

DENMARK

**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 law firm. For Denmark the study was carried out by the Law firm **Gorissen Federspiel Kierkegaard, Copenhagen**.

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.

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II. SUMMARY

There have been few modifications to the audiovisual legislation on this matter in Denmark, apart from the implementation of the European Directive TVWF (Executive Order of 11 June 1997). In 1997 a set of specific rules on advertising directed at minors was introduced in the audiovisual legislation.

The Consumer Ombudsman formulates detailed guidelines on many aspects of advertising and commercial communication in general and has issued detailed guidelines concerning advertising directed at minors on television and through the Internet.

Recently a proposal was introduced for a ban on TV-advertising directed at children (March 2000). The ban was to be effective 5 minutes before and after children's programmes but was afterwards converted into a voluntary agreement with the only nation wide public service broadcaster (TV2).

1. Definitions

According to Danish law a person under 18 years of age is a minor.

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

Marketing is defined as any commercial action, including advertising and sponsoring.

2. Regulation

a. General

Marketing and advertising activities in general are regulated by the *Danish Marketing Act*. The basic principle is that advertising must be fair and honest. There are no specific rules on minors.

In Denmark the Consumer Ombudsman is an important authority in consumer related issues. The Ombudsman negotiates with consumer organisations and relevant trade associations and issues guidelines. These guidelines can be accepted by the associations and become the basis for "orders". Such an order can be imposed on the association that accepted the guidelines.

The *Consumer Ombudsman* has issued Guidelines on the interpretation of the concept of good marketing practice in relation to children and young people. The Guidelines refer to art.14 of the *ICC* (International Chambre of Commerce) *International Code of Advertising Practice*.

It is in particular stipulated, besides the more basic provisions, that marketing may not:

- exploit the inexperience or natural credulity of children
- may not harm children mentally, morally, physically
- incite to unsafe behaviour, violent behaviour
- undermine social values, for instance by conveying the impression that possession, use or consumption of a product in itself will give children or young people physical, social or psychological advantages over other children or young people the same age;
- etc.

The Guidelines also contain specific provisions in relation to marketing on the Internet aimed at children and young people.

b. Media

Advertising in radio and TV is mainly regulated by the *Danish Broadcasting Act*.

Special rules protecting children and young people contained in the *Executive Order n°489 of 11 June 1997 concerning radio and Television Advertising and Programme Sponsorship* (the “Executive Order”), issued by the Ministry of Cultural Affairs, apply to television and radio commercials. The *Executive Order* implements parts of the “Television Without Frontiers” Directive.

It provides, for example, that characters, puppets etc... which are important and appear often in children’s programmes may not be shown in advertisements for products of particular interest to children. Persons connected with children’s programmes may not advertise products of particular interest to children.

Regarding teleshopping the legislation goes further than the Directive and states that a maximum of 1 hour daily is allowed.

The *Executive Order* (n°489 of 11 June 1997 concerning radio and Television Advertising and Programme Sponsorship – see above) regulate sponsoring. Advertisers selling alcoholic beverages (more than 2.8 pct. of alcohol), tobacco products, and pharmaceutical products are banned from sponsoring,

All the rules for TV advertising also apply to radio.

There are no specific provisions on advertising directed at minors for press and posters.

As for cinema, the applicable legislation states that advertising films should contain guidance on the required age for children. As regards the Internet, the Consumer Ombudsman issued specific guidelines, for example: advertising may not be directed at children to prevent children from purchasing goods.

c. Specific provisions

According to the *Danish Broadcasting Act*, advertising for beverages with an alcohol content of 2.8 pct. or more on television and radio is prohibited and special rules apply to advertising for other alcoholic beverages.

Regarding tobacco, the Ministry for Health negotiated an Agreement in 1991 with the member organisations of the tobacco industry, specifying good marketing practices for the marketing of tobacco. Advertising tobacco products on television and radio is prohibited (*Danish Broadcasting Act*).

Advertising for sweets and chocolate may not suggest that they can replace a meal.

d. Other marketing techniques

The *Danish Marketing Act* and the *Consumer Ombudsman's Guidelines* regulate direct marketing and promotional sale practices.

Unsolicited calls are regulated by the *Act on Certain Consumer Contracts*, as well as, since 1 June 2000, distance sales (implementing the EU Directive on the protection of consumers in respect of distance contracts).

Sponsoring for schools and sport clubs is regulated by the Guidelines adopted by the *Consumer Ombudsman*. The Guidelines laid down by the *Consumer Ombudsman* regarding school sponsoring stipulate, amongst others, that educational material may not be sponsored, that all sponsoring takes place under the responsibility and with the consent of the school direction, that parents have to be informed...etc.

3. Proposals for law

Recently a proposal was introduced for a ban on TV-advertising directed at children (March 2000). The ban was to be effective 5 minutes before and after children's programmes but was afterwards converted into a voluntary agreement with the only nationwide public service broadcaster (TV2). The rules of the agreement are detailed and state for example that advertising is forbidden during 1,5 minutes before and after programs directed at children under 8, on weekends and holidays advertising directed at children under 12 is forbidden before 9.30 am.

4. Self regulation

The Guidelines of the *Danish Consumer Ombudsman* are part of the regulation. However, they also include a significant element of self-regulation since the *Consumer Ombudsman*, prior to issuing said regulation, often consults and negotiates with relevant organisations representing the interests of the sector.

ICC has issued several codes and guidelines with relevance for marketing, which are often referred to in Denmark.

The self-regulatory body competent for advertising in Denmark is the *Reklame Forum, or Advertising Forum*. The Forum applies the ICC Code, which complements the Guidelines of the *Consumer Ombudsman*.

5. Handling of complaints

Authorities

Regarding administrative proceedings, the *Danish Consumer Complaints Board* has jurisdiction over complaints brought by consumers relating to goods or services. The *Consumer Ombudsman* monitors the compliance with the provisions of the *Marketing Practices Act*. It may institute legal proceedings if its injunctions are breached.

Matters concerning advertisements on radio and television are controlled by the *Radio and Television Advertisements Board*, which controls compliance with the ***Danish Broadcasting Act***. Since 1987 the Board treated 7 complaints related to advertising and children.

Judicial proceedings are organised before the *Danish Courts* for breach of the *Marketing Act* or of the general provisions of Danish law. However, a consumer has the right to have a court case postponed if the case can be submitted to the *Consumer Complaints Board* or one of the approved appeal tribunals.

Self-regulation

Regarding Self-regulation, the *Consumer Council* has, together with relevant organisations of the industry, established nine private appeal tribunals for complaints from consumers (for banks, travel, insurance, driving education, etc). The *Consumer Complaints Board* has approved such appeal tribunals. The orders of the appeal tribunals are binding.

There are no numbers known for complaints treated by the self-regulatory body.

III. REPORT

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DEFINITIONS

Generally Danish law¹ rarely defines concepts directly. The definitions are deduced from concepts in the legislation, preparatory works, court practice and literature.

Minors

Children and young people under 18 years of age who are not married are classed as minors and consequently legally incompetent according to the Danish Act on Guardianships section 1.

There is no defined age limits for marketing to children and young people. Neither of the concepts *children* and *young people* have been defined in marketing law practices (although various special rules includes age limits). The general marketing rules may, however, be interpreted differently in relation to children and young people. According to the Danish Consumer Ombudsman the marketing rules should be applied stricter in respect of anyone under the age of 18 years.

Public Sex Offences

Anyone selling immoral pictures or objects *to* children under the age of 16 may be subject to punishment according to the Criminal Code section 234. It should be noted that the legal standard “immoral” will be applied according to the moral standards prevailing at the time of the action in question and that this standard varies over time.

Anyone selling, distributing or possessing immoral photos, films etc. *of* children under the age of 15 years may be punished according to the Criminal Code section 235.

Extortion

According to the Criminal Code section 282 it is illegal to substantially abuse another persons financial or personal difficulties, ignorance, passions or an existing dependence in a contractual relationship.

Marketing

Marketing is any action undertaken by way of trade and consequently a very broad concept including almost any commercial business. Advertising and sponsoring are only two of many types of actions falling within the scope of the marketing concept.

¹ See schedule for translations of some of the most important Danish pieces of legislation.

