

GERMANY

**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**, 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 Germany the study was carried out by the **law firm Price Waterhouse Coopers, Dusseldorf**.

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 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

The German Broadcasting Treaty (Rundfunkstaatsvertrag) was modified in order to implement the TVWF Directive (last amendment on 1 April 2000). Current proposals concern amended guidelines by the Media authorities for additional rules on time schedules for programmes rated 16+ and 18+.

1. Definitions

According to the civil code, a minor or a child is a person under the age of 18. The Act on the legal protection of youth in Public uses the term “child” for a person under the age of 14 years and the term “young person” to designate a person who has attained the age of 14 and is under the age of 18.

The German self-regulatory body applies its own code inspired by the ICC code that contains references to minors.

A general definition of advertising can be found in the Broadcasting Treaty **of the “Länder”**. It is the same definition as that of the TVWF Directive. The Treaty specifies that with regard to children, advertising may not exploit their inexperience.

2. Regulation

a. General

Advertising may generally not be deceitful nor misleading. In general advertising has to be correct about the characteristics, the origin, the way of manufacturing and the pricing of the product or services (Gesetz gegen den unlauteren Wettbewerb). Regarding minors advertising may especially not take undue advantage of their inexperience.

b. Media

The Broadcasting Treaty regulates the audiovisual sector. The Treaty implements the provisions of the directive TVWF (consolidated version) regarding advertising, tele-shopping and sponsoring (in particular Articles 10, 11, 16 and 22). Those rules apply for both public service and commercial broadcasters. The Broadcasting Treaty foresees special schedule (time restrictions) and recognition signs for programmes that are only appropriate for minors other than 12 or 16 (between 10.00 p.m. and 6.00 a.m.) and 18 years and older (between 11.00 and 6.00 a.m.). Public service broadcasters may only broadcast advertising until 8.00 p.m. Moreover, Public service broadcasters are not allowed to broadcast advertising on Sundays and during school holidays.

Only teleshopping windows, rather than teleshopping may be broadcast by the public service broadcasters.

Regarding the commercial broadcasters, the Treaty contains rules that go beyond Article 11, alinea 5 of the TVWF Directive: programmes for children may not be interrupted by advertising or teleshopping.

In addition to the Broadcasting Treaty, the Guidelines of the Media Authorities on Advertising and Programming and Sponsoring on Television contain detailed rules in respect of advertising and teleshopping addressed to children. These Guidelines are in line with Article 16 of the TVWF Directive with however some differences (the use of the special interest of children in games is forbidden, children/young persons must not be shown as sexual objects, products that are part of the children's programmes broadcast can't be advertised before or after this programme, advertising that directly or indirectly requests children to buy the advertised product, etc.). Programmes showing permanent advertising for children are not allowed.

The same rules apply for radio programmes. There are no specific rules on advertising to minors for the press, outdoor advertising or the cinema.

However, a general provision contained in the Gjs provides that publications which are likely to morally harm children or young persons must be listed.

Regarding the Internet, there is a difference between the Media Services (i.e. publication addressed to the general public that may contain advertising) and teleservices (i.e. addressed to individuals by e-mail, chat room, etc.). Both services are covered by a special act that contains provisions on the protection of children/young persons.

c. Specific provisions

The Competition Act, the act on wine and the Broadcasting Treaty contain general provisions related to the advertising of **alcohol**. There are no specific rules that refer to minors on advertising for the radio, press, outdoor advertising, cinema or the Internet.

Advertising for a **tobacco** product is not forbidden, except on TV and radio. Advertising for tobacco products must respect certain criteria such as: not suggesting that the consumption of these products is not hazardous for the health, or that these products could have any good physical or psychological effect. In addition, advertising for tobacco products may not **persuade** children or young persons to smoke.

Under the Act on Drugs and healthcare, advertising for **medicinal products** that is exclusively or predominantly addressed to children under 14 years is prohibited. There are specific rules for advertising for medicine on television and radio, but these are generally applicable and do not apply specifically to children. Regarding the other media, there are no specific rules.

With the exception of the general rules on advertising, for other sectors (such as vehicles, education, toys, and financial services), there are no specific rules on advertising to children.

d. Other marketing techniques

The Broadcasting Treaty authorises the use of split screens and virtual advertising, provided certain conditions are fulfilled. There are no special references to children.

3. Proposals of law

There is a proposal of amended guidelines by the Media authorities regarding youth protection that contains additional rules on time schedules for programmes rated 16+ and 18+.

4. Self regulation

The German Council for Advertising (Deutscher Werberat) applies its own codes, inspired from the ICC codes. Those codes contain general rules on advertising.

Self-regulation plays an important role in television. There is the Voluntary Self-regulation which, inter alia, checks television programmes before their broadcasting (schedule and content). There are also the rules of the German Council for Advertising. This Council enacted rules on advertising and teleshopping on radio and television for alcoholic beverages and on advertising portraying or addressed to children. These rules cover the provisions of the TVWF Directive. For example: advertising for alcoholic beverage may not be addressed to minors, advertising shall not directly or indirectly exhort children to buy the advertised product.

Regarding the Internet, the Voluntary Self-regulation of Multi Media Service Providers (made up of Media association and companies) has drafted a code of practice containing rules on youth protection; there are no specific rules on advertising to children.

5. Handling of complaints

Authorities

Administrative procedure

Complaints have to be addressed to the Media Authority. The authority can use the following sanctions: warning, fines, withdrawal of the broadcasting licence. The number of complaints regarding advertising and children is not available.

Judicial procedure

Criminal actions can be filed where the advertising is misleading in respect of characteristics, origin, the manufacturing methods or the calculation of the price of the product.

Self-regulation

The German self regulatory body, the Deutscher Werberat, has enacted guidelines and adopted statements on advertising. Any interested person may file a complaint

before the Werberat. If the Werberat finds the complaint justified, the company responsible is ordered to modify its advertising or to withdraw it.
The number of complaint regarding advertising and children in 2000 was small: 3 out of 268 (one of the 3 was withdrawn).

