

AUSTRIA

**STUDY ON THE IMPACT
OF ADVERTISING AND TEleshopping
ON MINORS**

I. INTRODUCTION

II. SUMMARY

III. REPORT

I. INTRODUCTION

The study on the impact of TV advertising and teleshopping on minors was carried out by International Research Associates (**INRA**) in collaboration for legal issues with the lawfirm **Bird & Bird Brussels**, for the 18 Member States of the European Union and the European Economic Area, and, for each country, in collaboration with a national lawfirm (a complete list is annexed to the study). For Austria the study was carried out by the lawfirm **Schönherr Barfuss Torggler & Partners in Vienna**.

The aim of the study was to identify and describe the national provisions on advertising provided in legislation, regulation and self-regulatory codes, which are applied to advertising in each State for the protection of minors. In addition, the national system for the handling of complaints was described fully, covering administrative, legal and self-regulatory measures.

For most countries it was possible to identify and to comment upon official proposals of law. In this respect, the information received from professional associations in the advertising sector was very helpful, as were the comments made by national authorities, who had been sent the the draft reports by the Directorate General Education and Culture.

Finally in each national report the consultants indicated the way in which the provisions of the TVWF Directive (unofficial consolidated version), have been implemented in national legislation concerning TV advertising and teleshopping directed at minors. Nevertheless, in view of the objectives of the Commission and to enable comparison, the reports also cover other media such as radio, press, outdoor advertising, cinema, and Internet.

The study was carried out, realised and presented using an identical layout for each of the countries studied to achieve a harmonised readable approach, and facilitate comparison .

Therefore, as well as the main definitions and general rules in the field of advertising and teleshopping directed at minors, each national report contains the regulation by sector and by media, as well as an identification of specific marketing techniques. Moreover, each national report is preceded by a summary which gives the essential characteristics of the country in question. An Excell table has been drawn up, using the same layout for each country, as well as a comparative table for the 18 States studied.

Finally a report has been drawn up on European and international regulation and self-regulation concerning advertising directed at minors.

II. SUMMARY

Except for the modification of the audiovisual legislation in 1994 and 1999 (to implement the European Directives TVWF) there have been not been any significant modifications or proposals concerning advertising directed at minors. At present it does not seem to be a major concern of the Austrian public and the item does not figure high on the political agenda. Recently sponsoring in and of schools was the subject of an inquiry, mentioning possible negative effects, directed by the Minister of Education. The Minister decided that sufficient guarantees exist already to protect the interests of the children and their parents and that it was not necessary to intervene.

1. Definitions

As the majority is fixed at fully 19 years, the Austrian legislation strictly regulates the age required for juveniles to practice certain activities. Thus, an 18 years old minor can obtain a driving licence for vehicles of class B (cars). Specific acts, as the Road Traffic Regulations (StVO) even protect minors by requiring them to have a certain age for activities as cycling (12 years), horseback riding (16 years) and roller skating (12 years).

There is no specific definition of a minor/child in legislation concerning advertising.

2. Regulation

a. General

As in a number of other member states, advertising is regulated in Austria by way of an *Act against Unfair Competition*, banning all kinds of deceitful or misleading practices, which naturally include misleading advertising.

b. Media

The “Television without Frontiers” (TWF) Directive was implemented by the Broadcasting Act (RFG), regulating the public service broadcaster Austrian Broadcasting Corporation (ORF). Advertising on radio and television prejudicing respect for human dignity and fundamental rights or provoking hate because of race, gender, religion or nationality is prohibited. The RFG has been

modified twice: in 1994 when Austria adhered to the EEA and in 1999 to implement the directive TWF of 1997.

The same type of rules as in the RFG can be found in the Cable and Satellite Broadcast Act (KSRG) applicable to satellite and cable TV, and in the Regional Radio Act (RRG), regulating the field of private radio broadcasting (since the end of the ORF monopoly in the fields of radio broadcasting). The RRG specifies that the broadcast of children's programmes must not be interrupted by advertising.

The Austrian TV and the radio broadcasting regulations are characterised by the attention given to the influence of well known "public" persons. The appearance either through voice or image of presenters of news programmes and political magazines is therefore forbidden in advertising or teleshopping, (as well by the RFG, as by the KSRG, the RRG and the General Terms and Conditions of the ORF).

Regarding teleshopping, the RFG stipulates that the public service broadcaster may not distribute teleshopping. Teleshopping is specifically regulated by the KSRG (cable and satellite TV). The sponsoring is regulated by the three broadcasting laws (RFG, KSRG, and RRG), specifying in particular that news programs and political magazines must not be sponsored programmes.

There are no specific rules on advertising directed at minors for press, cinema, Internet and posters.

c. Specific provisions

Specific rules exist for certain categories of products and services.

For example advertising for tobacco and spirits is forbidden on TV.

The Tobacco Act regulates specifically and very precisely advertising for tobacco. Such advertising is not prohibited but strictly regulated: advertising for tobacco products depicting athletes or celebrities (individuals who, because of their status, their profession or their success, can be expected to enjoy public esteem), both in drawings or caricatures or giving their statements concerning smoking, is, amongst others, once more prohibited. Advertising for tobacco products by means of comics or characters appearing in comics is also prohibited.

d. Other marketing techniques

Direct marketing and promotional sales activities are considered as legal techniques, subject to the rules of the Act against Unfair Competition.

3. Proposals of law

There are no recent proposals of law on advertising directed at children.

4. Self regulation

The Austrian Advertising Council (ÖWR) was created by the advertising industry to promote self-regulation. It established a Code in 1995, containing guidelines, covering areas such as violence, women and children, as well as specific sectors such as alcohol, tobacco and vehicles. It covers all media.

5. Handling of complaints

Authorities

The administrative handling of the complaints is operated by the Broadcasting Commission (RFG). In case of infringement, the statement of the Commission will be published or broadcast.

The judicial proceedings mainly concern infringements of the Act against Unfair Competition, initiated by competitors of the infringing party.

Self-regulation

Self-regulation is organised by the Advertising Council, which will examine any complaint from anyone feeling that an advertising campaign infringes the guidelines of the Council. In 1999 only one complaint was examined but the council found no reason to act. In 2000 5 complaints were submitted of which 4 were not upheld.

III. REPORT

**STUDY ON THE IMPACT
OF ADVERTISING AND TEleshopping
ON MINORS :**

AUSTRIA

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I. DEFINITIONS

Minors

Article 21 of the Austrian Civil Code and Art 74 of the Austrian Criminal Code: A minor (“Minderjähriger”) is an individual who has not yet completed the age of 19 years. (enclosure 1)

Majority

Under Art 21 of the Civil Code, majority is fixed at the age of 19 years. At that age one is capable of all actions of civil life. (encl 1)

Legal entitlement to contract

Art 151 para 1 and Art 865 of the Civil Code: A child (ie a minor until he as reached the age of 7) is incapable of contracting without the express or implied consent of his legal representative.

Art 151 para 2 of the Civil Code: A minor who has reached the age of 14 may contract in regard of objects in his own power of disposal or in regard of income gained through its own work as long as his personal needs are not affected. He/she may also conclude a contract for rendering services (Art 152 Civil Code).

Art 151 para 3 of the Civil Code: A child concluding a contract which is usually concluded by children of his age and refers to a matter of minor importance, is legally bound by the contract regardless of the requirements of para 2. (encl 1)

Protection of youth

a) General

Art 21 para 1 of the Civil Code: Minors are protected by specific regulations (encl 1).

b) Special Federal State Regulations

Under the Austrian constitutional system also the 9 federal states (Bundesländer) are entitled to legislate in the field of youth protection. Thus the federal states have enacted laws for the protection of youth:

Burgenland: **Burgenländisches Jugendschutzgesetz 1986** (encl 2)

Kärnten: **Kärntner Jugendschutzgesetz** (encl 3)
Niederösterreich: **Niederösterreichisches Jugendgesetz** (encl 4)
Oberösterreich: **Oberösterreichisches Jugendschutzgesetz 1988** (encl 5)
Salzburg: **Salzburger Jugendgesetz** (encl 6)
Steiermark: **Steiermärkisches Jugendschutzgesetz** (encl 7)
Tirol: **Tiroler Jugendschutzgesetz 1994** (encl 8)
Vorarlberg: **Jugendgesetz** (encl 9)
Wien: **Wiener Jugendschutzgesetz 1985** (encl 10)

For example the **Tiroler JugendschutzG** (encl 8) provides general protection in respect of the following:

Sec 12: general obligations
Sec 13: public places
Sec 14: attendance to public events

Moreover the Act regulates sectors such as alcohol, tobacco, certain media, toys and telephone services in respect of minors.

