopping services the viewers request these and there are no programme content that can be disturbed. On these grounds **the rules on advertising shall not be applicable to interactive tele-shopping services**. Nevertheless the rules shall apply to other interactive services.

An advertisement technique used by Channel 5 has raised an important question among the Swedish broadcasters, namely – can advertisement that is actively requested by the viewer be in breach with the rules on insertion of advertising in RTL?

The broadcaster Channel 5 transmits from the UK and is thus not under Swedish jurisdiction. Channel 5 puts out a small square during their transmission of programmes that reads, “if you wish to see advertisement, please press a button on your remote control”. When the button is being pressed, a signal is sent to a set-top-box and from there on to a modem which dials a number. A charge is later put up on the phone bill (unless you have a broadband connection). This means that the viewers can only see advertisement if they actively request it.

RTL does not provide any specific regulation that covers this situation.

c) virtual advertising

Swedish regulation does not specifically regulate this type of advertising.

Recently, virtual advertising has emerged in the Swedish audiovisual landscape. SBC is in the process of examining a case on virtual advertising during transmissions of football matches (Premier League) on satellite channel Canal+. Virtual advertising was used to place advertising additional to that which was at the events. Presumably the SBC's decision is expected in March 2002.

VI. Projects of new regulation

8 June 2000 the Swedish Government appointed the Radio- and TV Act Committee with the task to analyse and consider the need of amendments to the current Radio and Television Act. The Committee shall come up with its considerations in a report end of May 2002. Some of the questions laid down in front of the Committee concern the following:

Programs transmitted on the behalf of a third party – consider how the legislation may be changed so that it will be possible to transmit programmes on the behalf of a third party without it counting towards the maximum permitted transmission limit for advertising and other announcements;

Insertion of sponsorship messages – consider amendments to the Radio- and TV Act with regard to the present uncertain situation on, among other things, sponsorship messages in the connection with longer breaks in programmes;

Rules on advertisement and other announcements – suggest amended rules with the purpose of equalising the rules of competition – without disregarding the aims of the Swedish legislation – for the television broadcasters that are active on the Swedish television-advertising-market. The present rules on children television advertising and advertising of alcoholic beverages shall not be effected. Considerations, regarding if experience from the application of present regulation or the use of new techniques should result in new legislation, shall be done.

The Committee no longer has the task to suggest amendments in the advertising regulation. Instead the Government has submitted a bill on the matter to the Parliament. The bill breaks in line with the Directive with one exception: advertising breaks will not be permitted in children's programmes.

RADIO

I. Advertising

A. General regulation

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

In Sweden the rules applicable to advertising distributed by radio are contained in the Radio- and TV Act. The two authorities on the radio field are The Swedish Radio and TV Authority and The Swedish Broadcasting Commission (see television above).

The Swedish Radio and TV authority grants broadcasting licenses for local commercial radio broadcasting and community radio broadcasting. The Government grants licenses for *public service* (i.e. SR) nationally and regionally. Digital broadcasting licenses are provided by the Government after proposal from the Swedish Radio and TV Authority.

As is the case for TV-broadcasting the content of the advertising has to comply with the Swedish consumer protection legislation (for detailed information see under television above).

2. Specific audiovisual regulation

Radio- and Television Act (1996:844)

The Radio- and Television Act applies to radio broadcasting of advertisement in basically the same manner as to TV-broadcasting. The Act contains provisions for transmissions of sound radio directed at the general public with the intention to be received with technical aids. The act only applies to broadcasters under Swedish jurisdiction.

The rules relevant to radio advertising are stated in sec. 4, 5 and 9 chap. 6 and chap. 7 RTL under the heading “ Advertising and other announcements” and are divided in two categories. One category relates to the insertion and duration of advertising and the other category to the content of the advertising.

a) definition

Radio broadcasting for the purpose of RTL is the transmission of radio programmes that are directed at the general public, and intended for reception through technical means. A broadcast is deemed to be directed to the public only where it is simultaneously accessible, without specific request, to any person who desires to receive it (1:1 RTL).

Radio advertising according to RTL is the same as in MFL, i.e. there has to be an intention to promote sale of and access to products. On the other hand there is no demand on any remuneration. Advertising in the traditional sense as well as self-promotion, sponsorship messages and shopping can normally be considered to come under the definition of advertising for the purpose of RTL (Bill 1995:96:160 s. 109 f).

