

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

DEFINITIONS

Minor	A minor is an individual who has not fully reached the age of 18 years (Article 12 of the Spanish Constitution of 1978 and Article 315 Civil Code).
Majority	Majority is fixed at fully 18 years (Article 12 of the Spanish Constitution of 1978 and Article 315 Civil Code).
Legal entitlement to contract	Minors are incapable of contracting (Article 1263 Civil Code).
Protection of youth	<p>Andalusia: Act 1/1998, of 20 April 1998, on Rights and Attention to Minors; -Aragon: Act 10/1989, of 14 December 1989, on Protection of Minors; -Asturias: Act 1/1995, of 27 January 1995, on Protection of Minors; -Balearics: Act 7/1995, of 21 March 1995, on Protection of Abandoned Minors; -Canary Islands: Act 1/1997, of 7 February 1997, on Integral Attention to Minors; -Castilla-La Mancha: Act 3/1999, of 31 March 1999, on Protection of Minors;</p> <p>and Teenagers. All these provisions have recently been compiled in the "Code of Family" passed by Act 9/1998, of 15 July; -Extremadura: Act 4/1994, of 10 November, on Protection and Attention of Minors; -Galicia: Act 3/1997, of 9 June 1997, on Family, Infancy and Adolescence; -La Rioja: Act 4/1998, of 18 March 1998, on Minors; -Madrid: Act 6/1995, of 28 March 1995, on Guarantees of the Rights of the Infancy and Adolescence;</p> <p>Other Autonomous Communities that have not enacted specific regulation on minors, but have adopted legislation on social matters that applies to minors: Cantabria (Act on Social Action of 27 May 1982), Castilla y León (Act on Social Action and Social Services of 28 December 1988), Navarra (Act on Social Services of 30 May 1983) and Basque Country and (Act on Social Services of 20 May 1982).</p>
Criminal protection	Articles 187 and 226 to 232 Criminal Code penally sanction persons who, respectively: (i) facilitate, instigate or foster the prostitution or participation of minors in pornographic or exhibitionist shows, (ii) abandon or use a minor for begging.

LEGAL PROVISIONS

GENERAL PROVISIONS

1.1. All supports

Provisions that impose on the media the obligation not to address advertising to minors that could harm them from a moral or physical point of view:

General Act 34/1988, of 11 November 1988 on Advertising (Article 3).

Act 1/1996, of 15 January 1996, regarding the juridical protection of minors (Article 4.3).

Act 1/1998, of 20 April 1988, on Rights and Attention to Minors of Andalusia (Article 6 and Article 7).

Act 1/1997, of 7 February 1997 on Integral Protection of Minors of Canary Islands (Articles 34 to 38).

Act 3/1999, of 31 March 1999, on Protection of Minors of Castilla-La Mancha (Article 12.3) .

Act 8/1995, of 27 July 1995 of Attention and Protection of Children and Teenagers of Catalonia (Articles 33 to 38):.

Act 3/1997, of 9 June 1997, on Family, Infancy and Adolescence of Galicia (Article 8 i and j).

Act 6/1995, of 28 March 1995, on Guarantees of the Rights of the Infancy and Adolescence of Madrid (Articles 32 to 40).

Act 4/1998, of 18 March 1995, of Minors of La Rioja (Articles 27 to 29).

Act 12/1984, of 28 December 1984, approving the Statute of the Consumer in Galicia (Article 33).

2. Through media

TELEVISION

Principles

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

Art. 10 TVWF

Art. 11 TVWF: insertion of advertising Children’s programmes must not be interrupted by advertising or teleshopping, unless their duration exceeds 30 minutes, in which case the general rules

Art. 12 TVWF: human dignity

Art. 13 TVWF: tobacco

specifically addressed to minors and that this advertising can only appear on TV after 9:30 pm.