Another example is the **Niederösterreichisches JugendG** (encl 4). Again the Act provides for the general and sectoral protection of minors. Among the general provisions are the following:

Sec 13: public places and amusement parks
Sec 16: public dance events
Sec 17: public events
Sec 20: illegal drugs
Sec 21: dangerous objects for minors
Sec 22: identification
Sec 23: obligations of the parent or guardian
Sec 24: surveillance of children and minors

Similarly to the **Tiroler JugendschutzG**, the Act also contains regulations concerning sectors such as pubs, cinemas, alcohol and tobacco.

c) **Criminal Law**

The Austrian **Criminal Code** (encl 11) protects minors in various ways. Among the most important offences are the following:

Sec 195: abduction of a person under the age of 16
Sec 199: lack of care, education or surveillance of a minor
Sec 207a: pornographic depictions of minors

Sec 208: moral endangerment of persons under the age of 16
Sec 212: abuse of a position of authority

In addition to that the **Criminal Procedure Act** (encl 12) provides for the protection of minors as well:

Sec 39: representation in criminal proceedings
Sec 282: entitlement to bring an application for nullity
Sec 465: entitlement to bring an appeal

Act against **Pornography** (encl 13):

Act against indecent publications and protection of minors against moral endangering. Any material showing sexual acts or sexual violence involving persons under the age of 14 constitutes "hard pornography". Whoever deals in such materials commits a criminal offence if there is evidence of an intention to gain financially. Moreover the Act protects in various ways persons under the age of 16 from being exposed to such material.

II. REGULATION

1. Classification by media

1.1. All media

The most general way in which advertising is regulated in Austria is by the **Act against Unfair Competition** (encl 14). In its Sec 1 and 2 the Act bans all kinds of deceiving or misleading trade practices which naturally include misleading advertising. Thus advertising has to be true and must not be contemptuous towards competitors of the advertiser. Also, this Act lays down the requirements for comparative advertising.

Minors have to be considered as consumers. They are protected by the general provisions of the Act against Unfair Competition.

1.2. Television

[**Note:** At the time of writing the study amendments to the RFG, the KSRG and the RRG entered into force: The amendments to the KSRG have been incorporated into the relevant parts because they relate to the study. The amendments to the RFG and RRG have no impact on the subject of this study. Copies of the Federal Legal Gazette containing the new provisions are to be found at the end of each respective enclosure: 15, 16 and 17]

1.2.1. RundfunkG – RFG (encl 15)

The publicly owned Austrian Broadcasting Corporation ORF has the monopoly of both radio and television broadcasting. Only recently this monopoly has been scrapped, so now also private radio broadcasting is allowed in Austria. The Broadcasting Act (RundfunkG – RFG; encl 15) contains all regulatory matters in respect of the ORF.

The Act has been amended twice to comply with the Directive TV without Frontiers, the first amendment entering in force timely with the adherence of Austria to the European Economic Area (EEA) in 1994, the second amendment in 1999 incorporating the 1998 amendments to the Directive TV without Frontiers.

Sec 2a lays down the general principles in regard of programming with the aim of protecting the youth:

Sec 2a para 1 RFG: All programmes broadcast by the ORF must respect human dignity and fundamental rights as regards their presentation and their content.

Sec 2a para 2 RFG: Programmes must not contain any incitement to hatred on grounds of race, sex, religion or nationality.

Sec 2a para 3 RFG: Programmes must not have a content which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence. If programmes can be detrimental to the physical, mental or moral development of minors, it has to be ensured by selecting the time of the broadcast or by any technical measure, that minors will not normally hear or see such broadcasts.

Sec 2a paras 1 through 3 have been amended in 1994 to implement the provisions of the Directive TV without Frontiers.

Sec 2a para 4 RFG: The unencoded broadcast of programmes pursuant to para 3 last sentence has to be preceded by an acoustic warning or identified by visual

Sec 2a para 4 has been amended in 1999 to implement the provisions of the 1998 amendments to the Directive TV without Frontiers.

Commercial advertising is defined in Sec 5 para 3 of the RFG as all communication in connection with the exercise of trade, craft or other professions, which is broadcast in return for payment, for similar remuneration or for self-promotional purposes to promote the sale of goods or the delivery of services, immovable property included, rights and obligations in return for payment.

According to Sec 5a para 1 RFG advertising must not be misleading, nor detrimental to the interests of the consumers.

Surreptitious advertising is illegal. Surreptitious advertising is defined in Sec 5a para 2 RFG as the representation in words or pictures of goods, services, names, trademarks or activities of a producer of goods or provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional if it is done in return for payment or for any other remuneration.

Presenters of news programs and political magazines may not appear in advertising, neither through voice nor image. The person paying for the advertisement must not exercise any influence on the editorial content of a program: Sec 5a para 3 and 4 RFG.

Moreover, advertising spots may be inserted only in groups/blocks between different programmes. Movies must not be interrupted through spots: Sec 5b RFG.

Sec 5c of the RFG sets out the following specific requirements. TV advertising must not:

- prejudice respect for human dignity,
- include any discrimination on grounds of race, sex or nationality,
- be offensive to political or religious beliefs,
- encourage behaviour prejudicial to health and safety,
- encourage behaviour prejudicial to the protection of environment or
- promote illegal activities.

As regards the protection of minors, Sec 5f RFG stipulates that advertising must not physically or morally harm minors and must consequently respect the following criteria for their protection:

- It must not directly exhort minors to purchase a product or service by taking advantage of the minor's inexperience and credulity.
- It must not directly encourage minors to persuade their parents or third parties to buy the goods or services being advertised.
- It must not exploit the special trust minors have in their parents, teachers or other persons.
- It must not unreasonably present minors in dangerous situations.

Secs 5a through 5g have been amended in 1994 to implement the provisions of the Directive TV without Frontiers.

1.2.2. Kabel- und SatellitenrundfunkG – KSRG (encl 16)

In addition to the RFG, satellite and cable TV is now the subject of the Cable and Satellite Broadcast Act (Kabel- und SatellitenrundfunkG – KSRG; encl 16):

Sec 14 KSRG lays down the principle that programmes broadcast by cable and satellite must ensure objectivity and allow difference of opinion. In particular programmes have to show in an appropriate way the public, cultural and eco-

conomic life in the respective broadcast area and allow the relevant social groups and associations to express their opinions.

Sec 15 KSRG adopts the wording of Sec 2a of the RFG as regards the protection of human dignity, fundamental rights and discrimination because of race, sex, religion and nationality.

In respect of minors, Sec 16 of the KSRG provides that TV broadcasts must not include programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence. If programmes can be detrimental to the physical, mental or moral development of minors, it has to be ensured by selecting the time of the broadcast or any other measure, that minors will not normally hear or see such broadcasts. The unencoded broadcast of such programmes has to be preceded by an acoustic warning or identified by visual means throughout their duration.

As regards advertising, the KSRG stipulates in its Sec 18 that advertising and teleshopping must not be misleading, nor detrimental to the interests of the consumers. Surreptitious advertising and similar practices in the context of teleshopping as well as subliminal advertising and teleshopping are illegal. Sec 18 para 3 defines commercial advertising as all communication in connection with the exercise of trade, craft or other professions, which is broadcast in return for payment, for similar remuneration or for self-promotional purposes to promote the sale of goods or the delivery of services, immovable property included, rights and obligations for remuneration (self-promotional purposes are defined by Sec 2 para 1 no 10 as all broadcasts, which promote products, services, programmes and shows of the broadcaster).