III. REPORT

STUDY ON THE IMPACT OF ADVERTISING AND TEleshopping ON MINORS

GERMANY

TABLE OF CONTENTS

I.	DEFINITIONS.....	14
II.	REGULATION.....	15
1.	CLASSIFICATION BY MEDIA	15
1.1.	<i>All media</i>	15
1.2.	<i>Television</i>	15
1.3.	<i>Radio</i>	22
1.4.	<i>Press</i>	22
1.5.	<i>Posters</i>	22
1.6.	<i>Cinema</i>	22
1.7.	<i>Internet</i>	22
2.	SPECIFIC RULES: CLASSIFICATION BY SECTOR	24
2.1.	<i>ALCOHOL</i>	24
2.1.1.	General	24
2.1.2.	By media.....	25
2.1.2.1.	Television.....	25
2.1.2.2.	Radio	26
2.1.2.3.	Press	26
2.1.2.4.	Posters	26
2.1.2.5.	Cinema	26
2.1.2.6.	Internet	26
2.2.	<i>TOBACCO</i>	26
2.2.1.	General	26
2.2.2.	By media.....	28
2.2.2.1.	Television.....	28
2.2.2.2.	Radio	28
2.2.2.3.	Press	28
2.2.2.4.	Posters	28
2.2.2.5.	Cinema	28
2.2.2.6.	Internet	28
2.3.	<i>FOOD STUFFS</i>	29
2.3.1.	General	29
2.3.2.	By media.....	29
2.3.2.1.	Television.....	29
2.3.2.2.	Radio	29
2.3.2.3.	Press	29
2.3.2.4.	Posters	29
2.3.2.5.	Cinema	30
2.3.2.6.	Internet	31
2.4.	<i>DRUGS AND HEALTHCARE</i>	31
2.4.1.	General	31

2.4.2.	By media.....	31
2.4.2.1.	Television.....	31
2.4.2.2.	Radio.....	32
2.4.2.3.	Press.....	32
2.4.2.4.	Posters.....	32
2.4.2.5.	Cinema.....	32
2.4.2.6.	Internet.....	32
2.5.	<i>VEHICLES</i>	32
2.5.1.	General.....	33
2.5.2.	By media.....	33
2.5.2.1.	Television.....	34
2.5.2.2.	Radio.....	34
2.5.2.3.	Press.....	34
2.5.2.4.	Posters.....	34
2.5.2.5.	Cinema.....	34
2.5.2.6.	Internet.....	34
2.6.	<i>EDUCATION</i>	35
2.6.1.	General.....	35
2.6.2.	By media.....	35
2.6.2.1.	Television.....	35
2.6.2.2.	Radio.....	35
2.6.2.3.	Press.....	35
2.6.2.4.	Posters.....	35
2.6.2.5.	Cinema.....	36
2.6.2.6.	Internet.....	36
2.7.	<i>TOYS AND OBJECTS FOR CHILDREN</i>	36
2.7.1.	General.....	36
2.7.2.	By media.....	36
2.7.2.1.	Television.....	36
2.7.2.2.	Radio.....	37
2.7.2.3.	Press.....	37
2.7.2.4.	Posters.....	37
2.7.2.5.	Cinema.....	37
2.7.2.6.	Internet.....	37
2.8.	<i>FINANCIAL SERVICES</i>	37
2.8.1.	General.....	37
2.8.2.	By media:.....	37
2.8.2.1.	Television.....	37
2.8.2.2.	Radio.....	38
2.8.2.3.	Press.....	38
2.8.2.4.	Posters.....	38
2.8.2.5.	Cinema.....	38
2.8.2.6.	Internet.....	38
2.9.	<i>LEISURE</i>	38

2.9.1.	General	38
2.9.2.	By media.....	38
2.9.2.1.	Television.....	39
2.9.2.2.	Radio.....	39
2.9.2.3.	Press	39
2.9.2.4.	Posters	39
2.9.2.5.	Cinema	40
2.9.2.6.	Internet	40
2.10.	<i>ARMS / VIOLENCE</i>	40
2.10.1.	General	40
2.10.2.	By media.....	40
2.10.2.1.	Television.....	40
2.10.2.2.	Radio.....	40
2.10.2.3.	Press	40
2.10.2.4.	Posters.....	40
2.10.2.5.	Cinema	40
2.10.2.6.	Internet	41
3.	PROPOSALS OF LEGISLATION ON ADVERTISING DIRECTED AT CHILDREN	41
III. SELF-REGULATION.....		42
1.	GENERAL.....	42
2.	CLASSIFICATION BY MEDIA	42
2.1.	<i>TELEVISION</i>	42
2.2.	<i>RADIO</i>	46
2.3.	<i>PRESS</i>	46
2.4.	<i>POSTERS</i>	46
2.5.	<i>CINEMA</i>	46
2.6.	<i>INTERNET</i>	46
3.	CLASSIFICATION BY SECTOR	46
3.1.	<i>ALCOHOL</i>	46
IV. SPECIAL MEANS OF COMMUNICATION		47
1.	DIRECT MARKETING	47
2.	SALES PROMOTION	47
3.	SPLIT SCREEN	47
4.	VIRTUAL ADVERTISING.....	47
V. COMPLAINTS.....		48
1.	SELF REGULATION	48
1.1.	<i>Handling</i>	48
1.2.	<i>Number of complaints regarding advertising and children</i>	48
2.	ADMINISTRATIVE PROCEDURE	49
2.1.	<i>Complaints regarding advertising on TV and radio</i>	49

2.2. *Competition Law* 49

I. DEFINITIONS

Minors

Article 2 of the Civil Code (Bürgerliches Gesetzbuch) (BGB)): a minor is an individual of either gender who has not yet fully reached the age of eighteen (18) years.

Majority

Article 2 of the Civil Code: majority is reached at the age of eighteen (18) years.

Child

A child is a person under 14 years of age (Article 2, para. 1 Law on Legal Protection of Youth in Public (Jugendschutzgesetz)).

Young person

A young person is older than 14 years but younger than 18 (Article 2, para. 1 Youth Protection Law)

Legal entitlement to contract

§ 106 of the Civil Code: minors of more than seven (7) years have limited legal capacity. They can enter into contracts with the consent of their parents. According to § 110 of the Civil Code they are also entitled to purchases with their pocket money.

Protection abuse

§ 1666 BGB: the Family Court is entitled to intervene whenever the physical, mental or spiritual welfare of a minor is in jeopardy and the parents are not able or willing to react appropriately. The Guardianship Court may intervene if the well-being of the child is endangered by misbehaviour of the parents or a third person by neglect or by any other failure of the parents.

The Family Court may take steps against the parents or a third person regarding the child to eliminate the jeopardy.

Public sex offences

Article 184, 11 para. 3 of the Criminal Law (Strafgesetzbuch) (StGB)): the criminal law sanctions persons who distribute or sell magazines, photos, films or other material or data of a pornographic nature to minors younger than eighteen. It is also criminal to own, distribute, produce and deliver pornographic material, showing the abuse of children.

II. REGULATION

1. Classification by media

1.1. All media

Advertising may generally not be deceitful nor misleading. In general advertising has to be correct about the characteristics, the origin, the way of manufacturing and the pricing of the product or services (Art. 1, 3 of the Competition Law (Gesetz gegen den unlauteren Wettbewerb) (UWG)). Regarding minors advertising may especially not take undue advantage of their inexperience.

