

THE NETHERLANDS

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

I. INTRODUCTION

II. SUMMARY

III. REPORT

I. INTRODUCTION

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

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 Dutch Media Act and Media Decree of 1987 have not changed significantly in this area apart from the implementation of the European Directive TVWF. There are no proposals to change the existing situation, which relies heavily on self-regulation. Nevertheless, a recent modification of the Media Act (2000) aims to provide for more effective protection of minors against audiovisual media products which can be considered as harmful for children (the rules had to be adopted to comply with Art.22 of the European Directive TVWF).

A number of detailed self-regulatory codes exist, together with a complaints procedure, easily accessible to consumers.

1. Definitions

The Civil Code defines a “minor” as a person who has not reached the age of 18 years.

The Media Act refers to “minors” under the age of 12 years old.

The Advertising Code defines a “child” as a person under 12 years old.

A definition of “advertising” can be found in the Media Act (radio/TV), as well as a very broad definition in the self-regulatory Advertising Code (hereafter referred to as AC). In general every message intended to encourage the public to buy a product/service has to be considered as advertising.

2. Regulation

a. General

In the Netherlands self-regulation has a greater importance than legislation.

The Advertising Code Foundation (consumers, advertisers, media) has created an Advertising Code, divided into a general section and several specific sections.

The Code defines general principles applicable to all kinds of advertising in relation to truth, good taste and decency, public interest, health, confidence, feelings of fear, testimonials, scientific terms and data.

Art.13 prescribes special rules for advertising directed at minors (advertising may not mislead children about the capacities or qualities of a product).

b. Media

The Media Act and Media Decree provide special rules for advertising on commercial and public service channels (clearly distinguished from programmes, broadcast time, interruption rules: for example programmes addressed to minors under the age of 12 may not be interrupted by advertising on the public service broadcaster and only if the programme lasts more than 30min for the commercial broadcasters). The European Directive TVWF is partly implemented in the audiovisual legislation (and partly in the Advertising Code).

The AC contains specific rules for advertising on radio/TV and criteria to prevent advertising from harming minors physically or mentally.

In relation to teleshopping the AC contains criteria to protect minors.

Product placement and sponsoring is forbidden in programs directed at children under 12 years old.

The same rules apply for radio and TV.

There are no specific rules on advertising directed at minors for press, posters, cinema and the Internet. Self-regulation however contains some specific rules, for example advertising directed at children in press publications has to carry the word “advertising”.

c. Specific provisions

Legislation and self-regulatory codes prescribe specific rules for advertising for certain products, for example :

alcohol : restrictions are found in self-regulatory codes, for example broadcasting of alcohol advertising is forbidden 5 minutes before or after a program that will be watched by more than 25% of minors.

tobacco : forbidden by the Tobacco Act on radio/TV+ detailed regulation in a self- regulatory code

medicines : Medicines advertising Decree (implements Regulation 92/28/EEC) and a specific self-regulatory code prohibits advertising addressed to children. TV-- -- -sponsoring by the pharmaceutical industry is forbidden.

health products : a specific self-regulatory code prohibits advertising directed to children

confectionery : the AC states that TV-advertising shall show a toothbrush + specific self-regulatory code aiming to protect the health of minors

leisure : the self-regulatory code on advertising for casino’s and machines contains special rules for the protection of minors

d. Other marketing techniques

Special self-regulatory codes exist on Box Advertising, Door-to-Door sampling and Direct response advertising. This kind of advertising may be directed to children but should not be likely to cause damage to their physical or mental health (also restrictions for medicines, tobacco and telemarketing).

Promotional sales practices are also regulated, for example a contest is allowed (even for minors) but not a game of “hazard”. Free gifts are allowed, except for some products such as alcohol, medicines...etc.

3. Proposals of law

A recent proposal aims at the prohibition of all outdoor advertising for tobacco, which is motivated by the concern to protect minors and to prevent them from starting to smoke.

4. Self regulation

Since in the field of advertising self-regulation is more important in the Netherlands than legislation, this subject is treated under **2**.

5. Handling of complaints

Authorities

For misleading/unfair advertising legal proceedings in court are a possibility.

The Media Authority supervises the compliance with the Media Act and Decree but does not handle complaints.

For advertising of medicines the Inspection Board of the Foundation Code of Medicines is competent for the handling of complaints.

Self-regulation

The self-regulatory Advertising Code Committee supervises the application of the AC and is the most important institution for consumers to complain about advertising. The advantage is that this control system is easily accessible for everybody, introducing a complaint is not complicated and can be done without too many formalities, the institution is well known by the public and the procedure is quick and efficient. This is considered to have clear advantages compared to the launch of legal proceedings.

Anybody can submit a written complaint and if it is justified the Committee will recommend the advertiser to stop the distribution of the advertisement. The media can be warned and asked to stop the distribution.

In 1997 there were only two complaints relating to advertising and children, both of which were rejected. In 1998 there were 7 complaints in this field (the majority of which were rejected), in 1999 there were 6 complaints (the majority were rejected). The subject does not appear to have provoked much concern amongst consumers.

III. REPORT

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NETHERLANDS

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I. DEFINITIONS

Minors

Article 1:233 of the Civil Code (“Burgerlijk Wetboek”) defines minors as those who have not yet fully reached the age of 18 years, who are not or have not been married or registered as a partner, or who have not been declared to have reached the age of majority on the bases of article 1:253ha Civil Code.

Article 1:253ha of the Civil Code stipulates that a minor woman with parental authority, who wants to take care and bring up her child, can, if she has reached the age of 16 years, request the juvenile court to declare her to have reached the age of majority.

The Dutch Advertising Code (“de Nederlandse Reclame Code”) considers youth as persons who have not fully reached the age of 18 years. A child is considered to be a minor till the age of 12 years.

Majority

The Civil Code does not contain a specific definition about when majority is reached. It follows from art 1:233 of the Civil Code that at 18 years a person has reached the age of majority. At that age one is legally capable of all actions in civil life.

Civil liability

Acts of a minor, who has not yet fully reached the age of 14 years, can not be imputed on him as as illegal civil acts (article 6:164 of the Civil Code). Article 6: 169 of the Civil Code establishes a strict liability for parents or legal guardian(s) in respect of the illegal civil acts of a minor who has not fully reached the age of 14 years. In case the minors are 15 years or more, exculpation of parents/guardians is possible.

Legal entitlement to act / contract

A minor has, provided that he acts with the permission of his legal representative, the capacity to act, unless the law stipulates otherwise (Article 1: 234 Civil Code). For example, the law stipulates otherwise with respect to employment agreements and medical treatment agreements in which case a minor of 16 year is capable to contract.

The permission can only be given in relation to a specific legal act or purpose. If it concerns a legal act which a minor (given his age) usually performs in our society independently, permission will be assumed.

Criminal prosecution

Article 486 Code of Criminal Procedure (“Wetboek van Strafvordering”) stipulates that nobody can be prosecuted before he has reached the age of 12 years.

Protection of youth

The Board of Protection of Minors (article 1:238 a.f. Civil Code, based on the Act of 13 June 1996, Stb 328) has several tasks and competences. The main competence is to act in legal proceedings in case the Board is of the opinion that a minor is brought up in such a way that his mental, moral and/or physical health is endangered. The Board can ask the juvenile judge to place the minor under family supervision. The Board, can on its own initiative or upon request, give information or advice with respect to the protection of children.

Public sex offenses

Protection of youth under the age of 16 year:

Article 240a Criminal Code (“Wetboek van strafrecht”) declares that it is considered a crime to supply, offer or show a picture or an object which may be harmful for a person under the age of 16 years, to a minor or a person of who that he is younger than 16 years.

Child pornography

Articles 240b Criminal Code (“Wetboek van strafrecht”) stipulates that it is considered a crime if a person distributes, , displays in public, makes, imports, transits, exports or keeps in stock, pictures or other visual carriers representing sexual positions or acts of a pornographic nature, involving or representing minors younger than 16. Exception is made in case the pictures are kept for a scientific, educational or therapeutic purpose.

Trade with minor

Article 437bis of the Criminal Code considers it an offense when a person, who acts in the capacity of a professional trader, acquires a good of a minor or of someone of whom he knows or suspects to be in prison, an institute for protection of minors, or a mental institute.

Advertising

The Civil Code does not contain an explicit definition of the term “advertising”. However, it follows from article 6:194 Civil Code that in the context of misleading advertising, advertising means any public communication about products or services made in the course of trade by the one who offers the products or services, irrespective of the medium used.

The Media Act (“De Mediawet”, Stb 1987, 249) does not define advertising as such. However, article 1 of the Media Act sets out the meaning of advertising with respect to radio and television programmes:

- “Advertising expression” (article 1 under jj): advertising message or other expression which clearly result in the public being encouraged to buy a specific product or to use a specific service, or if public opinion being influenced in a positive manner as regards a specific business, branch of industry or institution in a way which promotes the sale of products or the use of services.
- “Advertising message” (article 1 under kk): message which is unmistakably intended to encourage the public to buy a specific product or to use specific services, or to influence public opinion in a positive manner as regards a specific undertaking, branch of industry or establishment in order to promote the sale of products or the use of services.

The difference between an “expression” and a “message” is that the essential characteristic of a message is the intention to advertise. The relevant circumstance of an expression is the effectiveness of the expression. A “message” is a subset of an “expression”. Another example of an “expression” is teleshopping as defined in article 1, under xx, Media Act.

See also Chapter III Self Regulation for the definition of advertising.

II. LEGAL REGULATIONS

1. Legal regulations: classification by media

1.1. All Media

Article 6: 194 – 196 Civil Code (“Burgerlijk Wetboek”): General provision regarding advertising

Advertising may not be deceitful or misleading. According to the Explanatory Memorandum, the measurement for judgement is the cleverness and the capacity of understanding of an average public. However, in some cases the special circle of persons should be taken into account, such as children. The minor has to be considered as a consumer. Article 6: 195 of the Civil Code prescribes a reversed burden of proof; the burden of proof falls upon the advertiser to establish that his claims are correct and complete.

Misleading advertising can establish a violation of article 328bis of the Criminal Code (“Wetboek van Strafrecht”).