Art. 14 TVWF: medicinal products

Art. 15 TVWF: alcohol

Advertising of alcoholic beverages must always respect the content of the General Advertising Act 34/1988 and, apart from that, the following principles: (i) not to be addressed specifically to minors or show minors consuming alcoholic drinks; (ii) not to link the consumption of alcohol to an improvement of physical strength, to the driving of vehicles or give the impression that the consumption of alcohol contributes to social or sexual success; (iii) not to suggest that alcoholic drinks have therapeutical properties or a stimulant or sedative effect or that they contribute to solve conflicts; (iv) not to foster the immoderate consumption of alcoholic drinks or offer a negative image of soberness (v) not to underline as a positive quality the high percentage of alcohol in alcoholic drinks

specifically addressed to minors and that this advertising can only appear on TV after 9:30 pm.

Special protection of minors

Art. 16 TVWF: advertising and minors:

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

Art. 22 TVWF: protection of minors and public order

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

minors

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

<p>Sponsoring (Art. 17 TVWF)</p>	<p>Sponsorship is considered by the Spanish legislation as a kind of advertising, since Article 2 of General Act 34/1988, of 11 November 1988 on Advertising defines “advertising” as “all kind of communication carried out by an individual or a legal person, private or public, in a commercial, industrial, craft or professional activity with the aim of fostering, directly or indirectly, the trade of goods, real estates, services, rights and obligations”. In fact, sponsorship is regulated in Article 24 of this Act as a kind of advertising contract. For this reason, all the issues we have exposed regarding advertising must also be understood to apply to sponsorship</p> <p>As regards specifically sponsorship of TV programmes, Article 3 f) Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, as amended by Act 22/1999, of 7 June 1999 defines this activity as “the contract by which a physical or legal person (the sponsor), having no radio broadcasting activity or production of audio-visual works, contributes to the financing of a TV programme produced by another legal or physical person, with the aim of fostering the name, brand, image, activities o realisations of the sponsor”. Apart from respecting all the provisions regarding advertising and teleshopping, the sponsorship of TV programmes have to abide by the specific rules contained for this activity in Article 15 of Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, amended by Act 22/1999, of 7 June 1999</p>
<p>Teleshopping (Art. 19 TVWF)</p>	<p>Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, amended by Act 22/1999, of 7 June 1999. Article 3 h) defines teleshopping as “the broadcasting of direct offers to the public for the purchase or hiring, against payment, of all kind of goods, services or rights”.</p> <p>Teleshopping of, among other products, tobacco and alcoholic drinks with an alcohol level of 20 % or more is forbidden</p> <p>Teleshopping of the remaining alcoholic drinks is allowed, although, in any case, it must never be addressed specifically to minors</p> <p>Article 16 establishes the following rules aiming to protect minors against illicit teleshopping and advertising: Teleshopping must not contain images or messages that might morally or physically damage minors. In particular it must not incite minors to buy a product or service abusing their inexperience or credulity, and it must not either encourage minors to persuade parents to buy those products or services. Teleshopping must not exploit the special confidence of minors on their parents and must not show minors in dangerous situations, without a justified reason</p>
<p>RADIO</p>	
	<p>9:30 pm</p> <p>TV advertising must not contain images or messages that might morally or physically damage minors. In particular it must not incite minors to buying a product or service abusing from their inexperience or credulity, and it must not either persuade parents to buy those products or services. TV advertising must not exploit the special confidence of minors on their parents and must not show children in dangerous situations, without a justified reason (Article 16 of Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, as amended by Act 22/1999, of 7 June 1999).</p>
<p>PRINT</p>	
<p>POSTERS</p>	
<p>CINEMA</p>	
<p>INTERNET</p>	

SPECIFIC LEGAL PROVISIONS

2.1. Alcohol

2.1.1. General rules

Prohibition of sale of alcoholic drinks to minors:

- Act 1/1997, of 7 February 1997 of Integral Protection of Minors of Canary Islands (Article 32).
- Act 9/1998, of 22 July 1998, on Prevention, Assistance and Social Insertion in the Field of Drug Addiction of Canary Islands (Article 20).
- Act 2/1995, of 2 March 1995 on Prohibition of Alcoholic Drinks to Minors of Castilla-La Mancha (Articles 1 to 4).
- Act 6/1995, of 28 March 1995, of Guarantees of the Rights of the Infancy and Adolescence of Madrid (Article 31).
- Act 5/1990, of 19 December of 1990, of Asturias on the Prohibition of the Sale of Alcoholic Drinks to Minors under 16 (Article 6)
- Act 10/1991, of 16 March 1991 on Prevention and Limitation of the Consumption of Alcoholic Drinks by Minors of Navarra (Article 1).
- Act 20/1985, of 25 July 1985 on Prevention and Assistance in the field of Drug Addiction of Catalonia, as modified by Act 10/1991 of 10 May 1991 (Article 17).
- Act 4/1997, on Prevention Measures in the Field of Sale and Advertising of Alcoholic Drinks of Extremadura (Article 2).
- Act 2/1996, of 8 May 1996, on Drugs of Galicia (Article 13).
- Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the Field of Drug Addiction of the Basque Country (Article 20.1.a).
- Act 3/1997, of 16 June 1997, on Drug Addictions of Valencia (Article 18).

2.1.2. Regulations regarding advertising

A. General rules

Prohibition to address the advertising of alcoholic drinks to minors:

- General Act 34/1988 on Advertising (Article 8.5).
- Act 9/1998, of 22 July 1998, on Prevention, Assistance and Social Insertion in the Field of Drug Addiction of Canary Islands (Article 19).
- Act 2/1995, of 2 March 1995 of Prohibition of Alcoholic Drinks to Minors of Castilla-La Mancha (Articles 5 to 7).
- Act 3/1995, of 9 March 1995, on the Statute of the Consumer in Castilla-La Mancha (Article 23.2).
- Act 3/1994, of 29 March, on Prevention, Assistance and Social integration in the field of Drug Addiction of Castilla-León (Article 20).
- Act 5/1990, of 19 December of 1990 on the Prohibition of the Sale of Alcoholic Drinks to Minors under 16 of Asturias (Article 10)
- Act 5/1997, of 6 October 1997, on Prevention, Assistance and Social Integration in the Field of Drug Addiction of Cantabria (Article 20.1.b).
- Act 20/1985, of 25 July 1985 on Prevention and Assistance in the field of Drug Addiction of Catalonia, as modified by Act 10/1991 of 10 May 1991 (Article 16).
- Act 10/1991, of 16 March 1991 on Prevention and Limitation of the Consumption of Alcoholic Drinks by Minors of Navarra (Article 6)
- Act 4/1997, on Prevention Measures in the Field of Sale and Advertising of Alcoholic Drinks of Extremadura (Article 6).
- Act 6/1997, of 22 October 1997, on Prevention, Assistance and Social Integration in the field of Drug Addiction of Murcia (Article 12).
- Act 10/1981, of 10 November 1981, passing the Statute of Consumer of the Basque Country (Article 31).
- Act 18/1998, of 25 June 1998, on Prevention, Assistance and Insertion in the field of drug addiction of the Basque Country (Article 13).
- Act 3/1997, of 16 June 1997, on Drug Addictions of Valencia (Article 15. a)).
- Decree 57/1998, of 28 April 1998, of the Government of Valencia regarding the inclusion of warning messages in the advertising of alcoholic drinks and tobacco (Article 3).
- Order of the Ministry of Education of 7 November 1989 by which the selling of tobacco and alcoholic drinks in schools and high schools is forbidden (Article 1).