I. LEGAL DISPOSITIONS

1. Provisions: Classification by Media

1.1. All Media: Commercial Practices

1.1.1. General Rules

Marketing and advertising activities in general are regulated by the Danish Marketing Act. Private and corresponding public marketing activities must be fair and carried out in accordance with good marketing practices, see the Marketing Act, Section 1. Good marketing practice is a legal standard. The concept will be applied based on the context of the matter in question.

A number of specific statutory provisions supplement and fill out the general concept. Can be mentioned Inter alia : the provisions in the Marketing Act; section 2 prohibiting misleading advertising or information section 5 prohibiting the use of signs belonging to others; section 6 prohibiting certain gifts; and section 8 prohibiting certain trading stamps. Ethical based codes may also be of relevance in particular international standards, e.g. the ICC International Codes of Marketing Practice (International Chamber of Commerce).

It is an offence to make use of any false, misleading, or unreasonably incomplete indication or statement, which is likely to affect the demand or supply of goods, real or personal property and work or services. The same applies to indications or statements, which, because of their form and reference to irrelevant matters, are improper in relation to other persons.

Advertising, which in a denigrating or contemptuous manner depicts women or men, for instance by reducing persons to sex objects, or by depicting a person's sex in a degrading or sexually discriminating manner, is considered incompatible with good marketing practices. Depicting persons in the nude in advertisements is not necessarily improper marketing. If the depiction is not depreciatory or contemptuous it is not required that the depiction has a natural relation to the commodity or service in question. Advertisements, which claim or clearly imply that one of the sexes is inferior to the other sex, are in general considered to be incompatible with good marketing practices.

Anyone placing an advertisement in a media or contributing thereto is responsible for its content according to the Danish Media Liability Act section 27. In addition, the editor is generally responsible for the content of the media in conjunction with the columnist or advertiser.

When indicating the price of goods offered for retail sale the trader shall comply with the Danish Price Marking and Display Act implementing Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.

Based on negotiations with the relevant trade and consumer organisations, the Danish Consumer Ombudsman may endeavour to influence the conduct of the persons carrying on a trade and business by drawing up and publishing marketing guidelines within specified areas considered important, especially to the interests of the consumers.

Guidelines approved by the relevant trade and consumer organisations may, according to agreement with such organisations, form the basis of orders issued by the Consumer Ombudsman. Such an order may only be imposed on persons carrying on trade or business who are members of an organisation that adopted such an agreement. However, such orders and guidelines are often applied by the courts as supplementary sources of law for the interpretation of the “good marketing practice” norm in the Marketing Act.

1.1.2. Children

The Consumer Ombudsman has issued Guidelines on the interpretation of the concept of good marketing practice in relation to children and young people. Consumer Ombudsman considers that everyone should be aware of the fact that all advertisements can be seen and heard by children and young people.

Generally, marketing should not be designed to exploit children and young people’s natural credulity, lack of experience or loyalty. Nor should marketing undermine social values or encourage actions that are against normal safety or to acts of violence, victimising or other similar actions.

Contract law

As a main rule, minors are not capable of undertaking liabilities towards others according to the Danish Act on Guardianship section 1. However, minors may make purchases in consideration of cash not exceeding a fair amount. Furthermore, according to section 42 of the Danish Guardianship Act minors of 15 years or more can without the consent of the guardian dispose of self-acquired funds and all minors can dispose of funds obtained by way of a gift or inheritance.

Marketing

The Marketing Act does not contain special rules on marketing towards children and young people. The special overall requirements that are held to apply to marketing towards children are generally based on an interpretation of the general standard of “good marketing practices” in section 1 of the Marketing Act. Thus, it is the Consumer Ombudsman together with the courts who has the general competence to determine what is good marketing practice in this area.

The Consumer Ombudsman has published a set of Guidelines (the “Guidelines”) as to what can be described as good marketing practice in relation to the commercial marketing directed towards children and young people. Based on the supervisory authority over the Marketing Act, that has been granted to the Consumer Ombudsman under the Act, the Danish courts

will attach material importance to these Guidelines and regard them as a contributory supplement to the interpretation of the general provision in section 1 of the Marketing Act.

Article 14 of the ICC International Code of Advertising Practice is considered when deciding what good marketing practices are in relation to children and young people. In many respects the content of the Guidelines reflects the specific provisions laid down in the Executive Order no 489 of 11 June 1997 on Radio and Television Advertising and Programme Sponsoring (the "EXECUTIVE ORDER"). The main principles of the Guidelines are the following:

General presentation:

When marketing of toys and objects for children is directed at children, the marketing may not be presented in such a way that it exploits the inexperience or the natural credulity of children and young people, or the fact that children and young people are easily influenced. The marketing may not abuse the feeling of loyalty of children and young people.

The marketing may not be presented in such a way that it could harm the children and young people mentally, morally or physically. See section 18 of the EXECUTIVE ORDER.

Safety

The marketing may not incite behaviour conflicting with the need for safety in the home, the school, in traffic and similar places. Nor may the marketing contain statements or visual presentations that could have the effect of harming children or encouraging them to consort with strangers or to enter hazardous places, use dangerous substances or bringing them into unsafe situations, see section 19 of the EXECUTIVE ORDER.

Violence, fear etc.

The marketing may not incite violent behaviour, mobbing etc. The marketing may not without educational or social reasoning contain elements of killings, violence, physical abuse or other criminal acts.

The marketing may not without justifiable reason play on fear or superstition and may not give the impression that it incites violence.

Social values

Marketing may not undermine social values, for instance by conveying the impression that possession, use or consumption of a product in itself will give children or young people physical, social or psychological advantages over other children or young people of the same age, see section 19 of the EXECUTIVE ORDER.

Marketing should not be presented in such a way that children and young people are given the impression that their failure to own, use or consume the relevant product will in any way make them less privileged than other children and young people or expose them to contempt or ridicule.

Marketing should not undermine the authority, responsibility, judgement or tastes of parents or other people.

Finally marketing may not include any direct appeal to children and young people to persuade their parents or other adults to buy advertised products for them.

Product presentation

The advertiser should take care when presenting the product to children and young people, as it is easier to mislead children and young people due to their lack of experience.

Finally, the Consumer Ombudsman quotes the provision in article 14 of the ICC-code, which provides:

- that the advertiser must clearly state if extra equipment has to be purchased in order to use the product;
- that the advertiser must clearly state if the product is part of a series which constitutes a unity, including how to acquire the entire series and what the total price is. For instance this applies, if the individual parts have such a connection that the individual parts only have a very limited applicability and practical value for children and young people, if they do not acquire the whole series or several parts thereof;
- that price indication should not be such as to lead children and young people to reach an unreal perception of the true value of the product, for instance by using the word “only”;
- that the marketing should not imply that the advertised product is immediately within reach of every family budget,
- that the advertising should state for which age group the product is intended, if the product is not intended for children and young people in all age groups and
- where results of the use of the product are shown or described, the advertisement should represent what is reasonably attainable by the average young child or young person in the age range for which the product is intended.

Section 2 of the Marketing Act contains a ban against use of misleading advertising. Special care shall be taken in case of advertisements which are especially aimed at children in connection with marketing of toys and objects for children. The general principle in section 2 of the Marketing Act is supplemented by the detailed provisions in the ICC Code on Advertising Practice prescribing that particular care shall be taken to ensure that advertisements will not mislead children and young people as to the size, value, type, durability or performance of the advertised product.

1.2. Television

1.2.1. General rules

Advertising in radio and TV is primarily regulated in the Danish Broadcasting Act. Advertisements must be clearly identifiable as such, their content and presentation distinguishing them from regular programmes according to section 64 of the Act (art.10 Directive TV without frontiers).

Additional provisions are contained in Executive Order no 489 of 11 June 1997 concerning Radio and Television Advertising and Programme Sponsorships (The "EXECUTIVE ORDER". implements parts of the Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by the European Parliament and the Council Directive 97/36/EC of 30 June 1997 (The "TVWF Directive"). The only Danish Public Broadcaster broadcasting commercials, TV2, has through the practice of its advertising company TV2 Reklame A/S interpreted the provisions of the Act and the EXECUTIVE ORDER which should be considered as a supplementary source of law to the application of the Act. Reference is made to section III below.

Generally advertisements must comply with Danish law and in particular the Danish Marketing Act. The advertiser must be clearly identified.

Advertisements may not show or refer to persons without such persons' prior consent. The same shall apply to the showing of or reference to anything belonging to a person in a way that gives the impression of a personal recommendation. TV stations generally demands proof of such consent.

