

REGULATION AND SELF-REGULATION ON ADVERTISING DIRECTED AT MINORS - Germany

DEFINITIONS

Child / Young person	Youth in Public [Gesetz zum Schutze der Jugend in der Öffentlichkeit] as amended on 28 October 1994, art. 2 para. 1)
Minor	An individual of either gender who has not reached the age of 18 (German Civil Code, art. 2)
Civilian majority	Period beginning upon completion of the 18th year (German Civil Code, art. 2)
Civilian minority	Period until completion of the 18th year: - a person under the age of 7 is considered to be legally incapable - a person who has completed the 7th , but not yet the 18th year is considered to be of restricted legal capacity (German Civil Code, art. 104, 106, 107-113)
Legal entitlement to contract	A minor is in need of the prior consent of his or her legal representative so as to conclude a contract, unless he or she exclusively receives a legal advantage (German Civil Code, art. 107)
Youth protection	
Sex offences	
Moral protection	
Advertising	having come into force on April 1, 2000, adopts the wording of Article 1 of the EU Directive TV without Frontiers

LEGAL PROVISIONS

GENERAL PROVISIONS

1. In general

Protection of youth in public places

Provisions of the Law on Legal Protection for Youth in Public:

- Competent institutions must take appropriate measures, if children or young persons stay at places directly endangering their physical or mental well-being (art. 1)
- Children or young persons under the age of 16 are not allowed to stay in restaurants without a parent, unless they stay for a meal or have a drink (art. 3 para. 1)
- Children or young persons are not allowed to stay at nightclubs or comparable places (art. 3 para. 3)
- Children or young persons are not allowed to stay at public gambling halls or comparable places (art. 8)
- Children or young persons under the age of 16 are not allowed to stay at public dancing events without a parent; in case they are older than 16, they may stay until midnight (art. 5 para. 1)

2. Through media

TELEVISION

Principles

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

are issued according to Art. 16 RStV (public broadcasting) and Art. 46 RStV (private broadcasting).

Art. 10 TVWF

Advertisements and teleshopping have to be easily recognizable. They have to be clearly separated from other parts of the programme by visual means. Subliminal techniques may not be used. Indirect product placement or similar practices are not allowed

Advertisement-windows are allowed if they are clearly separated visually and marked as advertisements

Art. 11 TVWF: insertion of advertising

Public broadcasters may only show advertisements until 8:00 p.m. On Sundays and holidays advertisements may not be broadcast at all by public broadcasters (Art. 15 RStV). Generally, programming shall not be interrupted by advertisements.

Advertisements and teleshopping may not mislead the consumer

Art. 12 TVWF: human dignity

Advertising (& teleshopping) may not harm the viewers interests and it may not promote actions, which might jeopardise the health or the security of the consumer or the environment

are not allowed. This does not include "social advertising".

Art. 13 TVWF: tobacco

Art. 14 TVWF: medicinal products

Art. 15 TVWF: alcohol

Special protection of minors

Art. 16 TVWF: advertising and minors:

Advertisements and teleshopping, which aim at minors may not harm their interests or make use of their inexperience. Additionally teleshopping may not ask minors to purchase goods or services

Art. 22 TVWF: protection of minors and public order:

concerned from perceiving them

have to be either announced by acoustic means or marked optically throughout the programme

Sponsoring (Art. 17 TVWF)

If programmes are entirely or partly sponsored, it has to be pointed out at the beginning or at the end of the programme that it is financed by the sponsor

Sponsors may not influence the content and the position of the sponsored programme in a way that impairs the responsibility and the journalistic independence of the broadcaster

Programmes that are sponsored may not ask to sell, to buy or to rent goods or services of the sponsor or any third party

Programmes may not be sponsored by companies that produce cigarettes or other tobacco products

If a programme is sponsored by a company, that produces or sells medical drugs or medical treatments, the sponsoring may be related to the name or image of the company. They may not promote particular medical drugs or medical treatments that are only available on prescription

