

SPAIN

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

I. INTRODUCTION

II. SUMMARY

III. REPORT

I. INTRODUCTION

The study on the impact of TV advertising and teleshopping on minors was carried out by International Research Associates (**INRA**) in collaboration for legal issues with the lawfirm **Bird & Bird Brussels**, for the 18 Member States of the European Union and the European Economic Area, and, for each country, in collaboration with a national lawfirm (a complete list is annexed to the study). For Spain the study was carried out by the lawyers office **Martinez Lagae & Asociados, Madrid**.

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.

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II. SUMMARY

The Spanish Act 25/1994 of 12 July 1994 (modified by Act 22/1999 of 7 June 1999) regulating TV-advertising has not been significantly modified in this area apart from the implementation of the European Directive TVWF. There are no current proposals to introduce changes.

1. Definitions

According to the Civil Code, a minor is an individual who under the age of 18.

There are no specific provisions regarding advertising that explicitly define the concept of “minor”. The ICC codes regarding marketing and advertising do not define the concept of “minor” and refer to the national legislation related to “minors” in each country.

A definition of advertising can be found in the General Act on Advertising (34/1988, 1 November 1988).

2. Regulation

a. General

Each Province sets up standards regarding advertising and programmes for children (shall not directly exhort minors to buy a product by exploiting their credulity, unreasonably showing minors in dangerous situations, etc.).

b. Media

The General Act on advertising and each Community’s legislation on advertising contains provisions regarding advertising on TV and radio. With regard to advertising, sponsoring and teleshopping, the provisions of the directive TVWF (consolidated version) are implemented (e.g. Article 16, 22, etc.). The rules regarding advertising, teleshopping and sponsoring are applicable to all channels in the same way (commercial and public service).

With the exception of TV and radio, there are no specific laws related to other media. Therefore the rules stated in the General Act on Advertising are not applicable to the press, outdoor advertising, cinema, or the Internet.

c. Specific provisions

There are various laws regarding certain categories of services or products. These usually relate to the implementation of European Directives.

The General Act on Advertising as well as the Communities' legislation contain provisions similar to Article 15 of the European Directive TVWF regarding alcohol. The General Act on Advertising is more restrictive than the Directive as it forbids advertising on TV for alcoholic beverages that contain more than 20 degrees. Regarding advertising on radio for alcoholic beverages, the act on RTVE forbids the advertisements for alcoholic beverages before 9.30 p.m.

According to the General Act on Advertising, advertising for tobacco products in premises where the selling or the consuming of tobacco products is not permitted (e.g. hospital, schools, places frequented by children and young children, etc.) is prohibited. Advertising for tobacco products is therefore allowed provided it is not addressed to children (Community legislation). However, advertising tobacco products on TV is not allowed. On radio, advertising tobacco is allowed if it is broadcast after 9.30 p.m. In some Communities (Basque Country), advertising tobacco on radio between 8.00 a.m. and 10.00 p.m. is forbidden.

According to the Royal Decree on advertising of medicine for human use, advertising medicine is only permitted for the so-called "Especialidades Farmaceuticas Publicitarias" and the medicines under prescription.

Audio-visual legislation prohibits advertising of vehicles that is based on speed or that encourages imprudent driving.

The RTVE Act on advertising forbids all advertising on TV and radio that might incite children to fight. Advertising toys is not specifically regulated if broadcast by other media.

d. Other marketing techniques

Regarding promotional sales practices, there are regulations about the featuring of a famous TV star advertising a product on a children's programme and the membership of a children's club.

3. Proposals of law

There are no proposals related to advertising and minors.

4. Self-regulation

In Spain, the Asociacion de Autocontrol de la Publicidad (AAP), made up of announcers, media, advertising agencies, applies its own general code on advertising conduct which is inspired by the ICC code. There is a special provision regarding minors. In addition to that code, there are many references to advertising addressed to minors in specific codes drafted by the private sector (e.g. television, Internet, alcohol, medicine, etc.).

5. Handling of Complaints

Authorities

All complaints related to the infringement of advertising rules can be filed before the Administrative Authorities. This authority can stop the campaign and sanction the advertiser. Each Community has the competence to sanction an infringement that occurs on its territory. If the infringement covers more than one Community, the competence belongs to the Central Administration.

Judicial procedure: action for cessation or rectification of the illicit advertising

The General Act on Advertising regulates the procedure. Any person who has a legitimate interest is allowed to file such an action provided he has previously notified the advertiser.

Self regulation

The “Jurado de la Publicidad”, division of the AAP, is an arbitration court whose members are chosen amongst famous lawyers and professionals from the sector.

The AAP has various tasks: to advise on campaigns, to examine advertising for compliance with the general code, to handle complaints, etc.

Any interested person (individuals, consumer union, companies, public bodies, etc.) is entitled to file a complaint before the Jurado de la Publicidad provided certain conditions are fulfilled. The resolution rendered by the Jurado can be appealed before the “Plenum” of the Jury.

In 1999 the total of complaints on children treated by the Spanish self-regulatory body represented 5% of the total number of complaints received.

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III. REPORT

**STUDY ON THE IMPACT
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I. DEFINITIONS

Minors

Article 12 of the Spanish Constitution of 1978 and Article 315 Civil Code interpreted “a sensu contrario”: a minor is an individual who has not reached the age of 18 years. This definition of minor is also used by the Regions (*Comunidades Autónomas*) that have enacted their own legislation on the protection of minors.

Majority

Article 12 of the Spanish Constitution of 1978 and Article 315 Civil Code: majority is fixed at fully 18 years. At that age one is capable of being sued for all types of civil actions.

Legal entitlement to contract

Article 1263 Civil Code: Minors are incapable of contracting.