From the EXECUTIVE ORDER can further be mentioned the following provisions:

Section 3

Identification

3.-(1) Advertisements must be clearly identifiable as such, their content and presentation distinguishing them from regular programmes.

(2) On radio the beginning and end of an advertisement, or block of advertisements, shall be clearly indicated by an acoustic signal or speaker announcement, or both.

(3) On television the beginning and end of a block of advertisements shall be clearly indicated by an acoustic signal or speaker announcement, or both, as well as an image identification.

(4) On teletext a clear image identification shall suffice.

Section 4

Placement

4.-(1) Television advertisements may only be transmitted in blocks, to be inserted between the programmes.

(2) Subsection (1) shall not apply to teletext.

These provisions should be seen as an implementation of TVWF directive, article 10 (1) and article 10 (2).

Further may be mentioned the following provisions:

Section 6

Scope

6.-(1) Advertisements may occupy 15 pct of the daily transmissions of the daily transmission time and maximum 12 minutes per hour.

(2) Where individual elements of the total daily transmission time to which the holder of a radio or television broadcasting license is entitled are less than one hour, the 12 minutes per hour within such periods shall be reduced proportionally.

(3) Any television advertisements in the form of direct offers to viewers for the sale, purchase or rental of products or services may not exceed one hour per day total, and shall appear within the advertising time stated in subsection (1).

(4) Subsections (1) to (3) shall not apply to teletext.

Section 9

9.-(1) No advertisements may incite to violent behaviour. They may not include the showing of killings, violence or physical abuse, nor may they unduly play on superstition or fear.

(2) Advertisements may not be discriminatory on grounds of race, gender, age, religion or nationality, nor may they offend any person's religious or political persuasion.

(3) Advertisements may not incite to behaviour conflicting with the need for safety in the home, at the workplace or in traffic, nor to any other dangerous or irresponsible conduct, or such that may be harmful to health or the environment. Should the use of a product require certain safety precautions, this shall be clearly stated in the advertisement.

Advertisements using subliminal methods are prohibited see EXECUTIVE ORDER, Section 11. This includes any method or technique which the receiving part cannot be aware of (art.10 TVWF Directive).

Television and radio advertisements for beverages with alcohol content of 2.8 pct. by volume and for any tobacco products are prohibited, see section 12 and 13 of the EXECUTIVE ORDER.

It is prohibited to advertise pharmaceutical and health products on television. However, the Danish Medicines Agency may lay down rules for special cases where advertising of pharmaceutical products shall be permitted, cf. section 27a (2) of the Danish Pharmaceuticals Act.(See art. 14 of the TVWF directive).

For alcoholic beverages with an alcohol content of less than 2.8 per cent by volume, the following applies:

1. They may not be particularly targeted at minors, and especially not show minors drinking such beverages.
2. They may not associate the consumption of alcohol with improved physical performance or driving.
3. They may not create the impression that the consumption of alcohol promotes success in the social or sexual area.
4. They may not suggest that alcohol has any therapeutic properties, stimulating or sedating effect, nor that it may be used to solve personal conflicts.
5. They may not incite to excessive consumption of alcohol or present temperance or moderation in a negative light.

These provisions implement and go further than article 13 and article 15 of the TVWF directive.

The EXECUTIVE ORDER includes detailed rules on Programme Sponsorship in Chapter 4.

Sponsorship is defined in the EXECUTIVE ORDER as:

- any direct or indirect contribution to the financing of programmes from a natural or legal person not engaged in the broadcasting or production of radio or television programmes, films, phonograms, etc., with a view to promote the name, trademark, image, activities or products of that person.

The sponsor may not have influence on the content and scheduling of the sponsored programme to the prejudice of the radio or television broadcaster's responsibility and editorial integrity in respect of the programmes (art.17 European Directive TVWF).

Sponsored programmes shall be clearly identified as such by appropriate neutral credits appearing at the beginning, or end, or both, of the programme. Credits may not appear in the programme itself. The programme may not incite purchase or rental of the products or services.

Not everyone may sponsor a programme. Anyone selling alcohol beverages (above an alcohol content of 2.8 pct. by weight), tobacco and goods connected with smoking and pharmaceutical products are banned from sponsoring except for satellite, cable or local radio. The same applies to political parties, employer organisations, trade unions and religious movements.

Further, some programmes may not be sponsored, i.e. news programmes and current affairs programmes except from current affairs programmes transmitted by satellite, cable and local radio. Current affairs programmes are defined as programmes directly concerning news of significance to politics or society such as programmes in the form of commentary on news, review of the development in news or political attitudes to news, current events, etc.

Local radio and television transmission time may be sold to non-commercial undertakings except for communication of information and views on employer organisations and trade unions and communication of religious or political opinions.

The Consumer Ombudsman has aimed special focus on sponsoring to schools and sport clubs and issued Guidelines trying to interpret the broad general rule of good marketing practice. See above II.2.5.2.

1.2.2. Children

Special rules protecting children and young people below the age of 18 applies to television and radio commercials. The rules are contained in EXECUTIVE ORDER.

With regard to the contents of these provisions, reference is made to the description of the Consumer Ombudsman's Guidelines, inter alia reflection the specific provisions of the above EXECUTIVE ORDER, see section 1.1.2.

The provisions should inter alia be seen as an implementation of article 16 of the TVWF directive.

In addition can be mentioned the following provisions:

Section 20:

- (1) Particular care shall be taken to ensure that advertisements will not mislead children and young people as to the size, type, durability or performance of the advertised product. Advertisements for toys shall give a clear indication of the toy's actual size. Where the use or the shown or described result of the product requires an extra attachment (e.g. batteries), this shall clearly be stated. Where a product

forms part of a series, this shall be clearly indicated, as shall how to obtain the series.

- (2) Statements of price may not give children and young people an unrealistic idea of the value of the product, e.g. by using the word "only". No advertisement may suggest that the advertised product is easily affordable by any family.
- (3) Advertisements shall indicate the degree of skill required to use the product. Where the result of the use of the product is shown or described, the result presented in the advertisement shall be reasonably achievable by an average child in the age group for which the product is designed.

Section 21:

Figures, puppets and similar which are important and regular elements in children's programmes may not appear in advertisements for products of particular interest to children. Persons affiliated with children's programmes may not advertise products of particular interest to children.

Section 22:

Advertisements for chocolate, sweets, soft drinks, snacks and similar may not indicate that the product may replace regular meals.

Section 23:

- (1) Children under the age of 14 may only appear in television advertisements where such appearance is either a natural element of the depicted environment, or necessary in order to explain or demonstrate the use of products associated with children.
- (2) Children under the age of 14 may not recommend or provide testimonials endorsing products or services of any kind.

Advertisements directed at children and young people must not have a mentally or morally detrimental effect on such persons and must not exploit children and young people's natural credulity or loyalty, or their special confidence in parents, teachers or others, see section 17 of the EXECUTIVE ORDER.

Advertisements should be presented in such a way that it does not effect the safety of children and young people by showing minors in unnecessary dangerous situations or areas or using dangerous products (art.16 European Directive TVWF, implemented in section 17 of the EXECUTIVE ORDER).

Social values may not be undermined by conveying the impression that the possession, use or consumption of a product in itself will give children or young people physical, social or psy-

chological advantages. It is not permitted for advertisements to be designed to give children and young people the impression that their failure to own, use or consume the relevant product will expose them to contempt or ridicule, section 19 of the EXECUTIVE ORDER.

Advertisements may not directly appeal to children and young people with the effect to persuade others to buy a product, or promise prizes as a reward for winning new purchasers, section 18 of the EXECUTIVE ORDER.

In relation to children and young people the general provisions on misleading marketing are interpreted so that advertisements may not mislead children and young people as to the size, value, type, durability, performance or the degree of skill required to use the product. Statements of price may not give children and young people an unrealistic idea of the value of the products.

Advertisements for chocolate, sweets, soft drinks, snacks etc. may not indicate that the product may replace regular meals, section 22 of the EXECUTIVE ORDER.

Figures, puppets and similar which are important and regular elements in children's programmes may not appear in advertisements for products of particular interest to children. Persons affiliated with children's programmes may not advertise products of particular interest to children, section 21 of the EXECUTIVE ORDER.