News and political magazines may not be sponsored

Teleshopping (Art. 19 TVWF)

Teleshopping is excluded from public broadcasting. This does not apply for teleshopping-windows. Before the 4th Amendment to the Broadcasting Treaty came into force on April 1, 2000, teleshopping-windows were also excluded from public broadcasting. The amendment goes back to the EU Directive on TV without Frontiers which equals advertising and teleshopping-windows

Art. 11 TVWF: insertion of advertising

is 30 minutes or longer, the provisions set out above applied

The total percentage of teleshopping-spots may not exceed a percentage of 20 of the daily broadcasting time. Commercials may only sum up to 15 percent

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

Special protection of minors

Art. 16 TVWF: advertising and minors

(Additionally the Broadcasting Treaty is implemented by the Guidelines of the Media Authorities on Advertising, Distinction of Advertising and Programming and on Sponsoring in Television)

Programmes for children and religious services may not be interrupted by advertising or teleshopping

Advertising may not harm the interests or may not make use of their inexperience. Teleshopping may not ask minors, to buy or rent goods or services

Advertising, which is aiming at children or minors, is not allowed, if

- * children or young persons are asked, to get their parents or third parties to buy the advertised goods or services
- * it makes use of the special confidence, which children or young persons have to their parents, teachers or other persons
- * it shows children or young persons without any reasons in dangerous situations,
- * it shows criminal offences or other behaviour, which can be dangerous for persons, as exemplary or acceptable,
- * it uses aleatory means of advertising (e. g. sweepstakes) which can deceive the addressees.
- * it is also forbidden to make use of the special interest of children in games,
- * it shows children or young persons as sexual objects.

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

Services and programming for children may not be interrupted by advertisements or teleshopping

The broadcasting of a single programme may not be interrupted by advertisements or teleshopping, unless the programming is of more than 45 minutes of broadcasting time. Otherwise advertisements and teleshopping have to be placed between the single programmes (art. 14 RStV).

Teleshopping is excluded from public broadcasting. This does not apply for teleshopping spots

RADIO

The rules for TV also apply for radio

PRINT

publications are listed in accordance with the GJS, they are subject to the law's restrictions on advertising and marketing and may not be made accessible to children and young people

CINEMA

No specific rules

POSTERING

See print

INTERNET

Media Services (Mediendienstaatsvertrag, MDSV) and the Teleservices Act (Teledienstegesetz TDG). Media Services are publications that are directed to the general public and may contain advertising news or children and young persons re-spectively advertising rules on children and young persons:

young persons may not harm their interests or take advantage of their inexperience

Medieninhalte) applies, which does not contain specific rules on advertising portraying or directed to children or young persons

SPECIFIC LEGAL PROVISIONS

3.1 ALCOHOL	
3.1.1 General rules	<p>sentence 1 No. 1)</p> <p>person (Law on Legal Protection for Youth in Public, art. 4 para. 1 sentence 1 No. 2, para. 2)</p> <p>Alcoholic beverages may not publicly be offered in vending machines (Law on Legal Protection for Youth in Public, art. 4 para. 3 sentence 1)</p>
3.1.2 Advertising	
3.1.2.1 In general	
3.1.2.2 Per media	
Television	<p>Ban on advertising for wine products showing ingredients which may not be added to wine products in the course of bottling (Wine Act, art. 28 para. 1)</p> <p>for Alcoholic Beverages [Verhaltensregeln des Deutschen Werberats über die Werbung und das Teleshopping für alkoholische Getränke] of 1998, No. 3 and Guidelines on Advertising [...], 3/[1])</p> <p>Statements provoking young persons to drink or implying that a described person has already drunk alcoholic beverages in his or her youth should not occur (Rules of Conduct [...], No. 4 and Guidelines on Advertising [...], 3/[1])</p>
Radio	
3.2 TOBACCO	
3.2.1 General Rules	Children and young persons under the age of 16 are not allowed to smoke in public (Law on Legal Protection for Youth in Public, art. 9)
3.2.2 Advertising	
3.2.2.1 In general	Ban on advertising for tobacco products and, in general, on all advertising and sponsorship in that sector (Act on Food and Consumer Goods [Gesetz über den Verkehr mit Lebensmitteln, Tabakerzeugnissen, kosmetischen Mitteln und sonstigen Bedarfsgegenständen – Lebensmittel- und Bedarfsgegenständegesetz] as amended on 25 February 1998, art. 22 para. 1)