Presenters of news programmes and political magazines may not appear in advertising or teleshopping. The person who pays for advertising must not exercise any influence on the editorial content of a programme: Sec 19 KSRG.

Again this Act stipulates in its Sec 20 that advertising spots may be broadcast only in groups/blocks.

General requirements for TV advertising and teleshopping are laid down in Sec 21 KSRG. TV advertising and teleshopping must not:

- prejudice respect for human dignity,
- include any discrimination on grounds of race, sex or nationality,
- be offensive to political or religious beliefs,
- encourage behaviour prejudicial to health and safety or

- encourage behaviour prejudicial to the protection of the environment.

Moreover, advertising and teleshopping must be readily recognizable as such and clearly separated from other programmes by acoustic or optical means: Sec 22 KSRG.

As regards the protection of minors, Sec 27 para 1 KSRG stipulates that advertising must not physically or morally harm minors and must consequently respect the following criteria for their protection:

- It must not directly exhort minors to purchase a product or service by taking advantage of the minor's inexperience and credulity.
- It must not directly encourage minors to persuade their parents or third parties to buy the goods or services being advertised.
- It must not exploit the special trust minors have in their parents, teachers or other persons.
- It must not unreasonably present minors in dangerous situations.

Sec 28 KSRG lays down the maximum duration for advertising (TV: 15% of the daily broadcasting time; radio: annual average of 172 minutes per day, this figure maybe exceeded by 20% per day) and teleshopping (see IV. Special Means of Communication). Sec 28 para 2 provides that within a one hour-period calculated from the last full hour, the duration of TV-advertising and teleshopping must not exceed 20% of the time. Sec 28 para 3 in particular provides that references of the broadcaster to its own programmes and to accompanying material, which originates directly from these programmes, as well as to public service programmes and to calls for charities do not count as advertising.

The aforementioned Secs 15 through 28 have been enacted to implement the provisions of the Directive TV without Frontiers.

1.2.2.1. Radio

Reference is to be made to the provisions of the **RundfunkG (RFG)** and the **Kabel- und SatellitenrundfunkG (KSRG)** discussed under the preceding heading b). The provisions of these acts equally apply to television and radio broadcast.

1.2.2.2. RegionalradioG – RRG (encl 17)

As mentioned before, the ORF does not enjoy a monopoly in the field of radio broadcasting anymore. The regulatory matters in the field of private radio broadcasting are contained in the Regional Radio Act (RegionalradioG – RRG).

Principles of programming are laid down in Sec 4 RRG: The principles of objectivity and variety of opinions have to be ensured in all programmes. Programmes have to show in an appropriate way the public, cultural and economic life in the respective broadcast area and allow the relevant social groups and associations to express their opinions. Programmes must not have a pornographic content or a content which glorifies violence. As regards their presentation and their content, all programmes must respect human dignity and the fundamental rights of others. Programmes must not incite hatred on the basis of race, sex, religion or nationality. Reporting and news programmes have to comply with the generally agreed journalistic principles. News have to be verified with due diligence in respect of their truth and origin before being broadcast.

The Act regulates advertising in Sec 7 in various ways, the general requirement again being that advertising must not be misleading or detrimental to the interests of the consumers. Again, this Act stipulates that advertising for tobacco, spirits and drugs as well as subliminal and clandestine advertising are banned. Advertising must be readily recognizable as such and clearly separated from other programmes by acoustic or optical means. The Act also lays down certain requirements for sponsored programmes and the maximum duration of advertising. Sec 7 para 6 RRG provides that the broadcast of church services, programmes with a religious content, children's programmes, news programmes and news magazines must not be interrupted by advertising. Similarly to the KSRG, the Act prohibits presenters of news programmes and political magazines from appearing in advertisements.

1.3. Press

Mediengesetz (encl 26)

Sec 26 of the Media Act states that announcements, recommendations or other articles, for the publication of which the medium has received a compensation, have to be labelled "announcement", "publication against payment" or "advertisement" except when because of their styling or placement there is no doubt about the nature of the publication.

1.4. Posters

No federal legislation specifically for posters.

1.5. Cinema

No federal legislation specifically for advertisements in cinemas.

1.6. Internet

No federal legislation specifically for the internet.

2. Specific rules: classification by sector

2.1. ALCOHOL

2.1.1 General rules

As mentioned above, legislation in the field of youth protection is subject to federal states (Bundesländer) legislation:

eg **Tiroler Jugendschutzgesetz** (encl 8):

Sec 18 para 1: Alcoholic beverages (and tobacco) must not be given to children and minors under the age of 16 for their personal consumption.

Sec 18 para 2: Spirits must not be given to minors over the age of 16 for their personal consumption.

Niederösterreichisches Jugendgesetz (encl 4):

Sec 18 para 1: Children must not drink alcoholic beverages.

Sec 18 para 2: Minors must not drink any spirits. They are allowed to drink other alcoholic beverages only to the extent that they are not in a state which would disqualify them from driving a car.

2.1.2. Rules on advertising

A. General rules

There is no general legislation regulating advertising of alcoholic beverages in Austria.

B. By media

2.1.2.1. *Television*

RundfunkG – RFG (encl 15)

Sec 5 para 6 of the RFG bans any advertising for spirits (and tobacco).

Implementing the provisions of the Directive TV without Frontiers, Sec 5e of the RFG lays down the criteria for advertising for alcohol:

- It must not be aimed specifically at minors, or, in particular, depict minors consuming alcohol.
- It must not link the consumption of alcohol to enhanced physical performance or the driving of a car.
- It must not create the impression that the consumption of alcohol contributes towards social or sexual success.
- It must not claim that alcohol has a therapeutic, stimulating or sedative effect or an effect on resolving conflicts.
- It must not encourage immoderate consumption of alcohol or present abstinence or moderate use of alcohol in a negative light.
- It must not place emphasis on high alcoholic content as being a positive quality of the beverages.

Kabel- und SatellitenrundfunkG – KSRG (encl 16)

Sec 26 of the KSRG bans all advertising and teleshopping for spirits. Same as Sec 5e of the RFG, it lays down the following criteria for advertising and teleshopping for alcoholic beverages:

- It must not be aimed specifically at minors, or, in particular, depict minors consuming alcohol.
- It must not link the consumption of alcohol to enhanced physical performance or the driving of a car.
- It must not create the impression that the consumption of alcohol contributes towards social or sexual success.
- It must not claim that alcohol has a therapeutic, stimulating or sedative effect or an effect on resolving conflicts.
- It must not encourage immoderate consumption of alcohol or present abstinence or moderate use of alcohol in a negative light.
- It must not place emphasis on high alcoholic content as being a positive quality of the beverages.

See also the General terms and condition of the ORF under heading III. self-regulation.

2.1.2.2. Radio

The aforementioned provisions of the RFG and KSRG apply equally to radio.

RegionalradioG – RRG (encl 17)

Sec 7 para 2 of the RRG bans all advertising for (tobacco products and) spirits.

See also the General terms and condition of the ORF under heading III. self-regulation.

2.1.2.3. *Press*

No specific federal legislation.

2.1.2.4. *Posters*

No specific federal legislation.

2.1.2.5. *Cinema*

No specific federal legislation.

2.1.2.6. *Internet*

No specific federal legislation.

2.2. TOBACCO

2.2.1. General rules

The youth protection laws of the federal states provides detailed regulations:

eg **Tiroler Jugendschutzgesetz** (encl 8):

Sec 18 para 1: Alcoholic beverages and tobacco must not be given to children and juveniles under the age of 16 for their personal consumption.

Niederösterreichisches Jugendgesetz (encl 4):

Sec 19: Children must not consume tobacco products.

2.2.2. Rules on advertising

A. General rules

Tobacco Act (encl 19)

Advertising for tobacco products is specifically regulated in the Tobacco Act (TabakG).

Sec 11 para 1: Advertising for tobacco products is legal only if it complies with paragraphs 2-5 and must not be connected to advertising for any other product.