1.2. Television

The Broadcasting Treaty (Rundfunkstaatsvertrag, RStV)

Television in Germany is governed by the Law of the Länder (Bundesländer). The Broadcasting Treaty (Rundfunkstaatsvertrag) of the Länder is the basis of the dual broadcasting system and the legal basis of broadcasting in Germany. The 4th Amendment to the Broadcasting Treaty, which came into force on April 1, 2000 implements several provisions on advertising, teleshopping and sponsoring of the EU Broadcasting Directive (Directive TV without Frontiers, 97/36/EG; 89/552/EWG).

The provisions relevant for protection of children and young persons and advertising are Art. 3, 7 and 8 RStV. For the purpose of implementation of those provisions for both public and private broadcasters guidelines are issued according to Art. 16 RStV (public broadcasting) and Art. 46 RStV (private broadcasting).

Rules on the protection of children and young people

According to the Broadcasting Treaty, TV programs may not comprise content that may grievously harm the physical, mental or spiritual development of minors, unless the broadcaster takes precautionary measures to prevent the children or minors concerned from perceiving them (Art. 3 section 2 RStV, congruent with Article 22, section 1 of the EU Directive TV without Frontiers). Broadcasters must take account of the well being of children under 12 in deciding when to broadcast films which are not suitable for children of that age. Programming which is rated 18 years and older may only be broadcast between 11:00 p.m. and 6:00 a.m. (Art. 3 section 2 RStV and the guidelines both, for the public and for the private broadcasting). Programs that may be broadcast only between 10.00 p.m. and 6.00 a.m. have to be either announced by acoustic means or marked optically throughout the program. Guidelines on Youth

Protection (Richtlinie der Landesmedienanstalten zur Gewährleistung des Jugendschutzes) (June 1997)). Those guidelines were amended in September 2000..

Art. 3 RStV has first been implemented in 1987 and has been amended several times since. The last amendment was made on April 4, 2000, when regarding the provisions on children and young persons section 4 was added to implement Art. 22 section 3 of the amended Directive on Television Without Frontiers (97/36/EG; 89/552/EWG).

Rules on advertising, teleshopping and sponsoring

The Broadcasting Treaty also contains rules on advertising. Those rules vary partly for public and private broadcasters.

"Advertising" is defined in Art. 2 para. 5 RStV as "any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment". The provision, having come into force on April 1, 2000, adopts the wording of Article 1 of the EU Directive TV without Frontiers.

Generally private broadcasting companies' advertising is monitored and regulated by the German federal authorities. Public broadcasters may only show advertisements until 8:00 p.m. On Sundays and holidays advertisements may not be broadcast at all by public broadcasters (Art. 15 RStV). Generally, programming shall not be interrupted by advertisements..

Regarding the content and distinction of advertising and teleshopping, the RStV contains the following general rules for both, private and public broadcasters (Art. 7 RStV):

- Advertisements and teleshopping may not mislead the consumer (Art. 7, section 1, RStV, which implements Art. 11 of the EU Directive TV without Frontiers). Further it may not harm the viewers interests and it may not promote actions, which might jeopardise the health or the security of the consumer or the environment. Advertisements and teleshopping, which aim at minors may not harm their interests or make use of their inexperience. Additionally teleshopping may not ask minors to purchase goods or services (Art. 7 section 1, which adopts the wording of Article 16 section 2 of the EU Directive TV without Frontiers).

- Neither advertisements or the advertising companies nor teleshopping-spots, teleshopping-windows or their supplier may influence the content of the programming.
- Advertisements and teleshopping have to be easily recognizable. They have to be clearly separated from other parts of the program by visual means. Subliminal techniques may not be used. Indirect product placement or similar practices are not allowed.
- Advertisement-windows are allowed if they are clearly separated visually and marked as advertisements.
- Advertisements and teleshopping in television may not show persons, who appear regularly in the news or broadcasts with political content. Commercials of political or religious nature or regarding philosophy of life are not allowed. This does not include "social advertising".

Regarding sponsoring the RStV contains the following rules for both, private and public broadcasters (Art. 8 RStV):

- If programs are entirely or partly sponsored, it has to be pointed out at the beginning or at the end of the program that it is financed by the sponsor.
- Sponsors may not influence the content and the position of the sponsored program in a way that impairs the responsibility and the journalistic independence of the broadcaster.
- Programs that are sponsored may not ask to sell, to buy or to rent goods or services of the sponsor or any third party.
- Programs may not be sponsored by companies that produce cigarettes or other tobacco products. This rule adopts the wording of Article 17, paragraph 2 of the Directive TV without Frontiers.
- If a program is sponsored by a company, that produces or sells medical drugs or medical treatments, the sponsoring may be related to the name or image of the company. They may not promote particular medical drugs or medical treatments that are only available on prescription. This rule adopts the wording of Article 17, paragraph 3 of the Directive TV without Frontiers.
- News and political magazines may not be sponsored.

Those preconditions for sponsoring are also repeated and described more detailed in the Guidelines of the Media Authorities on Advertisements in Television and on the Radio (Art. 12, 9)

Specific rules for private broadcasting companies

The Broadcasting Treaty contains the following rules for private broadcasters:

- Private broadcasters may finance their programs by commercials and tele-shopping (Art. 43 RStV)
- Programs for children and religious services may not be interrupted by advertising or teleshopping (Art. 44 section 1 RStV). This rule goes beyond Article 11, section 5 Directive TV without Frontiers according to which children's programmes may be interrupted by advertising when their scheduled duration is more than 30 minutes.
- In general TV-advertising and teleshopping-spots have to be inserted between the programmes provided the conditions set out below are fulfilled, advertising and teleshopping spots may also be inserted during programs in such a way that the integrity and value of the program and the rights of the rights holders are not prejudiced (Art. 44 section 2 RStV).
- In programs consisting of autonomous parts, or in sports programs and similarly structured events and performances containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals. In other programs that are interrupted by advertising or teleshopping spots, a period of at least 20 Minutes should elapse between each successive advertising break within the program (Art. 44, section 3 RStV).
- The transmission of audio visual works such as feature films and films made for television, excluding series, serials, light entertainment programs and documentaries, may be interrupted once for each period of 45 minutes, provided their scheduled duration is more than 45 minutes. A further interruption shall be allowed if their scheduled duration is at least 20 Minutes longer than two or more complete periods of 45 minutes (Art. 44, section 4 RStV).
- News and current affairs programs, documentaries, and religious programs with a scheduled duration of less than 30 Minutes shall not be interrupted by advertising or by teleshopping. If their scheduled duration is 30 Minutes or longer, the provisions set out above applied (Art. 44, section 5 RStV).
- The total percentage of teleshopping-spots may not exceed a percentage of 20 of the daily broadcasting time. Commercials may only sum up to 15 percent (Art. 45 RStV).