Protection of youth

Act 1/1996, of 15 January 1996, regarding the legal protection of minors. Article 1: This Act applies to all individuals under 18 that, irrespective of their nationality, are present in the Spanish territory. This Act constitutes the general framework for protection of youth in Spain and recognizes explicitly their fundamental rights, such as their right to honour, to family and personal privacy, their freedom of conscience, ideology, religion, etc.

Apart from this Act, most Spanish Communities have enacted their own legislation regarding protection of minors:

- Andalusia: Act 1/1998, of 20 April 1998, on Rights and Attention to Minors;
- Aragon: Act 10/1989, of 14 December 1989, on Protection of Minors;
- Asturias: Act 1/1995, of 27 January 1995, on Protection of Minors;
- Balearics: Act 7/1995, of 21 March 1995, on Protection of Abandoned Minors;
- Canary Islands: Act 1/1997, of 7 February 1997, on Integral Attention to Minors;
- Castilla-La Mancha: Act 3/1999, of 31 March 1999, on Protection of Minors;

- Catalonia: Act 11/1985, of 13 June 1985, on Protection of Minors; Act 37/1991, of 30 December 1991, on Protection of Abandoned Minors and Adoption; Act 8/1995, of 27 July 1995, on Attention and Protection of Children and Teenagers. All these provisions have recently been compiled in the “Code of Family” passed by Act 9/1998, of 15 July;
- Extremadura: Act 4/1994, of 10 November, on Protection and Attention of Minors;
- Galicia: Act 3/1997, of 9 June 1997, on Family, Infancy and Adolescence;
- La Rioja: Act 4/1998, of 18 March 1998, on Minors;
- Madrid: Act 6/1995, of 28 March 1995, on Guarantees of the Rights of the Infancy and Adolescence;
- Murcia: Act 3/1995, of 21 March 1995, on Infancy;
- Valencia: Act 7/1994, of 5 December, on Infancy.

Some other Communities have not enacted a specific regulation on minors, but have adopted legislation on social matters that applies to minors. These Communities are Cantabria (Act on Social Action of 27 May 1982), Castilla y León (Act on Social Action and Social Services of 28 December 1988), Navarra (Act on Social Services of 30 May 1983) and the Basque Country and (Act on Social Services of 20 May 1982).

Criminal protection

Articles 187 and 226 to 232 Criminal Code: stipulate criminal sanctions for persons who, respectively: (i) facilitate, incite or foster the prostitution or participation of minors in pornographic or exhibitionist shows, (ii) abandon or use a minor for begging.

II. REGULATION

1. Provisions: classification by media

1.1. All media

General Act 34/1988, of 11 November 1988 on Advertising considers illicit (Article 3) the misleading, unfair, subliminal or denigrating advertising. In particular, it considers illicit the advertising contrary to the dignity of the person, “specially, in relation to infancy, youth or women” (Article 3 a))

Act 1/1996, of 15 January 1996, regarding the legal protection of minors. Article 4.3: forbids the use of the image of minors that might denigrate his/her honour or reputation. Article 5.4: imposes on the media the obligation not to address advertising to minors that could harm them from a moral or a physical point of view.

Act 1/1998, of 20 April 1988, on Rights and Attention to Minors of Andalusia. Article 6: Minors’ right to honour, privacy and own image must be respected; Article 7: The government bodies of Andalusia must prevent the media from broadcasting programmes or advertising contrary to minors’ rights. Particularly, programmes addressed to minors must not include violent, pornographic or discriminatory scenes.

Act 1/1997, of 7 February 1997 on Integral Protection of Minors of Canary Islands (Articles 34 to 38): Minors are protected against publications; programming or advertising that might harm them

Act 3/1999, of 31 March 1999, on Protection of Minors of Castilla-La Mancha (Article 12.3): The regional Administration will ensure that minors cannot have access to telecommunication services that might harm their development.

Act 8/1995, of 27 July 1995 of Attention and Protection of Children and Teenagers of Catalonia (Articles 33 to 38): Minors are protected against publications, programming or advertising that might harm them.

Act 3/1997, of 9 June 1997, on Family, Infancy and Adolescence of Galicia (Article 8 i and j): The media must not address messages to minors that foster violence or a denigrating treatment.

Act 6/1995, of 28 March 1995, on Guarantees of the Rights of the Infancy and Adolescence of Madrid (Articles 32 to 40): Minors are protected against publications, programming or advertising that might harm them.

Act 4/1998, of 18 March 1995, of Minors of La Rioja (Articles 27 to 29): Publications addressed to minors that foster violence or attitudes that are contrary to the rights and principles recognized in the Spanish Constitution are forbidden

Act 12/1984, of 28 December 1984, approving the Statute of the Consumer in Galicia. Article 33: The messages (advertising, programmes, shows, publications) addressed to minors by the public owned communication media (or by the media that obtain public aids) must avoid the psychological manipulation of minors.

1.2. Television

Act 25/1994, of 12 July 1994, that implements Directive 89/552 (“Television Without Frontiers”), as amended by Act 22/1999, of 7 June 1999 (implementing Directive 97/36/EC).

- Protection of minors from advertising (Article 16 Act; Art.16 Directive TVWF):

TV advertising may not show images or messages that might morally or physically damage minors. In particular it must not incite minors to buying a product or service abusing their inexperience or credulity, and it must not either persuade parents to buy those products or services. TV advertising must not exploit the special confidence of minors in their parents and must not show children in dangerous situations, without a justifiable reason.

- Protection of minors in relation to TV programmes (Article 17 Act; Art.22 Directive TVWF):

It prevents TV broadcasters from broadcasting programs that might damage the physical, mental or moral development of minors and it also prohibits TV programmes that might foster discrimination based on birth, race, sex, religion, nationality, opinion or any other personal or social circumstance. The programmes that might damage the physical, mental or moral development of minors or include pornography or unjustified violence can only be broadcast between 22:00 and 6:00 and must warn spectators about its content.