Except for the advertising bans in relation with tobacco products on television and radio and medicines available on prescription, the legislator has left a substantial part of the regulation and supervision of advertising to self-regulation by the parties/industries involved. As far as it concerns regulations with respect to the content of advertising most of the regulations of the European Directive “Television without Frontiers” (89/552/EEG of 3/10/1989, L 298/23), are to be found in The Dutch Advertising Code (“de Nederlandse Reclame Code”)(see III Self Regulation).

Article 169 of the Media Act (“Mediawet, Stb 1987, 249) gives the Minister (of Education, Culture and Science) the possibility to adapt rules on order to implement articles 12, 15 and 16 of the European Directive “Television without Frontiers” (89/552 of 3/10/1989, L 298/23) in so far as he is of the opinion that one or more of these articles have not been incorporated, or have been incorporated in insufficiently, incorrectly or late, into the Advertising Code or some other comparable scheme established by the Advertising Code Foundation, or if the Advertising Code Foundation fails its supervisory duties.

1.2. Television (and Radio)

The Media Act (“Mediawet”, Stb 1987, 249) and The Media Decree (“Media Besluit”, Stb 1987, 249), both updated several times, allow a limited advertising regime in line with the regulations about the quantity of advertising of the Directive “Television without Frontiers” (89/552/EEG of 3/10/1989, L 298/23).

In the Media Act some articles refer to minors under the age of 12 years (for example article 41a, section 4 and article 52a, section 3, under b). Other articles refer to persons under the age of 16 years (for example article 52d section 1).

Public and commercial broadcasting

Since 1991, the Media Act contains a dualistic system of public and commercial broadcasting. The main differences of the regimes will be discussed below.

Public Broadcasting

The national public broadcasters are not allowed to broadcast advertising-messages or advertising-expressions, according to article 52 section 1 and 2 Media Act, with some exceptions (see for difference between “message” and “expression” chapter I Definitions). Examples of the exceptions are: required identifications of the sponsor, and unavoidable advertising expressions.

Avoidable advertising expressions by way of displaying or referring to a product or service (“product placement”), are never allowed for programmes which are predominantly targeted at minors under the age of 12 (article 27 of the Media Decree and article 28 section 2 of the Media Decree).

Only the Radio and Television Advertising Foundation (STER) is allowed to broadcast advertising-messages (article 26 and 52 section 1 Media Act). Non-national public broadcasters (regional and local) may broadcast advertising-messages (according to the same regulations as apply to the STER). They may not broadcast other advertising-expressions (article 43a Media Act). The STER is responsible for the broadcasting of advertising (article 26 Media Act) and the separation of advertising. The STER is obliged to be a member of the Advertising Code Foundation (“de Stichting Reclame Code”) and is bound by the rules of the self regulatory Dutch Advertising Code (“de Nederlandse Reclame Code”) in which the regulations of the Directive as to the quality of advertising are adopted (article 61a Media Act).

Section 1 and 3 of article 10 of the Directive are adapted in article 50 paragraph 8 of the Media Act and stipulate in respect of the public broadcasters:

- -“ the programmes of the Radio and Television Advertising Foundation (STER) shall be recognisable as such and must clearly be discernable from the programmes of the other establishments which have obtained broadcasting time. Subliminal techniques shall not be used in the programmes of the STER.”

This stipulation prohibits surreptitious advertising.

Article 41a, section 4, provides for the possibility to include in de Media Decree rules concerning the STER in relation to advertising specially aimed at minors under the age of 12. Such rules are so far not included in the Media Decree.

Teleshopping is not allowed on the public network, neither by the public broadcaster nor the STER.

Interruption rules:

Programmes mainly targeted at minors under the age of twelve may not be interrupted by programmes of the STER (article 11, section 3, of the Media Decree).

Other interruption-rules are stipulated in article 41a section 1 Media Act:

Programmes may only be interrupted by advertising if:

- On Sundays, the programmes of the STER do not immediately precede or follow programmes of a religious or ideological nature, and the broadcaster has not lodged any objections;
- and programmes will only be interrupted if:
 1. The programme is a report or coverage of a sporting event, a stage performance or some other similar structured performance or event;
 2. The programme contains a full report of the entire performance or event;
 3. The interruption takes place during the natural breaks occurring in the performance or event or between separate parts of the performance per event; and
 4. The establishment which has obtained broadcasting time and which is responsible for the programme has no objections to the interruption on the grounds of it having an adverse affect on the integrity, the character or the coherence of the programme in question.

Article 11 of the Media Decree stipulates in addition:

- National broadcasting time may not be interrupted more frequently, by a programme of the STER, than once every 45 minutes in the case of TV and every 30 minutes in the case of radio broadcasting;
- The length of the programme to be interrupted is more than 90 minutes in the case of TV broadcasting and more than 45 minutes in the case of Radio broadcasting and the programme continues for at least 20 minutes after the break;
- The interruption lasts at least 2 minutes for television and 1 minute for radio;
- The interruption does not affect the rights of the rightholders;
- Programmes of a religious nature and – as mentioned above - programmes mainly targeted at minors under the age of twelve may not interrupted by advertising of the STER.

Commercial Broadcasting

The regulations for advertising by commercial broadcasters are mostly based on the Directive The Media Decree contains most of the regulation for advertising by (national, regional and local) commercial broadcasters. Commercial broadcasters are allowed to broadcast advertising messages, if they are members of the Advertising Code Foundation.

Interruption rules

As to interruption rules for commercial broadcasting article 52 e Media Decree decides that programmes shall only be interrupted by advertising messages if the interruption does not affect the integrity, nature or coherence of the relevant programme or infringe the rights of the programme right holder.

Programmes covering religious or ideological gatherings shall not be interrupted by advertising or teleshopping messages (article 52e section 2 Media Decree).

The following programmes may, according to article 52 e section 3 Media Decree, only be interrupted by advertising if they last more than 30 minutes:

- News or news commentaries;
- Religious or ideological nature other than as referred to in the second paragraph;
- Programmes aimed at minors under the age of twelve;
- Non-dramatised documentaries.

Films shall only be interrupted by advertising or teleshopping messages if their length is at least 45 minutes (article 52 e section 4 Media Decree). Films shall not be interrupted by advertising messages more frequently than once per 45 minutes. If a film has a remaining length of more than 20 minutes after two full segments of 45 minutes, the film may be interrupted once more.

Article 52 j section 1 Media Decree forbids surreptitious advertising.

Names, (trademark, logo's or image brand) may be shown in case of teleshopping, indication of the sponsor, mentioning-of-event-sponsoring, idealistic advertising and sponsored programmes if the public is not, by way of specific recommendations, otherwise encouraged purchasing the products.

In case one television programme is interrupted by more than one advertising break, the intervals between the advertising breaks should be at least 20 minutes. However, television programmes consisting of a report on or coverage of a sporting event, a stage performance or some other similarly structured performance or event shall only be interrupted by advertising messages during natural breaks occurring in the performance or event or between separate parts of the performance or event (article 52 f Media Decree).

The advertising or teleshopping messages of commercial broadcasters shall also be recognizable as such, and be clearly discernible from other programs. Subliminal techniques are not allowed (article 52 c Media Decree).

This stipulation prohibits surreptitious advertising.

Further rules with respect to broadcast-time for advertising by commercial broadcasters and the STER

The rules of article 11 of the Directive are adopted in the Media Act and the Media Decree; in the case of the STER most of the time more restrictive.

Transmission time of advertising by the Radio and Television Advertising Foundation (STER) and non-national public broadcasters will be maximally (including the "separation frame work"):

- Per year: 6,5 % of the broadcast time on television and radio;
- Per 24 hours: 15 % per day and per network of the broadcast time;
- Per hour: 12 minutes.

Minimum (including the "separation frame work"):

The television broadcasting time of the STER shall be scheduled with a minimum length of two minutes per block (article 12 Media Decree). As to advertising on Radio there is no minimum, except in case of program-interruption.

Article 52d Media Decree prescribes for commercial broadcasters the same rules as to the maximum and minimum broadcasting time for advertising.

Teleshopping

The Media Act (“Mediawet” Stb 1987, 249, according to the last review of the Act of 8 June 2000, Stb 252) defines “teleshopping message” as an advertising expression on a television programme, which consists of a direct offer to the audience in order to sell the products or services against payment (article 1 under xx Media Act).

Only commercial broadcasters are allowed to broadcast teleshopping messages. During a programme exclusively devoted to teleshopping it is also allowed to broadcast other advertising messages (article 52g, section 3, Media Decree). According to article 52d paragraph 2, 3 and 4 Media Decree no more than 20% of the total length of the entire programmes of a commercial broadcaster in one day or 12 minutes per hour, shall consist of teleshopping messages or a combination of advertising messages and teleshopping messages. No more than 8 blocks of teleshopping messages a day are allowed and the entire length of one block should be at least 15 minutes without interruption. The entire length shall be no more than 3 hours a day (article 52g section 6 Media Decree). No specific provisions in the Media Act referring to minors.

Sponsoring

The Media Act and Media Decree contain most of the regulations regarding sponsoring of television and radio programmes.

Article 1 under ll of the Media Act contains a more restrictive definition of sponsorship of a programme than the Directive “Television without Frontiers” (no. 97/36/EG, 30 June 1997 (Pb. EG. L 202) allows:

“The provision of financial or other contributions by a government institution or private company not normally involved in broadcasting activities or in the making of audio-visual productions, towards the production or purchase of a program for the purpose of facilitating or enabling its broadcast.”

The definition of sponsorship has no reciprocal character, in the sense that his name or product will be promoted in return of his contribution. Identification of the sponsor’s name is required in order to inform the audience and may not have a promotional character, as consequence of the prohibition of surreptitious advertising of the Directive.

As of 1 September 2000 of the Media Act stipulates that the programmes of all broadcasters (national, regional, local and public or commercial) may not be sponsored in case:

- The programmes wholly or partly consisting of news, current affairs or political information (article 52a, section 3, under a Media Act and article 52h, section 5 Media Decree).

Programmes of public broadcasters may not be sponsored in case the programmes are specially aimed at minors under the age of 12 (article 52a, section 3, under b Media Act).

For the following programmes article 52a section 2 of the Media Act makes an exception:

- Programmes of cultural nature, a report or coverage of sport-events or competitions, or an event in connection with idealistic purposes.