- Teleshopping-windows, which are broadcast during a regular program (i. e. not a teleshopping-program) have to have a minimum length of 15 minutes without any interruptions. During a regular TV-program only a maximum of eight teleshopping-windows is allowed. The total broadcasting time of such windows may not exceed three hours per day. The windows have to be announced by an acoustic or optical signal (Art. 45 RStV).

The rules lined out above adopt the wording of Article 11 of the EU Directive TV without Frontiers with the exception of the rule on programs for children, which may not be interrupted by advertising or teleshopping.

Additionally the Broadcasting Treaty is implemented by the Guidelines of the Media Authorities on Advertising, Distinction of Advertising and Programming and on Sponsoring in Television (Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung, zur Durchführung der Trennung von Werbung und Programm und für das Sponsoring im Fernsehen). Those guidelines of February 10, 2000 contain detailed rulings in respect of advertising and teleshopping aiming at children which largely adopt the provisions of Art. 16 Directive TV without Frontiers, although not being completely identical:

- According to section 4 of those guidelines advertising and teleshopping, which is aiming at children and young persons or which is showing children or young persons, may not harm the interests or may not make use of their inexperience. Teleshopping may not ask minors, to buy or rent goods or services.

- Advertising, which is aiming at children or minors, is not allowed, if
 - children or young persons are asked, to get their parents or third parties to buy the advertised goods or services,
 - it makes use of the special confidence, which children or young persons have to their parents, teachers or other persons,
 - it shows children or young persons without any reasons in dangerous situations,
 - it shows criminal offences or other behaviour, which can be dangerous for persons, as exemplary or acceptable,
 - it uses aleatory means of advertising (e. g. sweepstakes) which can deceive the addressees.
 - it is also forbidden to make use of the special interest of children in games,
 - it shows children or young persons as sexual objects.
- Advertising, which is aiming at young persons is especially not allowed, if it is asking the young persons directly, to buy the advertised goods. It is also not allowed to make use of their inexperience and credulity.
- Additionally the guidelines contain provisions for advertising, which is aiming at children. Such advertising is not allowed, if
 - it directly or indirectly requests to buy the advertised goods,
 - the advertising contains explanations about advantages or characteristics of the advertised product, which cannot be compared to the natural behaviour of children,
 - for products, which are shown in programs for children, commercials before or after the respective programming are broadcast,
 - the advertising contains elements, which are part of the children's programs before or after the respective advertising block. These pre-conditions also have to be fulfilled by advertisements, which show children or young persons.
- These rules are also applicable for teleshopping, which additionally may not ask children or young persons to purchase or rent goods or services.
- Programs showing permanent advertising for children are not allowed (section 8).

Additionally self-regulatory rules of the Association of Private Broadcasting and Telecommunication (Verband Privater Rundfunk und Telekommunikation e.V., VPRT) exist. The members of the *VPRT* are subject to additional self-regulation provisions. A reference can therefore be made here to the comments on page 35 (Rules of the Association of Private Broadcasting and Telecommunication)

According to section 3.3. of both guidelines in respect of advertisements portraying children and young persons and those directed to children and young persons the German Council for Advertising's Rules for the Advertising Portraying or Directed to Children on Radio and Television (Verhaltensregeln des Deutschen Werberates für die Werbung mit und vor Kindern im Werbefunk und im Werbefernsehen) have to be complied with. Since the German Council for Advertising is a self-regulatory body, those guidelines will be outlined below. Private broadcasters comply with these rules.

Specific rules for public broadcasters

The Broadcasting Treaty contains the following rules for public broadcasters:

Generally public broadcasters, ARD and ZDF, may only show advertisements until 8.00 p.m. On Sundays and public holidays advertisements may not be broadcast at all (Art. 15 RStV). The public broadcasting services' "third programmes", however, are not permitted to show any advertising at all. Furthermore, it should be added that advertising on the *ARD* and *ZDF* programmes is restricted to an annual average of 20 minutes per working day (§15(1) and (2) RStV).

- Services and programming for children may not be interrupted by advertisements or teleshopping.
- The broadcasting of a single program may not be interrupted by advertisements or teleshopping, unless the programming is of more than 45 minutes of broadcasting time. Otherwise advertisements and teleshopping have to be placed between the single programs (art. 14 RStV).
- Teleshopping is excluded from public broadcasting. This does not apply for teleshoppingspots..

Additionally the Broadcasting Treaty is implemented by the guidelines of the respective public broadcasters on advertising, distinction of advertising and programming and on sponsoring in television and radio (ARD-Richtlinien für die Werbung, zur Durchführung der Trennung von Werbung und Programm und für das Sponsoring, ZDF-Richtlinien für Werbung und Sponsoring). According to section 3.3. of both guidelines in respect of advertisements portraying children and young persons and those directed to children and young persons the German Council for Advertising's Rules for the Advertising Portraying or Directed to Children on Radio and Television (Verhaltensregeln des Deutschen Werberates für die Werbung mit und vor Kindern im Werbefunk und im Werbefernsehen) have to be complied with. Since the German Council for Advertising is a self-regulatory body, those guidelines will be outlined below.

1.3. Radio

The rules for TV also apply in principle for radio.

1.4. Press

There are no specific rules on advertising regarding minors in respect of the press.

There exists a general provision in § 1 *GjS* (Act on the dissemination of publications and media content morally harmful to young people) in accordance with which “publications which are likely to morally harm children or young persons” must be listed. § 3 *GjS* makes the same provision with respect to sound and picture recording media, data storage devices, pictures and other representations. If such publications are listed in accordance with the *GjS*, they are subject to the law's restrictions on advertising and marketing and may not be made accessible to children and young people.

1.5. Posters

There are no specific rules on advertising regarding minors in respect of posters. There exists a general provision in § 1 *GjS* (Act on the dissemination of publications and media content morally harmful to young people) in accordance with which “publications which are likely to morally harm children or young persons” must be listed. § 3 *GjS* makes the same provision with respect to sound and picture recording media, data storage devices, pictures and other representations. If such publications are listed in accordance with the *GjS*, they are subject to the law's restrictions on advertising and marketing and may not be made accessible to children and young people.

1.6. Cinema

There are no specific rules on advertising regarding minors in respect of the cinema.