B. Per medium	
Television	<p>General Act 34/1988 on Advertising Article 8.5 forbids advertising on TV of alcoholic beverages that contain more than 20 degrees</p> <p>34/1988, General Advertising Act and, apart from that, the following principles: (i) not to be addressed specifically to minors or show minors consuming alcoholic drinks; (ii) not to link the consumption of alcohol to an improvement of physical strength, the driving of vehicles or give the impression that the consumption of alcohol contributes to social or sexual success; (iii) not to suggest that alcoholic drinks have therapeutical properties or a stimulant or sedative effect or that they contribute to solve conflicts; (iv) not to foster the immoderate consumption of alcoholic drinks or offer a negative image of soberness (v) not to underline as a positive quality the high level of alcohol percentage in alcoholic drinks</p> <p>Television of 3 May 1988 states that private TV broadcasters are subject to the same regulations concerning the advertising of alcoholic drinks. These rules stipulate that the advertising of alcohol must not specifically be addressed to minors and that this advertising can only appear on TV after 21:30</p>
Radio	<p>beverages cannot be addressed to minors or feature minors consuming alcoholic drinks</p> <p>Advertising of alcohol and tobacco in RTVE must not be specifically addressed to minors and can only be broadcast after 9:30 pm</p> <p>Advertising of alcoholic drinks on radio channels established in Galicia is forbidden</p>
2.2. Tobacco	
2.2.1. In general	<p>Prohibition of sale and consumption of tobacco:</p> <p>Royal Decree 192/1988 of 4 March 1988 on limitation in the sale and use of tobacco (Articles 4 and 7).</p> <p>Order of the Ministry of Education of 7 November 1989 by which the selling of tobacco and alcoholic drinks in schools and high schools is forbidden (Article 1).</p>
2.2.2. Rules regarding advertising	
A. General rules	<p>Prohibition of the advertising of tobacco directly addressed to minors:</p> <p>General Act 34/1988 on Advertising Article 8.5 forbids the advertising of tobacco in the premises where selling or consuming tobacco is not permitted</p>
B. Per media	
Television	<p>General Act 34/1988 on Advertising. Article 8.5 forbids the advertising of tobacco on TV</p> <p>Royal Decree 1100/1978, of 12 May 1978, on advertising of tobacco and alcoholic drinks in RTVE.</p>
Radio	<p>Resolution of the General Directorate for the Media of 17 April 1990 that approves the rules for the admission of advertising in RTVE (Radio Televisión Española).</p>

2.3. Drugs and health	
2.3.1. General rules	
2.3.2. Rules regarding advertising	
A. General rules	“Ethical” Pharmaceuticals that can only be consumed if prescribed by a doctor cannot be advertised. In any case, the advertising of the “EFP” cannot be exclusively, or mainly, addressed to minors (Article 6.1.e of Royal Decree 1416/1994).
B. Per media	
Television/radio	accordance with the specific regulation on the matter
2.4. Vehicles	
2.4.1. General rules	Minimum age to drive vehicles: 16 years for motorised bicycles; 18 years for motorcycles and motorised vehicles; 21 years for motorised vehicles for the transport of persons and containing at least 9 seats
2.4.2. Regulation regarding advertising	
A. General rules	Royal Decree 339/1990, of 2 March 1990, that approves the Act on Circulation of Vehicles: prohibits the advertising of vehicles that encourages excessive speed or situations of danger
B. Per media	
Television/radio	
2.5. Education	
2.5.1. General rules	Act 1/1990 establishing the General Framework of the Educational System in Spain: The minor is subject to schooling during a period of 10 years, between 6 to 16 years of age Act 8/1985, of 3 July 1985, on Right to Education (Article 6) and Royal Decree 732/1995, of 5 May 1995. Order of the Ministry of Education of 7 November 1989 by which the selling of tobacco and alcoholic drinks in schools and high schools is forbidden (Article 1).
2.6. Toys and objects for children	
2.6.1. General rules	Definition of a toy: Royal Decree 880/1990 regarding safety rules for toys (Article 1). colour, flavour, presentation, labeling, etc that may induce consumers, “in particular children” to think wrongly that the product is suitable for consumption
2.6.2. Rules regarding advertising	
A. General rules	guarantees of the toy or in relation to the necessary capability of the child to use that toy without suffering any harm