The advertising definition does not include announcements other than commercial advertising and other programmes that cannot be considered as advertising, but which are broadcasted on the behalf of someone else. Nevertheless these programmes shall be broadcasted under the same conditions as commercial advertising.

The concept **broadcaster** is not defined in RTL. It should be understood as the natural or legal person that compiles and is responsible for the programme service in question. The SBC has found that only the company that holds editorial control can be the broadcaster. It has also found that editorial control could rest with only one of several companies (Decisions SB 202 –203/00).

b) authorisation

SR and UR are not permitted to carry advertising. Community radio and local radio may carry advertising and have to comply with the rules in chapter 7 RTL.

c) general rules on content

Anyone who is licensed by the government to transmit radio transmissions has a responsibility to make sure that the programme activity is in line with the fundamental ideas of the democratic state and not prejudice to the principles of **equality** and **freedom** and **respect for human dignity** (6:1 RTL).

Transmissions that are licensed by the government may be combined with conditions which provide that the right to transmit shall be exercised impartially and objectively (3:1 RTL). However these requirements do not apply to advertisement.

Sec. 3 chap. 7 RTL prohibits persons that play a significant part in news or current affairs programmes to appear in advertising. This probably includes correspondents but also i.e. programme presenters.

There is no ban on **children advertising** for community and local radio in RTL. Neither is it prohibited for a person or a character, that plays a prominent part in programmes that mainly addresses children to appear in a radio advertisement.

d) rules on duration and insertion in and between programmes

➤ identification of advertising

The general principle on identification of advertising provided for in sec. 5 MFL applies. It states that all marketing shall be formulated and presented in such a way that it clearly appears that marketing is involved. The party responsible for the marketing shall also be clearly indicated.

In RTL there is a complement to the section above. It states that for other measures in the course of marketing than advertisement it shall be identified in whose interest it is being transmitted (7:2). (This section aims to implement the directive). As there is no Directive on sound radio, the regulation on non-commercial announcements is not aiming to implement the TVWF Directive as far as radio is concerned.

Before and after each and every transmission of advertising or other measures in the course of marketing there has to be a **specific signature** to clearly distinguish the advertisement from other transmissions. The SBC has in its decisions asserted that the pre-signature has to be very obvious, in practice this means that the word advertisement or equivalent shall be included.

Note that there is no equivalent rule on a minimum time limit for advertising as for TV-advertising.

➤ insertion between programmes

There are no rules on where advertising breaks can be inserted in sound radio programmes. This is due to the fact that radio transmissions often have a different structure than television transmissions. Therefore it is less natural to talk about separate programmes and about breaks in these programmes. This means that advertisement in radio may be broadcasted at any time between and during programmes.

However, the programme terminology becomes important when applying the rules on insertion of sponsorship messages. (See sponsorship below.)

➤ insertion during programmes

See insertion between programmes.

➤ prohibition to insert advertising

Advertising shall not be permitted directly before or after a programme or a part of a programme that mainly addresses children below 12 years of age, unless it is a sponsorship message (7:7 RTL). This only applies to TV-broadcasts and not sound radio.

➤ duration

The proportion of transmission time devoted to advertising shall not exceed eight minutes during an hour within given clock hours. If the transmission does not comprise an hour within given clock hours, advertisement may be transmitted at a maximum of ten percent of that time (7:5 RTL).

Everything transmitted during the time limit for advertising shall be counted towards the total permitted advertising volume.

e) Surreptitious advertising

Programmes that are not advertising shall not unduly favour commercial interests (6:4 RTL).

B. Regulation for Specific Products

1. Alcohol

Advertisement for alcoholic beverages in radio programmes are prohibited (7:9 RTL and 4:9 Alcohol Act).

(See also the Code of statues of Swedish Consumer Agency 1979:6 and the agreement between the Swedish Brewers' Association and the member companies regarding the advertising of low alcohol beer and other low alcoholic drinks.)

2. Tobacco

Advertisement for tobacco products in radio programmes are prohibited (7:9 RTL); (sec. 14 Tobacco Act).

3. Medicines

The rule in RTL that prohibits advertising for medicinal products and medical treatment available only on prescription does not mention radio advertising. There is thus no prohibition laid down in RTL. Neither do the Pharmaceutical Act mention anything about advertising mediums.