The tobacco industry parties may not sponsor a program. According to article 56a section 5 of the Media Act and article 52i, section 2, Media Decree) this concerns the following persons, companies or establishments:

- Whose main activities include the manufacturing or sale of cigarettes or other tobacco products (article 56a section 5 under a of the Media Act);
- Those who use names, trademarks or logo's or brand images, identical or similar signs, used by the above mentioned persons or companies or establishments, so as to allow the public to get the impression and have the expectation that the name, trademark or logo in question is also of a person, company or establishment mentioned above (article 56a section 5 under c and 56, section 6, of the Media Act).

As to sponsored programmes, which have been purchased outside the Netherlands and have already been broadcasted as a programme service to a foreign audience, the above-mentioned restriction shall only apply in so far as the sponsorship contributions have been furnished to facilitate the purchase of that programme by the establishment which has obtained broadcasting time (article 52 c of the Media Act).

To meet the requirements of article 17 section 1 a of the Directive article 64b, section 1 of the Media Act also determines that the public broadcasters have to draw up a Programme Service Statute, which must in any event safeguard the editorial independence of those of their employees charged with the editorial aspects of the programmes against interference by sponsors. For commercial broadcasters the same is stipulated in article 52h section 1 of the Media Decree.

In case of sponsoring the public broadcasters have, pursuant to article 52b of the Media Act, the following obligations:

- The names of all sponsors shall be mentioned either at the beginning and/or end of the programme in question for the information of the public;
- In case of sponsored television programmes, the names of the sponsors shall appear for a maximum of 5 seconds. The appearance may be in the shape of a name, trademark, logo or image brand. In so far as this does not take place in the introductory or final credits, only a static image may be used. The appearance shall not fill the whole screen and shall be shaped in such a way that is does not fulfil the criteria of the definition of advertising messages;
- None of the sponsor's products or services may be mentioned or shown in a sponsored programme if the sponsorship consists of a financial contribution.

Almost the same conditions apply to the programmes of commercial broadcasters except, that they are allowed to refer to or display products and services of sponsors, provided that the public is not, by way of specific recommendations or otherwise, encouraged to purchase or hire such products or services (article 52h, section 2 of the Media Decree). The mentioning of the sponsors name is not bound to a maximum length but can be as long as necessary to mention or to show the name.

The Media Authority also publishes detailed guidelines about sponsoring.

1.3. Radio

The Media Act and the Media Decree make in principle no distinction between the rules, which apply, to broadcasting of advertisement on radio or on television. The rules for broadcasting of advertisement on radio are the same as the rules that apply to the broadcasting of advertisement on television. For the rules which apply to the broadcasting of advertising on the radio please be referred to 1.b Television.

1.4. Press

No specific rules apply.

1.5. Posters

No specific rules apply.

1.6. Cinema

The Act on Public Performance of Film (Wet op de filmvertoningen) is withdrawn by Act of 14 December 2000 (Wet tot wijziging van de Mediawet en van het Wetboek van Strafrecht, alsmede intrekking van de Wet op de filmvertoningen, Stb. 586). This Act became into force on 22 February 2001. See Chapter 3.

1.7. Internet

No specific rules apply.

2. Special regulations: Classification by sector

2.1. ALCOHOL

2.1.1. General Rules

Age limits:

Article 20 of the Alcohol Licensing- and Catering Act (“Drank- en Horecawet”, Stb. 2000, 185) stipulates in relation with minors:

- The supply in a professional context, or other than free of charge, of an alcoholic beverage (= drink with $\geq 0,5\%$ alcohol) to a person of whom is not established that he has reached the age of 16 years.
- The supply in a professional context or otherwise than free of charge, of a strong liquor (= a drink with $\geq 15\%$ alcohol except wine) to a person of whom is not established that he has the age of 18 years.
- A person who has not reached the age of 16 years and is not supervised by a person of 21 years or older is not allowed in a liquor store.
- In case where a person appears to be obviously the required age, verification of age is not necessary (article 20 section 4).
- Places that sell alcoholic beverages have to show clearly the required age limits (article 20 section 6).

By decree of the local government (“Gemeentelijke verordening”) the presence of persons under the age of 21 years can be prohibited in catering establishments designated in the Decree (article 20 section 5).

By decree of the national government (“Algemene Maatregel van Bestuur”) the supply of beverages (other than free of charge) can be prohibited in: football stadiums, in buildings of health, education institutions and at swimming pools (article 22 section 2).

A violation of the prohibitions of the Alcohol Licensing- and Catering Act establishes an economic criminal act. A special investigation officer of the Inspectorate for Health Protection and Veterinary Public Health is entrusted with the supervision of the compliance of the Licensing- and Catering Act.

2.1.2. Rules on advertising for alcoholic beverages

2.1.2.1. General rules

The Alcohol Licensing and Catering Act (“Drank- en Horecawet”, Stb. 2000, 185) provides the possibility for the Minister to issue a Decree (“Algemene Maatregel van Bestuur”), based on arguments of public health, restricting the contents, place and time, and target groups with regard to advertising for alcoholic beverages (article 2). Advertising contrary to this decree will be banned.

Until now no Decree has been issued, as there are self-regulatory rules of the Alcohol sector by the Code for Alcoholic Beverages (“De Reclamecode voor Alcoholhoudende Drank” latest version of 19 May 2000, in force as from 1 June 2000). The self-regulation applies to all commercial communication. (See Chapter III Self Regulation).

2.1.2.2. Television

No specific legal provision exists in relation to alcohol advertisements on television. This subject is regulated by self-regulation.

2.1.2.3. Radio

No specific legal provision exists in relation to alcohol advertisements on radio. This subject is regulated by self-regulation.

2.1.2.4. Press

No specific legal provision exists in relation to alcohol advertisements on press. This subject is regulated by self-regulation.

2.1.2.5. Posters

No specific legal provision exists in relation to alcohol advertisements in posterings. This subject is regulated by self-regulation.

2.1.2.6. Cinema

No specific legal provision exists in relation to alcohol advertisements in cinema. This subject is regulated by self-regulation.

2.1.2.7. Internet

No specific legal provision exists in relation to alcohol advertisements on internet. This subject is regulated by self-regulation.

2.2. TOBACCO

2.2.1. General Rules

Ban on smoking in public places

The Tobacco Act (“De Tabakswet” of 10 March 1989, Stb 342) juncto The Decree Limitation the Offer and Use of Tobacco Products (“Besluit beperking verkoop en gebruik tabaksproducten” of 28 December 1988, Stb 612 implementing article 9, 10, 11 paragraph 1, 12 of the Tobacco Act) forbids smoking in (semi)governmentbuildings which the public has access to, including waiting rooms, meeting rooms, classrooms, canteens, halls, lifts etc.

It is prohibited to supply in a professional context tobacco products to private persons in institutions of: health care, social services, centres for indoor sport funded by public money, social cultural work and education (financed with public money). An institution of social care includes youth assistance organizations, childcare and family care organizations (article 9 Tobacco Act Jo article 4 of the Decree Limitation of the Offer and Use of Tobacco Products).

The prohibitions are in order to protect youth and non-smokers.

There is no other formal limitation with respect to the points of sales of tobacco. No age limits exist.

The Government Control of National Health and the Inspectorate for Consumers Goods are entrusted with the supervision of the Tobacco Act.

2.2.2. Rules on advertising

2.2.2.1. General Rules

The Tobacco Act (“Tabakswet” of 10 March 1988, Stb 342) prohibits that television and radio-programmes contain advertising messages (article 4). This ban does not apply to other than national broadcast organizations.

Article 5 of the Tobacco Act provides the possibility for the Minister to issue a Decree (“Algemene Maatregel van Bestuur”), based on arguments of public health, restricting amongst others advertising for tobacco products. Until now no decree has been issued, because (in the recent past) the legislator preferred to give self-regulatory regulation a chance.

The Advertising Code of Tobacco Products (“Reclame Code voor Tabaksproducten”) contains self-regulatory rules with respect to advertising of tobacco products.

The Council of Ministers has proposed a ban on advertising for tobacco.

2.2.2.2. Television

Not allowed.

2.2.2.3. Radio

Not allowed.

2.2.2.4. Press

No specific legal provision exists in relation to advertisements for tobacco products. This subject is regulated by self-regulation.

2.2.2.5. Posters

No specific legal provision exists in relation to advertisements for tobacco. This subject is regulated by self-regulation.

2.2.2.6. Cinema

No specific legal provision exists in relation to advertisements for tobacco. This subject is regulated by self-regulation.

2.2.2.7. Internet

No specific rules apply.

2.3. Drugs and health

2.3.1. General Rules

Medicine

Article 3 of the Medicines Act (“Wet op de Geneesmiddelen voorziening”, Stb 1958, 408 last review by act of 4 December 1997, Stb 1997, 645) stipulates that a medicine must be registered by the Medicine Evaluation Board before marketing, which includes advertising, is allowed.

2.3.2. Rules on advertising

2.3.2.1. General rules

Medicine

Advertising for medicines available without prescription is allowed. Article 5 of the Medicines Advertising Decree (“Reclamebesluit Geneesmiddelen”) includes a prohibition of public advertising of medicines available on medical prescription.

It is not allowed to direct the advertising wholly or partly to children. Further regulations do not explicitly refer to minors.

Article 3 section 8 of the Medicines Act prohibits promoting a pharmaceutical preparation in a misleading way in respect of medicines or of the registered indications.

Medicines Advertising Decree (“Reclamebesluit Geneesmiddelen of 31 October 1994, Stb 1994, 787, last reviewed by 27 February 1998, Stb 1998, 139) contains all rules with respect to advertising for medicines. The Decree implements the Regulation Advertising for Medicines for Human Use (92/28/EEG of 31 March 1992, PbEG 113/13). The general rule of article 3 of the Medicines Advertising Decree is that advertising may encourage the rational use of medicine through objective presentation without exaggerating the properties.

The Decree Labeling and Use Instructions of Pharmaceutical Products (“Besluit Etikettering en Bijsluiter Farmaceutische produkten 29 juni 1994, 524”) stipulates that the label and the use instructions may not contain information to promote the medicine. This means that packaging, labels and the use instructions can not be used for promotional claims.

