

**SWEDEN**

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

- I. INTRODUCTION**
- II. EXECUTIVE SUMMARY**
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## 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 Sweden the study was carried out by the law firm **VINGE, Gothenburg**

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

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

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

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

Therefore, as well as the main definitions and general rules in the field of advertising and teleshopping directed at minors, each national report contains the regulation by sector and by media, as well as an identification

of specific marketing techniques. Moreover, each national report is preceded by a summary which gives the essential characteristics of the country in question. An Excell table has been drawn up, using the same layout for each country, as well as a comparative table for the 18 States studied.

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

## II. SUMMARY

Swedish legislation in respect of advertising to children bans all such advertising to children under 12 years old. The Radio and TV Act of 1996 prohibits advertising during, before and after programs directed at children. There are no current proposals to change the existing legislation.

### **1. Definitions**

Under the Swedish Parental Code, a **minor** is a person under the age of 18. A person who is younger than 18 is incapable of contracting. However, individuals over 16 are entitled to manage and control their own income.

The **Children's Ombudsman** has a general duty to supervise the observance of issues related to children and young people and to notify to the Social Welfare Board of any abuse which requires the intervention of the Social Services.

### **2. Regulation**

#### **a. General**

The EU Directive on Misleading Advertising was implemented in Sweden by the Marketing Advertising Act. The fundamental legislation in the advertising field is the Marketing Practices Act (MPA). The MPA stipulates that all marketing practices should be consistent with generally accepted marketing practices and shall otherwise be fair. Although it contains no specific rules regarding advertising directed at minors, the case law is extensive and courts are rigid when judging marketing directed to groups considered as weaker, such as minors.

#### **b. Media**

Advertising on **radio and on television** is governed by the Radio and Television Act (RTA). The RTA implements most of the Television without Frontiers Directive (TVWF) but often goes further than the European text. . Some provisions are aimed at the protection of children e.g. advertising in TV-broadcasting directed to children under 12 years of

age is prohibited (chapter 7, s4). In terms of case law, the type of product or service, the design of the advertisement and the time of broadcasting are important elements for the Court to assess whether a television commercial is directed at children. This provision implements Article 16 of the TWFD although Swedish rules go further.

Advertising is also prohibited directly before or after a TV show or part of a TV show, mainly directed towards children younger than 12 years old, apart from for sponsors of the programme. This implements Article 11.5 of the TWFD.

The RTA also bans TV shows containing detailed realistic descriptions of violence or of a pornographic character. This rule implements Article 22 of the TWFD.

The Marketing Practices Act and the Radio and TV Act apply to teleshopping.

There are no specific rules applying to sponsoring with respect to minors.

Until 1995, the Radio and Television Reviewing Committee was the supervising authority. Today it's the Consumer Agency.

The MPA applies to all forms of marketing techniques. The ICC International Code of Direct Marketing also applies to direct marketing. There is some case law on the issue of sending direct marketing to minors under 16 since below that age they are not entitled to contract.

The RTA stipulates that if a TV show is on the whole or in part sponsored, the indication of the sponsor may appear before or after the programme.

### **c. Specific provisions**

According to the Marketing of Alcoholic Beverages Act, the marketing of alcoholic beverages shall be carried out with moderation. Marketing of alcoholic beverages is banned in any TV or radio commercial. The Consumer agency has also published guidelines comprising rules such as the prohibition of marketing for alcoholic beverages in premises mainly intended for people younger than 20 years old.

Advertising for tobacco products directed to consumers in periodicals or similar publications, or in radio or TV broadcasting is generally

prohibited. The Consumer Agency Guidelines stipulate that marketing actions should not encourage an individual to start using tobacco products, especially when directed toward young persons. Advertisements in premises mainly used by young people under 20, and advertisements within schools are banned.

General rules of the Marketing Practices Act apply to advertising for leisure, vehicles, toys, arms, guns and weapons, and violence.

### **3. Proposals of law**

A bill relating to indirect Tobacco Marketing proposes banning all marketing of tobacco products and all goods or services marketed under the same name and connotation as tobacco products. The modifications should be implemented by July 2001. However, this bill has been revoked as the European Court of Justice has declared the EC Directive void.

### **4. Self regulation**

The ICC International Code of Advertising Practices and in particular its Article 14 applies to advertisements addressed to minors. Regarding the Internet, the ICC Guidelines on Advertising and Marketing on the Internet contain the general principles applying to advertisers and marketers offering goods or services to children on-line.

Article 3 of the ICC International Code of Direct Marketing applies to direct marketing addressed to children.

The Swedish brewers Association adopted an Agreement for Marketing of Lighter Beer, including e.g. a ban against the use of models younger than 25 years in the commercials or marketing campaigns..

The Agreement on Marketing of toys, Games and similar to Children and Young people was adopted by the Consumer Agency, the Swedish organisation for Retailers of Toys and the Council for Children's environment. This agreement clarifies marketing rules on certain toys and games as regards children and young people.

### **5. Handling of complaints**

Authorities

Proceedings regarding consumers' issues fall within the competence of the Consumers' Agency and the Consumers' Ombudsman. They act as the general supervisory authority over marketing in all sectors with a duty to intervene in cases with general consumer interest. The Consumer Ombudsman acts on his own initiative or following a complaint. Claims are filed with the Stockholm District Court as the court of first instance in all cases regarding marketing practices.



If a company contravenes the Marketing Practices Act, it may be charged a « market disruption » fine. This fine may be imposed on advertising agencies, TV or newspapers involved in the contravention in question.

The Radio and TV Reviewing Committee is responsible for the application of the Radio and TV Act. A contravention of the Act may entail a penalty such as a fine, or the prohibition to broadcast the show again or even in the case of a serious contravention, the withdrawal of the permission to broadcast. Provisions in the Radio and TV Act relating to marketing are exempted from the Reviewing Committee and are overseen by the Consumer Ombudsman.

### **Self regulation**

As regards self-regulation, the tobacco and medicinal sector both have their own boards supervising the marketing activities of their members.

In Sweden in 1998 there were no complaints relating to advertising and children, in 1999 complaints relating to children represented 7% of the total number of complaints

**III. REPORT**  
**STUDY ON THE IMPACT OF**  
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## I. DEFINITIONS

### **Minor**

The Parental Code (*Sw: Föräldrabalken*) (1) chapter 9, section 1, stipulates that an individual in Sweden is a minor until the age of 18.

This is the general Swedish definition of a “minor”.

However, within the Swedish legislation there are several different age levels that entail rights or obligations. For example it is necessary to be 20 years old to be allowed to buy alcoholic beverages in the store, but 18 years is sufficient to buy alcohol at bars and restaurants.

### **Majority**

There is no legal definition of majority, but it can be regarded as defined e contrario from the Parental Code as a person over 18 years.

However, in case the mental or physical condition of the individual so requires, also an individual over 18 years may be given a custodian, which will restrict the individual’s freedom to act. Parental Code, chapter 11, sections 4 and 7.

There are also other restrictions which apply to a person who are over 18 years, *e.g.* the possibility to drive a bus - requirement 21 years - or to buy alcoholic beverages from the retailer - requirement 20 years.

### **Legal Entitlement to Contract**

An individual younger than 18 years is incapable of contracting. In case the minor has entered into a contract on her own, such contract is not valid and all obligations exchanged shall be returned.

However, if the individual is older than 16, she is entitled to manage and control any of her own income.

### **Protection of Children**



It is the responsibility of each municipality to ensure that all children in the municipality grow up in good, safe conditions. Social service interventions for children and young people are guided by the Social Services Act (Socialtjänstlag 1980:620) (X?). All services provided in accordance with this act are based on consent.

When consent to services is not given the Care of Young Persons (Special Provisions) Act (*Sw: Lagen (1990:52) med särskilda bestämmelser om vård av unga*) (3), has given the Social Services the authority to care for a minor in case of abuse, undue exploitation, insufficient care, or if the minor, in any other way, suffers a considerable risk in his/her home environment. The Social Services may also determine to care for the minor if the minor him/herself is exposing his/her health or development to a considerable risk of damage by using drugs, or having a criminal or any other social destructive behaviour.

The Act on a Children's Ombudsman (*Sw: Lagen (1993:335) om barnombudsman*) (2) establishes the appointment of a Children's Ombudsman with a general task of observing matters affecting the rights and interests of children and young people. Especially, the Children's Ombudsman shall verify that laws and regulations, as well as their implementation, are in accordance with Sweden's commitments under the United Nations Convention (of 20 November 1989) on the Rights of a Child (*Sw: Förenta Nationernas konvention (d. 20 nov 1989) om barnens rättigheter*).

### **Public Offences**

The Penal Code (*Sw: Brottsbalken*) (4) stipulates in chapter 16, section 10a that an individual who exposes a child in a pornographic picture, distributes, transfers or makes such a picture available to someone else, acquires or offers such pictures or has such a picture in his possession has committed a child pornography crime and may be sentenced to prison or, if the crime is minor, to a penalty of a fine. Considered as "children" in this respect are individuals whose development during the puberty is still ongoing or who, when it is clear from the picture or the circumstances surrounding it, are younger than 18 years.