1.7. Internet

In respect of Internet Services according to German Law it has to be differentiated between “Teleservices” and “Media Services” (Tele- und Mediendienste) that are dealt within two different Acts, the Treaty on Media Services (Mediendienstestaatsvertrag, MDSV) and the Teleservices Act (Teledienstegesetz TDG). Media Services are publications that are directed to the general public and may contain advertising news or entertainment. On the contrary Teleservices aim at individual communication, which may be e-mail, the participation in chat rooms or various homepages. Both Acts contain the following rules on the protection of children and young persons respectively advertising rules on children and young persons:

Media Services

According to the Treaty on Media Services media services that may obviously harm children and young persons grievously by offending morality are not admissible. Services that may grievously harm the physical, mental or spiritual health of children and young persons may only be offered if the supplier provides measures for the user to block those services (Art. 8 MDSV)

Pursuant to Art. 9 MDSV advertisement that is portraying or is also directed to children and young persons may not harm their interests or take advantage of their inexperience.

Teleservices

On media services that are classified as tele services the Act on the distribution of publications and media contents morally harmful for adolescents (Gesetz über die Verbreitung jugendgefährdender Schriften und Medieninhalte) applies, which does not contain specific rules on advertising portraying or directed to children or young persons.

2. Specific rules: classification by sector

2.1. ALCOHOL

A. General rules

ALCOHOLIC BEVERAGES:

Article 4 of the Youth Protection Act (Gesetz zum Schutze der Jugend in der Öffentlichkeit, JÖSchG)

- ban for restaurants, bars or pubs, shops or other public premises to sell or serve spirits, spirit containing beverages or food which contains spirits to children or younger persons. Other alcoholic beverages may only be served to young persons over 16 years of age. An exemption is possible, if young persons over 14 years are accompanied by their parents or another person who has the care and custody of the child.
- Ban to offer alcoholic beverages in vending machines in public. This does not apply, if it is ensured that children and young persons under the age of 16 are not able to purchase alcoholic beverages from the vending machines.

ACCESS OF MINORS TO CERTAIN PUBLIC FACILITIES:

Article 5 of the Youth Protection Law (Gesetz zum Schutze der Jugend in der Öffentlichkeit, JÖSchG)

- The presence in dance halls and at public dance events is not allowed for a non-accompanied minor younger than 16. Young persons older than 16 may stay until midnight.

B. Rules on advertising

2.1.1. General

Competition Act (Gesetz gegen unlauteren Wettbewerb, UWG):

The UWG comprises general provisions regarding information and the protection of the consumer. Generally, advertising – also regarding alcohol – may not be deceitful, nor confusing. There are no specifics for minors.

Act on Wine (Weingesetz)

The Act on Wine also contains provisions on advertising. According to article 25 of the Act, wines, sparkling wines and spirits made of wine may not be advertised in the following way:

- such products may not be distributed with other names, explanations or other statements than those which have been expressed in any advertising for the product.

2.1.2. By media

2.1.2.1. *Television*

Article 7 Broadcasting Treaty

Article 7 of the Broadcasting Treaty regulates, that commercials and teleshopping spots may not be misleading and may not harm the interest of the consumer. Especially the health or the security of the consumer as well as the protection of the environment may not be in jeopardy. Also advertising aiming at children or young persons may not be harmful nor take advantage of their inexperience.

Section 3 of the Advertising Guidelines by the German Media Authorities on Television (Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung, zur Durchführung der Trennung von Werbung und Programm und für das Sponsoring im Fernsehen in der Neufassung vom 10.02.2000) repeats the wording of Article 7 paragraph 1 of the Broadcasting Treaty (1.2.2).

Art. 3 section 1 of the guidelines

Additionally the guidelines rule, that the following legislation or self-disciplinary rules have to be applied:

- Consumer protection law;
- Environment protection law;
- Competition law;
- Self-disciplinary rules of the German Council for Advertising regarding the advertisements for alcohol amended 1998
- Youth protection laws;
- Law on food and consumer goods (Lebensmittel- und Bedarfsgegenstände-gesetz);
- Law on the advertisements for drugs and health care (Heilmittelwerbe-gesetz);

There are specific rules of the German Advertising Council regarding advertising for alcohol that are self-disciplinary. Those rules will be outlined in the chapter on self-regulation.

2.1.2.2. Radio

The rules for TV also apply in principle for radio.

2.1.2.3. Press

There are no specific rules.

2.1.2.4. Posters

There are no specific rules.

2.1.2.5. Cinema

There are no specific rules.

2.1.2.6. Internet

There are no specific rules regarding advertising for alcohol and children.

2.2. TOBACCO

A. General rules

Act on Food and Consumer Goods (Lebensmittel- und Bedarfsgegenständegesetz, LMBG)

The Act on Food and Consumer Goods comprised general rules on Tobacco. It is additionally implemented by the executive order on the distinction of Tobacco products and on the maximum amount of tar in the smoke of cigarettes (Verordnung über die Kennzeichnung von Tabakerzeugnissen und über Höchstmengen von Teer im Zigarettenrauch, TabKTHmV). Pursuant to Art. 2 and Art. 3 a different warnings regarding the risks of smoking have to be printed on products made of tobacco.

Act on Legal Protection of Youth (Gesetz um Schutze der Jugend in der Öffentlichkeit, JÖSchG)

According to Art. 9 of the Act on Legal Protection of Youth (Gesetz zum Schutz der Jugend in der Öffentlichkeit, JÖSchG) children and young persons under the age of 16 are not allowed to smoke in public places.

B. Rules on advertising

2.2.1. General

Act on Food and Consumer Goods (Lebensmittel- und Bedarfsgegenstände-gesetz, LMBG)

According to Article 22 LMBG it is prohibited, to use certain descriptions or signs for the distribution of tobacco products or for the advertising of such products:

- It should not be suggested, that the consumption of tobacco products is not hazardous for the health. It also may not be suggested, that tobacco products could have any good physical or psychological effect;
- Advertising or any other description of tobacco products may not ask children or young persons to smoke;

It may not be suggested to inhale tobacco smoke.

2.2.2. By media

2.2.2.1. Television

According to Art. 22 of the Act on Food and Consumer Goods it is forbidden to advertise tobacco on television. Pursuant to Art. 8 section 4 of the Broadcasting Treaty programs may not be sponsored by companies that produce cigarettes and other products made from tobacco.

2.2.2.2. Radio

The rules for TV also apply in principle for radio.

2.2.2.3. Press

There are no specific rules.

2.2.2.4. Posters

There are no specific rules.

2.2.2.5. Cinema

There are no specific rules.

2.2.2.6. Internet

There are no specific rules.