According to section 23 of the EXECUTIVE ORDER children under the age of 14 may only appear in television advertisements if such appearance is either a natural element of the depicted environment or is necessary in order to explain or demonstrate the use of products associated with children. Children under the age of 14 may not recommend or provide testimonials endorsing products or services of any kind.

1.3. Radio

The rules for TV also apply for radio, however, advertisements in radio may be broadcast at any time within the broadcasting, i.e. also as breaks in other programmes, see section 5 of the EXECUTIVE ORDER.

1.3.1. Children

See above 1.2.2

1.4. Press

National legislation contains no specific rules on advertising for this media

1.5. Posters

National legislation contains no specific rules on advertising for this media

1.6. Cinema

National legislation contains no specific rules on advertising for this media

According to the Executive order n°3 of 16 January 1993 on the Media Council for Children and young People advertising films should include guidance on the required age for children.

1.7. Internet

National legislation contains no specific rules on advertising for this media

However the Nordic Consumer Ombudsmen's paper of December 1993 contains recommendations relating to advertising on the internet directed at children :

- The Nordic consumer ombudsmen founded the paper in December 1993 desiring to express their views on this issue and made a position paper to trading and marketing on the Internet and to monitor communication. This paper has the following section concerning advertising on the Internet aimed at children.
- The marketing should be elaborated in such a way that it is obvious to that age group – which is the target group – that it is a question of marketing.
- The businessman should take into account the development stage of the target group and therefore should not take advantage of children's and young persons' credulity and lack of experience. If entertainment features form part of the marketing – in the form of e.g. play, games, and anything similar – this entertainment should not be combined with or interrupted by advertising features.
- Children and young persons should not be encouraged to give information about themselves, the household or about any other persons. Giving information may not be made a condition of gaining access to contents.
- Children/young persons should not be offered rewards (money, gifts or anything else of a monetary value) for staying on or participating in activities on the internet. This rule does not prevent the holding of prize competitions that neither directly nor indirectly have the effect that the child/young person stays longer on the businessman's home page.
- Businessmen should use the techniques available at any time for allowing parents to limit the material to which their children have access via the Internet.

- Children and young persons should not be encouraged to buy goods or conclude contracts via the Internet, and appropriate precautions should be taken to ensure that children and young persons do not make purchases or conclude contracts via the Internet.
- Businessmen, whose marketing is directed at children and young persons should not use hyperlinks to places containing material that is not suited for children and young persons, or which do not comply with existing legislation.

2. LEGAL DISPOSITIONS

Specific Provisions: Classification by Sector

2.1. ALCOHOL

2.1.1. General Rules

According to the Catering and Restaurant Act section 10 serving of alcoholic beverages requires permission from the local municipality who communicates with the local police. Such permissions will not be issued if they specifically damage minors. Selling of strong alcoholic beverages from machines are only allowed within the premises of such businesses that may sell the alcoholic beverages due to such permission. According to the Catering and Restaurant Act section 29, it is prohibited to sell strong alcoholic beverages to anyone under the age of 18 years.

Sale by retail of alcoholic beverages to children under 15 is prohibited according to the Act on Measures against Abuse of Alcohol section 2a. Any sale by retail is prohibited between 20.00 and 06.00 on business days, between 17.00 Saturday to 06.00 Monday and on public holidays according to the Act on Business Hours etc. section 2.

2.1.2. Regulations regarding advertising

General provisions on advertising

The Ministry for Health and the Ministry of Trade and Industry have negotiated a set of rules on the marketing of alcoholic beverages of 21 December 1999 with the organisations representing producers, distributors, consumers and traffic safety. These rules having effect from 1 March 2000 may be seen as reflecting good marketing practice within the alcohol beverages sector and would therefore be applicable to anyone acting on the Danish market for alcoholic beverages including foreign producers, importers etc. A special enforcement council shall monitor these rules.

As a consequence of the industry's adoption of this code of conduct the Danish Consumer Ombudsman has repealed Guidelines previously issued by him.

When marketing alcoholic beverages special caution should be taken in choosing the kind of advertising, its substance and its form.

Irrespective of the media no advertising may be aimed at children and young people, e.g. at places where children and young people generally come or in medias addressed to children and young people. Marketing of alcohol may not be connected in any way with sport including sport clubs, magazines, sport stars, sport clothing etc. Sponsoring of sport events and discrete marketing of licensed restaurants near sport sites are not banned.

C. By media:

Advertising for beverages with an alcohol content of 2.8 pct. or more on television and radio is prohibited and special rules applies to advertising for other alcoholic beverages, see the Danish Broadcasting Act Chapter 8 and Executive Order concerning Radio and Television Advertising and Programme Sponsorship section 12.

Apart from this no specific regulation applies for the various media.

2.2. TOBACCO

2.2.1. General Rules

2.2.2. Regulations regarding advertising

A. General advertising

The Ministry for Health has in 1991 negotiated an agreement (the “Agreement”) with the member organisations of the tobacco industry. The Agreement contains a complete set of rules on the marketing of tobacco. The rules will be considered as being a reflection of good marketing practice for all tobacco products produced or imported for sale in Denmark. The Agreement has been effective since 31 December 1991.

With regard to health warnings in advertisements the tobacco industry shall act according to the agreement and provide the following text in advertising:

“Warning: The Health Agency directs that smoking of tobacco is injurious to health”

The warning shall at least cover 10 per cent of the total space of the advertisement and shall appear clear and distinct.

With regard to the form and contents of the marketing, the Agreement provides that consumer oriented marketing of tobacco products in advertisements may only take place:

- in daily papers including Sunday or weekend editions and supplements and district papers, however, not in parts especially concerned with sports or young people,
- in periodicals and magazines except from publications primarily containing light reading or texts of special interest to young people including sports periodicals and publications especially for children and young people, and
- on points of sale.

The marketing of a tobacco product may not:

- use replicas of children, young people or other persons appearing to be under the age of 30 years,
- show participants in or spectators of active sport performances,
- use or show persons who appear with names,
- use or show persons, real or fictitious who through their performances or position within the entertainment business, the art of music or pictures, the political life, sports, guidance of young people etc. appear as idols for young people, or
- use or show persons who appear to be doctors, dentists, nurses etc. or other categories of personnel within the hospital business.

All members of the tobacco industry are obliged to comply with the Agreement. If the tobacco industry learns that one of the tobacco industry's member's wholesalers or dealers market tobacco products in contravention of the Agreement, the tobacco industry shall immediately negotiate with the wholesaler or dealer in order to stop the contravention. If this does not stop the wholesaler or dealer and all members are, upon acceptance from the Danish Competition Council, obliged to stop deliveries of tobacco products to the wholesaler or dealer.

B. By media:

It is prohibited to advertise tobacco products, or goods primarily used in connection with smoking on television and radio, see the Danish Broadcasting Act Chapter 8 and Executive Order concerning Radio and Television Advertising and Programme Sponsorship section 13. Apart from this no special regulation by media has been issued.

2.3. DRUGS AND HEALTH

2.3.1. General Rules

2.3.1.1. Regulations regarding advertising

A. General advertising

With respect to pharmaceuticals, the general rule is that advertising to the general public of *pharmaceuticals on prescription* is prohibited, see section 27(1)(1) of the Pharmaceuticals Act (Consolidated Act no. 656 of 28 July 1995 as amended by Act no. 1043 of 23 December 1998). The Act implements Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary pharmaceuticals as amended by Council Directive 93/39/EEC of 14 June 1993 in respect of pharmaceuticals and Council Directive 92/28/EEC of 31 March 1992 on the advertising of pharmaceuticals for human use. It is also prohibited to advertise pharmaceuticals

which are unfit for use without prior consultation of a physician with a view to diagnosing or supervising the treatment, cf. section 27(1)(2) of the Pharmaceuticals Act.

Pharmaceuticals are defined in section 1(1) as products, that are intended to be consumed by human beings or animals to prevent, diagnose, alleviate, treat or cure diseases, symptoms of disease or pain, or to affect body functions. The aim of these provisions is to protect the general public against an excessive exposure to information, the contents of which are difficult to assess by the general public. Further, excessive self-medication and excessive use of pharmaceuticals is considered undesirable.

However, advertising of pharmaceuticals on prescription is allowed to physicians, dentists, veterinarian, pharmacists and nurses etc. However, a number of special requirements shall be observed in connection with such marketing measures, such as information on indications for use, contra-indications, side effects, the name of the holder of the marketing authorisation etc, cf. section 5 of the Executive Order no. 8 of 5 January 2000 of the Danish Ministry for Health.