Chapter 16, section 10c, the Penal Code, stipulates that any individual who, intentionally or by negligence, in the line of business distributes a movie, video film or similar showing violence to people or animals to

individuals younger than 15 years, is guilty to impermissible distribution of a technical recording and may be sentenced to prison or a penalty of a fine.

Further, an individual, who, among children and young people distributes a written document, a picture or a technical recording that in its content may be brutal or entail a serious danger to the moral upbringing of the children, is guilty to leading young people astray, and may be sentenced to prison or a penalty of a fine, in accordance with Chapter 16, section 12 in the Penal Code.

## II. REGULATIONS

### 1. Classification by Media

#### 1.1. All Media

The Marketing Practices Act (*Sw: Marknadsföringslagen (1995: 450)*) (5) is the general legislation applicable on all kinds of marketing and commercial practices in Sweden; thus the Marketing Practices Act is applicable on radio and television commercials as well as on marketing of alcohol, tobacco and all kinds of products. However, the Marketing Practices Act is also completed by specific regulations regarding marketing for certain sectors and products, *e.g.* the Radio and Television Act (6) contains specific rules about marketing in those media.

The Marketing Practices Act does not contain any specific regulation regarding advertising directed to children. The Marketing Practices Act is based on a general ban, encompassing all kinds of marketing that is not consistent with generally accepted marketing practices.

Section 4, the Marketing Practices Act

*“Marketing practices shall be consistent with generally accepted marketing practices and shall otherwise be fair with respect to the consumers and undertakings”*

*“Generally accepted marketing practices” are defined as “generally accepted business practices or other norms the purpose of which are to protect consumers and undertakings in the context of the marketing of the products”.*

Section 5, the Marketing Practices Act

*“All marketing shall be formulated and presented in such a way that it clearly appears that marketing is involved. The party responsible for the marketing should also be clearly indicated.”*

Section 6, the Marketing Practices Act

*“An undertaking may not, in the course of marketing, make any assertion or other representation which is misleading with respect to the business of the undertaking, or any other undertaking.”*

These general principles are however quite wide. The case law is therefore extensive and of great importance. In general, the competent authority and court are rigid when judging marketing directed to certain groups in a society that may be considered as weaker and easy to influence, such as minors.

The Market Court (reference to paragraph V 3.1) has for example in its case law stated and confirmed that:

- (i) if the marketing method itself poses a risk to the safety or health of children it could be banned.

The marketing of nutrition for plants by sending samples of the products in the shape of small pills to families with children has been banned, since small children could mistake the pills for candy. (MD 1989:1)

- (ii) advertisements containing children performing hazardous activities could be banned if not enough regard is paid to necessary measures of safety.

An advertisement containing a drawing of a child on a skateboard without necessary protections on knees and elbows was considered as unfair marketing practices. (MD 1979:24)

- (iii) marketing of a product intended for children may not use the gullibility of children.

Small pictures were sold in packages where the different pictures could not be identified. This was considered to entice the

collector to buy many more pictures than necessary to obtain the whole series. The marketing method was found contrary to good marketing practices since it used the gullibility of children. (MD 1972:13)

The issue of product safety is covered by the Product Safety Act (*Sw: Produktsäkerhetslagen (1988:1604)*) (6). Until 1989 such issues were covered by the Marketing Practices Act.

According to section 1 in the Product Safety Act, the Act has as its purpose to obstruct that goods and services cause damages to persons or property. For this purpose the Market Court may for example order a company to supply security information regarding a product or a service (section 5) or to stop selling a product or a service (section 6).

With respect to case law (reference to paragraph V 3.1), there are many cases regarding products intended for children, especially toys.

The Market Court has banned the sale of baby beds (MD 1991:30) since there was a considerable risk that the baby might get hurt due to the construction of the bed. The Market Court has furthermore banned the sale of a toy intended for babies with reference to choking risk due to small, detachable parts (MD 1992:26). The market Court has also banned the sale of so called magical eggs containing a little toy which could increase in size by 130 times in 24 hours. This was considered as very dangerous if the toy was swallowed. In MD 1998:1 the Market Court did not ban the sale of a swing, since it was not considered to entail such risk for damage as is intended in section 6 of the Product Safety Act.

## **1.2. Television**

Apart from the Marketing Practices Act, advertising in radio or television is more specifically governed by the Radio and Television Act (*Sw: Radio och TV-lagen (1996:844)*) (7). The TV without Frontiers Directive (89/552/EEC) has mainly been implemented in Sweden through provisions in this Act.

Chapter 2, section 1, provides for an approval to be allowed to broadcast TV. Such approval may be given on the condition that all commercials or other advertising is banned from the broadcast, chapter 3, section 3.

Some provisions in the Radio and Television Act are especially aimed at the protection of children.

Chapter 7, section 4, prohibits advertising in TV-broadcasting directed at children under 12 years of age. When deciding whether an advertisement is aimed to catch the attention of children younger than 12 years the following circumstances should, according to guidelines concluded between the Consumer Agency and the Trade and Industry Delegation for Market Law, have importance: the type of product or service, the design of the advertisement and the context in which the advertisement appears. It is further prohibited for persons or characters, who usually play prominent roles in TV-shows, mainly directed towards children younger than 12 years to take part in TV-broadcast advertisements. The rule in section 4 has no *direct* parallel provision in the TV without Frontiers Directive, but it is considered to implement article 16 of the Directive. The Swedish rule goes further however than article 16.

Chapter 7, Section 7, further stipulates that advertising shall, with some exceptions, be broadcast between programmes and that it is prohibited to broadcast advertising right before or after a TV-show or part of a TV-show, mainly directed towards children younger than 12 years. The provision refers to chapter 7, section 8, for an exemption to this rule, stipulating that if a TV-show in whole or in part has been sponsored, this may appear in a suitable way either before or after the programme starts. The prohibition implements article 11.5 of the TV without Frontiers Directive as far as children's programmes are concerned.

The legislator has, as motivation for the prohibitions in chapter 7, sections 4 and 7, argued that children may have problems to distinguish commercials from other programmes. Furthermore children may not understand that the purpose of an advertisement is to incite the viewer to buy a product. The rules came into force on 1 July 1991 in the Radio Act, which is replaced by the Radio and Television Act.

Moreover, in chapter 6, section 2, the Radio and Television Act provides for a ban against TV-shows that contain detailed realistic descriptions of violence or of a pornographic character. If such broadcasting cannot be defended for specific reasons, it is not allowed to be broadcast at a time or in a way when there is a considerable risk that children will watch it. This rule implements article 22 in the TV without Frontiers Directive.

Chapter 6, section 1, contains a general provision stipulating that whoever broadcasts TV-shows after an approval from the government is obligated to control that the content of the broadcast in its entirety is in accordance with democratic basic ideas and the principles of all individuals' equal value and individual freedom and dignity. The provision implements articles 12 and 22 in the TV without Frontiers Directive.

Chapter 7, section 3, prohibits individuals who play prominent roles in TV-broadcasting, mainly with respect to news programmes or as news commentators, to be cast in TV-broadcast advertisements or commercials. The background to the regulation can be found in the provisions regarding recognizing of advertisements in the TV without Frontiers Directive.

Chapter 7, section 9, refers to special legislation for a ban against advertising of alcohol or tobacco, but stipulates that a TV-programme cannot be sponsored by a company whose main business is production or sale of alcoholic beverages or tobacco goods. The rule implements article 17 in the TV without Frontiers Directive.

Chapter 7, section 10, also prohibits, with minor exemptions, all commercials or advertisements in television for drugs sold on prescription or other such medical treatment, which is available only after a doctor's prescription. The provision implements article 14 in the TV without Frontiers Directive.

Sponsoring of TV-programmes directed to children is not forbidden, but sponsor messages may not be intended to catch the attention of children younger than 12 years.

In terms of case law (reference to paragraph V 3.1), the Market Court has in general banned television commercials containing exaggerated statements about the characteristics or the field of use of a product, such as kitchen knives (MD 1993:2), napkins (MD 1993:19) and washing powder (MD 1994:17).

The Market Court has also prohibited a company from marketing its products in a TV-programme in such a way that the marketing easily could be mistaken for edited material. In the case the Market Court further stated that the company had neglected its duty to clearly present the sender of the commercial. The Market Court also prohibited the

production company to take part in such “hidden” marketing methods (MD 1992:19).

When the Market Court has assessed whether a television commercial has as its purpose to catch the attention of children, the design of the commercial and the time of the broadcasting are important elements.