The Information Practice Committee (which examines whether the marketing measures are compatible with the rules on drug information laid down by the Association of the Swedish Pharmaceutical Industry, LIF) prohibits all advertising of medicinal products and medical treatment available on prescription. However not all pharmaceutical companies are affiliated members of LIF and are thus in theory not obliged to adhere to these regulations. (See also Rules Governing Drug Information above.)

Furthermore Sweden has not yet implemented EEC Council Dir. 92/28 on the prohibition of advertisement for medical products available on prescription.

4. Cars

The Marketing Practices Act applies.

As already stated, sec. 4 MFL provides that advertisement must contain information of particular importance to consumers. According to Swedish case law and guidelines drawn up by the Consumer Agency, information on the **fuel consumption** on private cars is to be considered as information of particular importance to consumers. Anyone who advertises a specific model of a private car, in advertising media, shall therefore provide such information.

For the application of this rule to radio advertising it should be mentioned that the requirement on information of fuel consumption has not been tried in the connection with radio advertising (as is the case with TV-advertising).

5. Media

There are no regulations on the advertisement of media.

6. Religions, politics and parties, social issues and groups.

The Swedish Broadcasting commission also supervises announcements other than commercial advertising. Such announcements come outside the scope of MFL, but RTL is applicable.

Sec. 5 chap. 6 RTL prohibits transmissions governed by the condition of impartiality (SR and UR) to insert announcements by or on behalf of any body whose objects are to win support for a political or religious view or a matter related to interested parties on the labour market. Sec. 1 chap. 7 provides that such announcements shall be deemed to be advertisements. Community- and local radio may subsequently broadcast such announcements.

The preliminary works state that this rule does not prevent organisations or communities to advertise on public activities, events or collections to charity. Neither does it prevent an announcement if its objectives are other than to win support for an opinion just referred to, for example an announcement for a book which opposes a specific political opinion.

C. Self-Regulation

(See Ethical Rules for Public Service Broadcasters under television above.)

II. Shopping

The rules on sales programmes in RTL do only mention TV-transmissions. There are no other specific rules on such advertising in Swedish legislation. Neither has shopping in radio transmission yet been practiced by Swedish broadcasters. Thus it can be assumed that the normal rules on advertisement shall apply.

III. Sponsorship

A. General regulation

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

See I. A. 1 (Television)

2. Specific audiovisual regulation

a) definition

Sponsorship comes under the definition of advertising for the purpose of RTL (see I.A.2.a.)

A programme is sponsored if it is wholly or partly financed by someone not engaged in broadcasting or in the production of audiovisual works (7:8).

According to the transmission licenses for SR and UR sponsorship is defined as when a sponsor contribution have gone directly to SR or UR or led to a significant cost reduction for the programme.

b) authorisation

The right to transmit sponsored programmes is limited for SR and UR. The transmission licenses for SR and UR states that the broadcasters may not transmit such sponsored programmes where the sponsor contribution have gone directly to SR or UR or led to a significant cost reduction for the programme. It is also prohibited to transmit sponsored programmes mainly directed at children below 12 years of age.

The transmission license for SR (but not for UR) states that SR is permitted to transmit a sponsor message in connection with programmes that involve a transmission of a public gathering or official event where SR is the arranger under the condition that it regards an arrangement within an undertaking towards the EBU or an arrangement of similar importance and that the programme is broadcasted live to many countries.

Furthermore the license states that the sponsor message has to be designed so that there will be no risk for mistaking it with traditional advertisement spots in the commercial radio. The sponsor message, that shall be short, may not be followed by music and shall also in other respects be given a neutral design.

If without being a question of prohibited sponsorship according to the transmission license, a contribution to the financing of programmes has been given by someone not engaged in radio or television or in the production of audio-visual works, information about this shall be given

according to the principles in sec. 8 chap 7 RTL. Such information need not to be given if it cannot be given without complication or it is obvious that it should lack importance for the listeners.

Commercial radio and community radio can broadcast sponsored programmes in accordance with the RTL.

c) general rules on content

The license for SR states that a logo may be used only if there is no risk of mistaking it with a service or product that the sponsor is marketing. The sponsor message, that shall be short, may not be followed by music and shall also in other respects be given a neutral design. The license for SR does not mention the word “logo” – the sponsorship message shall be designed in such a way that it cannot be confused with ordinary advertising in commercial radio.