In pursuance of section 31 of the Pharmaceuticals Act, advertisements addressed to the general public for products by the Act that do not qualify as pharmaceuticals may not, directly or indirectly, present such products as being preventive, alleviating or effective against diseases or symptoms of diseases or give the impression of a medical or medical-biological effect.. Diet and slimming products are examples of products within the health sector that do not qualify as pharmaceuticals.

In case of pharmaceuticals *other than* pharmaceuticals on prescription or pharmaceuticals that require prior consultation by the patient of a physician, advertising of such a pharmaceutical is allowed if the advertisement is complete and objective. Statements in the advertisement shall be in accordance with the summary of product characteristics approved by the Danish Medicines Agency.

The content of the approved summary - compulsory information - follows from section 1 (2)(1-5) of the above Executive Order on Advertising of Pharmaceuticals. In accordance herewith the advertisement shall contain the following information:

- the name of the pharmaceutical and - if the product contains only one active ingredient - its common name,
- pack sizes and prices inclusive of VAT,
- an express and easily legible invitation to read carefully the instructions on the package leaflet or on back,
- expected effect, side effects and dosage, and
- any other information necessary for the correct and appropriate use of the pharmaceutical.

In addition, advertising to the general public of pharmaceuticals may *not*:

- give the impression that it is superfluous to consult a physician,
- give the impression that the effect of the pharmaceutical is certain, is without side effects or is better than or as good as the effect of another treatment, including a different pharmaceutical,
- give the impression that general health can be improved by use of the pharmaceutical,
- give the impression that general health may be impaired if the pharmaceutical is not used,
- be directed exclusively or primarily at children,
- contain a recommendation by scientists, health professionals or other persons etc., which by virtue of their standing etc. could encourage the consumption of pharmaceuticals,
- present the product as comparable with foodstuffs, cosmetics or other consumer products,
- give the impression that the safety or efficacy of the pharmaceutical is due to the fact that its ingredients are “natural”,
- lend itself to erroneous self-diagnosis,
- contain exaggerated, alarming or misleading claims relating to recovery,
- state that the product has been approved by the authorities since approval is a requirement for all pharmaceuticals and as the statement therefore may give the consumer the impression that this product has a particular and better approval than other products,
- refer directly or indirectly to grave illnesses or symptoms of grave illnesses, or
- contain references to research studies, professional journals or literature etc.
- in an exaggerated, alarming or misleading manner make use of images, drawings, etc or of changes in the human body due to disease or injury, or the action of a medicinal product on the human body or parts thereof.

The holder of a marketing authorisation must keep a copy of all material advertising of their pharmaceuticals, cf. section 29(1) of the Pharmaceuticals Act. Further, records of where, when and how the advertising was used, including to whom it was sent or distributed, the means of distribution, and in which journals etc. it was published must be kept.

In pursuance of section 28(1) free samples of pharmaceuticals to the general public are banned.

The compliance with the above rules is subject to supervision by the Danish Medicines Agency. As the advertising measures are of significant importance in this area, the trade has taken on *self-discipline* in relation to advertising of pharmaceuticals aimed at physicians. Such self-discipline is undertaken by the Danish Board of Drug Advertising (Nævnet for Medicinsk Informationsmateriale) established in 1973.

In respect of foodstuffs the Danish Act on Foodstuffs etc. no. 310 of 6 June 1973 as amended the last time by Act no. 1228 of 27 December 1996 includes provisions in section 28 to 30 on the marketing of foodstuffs. The Act implements Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer as amended by

Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997.. The Act bans advertising that:

- results or imposes fear on customers,
- doubts the safety of consuming other foodstuffs,
- indicates that a foodstuff due to additives has improved nutritive value,
- indicates that a foodstuff is recommended by doctors or prevents or relieves an illness, or
- shows staff working in the health services sector.

Further, according to the Act on Advertising for Health Services no. 463 of 10 June 1997 section 3 any advertising from authorised as well as not authorised health care personnel should be factual, objective and adequate. The advertising may only include information listed in section 3 (2), hereunder name, address, position, opening hours, waiting list and prices.

B. By Media

It is forbidden to advertise pharmaceuticals whether on prescription or not and to advertise health services on television according to section 27 a of the Pharmaceuticals Act no. 327 of 26 June 1975 as amended and section 3 (3) of the Act on Advertising for Health Services no. 463 of 10 June 1997..

According to section 14 of the Executive Order, concerning Radio and Television Advertising and Programme Sponsorships, it is prohibited to advertise pharmaceuticals and health products on television and on radio, however with certain exceptions see the Executive Order on Advertising of Pharmaceuticals (art.14 European Directive TVWF). The Danish Medicines Agency may lay down rules for special cases where advertising of pharmaceuticals shall be permitted on television, cf. Section 27a (2) of the Danish Pharmaceuticals Act.

Apart from this no specific regulation by media has been issued.

2.4. VEHICLES

2.4.1. General Rules

Driving licences may according to the Traffic Act no. 783 of 15 October 1999 and the Executive Order on driving licences no 196 of 11 March 1997 as amended by Executive Order no. 225 of 19 April 1999 be issued to persons above the age of:

- 16 years for motorised bicycles (under 50 cubic centimetre) and special vehicles with a maximum speed of 30 km/h, i.e. tractors etc.,
- 18 years generally (cars, motorbikes, trucks etc.), and
- 21 years for busses (8 persons plus driver).

Practical driving education may begin 3 months before the relevant age limit. Persons of the age of 15 years may, however, participate in practical driving education for driving motorised bicycles.

2.4.2. Regulations regarding advertising

A. General provisions on advertising

The Danish Consumer Ombudsman has in November 1989 after negotiations with relevant organisations issued Guidelines for advertising for driving education, hereunder prices and other terms. The Guidelines should be considered as reflecting the general rule of good marketing practice within this sector.

It is a condition that adverts comply with the legislation in general. Hence, the Road Traffic Act may not be violated, e.g. by not using safety belts or speeding in adverts.

B. By media:

N/A

2.5. EDUCATION

2.5.1. General Rules

2.5.2. 2.5.2 Regulations regarding advertising

A. General advertising

Advertising and school sponsorships and other marketing activities in schools and day-care institutions for children and young people are governed by the Danish Marketing Act. In the Guidelines on advertising to children from the Consumer Ombudsman, rules are laid down as to what can be considered good marketing practice in this area.

School sponsorship and sponsorships in day-care institutions and similar institutions

School sponsorship is a special type of marketing, whereby for example companies and industrial organisations offer free educational material and education. Similarly, day-care institutions are offered materials, toys etc. It is argued that it is generally tempting for the schools and the institutions to accept the offers as finances are tight, but also because the teachers/educators are not always able to find up-to-date educational materials. Special consideration should therefore be taken to any marketing activities in this sector.

As to the schools, the school boards are responsible for the educational material, including the material offered by companies and organisations.

Parents should be informed on whether the school has entered into sponsorship agreements and on the policy of sponsorship which the school board has determined. At the request of a parent, the school/institution should name the companies with which they have concluded agreements.

- The Consumer Ombudsman has laid down principles in his Guidelines that should be adhered to by the advertiser in connection with school sponsorships and sponsorships in day-care institutions and similar institutions:
- The name, logo, trademark, figures etc. of the sponsor should be used (as sparingly as possible) and affixed to educational material, toys and other sponsored materials. Similarly the name, logo, trademark etc. should be mentioned (as sparingly as possible) and used in connection with education and other activities such as games, competitions etc.
- Educational materials, toys and other sponsored materials should not be accompanied by or contain advertising and other kinds of marketing. The same applies to education or other activities.
- Parents give their consent to the participation by minors in activities and education offered by the advertisers.
- Educational material, education and other activities should not contain direct or indirect invitations to the children/young people to buy or use the products or services of the sponsor or third parties. This also applies to invitations to influence the parents to do so.
- Statements in educational materials, in the education or in other activities, which can be interpreted as a recommendation or containing statements which assume that goods or services from certain traders are better or worse than other goods and services, should be avoided and shall as a minimum be documented.
- The prestige of the teachers/educators and the school/institution should not be used in such a way that children, young people and their parents might get the impression that the children/the young people become unpopular, mobbed or in any other way are placed in an inferior position to other people, if they do not buy or use the product or services of the sponsor or third parties.
- The children, the young people, and the teachers should be allowed to take a critical attitude towards the sponsor and its products.
- The co-operation between the sponsor, the teachers/educators and the parents should not commit such persons to use the sponsored material.