Advertising for tobacco products is legal only on billboards, in the cinema and in newspapers/magazines. It must contain a warning on the dangers of tobacco consumption. Moreover advertising on billboards is limited to a certain size and banned, if it can be seen from schools or youth centres. Advertising in newspapers/magazines is limited to a one page-advertisement per producer and per issue. Tobacco advertising in cinemas with admission for minors is prohibited. Totally banned is:

- advertising for tobacco in radio and TV
- advertising for cigarettes with a content of more than 10 mg tar
- advertising for filterless cigarettes
- advertising in a way, which suggests that the consumption of tobacco products is not harmful

- advertising in a way, which directly appeals to juveniles
- advertising for tobacco products by depicting smoking or persons calling upon consumers to smoke who are younger than 30 years or who consumers might think are younger than 30 years or by depicting athletes or celebrities both also in drawings or caricatures or by giving their statements as regards smoking. Celebrities are individuals who – because of their status, their profession or their success – can be expected to enjoy public esteem.
- advertising for tobacco products by means of comics or characters appearing in comics
- special offers and promotional activities and mailings of tobacco products. The giving away of single items on the occasion of launching a new brand is legal within a period of 8 months after the first marketing of the product.
- advertising for tobacco products by means of giving promotional items connected to tobacco products to children and juveniles or promotional items usually destined to children
- advertising for tobacco products by means of flying banners or any other activities raising public interest

Moreover, limitations to advertising for tobacco products must not be circumvented by means of advertising for products, which look like tobacco products. Finally, the sponsoring of events, groups or associations as well as the announcement of this sponsoring is legal only within existing limitations.

B. By media

2.2.2.1. Television

RundfunkG – RFG (encl 15)

Sec 5 para 6 of the RFG bans all advertising for (spirits and) tobacco.

Kabel- und SatellitenrundfunkG – KSRG (encl 16)

Sec 23 of the KSRG bans all advertising (and teleshopping) for cigarettes and other tobacco products.

2.2.2.2. Radio

The aforementioned provisions of the RFG and KSRG apply equally to radio.

RegionalradioG – RRG (encl 17)

Sec 7 para 2 of the RRG bans all advertising for tobacco products (and spirits).

2.2.2.3. Press

No specific federal legislation. The Tobacco Act applies.

2.2.2.4. Posters

No specific federal legislation. The Tobacco Act applies.

2.2.2.5. Cinema

No specific federal legislation. The Tobacco Act applies.

2.2.2.6. Internet

No specific federal legislation. The Tobacco Act applies.

2.3. DRUGS AND HEALTH

2.3.1. General rules

No general rules to be highlighted for the purpose of this study.

2.3.2. Rules on advertising

A. General rules

Pharmaceutical Drugs Act (encl 20)

Advertising for drugs is regulated in the Pharmaceutical Drugs Act (ArzneimittelG - AMG):

According to Sec 50 para 2 of the Act advertising for drugs must not:

- claim effects of the drug which go beyond its actual effects,
- give the impression that one can regularly expect the drug to be effective
or
- be in contradiction to its marking or information regarding the accurate use.

According to Sec 51 of the AMG advertising, which is directed at consumers, must not:

- comprise drugs available only on prescription,
- comprise prescription-free drugs, whose trade name or scientific name is identical to a prescription drug,
- comprise homeopathic drugs which have not been admitted by decree.

In general, the advertising character of a commercial message directed at the public must be obvious and the product must be presented as a drug: Sec 52 AMG.

Sec 53 of the AMG sets out in detail the rules for drug advertising directed at the public. It must not contain elements, which:

- show members of the health profession or institutions of health care,
- lead to believe that a medical examination or an operation is unnecessary, particularly by offering a diagnosis or recommending treatment by distance,
- suggest that the effect of a drug without any side effects is guaranteed or that the drug is equivalent or superior to another drug or medical treatment,
- suggest that the normal health of a patient can be improved through a drug,
- are exclusively or predominantly destined for children,
- refer to a recommendation from scientists, persons active in health care or from other persons who – because of their celebrity status – could promote use of the drug,
- equate a drug to food, a cosmetic or any other product,
- suggest that the safety or effectiveness of a product is based on its biological origin,
- by means of an extensive description of the anamnesis may lead to a wrong self-diagnosis,
- refer in an abusive, disquieting or misleading way to cure certificates,
- use in an abusive, disquieting or misleading way depictions of changes of the human or animal body due to diseases or harmful events or the effects of drugs in the human body or in parts thereof,
- mention that the sale of the drug is admitted by the health authorities,
- suggest that the drug be ordered through mail order.

Sec 54 para 1 of the AMG determines the minimum information which must be part of drug advertising directed at consumers:

- the trade name and the scientific name of the active ingredient as long as the drug contains only one active ingredient

- the information indispensable for a purposeful use of the drug
- a clear warning about the fact that drugs can have side effects and that therefore the information supplied with the drug has to be followed strictly or a doctor or pharmacist are to be consulted. If the advertising takes place in electronic media, that warning must be clearly perceptible.

Sec 54 para 2 AMG stipulates that advertising directed at consumers need not comply with the requirements laid down in para 1, if the advertising consists solely of the name of the drug (follow-up advertising), unless

- the advertising takes place in electronic media or
- the advertising is for drugs designed to increase athletic performance.

If follow-up advertising takes place on billboards or in magazines, the warning pursuant to para 1 must be present.

Sec 55 of the AMG regulates the advertising for drugs directed at health professionals. The most important aspect of this is that they must not accept any gifts etc.

Sec 56 of the AMG finally requires advertising for certain drugs in magazines to include information about the drug. This is regardless of whether the advertising is directed at pharmacists or consumers and must be clearly legible.

Pflanzenschutzmittelgesetz 1997 (encl 21)

This Act deals with pesticides. Its Sec 24 provides that pesticides may be advertised only if they are admitted. Texts and depictions for the purposes of advertising have to contain a clearly perceptible – depending on the medium – warning as to risks and safety. This warning must also be contained in the package. The marketing of pesticides must not refer to anything, which is in violation of this Act in respect of marking. In particular, there must not be any reference, which could lead to a wrong impression of the risks or the possible applications of the pesticide.

Lebensmittelgesetz (encl 22)

The Pure Food Act deals with advertising in its Sec 9. Para 1 bans all health-related statements in advertising and in particular provides that

- there must not be any reference to the prevention, soothing or cure of diseases or symptoms of diseases or to any physiological or pharmacological ef-

fects or such effects, which keep young and healthy, prevent aging and help to become slimmer or give the impression of such an effect;

- there must not be any reference to pathological histories, recommendations by doctors or expert opinions;
- there must not be any use of health-related, graphic or stylistic depictions of organs of the human body, depictions of members of the medical professions or spas or any other use of depictions of medical activities.

Para 2 permits all traditional designations which leave no doubt as to the quality of the good.

Para 3 provides that the Ministry of Health and Environment can on application allow certain health-related statements by decree, if this is consistent with the protection of consumers from being misled. The decree is to be lifted, if the conditions for the permission are not fulfilled anymore.

See also the institution Pharmig under heading III. self-regulation.

B. By media

2.3.2.1. Television

RundfunkG – RFG (encl 15)

Advertising for drugs as regards the radio and TV channels of the ORF is regulated in Sec 5d of the RFG. It bans all advertising for drugs and medical treatments, which are available on prescription only. Advertising for all other drugs and medical treatments must be distinguishable as such, honest, true and verifiable. It must not be harmful to the human being. Sec 51 of the Pharmaceutical Drug Act (ArzneimittelG) is not affected by these provisions.

Kabel- und SatellitenrundfunkG – KSRG (encl 16)

Sec 24 of the KSRG bans all advertising for drugs and medical treatments, which are available on prescription only. Advertising for all other drugs and medical treatments must be distinguishable as such, honest, true and verifiable. It must not be harmful to the human being. Sec 51 of the Pharmaceutical Drug Act (ArzneimittelG) is not affected by these provisions.

See also the General terms and condition of the ORF under heading III. self-regulation.

2.3.2.2. Radio

The aforementioned provisions of the RFG and KSRG apply equally to radio.

RegionalradioG – RRG (encl 17)

Sec 7a of the RRG has the same purpose and uses the same words as Sec 5d of the RFG and Sec 24 of the KRSG.