2.3. FOOD STUFFS

A. General rules

The Act on Food and Consumer Goods (Lebensmittel- und Bedarfsgegenständege-
setz) comprises general rules on foodstuffs that is put into circulation in order to
protect the consumer.

B. Rules on advertising

2.3.1. General

Act on Food and Consumer Goods (Lebensmittel- und Bedarfsgegenständegesetz,
LMBG)

Article 18 imposes the following prohibitions on advertising addressed to the public
for food:

- It may not be addressed, that food can cure or prevent illnesses;
- Recommendations by doctors,
- records or references to such recommendations;
- Recommendations of third persons in respect of the cure of illnesses;
- Photos of doctors or medical staff, wearing their professional clothing;
- Statements, which could cause or take advantage of feelings of fear;
- Explanations about how to cure illnesses with food.

Those rules do not apply to advertisements addressed to medical professionals.

2.3.2. By media

2.3.2.1. *Television*

There are no specific rules.

2.3.2.2. *Radio*

There are no specific rules.

2.3.2.3. *Press*

There are no specific rules.

2.3.2.4. *Posters*

There are no specific rules.

2.3.2.5. Cinema

There are no specific rules.

2.3.2.6. Internet

There are no specific rules.

2.4. DRUGS AND HEALTHCARE

A. General rules

Medical Preparations Act (Arzneimittelgesetz)

The Medical Preparations Act contains general rules on medicine.

B. Rules on advertising

2.4.1. General

Act on Drugs and Healthcare Advertising (Heilmittelwerbeengesetz)

Advertising for medicine and pharmaceutical products which are promising to cure illnesses on medical programs for humans or animals as well as cosmetics and goods for the personal hygiene is ruled in the Act on Drugs and Healthcare Advertising (Heilmittelwerbeengesetz).

- Misleading advertising is not allowed (Art. 3 Act on Drugs and Healthcare Advertising).
- In general each advertisement for medicine has to include information regarding the name and place of business of the pharmaceutical undertaking, the mark of the medicine, the composition of the medicine, the field of application, information on collateral effects and contra-indication, warning notices and whether the medicine advertised is subject to prescription (Art. 4, section 1 Act on Drugs and Healthcare Advertising)
- Cosmetics are additionally also subject to the Act on Food and Consumer Goods (Article 4). According to this Article 27 advertisement for cosmetics may not use deceiving declarations or explanations about the effect of such products.

Advertising that is exclusively or predominantly directed to children under 14 years of age is not allowed (Art. 11, no. 12)

2.4.2. By media

2.4.2.1. Television

Advertisements in audio-visual media additionally have to fulfil the following criteria (Article 4 paragraph 5 Act on Drugs and Healthcare Advertising):

- Advertisements in audio-visual media always have to be accompanied by with the following text:

"For information about risks and possible side effects please read the enclosed instructions or ask your doctor or pharmacist."

This text has to be shown in print and has to be read to the viewer as well.

- For mineral waters with medical effects and for drugs for a veterinary use the text has to be slightly altered.

2.4.2.2. Radio

The rules for TV also apply for radio.

2.4.2.3. Press

There are no specific rules.

2.4.2.4. Posters

There are no specific rules.

2.4.2.5. Cinema

There are no specific rules.

2.4.2.6. Internet

There are no specific rules.

2.5. VEHICLES

A. General rules

Act on Road Traffic (Straßenverkehrsgesetz, StVG):

The minimum age for a driving license for cars and motorbikes over 50 ccm is 18. Smaller motorcycles may be driven at the age of 16.

B. Rules on advertising

2.5.1. General

There are no specific rules regarding advertising on vehicles addressing minors.

2.5.2. By media

2.5.2.1. Television

There are no specific rules.

2.5.2.2. Radio

There are no specific rules.

2.5.2.3. Press

There are no specific rules.

2.5.2.4. Posters

There are no specific rules.

2.5.2.5. Cinema

There are no specific rules.

2.5.2.6. Internet

There are no specific rules.

2.6. EDUCATION

A. General rules

ACCESS OF MINORS TO SCHOOLS

Bavarian Law on Education and Schools (Bayerisches Gesetz über das Erziehungs- und Unterrichtswesen)

In Germany the individual states (Bundesländer) have the power to legislate all matters in respect of education and schools. As an example we give a summary of the Bavarian Act on Education and Schools (Bayerisches Gesetz über das Erziehungs- und Unterrichtswesen).

According to article 35 of this Act, as a rule, a minor is subject to schooling during a period of 12 years, between 6 and 18 years of age.

The obligatory schooling is full-time and fulfilled with the visit of a primary school and a secondary school. The full-time obligatory schooling is followed by a period of part-time school (Vocational education - Berufsschule).

B. Rules on advertising

2.6.1. General

As far as the Bavarian Law on Education and Schools (*BayEUG*) is concerned, according to Article 84 *BayEUG*, commercial and political advertising is prohibited in schools. The legal situation may well, however, differ from one region to another.

2.6.2. By media

2.6.2.1. *Television*

There are no specific rules.

2.6.2.2. *Radio*

There are no specific rules.

2.6.2.3. *Press*

There are no specific rules.

2.6.2.4. *Posters*

There are no specific rules.

2.6.2.5. Cinema

There are no specific rules.

2.6.2.6. Internet

There are no specific rules.

2.7. TOYS AND OBJECTS FOR CHILDREN

A. General rules

Act on Food and Consumer goods (Lebensmittel- und Bedarfsgegenständegesetz)

Toys are regarded as consumer goods which are ruled in the Act on Food and Consumer goods (Lebensmittel- und Bedarfsgegenständegesetz (Article 5).

According to Article 30 of the Act on Food and Consumer Goods it is forbidden to

- manufacture consumer goods which could cause damages because of their toxic contents;
- to distribute or to sell such goods;
- to use consumer goods for the production or preparation of food, if they could be hazardous to the health.

B. Rules on advertising

2.7.1. General

There are no specific rules on the advertising for toys.

2.7.2. By media

2.7.2.1. Television

There are no specific rules on the advertising for toys and objects for children.

The advertising guidelines by the media authorities for television (Werberichtlinien) in section 4 only contain the following general rulings which could also be applied for toys:

- advertisements in radio and television may not directly ask children or young persons to buy or otherwise consume either by themselves or by their parents or third persons the advertised goods or services.

- any commercial which is broadcast before or after a children's program may not promote any product which has been shown in this program. Merchandising products for children programs may therefore not be advertised before or after the program.

2.7.2.2. Radio

The rules for TV also apply for radio.

2.7.2.3. Press

There are no specific rules.

2.7.2.4. Posters

There are no specific rules.

2.7.2.5. Cinema

There are no specific rules.