Other marketing in schools and day-care institutions

Marketing in schools and in day-care institutions, e.g. in the form of posters, brochures or distribution of samples, should only take place subject to permission by the head of the school/institution. Marketing materials including samples should not be sent directly to the children.

B. By media:

N/A

2.6. TOYS AND OBJECTS FOR CHILDREN

2.6.1. General Rules

2.6.2. Regulations regarding advertising

A. General advertising

The general marketing rules for children described above applies to toys and objects for children. Particularly important are the rules on safety and presentation. E.g. the advertiser must clearly state if extra equipment has to be purchased in order to use the product, if the product is part of a series, the age group for which the product is intended etc.

B. By Media:

See section 1.2.2 above with reference to section 16-23 in the EXECUTIVE ORDER. Apart from this no specific regulation by media has been issued.

2.7. FINANCIAL SERVICES

2.7.1. 2.7.1 General Rules

Children and young people may open a bank account. According to section 42 of the Danish Guardianship Act, minors above the age of 15 years can without the consent of the guardian dispose of self-acquired funds and always of gifts and inheritance subject to provisions on such disposal in a will. It should not be possible to overdraw a bank account for a minor as this would be a liability for the minor, which the minor cannot legally assume.

The Danish Consumer Ombudsman has issued Guidelines for young people and bank accounts/debit cards and net/home banking (the “Bank Guidelines”) after negotiations with the Danish Bankers’ Association, the Department of Private Law, the Children Council and the Danish Consumer Council. The principles of the Bank Guidelines should be considered to reflect good marketing practice within the Banking Sector. The banks shall according to the Consumer Ombudsman always consider whether the guardian ought to be informed.

According to the Bank Guidelines the bank should obtain consent from the parents/guardians before issuing a passbook or a deposit card without pin-code to children under the age of 15 years. Children between 13 and 15 years may have a deposit card with pin-code. Younger children should not have passbooks or deposit cards. Children above 15 years may have access to net and home banking provided access is subject to a pin-code.

There are no general amounts which children or young people may handle. The general rule is as mentioned above that children are legally competent in respect of their self-acquired funds. The bank should estimate the self-acquired funds for the young persons.

The Consumer Ombudsman has, furthermore, issued a set of Guidelines for ethics in banking business in general.

Children may trade stock with the same assets as they may open a bank account, i.e. self-acquired funds when above the age of 15 years and funds attained by way of gifts or inheritance. Certain derivatives as futures including liabilities are, however, excluded according to the general rule on legal incompetence. Stock trading is regulated by a special set of rules, hereunder the stock exchange rules of conduct, which does not contain special rules for children and young people.

2.7.2. Regulations regarding advertising

A. General provisions on advertising

The Act on Credit Arrangements implements the Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credits as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998. Section 8-16 of the Act describes the information to be given by anyone granting a credit. Section 23-24 limits the rights for the creditor in the event the required information has not been provided.

The Act is not directly relevant for children since minors may not assume loans due to incapacity.

The bank should not through its advertising give children and young people the impression that they may have a passbook or a debit card subject to certain conditions if the marketing does not include these conditions. Nor should the advertising give children the impression that they could have a passbook, debit card or credit card without meeting the above age requirements.

B. By Media:

N/A

2.8. LEISURE

2.8.1. General Rules

A Media Council for Children and Young People established by the Ministry of Culture shall guide parents on the suitability of films to children and parents according to the Executive Order no. 30 of 16 January 1998. Any film which is shown in public or commercially sold, leased or lent to children under 12 or under 16 shall in advance be approved by the Media Council to such age groups except when the child is accompanied by an adult, see the Danish Act on Films section 20.

Executive Order no. 516 of 14 June 1996 on Young People's Work as amended includes provisions on employment of children. Anyone between 15 and 18 may work subject to their development, age, education etc. Generally children below 15 years of age may not enter into employment contracts. Exemption is made for cultural work. Children between 13 and 15 may not be employed without the consent of their parents. Children under the age of 13 should further have the permission of the local police chief.

Access to casinos is not allowed for anyone below 18 years of age.

Access to discotheques and other dancing places is not regulated specifically, i.e. there is no age requirement for the access itself irrespectively of consumption of alcohol etc. However, sale of alcoholic beverages to anyone below the age of 18 years is prohibited. If the police catch minors drinking in such discotheques and restaurants the alcohol licence may be withdrawn depending on the circumstances. Consequently many discotheques set their own age requirement for access to e.g. 18, 21 or 25 years. An alcohol licence could include a condition regarding an age requirement.

2.8.2. Regulations regarding advertising

A. General provisions on advertising

Film Advertising films should include guidance on the required age for children according to special rules set out in the Executive Order no. 30 of 16 January 1998 on the Media Council for Children and Young People by the Ministry of Culture according to the Danish Act on Films section 21.

B. By Media:

N/A

2.9. ARMS/VIOLENCE

2.9.1. General Rules

Firearms may not be sold to people younger than 18 years according to the Act on Arms and Explosives. Exception is made for young people above 16 years of age with a hunting licence or a membership in a rifle club, see section 16 of Circular no. 8 of 26 January 2000 regarding arms and ammunition. The consent of the rifle club is required and the child may only possess the firearm for sporting purposes.

It is prohibited to carry knives in public places except for clasp knives with blades shorter than 7 cm unless for the purposes of commercial use, hunting, fishing and other sports. No specific regulation applies for children and young people.

2.9.2. Regulations regarding advertising

A. General provisions on advertising

See section 1.2.2 above and section 17 of the EXECUTIVE ORDER.

B. By Media:

See section 1.2.2 above and section 17 of the EXECUTIVE ORDER.

2.10. PUBLIC PROVISIONS

2.10.1. General Rules

N/A

2.10.2. Regulations regarding advertising

N/A

A. General provisions on advertising

N/A

B. By Media:

N/A

2.11. TELECOMMUNICATIONS

2.11.1. General Rules

2.11.2. Regulations regarding advertising

A. General provisions on advertising

Providers of so-called 900-services (special services) shall in advertising and other kinds of marketing include information on the price for dialling the number and the name of the supplier. Detailed regulation is included in Executive Order no. 917 of 18 October 1996 on 900 Services.

B. By Media:

N/A

3. Proposals of law

- Directive 98/43/EC of the European Parliament and the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (Advertising Directive) was adopted in 1998. The Directive is not yet implemented in Danish legislation.

However, the Danish Minister for Health has sent a draft bill on an act on the prohibition against tobacco advertising etc., out for hearing which shall implement the Advertising Directive into Danish legislation. It is expected that the bill will be tabled in Parliament within the coming parliamentary session beginning October 2000.

The proposal is to a wide extent a mere transcript of the wording of the Directive.

Section 3, subsection 1 in the proposal provides that any kind of advertising of tobacco products, including indirect advertising shall be prohibited. Subsection 2 provides that tobacco products may not be included in advertisements for other goods or services. Section 4 provides that any kind of sponsorship of tobacco products shall be prohibited.

The Minister for Health has furthermore stated publicly that smoking in schools should be prohibited for children and young people and that the Minister intends to table a bill in the coming parliamentary session to that effect. The Minister for Education appears to be disagreeing with the position of the Minister for Health, and it is therefore unclear whether any bill will be tabled after all.

After the editing of this Report, the European Court of Justice has rejected the validity of the Directive.

The Minister for Health has, however, tabled a bill in December 2000 on prohibition against tobacco advertising. The bill is in many respects similar to the wording of the draft bill sent out for hearing in Spring 2000.

The current regulation on Television advertising in the Danish Broadcasting Act is based on an agreement between 4 parties of Parliament on media policy from 2001 – 2004. This agreement introduced for the first time a ban on ads directed to children and ads for children's products. The ban was to be effective 5 minutes before and after children's programmes. And it was to be a supplement to – not a replacement for – the existing and fairly restrictive rules on the protection of children and young people under 18.

During the subsequent negotiations the ban was converted into a voluntary agreement between the Minister for Culture and TV2 – a public service broadcaster and the only nationwide Danish TV station carrying advertising. About 70% of TV2's income is derived from advertising.