There is no specification on rules on content in sponsor messages in the legislation. Sec. 8 chap. 7 uses the word “appropriate”. It is agreed that the intrinsic meaning of this term is that a sponsor message may not be designed so that it will be mistaken with traditional advertisement and in other respects shall be given a neutral design.

The demand on neutral design is less restrictive for commercial broadcasters.

d) rules on duration and insertion in and between programmes

➤ identification of sponsorship

When a program is sponsored the broadcaster has to appropriately inform the public on the identification of the sponsor as such at the beginning and/or the end of the programme and on the fact that the program is being sponsored (7:8).

The sponsor messages are on one hand considered to be advertisement, but do not have to be surrounded by a specific signature (7:8).

The Broadcasting Commission has in its decisions stated that the sponsor might be identified by the name or the logo and /or name of its product, however a company name and the name of a product from the same company may not appear as a sponsor of the same programme.

The Commission has also through its decisions permitted local and community radio to identify a sponsor by a short jingle for the sponsor, i.e. sound logo on the condition that it does not consist of anything but the name of the sponsor or the name of the product.

A sponsor message may not be designed as advertisement, if this notwithstanding would be the case it could be regarded as an attempt to promote commercial interests in an unwarranted manner according to sec. 4 chap. 6 RTL.

➤ insertion between programmes

The general rule is that a sponsor message shall be inserted between programmes.

Radio transmissions do often have a different structure than television transmissions. Therefore it is less natural to talk about separate programmes and about breaks in these programmes. Anyhow the programme terminology becomes important when applying the rules on insertion of sponsorship messages.

When the SBC decides on whether a transmission constitutes a separate program it takes into account; the presentation of the transmission, an own vignette, specific program host, specific theme, a to the public previously known transmission time and the length of the programme.

For example the SBC has asserted that it is not possible to sponsor a short message about the present time, a short weather forecast, or traffic information, especially if the same presenter presents the messages as well as the surrounding transmissions. Neither is it permitted to insert a sponsorship message in a trailer for the following programme, regarding the identification of the sponsor for the following programme.

According to the SBC different parts of a transmission can constitute separate programmes. However the Commission has in many cases asserted that programmes which are interrupted by other short programmes still are to be considered as *one* programme all together and that a sponsor message therefore may not be transmitted in the interruption but only in the beginning and at the end of that programme (SB 219/94).

Sponsorship messages may be inserted directly before or after a programme or a part of a programme that mainly addresses children below 12 years of age (7:8).

➤ insertion during programmes

Next to the possibility to sponsor a *programme* the SBC has, due to the special structure of radio transmissions, allowed for a transmission hour between whole clock hours to be sponsored. This is only possible if no other programmes during that transmission hour are being sponsored.

➤ prohibition to insert sponsorship

A program mainly concerning news or current affairs may not be sponsored (7:8 RTL).

➤ rules on duration

A sponsor message does not have to count towards the time limit on advertising (7:8).

B. Regulation for Specific Products

1. Alcohol

A programme may not be sponsored by someone whose main activity involves the production or sale of alcoholic beverages (7:9).

2. Tobacco

A programme may not be sponsored by someone whose main activity involves the production or sale of tobacco products (7:9)

3. Medicines

There is no prohibition for a pharmaceutical company, when sponsoring a radio programme, to promote a medicinal product or medical treatment available on prescription as long as the rules on content of a sponsorship message are being complied with.

4. Cars

There are no specific regulations.

5. Media

There are no specific regulations.

6. Religions, politics and parties, social issues and groups.

See I. B. 6. (Television)

IV. Self-promotion

According to RTL self-promotion is a form of advertising. However it is stated in sec. 12 chap. 7 that the chapter does not apply to advertisement for a broadcasters own program activity, such as trailers etc. Such advertisement must therefore not be transmitted during the permitted time for advertisement. If however self-promotional trailers are transmitted during regular advertisement transmissions they shall nevertheless count towards the whole permitted time for advertisement.

The transmission licenses for the public service broadcasters state that the ban on advertisement does not include advertisement for programme activity, education material or other similar products with direct connection to the programmes.

According to the ethical rules that exist for public service radio, broadcasters must design the sale of their own products and services as advertisement.