Article 5 of the Medicines Advertising Decree prohibits public advertising for medicines which are only available on prescription (UR medicines). Free samples of UR medicines may be handed over to the profession under certain conditions.

The Medicines Advertising Decree contains also specific rules with respect to advertising directed to the public for freely available medicines.

As mentioned above, pursuant this Decree, it is not allowed to direct advertising wholly or partly, to children (article 10 under e).

Food Stuffs

The Commodities Act 1988 (“De Warenwet 1988” Stb 1988, 360) is a framework act that offered a basis for further regulatory measures with respect to food stuff and non-food stuff. The Commodities Act mentions four general interests on which grounds further regulatory measures can be taken: public health, safety, fair business and fair information. Almost every group of products has its own regulation about indications, labelling, nutritional value and safety, often based on European Directives.

Articles 19 and 20 of the Commodities Act prohibit the use of medical claims in respect of food and beverages. As to non-food, misleading health claims are prohibited.

The Commodities Act does not contain specific rules regarding minors.

Some specific Commodities Act Decrees require indications with regard to minors in order to protect them because of their vulnerability and limited understanding of dangers. It concerns:

- The Imitation products (Communities Act) Decree which contains regulation to avoid that minors will think the product is eatable and the decrees with respect of children toys and/or objects.
- The Toys (Commodities Act) Decree (“Warenwetbesluit Speelgoed”) of 29 may 1991, last review of 7 May 1998, Stb 1998, 328) contains rules with respect to indications and warnings on toys and to the instructions of use (see further paragraph 2.6: Toys and Children Objects).

2.3.2.2. Television

No specific rules apply.

2.3.2.3. *Radio*

No specific rules apply.

2.3.2.4. *Press*

No specific rules apply.

2.3.2.5. *Posters*

No specific rules apply.

2.3.2.6. *Cinema*

No specific rules apply.

2.3.2.7. *Internet*

No specific rules apply.

2.4. **VEHICLES**

2.4.1. **General Rules**

A person who has not reached the age of 18 years may not drive a motor vehicle, which included motor cycles, nor have driving lessons or a driver's licence (article 110, of the Road Traffic Act ("Wegenverkeerswet" 1994, Stb 475, often reviewed)). Persons under the age of 16 years may not drive motor bicycles.

2.4.2. **Rules on advertising**

2.4.2.1. *General Rules*

No legal provisions with respect to advertising of vehicles exist. Advertising for cars is subject to a self-regulatory code.

2.4.2.2. *Television*

No specific rules apply.

2.4.2.3. *Radio*

No specific rules apply.

2.4.2.4. *Press*

No specific rules apply.

2.4.2.5. Posters

No specific rules apply.

2.4.2.6. Cinema

No specific rules apply.

2.4.2.7. Internet

No specific rules apply.

2.5. EDUCATION

2.5.1. General Rules

The Compulsory Education Act (“Leerplichtwet” of 30 May 1968, Stb 303, latest review 7 July 1994, Stb 565) constitutes a regulation of compulsory education.

Compulsory education exists as of the first day following the month in which a minor has reached the age of 5 years (article 2). Parents or guardians are responsible for the subscription and attendance of the minors. As of the age of 12 years the minor is responsible if the parents or guardian can prove they can not be hold responsible.

The compulsory education exists till the age of 18 years has been reached. In specials cases exemptions are possible.

2.5.2. Rules on advertising

2.5.2.1. General Rules

Recognized educational institutions have to recruit its student in a proper way and not allowed give away premiums (article 10 of the Act on the Recognized Educational Institutions, of 4 July 1985, Stb 407, often reviewed)

2.5.2.2. Television

No specific rules apply.

2.5.2.3. Radio

No specific rules apply.

2.5.2.4. Press

No specific rules apply.

2.5.2.5 Posters

No specific rules apply.

2.5.2.6. Cinema

No specific rules apply.

2.5.2.7. Internet

No specific rules apply.

2.6. TOYS AND OBJECTS FOR CHILDREN

2.6.1. General Rules

According to the definitions of the Toys (Commodities Act) Decree (“Warenwetbesluit Speelgoed” last reviewed 7 May 1998, Stb 328):

- Toys are: goods or parts of goods designed or destined to be used by children up to the age of 14 years (article 1 under a).
- Object for children are: other goods or parts of goods which are suitable to be used by children up to the age of 14 years (article under b) and children-goods and objects or parts of it, intended for playing by children till the age of 14 years.

2.6.2. Rules on advertising

2.6.2.1. General Rules

Toys that might be dangerous for children under the age of 36 month, have to mention “Not intended for children younger than 36 months” or “Not intended for children younger than three years”, with the mentioning of the specific dangers (article 16.1 The Toys (Commodities Act) Decree).

Toys have to attach the label mentioning “Warning! Only to be used with the supervision of adults” in case they have a comparable function with apparatus or installations used by adults (article 18 The Toys (Commodities Act) Decree). (Roller) skates should mention “Warning! To be used with protection” and instructions of use should explain amongst others which protection should be used (article 20 The Toys (Commodities Act) Decree). Also special rules exist as to the indications and/or warning on (percussion) caps, toys team engines, swimming belts and comforters.

Toys should mention the name, trade mark or trade name and the address of the manufacturer or EU-importer (article 5 The Toys (Commodities Act) Decree).

Till.

2.6.2.2. Television

No specific rules apply.

2.6.2.3. Radio

No specific rules apply.

2.6.2.4. *Press*

No specific rules apply.

2.6.2.5. *Posters*

No specific rules apply.

2.6.2.6. *Cinema*

No specific rules apply.

2.6.2.7. *Internet*

No specific rules apply.

2.7. **FINANCIAL SERVICES**

2.7.1. **General Rules**

It is possible for minors (under 18 years) to use financial services, such as opening an account and deposit and withdraw money or use other financial services, only with the consent of the parents (or the statutory guardian) and in accordance with the specific general condition of the different banks.

As of 16 years a minor can request the Subdistrict Court to grant legal capacity to act with respect to his income. This is not possible with respect to mortgage loan, registered property and securities (article 1: 235 Civil Code).

2.7.2. **Rules on advertising**

2.7.2.1. *General rules*

The Decree Credit Offers (“Besluit Krediet Aanbiedingen d.d. 1 January 1992, based on the Consumer Credit Act “Wet op het consumenten Credit” of Stb 1990, 395) prescribes amongst other which information should be given to the public when offering credits. In addition the Code of Honor of the Foundation of Lending Institutions contains specific rules for advertising.

Several different self-regulatory codes of conduct in relation to financial services exist. They do not refer to minors.

2.7.2.2. *Television*

No specific rules apply.

2.7.2.3. *Radio*

No specific rules apply.

2.7.2.4. *Press*

No specific rules apply.

2.7.2.5. *Posters*

No specific rules apply.

2.7.2.6. *Cinema*

No specific rules apply.

2.7.2.7. *Internet*

No specific rules apply.

2.8. **LEISURE**

2.8.1. **General Rules**

The Act on the Games of chance (“Wet op de Kansspelen” dd. 10 December 1964, Stb 483, reviewed several times) forbids minors under 18 years to participate with lottery games related to sport-competition and scratching tickets.

The Decree Slot Machine (“Speelautomatenbesluit” dd. 24 November 1986, Stb 589 based on the Act of Games of Chance) stipulates in article 5 that gaming machines are not allowed in sport-, village- or local centers of which the activities are mainly focused on minors under the age of 16 years. The Act on the Games of Chance forbids in article 27 to allow the entrance in casinos by minors under age of 18 years.

The Act on Public Performance of Film (Wet op de filmvertoningen) is withdrawn by Act of 14 December 2000 (Wet tot wijziging van de Mediawet en van het Wetboek van Strafrecht, alsmede intrekking van de Wet op de filmvertoningen, Stb. 586). This Act became into force on 22 February 2001. See Chapter 3.

Article 20 of the Alcohol Licensing and Catering Act (“Drank and Horecawet”, Stb 1931, 477 often reviewed”) prohibits the supply in a professional context of an alcoholic beverage to a person of whom is not established that he has reached the age of 16 years. Strong liquor may not be sold to a person of who is not established that he has reached the age of 18 years.

2.8.2. **RULES ON ADVERTISING**

2.8.2.1. *General Rules*

No specific provisions apply.

2.8.2.2. *Television*

No specific rules apply.

2.8.2.3. *Radio*

No specific rules apply.

2.8.2.4. *Press*

No specific rules apply.

2.8.2.5. *Posters*

No specific rules apply.

2.8.2.6. *Cinema*

No specific rules apply.

2.8.2.7. *Internet*

No specific rules apply.

2.9. **FIRE ARMS / VIOLENCE**

2.9.1. **General Rules**

The Weapon Act (“Wet Wapen en Minutie” 5 July 1997, Stb 292) prohibits acts with all kinds of weapons without a licence. Only under strict conditions a licence will be granted.

The Weapon Act forbids minors under the age of 18 years to have weapons of the category IV ((double bladed) knives, swords, spring weapons and crossbows). The Minister can allow an exemption in connection with sporting clubs (article 26 section 5 and 6). A license to hold weapons of category III (pistols etc.) can be given to persons who have reached the age of 18 years, with exceptions for members of rifle clubs (article 28)

2.9.2. **Rules on advertising**

2.9.2.1. *General Rules*

No specific rules apply.

2.9.2.2. *Television*

No specific rules apply.

2.9.2.3. *Radio*

No specific rules apply.

2.9.2.4. *Press*

No specific rules apply.

2.9.2.5. *Posters*

No specific rules apply.

2.9.2.6. *Cinema*

No specific rules apply.

2.9.2.7. *Internet*

No specific rules apply.

2.10. *Public provisions*

2.10.1. *General Rules*

No specific rules in respect of advertising.

2.10.2. *Rules on advertising*

No specific rules apply.

2.10.2.1. *Television*

No specific rules apply.

2.10.2.2. *Radio*

No specific rules apply.

2.10.2.3. *Press*

No specific rules apply.

2.10.2.4. *Posters*

No specific rules apply.

2.10.2.5. *Cinema*

No specific rules apply.

2.10.2.6. *Internet*

No specific rules apply.

2.11. TELECOMMUNICATIONS

2.11.1. General rules

No specific rules in respect of advertising.