2.7.2.6. Internet

There are no specific rules.

2.8. FINANCIAL SERVICES

A. General rules

Minors may not open a bank account without the consent of their parents. According to article 107 of the Civil Code (BGB) minors can only give declarations without the consent of their parents, if the gain only legal advantages by such declarations.

B. Rules on advertising

2.8.1. General

There are no specific rules regarding advertisement for financial services

2.8.2. By media:

2.8.2.1. Television

There are no specific rules.

2.8.2.2. Radio

There are no specific rules.

2.8.2.3. Press

There are no specific rules.

2.8.2.4. Posters

There are no specific rules.

2.8.2.5. Cinema

There are no specific rules.

2.8.2.6. Internet

There are no specific rules.

2.9. LEISURE

A. General rules

Youth Protection Act ("Gesetz zum Schtze der Jugend in der Öffentlichkeit", JÖSchG)

The Act contains the following rules regarding public facilities:

- Children or young persons may not stay in places, where their physical or psychological well-being is in jeopardy (Article 1);
- Children and young persons under 16 years of age may only stay in restaurants or pubs, if they are accompanied by their parents or another person in charge (Article 3)
- Children and young persons up to 16 years may also not be present in dance halls. Older minors may stay until midnight (§5 JÖSchG)

B. Rules on advertising

2.9.1. General

There are no specific rules regarding advertisement on leisure.

2.9.2. By media

2.9.2.1. Television

There are no specific rules.

2.9.2.2. Radio

There are no specific rules.

2.9.2.3. Press

There are no specific rules.

2.9.2.4. Posters

There are no specific rules.

2.9.2.5. Cinema

There are no specific rules.

2.9.2.6. Internet

There are no specific rules.

2.10. ARMS / VIOLENCE

A. General rules

According to the Act on Weapons (Waffengesetz, WaffG) a license is required for fire arms. This license will not be given to minors (Article 35).

B. Rules on advertising

2.10.1. General

According to Art. 34, section 8 WaffG, advertising for firearms and ammunition is generally admissible. However, if a license is required for the firearms and the ammunition advertised, the advertisement has to indicate this requirement and has to contain the name and address of the offerer.

2.10.2. By media

2.10.2.1. Television

There are no specific rules.

2.10.2.2. Radio

There are no specific rules.

2.10.2.3. Press

There are no specific rules.

2.10.2.4. Posters

There are no specific rules.

2.10.2.5. Cinema

There are no specific rules.

2.10.2.6. Internet

There are no specific rules.

3. Proposals of legislation on advertising directed at children

Proposal of amended guidelines by the media authorities regarding youth protection (Jugendschutzrichtlinien of June 26/27 2000)

The draft contains some additional rulings regarding the time frame for programs which are rated FSK 16 or FSK 18 especially for digital television programs (section 2 and 5).

The draft does not contain any clauses on advertising.

III. SELF-REGULATION

1. General

The German Council for Advertising (Deutscher Werberat)

The German Council for Advertising is the self-regulatory body with respect to advertising by the advertising trade and industry.

The German Council for Advertising has passed the following self-regulatory rules:

- Rules on advertising and teleshopping for alcoholic beverages.
- Rules on advertising with or for children on radio and television.
- Statement on discrimination and disparagement of people.
- Statement on advertising photos increasing the risk of extents.
- Statement on advertising for tires.

The statements are of a more general character, whereas the rules refer to advertisements on radio and television. In respect of children the statement on the discrimination and disparagement of people has some relevance.

2. Classification by media

2.1. TELEVISION

a. Voluntary Self-regulation TV (Freiwillige Selbstkontrolle Fernsehen e.V., FSF)

The FSF is a registered society of the German private broadcasters which was established in 1993 and aims at improvement of youth protection on television. One of its main functions is to check TV programs before they are broadcast and to determine the appropriate time of their broadcast. *FSF* broadcasters submit to the *FSF* committees for approval any programmes that are not patently unproblematic in terms of the planned broadcasting time for the purposes of protecting young people. This applies for both fiction and non-fiction programmes but for the latter only in as far as this is reasonable in the light of the programme's topicality. The programmes are examined by independent experts and the guidelines for approval are laid down and updated by an independent board of trustees.

b. Rules of the German Council for Advertising (Deutscher Werberat)

Both, the Rules on advertising and teleshopping for alcoholic beverages, and the Rules on advertising portraying or directed to children on radio and television refer to advertising on television (and radio).

Rules on advertising portraying or directed to children on radio and television

The council on advertisement has ruled the following guidelines in respect of the advertising for and with children in radio and television:

- such advertisements shall give no explanations by children about certain advantages or characteristics of a product, which seem unnaturally for a child of that age.
- It shall not ask children directly to buy or consume anything
- It shall not ask children directly to get others to buy such products
- It shall not make abusive use of the child's confidence in third persons and this permit
- Free gifts or similar means of advertising shall not deceive the addressed persons.

Additionally it is forbidden to use such means to make use of the child's interest in games and to molest the addressee.

- Advertisements shall not show any criminal offences or any other incorrectnesses.

In accordance with the EU Directive on television without frontiers, amended June 30, 1997, the guidelines of the advertising council rule the following:

- Young persons shall not be confronted with direct offers, which make use of their inexperience.
- Young persons shall not be asked, to get their parents or third persons to purchase the advertised goods or services.
- Advertising shall not make use of the confidence, which young persons have to their parents, teachers and other persons.
- Young persons shall not be shown in dangerous situation without a good reason.

Rules on advertising and teleshopping for alcoholic beverages

The rules on advertising and teleshopping for alcoholic beverages deal with the following issues:

Abuse of alcohol

- The advertisement must not encourage an excessive or abusive consumption of alcoholic beverages. Such a consumption may not be presented as desirable.
- Any reference to the content of alcohol of such beverages may not give the impression, that such beverages may not cause an abuse of alcohol.

Young persons and athletes

- Advertising regarding alcoholic beverages may not be addressed to minors and may not show minors consuming such beverages.
- Such advertisements may not give the impression, that young persons are not mature enough to consume alcoholic beverages and show young persons who drink such beverages. Also it may not be mentioned that a person shown in the commercial has consumed alcoholic beverages as a minor.
- Athletes may not be shown drinking nor asking nor offering somebody alcoholic beverages.

Road Traffic and Safety

- Advertisements for alcohol may not show people driving cars who have been drinking or who have been asked to drink as well as it is prohibited to ask drivers to drink. It has to be avoided to give the impression of a relationship between drinking and driving.
- Advertisements may not show an infringement of traffic laws.