V. Other promotion techniques

RTL does not contain particular provisions regarding the different forms of product placement. In addition to the rules on sponsorship the general prohibition on **undue prominence**, contained in sec. 4 chap. 6 covers product placement. It states that programmes that cannot be considered to be advertising may not **unduly favour commercial interests**. An interaction between the rules on sponsorship and undue prominence can be seen where the rules on sponsorship are not applicable because the marketing has occurred during a program and not before or after it.

MFL applies to all forms of marketing in all mediums and works on a different level than RTL. While RTL prohibits surreptitious advertisement, MFL provides that such advertisement must be clearer. Through the provisions on marketing- and advertiser identification and improper marketing practices, product placement which does not clearly appear as advertisement will not comply with MFL (sec. 5 MFL).

If a product placement would comply with MFL, the chances are high that it would constitute an undue favouring of commercial interests according to RTL. On the other hand a relatively hidden product placement would probably comply with both MFL and RTL, due to the fact that it would neither be regarded as an undue favouring of commercial interests nor as commercial information that is regulated by MFL.

The only **party** that can be held **responsible** according to RTL is the broadcaster. However the product placer or anyone that has contributed to the marketing (in theory the broadcaster) can be held responsible according to MFL.

According to the preliminary works the rule on undue prominence in RTL covers the situation where there has been a significant focus on a company name, product, service or a logo and where this cannot be justified from a **news-, information- or entertainment perspective**. For the purpose of this rule it is not important if the public consider the marketing informative or if the program is popular and has a numerous audience.

The SBC have accepted mentioning of some brands in game shows, such as for cars. It seems as if an information perspective is justified when there are many kinds of a product or when there is a big economical difference between these kinds. Also programmes that give attention to new books, films or records etc. have in general been accepted due to their informative- or entertainment value.

On answering the question of what is to be considered as “**commercial interest**” the SBC has stated that such interest exist when the product is provided by someone who is running an activity of economical nature, with or without the purpose to profit.

SBC has also stated that special caution should be taken when mentioning company names in **children programmes**, due to the ban on children advertisement. (SB 239/96)

The transmission licences granted to UR and SR are combined with conditions which provide that the right to transmit shall be practised **impartially and objectively**. This condition is limited to the editorial programme material. Subsequently this condition does not apply to neither advertising nor sponsorship (since advertising is covered by the rules in MFL). This rule means e.g. that conflicting opinions should be reflected in the programmes.

6:4 RTL means among other things that a favouring similar to advertisement of a certain product or a specific company may not occur. This is of interest for the regulation on product placement. A strong focus on products etc. is not permitted according to this rule.

The rule in RTL also regulates the editorial content.

According to the decisions of SBC a broadcaster's favouring of its **own sale activity** is not an undue favouring of commercial interests as long as it regards a transmission for which there are no demands on impartiality (i.e. local- and community radio, cable- and satellite transmissions and terrestrial digital TV-transmissions).

a) Co-production or co-financing with promotional intent

There are no particular provisions in the RTL as regards co-production or co-financing of audio productions for promotion purposes, although the rules on sponsorship may be applicable in such a case.

As regards the public service broadcasters the transmission license for SR stipulates that if, in cases that do not constitute sponsorship, a contribution to cover the cost of production has been made by a person or organization not primarily engaged in broadcasting or the production of audio works, the contribution shall be acknowledged as sets out in sec. 8 chap. 7 RTL. Such acknowledgement is not required, however, if it is difficult to ascertain the identification of the donor or the information is clearly of no consequence to the listening public.

The ethical rules for public service broadcasters additionally recommend rejecting ideas, information and propositions to programmes, if they are connected with requirements on performances which include advertisement in any form. They also recommend to reject offers like free or greatly discounted journeys to editorial staff, to reject gifts and other privileges and never to give advance promises on publicity.

b) Merchandising

There are no regulations prohibiting for example the public service broadcasters to use merchandising, but they may not use the funding granted to them through their agreements with the Government for the purpose of merchandising.

REGULATION CONCERNING ADVERTISING VIA INTERNET, CINEMA AND MOBILE PHONES

A. General regulation

In Sweden there is not specific **regulation** for advertising distributed through the Internet, in cinemas and by mobile phone. This does not mean these advertising mediums are not regulated since general consumer protection regulation, regulation on misleading advertising, specific regulation for particular categories of products, regulation on distance selling etc. apply to advertising no matter the medium used.

There is no specific **regulator** for the Internet, cinema and mobile telephony.