A television commercial for a movie channel containing cartoons and children was banned since it was considered to have as its purpose to catch the attention of children under 12 years of age. (MD 1993:13)

In MD 2000:14 the Consumer Ombudsman claimed that a television commercial for “Varm Oat Krunch”, a breakfast product similar to porridge or muesli, had as its purpose to catch the attention of children younger than 12 years, since the product consisted mostly of sugar, apple and cinnamon and the commercial contained animated figures. The Market Court did however not find that the commercial had as its purpose to catch the interest of children younger than 12 years.

Today the Consumer Agency (Reference to paragraph V:2.1) is the supervising authority regarding the provisions in chapter 7 sections 4, 3 and 10 in the Radio and Television Act but until 1995 the Radio and TV Reviewing Committee (Reference to paragraph V:2.3) originated case law with respect to these provisions. The Radio and TV Reviewing Committee is still the supervising authority regarding the other provisions in the Radio and Television Act. The following case law originates from the Radio and TV Reviewing Committee:

- (i) Television commercials for candy and toys were considered to have as their purpose to catch the attention of children under 12 years since they were animated. (SB107/94, SB 488/93)
- (ii) A television commercial for Nintendo which was televised directly after an animated movie for children was considered to have as its purpose to catch the attention of children under 12 years, due to the hour it was televised and the content in general. (SB 95/93)
- (iii) A television commercial for tooth paste where a child’s voice talks about the tooth paste as specially developed for children

was considered to aim to catch the attention of children under 12 years. (SB 213/94)

- (iv) A commercial for the chocolate egg Kinder was not considered as being mainly directed to catch the attention of children younger than 12 years, since it was televised after 9 p.m. (SB 281/95)
- (v) A commercial for the video “Cinderella” was considered to be directly intended to catch the attention of children younger than 12 years since it contained animated sections and a section where a child gets the video as a gift from a parent. The commercial was televised around 7 p.m. (SB 92/397)

### **1.2.1. Teleshopping**

In terms of marketing, the general rules in the Marketing Practices Act and in the Radio and TV Act are applicable on teleshopping. This means that the restrictions concerning television advertising and children in Chapter 7 sections 4 and 7 of the Radio and Television Act also apply to teleshopping. In addition to that, there are no specific regulations with respect to minors.

The Consumer Agency’s Guidelines on Mail Order Sales are in relevant parts also applicable to teleshopping.

### **1.2.2. TV Sponsorship / TV Sponsoring**

In the Radio and Television Act, chapter 7, section 7, that refers to chapter 7, section 8, it is stipulated that if a TV-show in whole or in part has been sponsored, this may appear in a suitable way either before or after the programme starts.

There are no specific regulations with respect to minors in the Radio and Television Act. However, under the terms of all licences to broadcast terrestrial television (both analogue and digital), programs mainly directed towards children younger than 12 years must not be sponsored.

## **1.3. Radio**



As stated above in section 1.2 advertising in radio is more specifically governed by the Radio and Television Act. Chapter 2, section 1, provides for an approval to be allowed to broadcast radio. Such approval may be given on the condition that all commercials or other advertising is banned from the broadcast, chapter 3, section 3.

Chapter 6, section 1, contains a general provision stipulating that whoever broadcasts radio after an approval from the government is obliged to control that the content of the broadcast in its entirety is in accordance with democratic basic ideas and the principles of all individuals' equal value and individual freedom and dignity.

Chapter 7, section 9, refers to special legislation for a ban against advertising of alcohol or tobacco, but stipulates that a programme cannot be sponsored by a company whose main business is production or sale of alcoholic beverages or tobacco goods.

#### **1.4. Press**

There are rules regarding marketing of specific products, such as alcoholic beverages, tobacco products and health products with respect to press (reference to paragraphs II 2.1, 2.2, 2.3.2, 2.4).

#### **1.5. Posters**

There are rules regarding marketing of specific products, such as alcoholic beverages and tobacco products and health products with respect to posters (reference to paragraphs II 2.1, 2.2, 2.4).

#### **1.6. Cinema**

There are rules regarding marketing of specific products, such as alcoholic beverages and tobacco products with respect to cinema (reference to paragraphs II 2.1, 2.2, 2.4, 2.8).

#### **1.7. Internet**

There are no specific marketing regulations with respect to Internet.

## **2. Specific rules- Classification by Sector**

### **2.1. Alcohol**

#### **2.1.1. General Rules**

Production and trade with alcohol is governed by the Alcohol Act (*Sw: Alkohollagen (1994:1738)*) (8). The Alcohol Act requires a permission to produce alcohol and a licence to serve wine, spirit and beers on the premises. Retail trade in spirits, wine and strong beer may only be carried out by the state owned retail company (Systembolaget AB). All sales of alcoholic beverages shall be done in a way so as to diminish any eventual damage as much as possible.

Systembolaget is prohibited to sell alcohol to individuals younger than 20 years. Further, it is prohibited for restaurants, bars and similar to serve stronger beer, wine or other spirits to minors. The responsibility to control that the buyer has reached the required age rests with the seller or provider of alcoholic beverages. There is a ban against providing spirits, wine and strong beer to persons younger than 20 years or to give spirits, wine and strong beer as a gift or in any other way to an individual younger than 20 years.

The Alcohol Act also contains a ban against minors selling alcohol.

A breach of any of these provisions may entail a sentence of imprisonment or a penalty of a fine and that the permission to sell or a licence to serve is suspended or withdrawn.

#### **2.1.2. Rules regarding Advertising**

##### **A. General**

According to the Alcohol Act, marketing of alcoholic beverages shall as a general principle be done with moderation. Further, the Act contains specific bans on advertising in different media. An act contrary to any such ban shall be considered as unfair marketing practices when applying the Marketing Practices Act. The Alcohol Act does not apply to marketing of lighter types of beers (*Sw: lättöl*). (Reference to paragraph III 3.1)

The general supervisory authority for marketing of alcohol is the Consumer Agency.

The Consumer Agency has published Guidelines with respect to Marketing of Alcoholic Beverages, Wine and Stronger Beer (*Sw: Riktlinjer för marknadsföring av spritdrycker, vin och starköl, KOVFS 1979:5*) (10). The Guidelines contain detailed specifications on where, to whom and how these products may be marketed. It is specifically stated that marketing of alcoholic beverages is banned in premises mainly intended for or used by individuals younger than 20 years. The retailers of alcoholic beverages, wine and stronger beer are responsible for the observance of these Guidelines.

The Consumer Agency has also published Guidelines for Marketing of Beer Class II (*Sw: Riktlinjer för marknadsföring av öl klass II, KOVFS 1979:6*) (11). The Guidelines contain detailed restrictions with respect to marketing of beer class II. It is stated that marketing of beer class II is banned in premises mainly intended for or used by youths under 20. The retailers of lighter beer are responsible for the observance of these Guidelines.

In terms of case law (reference to paragraph V 3.1) with relation to children, the Market Court has prohibited the sending of direct marketing concerning equipment intended for the manufacturing of wine at home to people younger than 20 years. (MD 1983:25).

B. By Media

#### **2.1.2.1. Television**

According to the Alcohol Act marketing of all alcoholic beverages is banned in any TV commercial in Sweden. This prohibition applies also to such TV broadcasting via satellite which are encompassed by the Radio and Television Act. The rule implements article 15 in the TV without Frontiers Directive but is stricter than the article in question. The legislator motivates the ban with Sweden's strict alcohol politics. The rule came into force on 1 July 1991.

#### **2.1.2.2. Radio**

According to the Alcohol Act marketing of all alcoholic beverages is banned in any radio commercial in Sweden.

### **2.1.2.3. Press**

In the Marketing of Alcoholic Beverages Act there is also a general ban applicable to marketing of alcoholic beverages in periodicals and other such publications.

#### **2.1.2.4. Posters**

According to Guidelines on Marketing of Spirits, Wine and Stronger Beer section 4.2 there should be no marketing of spirit, wine and stronger beer on public places such as waiting halls and public transportation nor on outdoor posters. According to the Guidelines for Marketing of Beer Class II section 3.2 the same rules apply to marketing of beer class II.

#### **2.1.2.5. Cinema**

According to Guidelines on Marketing of Spirits, Wine and Stronger Beer section 4.2 there should be no marketing of spirit, wine and stronger beer in the form of advertising films or loud speaker commercials on cinemas or theatres. According to the Guidelines for Marketing of Beer Class II section 3.2 the same rules apply to marketing of beer class II.

#### **2.1.2.6. Internet**

There are no rules specifically aimed at marketing of alcohol with respect to Internet.

### **2.2. Tobacco**

#### **2.2.1. General Rules**

The Tobacco Act (*Sw: Tobakslagen (1993:581)*) (12) is the general legal framework as regards tobacco goods.

Section 2 contains a general ban against smoking in premises for childcare, education or other child or youth activities, in premises for healthcare etc.

Section 9 provides for warning texts and declaration of content as well as special packaging for tobacco products.