<p>3.2.2.2 Per media</p> <p>Television/radio</p> <p>Others</p>	<p>portraying the inhalation of tobacco smoke as exemplary (Act on Food [...], art. 22 para. 2 sentence 1 No. 1)</p> <p>Ban on advertising for tobacco using designations which imply that tobacco products are natural (Act on Food [...], art. 22 para. 2 sentence 1 No. 2)</p>
<p>3.3 DRUGS AND HEALTH</p>	
<p>3.3.1 General rules</p> <p>3.3.2 Advertising</p> <p>3.3.2.1 In general</p> <p>3.3.2.2 Par support</p> <p>Television/radio</p> <p>Press</p>	<p>Ban on placing dubious drugs on the market (Drug Act [Gesetz über den Verkehr mit Arzneimitteln- Arzneimittelgesetz] as amended on 17 August 1996, art. 5)</p> <p>Ban on bringing drugs into circulation for doping purposes or to prescribe them (Drug Act, art. 6a para. 1)</p> <p>Packing, amongst other information, must contain indications of the ingredients, the mode of application, and the expiration date (Drug Act, art. 10 para. 1 No. 6, 7, 9, art. 11)</p> <p>Ban on advertising that misleads by giving the false impression that success can definitely be expected or that no harmful effects would occur, or deceives with respect to the quality or to the therapeutical effectiveness of the drug (Drug Act, art. 8 para. 1 No. 2, para. 2)</p> <p>or deceiving details on the ingredients of a drug or on personal issues of the manufacturer (Act on Drugs and Healthcare [Gesetz über die Werbung auf dem Gebiete des Heilwesens-Heilmittelwerbe-gesetz], as amended on 25 October 1994, art. 3)</p> <p>No. 7)</p> <p>on Drugs and Healthcare, art. 11 No. 12, art. 2)</p> <p>Healthcare, art. 11 No. 13)</p>
<p>3.4 VEHICLES</p>	
<p>3.4.1 General rules</p> <p>3.4.2 Advertising</p> <p>3.4.2.1 In general</p> <p>3.4.2.2 Per media</p>	<p>Minimum ages for getting a driving licence:</p> <ul style="list-style-type: none"> - Cars (category C) and motorcycles over 50 ccm (category A): 18 years - Motorised bikes up to 50 ccm (category M) or 125 ccm and 11 kW (category A1): 16 years <p>(previously Traffic Admission Code [Strassenverkehrszulassungsordnung], art. 1-15, replaced by Driving Licence Decree [Fahrerlaubnisverordnung] of 1 May 2000, art. 10 para. 1 No. 3, 4, art. 6 para. 1)</p>

<p>Television/radio</p> <p>Others</p>	
3.5 EDUCATION	
<p>3.5.1 General rules</p> <p>3.5.2 Advertising</p> <p>3.5.2.1 In general</p> <p>3.5.2.2 Per media</p> <p>Television/radio</p> <p>Others</p>	Education is subject to the law of the individual states
3.6 TOYS AND CHILDRENS THINGS	
<p>3.6.1 General rules</p> <p>3.6.2 Advertising</p> <p>3.6.2.1 In general</p> <p>3.6.2.2 Per media</p> <p>Television/radio</p> <p>Others</p>	There are no specific rules on toys
3.7 FINANCIAL SERVICES	
<p>3.7.1 General rules</p> <p>3.7.2 Advertising</p> <p>3.7.2.1 In general</p> <p>3.7.2.2 Per media</p> <p>Television/radio</p> <p>Others</p>	There are no specific rules on financial services