The Marketing Practices Act is applicable to all products and all mediums. Advertising on the Internet therefore has to comply with the Act. (According to Swedish case law advertising for illegal TV-decoders was banned in newspapers as well as on the Internet MD 1996:22.)

MFL applies when the marketing is aimed at a Swedish audience, no matter if the measures are aimed at the general public or specific individuals, for example e-mail advertising.

Naturally marketing on the Internet has to comply with the general clause on **good marketing practices** (sec. 4). ICC:s guidelines for advertising on the Internet is an example of what can be considered as good marketing practices.

Furthermore providing **information of particular importance** to the consumer (sec. 4) is generally easy when advertising on the Internet, for example through clear links to more detailed information on the terms of a contract. This should mean that the compliance with this rule on the Internet is set very high. When applying the same rule to advertising through mobile applications such as WAP and SMS the demands cannot be set as high, since the technical possibilities to publish long texts are limited. (It should be mentioned that the lack of providing important information does not necessary nullify a future contract.)

In general it can be said that the major on-line operators in Sweden comply with the regulations in MFL as well as to the prohibitions laid down in RTL on the advertisement on alcoholic beverages and tobacco products and to the regulations on children advertisement. The problems appear mainly with smaller businesses which either position themselves outside Sweden or advertise through a foreign website.

The Distance Contract Act (2000:274)

The Act applies to the Internet and implements EEC Council Dir. 97/7. The Act applies to distant contracts between an undertaking and a consumer and applies also to marketing for the purpose of distant contracts.

The directive provides an unexhaustive list of the different techniques that can be used for the purpose of distant communication. The list is not included as such in the Distance Contract

Act, but in the preliminary work the list is enumerated and to the list the Internet is added as a very important means for distant communication (Bill 1999/2000:89 p. 27 f. p. 75).

On-line stores with ordering functions count as organized distance sales schemes for the purpose of the Act. General marketing, for example on a website without a direct connection to an ordering function, falls outside the scope of the Act.

(See also television/tele-shopping above for rules on the provision of necessary information when advertising for the purpose of distant contracts.)

The **Nordic Consumer Ombudsmen** have issued **recommendations** for trade and marketing on the **Internet**. Among other things the recommendations provide guidelines on advertisement to children and young adults.

- i) the marketing shall not take advantage of children and young adults naivety and lack of experience;
- ii) the age group shall clearly be able to identify the announcement as advertising;
- iii) if entertainment is involved, it shall not be combined with or interrupted by advertising spots;
- iv) children and young adults shall not be tempted with rewards to stay on or participate in events on the Internet;
- v) marketing aimed at children or young adults should not use links to websites that are not intended for them;
- vi) interactive advertising or other new advertising techniques shall not be used in a way which effects the unconscious of children or young adults.

Regulations applicable to unrequested direct marketing:

There is no general prohibition against unrequested direct marketing (spam) in Swedish legislation, but the general clause on improper marketing practices is applicable also on the methods of the marketing, such as direct marketing. If particularly intrusive methods are used they can be banned through application of the general clause.

It is not unlikely that unrequested transmissions of text messages to mobile phones (SMS) can be prohibited on these grounds. Case law stipulates that direct marketing may not be transmitted to children below 16 years of age (MD 1983:16), which can be assumed would apply in a situation of direct marketing through the Internet or through mobile phones messaging.

Sec. 13 a MFL (which implements the regulations on unrequested marketing in the EEC Council Dir. 97/66 and 97/7) stipulates that an undertaking when marketing towards a natural person may use facsimile machines or such automatic calling machines or other similar

automated calling systems for individual communication which is not served by an individual, only if the natural person has given his consent in advance.

The undertaking may use other methods of distant individual communication unless the natural person clearly has opposed that such methods are used. For the latter which includes e-mails and text messaging to mobile phones an opt-out solution is stated (on the Internet a banner cannot be considered to constitute individual communication).

If an opposition to receive future advertisement messages is not respected by the advertiser the continuing advertisement will be considered to constitute improper marketing practices.

In a committee report, which regards the implementation of the EEC Council Dir. 2000/31 an additional passage in sec. 13 MFL is proposed. It stipulates that an undertaking – which uses e-mail to transmit unrequested advertising to natural persons – shall respect and continuously check registers where natural persons can apply to be spared from such e-mail marketing.