Section 12 contains a general prohibition against selling tobacco products to minors. The seller or any other individual handing out the tobacco is responsible for the control of the buyer's age. Only individuals that have reached their majority are allowed to import tobacco products to Sweden.

Section 27 stipulates that a breach of any of the provisions in the Tobacco Act may entail a sentence of imprisonment or a penalty of a fine. Furthermore, the supervisory authority is entitled to investigate and confiscate products that are not sold in accordance with the legal requirements.

### **2.2.2. Rules regarding Advertising**

#### **A. General**

Section 14 in the Tobacco Act stipulates a general duty for the advertiser to be moderate when advertising tobacco products. Especially, the advertisements, or any other marketing of tobacco products, shall not be pushy, seek someone out or encourage the use of tobacco products.

The supervisory authority for marketing of tobacco products is the Consumer Agency.

The Consumer Agency has published Guidelines on the Marketing of Tobacco Products (*Sw: Riktlinjer för marknadsföring av tobaksprodukter, KOVFS 1998:7*) (13). The Guidelines are applicable on all marketing aspects directed to consumers with respect to tobacco goods and contain detailed restrictions on how and where tobacco products may be marketed.

The Guidelines stipulate that all marketing actions must be moderate, and, shall not, especially when directed towards young persons, encourage an individual to start using tobacco products.

As regards children or young persons, the following marketing actions are banned:

- (i) advertisements in newspapers or periodicals whose circle of readers to more than one third are young persons under 20 years;
- (ii) advertisements in premises that are mainly used or visited by young persons under 20 years;
- (iii) advertisements within schools or other educational premises;

- (iv) presentations or free samples to other individuals than individuals that are at least 20 years and at that time are buying tobacco products.

The retailers of tobacco products are responsible for the observance of the Guidelines.

In terms of case law (reference to paragraph V 3.1), the Market Court did not consider a commercial for a cigarette brand selling an adventure journey as unfair marketing practices since the marketed product was not cigarettes but the journey. (MD 1989:10)

B. By Media

**2.2.2.1. Television**

Section 14 in the Tobacco Act provides for a general prohibition against advertising and commercials for tobacco products directed to consumers in TV broadcasting. The prohibition applies also to such TV broadcastings via satellite which are encompassed by the Radio and Television Act. The rule implements article 13 in the TV without Frontiers Directive.

**2.2.2.2. Radio**

Section 14 in the Tobacco Act also provides for a general prohibition against advertising and commercials for tobacco products directed to consumers in radio.

**2.2.2.3. Press**

Section 14 in the Tobacco Act furthermore provides for a general prohibition against advertising and commercials for tobacco products directed to consumers in periodicals or similar publications.

**2.2.2.4. Posters**

According to Guidelines on Marketing of Tobacco Products section 5 there should be no marketing of tobacco products on public places such as waiting halls and public transportation nor on outdoor posters.



#### **2.2.2.5. Cinema**

According to Guidelines on Marketing of Tobacco Products section section 5 there should be no marketing of tobacco products in the form of advertising films or loud speaker commercials on cinemas or theatres.

#### **2.2.2.6. Internet**

There are no rules specifically aimed at marketing of tobacco products with respect to Internet.

## **2.3. Drugs and Health**

### MEDICINAL PRODUCTS

#### **2.3.1. General Rules**

The general provisions governing pharmaceutical products as well as different kinds of medicaments are stipulated in the Medicinal Products' Act (*Sw: Läkemedelslagen (1992:859)*) (14).

The Medicinal Products' Act states that medicinal products may be sold in Sweden after having been approved for sale either in Sweden or in any other Member State within the European Union. There is an exemption to this principle stating that in case of specific reasons, an approval to sell medicaments may also be given under other circumstances.

Permission to sell medicaments is granted by the Medical Products' Agency (*Sw: Läkemedelsverket*).

Retailing with medicinal products can only be carried out by the State or by a State owned company.

#### **2.3.2. Rules regarding Advertising**

##### A. General

Medicinal products can either be sold without or on prescription. The difference is noticeable when it comes to marketing of medicinal products.

##### Medicinal Products sold without Prescription

Marketing is allowed for medicinal products sold without prescription, as long as the information in the marketing campaign is objective, informative, easily understood and balanced. (Reference to paragraph III 3.4.1)

The Market Court has in its case law (reference to paragraph V 3.1) stated that the demands for trustworthiness are high with respect to marketing of medicinal products.

An advertisement for a medicinal product (Ipren) claiming that no other painkiller on the market was more effective or safe than Ipren was not considered to fulfil the demands for trustworthiness, since the advertisement could be interpreted as if the product was more effective than other products on the market. Ipren was however not proved to be more effective or safe than other similar medicines on the market. In the same case the Market Court found that the sending of direct marketing to girls in the age of 16 to 18 years was not contrary to good marketing practices. (MD1991:22)

### Medicinal Products sold on Prescription

As regards medicinal products sold on prescription, marketing directed to consumers is in general banned.

There are no specific rules to protect children with respect to medicinal products.

### Nature Cure Preparation

The Consumer Agency has further published Guidelines on the Marketing of Nature Cure Preparation with a Temporary Sale's Approval (*Sw: Riktlinjer för marknadsföring av naturmedel som medgivits tillfälligt försäljningstillstånd, KOVFS 1993:4*) (15) that contain a definition on a nature cure preparation as well as details on how information and marketing about such preparation may be presented. The Guidelines state that the packing of the preparation must be clearly marked with *e.g.* not suitable for children. Apart from such more general observations, the Guidelines contain no specific instructions aimed to protect children and young people.

#### B. By Media

##### **2.3.2.1. Television**

As stated above, chapter 7, section 10 in the Radio and Television Act prohibits, with minor exemptions, all advertising or commercials for medicinal products sold on prescription or other such medical treatment that is available only after a doctor's prescription. The rule implements article 14 in the TV without Frontiers Directive.

#### **2.3.2.2. Radio**

There are no rules specifically aimed at marketing of medicinal products with respect to radio.

#### **2.3.2.3. Press**

There are no rules specifically aimed at marketing of medicinal products with respect to press.

#### **2.3.2.4. Posters**

There are no rules specifically aimed at marketing of medicinal products with respect to posters.

#### **2.3.2.5. Cinema**

There are no rules specifically aimed at marketing of medicinal products with respect to cinemas.

#### **2.3.2.6. Internet**

There are no rules specifically aimed at marketing of medicinal products with respect to Internet.

### **2.4. Health Products**

#### **2.4.1. General rules**

A variety of different products and foodstuffs are so called “health products”.

Each product has to be examined individually to assess whether it is a health product according to the laws and regulations governing that specific product.

## **2.4.2. Rules regarding Advertising**

### A. General

A general remark is that advertisements and commercials for health products are encompassed by the general requirement for trustworthiness, a requirement rigidly upheld by the competent authority and court. (Reference to paragraph III 3.4.2)

Furthermore, any health based argument for foodstuffs - “functional food” - must be such that the relation food – health is publicly well known and documented.

The case law (reference to paragraph V 3.1) consists mainly of cases where marketing of different health products has not been considered trustworthy and has therefore been banned, since the effect of the product stated in the advertisement could not be proven, *e.g.* slimming preparation (MD 1983:14), tooth paste claimed to counteract tartar (MD 1988:28), bio-magnetic necklace and bracelet (MD 1984:12).

The Market Court has confirmed that advertisements for health products may be considered as contrary to good marketing practices if they contain statements that the product in question has the effect of a medicine. Such statements may only regard approved medicinal products. (MD 1995:12) The marketing of pills for better blood circulation was furthermore found contrary to good marketing practices since the advertisement contained statements which could be understood as a recommendation to use the product for a disease which demanded medical care. (MD 1994:28).

### B. By Media

#### **2.4.2.1. Television**

There are no rules specifically aimed at marketing of health products with respect to television.

#### **2.4.2.2. Radio**

There are no rules specifically aimed at marketing of health products with respect to radio.

#### **2.4.2.3. Press**

The Market Court has also declared that advertisements for health products must be clearly distinguishable from articles or other edited material in newspapers. (MD 1993:28, MD 1991:15)

#### **2.4.2.4. Posters**

There are no rules specifically aimed at marketing of health products on posters.

#### **2.4.2.5. Cinema**

There are no rules specifically aimed at marketing of health products with respect to cinemas.

#### **2.4.2.6. Internet**

There are no rules specifically aimed at marketing of health products with respect to Internet.

### **2.5. Vehicles**

#### **2.5.1. General Rules**

According to the Driver's Licence Act (*Sw: Körkortslagen (1998:488)*) (16) chapter 3, section 1, individuals must be 18 years to drive a car or a larger motorcycle. Further, to be allowed to drive a smaller motorcycle an individual has to be at least 16 years and for a moped at least 15. Finally, an individual has to be at least 21 to legally drive a bus.

#### **2.5.2. Regulations regarding Advertising**

##### **A. General**

In terms of marketing the general rules in the Marketing Practices Act are applicable.