2.11.2. Rules on advertising

2.11.2.1. *General Rules*

No specific rules apply.

2.11.2.2. *Television*

No specific rules apply.

2.11.2.3. *Radio*

No specific rules apply.

2.11.2.4. *Press*

No specific rules apply.

2.11.2.5. *Posters*

No specific rules apply.

2.11.2.6. *Cinema*

No specific rules apply.

2.11.2.7. *Internet*

No specific rules apply.

3. Law

Media Act

The Bill of 14 December 2000 with respect to the review of the Media Act and the Criminal Code and the Act on Public Performance of Films (“Wijzigingen van de Mediawet en het Wetboek van strafrecht als mede de intrekking van de Wet op de filmvertoningen”) establishes a more effective protection of minors against audio–visual media products which are considered harmful. This Act came into force on 22 February 2001.

With this Bill the legislator also wants to comply with article 22 of the Directive “Television without Frontiers” (no. 97/36/EG, 30 June 1997 (Pb. EG. L 202)). As of 22 February 2001 two articles (article 52D and 53) have replaced the article 53 of the Media Act and introduces stipulations with respect to the content of television programmes regarding minors.

A general provision stipulates that a program shall not contain program parts that might impair seriously the physical, mental or moral developments of a person younger than 16 years. Harmful programmes are only possible in case a broadcast organization is member of an organization approved by the Minister, as mentioned below, and will be subject to the –self - regulations of this organization.

Article 53 Media Act (new): The Minister of Culture can acknowledge an independent organization that satisfies the further requirements of this new article. Amongst others the organization has to provide a rating system with respect to the broadcasting of programs, which might impair minors in the way as mentioned above. This organization has to supervise the compliance with the regulation. This regulation has to provide criteria for the rating system with respect to the degree that programs:

- Arouse fear;
- Show or justify impudence bold violence;
- Encourage or approve the use of drugs;
- Contain pornography;
- Show products, which according to the public opinion are not suitable to show to persons younger than 16 years.

The organization has to regulate the time of broadcasting and ensure that the programs are preceded by an acoustic warning or are identified by the presence of a visual symbol. As a consequence the Bill has abolished the Act on the Public Performance of Films which contains the current regulation with respect to the supervision of the content of films.

The organisation NICAM (Nederlands Instituut voor Classificatie van Audiovisuele Media) has been acknowledged by the Minister and operational. The NICAM is a selfregulation-organisation of public and commercial television-organisations, the filmsector and organisations related to video and computergames.

The NICAM has developed a descriptive classification system which is connected to a rating system.

The Bill also increases the punishment of article 204a of the Criminal Code. Persons who offer a data carrier with pictures to minors under the age of 16 that might be harmful to them, will be punished with a maximum of 1 year prison or a fine of maximum of NLG 25.000, =.

The Bill of 8 June 2000 (Stb. 252) and the Order in Council of 7 December 1999 (Stb. 545) has cancelled (as of 21 June 2000) the sponsoring ban by medical sector of programs broadcasted by the commercial broadcaster.

Tobacco Act

The Tobacco Act I Bill (1998/99 26472 of 10 April 1999) is a result of the official policy of discouraging smoking and anticipates the Tobacco Advertising Directive (98/43/EG of 6 July 1998, Pb EG 30 July 1998, L 213/9). The Tobacco Act I Bill contains the following important proposed modifications:

1. A prohibition of all the outdoor advertising for tobacco products in order to protect minors.
2. By Decree (“Algemene Regel van Bestuur”), it will be possible to ban all advertising for tobacco products in order to protect the public health.
3. A prohibition as to the sale of tobacco products to persons under the age of 18 years, with the introduction of the obligation to give evidence of the identity.
4. A prohibition of sampling.
5. A prohibition of the sale of cigarettes in packaging containing less than 19 pieces.
6. A prohibition to sale tobacco products in public buildings and sport premises.
7. The possibility (on the basis of a Decree) to prohibit the sales of tobacco product in other private companies or establishments, such as youth centres;
8. Use of clear non-smoking signs.
9. The policy with respect to smoking will organised by self discipline, but with the possibility that by Decree the government will be able to extend the introduction, control and mentioning of prohibition on smoking to employers and other areas of the commercial business.
10. The introduction of a system of fining offenders.

It is planned that after the summer recess of the Parliamentary this year, the Tobacco Act II Bill will be proposed to the Second Chamber of the Parliament. The purpose of the Tobacco Act II Bill is to implement The Tobacco Advertising Directive (98/43/EG of 6 July 1998, Pb EG 30 July 1998, L 213/9). A confidential document of a Draft Bill of the Tobacco Act has circulated within the interested circles. It is reported that the Draft Bill is more severe on more issues than the Directive and received with criticism of interested parties.

Unfortunately it is not possible to give a time schedule about the implementation of the two acts.

III. SELF – REGULATION

1. General rules

Self-regulation plays an important role as to the regulation and supervision of advertising. Except for the advertising bans in relation to tobacco products on radio and television and medicines available on medical prescription, the legislator has left a substantial part of advertising to self-regulation by the parties involved, which are amongst others: Consumer Association, Union of Advertisers, printed media and broadcasters. These parties co-operate in the Advertising Code Foundation (“Stichting Reclame Code”) who has established the Dutch Advertising Code (“de Nederlandse Reclame Code”) which contains a body of rules to which all forms of advertising are subject to. The Dutch Advertising Code is divided into a General Section and several Specific Sections.

Organisations who are entitled to broadcast advertisements under the Media Act, are legally obligated to be member of the Advertising Code Foundation and are subject to the supervision of the Advertising Code Foundation.

Article 1 of the self-regulatory Dutch Advertising Code, defines advertisement as any form of public commendation of goods, services or ideas, irrespective of the medium used, including inter alia labels, packaging, internet, merchandising and sponsorship. The solicitation of services is also defined as advertising. The explanatory note of Article 1 of the Dutch Advertising Code mentions that teleshopping has to be considered as advertising

Under minors the Dutch Advertising Code understands: children under the age of 12 years.
Under youth the Dutch Advertising Code understands: person who not have reached the age of 18 years.

Most of the regulations of the European Directive “Television without Frontiers” (89/552/EEG of 3/10/1989, L 298/23), as far as it concerns regulations with respect to the content of advertising, are to be found in the Dutch Advertising Code:

- Article 2 determines that advertising shall conform to the law, the truth and the requirements of good taste and decency.
- Article 3 determines that advertising shall not contravene the public interest, public order or morality.
- Article 4 determines that advertising shall not be gratuitously offensive or constitute a threat to mental and/or physical public health.
- Article 5 determines that the form and content shall not undermine confidence in advertising.
- Article 6 determines that without justifiable cause, advertising shall not arouse feelings of fear or superstition.
- Article 8 determines that testimonials, commendations or statements by experts that are used in advertising shall be based on the truth and tally with the latest accepted scientific views.
- Article 9 determines that scientific terms, statistical data and quotations shall be used with the utmost care in advertising intended for general public, in order to obviate confusion of

ideas. If use is made of statistics, which are valid only with certain limits, such limits shall be stated clearly. The following shall not be used: technical terms, descriptions, illustrations or pictures that are manifestly intended to suggest in a quasi-scientific or misleading manner the presence of non-existent properties of goods or services.

The articles 7 and 9 elaborate further the prohibition of misleading advertising.

The above-mentioned general rules make no distinction with respect to the age of the public, and thus also apply to minors.

As to advertising to minors, irrespective of the media, article 13.1 prescribes:

When advertising is aimed wholly or partly at children, that is, minors up to the age of 12, it shall contain no speech, sound or image which in any way could mislead them about the capacity and qualities of the product concerned.

According to the explanatory note account should be taken of their intellectual grasp and expectations, especially with respect to “playing-pleasure” and performance of the product.

2. Rules per media

2.1. Television

Article 10 of the Dutch Advertising Code prescribes that advertising shall be recognisable as such by virtue of its layout, presentation, content and so forth, taking account of the public for which it is intended.

The use of subliminal techniques in audio-visual advertising is also prohibited according article 10 of the Dutch Advertising Code. The use is likewise prohibited of elements from a broadcast programme in advertising on radio and television if it can be reasonably assumed that the viewers or listeners would be misled or confused by it.

Teleshopping

The Dutch Advertising Code is applicable to teleshopping, because according to the explanatory note of the Dutch Advertising Code advertising includes teleshopping. Teleshopping is defined as a television programme in which offers are made directly to the public with the intention to supply products for profit.

As to minors the Dutch Advertising Code contains specific rules, which are discussed below.

Minors:

Advertising on television shall cause no mental or physical harm to minors and shall for their protection, satisfy the following criteria:

- It shall not encourage minors to buy a particular product by taking advantage of their inexperience or credulity;
- It shall not directly encourage minors to persuade their parents or others to buy advertised products;
- It shall not take advantage of the special confidence which minors have in parents, teachers or others;
- It shall not, without reason, depict minors in dangerous situations.

(Article 13.2 of the Dutch Advertising Code)

Article 13.3 of the Dutch Advertising Code stipulates that teleshopping shall meet the requirements stipulated in article 13.2 and moreover, shall not encourage minors to conclude agreements for purchasing or renting products.

In advertising, on radio and television, is prohibited to feature persons who are known to the public and who can influence the public by virtue of the confidence instilled upon them.

2.2. Radio

No specific rules except for the ones mentioned above.

2.3. Press

Specific rule: Advertising directed to minors shall print the word “advertisement” in 12 point letters over every advertisement (including the so-called “advertorial” in (children’s) magazines, with a range exceeding 25% of the children of 11 years old and under. The percentage being measured yearly by means of ratings-research is, generally accepted in the market (article 10 Dutch Advertising Code).

2.4. Posters

No specific rules

2.5. Cinema

No specific rules

2.6. Internet

No specific rules

3. Classification by sector

3.1. Alcohol

The Code for Alcoholic Beverages (“de Reclame Code voor Alcoholhoudende Dranken”, latest version of 19 May 200, in force as from 1 June 2000) is applicable to advertising in respect of alcoholic beverages.

Definition of alcoholic beverages: alcoholic beverages containing 0,5% or more alcohol by volume.

Definition of minors: persons aged under 18.