Bitos is an organization of interest for Swedish on-line content- and service providers. It has issued **recommendations for direct marketing over the Internet:**

- i) it shall be evident in what way the e-mail address has been given to the advertiser;
- ii) the receiver should, through a link or detailed instruction, be given information on how to cancel future marketing messages;
- iii) the receiver should via a hyperlink or detailed instruction receive information on the senders contact details, such as postal address, visiting address, telephone number, fax number and contact person;
- iv) in addition to what is required by law the advertiser shall design its e-mail advertising so that the receiver can filter the message in his or hers own computer as well as on server level (without having to bring home the message to the computer). The advertiser should therefore either mark the subject heading with the symbol ((a)) or use the words advertisement, offer or marketing;
- v) the receiver should via a hyperlink or detailed instruction receive information on how his or her personal data is treated, collected or transferred;
- vi) in addition to these recommendations the advertiser should comply with the recommendations on good direct marketing practices stipulated by SWEDMA (Swedish Direct Marketing Association).

If in any case the direct marketing requests an unpermitted treatment of personal data the general clause on improper marketing practices in MFL is applicable.

Direct marketing over the Internet and to mobile phones necessitates the use of personal data, such as e-mail addresses and mobile phone numbers. Hereby legislation regarding protection of personal data is also brought to the fore.

The Protection of Personal Data Act (1998:204)(PuL)

The Act implements EEC Council Dir. 95/46 and came into force 1 October 1998. It aims to protect an individual from a violation of his or her personal integrity through improper treatment of personal data. It is irrelevant where or for what purpose the data is being collected. **Personal data** is according to the law every type of information that can directly or indirectly be connected to a living individual.

Personal data may be collected only if the registered individual have given his or her **consent** or if the treatment for other reasons is necessary for a purpose that concerns a justified interest to the undertaking, if this interest is more important than a violation of the personal integrity (sec. 10 PuL).

Personal data may not be collected for the purpose of all **direct marketing**, if the registered individual has in writing reported to the one responsible for the personal data that he or she disapproves of such treatment (sec. 11 PuL).

B. Regulation for specific products

1. Alcohol

The Alcohol Act

The Act does not specifically regulate the advertising of alcoholic beverages on the Internet, in the cinema or through mobile phones. Subsequently there is no ban equivalent to the one on TV- and radio advertising. Nevertheless the major rule on the marketing of alcoholic beverages to consumers states that **special moderation** must be observed in the marketing of alcoholic beverages with regard to the health risks connected with the use of alcohol. It particularly emphasises that advertising or other marketing measures, which are **obtrusive** or **specially targeted** or **encouraging** to drink alcohol, are not permitted. Additionally marketing shall not be directed towards or show children or youngsters. Immoderate Advertisement constitutes improper marketing practices according to MFL (4:8 Alcohol Act); (art. 14).

The preliminary work for the legislation contains certain specifications. Examples given of obtrusive and specially targeted advertising include direct advertising and advertising in cinemas.

It can be assumed that unrequested e-mail advertising or advertising using a mobile phone application constitutes a violation of sec. 8 chap. 4 in the Alcohol Act. It is also likely that advertisement through banners on a magazines website cannot be considered as moderate. Possibly passive websites can be accepted in a limited extent, but this requires among other things that the headlines and the layout are not particularly eye-catching or encouraging.

Furthermore the preliminary works state that the advertising must give **objective information** enabling the consumer to make a conscious and rational choice between different products.

The commercial message, which is acceptable according to the legislator, should be limited to relevant facts concerning the product and its characteristics, presented as objectively as possible and without irrelevant features. In addition, more or less obvious judgements based on value must not be included. The image used in the advertising should be confined to show the actual product and that which may be naturally associated with it, e.g. packaging and certain accessories.

The Code of Statutes of the Swedish Consumer Agency 1979:5 for the marketing of regular beer and 1979:6 for the marketing of spirits, wine and strong beer

The regulations in the Alcohol Act have not been made concrete to any great extent, and the consumer agency has therefore drawn up guidelines for the marketing of alcoholic beverages. Although they are not to be regarded as legislation they must be regarded as extremely authoritative statements on the practical meaning of the legislation.

The guidelines have been produced following negotiations with sections of trade and industry concerned, but a great deal is also based on earlier practices and statements in the legislation's preliminary work. However, the practical meaning of the legislation's stipulations is determined in the final analysis by the Market Court. An extract of these rules follow below.