See also the General terms and condition of the ORF under heading III. self-regulation.

2.3.2.3. Press

No specific federal legislation.

2.3.2.4. Posters

No specific federal legislation.

2.3.2.5. Cinema

No specific federal legislation.

2.3.2.6. Internet

No specific federal legislation.

2.4. VEHICLES

2.4.1. General rules

Führerscheingesetz (encl 22)

The Driving License Act (Führerscheingesetz – FSG) deals with the protection of minors in various ways, usually by requiring a certain age for a certain type of license. Sec 6 is the most fundamental provision in this regard, requiring the applicant to be 18 years old to be awarded a license in class B (cars) and 21 years to be awarded a license in class A (motor cycles).

Straßenverkehrsordnung (encl 24)

As is the case with the Driving License Act, the Road Traffic Regulations (Straßenverkehrsordnung – StVO) protect minors by requiring them to have a certain age for certain activities such as cycling (Sec 65: 12 years), horseback riding (Sec 79: 16 years) and roller skating (Sec 88a: 12 years).

2.4.2. Rules on advertising

A. General rules

Straßenverkehrsordnung (encl 24)

The Road Traffic Regulations also deal specifically with advertising. Sec 24 para 7 provides that the competent authority may ban the parking of vehicles, whose main purpose is advertising on certain roads, car parks or areas of a city permanently, for a certain period of time or beyond a certain period of time, if this proves necessary considering parking as a whole or the available parking space. Sec 82 para 1 stipulates that the use of public roads and the air space above those roads for purposes other than traffic such as trade or advertising requires – regardless of other permissions – a permission pursuant to this Act.

Bundesstraßengesetz (encl 25)

The Highway Act (Bundesstraßengesetz) bans acoustic advertising and all types of facilities, which produce such advertising in an area of less than 100 meters along the highway. Optical advertising in this area requires – regardless of other permissions required, in particular pursuant to the Road Traffic Regulations – a permission of the Federal Highway Authority, which may be given only if those advertisements serve the general interest of motorists.

B. By media

2.4.2.1. Television

No specific federal legislation.

2.4.2.2. Radio

No specific federal legislation.

2.4.2.3. Press

No specific federal legislation.

2.4.2.4. Posters

Mediengesetz (encl 26)

Sec 48 of the Media Act provides that it does not require a permission by the competent authority to post bills or leave bills in a public place. The competent authority, however, may order that bills may be posted only in certain places if this is necessary to secure law and order.

2.4.2.5. Cinema

No specific federal legislation.

2.4.2.6. Internet

No specific federal legislation.

2.5. EDUCATION

2.5.1. General rules

Schulpflichtgesetz (encl 27)

The Compulsory Education Act (Schulpflichtgesetz) naturally protects minors by making it mandatory to attend school. Sec 1 requires all children, who are resident in Austria, to attend school. Children are defined as minors, who are obliged to attend school or who are entitled to attend a general state school pur-

suant to this title. Sec 2 determines the start of school age with the first of september after turning 6 years on age. Sec 3 stipulates that mandatory school attendance lasts for 9 years.

2.5.2. Rules on advertising

A. General rules

Schulunterrichtsgesetz (encl 28)

Sec 46 para 3 of the Schooling Act (Schulunterrichtsgesetz) provides that advertising for purposes other than school is admitted in schools, at school events and at events related to school, only if the functioning of the Austrian school pursuant to Sec 2 of the School System Act is not affected hereby.

B. By media

2.5.2.1. Television

No specific federal legislation.

2.5.2.2. Radio

No specific federal legislation.

2.5.2.3. Press

No specific federal legislation.

2.5.2.4. Posters

No specific federal legislation.

2.5.2.5. Cinema

No specific federal legislation.

2.5.2.6. Internet

No specific federal legislation.

2.6. TOYS AND OBJECTS FOR CHILDREN

2.6.1. General rules

The youth protection laws of the Federal States:

eg **Tiroler Jugendschutzgesetz** (encl 8):

Sec 17 para 1: Media (eg magazines, books, photos, video tapes, other types of storage systems, software, etc), objects (eg toys) and services (eg phone sex), which show a favourable image of violence, discriminate against human beings because of race, colour of skin, national or ethnic origin, sex or religious belief or depict sexual activities and thereby put the physical, mental, moral or social development of children or minors at risk, must not be offered, given, shown or otherwise made available to them.

Sec 17 para 2: Anyone dealing with objects as described in para 1 for commercial purposes has to take appropriate measures to ensure that children and juveniles are not exposed to them.

Spielzeugverordnung (encl 29)

The Toys Regulation lays down provisions in regard of the marketing of toys. Toys may be marketed on the condition that they bear the CE-conformity sign, comply with the safety requirements of the regulation, carry information regarding risks and proper use and do not constitute any risk to the health and safety of users or third persons.

Spielzeugkennzeichnungsverordnung (encl 30)

The Toys Marking Regulation deals with the necessary marking of toys for their lawful marketing. The necessary marking includes the name and the logo of the manufacturing company, its agent or importer within the EEA and the CE-sign.

2.6.2. Rules on advertising

A. General rules

No general federal legislation specifically directed on advertising.

B. By media

2.6.2.1. Television

See the General terms and conditions of the ORF under heading III. self regulation for a ban on war game advertising.

2.6.2.2. Radio

See the General terms and conditions of the ORF under heading III. self regulation for a ban on war game advertising.

2.6.2.3. Press

No specific federal legislation.

2.6.2.4. Posters

No specific federal legislation.

2.6.2.5. Cinema

No specific federal legislation.

2.6.2.6. Internet

No specific federal legislation.

2.7. FINANCIAL SERVICES

2.7.1. General rules

Bankwesengesetz (encl 31)

The Banking Act (Bankwesengesetz – BWG) regulates all matters in respect of banks and their business.

2.7.2. Rules on advertising

A. General rules

Sec 35 para 2 BWG stipulates that all advertising for loans – provided it contains figures on the interest rate or the costs of the loan – must include the actual and the fictitious annual interest rate, if necessary by way of example.

Sec 93 para 9 BWG provides that any bank that has been excluded from the system of investor compensation must post a bill in its premises referring to that fact as well as include a warning in its standard contracts and advertising.

B. By media

2.7.2.1. Television

See the General terms and conditions of the ORF under heading III. self regulation for a ban on advertising loans of private money lenders.

2.7.2.2. Radio

See the General terms and conditions of the ORF under heading III. self regulation for a ban on advertising loans of private money lenders.

2.7.2.3. Press

No specific federal legislation.

2.7.2.4. Posters

No specific federal legislation.

2.7.2.5. Cinema

No specific federal legislation.

2.7.2.6. Internet

No specific federal legislation.

2.8. LEISURE

2.8.1. General rules

The youth protection laws of the Federal States:

eg **Tiroler Jugendschutzgesetz** (encl 8):

Sec 15: Children and teenagers may attend cinema showings according to the age limit set in an announcement pursuant to Sec 22 of the Tiroler LichtspielG.

Sec 16 para 1: Children may be present in the rooms of a pub, if they are accompanied by an adult or if there is an important reason.

Sec 16 para 2: If not accompanied by an adult, minors under the age of 16 may be present in the rooms of a pub until midnight, minors over the age of 16 until 1 am.

Sec 16 para 3: Children and minors must not be present in any premises, which present a risk to their physical, mental, moral or social development, because of their kind, location, way of operation or customership (eg wine bars, night clubs, sexshops, etc). Moreover children must not be present in amusement arcades.

Niederösterreichisches Jugendgesetz (encl 4):

Sec 13 para 1: Children may be present in public places between the hours of 10 pm and 5 am only if accompanied by a supervisor. At other times they may be present in such places only with the consent of their parents.

Sec 13 para 2: Minors may be present in public places between 5 pm and midnight, at other times only with the consent of their parents.

Sec 13 para 3: Children and minors may be present in amusement arcades only if accompanied by their parent or guardian.

Sec 14 para 1: Children may be present in pubs between 10 pm and 5 am only if accompanied by a supervisor. At other times they may be present in such places only with the consent of their parents.