Definition of “Youth broadcasting station”: broadcasting stations of which over 25 % of the total audience consists of minors. The percentage being measured annually by means of ratings-research, is generally accepted in the market.

General rules with regard to advertising of alcoholic beverages:

- It may not display, suggest or stimulate excessive or otherwise irresponsible consumption (article 1).
- It may not portray moderate alcohol consumption or abstinence from alcohol negatively, nor contrast favourably against any non-alcoholic beverage (article 2).
- It may not arouse confusion concerning alcohol percentage (article 3) and may not suggest that it is a soft drink or non-alcoholic beverage (article 4) nor may it imply that risks are eliminated by the lower amount of the alcoholic percentage (article 5).
- It may not be at variance with good taste and decency or detract from human dignity and integrity (article 6).

Claims

- It may not refer to the disinheriting effects (reduction of fears or feelings of inner conflict) (article 7).
- It may not refer to possible health benefits of consuming (article 8), nor suggest that it improves physical or mental performances (article 9).
- It may not suggest that it positively influences sporting performance (article 10).
- It may not suggest that it enhances professional performance (article 11).
- It may not invoke the impression it enhances social or sexual success (article 12).

Risky situations

- It may not portray situations that encourage risky behaviour (article 24).
- Advertising of events is not permitted if it will encourage disruption of public order or disruption of the events (article 25), or if it may create a risk of bodily injury for participants or spectators (article 26).
- It may not establish a link between consumption of alcoholic beverages and active participation in traffic using a vehicle of any kind, unless the recommendation contains a warning against active participation in traffic after consumption of alcohol (article 27).
- It may not be displayed on an individual sportsman or sporting team, or sportsman/sporting team in performing speed sports (article 28).

Specific forms of promotion

- Collective advertising is not permitted (article 29).
- The Code also applies to sporting and events sponsorship. Linkage of a brand name of alcoholic beverages to an event is permitted (article 30).
- Free supply (or at less than half the normal retail price) by a member of the alcohol industry of alcoholic beverages to individuals is not permitted.
- It is not permitted to provide professional tap facilities free of charge or for a token payment at gatherings, events and festivities (article 32)

Vulnerable groups (pregnant women and minors)

The rules referring to minors stipulate that advertising shall not be aimed specifically at minors or encourage the consumption of alcoholic beverages or suggest that drinking is a sign of maturity:

- Advertising of alcoholic beverages may not be aimed specifically at minors. This applies to all media, cinemas theatres, concert, events etc.(article 14).
- It may not reach a public that consists of more than 25 % minors (according to results generally accepted in the market; in case of cinemas and events measured in terms of attendance figures)(article 15).
- It may not be broadcast on radio and television immediately before or after or during programmes which are listened to or viewed by more than 25 % minors (according to rating giques generally accepted in the market) (article 16).
- Youth broadcasting stations may not carry any advertising for alcoholic beverages (article 17).
- Recommendation by promotion teams may not be aimed at minors. It is not permitted in places where over 25 % of the public consist of minors at that point of time. Offering alcoholic beverages free of charge (or at less than half the normal retail price) is not permitted during promotions. (article 18)
- It is not permitted on billboards, posters, bus shelters and display panels located in sight of schools, drug rehabilitation clinics or along roads and highways outside built-up areas. (article 19)
- It may not show any person aged under 25 consuming alcoholic beverages (article 20).
- It may not make any use of illustrations, cartoons, symbols or idols intended to reach minors in particular (article 21).
- It may not suggest that consumption is a sign of adulthood, and abstinence is a sign of immaturity (article 22).
- Object bearing advertisements for alcoholic beverages may not be provided free of charge (or half the normal retail price) to persons who have not yet reached the legal age for purchasing the alcoholic beverage (article 23).

Television/radio

- Advertising of alcoholic beverages may not be aimed specifically at minors. This applies to all media, cinemas theatres, concert, events and the like (article 14)
- It may not reach a public that consist of more than 25 % minors (according to results generally accepted in the market; in the case of cinemas and events measures in terms of attendance figures)(article 15)
- It may not be broadcast on radio and television immediately before or after or during programmes which are listened to or viewed by more than 25 % minors (according to rating giques generally accepted in the market) (article 16)
- Youth broadcasting stations may not carry any advertising for alcoholic beverages (article 17)

Educational slogan

Television

Advertisement on television must at least 40 % of the broadcast carry an educational slogan, encouraging the consumer to use alcohol responsibly (article 33)

Each advertising broadcast immediately before, after or during a sporting programme, must come with an educational slogan (article 35).

Cinema

Each advertisement in cinema's, theatres, closed television circuits and discotheques by means of film and video must carry an educational slogan (article 34)

Penalties and fines

Upon violation of the Advertising Code for Alcoholic Beverages, the Advertising Code Commission or the Appeals Board may impose a fine on the members of the industry up to NLG 100.000,= depending on the seriousness and extent of the violation.

3.2. Tobacco

The Advertising Code of Tobacco Products contains a very detailed regulation as to other forms of advertising than television and radio advertising. It will be replaced by legislation as soon as the Tobacco Act will be amended and amongst others the total ad ban of the Directive 98/43/EG (of 6 July 1998, Pb EG 30 July 1998, L 213/9) shall be implemented. Officially the Code was valid till 18 May 1999, however the Code is not withdrawn by the tobacco industry. Awaiting the amendments of the Tobacco Act, it is assumed that the Code is still applicable.

In short the code stipulates:

1. No advertising in testimonials, billboards, aircrafts, trains, busses etc.;
2. No collective campaigns for tobacco products;
3. Health warnings in all kind of advertising;
4. A connection between health, sports, youth and tobacco may not be mentioned or suggested in advertising;

Definition of young people: persons under the age of 18 years.

General advertising rules regarding young people (article 12 / 17)

Advertising messages relating to tobacco products shall not be intended to influence young people to form a favourable impression of the commended product.

Advertising messages shall contain no representations and/or commendations, which appeal specifically to young people.

Advertising messages shall depict no persons under the age of 30 years.

Advertising messages shall not establish any connection between smoking and maturity or immaturity, i.e., creates no impression that smoking is a sign of maturity and not smoking a sign of immaturity.

Advertising messages shall not be shown in:

- Places which are intended primarily for meeting young people;
- Discotheques;
- Educational establishments.

Advertising messages shall not be shown at events which are intended for, or expected to be attended primarily by young people (attendance of young people will exceed 25%).

The attendance of young people will be based on experiences and surveys of record sales or research material provided by the organisers of the event.

Advertising messages shall not be conveyed by audio-visual media, in areas, which are intended primarily for use by families and at pop festivals.

Print: young people

Advertising messages shall not be conveyed in media who appeal primarily to young people.

Advertising messages shall not be placed in printed matter as referred to in annex 3 which is specifically intended for young people or which has a reading public of whom over 25% are young people. Annex 3 is adopted annually on the basis of information published in the Manual of the Dutch Press and Publicity Sector.

Location of outdoor advertising:

Outdoor advertising messages for tobacco products shall not be placed on locations, which are visible from hospital or from educational establishments, as well as transport stops in the immediate vicinity of educational establishments used predominantly by young people (persons under 18 year) as well as between these transport stops and educational establishments, in accordance with the list in annex 2 (a list of not allowed locations)(article 11 of the Code).

Cinema

As from 1 January 1997 no advertising messages shall be shown in cinemas, except at places where tobacco products are sold, to conform to the agreement between the undersigned of the Code and the government.

Sponsoring

Article 21.1 and 21.2 of the Advertising Code for Tobacco Products stipulates in respect of sponsoring:

If the industry sponsors the sports referred to in annex 4, no advertising messages are permitted except those relating to events at the race tracks of Zandvoort and Assen. With the exception of the above racetracks, this prohibition also applies to grounds or places where the sports referred to in Annex 4 are played.

If the industry sponsors sport other than those referred to in annex 4, advertising messages shall be permitted only in so far as they establish no connection between the use of tobacco products and the playing of these sports.

Sales Promotion

No price-cutting actions with respect to tobacco products aimed at the general public:

The industry shall refrain from offering tobacco products for promotional purposes and free of charge or at a reduced price other than to retailers and at locations other than tobacconist or at its own stands at trade fairs. This provision includes the capacity to order these products by coupons, advertisements and the like (article 24 of the Advertising Code for Tobacco Products).

“Trade fair” means exhibitions which are predominantly open only to the persons active in the relevant fields. Exhibitions that are primarily intended for general public are explicitly not considered trade fairs.

No direct mail or door-to-door mail actions without prior consent:

The industry shall refrain from sending or distributing (or causing to be distributed) unsolicited door-to-door samples and/or printed matter which solely or primarily contain advertising for tobacco products (article 25).

3.3. Drugs and Health

Registered medicine

The Code for Public Advertising of Medicines (“Code voor de Publieksreclame voor Geneesmiddelen”) prohibits public advertising of registered medicines.

Medicine available without prescription

Besides the Medicines Advertising Decree, advertising for medicines is also regulated by self-regulatory codes of Conduct. The Code for Public Medicine Advertising (“Code voor de Publieksreclame voor Geneesmiddelen”) sees to advertising to the public and contains more or less the same rules, which already apply by virtue of the Medicine Advertising Decree. It repeats the prohibition that advertising of medicines may not be directed to children, wholly or partly. The explanatory note mentions that the age depends of the nature of the product. In most cases it will concern an age of 12 years. This Code provides for a regularisation of preventive examination. All advertising directed to the public need a preventive previous approval of the Inspection Board for Public Advertising Medicines (“Keuringsraad voor Openbare Aanprijzing Geneesmiddelen”(KOAG)).

Health products

The self-regulatory Advertising Code Health Products (“Code Aanprijzing van Gezondheidsproducten”) contains specific rules with respect to advertising for health products. According to the definition of the Code, health products are products in a pharmaceutical form and with a pharmaceutical outer-appearance or which have primarily a health related function without being an official medicine. Health products are not to be considered as a medicine. Health products are subject to the regulation of the Commodities Act. Therefore it is not allowed to use medical claims for health products. It is allowed to use health claims, which are indicated on the list which is attached to the Advertising Code Health Products.