Further, the Consumer Agency has published Guidelines on Information about Vehicles' Fuel Consumption (*Sw: Riktlinjer för information om nya personbilers bränsleförbrukning, KOVFS 1988:1*) (17) and Guidelines on Trade Description of Cars (*Sw: Riktlinjer för varudeklaration av begagnade bilar, KOVFS 1994:4*) (18). Both sets of Guidelines contain details on how information and marketing about vehicles must be presented. The Guidelines do not contain any provisions especially directed to children.

The Market Court (reference to paragraph V 3.1) has considered it unfair marketing practices when a company, to market mopeds, sent invitations to test-drive a moped to persons younger than 15 years. The company was thereby considered to evoke a risk to mislead the receiver to commit an offence against the prohibition for children younger than 15 to drive mopeds. (MD 1973:32)

##### **B. By Media**

### **2.5.2.1. Television**

According to Guidelines on Information about Vehicles Fuel Consumption section 2.2 the fuel consumption at mixed driving shall be stated in advertising films.

### **2.5.2.2. Radio**

There are no rules specifically aimed at marketing of vehicles with respect to radio.

### **2.5.2.3. Press**

According to Guidelines on Information about Vehicles Fuel Consumption section 2.2 the fuel consumption at mixed driving and the cost therefore at 15.000 kilometres shall be stated in advertisements in papers.

### **2.5.2.4. Posters**

According to Guidelines on Information about Vehicles Fuel Consumption section 2.2 the fuel consumption at mixed driving and the cost therefore at 15.000 kilometres shall be stated in advertisements on posters.

### **2.5.2.5. Cinema**

According to Guidelines on Information about Vehicles Fuel Consumption section 2.2 the fuel consumption at mixed driving shall be stated in advertising films.

### **2.5.2.6. Internet**

There are no rules specifically aimed at marketing of vehicles with respect to Internet.

## **2.6. Education**

### **2.6.1. General Rules**

In accordance with the rules in the School Act (*Sw: Skollagen (1985:1100)*) (19) a child may, after the demand of the guardian, start school at the age



of 6 years. School attendance is compulsory from the year a child becomes 7 years, but may in case of special reasons be postponed until the child is 8. Compulsory school attendance is applicable until the child is 16, if the child before that date has not gone through the required education in a satisfactory way.

## **2.6.2. Rules regarding Advertising**

### A. General

In terms of marketing in schools and in any other educational premises, the general rules in the Marketing Practices Act are applicable. Furthermore there are rules regarding marketing of specific products in schools. According to the Guidelines on Marketing of Spirits, Wine and Stronger Beer and on Marketing of Beer (class II) such products may not be marketed at schools. According to Guidelines on Marketing of Tobacco Products such products may not be marketed in schools.

### B. By Media

#### **2.6.2.1. Television**

There are no rules specifically aimed at marketing of education with respect to television.

#### **2.6.2.2. Radio**

There are no rules specifically aimed at marketing of education with respect to radio.

#### **2.6.2.3. Press**

There are no rules specifically aimed at marketing of education with respect to press.

#### **2.6.2.4. Posters**

There are no rules specifically aimed at marketing of education with respect to posters.

#### **2.6.2.5. Cinema**

There are no rules specifically aimed at marketing of education with respect to cinema.

#### **2.6.2.6. Internet**

There are no rules specifically aimed at marketing of education with respect to Internet.

## **2.7. Toys and Objects for Children**

### **2.7.1. General Rules**

Swedish law contains no legal definition on what is regarded as a toy. There is an Act with respect to the Safety of Toys (*Sw: Lagen (1992:132) om leksakers säkerhet*) (20), implementing the corresponding EC Directives.

There is also a Directive published by the Consumer Agency on the Safety of Toys (*Sw: Konsumentverkets föreskrifter om leksakers säkerhet, KOVFS 1993:9*) (21). Included in the Directive is an obligation to mark the toy with the approximate age of the children that the toy is aimed for, as well as with directions on how to use the toy. Apart from the safety regulations, the Directive also enumerates different objects that are not considered as toys.

### **2.7.2. Rules regarding Advertising**

#### **A. General**

In terms of marketing, the general rules in the Marketing Practices Act are applicable on advertisements and commercials for toys. Furthermore the Product Safety Act is often applied by the Market Court as regards toys and objects for children. (Reference to paragraph III 3.2)

#### **B. By Media**

##### **2.7.2.1. Television**

There are no rules specifically aimed at marketing of toys and objects for children with respect to television.

##### **2.7.2.2. Radio**

There are no rules specifically aimed at marketing of toys and objects for children with respect to radio.

### **2.7.2.3. Press**

There are no rules specifically aimed at marketing of toys and objects for children with respect to press.

#### **2.7.2.4. Posters**

There are no rules specifically aimed at marketing of toys and objects for children with respect to posters.

#### **2.7.2.5. Cinema**

There are no rules specifically aimed at marketing of toys and objects for children with respect to cinema.

#### **2.7.2.6. Internet**

There are no rules specifically aimed at marketing of toys and objects for children with respect to Internet.

### **2.8. Financial Services**

#### **2.8.1. General Rules**

Section 23 in the Banking Business Act (*Sw: Banklagen (1987:617)*) (22) stipulates that a minor may, without the permission of her parents or guardian, have access to and control funds that the minor herself has deposited after the minor has become 16 years. The general rule states that the guardian is not entitled to access or control these funds. The minor is however not entitled to funds deposited and managed by the parents or the guardian. Thus, an individual who is not yet 16 is not allowed, without the permission of the guardian, to open an account, deposit or withdraw savings.

The Consumer Credit Act (*Sw: Konsumentkreditlagen (1992:830)*) (23) relates to credits mainly directed towards individuals for private use. The Consumer Credit Act is protective towards the consumer.

#### **2.8.2. Rules regarding Advertising**

##### **A. General**

Section 6 in the Consumer Credit Act contains a basic requirement applicable to the creditor requiring the observance of good credit practices and specific regulations on how to market consumer credits including a duty for the creditor to inform the consumer about the effective interest

rate. If the credit is destined for the purchase of goods, information about the cost for the credit and the correct price for the goods must also be given.

Section 7 stipulates that the information shall be given in writing before the transaction between the creditor and the consumer is completed.

Section 8 stipulates, with reference to the Marketing Practices Act, that it is possible to take legal measures against any exaggerated, misleading or in any other way inappropriate consumer credit marketing.

The Consumer Agency has published Guidelines relating to the Applicability of the Consumer Credit Act (*Sw: Riktlinjer för tillämpning av konsumentkreditlagen m m, KOVFS 1992:4*) (24). The persons or undertakings carrying out the business activities or the marketing are responsible for the observance of the Guidelines. (Reference to paragraph III 3.3)

The Market Court (reference to paragraph V 3.1) has in several cases stated that the effective interest rate has to be calculated according to a method decided by the Consumer Agency and be evident from the advertisement. (MD 1987:13, MD 1987:13, MD 1988:20)

The Market Court has also confirmed that statements in advertisements about the cost of a credit in a particular case must not be too general and vague (MD 1981:6) and that the total cost for a credit shall be stated in advertisements. (MD 1984:13)

As regards individuals younger than 18 years, there are no specific regulations that differ from the general rules with respect to consumer credits.

Further, with respect to advertisements or marketing of banking in general, the general rules in the Marketing Practices Act are applicable.

B. By Media

### **2.8.2.1. Television**

There are no rules specifically aimed at marketing of financial services with respect to television.

#### **2.8.2.2. Radio**

There are no rules specifically aimed at marketing of financial services with respect to radio.

#### **2.8.2.3. Press**

There are no rules specifically aimed at marketing of financial services with respect to press.

#### **2.8.2.4. Posters**

There are no rules specifically aimed at marketing of financial services with respect to posters.

#### **2.8.2.5. Cinema**

There are no rules specifically aimed at marketing of financial services with respect to cinema.

#### **2.8.2.6. Internet**

There are no rules specifically aimed at marketing of financial services with respect to Internet.

### **2.9. Leisure**

#### **2.9.1. General Rules**

According to section 1 in the Act on Review and Censorship upon Movies or Video films (*Sw: Lagen (1990:886) om granskning och kontroll av filmer och videogram*) (25), all movies shown publicly shall be reviewed and approved beforehand. If necessary, an approval to show the movie to children shall be given only if the children have reached a certain age.

Section 5 stipulates that a movie shall not be approved for children younger than 7, 11 or 15 years, if the children in each respective age group may suffer psychological damages.

Section 6 stipulates that children below the approved age limit shall not be admitted into the movie theatre. The person responsible for showing the movie or video is also responsible for the observance of these rules. However, children below 7 years, in company of their parents, guardian or any other adult, may be admitted to movies allowed for children older than 7 years. In a similar way, children between 7 and 11 years may, in the company of a parent, guardian or adult, be admitted to a movie with the age limit set to 11 years.