- Advertising of alcoholic beverages (Article 10 Act, Art. 15 (a) Directive TVWF):

Advertising of alcoholic beverages must always respect the content of the General Advertising Act 34/1988 and, apart from that, the following principles: (i) not to be addressed specifically to minors or show minors consuming alcoholic drinks; (ii) not to link the consumption of alcohol to an improvement of physical strength, to the driving of vehicles or give the impression that the

consumption of alcohol contributes to social or sexual success; (iii) not to suggest that alcoholic drinks have therapeutically properties or a stimulant or sedative effect or that they contribute to solve conflicts; (iv) not to foster the immoderate consumption of alcoholic drinks or offer a negative image of soberness (v) not to underline as a positive quality the high percentage of alcohol in alcoholic drinks.

- Interruptions of programmes (Art. 12 (5) Act; Art. 11 (5) Directive TVWF):

Children's programmes must not be interrupted by advertising or teleshopping, unless their duration exceeds 30 minutes, in which case the general rules (Art. 12 (1) – (3)) apply .

Resolution of the General Directorate for the Media of 17 April 1990 that approves the rules for the admission of advertising in RTVE (Radio Televisión Española) (Articles 13 to 15): Advertising in RTVE must not harm minors.

Act 42/1995, of 22 December 1995, on Cable TV (Article 12) Cable TV emissions that might harm the rights of minors must be offered to the spectators independently.

Royal Decree 1100/1978, of 12 May 1978, on advertising of tobacco and alcoholic drinks in RTVE. Although this Royal Decree formally applies only to the public-owned “Radio Televisión Española”, Act 10/1988 on Private Television of 3 May 1988 states that private TV broadcasters are subject to the same regulations concerning the advertising of alcoholic drinks. Among these rules, we must stress that advertising of alcohol must not be specifically addressed to minors and that this advertising can only appear on TV after 9:30 pm.

Act 8/1995, of 27 July 1995 of Attention and Protection of Children and Teenagers of Catalonia (Article 36) It stipulates identical provisions to the Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers” regarding protection of minors from advertising and broadcasting.

Act 6/1995, of 28 March 1995, of Guarantees of the Rights of the children and Adolescents of Madrid (Article 34): It provides identical provisions than Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers” regarding the protection of minors from advertising and broadcasting

Act 5/1982, of 20 May 1982 by which the Public Basque TV and Radio is founded. Article 4: The advertising and broadcasting addressed to minors must respect the content of the “Basque Statute of the Consumer” (i.e., the public Basque TV can not send messages inciting the consumption of tobacco or alcohol by children).

Act 5/1997, of 8 July 1997, that governs dynamic advertising in Balearics: Article 4.1.b: Dynamic advertising must always respect the rights of infancy, young persons and women.

1.2.1. Teleshopping

Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, amended by Act 22/1999, of 7 June 1999. Article 3 h) defines teleshopping as “the broadcasting of direct offers to the public for the purchase or hiring, against payment, of all kind of goods, services or rights”.

Article 9.1.a): Teleshopping of, among other products, tobacco and alcoholic drinks with an alcohol level of 20 % or more is forbidden. Article 10.1: Teleshopping of the remaining alcoholic drinks is allowed, although, in any case, it must never be addressed specifically to minors (Article 10.2. a).

Article 16 establishes the following rules aiming to protect minors against illicit teleshopping and advertising: Teleshopping must not contain images or messages that might morally or physically damage minors. In particular it must not incite minors to buy a product or service abusing their inexperience or credulity, and it must not either encourage minors to persuade parents to buy those products or services. Teleshopping must not exploit the special confidence of minors on their parents and must not show minors in dangerous situations, without a justified reason.

1.2.2. Sponsorship

Sponsorship is considered by the Spanish legislation as a kind of advertising, since Article 2 of General Act 34/1988, of 11 November 1988 on Advertising defines “advertising” as “all kind of communication carried out by an individual or a legal person, private or public, in a commercial, industrial, craft or professional activity with the aim of fostering, directly or indirectly, the trade of goods, real estates, services, rights and obligations”. In fact, sponsorship is regulated in Article 24 of this Act as a kind of advertising contract. For this reason, all the issues we have exposed regarding advertising must also be understood to apply to sponsorship.

As regards specifically sponsorship of TV programmes, Article 3 f) Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, as amended by Act 22/1999, of 7 June 1999 defines this activity as “the contract by which a physical or legal person (the sponsor), having no radio broadcasting activity or production of audio-visual works, contributes to the financing of a TV programme produced by another legal or physical person, with the aim of fostering the name, brand, image, activities or realisations of the

sponsor”. Apart from respecting all the provisions regarding advertising and teleshopping, the sponsorship of TV programmes have to abide by the specific rules contained for this activity in Article 15 of Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, amended by Act 22/1999, of 7 June 1999.

1.3. Radio

The following rules applying to TV broadcasts (supra 1.2.) also apply to radio broadcasting:

Royal Decree 1100/1978, of 12 May 1978, on advertising of tobacco and alcoholic drinks in RTVE. Advertising of alcohol and tobacco in RTVE must not be specifically addressed to minors and can only be broadcast after 9:30 pm.

2. Specific rules: classification by sector

2.1. Alcohol

2.1.1. General rules

Act 1/1997, of 7 February 1997 of Integral Protection of Minors of Canary Islands Article 32: Minors cannot consume or buy alcoholic drinks. Alcoholic drinks cannot be dispensed in schools or in premises dedicated specifically to minors. The same provisions appears in Article 20 of Act 9/1998, of 22 July 1998, on Prevention, Assistance and Social Insertion in the Field of Drug Addiction of Canary Islands.

Act 2/1995, of 2 March 1995 on Prohibition of Alcoholic Drinks to Minors of Castilla-La Mancha Articles 1 to 4: The sale or dispensation of alcoholic drinks to persons under 18 is forbidden.