Advertising for health products may not be directed, wholly or partly, to children. The age depends on the nature of the product and will be in most times 12 years (article 24 Advertising Code Health Products).

Advertising for health products is also subject to a preventive previous approval of the Inspection Board for the Commendation of Health Products (“Keuringsraad voor de Aanprijzing Gezondheidsproducten”(KAG)).

Above mentioned Codes are not incorporated in the Dutch Advertising Code. However, article II a. of the Dutch Advertising Code regulates that:

Advertising for medicines aimed at the general public shall be provided with a valid entrance stamp issued by the Inspection Board for the Public Commendation of Registered Drugs (KOAG) in conformity to its articles.

In the case of complaints about advertising evaluated by the Inspection Board for the Commendation of Health Products (KAG) the Advertising Code Committee or Board of Appeal can take into account the decision of the KAG.

Confectionery

The Advertising Code for Confectionery applies to advertising for confectionery (Code voor Zoetwaren). Confectioneries are defined as all foodstuffs and delicacies that do not form part of a regular meal and are consumed between meals because of the sweet flavour or because of the simple carbohydrates. The Code does not apply to: ice cream, soft drinks, spreads and products containing sugar that form part of a normal meal.

Although the Code does only mention explicitly children in article 7, it is obvious that the purpose of the Code is to protect the health of minors.

This Code contains various provisions with respect to advertising for confectionery such as:

- Advertising shall not encourage excessive consumption (article 1).
- Advertising shall not suggest that confectionery can replace a meal (article 2).
- Reference to a relatively low sugar content shall not be used to create the impression that the chance of tooth decay is small (article 5).
- Situations in which confectionery is consumed by a person immediately after brushing his teeth and before going to bed shall not be shown, nor shall consumption at such times be encouraged (article 5)

Television:

Article 6 of the Advertising Code for Confectionery states that television for confectionery shall show a styled image of a toothbrush approved by the Advertising Code Committee.

Print:

Article 7 of this Code states that advertising in printed matter intended for, or which may be assumed, will be read primarily by children under the age of 14 years or in articles specifically intended for children under the age of 14 years shall show the toothbrush emblem) measure 1 cm X 1.5 cm A4 and A5 formats and proportionally larger or smaller for others formats).

3.4. Vehicles

The self-regulatory Code for Passenger Cars (“Reclame Code voor personenauto’s”) applies to advertising for (new) passenger cars. The purpose of the Code is to attune government policy on traffic safety, the environment and energy savings. It does not contain provisions regarding minors.

The main general rule of the Code for Passenger Cars prescribes that advertising shall not use speed, acceleration and engine power as an argument to promote sale. Any mentioning of engine power shall be in kilowatts (kW)(article 1). Advertising shall not appeal to, or elicit aggressive, environmentally unfriendly or unsafe traffic behaviour (article 3).

3.5. Education

Courses

The self-regulatory Special Advertising Code on courses stipulates that advertising for courses shall provide a faithful picture of the institution which organises the course and under whose auspices the course is given. Advertising shall omit suggestion of results which can not reasonably be expected awarding of unrecognised degrees. The Code does not refer to minors.

Sponsoring of education

A Voluntary Agreement Sponsoring (“Covenant Sponsoring”) regulates sponsoring in relation to primary and secondary education. The purpose of the agreement is that schools will handle sponsoring in a responsible and serious way.

The explanatory notes explain amongst others that:

teaching material may not contain explicit or implicit advertising;

advertising may not encourage students to behave unhealthily or dangerously or encourage students to persuade their parents to buy the sponsors products or services;

May not take advantage of the intellectual gap or expectations of children for example by rewarding students for their achievements with products of the sponsor.

It is allowed to offer teaching materials (books, games, posters) to advertise on school boards or school-papers, sampling, to sponsor the organisation of sport or other events and sponsoring of buildings and catering.

A School needs agreement of the School Parent-Teacher Association of the school as to the acceptance of sponsorship contribution according to article 9 of the Act School Parent-Teacher Association (“Wet Medezeggenschap onderwijs 1992, 3 December 1992, Stb 663”). This Act also provides a system of handling of complaints of amongst others the association.

3.6. Toys and Objects for children

Up until the 5 June 1996 the Advertising Committee had the competence to give general recommendations. Over the years the Advertising Code Committee (Reclame Code Commissie) has made a number of recommendations. A recommendation concerns fire works for children.

The Committee recommends that advertisers omit any designation or suggestion of safety or harmlessness, and to take this aspect into account when commending these allegedly harmless fireworks – including any packaging material – and to state explicitly that care should be taken in all cases when letting them off (October 1985).

3.7. Financial Services

The Dutch Advertising Code has adapted in 1977 specific provisions in relation to advertising in loans, saving and investments:

Loans and investments: advertising for forms of saving, loans and/or investments shall contain no claims which can mislead the general public regarding the terms of the loan or securities on offer, actual or estimated earnings, or the terms of interest payments and redemption (Special Advertising Codes for Loans, Investments and Real Estate).

Furthermore specific code of conduct exist for different kind of financial services, mainly to make sure that correct and sufficient information will be given.

No reference to minors.

3.8. Leisure

The self-regulatory Advertising Code for Casino and Slot Machines (“Reclamecode Casinospelen en Kansspelautomaten) give, in addition to the Advertising Code, specific rules as to advertising for casino’s and slot machines. It provides several rules in relation to minors:

- Advertising may not be aimed specifically at minors;
- No minor shall be depicted in advertising;
- No advertising is allowed at events specifically intended for minors;
- No advertising shall be placed in the vicinity of minors;
- Radio and television programmes intended wholly or partly for minors shall not be sponsored by Holland Casino and its branches or by operators of slot machines.

3.9. Telecommunications

The self-regulatory Code for Telephone Information Services (“Code voor Telefonische Informatiediensten”) concerns amongst others a delineation of the different numbers (0800, 0900, 0909, 0906).

Services providing information which is implicitly or explicitly of an erotic, sexual or pornographic nature shall not be aimed at, or make use of minors. Advertising shall not incite minors directly or indirectly by implicit or explicit means to make use of these information services, nor shall such advertising contain a reference to minors (article 7.3 of this Code).

IV. SPECIFIC TECHNIQUES

1. Direct marketing

1.1. Legislation

Article 6: 194 – 196 Civil Code (“Burgerlijk Wetboek”): General provision regarding advertising

Advertising may not be deceitful or misleading. According to the Explanatory Memorandum, the measurement for judgement is the cleverness and the capacity of understanding of an average public, although in some cases the special circle of persons should be taken into account, such as children. The minor has to be considered as a consumer. Article 6: 195 of the Civil Code prescribes a reverse burden of proof; the burden of proof falls upon the advertiser to establish that his claims are correct and complete.

No further general legal provisions exist with respect to direct marketing.

1.2. Self-regulatory rules

The Box Advertising, Door-to-Door sampling and Direct Response Advertising Code (“Code Brievenbusreclame, Huissampling en Direct Response Advertising”) allows door-to door advertising and direct mail directed to minors.

This Code knows two provisions with respect to advertisement to children:

No direct mail of dangerous samples: samples and other material which may constitute a danger to physical health in the event of internal or external use. Such samples should be handed personally by the distributor to adults only (Article 16).

No advertising material shall be distributed (or caused to be distributed) door to door or by direct mail to young people which of can reasonable be assumed to cause damage to their mental health.

Furthermore, this Code contains general provision with respect to the content and handling of the offer, unsolicited goods, right of return and extended transactions.

In addition to the above, the Advertising Code for Distribution of Unaddressed Printed Advertising gives a regulation of a sticker system. By putting a sticker (NO UNADDRESSED PRINTED ADVERTISING; NO FREE LOCAL PAPERS) or (FREE LOCAL PAPERS ACCEPTED BUT NO UNADDRESSED ePRINTED ADVERTISING) on the letterboxes, a person can indicate that he does not wish to receive unaddressed printing and/or local papers.

Telemarketing

The Telemarketing Code contains rules for telephone conversations between telemarketeer and consumers. Article 9 of this Code stipulates that a telemarketing agency shall make no offer to a consumer of whom the telemarketeer knows or could reasonably have known the consumer is a minor.

Tobacco

Article 12 of the Advertising Code for Tobacco Products already forbids advertising intended to influence young people (under 18 years), which means no direct mail to young people is allowed. In general the Code stipulates no direct mail or unaddressed mail actions without prior consent. The industry has to refrain from sending or distributing (or causing to be distributed) unsolicited door-to-door samples and/or printed matter which solely or primarily contains advertising for tobacco products (article 25).

2. Promotional sales practices

2.1. Legislation

Competitions

The Act on Games of Chance (“De wet op de Kansspelen”) prohibits the organization of a draw, but allows the organization of a competition. A competition is a game in which the participant must be able to have a considerable influence on his chance of winning the prize himself. There must be a feat that can be judged and the prize may not exceed the amount of NLG 5,000,=. There is no age-limit, so the contest can be organized for minors.

Gifts

An obligation to purchase is allowed since the Limitation of Gifts Act has been abolished in 1997. Promotional actions with gifts are not allowed for certain products, amongst others: tobacco products, medicines and educational courses.

2.2. Self-regulation rules

Sweepstakes

The Advertising Committee allows advertising accompanied by a sweepstake, which, according to article 1 of the Code for Sweepstakes (“Code voor Sweepstakes”), is a promotional campaign by which one or more prizes are made available free of charge by the drawing of predetermined entities, such as number, names or other numbers/letter combinations or objects having a unique identity. Distribution of these prizes only requires a response on the part of the recipient. The Code makes no reference to minors.

The Dutch Supreme Court considers sweepstakes a violation of the Act on Games of Chance. However the Public Prosecutor does not prosecute violations in this respect of this Act.

Alcohol

Pursuant to the Advertising Code for Alcoholic Beverages it is not allowed to offer alcoholic beverages to persons free of charge or for a symbolic payment for the purpose of promoting them. Offering of samples is not allowed. During fairs it is not allowed to offer alcoholic beverages on an unsolicited basis.

As to minors the code determines in article 25 that members of the sector refrain from offering alcoholic beverages or causing them to be offered to minors free of charge or for a symbolic payment. The sector also has to refrain from supplying objects carrying advertising for alcoholic beverages or causing them to be supplied to minors free of charge or for a symbolic payment.