3.1.1. The Rules

The voluntary agreement is quite specific:

- No ads during 11/2 minutes before and after programmes for children under 8.
- Ads before and after these must not be directed at children under 12.
- Ads before and after programmes for children aged 8-12 must not be directed at children under 8
- On weekends and holidays there are no ads directed at children under 12 before 9.30am
- Children's programmes may not be sponsored.

When deciding whether a programme is meant for children under 8 or under 12 the following aspects are considered – among others:

- the content
- the age of participating children
- the hour of broadcasting
- the age of children who watch the programme
- the language used in the programme

When deciding whether an ad is directed to children under 8 or under 12 the type of product advertised and its use must be considered. When dealing with products used by children under 8 and up to 12 it must be estimated which age-group uses the product more. It should be added that advertisements for baby products such as diapers are considered to be directed at parents and therefore permitted.

A newly created Radio and Television Board will have among its duties to oversee that the rules are followed, and it will report to the Minister twice a year.

The Minister has now entered into a dialogue with other commercial broadcasters in order to make a similar agreement with them. In practice we are talking about a network of local TV stations covering about 80% of the country. In addition, the Minister would like to make an agreement also with the UK based TV3 which can be viewed by about 70% of the Danes.

If the Danish broadcasters – the network mentioned – are not willing to enter into an agreement, or if TV2 does not follow the rules, the Minister will issue binding rules.

II. SELF REGULATION

1. General Rules

The guidelines and principles issued by the Danish Consumer Ombudsman are a part of public regulation. However, they often include a significant element of self-regulation since the Consumer Ombudsman prior to issuing the said regulation often and as far as possible have talks and maybe even negotiations with relevant organisations representing the different parties in the particular sector.

The Ministry for Health and the Ministry of Food, Agriculture and Fisheries have negotiated a set of rules on marketing of alcoholic beverages with the organisations representing producers, distributors, consumers and traffic safety. Hereafter the rules should be considered as reflecting *good marketing practise* for anyone acting on the Danish market for alcoholic beverages. A special enforcement council shall monitor these rules. See section 2.1.2.

Secondly the Ministry for Health has negotiated an agreement with the member organisations of the Danish tobacco industry. The agreement represents a set of rules on marketing of tobacco. Hereafter the rules should be considered *good marketing practise* for all tobacco products produced or imported for sale in Denmark by the member organisations of the tobacco industry. The agreement entered into force on 31 December 1991. See section 2.2.2.

ICC (International Chamber of Commerce) has issued several codes and guidelines with relevance for marketing. The ICC codes and to some extent also the guidelines will therefore be a relevant contribution to any interpretation of good marketing practice. Especially the ICC International code of advertising practise dated 21 April 1997 is often referred to in Denmark.

2. Rules by media

The regulation of commercials in TV is primarily governed by the general principles of the Marketing Act. If commercials use text, the text must be readable or the commercials will be misleading, see section 2 in the Marketing Act.

According to standards set by the Danish public broadcaster TV2's advertising company, TV2 Reklame A/S, this means that the text must be on the screen for minimum 2 seconds plus 0.2 seconds for every word and that the pitch size of the text should minimum be 1/20 of the text safe area of the screen. If a smaller pitch size is used the text must be on the screen correspondingly longer.

In relation to sponsoring, the primary Danish TV channels also apply their won rules apart from the ones described above. Contact to the broadcasting station is therefore of importance in every sponsoring case. In Danish public television and radio broadcaster, Danmarks Radio,

the Head of the department and the TV Manager decides on any sponsoring contract. Correspondingly in TV2 the advertising company TV2 Reklame A/S has the authority.

The TV stations TV Danmark 1 and 2 operate respectively from the UK and Denmark. The Managing Director has informed us that the TV stations have no internal further regulations regarding advertising.

III. SPECIFIC MEANS OF COMMUNICATION

1. Direct Marketing

According to The Danish Marketing Act section 6a unsolicited calls using electronic mail, automated calling systems or telefax to customers are prohibited unless the particular customer has made a prior request for such calls. Other unsolicited calls may not be made if the customer has requested that the supplier makes no such calls or has registered a general reservation against unsolicited calls with the Civil Registration System.

The new Danish Act on Processing of Personal Data no. 429 of 31 May 2000 implements Directive 95/46/EC and Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Section 6 describes for which purposes personal information may be processed and provides that a business may not give information on a consumer to another business for marketing purposes or use the information in the interest of the other business unless the consumer have consented hereto.

Exemption from the general rule applies to passing on of information without the consent if the information is general customer information forming basis for dividing customers into customer categories. According to section 36 of the Act the customer has the right to object to passing on of any information either by contacting the business possessing the information or by registering with the Civil Registration System.

2. Promotional Sales Practices

As a general rule it is prohibited to provide and advertise any collateral gift or similar inducement in marketing, unless such gift or inducement is of negligible value according to the Marketing Act section 6. However, a benefit of exactly the same kind as the principal benefit rendered shall be deemed not to be a collateral gift or similar inducement. Further, special rules exist regarding flight tickets etc.

The Consumer Ombudsman has interpreted these principles in the Guidelines on Children, Young People and Marketing Practices, from which may be summarised the following:

Children and young people should not buy on mail order or other kind of distance selling without the consent of their parents. Since minors are legally incompetent the contract may be invalid if challenged.

Offers for distance selling aimed at children and young people should only take place if it is clearly stated that the minors should have their parents' consent.

Children and young people should not be allowed to join clubs or take out subscriptions without the written consent of their parents. It should appear from the marketing material if it is a question of clubs and subscriptions which are especially aimed at children and young people. It is a question of agreements involving rights and obligations for which the young people cannot be responsible for themselves.

Children and young people should not be allowed to join loyalty concepts without the consent of their parents. Mail in connection with these concepts should be sent to the parents when concerning offers to children and young people or invitations to them to give certain personal information.

Use of prize competitions, promises of gifts and similar tempting offers in marketing aimed at children and young people should be applied with great caution.

It is stated that the advertiser with respect to prize competitions shall observe section 9 of the Marketing Act, which provides that no attempts shall be made to promote sales to consumers of goods and services offering them the possibility of a prize if they participate in the drawing of a lot, prize competition or any other arrangement where the results are wholly or partly dependent on chance, provided that such participation is conditional upon purchase.

However, this provision does not apply to marketing measures aimed at children under the age of 15, if the value of the individual prize does not exceed DKK 5, and the total value of the prizes of the marketing measures does not exceed DKK 50.

Advertisers should not use children and young people to market their products. Examples hereof are that an advertiser - for instance through a sports club or youth club - gets children and young people to act as salesmen for the advertiser, and where part of the profit is paid to the club. The children and young people have difficulty in grasping the commercial purpose, and they cannot predict the difficulties in disposing of the goods. In this case the advertiser exploits the feeling of loyalty of the young people towards the club, the goodwill of parents and friends towards the young people and the goodwill of the general public towards the child. In such situations it will not only be a case of violation of section 1 of the Marketing Act, but also illegal door-to-door sales.

3. Internet

The above mentioned Guidelines from the Consumer Ombudsman contains specific guidelines in relation to marketing on the Internet to children and young people. Advertisers shall comply with the following principles:

There shall be a clear distinction between advertising, amusement (including plays and games) and access to purchase (conclusion of contracts) via the Internet.

There should be a clear distinction between marketing aimed at children and young people and marketing of goods and services, intended for adults.

Children and young people should not be urged to buy goods or enter into other agreements via the Internet.

Adequate measures should be taken to ensure that children and young people do not undertake purchases or make agreements via the Internet.

Children and young people should not be promised an award (money, gifts etc) for participating in activities on a home page.

Parents should be encouraged to participate in and/or supervise their children's activities on the Internet.

No links to other Internet sites should be used in the marketing, if such pages do not comply with the Guidelines of the Consumer Ombudsman.

Advertisers should use the techniques available at any time to give the parents the possibility of restricting the material, to which their children have access on the Internet.

4. Unsolicited Calls

Section 2 of the Act on Certain Consumer Contracts (door-to-door sales etc., distance contracts and continuing services) prohibits business people to contact consumers at their homes without the prior consent of the consumers. The Act implements Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises. Further, the Act on Certain Consumer Contracts includes since 1 June 2000 provisions on remote sales corresponding to the Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.