Statements related to health

- Advertisements for alcohol may not show doctors or other persons working in health care wearing their professional clothing. Such commercials also may not give the impression of a medical recommendation for the consumption of alcohol.
- It must not suggest that alcoholic beverages have a therapeutic effect on the cure or prevention of illnesses.
- It may not be stated, that alcoholic beverages may have the impact of a medication.

Loss of Inhibitions, fear and conflicts

- It may not be suggested, that alcoholic beverages can lead to the loss of inhibitions.
- It may not be stated or shown, that alcoholic beverages may remove states of fear.
- It may not be said or shown, that alcoholic beverages may help to overcome psychological conflicts.

Abstinence

- Abstinence may not be devalued;
- It must not be suggested that alcoholic beverages improve social or sexual success;
- It may not establish a connection between the consumption of alcohol and the improvement of physical performances or driving a vehicle.

Rules of the Association of Private Broadcasting and Telecommunication (Verband Privater Rundfunk und Telekommunikation, VPRT)

The private broadcasters that are associated in the VPRT voluntarily mark not only the beginning of advertising that is surrounding children's programmes but also its end by inserts. Additionally they mark the beginning of advertising by audible signals in order to ensure that small children who are not able to read are enabled to recognise that advertising begins.

In addition to the legal provisions, the German private broadcasters have given voluntary undertakings to fulfil their responsibilities vis-à-vis society. All the private broadcasters have an officer for the protection of young people, who examines the entire programme to see whether it is suitable for children and young people – not least with regard to the planned broadcasting time - and many of them extend this internal scrutiny to cover advertising. In such cases, the officer for the protection of young people works closely together with the broadcaster's own advertising coordination team, which vets all advertising spots before they are first shown on the programme.

The following example illustrates just how influential the broadcaster's own internal arrangements are in practice:

In the case of Super RTL, internal checks go far beyond what is required under the law. When it started broadcasting back in 1995, the market leader in German children's programmes laid down internal guidelines for advertising, incorporating universal bans on advertising for certain groups of products and time restrictions on advertising. These time restrictions depend on whether a spot is to be broadcast during the children's programmes or during the family programme, i.e. outside specific children's viewing times. As a matter of principle, Super RTL does not advertise any feature films shown in the cinemas which are released for the age group of 18 and over. Nor is there any advertising for party, confession, date or chat lines. This also applies to the evening programme, which is actually aimed at an adult audience but is also seen by many children. The broadcaster also reserves the right not to broadcast advertising spots depicting violence and obscenity. In addition, there is a whole series of criteria excluding, for example, advertising of dietary products and alcoholic beverages and products which themselves are the subject of children's programmes.

2.2. RADIO

The rules for TV also apply for radio.

2.3. PRESS

There are no specific rules.

2.4. POSTERS

There are no specific rules.

2.5. CINEMA

The Voluntary Self-regulation Film (Freiwillige Selbstkontrolle Film, FSK) was established in 1949. It examines films, videos and similar picture carriers and rates at which age the respective film may be seen. In general film producers are not obliged to produce films to the FSK but since the top-level organisation of the economy of film producers (Spitzenorganisation der Filmwirtschaft, SPIO) has put its members under the obligation to do so, practically all films are rated by the FSK.. However there are no specific rules on advertising regarding minors.

2.6. INTERNET

Regarding contents on the Internet the Voluntary Self-regulation of Multi-Media Service Providers (Freiwillige Selbstkontrolle Multimediadienstanbieter e. V., FSM), a self-regulatory body of several media associations and companies has established a code of practice. This code of practice comprises rules on youth protection but no special rules on advertising and children or young persons.

3. Classification by Sector

3.1. ALCOHOL

Specific self-regulatory rules on advertising for alcohol have been established by the German Council on Advertising. Those rules apply only for advertising and tele-shopping on TV and radio and have already been outlined above.

IV. SPECIAL MEANS OF COMMUNICATION

1. Direct marketing

2. Sales promotion

Advertising aiming at children and young persons may not use any free gifts or any competitions or other alluring means, which could deceive the addressed children or make otherwise use of their inexperience.

3. Split screen

According to article 7 of the Broadcasting treaty and section 7 of the advertising guidelines for TV the parallel broadcasting of different programs on the same screen (split screen) is allowed. One part of the screen may also be used for advertising.

The advertising has to be separated by optical means of the other program and has to be marked as such (e. g. by the logo "advertising") (section 7 paragraph 2 of the advertising guidelines for television).

Advertising on split screens will be added to the total advertising time which is ruled in article 45 of the broadcasting treaty.

Split screens may not be used during the broadcasting of religious services and programs for children.

4. Virtual advertising

According to article 7 of the broadcasting treaty and section 10 of the advertising guideline for television virtual advertising is allowed, if the following preconditions are fulfilled:

- At the beginning and at the end of the respective programs the viewer has to be informed, that the program contained virtual advertising
- The virtual advertising may only substitute advertising (e. g. stadium advertising at sports events) which already exists in the original program.

V. COMPLAINTS

1. Self regulation

1.1. Handling

The self-regulatory body for advertising of the advertising industry the German Council on Advertising (Deutscher Werberat), has passed several guidelines and statements on advertising, which have been outlined above.

Complaints have to be addressed to the German Council on Advertising, who decides if the complaints are justified. In the event, that the council is of the opinion that the complaint is justified, it functions as a referee. The complaint is forwarded to the responsible company. The aim is to have the company itself change the respective advertising or stop the respective campaign altogether.

1.2. Number of complaints regarding advertising and children

The number of complaints regarding claims that the Rules on advertising portraying or directed to children have been violated is very small:

1997

Total number of complaints:	181
Complaints regarding advertising and children,	6
of which were withdrawn:	6

1998

Total number of complaints:	168
Complaints regarding advertising and children,	1
of which was withdrawn:	1

1999

Total number of complaints:	188
Complaints regarding advertising and children,	2

of which were withdrawn: 0

2000

Total number of complaints: 268

Complaints regarding advertising and children, 3

of which was withdrawn 1

2. Administrative procedure

2.1. Complaints regarding advertising on TV and radio

The Broadcasting Treaty is relevant for this issue. Complaints have to be addressed to the media authority, who is responsible for the respective broadcaster. This media authority decides about the disciplinary actions. In the first step this will probably be a warning, followed by a fine and could lead up to the withdrawal of the broadcasting license.

The number of complaints regarding advertising and children is not available.

2.2. Competition Law

According to article 4 of the competition law (UWG) advertising which is addressed to the public and is deceiving about the characteristics, the origin, the way of manufacturing or the calculation of the pricing of the advertised goods or services is a criminal offence. Other advertising can be an administrative offence (e. g. article 15 of the Act on Drugs and Healthcare).

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