The Lotteries' Act (*Sw: Lotterilagen (1994:1000)*) (26) stipulates that an approval is required to arrange a lottery. "Lottery" is given a wide definition, encompassing gambling of all kinds. The approval is only granted if the lottery, from a general perspective, will be managed in a suitable way, therein included *e.g.* a condition with respect to who is given access to the lottery. There is however no specific provisions with respect to minors.

According to the Act on Arranging Certain Kinds of Automatic Gambling Machines (*Sw: Lagen (1982:636) om anordnande av visst automatspel*) (27), such automatic gambling machines shall not be located in premises or in any way so as to encourage children or young people to start gambling.

## **2.9.2. Rules regarding Advertising**

### A. General

The general rules in the Marketing Practices Act are applicable on all kinds of leisure activities.

### B. By Media

#### **2.9.2.1. Television**

There are no rules specifically aimed at marketing regarding leisure with respect to television.

#### **2.9.2.2. Radio**

There are no rules specifically aimed at marketing regarding leisure with respect to radio.

#### **2.9.2.3. Press**



There are no rules specifically aimed at marketing regarding leisure with respect to press.

#### **2.9.2.4. Posters**

There are no rules specifically aimed at marketing regarding leisure with respect to posters.

#### **2.9.2.5. Cinema**

Section 2 in the Act on Review and Censorship upon Movies or Video films exempts a movie or a video containing marketing for goods or services from its applicability. Instead, the general rules in the Marketing Practices Act are applicable.

#### **2.9.2.6. Internet**

There are no rules specifically aimed at marketing regarding leisure with respect to Internet.

### **2.10. Arms / Violence**

#### **2.10.1. Arms**

##### **2.10.1.1. General Rules**

The Arms' Act (*Sw: Vapenlagen (1996:67)*) (28) stipulates in chapter 2, section 1, that permission is required to carry a gun. Chapter 2, section 2 and 3, state that the Police Authority may grant permission to any individual but only if the individual needs the gun.

Chapter 2, section 10 in the Arms' Act also provides for a prior approval to do business with or import arms.

According to the Regulation on Arms (*Sw: Vapenförordningen (1996:70)*) (29), minors may only be granted permission to carry or possess a gun when it is meant for hunting or target shooting.

According to section 1 in the Act on a Ban against Knives and other Dangerous Objects (*Sw: Lagen (1988:254) om förbud beträffande knivar och andra farliga föremål*) (30), knives or similar objects that may be used as weapons when committing a crime threatening to life or health may not be possessed in public places or in school premises.

Section 2 in the Act on a Ban against Knives and other Dangerous Objects further contains a ban on the possession or transfer of knuckle-dusters, missiles or similar objects to individuals younger than 21 years.

#### **2.10.1.2. Rules regarding Advertising**

##### A. General

The general rules in the Marketing Practices Act are applicable on marketing of arms, guns or weapons.

##### B. By Media

#### **2.10.1.2.1. Television**

There are no rules specifically aimed at marketing of arms with respect to television.

#### **2.10.1.2.2. Radio**

There are no rules specifically aimed at marketing of arms with respect to radio.

#### **2.10.1.2.3. Press**

There are no rules specifically aimed at marketing of arms with respect to press.

#### **2.10.1.2.4 Posters**

There are no rules specifically aimed at marketing of arms with respect to posters.

#### **2.10.1.2.5. Cinema**

There are no rules specifically aimed at marketing of arms with respect to cinema.

#### **2.10.1.2.6. Internet**

There are no rules specifically aimed at marketing of arms with respect to Internet.

#### **2.10.2. Violence**

##### **2.10.2.1. General Rules**

Section 4 in the Act on Censorship upon Movies and Video films stipulates a ban against movies, which contain brutalised action or scenes. Detailed or lengthy scenes involving violence to people or animals, serious sexual exposure or violent behaviour or pornographic scenes involving especially children shall in particular be taken into consideration in the assessment.

##### **2.10.2.2. Rules regarding Advertising**

###### **A. General**

The general rules in the Marketing Practices Act as well as the provisions in the Radio and Television Act are applicable.

B. By Media

**2.10.2.2.1. Television**

Chapter 6, section 2, the Radio and Television Act provides for a ban against programmes that contain detailed realistic descriptions of violence or of a pornographic character. If such broadcasting cannot be defended for specific reasons, it is not allowed to be broadcast at a time or in a way when there is a considerable risk that children will watch it.

**2.10.2.2.2. Radio**

There are no rules specifically aimed at marketing regarding violence with respect to radio.

**2.10.2.2.3. Press**

There are no rules specifically aimed at marketing regarding violence with respect to press.

**2.10.2.2.4. Posters**

There are no rules specifically aimed at marketing regarding violence with respect to posters.

**2.10.2.2.5. Cinema**

There are no rules specifically aimed at marketing regarding violence with respect to cinema.

**2.10.2.2.6. Internet**

There are no rules specifically aimed at marketing regarding violence with respect to Internet.

### **III. SELF REGULATION**

#### **1. General Rules**

ICC International Code of Advertising Practices (1997 edition) (*Sw: Internationella Handelskammarens (ICC) Grundregler för reklam*) (32) is applicable in Sweden. The Code is considered as a standard in the assessment of generally accepted marketing practices in the light of the general ban in the Marketing Practices Act.

Article 14 in the Code is applicable to advertisements addressed to children and young people who are minors. According to these codes a person classed as a child is 14 years old or younger. It states that the advertisements should not exploit the inexperience or credulity of children and young people, nor understate the degree of skill or age level generally required to use or enjoy the product. Special care should be taken to ensure that advertisements do not mislead children and young people as to the true size, value, nature, durability and performance of the advertised product.

Advertisements should further not contain any statement or visual presentation which could have the effect of harming children and young people mentally, morally or physically or of bringing them into unsafe situations or activities seriously threatening to their health or security, or of encouraging them to consort with strangers or to enter strange or hazardous places.

The advertisements should not suggest that possession or use of a product alone will give a child or young person advantages of any kind over another person and should not undermine the authority or responsibility of parents, nor include any direct appeal to children to persuade parents or guardians to buy advertised products for them.

#### **2. Classification per Media**

##### **2.1. Television**

In Rules for Information about Medicinal Products there are provisions regarding the contents of written information about medicinal products included in the catalogue FASS directed to nursing staff. These rules apply also to information transmitted by audio-visual media. According to the Agreement on Marketing of Toys, Games and Similar to Children and Young People film and video commercials may not contain detailed, long or brutalizing elements of violence. The Agreement for Marketing of Lighter Beer stipulates that when marketing lighter beer the word lighter beer or beer class I shall be clearly marked in the television- or film commercial.

## **2.2. Radio**

There are no self-regulation rules specifically aimed at marketing on radio.

## **2.3. Press**

In Rules for Information about Medicinal Products there are provisions regarding the contents of written information about medicinal products included in the catalogue FASS directed to nursing staff. Printed marketing for toys and games may not contain realistic descriptions of violence. According to the Agreement on Marketing of Toys, Games and Similar to Children and Young People advertising pictures may not contain detailed, long or brutalizing elements of violence. The Agreement for Marketing of Lighter Beer stipulates that when marketing lighter beer the word lighter beer or beer class I shall be clearly marked in the advertisement.

## **2.4. Posters**

In Rules for Information about Medicinal Products there are provisions regarding the contents of written information about medicinal products included in the catalogue FASS directed to nursing staff. According to the Agreement on Marketing of Toys, Games and Similar to Children and Young People advertising pictures may not contain detailed, long or brutalizing elements of violence. The Agreement for Marketing of Lighter Beer stipulates that when marketing lighter beer the word lighter beer or beer class I shall be clearly marked on the poster.

## **2.5. Cinema**

In Rules for Information about Medicinal Products there are provisions regarding the contents of written information about medicinal products included in the catalogue FASS directed to nursing staff. These rules apply also to information transmitted by audio-visual media. According to the Agreement on Marketing of Toys, Games and Similar to Children and Young People film and video commercials and may not contain detailed, long or brutalizing elements of violence. The Agreement for Marketing of Lighter Beer stipulates that when marketing lighter beer the word lighter beer or beer class I shall be clearly market in the television- or film commercial.

## **2.6. Internet**

ICC Guidelines on Advertising and Marketing on the Internet (Sw: *Internationella Handelskammarens riktlinjer för reklam och marknadsföring på Internet – Internetregler*) (33) state with respect to advertising to children that:

The advertisers and marketers offering goods or services to children online should:

- Not exploit the natural credulity of children or the lack of experience of young people and should not strain their sense of loyalty;
- Not contain any content which might result in harm to children;
- Identify material intended only for adults;
- Encourage parents or guardians to participate in or supervise their children's online activities;
- Encourage young children to obtain their parents' or guardian's permission before the children provide information online, and make reasonable efforts to ensure that parental consent is given;
- Provide information to parents or guardians about ways to protect their children's privacy online.