Act 6/1995, of 28 March 1995, of Guarantees of the Rights of the Children and Adolescents of Madrid Article 31: The sale of alcoholic drinks to minors is forbidden.

Act 5/1990, of 19 December of 1990, of Asturias on the Prohibition of the Sale of Alcoholic Drinks to Minors under 16. Article 6: The sale of alcoholic drinks to minors under 16 is forbidden.

Act 10/1991, of 16 March 1991 on Prevention and Limitation of the Consumption of Alcoholic Drinks by Minors of Navarra. Article 1: The sale and consumption of alcoholic drinks by minors under 18 is forbidden.

Act 20/1985, of 25 July 1985 on Prevention and Assistance in the field of Drug Addiction of Catalonia, as modified by Act 10/1991 of 10 May 1991. Article 17: The consumption of alcoholic drinks is always forbidden for minors under 16. Minors older than 16 may only consume alcoholic drinks with an alcohol level of less than 23% and always between 6:00 in the morning to midnight.

Act 4/1997, on Prevention Measures in the Field of Sale and Advertising of Alcoholic Drinks of Extremadura. Article 2: the sale and consumption by minors under 18 of alcoholic drinks is forbidden.

Act 2/1996, of 8 May 1996, on Drugs of Galicia. Article 13: The sale and consumption of alcoholic drinks to minors under 16 is forbidden. Minors older than 16 are allowed to consume alcoholic drinks that have less than 18% alcohol.

Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the Field of Drug Addiction of the Basque Country. Article 20.1.a: The sale of any kind of alcoholic drinks to minors under 18 is forbidden.

Act 3/1997, of 16 June 1997, on Drug Addictions of Valencia. Article 18: The sale of alcoholic drinks to minors under 16 is always forbidden. Minors older than 16 are allowed, however, to consume alcoholic drinks with less than 18% alcohol.

2.1.2. Rules on advertising

A. General rules

General Act 34/1988 on Advertising Article 8.5: No advertising can take place in a site where selling or consuming alcohol is not allowed. For this reason, advertising of alcoholic drinks is not allowed in football stadiums (Article 67 of Act 10/1990 on Sports of 15 October 1990, forbids the sale and consumption of alcoholic drinks in sport centres).

Act 9/1998, of 22 July 1998, on Prevention, Assistance and Social Insertion in the Field of Drug Addiction of Canary Islands. Article 19: the advertising of alcoholic drinks directly addressed to minors is forbidden.

Act 2/1995, of 2 March 1995 of Prohibition of Alcoholic Drinks to Minors of Castilla-La Mancha (Articles 5 to 7): Advertising of alcoholic drinks directly addressed to minors is prohibited.

Act 3/1995, of 9 March 1995, on the Statute of the Consumer in Castilla-La Mancha. Article 23.2: The Regional Administration of Castilla-La Mancha will specially look after the protection of minors against illicit advertising.

Act 3/1994, of 29 March, on Prevention, Assistance and Social integration in the field of Drug Addiction of Castilla-León. Article 20: Advertising of alcoholic drinks directly addressed to minors is forbidden.

Act 5/1990, of 19 December of 1990 on the Prohibition of the Sale of Alcoholic Drinks to Minors under 16 of Asturias. Article 10: The promotion of the consumption of alcoholic drinks among minors is forbidden.

Act 5/1997, of 6 October 1997, on Prevention, Assistance and Social Integration in the Field of Drug Addiction of Cantabria. Article 20.1.b. The advertising of alcoholic drinks directly addressed to minors is forbidden.

Act 20/1985, of 25 July 1985 on Prevention and Assistance in the field of Drug Addiction of Catalonia, as modified by Act 10/1991 of 10 May 1991 Article 16 forbids all kind of advertising of alcoholic drinks addressed to minors.

Act 10/1991, of 16 March 1991 on Prevention and Limitation of the Consumption of Alcoholic Drinks by Minors of Navarra. Article 6: All kind of advertising of alcohol drinks addressed to minors is forbidden.

Act 4/1997, on Prevention Measures in the Field of Sale and Advertising of Alcoholic Drinks of Extremadura. Article 6: Any campaign that incites or induces minors to the consumption of alcoholic drinks is forbidden.

Act 6/1997, of 22 October 1997, on Prevention, Assistance and Social Integration in the field of Drug Addiction of Murcia. Article 12 forbids the advertising of alcoholic drinks specifically addressed to minors under 18.

Act 10/1981, of 10 November 1981, passing the Statute of Consumer of the Basque Country. Article 31: Advertising addressed to minors must not incite the consumption of alcoholic drinks.

Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the field of drug addiction of the Basque Country. Article 13: Advertising of alcoholic drinks cannot be addressed specifically to minors.

Act 3/1997, of 16 June 1997, on Drug Addictions of Valencia. Article 15. a) : The advertising of alcoholic drinks addressed to minors under 18 is forbidden.

Decree 57/1998, of 28 April 1998, of the Government of Valencia regarding the inclusion of warning messages in the advertising of alcoholic drinks and tobacco. Article 3: All advertising of alcoholic drinks must include a general message warning about the danger of the abuse of alcohol for health and social welfare.

Order of the Ministry of Education of 7 November 1989 by which the selling of tobacco and alcoholic drinks in schools and high schools is forbidden (Article 1)

B. By media

2.1.2.1. Television

General Act 34/1988 on Advertising Article 8.5 forbids advertising on TV of alcoholic beverages that contain more than 20 degrees

Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, as amended by Act 22/1999, of 7 June 1999. Article 10 (2): Advertising of alcoholic drinks must always respect the content of Act 34/1988,

General Advertising Act and, apart from that, the following principles: (i) not to be addressed specifically to minors or show minors consuming alcoholic drinks; (ii) not to link the consumption of alcohol to an improvement of physical strength, the driving of vehicles or give the impression that the consumption of alcohol contributes to social or sexual success; (iii) not to suggest that alcoholic drinks have therapeutical properties or a stimulant or sedative effect or that they contribute to solve conflicts; (iv) not to foster the immoderate consumption of alcoholic drinks or offer a negative image of soberness (v) not to underline as a positive quality the high level of alcohol percentage in alcoholic drinks.