Sec 14 para 2: Minors may be present in pubs until midnight, after that only with the consent of their parent or guardian.

Sec 14 para 3: Children and minors may not be present in night clubs and wine bars.

Sec 15: Children and minors may attend cinema showings, TV showings and theatre performances only if they have the minimum age according to the Niederösterreichisches LichtspielG.

2.8.2. Rules on advertising

A. General rules

No general federal legislation specifically directed on advertising.

B. By media

2.8.2.1. Television

No specific federal legislation.

2.8.2.2. Radio

No specific federal legislation.

2.8.2.3. Press

No specific federal legislation.

2.8.2.4. Posters

No specific federal legislation.

2.8.2.5. Cinema

No specific federal legislation.

2.8.2.6. Internet

No specific federal legislation.

2.9. ARMS/VIOLENCE

2.9.1. General rules

Arms Act (encl 32)

All matters relating to arms are regulated in the Arms Act (WaffenG). It sets out the various requirements for the lawful possession of arms.

Sec 11 specifically deals with minors and makes it impossible for them to be in possession of arms, live and fake ammunition. There are certain exceptions for minors dealing with arms while being trained for a profession and also for minors using arms for hunting and sports purposes.

2.9.2. Rules on advertising

A. General rules

B. By media

2.9.2.1. Television

See the General terms and conditions of the ORF under heading III. self regulation for a ban on advertising products, which play down violence, in particular war games.

2.9.2.2. Radio

See the General terms and conditions of the ORF under heading III. self regulation for a ban on advertising products, which play down violence, in particular war games.

2.9.2.3. Press

No specific federal legislation.

2.9.2.4. Posters

No specific federal legislation.

2.9.2.5. Cinema

No specific federal legislation.

2.9.2.6. Internet

No specific federal legislation.

3. Proposals of Law

Familienvolksbegehren (encl 33)

A referendum (Volksbegehren) was held last autumn with the aim of enacting legislation to improve the situation of families in Austria. The main ambitions of the referendum were to establish a general state allowance during maternal leave, to improve conditions for working parents, to protect children and minors from sects and violence in media, to introduce another kind of allowance (Kinderbetreuungsgeld) as well as free public transport for pupils and apprentices living in boarding schools and finally full compensation for braces. Parliament is still discussing those ambitions.

Bundesjugendförderungsgesetz (encl 34)

Another legislative ambition deals with the enactment of an Act for the Promotion of Youth. As indicated by its name, it aims at improving the situation of youth (defined as persons between the ages of 14 and 30) in Austria. The main measures to achieve this aim are the establishment of a youth council, which is designed to provide a regular forum for discussions between political leaders and representatives of youth associations, and the granting of subsidies. Parliament is still discussing that ambition.

Parlamentarische Anfrage zur Schulwerbung (encl 35)

Sponsoring in and of schools was the subject of an enquiry by a MP directed at the Ministry of Education in April 2000. The main concerns of the MP were a lack of control as to how funds earned by schools through sponsoring would be used, a possible dependence of schools on sponsors, the allegedly unfair share of the profits between schools and agencies arranging the sponsoring and the sole responsibility of the headmaster of the school to decide on the use. The Ministry of Education pointed out in her answer to the query that existing measures are sufficient to check the purposeful use of the funds earned, that there is no danger of schools becoming dependent on sponsors because of state funding, that existing contracts represent the voluntary decisions of the contracting parties and that there is no point in establishing a council to decide on the use of the funds since there are councils anyway, in which other parties involved may express their opinions.

III. SELF REGULATION

1. General

Österreichischer Werberat (encl 36)

The Austrian Advertising Council (Österreichischer Werberat) is the forum entrusted by the advertising industry to promote self-regulation. It supports responsible behaviour and corrects developments, which are deemed undesirable. In particular, the Council has established guidelines of good behaviour in the "Selbstbeschränkungskodex der Werbung". The guidelines cover general areas such as violence, women and children, as well as sectors such as alcohol, tobacco and vehicles. The Council is comprised of 27 members, who are appointed by the Society for Self-Regulation of the Advertising Industry, which represents the media, the advertising industry and the clients of the advertising industry.

In relation to children, the code stipulates, for example, that :

- advertising should not directly invite children to purchase products or to influence other persons accordingly,
- advertising should not make children feel inferior if they do not possess a particular product,
- advertising should not encourage children to behave undesirably or anti-socially.

Presserat (encl 37)

The Press Council (Presserat) is another institution, which deals with self-regulation – in this case the self-regulation of the media. It has developed a set of guidelines, which are to be observed by everyone involved in journalism, both electronic and traditional. These guidelines deal with principles such as objectivity, incorruptibility, respect of privacy and verification of news. The guidelines are compiled in the "Ehrenkodex der österreichischen Presse".

2. Classification by media

2.1. **Television**

General terms and conditions of the ORF (encl 18)

The terms and conditions of the ORF applied to TV and radio advertising on its channels enjoy much more importance than the terms and conditions of an average company by virtue of the ORF's former monopoly in the field of radio broadcasting and virtual monopoly in the field of TV broadcasting. These terms and conditions regulate advertising in a very detailed way. In addition to the requirements of the RFG, these terms and conditions stipulate that advertising must not only observe the relevant provisions of various other acts, in particular the RFG, the Act against Unfair Competition and the Media Act, but also must be in accordance with "good taste". In general, the terms and conditions exclude the following:

- subliminal advertising
- advertising, which violates the human dignity or the fundamental rights of others
- advertising, which discriminates because of race, sex or nationality
- advertising with a religious or party-political content, or advertising, which violates one's religious or political conviction
- advertising, which addresses superstitiousness
- advertising promoting behaviour, which puts health or safety at risk
- advertising for tobacco and spirits
- advertising for prescription drugs or such drugs, which are not on prescription only but have the same name as such drugs
- advertising, which promotes goods as clinically proven or recommended by doctors or which involves members of the health profession
- advertising for medical treatments, which are available on prescription only
- advertising promoting behaviour which threatens the environment
- advertising of products, which play down violence, in particular war games
- advertising using elements, which are reserved for official broadcasts in the case of catastrophies or emergencies
- advertising involving employees of the ORF
- advertising involving freelance employees of the ORF, if the ORF has not given its consent
- advertising, which involves presenters of news programmes or political magazines
- because of the statutory obligation to objective reporting, the ORF cannot accept commercial advertising, which involves active Austrian politicians
- advertising of people, who want to marry, or advertising of private money lenders

- advertising using the following pieces of music: national anthem, European anthem, Eurovision fanfare
- radio advertising, which is silent for more than one minute

There are a number of provisions with the specific aim of **youth protection**: Advertising must not cause physical or moral detriment to minors. Advertising, which aims at minors exercising psychological force on their parents or guardians to purchase, is banned. For the protection of minors, advertising has to meet the following criteria:

- Advertising must not call upon minors to purchase or consume.
- Advertising must not call upon minors to persuade their parents or third parties to purchase the advertised good or service.
- Advertising must not exploit the way, in which minors trust their parents, teachers or other persons.
- Advertising must not show minors in dangerous situations without motive.
- Advertising must not show imitations of minors.

2.2. Radio

The aforementioned General terms and conditions of the ORF apply equally to radio.

2.3. Press

See discussion of the **Presserat** under heading 1. General.

2.4. Posters

No specific self-regulations to be mentioned for the purpose of this study.

2.5. Cinema

No specific self-regulations to be mentioned for the purpose of this study.

2.6. Internet

No specific self-regulations to be mentioned for the purpose of this study.

3. Classification by sector

Within the self-regulating structure of Austrian commercial communications, all forms of advertising and children are regulated (television, radio & print media) on the basis of the ICC Code of Advertising Practice.

3.1. ALCOHOL

General terms and conditions of the ORF (encl 18)

The terms and conditions of the ORF in respect of advertising for alcohol provide for the following (pt 4c): Any advertising in the context of children, minors or drivers is prohibited. Any advertising, which is not related to the product, is banned. Any advertising for alcoholic beverages has to meet the following criteria:

- There must not be any connection between an improvement of the physical performance and the consumption of alcohol.
- There must not be any impression that the consumption of alcohol promotes social or sexual success.
- There must not be any suggestion of a therapeutic, stimulating, calming or such an effect of alcohol, which resolves conflicts.
- Irresponsible use of alcoholic beverages must not be promoted and moderate use or temperance must not be shown in a negative way.
- The percentage of the alcoholic content must not be used as a positive characteristic.
- Advertising must not call upon consumers to consume alcohol along the lines of "drink...".