There are rules regarding written information about medicinal products included in the catalogue FASS in Rules for Information about Medicinal Products.

## **3. Classification by Sector**

### **3.1. Alcohol**

There is an Agreement for Marketing of Lighter Beer (Sw: *Överenskommelse om reklam för lättöl*) (34) adopted by the Swedish Brewers' Association (Sw: *Svenska Bryggareföreningen*) providing detailed instructions on the marketing of lighter kinds of beer, including *e.g.* a ban against the use of models in the commercials or marketing campaigns younger than 25 years.

### **3.2. Toys and Objects for Children**



There is an Agreement on Marketing of Toys, Games and Similar to Children and Young People (Sw: *Överenskommelse om marknadsföring till barn och ungdom av leksaker, spel och liknande*) (35) between the Consumer Agency, the Swedish Organisation for Retailers' of Toys and the Council for Children's Environment.

The Agreement provides for a clarification of the marketing rules as regards children and young people and certain toys and games. The Agreement states that marketing of toys must not

- (i) in a realistic way imitate, exemplify or encourage to crime threatening to life or health;
- (ii) imitate, aim to encourage or glorify violent or brutal actions;
- (iii) aim to create the opinion that violence is the only solution to a problem;
- (iv) aim to create contempt for other individuals.

Further, any written document should not contain realistic or violent action scenes, exposure in window-displays may not contain realistic or forward elements of violence and movies, video films or similar must not contain extended or brutal elements of violence.

There is also a Recommendation published by the Trade Associations about the Purchase and Sale of Certain Toys, Games and similar (Sw: *Branschorganisationernas rekommendation för inköp och försäljning av vissa leksaker, spel och liknande*) (36) providing, *i.a.* that the members of the trade association are recommended not to purchase or sell toys or games which are realistic and similar to real weapons used in crimes threatening to someone's life or health. A similar restriction is recommended with respect to computer or video games that in a clear and realistic way contain violent or brutal action contravening the moral principles for ordinary movies or video films.

### **3.3. Financial Services**

There is a Recommendation from the Financial Supervisory Authority regarding Credits related to Consumer Relations (Sw: *Allmänna råd (FFFS 2000:2) om krediter i konsumentförhållanden*) (37), containing provisions

similar to the Guidelines from the Consumer Agency related to consumer credits.

### **3.4. Drugs and Health**

#### **3.4.1. Medicinal Products**

There are Rules for Information about Medicinal Products (sold without prescription) (*Sw: Läkemedelsindustriföreningens regler för läkemedelsinformation*) (38) adopted by the Swedish Association of the Pharmaceutical Industry (*Sw: Läkemedelsindustriföreningen*). The Rules contain detailed instructions on how to give information and market pharmaceutical products, making no difference between adults and children.

#### **3.4.2. Health Products**

There are rules for the use of health based argumentation when marketing foodstuffs, a Self-Regulating Programme – Health Claims in the Labelling and Marketing of Food Products (*Sw: Egenätgårdsprogrammet – Hälsopåståenden i märkning och marknadsföring av livsmedel*) (39) that have been published by the Swedish Nutrition Foundation (*Sw: Stiftelsen Svensk Näringsforskning*), a foundation with an advisory role to the Food Industry.

The Programme contains an enumeration of eight connections between diet-related diseases and diets that form the basis of health claims, which are acceptable in the marketing of food products. None of these connections are especially related to children or young people.

### **3.5. Commercial activities in schools**

There are no specific rules. The ICC code of advertising practice is applied which includes a specific section on advertising and children.

## IV. SPECIAL MEANS OF COMMUNICATION

### 1. Direct Marketing

#### 1.1. Legislation

In terms of marketing, the general rules in the Marketing Practices Act are applicable.

In terms of case law (reference to paragraph V 3.1), the Market Court does not consider it good marketing practices to send direct marketing to children younger than 16 years. The age limit was set to 16 since children below that age are not entitled to contract.

#### 1.2. Self-regulation

In addition, the ICC International Code of Direct Marketing (*Sw: Internationella Handelskammarens etiska regler för direktmarknadsföring, DM-regler*) (40) is also applicable.

Its article 3 is directed to children and young people:

Direct marketing activities addressed to children and young people should not exploit their credulity or inexperience. No direct marketing activity should be undertaken which is likely to harm children mentally, morally or physically, or to strain their sense of loyalty vis-à-vis their parents or guardians.

Sellers and operators offering products to children should:

- identify material intended for adults;
- encourage young children to obtain their parents' or guardian's permission before the children provide information, and make reasonable efforts to ensure that parental consent has been given;
- provide information to parents or guardians about ways to protect their children's privacy.

## **2. Mail Order**

In terms of marketing, the general rules in the Marketing Practices Act are applicable on mail order sales.

The Consumer Agency has published Guidelines on Mail Order Sales (*Sw: Riktlinjer för postorderförsäljning, KOVFS 1980:2*) (42). The guidelines contain detailed instructions on the content of information and marketing related thereto. There are no specific regulations with respect to minors.

## **3. Promotional Sales Practices**

The general rules in the Marketing Practices Act are applicable.

Section 13 in the Marketing Practices Act contains a more specific requirement on a person carrying out business activities to clearly inform the consumer about a promotional offer, especially about the conditions to utilise the offer; its nature and value; and any time limits or other relevant restrictions applicable to the offer in question.

There are no specific regulations with respect to minors.

## **4. Sponsoring / Sponsorship**

There is no general or specific legislation on sponsoring in Sweden. Thus, the general rules in the Marketing Practices Act are applicable.

## **5. Commercial activities at school**

No specific legislation. There is a comprehensive Marketing Act, which provides for the protection of children. Any commercial activity on the school premises would require the explicit permission of the relevant authorities.

There are regulations on tobacco and alcohol that specifically ban advertising in schools.

## V. HANDLING OF COMPLAINTS

### 1. Self-regulation

The Pharmaceutical Industry's Associations has appointed an Information Reviewer (*Sw: Läke-medelsindustrins informationsgranskningsman*), which is the first instance when reviewing information about Medicinal Products. The Board for the Assessment of Information about Medicinal Products (*Sw: Nämnden för bedömning av läke-medelsinformation*) is the second instance, and some cases are tried in the Board directly. The Board has the mission to try whether the information from the medicinal industry and other marketing actions are in accordance with the applicable Rules for Information about Medicinal Products. A pharmaceutical company, being a member of the Pharmaceutical Industry's Association that contravenes these rules may be ordered to pay a financial penalty. Cases related to children are very rare both in the case law of the Information Reviewer and of the Board for the Assessment of Information about Medicinal Products. Since 1997 only one case involving children has been dealt with, and that case was tried by the Information Reviewer. The case regarded a TV commercial for a multivitamin product where a little girl was climbing up on a chair to reach the product. The commercial was found to contravene ICC International Code of Advertising Practices due to the hazardous activities of the little girl.

Until 1994 there was a Reviewing Board for the Tobacco Industry (*Sw: Tobaksbranschföreningens Granskningsnämnd*) established by the trade association, being a general supervisory authority over the members of the association, including their marketing. The Board has ceased to exist due to the advertising prohibition in the Tobacco Act, section 14.

There is an Ethical Council appointed by the Industry to review and try whether marketing contains discrimination between the sexes (*Sw: Näringslivets Etiska Råd mot Könsdiskriminerande Reklam*). Its decisions are published, but a conviction does not mean that the marketing practices are banned. The Council has tried three cases during the years 1997 – 2000 with relation to children; one in 1997, one in 1999 and one in 2000. The cases from 1997 and 2000 concern children in sales catalogues, only in the

case from 1997 resulted in a conviction. The case from 1999 concerned a catalogue for marketing of toys.

There is also a Council on Ethical Marketing (*Sw: Marknadsetiska Rådet*), which responsibility is to clarify and apply the ICC Code of Advertising Practices. Its decisions are published. A conviction means that the marketing practices contravene good marketing practices, but not that they are banned. The Council tried one case related to children during 1997, one case during 1998, two cases during 1999 and four cases during 2000. Most of the cases concern commercials including children in some way. In case Dnr 18/97, the Consumer Ombudsman *./. Levi Strauss Sweden AB*, the Council found that a television commercial containing violent “kung-fu” scenes which was broadcast before a family programme, was contrary to article 14 in the ICC Code of Marketing Practices. Levis claimed that the commercial was a travesty of kung-fu movies. However, the Council found that children would probably not understand the travesty, and that the commercial was broadcast in such a context that children was likely to watch it and be negatively affected by it.

Further, there is an Ethical Board for Direct Marketing (*Sw: Etiska nämnden för direktmarknadsföring*) which mainly applies the ICC International Code of Direct Marketing. In this Board the question of direct marketing directed to children younger than 16 years are relatively often dealt with. The Board settles about five cases per year regarding this matter. The Board has in these cases established that the principal rule is that direct commercial sent to persons under 16 years is contrary to good marketing practices since these persons do not have a right to contract. Therefore it is not acceptable to send direct invitation to buy a product to persons under 16 years of age.