Tobacco

The Advertising Code for Tobacco Products prohibits price-cutting actions with respect to tobacco products aimed at the general public. The industry has to refrain from offering tobacco products for promotional purposes and free of charge or at a reduced price other than to retailers, to tobacconist or at its own stands at trade fairs. This provision includes the prohibition to order these of products by coupons, advertisements and the like (article 24 of the Advertising Code for Tobacco Products).

Pursuant to article 17 of this Code it is not allowed to offer advertising objects or cause them to be offered to persons obviously under the age of 18 years. Nor shall advertising objects be aimed specifically at persons under the 18 years.

Medicine

The Code for Public Advertising of Medicines prohibits providing the public with free samples or organising refund actions, to give away vouchers, special promotions and contests or games which contain the obligation to buy goods (article 5).

Saving systems

Saving systems are under conditions allowed. No special arrangement referring to minors.

V. HANDELING OF COMPLAINTS

1. Self-regulatory: Advertising Code Committee

Self-regulatory body: The Advertising Code Committee

The Advertising Code Committee (“De Reclame Code Commissie”) supervises the compliance of the Dutch Advertising Code. The Committee exists of 5 members. One member is appointed by the Union of Advertisers, one by the Consumers Association, one by the Advertising Code Foundation affiliated media, one by the Foundation of Marketing Communication Bureaus. The last member will be independent, often a judge, and is appointed by the Advertising Code Foundation. The Committee has, beside two general chambers, two specific chambers: audio-visual chamber and direct marketing chamber.

Procedure/Sanctions

Any member of the public, including companies and competitors, can lodge a written complaint with the (secretariat) of the Advertising Code Committee, motivating to which advertisement the complaint relates and which rules of the Dutch Advertising Code, including the specific Codes, are violated.

The complaint may regard all kinds of advertising, irrespective of the kind of media used (print, direct mail, radio and television, Internet, outdoor advertising).

The Committee’s Chair carries out an initial assessment of the complaint in order to examine if the complaint lends itself for handling by the Committee.

In case the Chair of the Committee rejects the complaint, the complaining party will be informed. An Appeal can be lodged with the plenary Advertising Code Committee.

Complaints that are judged suitable for handling by the Committee are subject to a procedure in which the two parties to the conflict will be heard. The advertiser is sent a copy of the complaint and is allowed a period of 14 days to submit its response of which a copy will be forwarded to the complaining party.

After the written part a hearing is scheduled at the office of the Advertising Code Committee, where parties are invited to elaborate on their point of views.

After a period of 4 weeks in general the Advertising Code Commission issues its written ruling. Short-term proceedings are possible in urgent matters.

The losing party has two weeks to appeal against the ruling with the Board of Appeal. The Board of Appeal knows the same proceeding.

The Advertising Code Committee may rule the complaint to be unjustified and reject it. In case it decides that the complaint is justified, the Committee will recommend the advertiser to stop using the advertisement concerned.

The Committee can also stipulate a term during which the advertiser should comply with the recommendation of the Committee and can sometimes impose measures (e.g. fines) as described in the Special Advertising Codes.

The recommendation can be made privately. Only the parties involved will be informed about the ruling. The recommendation can also be made in public, which means the Committee will distribute a press release. When the recommendation concerns a generally occurring violation and/or the general interest justifies it, the recommendation is made public by press release, but without disclosure of the names of the parties concerned.

The private and public recommendations, including the names of the parties involved, are available for the public.

The recommendations are effective because, the media (which is affiliated to the Advertising Code Foundation) will be asked to stop publishing the advertising concerned. Organizations which are members of the Advertising Code Foundation (pursuant to the Media Act (e.g. STER) have the obligations to reject advertising's which are a violation of the Advertising Code.

Decisions of the Advertising Code Committee/Board of Appeal in relation with minors:

1997: 2 complaints

Donald Duck (gambling; scratching; complaint rejected)

Raak children's coke (harmful substances; complaint rejected)

1998: 7 complaints

Soda-Club (free bottle of wine; complaint rejected)

campaign don't drink and drive (non-commercial advertising; complaint rejected)

Calgonit (distribution dangerous product; complaint awarded)

Smirnoff vodka (violence; complaint rejected)

Creeping into the freezer (danger; complaint rejected)

Werthers Original (danger; choking; complaint rejected)

Tel Sell (cutting into a sofa with a knife; giving a wrong impression; complaint rejected)

1999: 6 complaints

Telfort (tattooed baby; shocking advertisement; complaint rejected)

Milk (deception/misleading; complaint awarded)

anti-alcohol campaign "drinking can break your heart alcohol ruins more than you love" (time of broadcasting; complaint rejected)

Pisang Ambon/TMF (time of broadcasting; violation of the Code for Alcoholic beverages; complaint awarded)

Knikko's (deception; complaint rejected)

Bart Smit (good taste; deception; complaint rejected)

The case law of the Advertising Code Committee with regard to minors shows a distinction between advertising which is aimed wholly or partly at minors and which is aimed at the

general public. If aimed at the general public the Advertising Code Committee does not apply the provisions that specifically relate to children. However, she does take children into consideration when the advertisement is broadcasted before 20.00 hours and 20.30 hours.

In case the advertisement is aimed at the general public the Advertising Code Committee judges often whether or not the advertisement is contrary to the general subjective criteria of good taste, decency or morality. When it is obvious for everybody, including children, that an advertisement is meant to be humorous, complaints against it are most of the time rejected. Humour makes it clear that the messages or pictures should not be taken (too) seriously.

A lot of complaints are related to advertising that according to the claimant may incite or inspire children to a certain behaviour and advertising that shows shocking or terrifying images. The decisions of the Advertising Code Committee depend of the factual circumstances and it is difficult to give general rules about what is allowed and what is not. For example:

Advertising inspiring to a certain behaviour:

Broadcasting of an advertisement showing a man who puts his fingers in a electric point is restricted to transmission after 20.30 hours (RCC, 30 March 1993, 1993/52), because the Committee considers that is likely that children will follow this behaviour.

Broadcasting of an advertisement showing a man who puts a coughlozenge in his mouth and than inhales deeply is not restricted (RCC, 4 July 1990, 1990 nr. 6626), because it is not likely that children will follow this behaviour.

Advertising showing shocking or terrifying images:

An advertisement for a CD showing images of a slaughter-house is considered terrifying for children (RCC, 19 March 1996, 1996/83).

An advertisement for a newspaper showing among other things images of hunger, torture death and war etc. is not considered harmful for children because the advertisement was not aimed at children. The newspaper had also a reason to use the images. (RCC, 18 March 1991, 1991 nr. 6855).

Till now no advertising has been considered contrary to the provision in the Dutch Advertising Code which states that advertising on television shall not directly encourage minors to persuade their parents or others to buy advertised products.

In this respect a full-page advertisement for ice cream in a paper, which said “if you’re clever, show this advertisement to your mother” was not considered contrary to the Dutch Advertising Code. It was meant to be humorous and the advertisement was not to be seen as seriously aimed at minors but at their parents.

Medicines

Self-regulatory body: The Inspection Board of the Foundation Code of Medicines

The Inspection Board of the Foundation Code of Medicines (divided in two sections) are in charge of handling complaints about the Code of Conduct of Medicines Advertising is being violated.

With respect to advertising directed at the profession everyone can file a complaint at Section I of the Board of the Foundation Code of Medicines.

Public advertising for medicines (available without prescription) is subject to preventive examination by section II of the Board. The member advertisers may lodge a complaint about the rejection of the preventive approval or against an approved advertising of another member at the Board of Appeal KOAG/KAG. In case a consumer wants to complain about advertising of medicines, the Advertising Code Committee is the competent authority.

Procedure/Sanctions of decisions taken by KOAG/KAG

After the notification of a written complaint the defendant has 6 weeks to file written observations. The observations will be sent to the complainant and then oral pleadings are possible. Summary proceedings within 4 or 5 weeks are possible. Appeal is possible within 3 weeks after the decision in normal proceedings and within 7 days in case of summary proceedings.

The Board has to the competence to impose measures such as a rectification and a recall.

2. Dutch Media Authority

Competent authority the Dutch Media Authority

The Dutch Media Authority has been established on 1 January 1988. The Media Act formulates three tasks:

1. Supervision whether broadcasters act in compliance with the Media Act and Media Decree;
2. Allocation broadcasting time/permission for commercial broadcasting;
3. Financial control.

It does not handle complaints.

The Media Authority is independent of the government. The three members of the Media Authority are being appointed by Royal Decree for a period of 5 years.

Procedure/Sanction

The Media Authority monitors (afterwards) radio and television programs, mainly in order to control whether the public and commercial broadcasters comply with the regulations for advertising and sponsorship.

The Media Authority can impose financial sanctions up to a maximum of NLG 200,000=. It may also withdraw the broadcasting time of public broadcasters for a maximum period of 12 weeks if the broadcasters fail to comply with the obligations of the Media Act. As the commercial broadcasters the Media Authority may withdraw the permission to broadcast in case violating the rules.

3. Civil Proceedings

Competent Court

As to misleading or unfair advertising consumers, competitors and general interest organisations can start legal proceedings. The so-called summary proceedings before the President of a District Court are considered to be the most efficient. However, proceedings on the merit of the case are possible. Proceedings on the merit of the case cost more time, at least between one and a half to two year. These kinds of proceedings can be desirable in case the

plaintiff wants to claim compensation or damages. In the event the case has no urgent interest summary proceedings are not possible.

Procedure/Sanctions

Summary proceedings exist of an oral hearing. The arguments are summarised in a memorandum, which will be submitted to the President and the other party after the hearing. In standard cases the hearing will take place within two to four weeks after the claimant has asked for a date to schedule a hearing and has issued a writ of summons. The judgement will normally be rendered within two weeks after the hearing. These terms may vary, depending on the urgent interest of the case.

The claimant in summary proceedings can ask for a preliminary relief such as an injunction, a recall of promotional documents or a rectification, on forfeit of a penalty to be paid to the claimant in the event of default. In general, compensation of the damages cannot be claimed.

An appeal is possible within two weeks after the judgement.

Decisions of the Civil Court: Civil Court has not yet ruled in cases concerning advertising aimed at children.

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