Royal Decree 1100/1978, of 12 May 1978, on advertising of tobacco and alcoholic drinks in RTVE. Although this Royal Decree formally applies only to the public-owned “Radio Televisión Española”, Act 10/1988 on Private Television of 3 May 1988 states that private TV broadcasters are subject to the same regulations concerning the advertising of alcoholic drinks. These rules stipulate that the advertising of alcohol must not specifically be addressed to minors and that this advertising can only appear on TV after 21:30.

Resolution of the General Directorate for the Media of 17 April 1990 that approves the rules for the admission of advertising in RTVE (Radio Televisión Española) Article 16: the admission of advertising of alcoholic beverages cannot be addressed to minors or feature minors consuming alcoholic drinks.

Act 8/1995, of 27 July 1995, of Attention and Protection of Children and Teenagers of Catalonia: Article 38: the advertising of alcoholic beverages addressed to minors is forbidden to TV broadcasters. The Government of Catalonia supervises the compliance of these rules.

Act 2/1996, of 8 May 1996, on Drugs of Galicia. Article 12: Advertising of alcoholic drinks on TV channels established in Galicia is forbidden

Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the field of drug addiction of the Basque Country. Article 17: The advertising of alcoholic drinks by TV channels established in the Basque Country is forbidden between 8:00 and 22:00.

2.1.2.2. Radio

The following rules applying to TV broadcasts also apply to radio broadcasting:

Royal Decree 1100/1978, of 12 May 1978, on advertising of tobacco and alcoholic drinks in RTVE. Advertising of alcohol and tobacco in RTVE must not be specifically addressed to minors and can only be broadcast after 9:30 pm.

Act 2/1996, of 8 May 1996, on Drugs of Galicia. Article 12: Advertising of alcoholic drinks on radio channels established in Galicia is forbidden.

Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the field of drug addiction of the Basque Country. Article 17: The advertising of alcoholic drinks by radio channels established in the Basque Country is forbidden between 8:00 and 22:00

2.2. Tobacco

2.2.1. General Rules

The places where selling or consuming tobacco is forbidden are fixed, with effects throughout Spain, in the Royal Decree 192/1988 of 4 March 1988 on limitation in the sale and use of tobacco. According to this Royal Decree:

-it is forbidden to sell tobacco in hospitals, in schools and in places frequented by children and young people (Article 4);

-it is forbidden to smoke in, amongst other places, schools, high schools and Universities, in public sites like libraries and museums and in theatres, cinemas and closed sports centres (Article 7)

Order of the Ministry of Education of 7 November 1989 by which the selling of tobacco and alcoholic drinks in schools and high schools is forbidden (Article 1)

Act 1/1997, of 7 February 1997 of Integral Protection of Minors of Canarias (Article 32): Minors cannot consume or buy tobacco. Tobacco cannot be dispensed in schools or in premises dedicated specifically to minors. The same provision appears in Article 22 of Act 9/1998, of 22 July 1998, on Prevention, Assistance and Social Insertion in the field of Drug Addiction of Canarias.

Act 20/1985, of 25 July 1985 on Prevention and Assistance in the field of Drug Addiction of Catalonia, as modified by Act 10/1991 of 10 May 1991.Article 24.2: The sale of tobacco to minors is forbidden.

Act 2/1996, of 8 May 1996, on Drugs of Galicia. Article 13 forbids the sale of tobacco to minors under 18.

Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the field of drug addiction of the Basque Country. Article 21.1: The sale of tobacco to minors under 18 is forbidden.

Act 3/1997, of 16 June 1997, on Drug Addictions of Valencia. Article 20.1: The sale of tobacco to minors under 16 is forbidden

2.2.2. Rules on advertising

A. General rules

General Act 34/1988 on Advertising Article 8.5 forbids the advertising of tobacco in the premises where selling or consuming tobacco is not permitted.

Act 9/1998, of 22 July 1998, on Prevention, Assistance and Social Insertion in the field of Drug Addiction of Canary Islands. Article 19: the advertising of tobacco directly addressed to minors is forbidden.

Act 5/1997, of 6 October 1997, on prevention, assistance and social incorporation in the field of drug addiction of Cantabria. Article 20.1.b. The advertising of tobacco directly addressed to minors is forbidden.

Act 3/1994, of 29 March, on Prevention, Assistance and Social integration in the field of Drug Addiction of Castilla-León (Article 20): Advertising of tobacco directly addressed to minors is forbidden.

Act 20/1985, of 25 July 1985 on Prevention and Assistance in the field of Drug Addiction of Catalonia, as modified by Act 10/1991 of 10 May 1991. Article 25.1 forbids the advertising of tobacco addressed to minors

Act 6/1997, of 22 October 1997, on Prevention, Assistance and Social Integration in the field of Drug Addiction of Murcia. Article 12 forbids the advertising of tobacco specifically addressed to minors under 18.

Act 10/1981, of 10 November 1981, passing the Statute of Consumer of the Basque Country. Article 31: Advertising addressed to minors may not encourage the consumption of tobacco.

Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the field of drug addiction of the Basque Country. Article 13: Advertising of tobacco must not be addressed specifically to minors.

Act 3/1997, of 16 June 1997, on Drug Addictions of Valencia. Article 15: Advertising of tobacco addressed to minors under 18 is forbidden.

B. By Media

2.2.2.1. Television

General Act 34/1988 on Advertising. Article 8.5 forbids the advertising of tobacco on TV.