3.2. DRUGS AND HEALTH

Pharmig (encl 38)

Pharmig is an association of undertakings of the Austrian pharmaceutical industry. Almost all of those undertakings are represented in Pharmig. Among other things, it also deals with self-regulation and for this purpose has set up a Code of Conduct. This Code of Conduct manifests the manufacturers' acknowledgement of their responsibility vis-à-vis society in general and the patient in particular. It lays down guidelines for the marketing activities after the approval of a drug and for the provision of scientific information to specialist circles.

General terms and conditions of the ORF (encl 18)

Advertising for drugs is regulated in the terms and conditions of the ORF. This must be in accordance with the relevant statutes (ArzneimittelG) and regulations of the Ministry for Health and Consumer Affairs. Advertising for drugs, which are available over the counter, and treatments, which do not require a prescription, must be distinguishable as such, honest, true, and verifiable. In particular, advertising in radio and TV must not use:

- expert opinions, certificates or scientific publications
- statements according to which drugs are clinically proven or recommended by doctors
- clinical/pathological histories
- "before and after"-pictures of body parts under the influence of a certain drug
- statements, which cause fear or take advantage of fear
- additionally, according to the Pure Food Act (LebensmittelG), it is illegal to claim that a drug prevents, eases or cures a disease or symptoms of a disease or has any other physiological or pharmacological effect or gives the impression of such an effect
- hints on clinical/pathological histories, medical recommendations or expert opinions
- health-related depictions of organs of the human body, of members of the medical professions or spas or any other use of depictions of medical activities

3.3. TOYS AND OBJECTS FOR CHILDREN

General terms and conditions of the ORF (encl 18)

Pt 4l of the General terms and conditions of the ORF bans advertising of products, which play down violence, in particular war games.

3.4. FINANCIAL SERVICES

General terms and conditions of the ORF (encl 18)

Pt 4r of the General terms and conditions of the ORF bans advertising loans of private money lenders.

3.5. ARMS/VIOLENCE

Pt 4l of the General terms and conditions of the ORF bans advertising of products, which play down violence, in particular war games.

3.6. TELECOMMUNICATIONS (encl 39)

The telecoms industry has adopted a code of conduct in regard of value added services. In principle, this code is self-regulating, but becomes binding by way of being included in each operator's licence. It sets out various conditions with the aim of protecting minors, the most important of which are the following:

Sec 10 para 1: Value added services must not offer any content, which is contrary to Austrian law.

Sec 10 para 2: Moreover, all content, which incites the breach of law, advises on such a breach or facilitates such a breach, is banned. Also, it is prohibited to offer information, which gives the impression that such information is based on an illegal activity, which actually took place.

Sec 10 para 3: Para 1 and 2 cover particularly all activities, which are in violation of laws protecting good morals, property or the state. Also covered are all activities in contradiction of laws against the use of illegal drugs or the dissemination of national socialist ideology.

Sec 11 para 1: Operators are also obliged not to offer any content, which:

- discriminates against individuals or groups of individuals because of their race, colour of skin, nationality, religion or language,
- contains violence, sadistic activities or cruelty,
- causes the caller to be afraid or panic or
- demands the caller to use dangerous practices or dangerous substances.

Sec 12 para 1: Children's services must not offer any content, which reasonable parents would not like to be offered to their children at all or not in such a way.

Sec 12 para 2: Telecom operators take all reasonable measures to prevent services, which are capable of causing harm to the physical, mental and moral well-being of children and minors from being used by children and minors.

Sec 23: Advertising is regulated in the same way as the content of value added services (Secs 9-11). Particularly all content, which incites the breach of law, advises on such a breach or facilitates such a breach, is banned.

Sec 24 protects children and minors from certain types of advertising: Telecom operators take all reasonable measures (particularly by choosing suitable media) to ensure that teenagers are not exposed to advertising for services other than children's services.

Finally, the code contains a number of provisions regarding the cost of value added services and measures to protect consumers in general and children in particular from incurring too high costs.

3.7. COMMERCIAL ACTIVITIES IN SCHOOL

The Werberat (Advertising Council) has produced a general set of rules relating to advertising and children within its general code of advertising practice.

IV. SPECIAL MEANS OF COMMUNICATION

1. Direct Marketing

As a matter of principle, direct marketing is legal. All activities, however, are subject to the rules of the Act against Unfair Competition (encl 14), ie both its specific and general provisions. As regards the former, it must in particular not be misleading (Sec 2) or give untrue statements about competitors (Sec 7). As regards the latter, the following types of direct marketing are – if not illegal – problematic and may be illegal depending on the circumstances of the case (Sec 1): Marketing by phone, fax or email; door-step-selling; party-(housewives-)selling; selling by laymen. Moreover, direct marketing activities may be regulated by public law. In such a case, anyone engaging in direct-marketing has to comply with the relevant statutes, such as trade and pricing regulations or data protection laws. The trade regulations (Gewerbeordnung – GewO; encl 40) for example provide in its Sec 50 para 2 that poison, drugs, health articles, weapons and ammunition as well as pyrotechnic items must not be distributed by mail order.

2. Sales Promotion

Similarly to direct marketing, promotional sales activities are legal to the extent that they may infringe certain provisions of the Act against Unfair Competition (encl 14). In particular, Sec 9a of the Act bans certain types of gifts given away to consumers or entrepreneurs. The possibility to participate in a lottery counts as a free gift as well. There are, however, a number of exceptions to this ban to allow such gifts, which are regarded as traditional and in accordance with trade practice and present no risk to consumers. Gifts given away with newspapers, magazines, etc on the other hand are prohibited without exception. Another ban in Sec 27 deals with distribution systems, according to which consumers have to pay a price but are entitled to claim the good only, if they lead other consumers to conclude a contract of the same type with the entrepreneur ("Schneeballsysteme"). Sections 33a through 33f lay down a number of requirements for "special sales" ("Ausverkäufe"), which are defined as all announcements giving the impression that big quantities of goods are sold in a fast way and that there are special circumstances forcing the entrepreneur to sell the goods in such a fashion.

3. Teleshopping

RundfunkG – RFG (encl 15)

According to Sec 5 para 4 RFG, the ORF must not sell broadcast time for any kind of teleshopping.

Kabel- und SatellitenrundfunkG – KSRG (encl 16)

Teleshopping is defined in Sec 2 para 1 no 11 as a programme of direct offers to the public for the sale of goods or delivery of services, immovable property included, rights and obligations for consideration.

Teleshopping is regulated by the KSRG in detail:

Sec 18 para 1: Advertising and teleshopping must not mislead and be harmful to the consumer.

Sec 18 para 2: Surreptitious advertising and practices of a similar effect in the context of teleshopping as well as subliminal advertising and teleshopping are illegal.

Sec 19 para 1: Presenters of news programmes and political magazines must not appear in advertising or teleshopping, neither through image nor voice.

Sec 19 para 2: The person who pays for the advertising must not exercise any influence on the editorial content of a programme.

Sec 20: TV advertising and teleshopping are to be broadcast in blocks between different programmes.

Sec 21 lays down the general requirements for advertising and teleshopping (see above under heading II. regulation 1. classification by media b) television).

Sec 23 bans any form of advertising and teleshopping for cigarettes and other tobacco products.

Sec 24 and 25 ban teleshopping for drugs and medical treatments.

Sec 26 bans all advertising and teleshopping for spirits. Moreover it lays down the following criteria for advertising and teleshopping for alcoholic beverages:

- It must not be specifically directed at minors and in particular must not show minors drinking alcohol.
- There must not be any connection between an improvement of the physical performance and the consumption of alcohol or the driving of a car and the consumption of alcohol.
- The impression must not be given that the consumption of alcohol promotes social or sexual success.