Restrictions on the choice of advertising media

The guidelines state that the use of the following is **prohibited**:

- i) **direct advertising** (e.g. mass distribution to households) or other advertising media based on direct appeals to the consumer;
- ii) outdoor advertising, e.g. in a public place, or on public transport, in waiting rooms, etc., at public sports grounds or other public arenas, including advertising at sports events which are open to the public;
- iii) commercials, advertising projected via loudspeakers/public address systems, stills in **cinemas** or theatres, videograms or advertising in similar forms.

The design and content of marketing

As regards **advertising images**, it is indicated that:

- i) an image must not consist of anything other than especially moderate reproduction of the product or its raw ingredients;
- ii) an individual bottle or can;
- iii) the trademark or other equivalent distinctive mark for the product;
- iv) the image must also be neutral and not contain any representative elements, decoration or other elements which may create tangible associations.

The guidelines' stipulation concerning **advertising text** enumerates of which types of information are permitted in advertising:

- i) the nature or type, including raw ingredients and production method as well as characteristics (taste, alcohol content);
- ii) the origin of the raw ingredients, manufacturer (cultivator), manufacturing district,
- iii) manufacturing country, how the product is used and area of use; the price of the product;
- iv) place of sale.

Furthermore, it is stated that personal statements (personal testimonials about a product) or obvious subjective opinions are not considered objective. This type of information is therefore not permitted.

prohibited sales promotion measures

- i) the handing out of product samples or tasting;
- ii) the handing out of free gifts (e.g. trays, glasses, etc);
- iii) competitions with prizes;
- iv) discount coupons;
- v) combination offers (not applicable if the beverage is part of a meal and an alcohol-free alternative is also offered).

2. Tobacco

The Tobacco Act (1993:581)

The Act does not specifically regulate the advertising of tobacco products on the Internet, in the cinema or through mobile phones. Subsequently there is no ban equivalent to the one on TV- and radio advertising. Marketing of tobacco products towards consumers in these mediums have to observe special moderation. Particularly, advertising or other marketing measures may not be obtrusive, specially targeted or encouraging to use tobacco products. Advertisement violating the moderation requirement constitutes improper marketing practices according to MFL (sec. 14 and 15 Tobacco Act).

The Code of Statutes of the Swedish Consumer Agency 1998:7 for the marketing of tobacco products to consumers

A code has been issued by the Consumer Agency concerning tobacco advertising. The main purpose of the code is to specify the requirement of the Tobacco Act on special moderation for the marketing of tobacco products.

The code **applies** to advertisement for:

- i) cigarettes;

- ii) cigarillos;
- iii) cigars;
- iv) pipe tobacco;
- v) chewing tobacco;
- vi) snuff;
- vii) hand-rolling tobacco;
- viii) other equivalent products containing tobacco;

The Code covers the same field of application as the Tobacco act, including

- i) marketing on a pack design and on a vehicle;
- ii) marketing of a tobacco product together with another product or service.

Specification of the requirement of special moderation (sec. 14 Tobacco Act)

Measures of marketing which are aggressive, persuasive or which attract special attention are not permitted in marketing. The requirement on special moderation means that the marketing as a whole shall be characterized by strong moderation, relevance and objectivity, especially in the following aspects:

- i) all marketing shall be limited to the relevant facts concerning the product itself and its characteristics shall be presented in an objective manner;
- ii) encouragements to use tobacco may not occur;
- iii) advertising text may only contain objective information about the characteristics, origin, manufacturing place/country, package nature and characteristics, price and manufacturer/importer/retailer;
- iv) the headline and layout may not be specifically eye-catching or striking.

Prohibited marketing methods

To secure special moderation and to prevent that tobacco debut shall be encouraged – especially amongst young adults – the following advertisement methods are prohibited (only the methods relevant to this report are listed):

- i) **direct advertising** or other advertising that appeals directly to the consumer;
- ii) targeted advertising via facsimile, telephone or e-mail;
- iii) commercials and equivalent in **cinemas** or theatres;
- iv) lottery, competitions with prizes, discount coupons or combination offers.

3. Medicines

See Pharmaceutical Act and the Rules Governing Drug Information laid down by LIF under television above.

4. Cars

The same regulations as for television advertising are applicable where appropriate to the Internet, cinema and mobile phones.