IV. HANDLING OF COMPLAINTS

1. Self-regulation

The Danish Consumer Council has together with relevant organisations of the industry established nine private appeal tribunals for complaints from consumers. The Consumer Complaints Board has approved such boards according to section 12 of the Danish Consumer Complaints Board Act on the conditions that the members of the boards are comprised of (i) a judge (chairman), (ii) two representatives from the industry and (iii) two representatives from the Consumer Council and that the appeal tribunals may process complaints irrespectively of whether the particular business party is a member of the a specific industry organisation.

The orders from the appeal tribunals are binding unless the business part of the dispute brings the case to the judicial system, typically within four weeks from the decision. The Association of Danish Mortgage Banks has, further, accepted that the orders always are binding.

However, orders from the appeal tribunal are not effective for execution and a court ruling may consequently be necessary. The courts are not formally bound by the appeal tribunal orders.

According to the Danish Administration of Justice Act section 335a consumers with a fair case has free legal aid when an order from such an appeal tribunal is brought to a court by the business part and when a consumer seeks execution basis for an order from such an appeal tribunal.

The *Bankers Board of Appeal* processes complaints over Danish financial institutions (banks) and their Danish subsidiaries regarding private banking and is appointed by the Danish Consumer Council, the Danish Bankers' Association and Association of Danish Cooperative Banks. The chairman is a Supreme Court Judge and the two vice-chairman's are High Court Judges. The parties are not bound by the orders, but the bank shall within four weeks give notice to the Board of Appeal if the bank does not wish to be bound by the order.

The *Travel Appeal Tribunal* is a private tribunal approved by the Danish Consumer Council and represents the travel agencies and the travel organisers in Denmark. A High Court Judge is Chairman of the Tribunal. The Travel Appeal Tribunal deals with complaints from consumers regarding travels purchased in Denmark.

The *Insurance Complaints Board* is correspondingly a private tribunal approved by the Danish Consumer Council and the Danish Insurance Association. The decisions of the Board are binding for the insurance companies unless the insurance companies bring cases to the judicial system within four weeks from the decision. The Board is chaired by a Supreme Court Judge.

Further tribunals appointed by the Danish Consumer Council together with relevant organisations include among others the *Appeal Tribunal for Driving Education*.

The medicine producers' and manufacturers' association (LIF) has set up a committee to monitor advertising to doctors. This committee is not a body approved by the Consumer Complaints Board.

There were no statistical material available on the number and evolutions of complaints within the available time frame.

2. Administrative proceedings

Danish Consumer Complaints Board Act

Complaints by consumers relating to goods, work or services may be brought before the public Consumer Complaints Board according to section 1 of the Danish Consumer Complaints Board Act no. 282 of 10 May 1988 and Executive Order on The Consumer Complaints Board's Sphere no. 871 of 14 October 1994 as amended by Executive Order no. 153 of 19 March 1999. The Complaints Board has jurisdiction over claims regarding goods, workmanship and services except for cases processed by approved appeal tribunals (see below) and sectors listed in the Act and section 2-4 of the Executive Order. According to the Executive Order, the Complaints Board is incompetent in cases with a value under DKK 500 or above DKK 24,000 (for cars DKK 82,000), or concerning repair of cars, boats, real estate, agreements between privates, and doctors, dentists or lawyers.

A complaint may concern all facts in the legal relation between the parties. The Complaints Board can issue orders for compensation, annulment etc. When the Board has made a decision in respect of a complaint, the case may be brought before the courts by either of the parties without any applicable deadline. Where the decisions of the Board are not complied with, the Board's secretariat shall at the request of and on behalf of the complainant bring the case before the courts.

The Consumer Ombudsman

The Danish Consumer Ombudsman monitors that the provisions of the Marketing Act are not contravened and should especially consider the interests of the consumers. For this purpose the Consumer Ombudsman may require all such information as he considers necessary for the performance of his functions including information considered necessary to decide whether a matter falls within the scope of the Act. Any person failing to give such information as is required or giving false or misleading information to the Consumer Ombudsman may be liable to a fine.

Decisions made by the Consumer Ombudsman under the Marketing Act cannot be appealed to any other administrative authority.

The Consumer Ombudsman is appointed by the Minister for Trade for a period of six years and may only be discharged if the discharge is based on health conditions or if the person

concerned due to a punishable offence, a violation of service duties or irregularities is unfit continuously to hold the position. Extension or re-appointment may not take place.

The Consumer Ombudsman shall by negotiation endeavour to induce persons carrying on a trade or business to act in accordance with the principles of good marketing practices in the Marketing Act. If a person carrying on a trade or business fails to fulfil a commitment given to the Consumer Ombudsman after negotiations, the Consumer Ombudsman may issue such orders to the person concerned as may be deemed necessary for ensuring the fulfilment of such commitment.

Upon request the Consumer Ombudsman often gives his opinion on the legality of contemplated marketing initiatives, but such an advance statement does not imply an actual decision.

The Consumer Ombudsman may institute legal proceedings with respect to injunctions and orders pursuant to the Marketing Act. If an act is in clear contravention of the Act and cannot be changed by negotiation the Consumer Ombudsman may issue orders. The party against whom an order is issued may demand that the order be brought before the courts of law according to the provisions described below.

An interlocutory injunction may be issued by the Consumer Ombudsman where there is a reasonable possibility that the object of an injunction may not be achieved if the decision of the court has to be awaited.

The Danish Broadcasting Act

The Radio and Television Advertisements is appointed pursuant to the Danish Broadcasting Act section 71 by the Minister for Culture to consider advertisements on radio and television.

The Board makes the final administrative decision in matters concerning the content of radio and television advertisements. In cases concerning compliance with the Pharmaceuticals Act the Board shall obtain a prior opinion from the National Health Board. The Board may take up any infringement of the provisions of the Act on its own motion and may order a licensee providing radio or television services to make the ruling known to the public and to broadcast a reply.

Complaints concerning the content of advertisements should be lodged with the Board within four weeks of the broadcasting of the advertisement concerned.

As Annex 4 is included a chart on the number and evolution of complaints with the Board in the period 1992-1999. As it may be seen, 75% of the complaints were dismissed in 1999.

The Board has since 1987 treated 7 complaints concerning an advertising rule for children. In the complaint the Board rejected a TV-commercial for a chocolate product, where an adult climbed into a deep freezer eating the chocolate there. The Board did not find it probable that

children would be encouraged to copy the adult's behaviour. However, the Board regarded the deep freezer as a dangerous device and held that the commercial should be prohibited.

3. Judicial proceedings

The Danish courts may issue injunctions prohibiting acts done in contravention of the legislation, hereunder the Marketing Act, and may make such necessary orders to ensure that an injunction is complied with and that the conditions existing prior to the illegal act are restored. Any person with a legal interest herein may institute legal proceedings with respect to injunctions, orders or liability for damages.

Any person violating others rights or damaging them is subject to liability for damages pursuant to the general provisions of Danish law.

Civil proceedings for the decision of which the application of the Marketing Act is of material importance shall be brought before the Copenhagen Maritime and Commercial Court, see section 14 of the Marketing Act. Further, public prosecution for an offence under the same Act shall be brought before the Copenhagen Maritime and Commercial Court unless detailed knowledge of marketing practices is not considered to be of importance to the decision of the case.

If, in connection with a contravention of the provisions of the Marketing Act, a plurality of consumers has uniform claims for damages, the Consumer Ombudsman may, upon request, recover the claims collectively according to section 20 of the Act. The purpose of the provision is among other things to provide a smooth way for procedures relating to several identical issues each with smaller economic impact, where the costs of individual proceedings would be expected to be too high. This legal institute is unusual for Danish law and the provision has not been applied in practice yet.

Any person guilty of breach of an injunction or non-compliance with an order issued by a court or by the Consumer Ombudsman may be liable to a fine or to mitigated imprisonment. Criminal liability may be imposed on corporations, etc., (legal persons) pursuant to the rules of Part 5 of the Danish Criminal Code.

Orders to (re)pay money cannot result in the above criminal sanctions. Violation of the statutory prohibition of misleading marketing, unsolicited calls to customers, collateral gifts and trading stamps in the Marketing Act may result in imposing of a fine.

It may be noted, that a consumer has the right according to the Danish Administration of Justice Act section 361 to have a court case postponed if the case can be processed by the Consumer Complaints Board or one of the approved appeal tribunals.

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