Royal Decree 1100/1978, of 12 May 1978, on advertising of tobacco and alcoholic drinks in RTVE

Resolution of the General Directorate for the Media of 17 April 1990 that approves the rules for the admission of advertising in RTVE (Radio Televisión Española)

Act 8/1995, of 27 July 1995, of Attention and Protection of Children and Teenagers of Catalonia: Article 38: the advertising of tobacco by the television channels depending on the Government of Catalonia addressed to minors is forbidden.

Act 2/1996, of 8 May 1996, on Drugs of Galicia. Article 12: Advertising of tobacco on TV channels established in Galicia is forbidden.

Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the field of drug addiction of the Basque Country. Article 17: The advertising of tobacco by TV channels established in the Basque Country is forbidden between 8:00 and 22:00.

2.2.2.2. Radio

The following rules applying to TV broadcasts also apply to radio broadcasting:

Royal Decree 1100/1978, of 12 May 1978, on advertising of tobacco and alcoholic drinks in RTVE

Resolution of the General Directorate for the Media of 17 April 1990 that approves the rules for the admission of advertising in RTVE

Act 2/1996, of 8 May 1996, on Drugs of Galicia. Article 12: Advertising of tobacco on radio channels established in Galicia is forbidden.

Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the field of drug addiction of the Basque Country. Article 17: The advertising of tobacco by radio channels established in the Basque Country is forbidden between 8:00 and 22:00.

2.3. Drugs and health

2.3.1. General rules

2.3.2. Rules on advertising

A. General rules

Royal Decree 1416/1994, of 25 June 1994 that rules the advertising of pharmaceuticals of human use. The so-called “Especialidades Farmacéuticas Publicitarias” (EFP) are the only pharmaceuticals that may be advertised. “Ethical” Pharmaceuticals that can only be consumed if prescribed by a doctor cannot be advertised. In any case, the advertising of the “EFP” cannot be exclusively, or mainly, addressed to minors (Article 6.1.e of Royal Decree 1416/1994).

B. By media

2.3.2.1. Television

Resolution of the General Directorate for the Media of 17 April 1990 that approves the rules for the admission of advertising in RTVE (Radio Televisión Española) (Article 17): The advertising of drugs in TVE must be in accordance with the specific regulation on the matter.

2.4. Vehicles

2.4.1. General rules

Royal Decree 772/1997, of 30 May 1997, that passes the General Regulation of Drivers. Article 7 of this Regulation establishes the minimum age necessary to obtain driving licenses:

- 16 years for motorised bicycles
- 18 years for motorcycles and motorised vehicles
- 21 years for motorised vehicles for the transport of persons and containing at least 9 seats.

2.4.2. Rules on advertising

A. General rules

Royal Decree 339/1990, of 2 March 1990, that approves the Act on Circulation of Vehicles. Article 52 prohibits the advertising of vehicles that encourages excessive speed or situations of danger.

B. By media

2.4.2.1. Television

Resolution of the General Directorate for the Media of 17 April 1990 that approves the rules for the admission of advertising in RTVE (Radio Televisión Española). (Article 20): advertising of vehicles must not encourage excessive speed or imprudent driving.

2.5. Education

2.5.1. General rules

Act 1/1990 establishing the General Framework of the Educational System in Spain: Article 12: The minor is subject to schooling during a period of 10 years, between 6 to 16 years of age.

Act 8/1985, of 3 July 1985, on Right to Education (Article 6) and Royal Decree 732/1995, of 5 May 1995 establish the rights and obligations of students in schools and high schools.

Order of the Ministry of Education of 7 November 1989 by which the selling of tobacco and alcoholic drinks in schools and high schools is forbidden (Article 1)

2.5.2. Rules on advertising

2.6. Toys and objects for children

2.6.1. General rules

Definition of a toy: Royal Decree 880/1990 regarding safety rules for toys.
Article 1: A toy is every common object or part of it, conceived or commonly known as destined for play by children younger than 14

Safety provisions: Royal Decree 820/1990, of 22 June, that forbids the manufacturing and marketing of products with a deceptive appearance. In particular, Article 1.1 prohibits the manufacturing and marketing of products that have a colour, flavour, presentation, labelling, etc that may induce consumers, “in particular children” to think wrongly that the product is suitable for consumption.

2.6.2. Rules on advertising

A. General rules

Royal Decree 2330/1985 of 6 November 1985 regarding safety of toys Article 5: Advertising and any other information regarding toys must not lead the consumer into error in relation to the characteristics and safety guarantees of the toy or in relation to the necessary capability of the child to use that toy without suffering any harm.

B. By Media

2.6.2.1. Television

Resolution of the General Directorate for the Media of 17 April 1990 that passes the rules for the admission of advertising in RTVE (Radio Televisión Española) (Article 14): Advertising of toys in TVE must not incite children to fight, It must specify the age of the children the toy is intended for and must show the toy in a way that allows the spectator to have a real impression about its size.

2.7. Financial services

2.7.1. General rules

2.7.2. Rules on advertising

A. General Rules

Act 26/1988, of 29 July 1988, on the Discipline and Intervention of Banks. Article 48 authorizes the Ministry of Economy to adopt the necessary measures to implement an administrative control of the advertising activity of Banks.

This administrative control is established by the Order of the Ministry of Economy of 12 December 1989 on advertising and information about interest rates. According to Article 10 of this Order, the advertising of operations, services and financial products carried out by Banks by any means must be previously authorized by the Bank of Spain.

B. By Media

2.8. Leisure (cinema, discotheques, public shows and publications):

2.8.1. General rules

The General Regulation of Police, passed by Royal Decree 2816/1982, prohibits the admission of minors under 16 to pubs and discos (Article 60). This regulation applies only to those Communities that have not enacted specific legislation on the protection of minors.