3.8 LEISURE	
3.8.1 General rules	regulations imposed by a national federation
3.8.2 Advertising	
3.8.2.1 In general	
3.9.2.2 Par support	
Television/radio	
Others	
3.9 ARMS/VIOLENCE	
3.9.1 General rules	Persons under the age of 18 may not purchase fire arms (Fire Arms Act [Waffengesetz] as amended on 25 October 1994, art. 30 para. 1 sentence 1 No. 1, art. 28 para. 1)
3.9.2 Advertising	Persons under the age of 18 may not carry fire arms (Fire Arms Act, art. 36 para. 1 sentence 1, art. 30 para. 1 sentence 1 No. 1, art. 35 para. 1)
3.9.2.1 In general	
3.9.2.2 per media	
Television/radio	
Television	
Others	
3.10 POLITICS	
3.10.1 General rules	
3.10.2 Advertising	
3.10.2.1 In general	
3.10.2.2 Per media	
Television/radio	
Others	
3.11 TELECOMMUNICATIONS	
3.11.1 General rules	
3.11.2 Advertising	
3.11.2.1 In general	
3.11.2.2 Per media	
Television/radio	
Others	

PROPOSALS OF LAW

Proposal of the Guidelines of the Media Authorities [...] of 26/27 June 2000:

[being in force]

- Announcements of locked programs outside the time restrictions can only be made in a locked way (para. 3.1)

SELF-REGULATION

GENERAL RULES

The German advertising industry implicitly adheres to the ICC Code.

Rules of Conduct of the German Advertising Council concerning Advertising with and in the Presence of Children on Radio and Television (Verhaltensregeln des Deutschen Werberats für die Werbung mit und vor Kindern in Hörfunk und Fernsehen) of 1998:

- * Advertising should not contain presentations of children about a product that are not in accordance with their natural utterings
- * Advertising should not contain direct offers to children either to buy or consume a product, or to cause others to buy a product.
- * Advertising should not abusively take advantage of the particular confidence that children regularly have in certain persons

1989 in the wording of 30 June 1997)

Frontiers of 3 October 1989 as amended)

* Additionally, all regulations of the Treaty on Broadcasting, art. 7 I 2, 3 and of Guidelines on Advertising [...], para. 4/(1), (2), (3) are contained in the Rules of Conduct [...], except for Guidelines on Advertising [...], para. 4/(1), No. 6 and (3),

SPECIAL PROVISIONS & CODES OF CONDUCT

ALCOHOL
TOBACCO
DRUGS/HEALTH
VEHICLES
EDUCATION
LEISURE
FINANCIAL SERVICES
ENTERTAINMENT
ARMS/VIOLENCE
POLITICS
TELECOMMUNICATIONS

rules on the advertising and teleshopping for alcoholic beverages (1992)

Statement on the advertising for tires (1974)

OTHER ADVERTISING TECHNIQUES (LEGISLATION AND SELF-REGULATION)

DIRECT MARKETING

The German Direct Marketing association (DVV) draw up 2 self-regulatory codes: the telemarketing code and the Direct Marketing Association Listbrakers Code

PROMOTIONAL SALES PRACTICES

Free gifts or any competitions or other aleatory means, which could deceit the addressed children or use otherwise their inexperience, are prohibited for advertising aimed at children and young persons

SPLIT SCREEN

programmes for children.

VIRTUAL ADVERTISING

is allowed (with preconditions - no specific rules re minors)

SCHOOLS

schoolbooks as well as advertising for addictive substances (alcohol and tobacco) remain strictly forbidden. Other marketing activities in schools are prohibited.

REGLES PAR SECTEUR