- The advertising must not suggest that alcohol has a therapeutic, stimulating, calming or such an effect, which resolves conflicts.
- Irresponsible consumption of alcohol must not be promoted, moderate use of alcohol or temperance must not be shown in a negative way.
- The percentage of the alcoholic content must not be shown as a positive characteristic of the beverage.

Sec 27 lays down the general requirements for advertising and teleshopping for the protection of minors (see above under heading II. regulation 1. classification by media b) television).

Sec 27 para 2 moreover provides that teleshopping must not incite minors to conclude contracts for the purchase, rent or lease of goods and services.

Sec 28 para 1 lays down the maximum duration for advertising (see above under heading II. regulation 1. classification by media b) television) and also regulates the minimum/maximum duration of teleshopping windows (teleshopping windows must have a minimum duration of 15 minutes without interruption; there must not be more than 8 windows per day; the aggregate duration of the windows must not exceed three hours per day; teleshopping windows must be clearly marked as such by optical and acoustic means: Sec 28 para 4).

Sec 28a provides that advertising in pure teleshopping channels is legal to the extent provided for in Sec 28 and in programmes exclusively for self-advertising, other forms of advertising are legal pursuant to Sec 28 paras 1 and 2.

4. Sponsorship/sponsoring

All three broadcasting laws lay down provisions in respect of sponsored programmes (the term used by the Austrian Acts is "Patronanzsendungen"). ***These provisions implement the Directive TV without Frontiers.***

RundfunkG – RFG (encl 15)

Sec 5g para 1 of the RFG defines sponsored programmes as works of an audiovisual nature, to which a public or private undertaking not active in the field of audiovisual production makes a financial contribution with the aim of promoting the name, the trademark, the image, the activities or the products of that undertaking.

Sec 5g para 2 lays down the requirements:

- The content and time slot of the sponsored programme must not be influenced by the client in such a way that the responsibility and the editorial independence of the ORF in respect of the programme in question are affected.
- Sponsored programmes have to be marked as such by broadcasting the name and the logo of the client at the beginning and the end of the programme.
- They must not incite the purchase, the rental or the lease of goods or the use of services of the client or a third party, in particular by making references promoting the sale of these goods or services.

Sec 5g para 3 RFG prevents undertakings from sponsoring programmes, whose main activity is the production or distribution of goods or delivery of services, for which there is a ban on advertising pursuant to the provisions of this Act or any other act.

Sec 5g para 4 RFG: News programmes and political magazines must not be sponsored programmes.

Kabel- und SatellitenrundfunkG – KSRG (encl 16)

The KSRG defines in Sec 29 sponsored programmes as works of an audiovisual nature or radio programmes, to which a public or private undertaking not active in the field of audiovisual or radio production makes a financial contribution with the aim of promoting the name, the trademark, the image, activities or the goods of the undertaking.

Sec 29 para 2 lays down the requirements:

- The content and time slot of the sponsored programme must not be influenced by the client in such a way that the responsibility and the editorial independence of the broadcaster in respect of the programme in question are affected.
- Sponsored programmes have to be marked as such by broadcasting the name and the logo of the client at the beginning and the end of the programme.
- They must not incite the purchase, the rental or the lease of goods or the use of services of the client or a third party, in particular not by making references promoting the sale of these goods or services.

Sec 29 para 3 KSRG prevents undertakings from sponsoring programmes, whose main activity is the production or distribution of goods or delivery of

services, for which there is a ban on advertising pursuant to the Sec 23 of this Act or any other act.

Sec 29 para 4 KSRG: Programmes sponsored by undertakings, whose activities include production and the sale of drugs and medical treatments, must be sponsored only in such a way that the name of the company is mentioned or the logo is shown, there must be no reference to drugs or medical treatments, which are available on prescription only.

Sec 29 para 5 KSRG: News programmes and political magazines must not be sponsored programmes.

RegionalradioG – RRG (encl 17)

Sec 7 para 5 lit a RRG defines sponsored programmes as radio programmes, to which a public or private undertaking not active in the production of such programmes makes a financial contribution with the aim of promoting the name, the trademark, the image, the activities or the goods of the undertaking.

Sec 7 para 5 lit b lays down the requirements:

- The content and time slot of the sponsored programme must not be influenced by the client in such a way that the responsibility and the editorial independence of the radio broadcaster in respect of the programme in question are affected.
- Sponsored programmes have to be marked as such by broadcasting the name of the client at the beginning and the end of the programme.
- They must not incite the purchase, the rental or the lease of goods or the use of services of the client or a third party, in particular not by making references promoting the sale of these goods or services.

Sec 7 para 5 lit c RRG prevents undertakings from sponsoring programmes, whose main activity is the production or sale of goods or delivery of services, for which there is a ban on advertising pursuant to the Sec 7 para 2 of this Act or any other act.

Sec 7 para 5 lit d RRG: Programmes sponsored by undertakings, whose activities include the production and the sale of drugs and medical treatments, must be sponsored only in such a way that the name or the image of the company is mentioned, there must be no reference to drugs or medical treatments which are available on prescription only.

Sec 7 para 5 lite RRG: News programmes and political magazines must not be sponsored programmes.

5. Commercial activities in school

In February 1997, the the Schulorganisationsgesetz pertaining to advertising was changed, leading to a new provision (Sec 46 para 3 of the Schulorganisationsgesetz) permitting advertising and sponsorship in schools.

Only the head of the school concerned has the right to decide upon sponsorship or advertising.

The provision states that (free translation) “In the shool, at school events or events directly connected to the school, advertising/sponsorship that does not relate to school/teaching is permitted in so far as it does not adversely affect the school’s duties” (See annex A1 for original German text).

It is strictly forbidden to advertise products that could lead to addiction, ie alcohol, tobacco products or computer games not suitable to the pupils age.

V. COMPLAINTS

1. SELF REGULATION

Werberat

Anyone, who feels that a certain advertising campaign infringes the guidelines of the Advertising Council, is entitled to bring a complaint to the Council – in serious cases the Council also acts on its own motion –, which leads to an examination. The result of such an examination is an "opinion", which will be published.

The Advertising Council has published extensive data on the number of complaint and their topics as well as on the evolution of the complaints starting 1995 (encl 36):

In the year 2000, 5 complaints on alleged endangering of children through advertising have been received by the Advertising Council. In 4 cases, the Council found no reason to act. Only in one case, the Council called to use another angle in the advertising in future.

In the year 1999, the Council received only one complaint on this topic and found no reason to act.

In the year 1998, the Council received 6 complaints. One case, the Council found as being outside the Council's jurisdiction. In 2 cases, the Council found no reason to act, whereas in the remaining 3 cases, the Council called for the immediate withdrawal of the campaign.

In the year 1997, 4 complaints have been received, one was found outside the Council's jurisdiction, in two cases, the Council found no reason to act, and in only one case, the Council called to use another angle in the advertising in future.

2. ADMINISTRATIVE PROCEEDINGS

Rundfunkkommission

Any infringements of the RFG (encl 15) are examined by the Broadcasting Commission (Rundfunkkommission): Sec 25 RFG. Apart from certain institutions, an individual can bring a complaint to initiate an examination, if that individual has directly been damaged by the infringement of the RFG, or otherwise, if that complaint is supported by 500 people: Sec 27 RFG. If the Commission finds that a provision of the RFG has been infringed, it publishes a statement, which may also be broadcast: Sec 29 RFG. Decisions of the Commission are not subject to an appeal.

In certain cases of infringement of the Act against Unfair Competition, particularly Sec 33a through 33f (encl 14), the competent authority acts as a prosecutor and initiates administrative penal proceedings.

Neither statistical data nor decisions on the topic of advertising and children have been published by the Broadcasting Commission.

3. JUDICIAL PROCEEDINGS

Infringements of the Act against Unfair Competition (encl 14) are predominantly prosecuted by competitors of the infringing party. They are entitled to apply to courts for an injunction ordering the infringing party to refrain from continuing with the unfair practice. Moreover, they are entitled to claim damages in the main proceedings and have the judgment published.

No published decisions have treated the topic of advertising and children.

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