Act 1/1982 of 24 February 1982 prohibits the access of minors to cinemas where pornographic or violent films are exhibited (the so-called “X Cinemas”) (Article 1)

Royal Decree 81/1997, of 24 January 1997, that develops Act 17/1994 on Protection of Cinema: Article 15: Cinemas must clearly show the age-qualification of the films. It is important to stress that age-qualification of films is only recommended, not compulsory. In consequence, minors can have access to all film exhibitions (in cinemas or in video), with the only exception of “X-films” (pornographic films) (Article 19).

Order of the Ministry of Culture of 7 July 1997, developing the content of Royal Decree 81/1997 Article 17: The age-qualification of films is made up by the following six categories: (i) “Specially recommended for children”; (ii) “For all ages”; (iii) “Not recommended for children under 7”; (iv) “Not recommended for children under 13”; (v) “Not recommended for people under 18” and (vi) “X-film”

Order of the Ministry of Culture of 5 September 1978 (Article 1) Pornographic publications must necessarily include clearly the indication “Adults Only”.

Royal Decree 2816/1982, of 27 August 1982, that approves the General Regulation of public shows and recreational activities (Article 62.3): It allows governmental and municipal authorities to, in exceptional circumstances, prohibit the entrance of minors to public shows, provided this measure is necessary to guarantee an adequate protection of children and youth (this Royal Decree is not in force in Catalonia, according to Act 10/1990, of 15 June 1990, of Catalonia).

Royal Decree 2748/1977, of 6 October 1977, that rules the regime of certain publications (Article 1): The publications that show images that can be inappropriate or dangerous for minors cannot be shown publicly in kiosks or shop windows.

2.8.2. Rules on advertising

A. General rules

Decree 3449/1977 of 16 December 1977, that governs the exterior advertising of public shows (Article 1): The exterior advertising of public shows like cinemas, theatres (i.e., the advertising of these shows in the street) must not include images or scenes that are inappropriate or dangerous for minors.

Royal Decree 1189/1982, of 4 June 1982, on Regulation of inappropriate or dangerous activities for minors: Apart from reproducing the content of Decree 3449/1977 regarding the exterior advertising of public shows, this Royal Decree prohibits the sale of pornographic publications to minors.

B. By media

2.9. Arms/violence

2.9.1. General rules

Royal Decree 137/1993, of 29 January 1993, that approves the Regulation on Arms. Article 109: A licence for having a firearm can only be granted to persons 18 or older. Exceptionally, minors can obtain a special authorization to use certain firearms provided that they fulfil certain conditions: (i) to be older than 16 or 14, depending on the kind of firearm; (ii) to use the firearm exclusively for hunting or for sport “junior” competitions; (iii) to be accompanied by persons older than 18 who have a licence of firearms and who have committed themselves to look after the minor during hunting or his participation in the sport “junior” competition.

2.9.2. Rules on advertising

A. General rules

Article 5 of the Regulation of Firearms expressly forbids the advertising of certain kind of items, such as personal defence sprays or semi-automatic firearms.

Article 45 of the Regulation of Firearms establishes that certain firearms (those that belong to categories 1 and 2) can only be advertised in specialized publications.

B. By media

2.9.2.1. Television

Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, as amended by Act 22/1999, of 7 June 1999. Article 17 prevents TV broadcasters from broadcasting programmes that might damage the physical, mental or moral development of minors and it also forbids TV programmes that might foster discrimination based on birth, race, sex, religion, nationality, opinion or any other personal or social circumstance. The programmes that might damage the physical, mental or moral development of minors or include pornography or unjustified violence can only be broadcast between 22:00 and 6:00 and must include a warning about its content.

2.10. Public provisions

2.10.1. General rules

2.10.2. Rules regarding advertising

A. General rules

B. By media

3. Proposals of Law

At the present moment there are two proposals of law related to minors that are being discussed in the Spanish Parliament:

Proposal to modify the Criminal Code, the Civil Procedural Code and the Civil Code in order to fight against the illicit retention of minors. This proposal was

submitted by the Socialist Group on 5 April 2000 and is now being discussed in the Commission of Justice of the Parliament.

Proposal to modify the Criminal Code in order to prevent the “legal kidnapping” of minors by members of their own family. This proposal was submitted by the Popular Group on 5 June 2000 and is presently discussed in the Commission of Justice of the Parliament.

III. SELF-REGULATION

1. General rules

Code of Advertising Conduct. This Code was passed on 14 April 1999 by the Asociación de Autocontrol de la Publicidad (AAP), the Spanish Advertising Self Regulation Association and is inspired by the ICC Code. Article 28: The advertising addressed to children must be not abuse the children's inexperience or credulity. The advertising addressed to children must not inflict any harm from a physical or psychological point of view.

2. By media

2.1. Television

Code of Conduct concluded by the Ministry of Education, the Self-regulating Communities and the TV Channels on 26 March 1993 regarding the protection of minors against certain contents of TV broadcasting. This Code of Conduct includes the principles that TV broadcasters assume in order to prevent causing, any harm to children.

2.2. Internet

Ethical Code on Advertising on the Internet approved by the Asociación de Autocontrol de la Publicidad on 14 April 1999. Article 9: Advertising in Internet should not provoke any harm to minors and should in consequence respect some basic principles, such as the need to identify the contents that are addressed only to adults, not to show children in dangerous situations, not to exploit the inexperience of children, etc. Article 16: The advertisers and the media are obliged to communicate to the relevant authorities any criminal activity on the web that they are aware of, such as children pornography.

Ethical Code of Data Protection in Internet passed by the "Asociación Española de Comercio Electrónico" (Spanish E-mail Commerce Association). Articles 13 to 18 are specifically dedicated to the treatment of personal data of minors.