From a survey carried out by the European Advertising Standards Alliance it appears that in 1997 the total complaints on children and advertising represent 7% of the total number of complaints received.

## **2. Administrative Procedure**

### **2.1. The Consumer Agency**

The State has established a public authority responsible for consumer issues, the so-called Consumer Agency (*Sw: Konsumentverket*). The director

for the Consumer Agency is appointed by the Swedish Government and holds the position as Consumer Ombudsman (*Sw: Konsumentombudsman*).

The Consumer Agency and Consumer Ombudsman act as general supervisory authority over marketing in all sectors with a duty to intervene in cases with a general consumer interest.

Further, the Consumer Agency publishes Guidelines or Directives on marketing with respect to different sectors. These Guidelines or Directives are considered as a binding standard in the assessment of generally accepted marketing practices in the light of the general ban in the Marketing Practices Act. The guidelines are developed in consultation with business.

The general provisions in the Marketing Practices Act with respect to the Consumer Ombudsman and to the judicial or administrative proceedings are applicable to all those sectors.

## **2.2. The Consumer Ombudsman**

The Marketing Practices Act contains provisions on actions initiated by the State, through the Consumer Ombudsman.

The Consumer Ombudsman may on his own initiative initiate actions against a company in breach of the marketing rules, if the action is of a general consumer interest. But a company affected by impermissible marketing may also file a complaint with the Consumer Ombudsman, who has a duty to intervene in cases of a general consumer interest.

Section 21 stipulates that in cases of minor importance the Consumer Ombudsman may order the company contravening the Marketing Practices Act or any other marketing rules to stop marketing its products or itself in a way contrary to the legal provisions or to hand over information to the Consumer Ombudsman with respect to the marketing performed. Such injunction is always under a penalty of a fine. To be valid, the injunction must be immediately approved and signed by the company carrying out the impermissible marketing. Once approved, the injunction can be executed in the same way as a proper judgement from the court. An approval of the injunction given after the time limit has expired is not valid.

The Consumer Ombudsman handled 28 items with relation to children and marketing during 1997, including all types of affairs such as remarks, interventions etc, both those initiated on the Consumer Ombudsman's own initiative and cases initiated by a complaint. In 1998 the number of items was 26, in 1999 the number was 13 and in 2000 it was 19. If the Consumer Ombudsman finds that a case is important he will start legal proceedings. The important cases are therefore mentioned under case law in the Market Court (reference II 1.1, 1.2). At the moment the Consumer Ombudsman has started legal proceedings in two different cases which have not yet been settled. One case concerns an animated movie broadcast on TV about the figure "pokemon". The Ombudsman claims that the movie is partly a commercial for "pokemon" products. The other case regards a TV commercial for the video Cinderella.



## **2.3. The Radio and TV Reviewing Committee**

### **2.3.1. General Rules**

The Radio and Television Act provides for the establishment of a Radio and TV Reviewing Committee (*Sw: Granskningsnämnden för Radio & TV*), appointed by the State, with whom rests the main responsibility for the observance of the Radio and Television Act. A contravention of the Radio and Television Act may entail a duty to pay a special fine, but also an order to comply with the provisions, subject to a conditional fine. In exceptional cases, the contravening company may have its permission to broadcast withdrawn.

### **2.3.2. Rules regarding Advertising**

The provisions in the Radio and Television Act that relate to marketing are especially exempted from the Reviewing Committee. Instead, chapter 9, section 2 in the Radio and Television Act refers to the Consumer Ombudsman as the supervisory authority. Until 1995 the Committee was the supervisory authority also for the provisions related to marketing in the Radio and Television Act. (For case law see paragraph II 1.2)

Chapter 10, section 7, in the Radio and Television Act, stipulates that any marketing action contravening the marketing provisions in the Radio and Television Act shall be considered as unfair to consumers. Such action may thus entail a market disruption charge under the Marketing Practices Act.

## **3. Judicial Procedures**

### **3.1. The Market Court**

According to the Market Court Act (*Sw: Lag (1970:417) om marknadsdomstol m. m.*) (43) the Market Court hear cases according to the Competition Act, the Marketing Practices Act, the Consumer Contracts Act, the Terms of Contract between Tradesmen Act and the Product Safety Act. The Market Court is above all a precedent instance. Decisions by the Market Court are final.

The case law in the Market Court related to children is not particularly extensive. During 1997 the Court settled one case, MD 1997:4 concerning direct marketing to children younger than 16 years (reference IV 4). There are two cases from 1998, in the first one, MD 1998:17, the Market Court found that the prohibition against television commercials intended to catch the interest of children younger than 12 years in the Radio and Television Act may not be applied to TV broadcastings originating from other member states. The second one, MD 1998:7, was about the safety of products (reference to paragraph II 1.1). There is one case from 1999, MD 1999:26, regarding direct marketing to children younger than 16 years (reference to paragraph IV 4). In 2000 the Market Court has decided one case, MD 2000:14, which concerned the prohibition against television commercials intended to catch the interest of children younger than 12 years (reference to paragraph II 1.2). (For further case law reference to paragraphs II 1.1, 1.2, 2.1, 2.2, 2.3, 2.4, 2.7)

### **3.2. The Proceedings in the Marketing Practices Act**

#### **3.2.1. Two-tier Court System**

The Marketing Practices Act governs the different legal actions available against impermissible marketing.

The Consumer Ombudsman or a company who is affected by the marketing and associations of companies or employees are all entitled to file claims and to request that the court issues prohibitions against impermissible marketing and orders to fulfil the duty to inform set out in the Marketing Practices Act. The companies or association of companies file such claims at its own cost.

Claims regarding prohibitions or injunction shall as a principal rule be filed with the Market Court according to section 38. Claims regarding market disruption charge shall be filed with the Stockholm District Court (*Sw: Stockholms tingsrätt*) according to section 39. Section 41 stipulates that claims for damages according the Marketing Practices Act shall be filed with the Stockholm District Court.

Section 43 provides for all appeals regarding judgements of the Stockholm District Court being handled by the Market Court.

The large majority of complaint cases however are settled in an informal way by voluntary agreement between the Agency and the tradesman. Moreover the Consumer Ombudsman and the Agency often seek to reach broad agreements with trade and industry associations aimed at resolving causes for consumer problems.

### **3.2.2. Market Disruption Charge**

If a company intentionally or negligently contravenes the Marketing Practices Act, it may be ordered to pay a specific fine, a market disruption charge. The minimum charge is SEK 5,000, the maximum SEK 5,000,000. However, the charge may not exceed 10 per cent of the company's turnover the preceding financial year. The market disruption charge may also be imposed on companies that have been involved in the contravention in question. This may include advertising agencies, newspapers, magazines and radio and TV stations. However, a private individual working for a company cannot be ordered to pay a market disruption charge.

The Consumer Ombudsman may file an application for an order for the defendant to pay a market disruption charge. Only if the Consumer Ombudsman does not file a claim, companies affected by the contravention and associations of companies are entitled to file an application for an order for the defendant to pay a market disruption charge.

### **3.2.3. Prohibitions and Injunctions**

The courts and, in cases of minor importance, the Consumer Ombudsman, are authorised to issue various prohibitions. For example, a company may be prohibited from continuing impermissible marketing. In addition, companies may be prevented from withholding information of importance in their advertising aimed at consumers. These prohibitions may be imposed on individuals who are connected to the company, including the company's employees and all persons involved in marketing the products.

Prohibitions and injunctions must normally be accompanied by financial penalties and may also be issued on an interlocutory basis before final judgement is delivered. The burden of proving that marketing is not

impermissible or misleading rests with the company responsible for the marketing.

#### **3.2.4. Damages**

Anyone contravening a prohibition or an injunction imposed by an authority will be liable to pay damages. Although the plaintiff must show the extent of the loss incurred, the court may also assess the value of the loss. To improve an injured company's chances of receiving compensation for a loss when estimating the damage, the court may have a regard to circumstances other than financial loss.

To emphasise that the obligation to practise good marketing applies to companies as well as to consumers, consumers are also entitled to claim damages. However, if no claim is filed, entitlement to claim damages is lost five years from the day the loss or damage occurred.

#### **3.2.5. Removal of Misleading Statements**

In the event of a contravention of a specific prohibition or of an injunction, the court may, in addition to imposing a penalty of a fine for impermissible marketing, order at the request of a party that misleading statements are removed or altered so that they are no longer misleading.

The court may also prohibit certain activities and misleading statements and combine the prohibition with a penalty of a fine.

If a party has failed to comply with a prohibition arising from its contravention of the Marketing Practices Act, the products may be confiscated by orders of the court. If the matter is urgent, an interlocutory order involving the seizure of the products may be issued against a party without the party first being heard.

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