3. Classification by sector

3.1. Alcohol

Code of Conduct of the “Asociación Española para la Autorregulación de la Publicidad de Bebidas Alcohólicas” (Spanish Association of Advertisers for the self regulation of the advertising of alcoholic drinks). Article 1: The advertising of alcoholic drinks will not be addressed to minors under 16.

Code of Self Regulation for the Advertising of Beer between “Cerveceros de España” and “Unión de Consumidores de España” (UCE), a well-known Spanish Consumer Union. Through this Code of Conduct, the Spanish beer advertisers commit themselves to several obligations regarding minors, such as, for instance, to avoid the sale of beer to minors under 16 and not to broadcast advertising of beer on TV before 20:30. (There is no legal time restriction in Spain to advertise alcoholic beverages with less than 20% alcohol. on TV).

3.2. Drugs and Health

- Code of Conduct passed by the “Asociación Nacional de Especialidades Farmacéuticas Publicitarias” (the Spanish Association of Laboratories that market drugs that may be advertised). Article 12: The advertising of the “Especialidades Farmacéuticas Publicitarias” (EFP) must not exclusively be addressed to children, except in those cases where the advertising message may contribute to the personal hygiene of the child. In any case, the advertising of these products must not induce children to use them without the supervision of their parents.

- Code of Conduct for the advertising of cosmetic and perfumery products

3.3. Toys

Code of Conduct regarding advertising for children signed between the Association of Toy Manufactures and the Unión de Consumidores de España (UCE). It establishes the principles that the broadcasters must respect for advertising toys.

3.4. Detergents

Code of Conduct for the advertising of cleaning products, signed on 4 April 1989 between the Instituto Nacional del Consumo and ADTA (Asociación de Fabricantes de Detergentes, Tensoactivos y Productos Afines, the Spanish Association of Detergent Manufactures): Article V.b: the detergents manufacturers commit themselves not to show behaviour that may incite consumers and, in particular, minors to use detergents incorrectly or in a dangerous way.

3.5. Commercial activities in schools

There are no specific rules. The APP does have a specific part of its code relating to children. There also exists a Code of Advertising and Children adopted by the Spanish Association of Toy Manufacturers and by the consumer association the UCE as well as an agreement between the Spanish Ministry of Education and TV broadcasters.

IV. SPECIFIC MEANS OF COMMUNICATION

1. Direct marketing

The Direct Mail Association applies its own self-regulatory advertising code independently of the AAP.

2. Promotional sales practices

Act 3/1991, of 10 January 1991, on Unfair Competition. Article 8 considers it illicit to give presents or gifts to consumers (included, in consequence, minors) when, in the light of the circumstances in which these presents are given, the consumer is obliged to acquire a product or service. Act 7/1996, of 15 January 1996, ruling Retail Trade. Articles 32 to 34 rule specifies the manner in which these presents must be given.

Code of Conduct regarding advertising for children signed between the Association of Toy Manufactures and the Unión de Consumidores de España (UCE). Article 6: Famous TV-personalities may not advertise products or offer prizes or services in a programme for children in which they appear. Article 9: Children's Clubs may not suggest that children become a member of the club by acquiring a product or service. A child can only be a member of a children's club if

He really has to make an application for it. In particular, watching a TV programme or to having lunch in a restaurant cannot be a condition to become a member.

V. HANDLING OF COMPLAINTS

1. Self-regulation

The settlement of disputes regarding advertising is included in the objectives of the “Asociación de Autocontrol de la Publicidad” (AAP), the Spanish Advertising Self Regulation Association. This activity of settlement of disputes is carried out by the “Jurado de la Publicidad” (Advertising Jury), that is an Arbitral Court whose members are well-known jurists and professionals of the sector.

The AAP is in charge of various tasks: to provide copy advice on campaigns, to examine advertising for compliance with the code, to handle complaints.

Any interested person (individuals, consumer Unions, companies, public bodies, etc) can file a complaint before the Jurado de la Publicidad. The only conditions that the complaint must fulfil in order to be admitted are: (i) the proper identification of the plaintiff; (ii) the advertising message about which the complaint is filed must have been broadcast, published, etc twelve months before as maximum and (iii) no judicial proceedings must be or have been open with regard to this issue.

One of the five Sections of this Jury will solve the issue after having given the defendant the chance to be heard in the proceedings. This Resolution can be appealed to the “Plenum” of the Jury.

2. Administration proceedings

Complaints can also be filed before the Administrative Authorities that have the competence to sanction and stop the infringements of the advertising rules that we have outlined above. This competence is exercised by the Communities according to their own administrative proceedings. These proceedings must be in accordance with the general legal principles set out by Royal Decree 1398/1993, of 4 August 1993. This Royal Decree establishes the rules to be followed, with general character, by the Administration in the administrative sanctioning proceedings.

Regarding, in particular, infringements of Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, amended by Act 22/1999, of 7 June 1999, we must underline that the Communities have competence to initiate and follow the corresponding sanctioning proceedings only when the TV service is exclusively broadcast in the territory of the

Community.. In all other cases (i.e., when the TV service that has supposedly infringed the content of this Act covers more than one Community), the sanctioning competence belongs to the Central Administration (Article 19.2).

3. The judicial procedure: action for cessation

The judicial proceedings for the cessation or the rectification of illicit advertising are regulated in Articles 25 to 33 of General Act 34/1988, of 11 November 1988, on Advertising.

Any person who has a legitimate interest in the cessation or rectification of the illicit advertising can initiate these actions.

However, for one of these actions to be admitted by the courts, the plaintiff must demonstrate that he has previously required the advertiser to put an end or rectify the illicit advertising in a maximum deadline of three days and that this requirement has produced no result.

After the admission of the action, the proceedings are followed according to the common civil proceedings stated in the “Juicio de Menor Cuantía” with some particular issues that are expressly established in Article 29 of General Act 34/1988, of 11 November 1988, on Advertising.

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