<p>B. Per media</p> <p>Radio Television</p>	<p>Advertising of toys in TVE must not incite children to fight, It must specify the age of the children the toy is intended for and must show the toy in a way that allows the spectator to have a real impression about its size</p>
<p>2.7. Financial services</p>	
<p>2.7.2. Rules regarding advertising</p>	
<p>A. General rules</p>	<p>Act 26/1988, of 29 July 1988, on the Discipline and Intervention of Banks (Article 48).</p> <p>Order of the Ministry of Economy of 12 December 1989 on advertising and information about interest rates: the advertising of operations, services and financial products carried out by Banks by any means must be previously authorized by the Bank of Spain</p>
<p>2.8. Leisure</p>	
<p>2.8.1. General rules</p>	
<p>2.8.2. Rules regarding advertising</p> <p>A. General rules</p>	<p>Act 1/1982 of 24 February 1982: prohibits the access of minors to cinemas where pornographic or violent films are exhibited (the so-called “X Cinemas”)</p> <p>Cinemas must clearly show the age-qualification of the films. It is important to stress that age-qualification of films is only recommended, not compulsory. In consequence, minors can have access to all film exhibitions (in cinemas or in video), with the only exception of “X- films” (pornographic films)</p> <p>The age-qualification of films is made up by the following six categories: (i) “Specially recommended for children”; (ii) “For all ages”; (iii) “Not recommended for children under 7”; (iv) “Not recommended for children under 13”; (v) “Not recommended for people under 18” and (vi) “X-film”</p> <p>Royal Decree 2816/1982, of 27 August 1982 allows governmental and municipal authorities to, in exceptional circumstances, prohibit the entrance of minors to public shows, provided this measure is necessary to guarantee an adequate protection of children and youth</p> <p>Royal Decree 2748/1977, of 6 October 1977, that rules the regime of certain publications (Article 1).</p>
<p>B. Per media</p> <p>Television</p> <p>radio</p> <p>Print</p> <p>Posters</p> <p>Cinema</p> <p>Internet</p>	<p>Decree 3449/1977 of 16 December 1977, that governs the exterior advertising of public shows (Article 1).</p> <p>Royal Decree 1189/1982, of 4 June 1982, on Regulation of inappropriate or dangerous activities for minors.</p> <p>Pornographic publications must necessarily include clearly the indication “Adults Only”.</p> <p>The publications that show images that can be inappropriate or dangerous for minors cannot be shown publicly in kiosks or shop windows</p> <p>The exterior advertising of public shows like cinemas, theatres (i.e., the advertising of these shows in the street) must not include images or scenes that are inappropriate or dangerous for minors</p> <p>The exterior advertising of public shows like cinemas, theatres (i.e., the advertising of these shows in the street) must not include images or scenes that are inappropriate or dangerous for minors</p>

2.9. Arms/violence	
2.9.1. General rules	A licence for having a firearm can only be granted to persons 18 or older. Exceptionally, minors can obtain a special authorization to use certain firearms provided that they fulfil certain conditions
2.9.2. Rules regarding advertising	
A. General rules	the Regulation of Firearms expressly forbids the advertising of certain kind of items, such as personal defence sprays or semi-automatic firearms
B. Per media	
Television/radio	Act 25/1994, of 12 July 1994, that implements Directive “Television Without Frontiers”, as amended by Act 22/1999, of 7 June 1999 (Article 17).

PROPOSALS OF LAW

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

Proposal to modify the Criminal Code, the Civil Procedural Code and the Civil Code in order to fight against the illicit retention of minors. This proposal was submitted by the Socialist Group on 5 April 2000 and is now being discussed in the Commission of Justice of the Parliament.

Commission of Justice of the Parliament.

SELF-REGULATION

GENERAL RULES

1. General rules	Code of Advertising Conduct. This Code was passed on 14 April 1999 by the Asociación de Autocontrol de la Publicidad (AAP), the Spanish Advertising Self Regulation Association (Article 28).
2. Rules per media	
Television	Code of Conduct concluded by the Ministry of Education, the Autonomous Communities and the TV Channels on 26 March 1993 regarding the protection of minors against certain contents of TV programming.
Internet	Ethical Code on Advertising in Internet approved by the Asociación de Autocontrol de la Publicidad on 14 April 1999 (Article 9). Ethical Code of Data Protection in Internet passed by the “Asociación Española de Comercio Electrónico” (Spanish E-mail Commerce Association) (Articles 13 to 18).
3. Classifications per sectors	
3.1. Alcohol	Code of Conduct of the “Asociación Española para la Autorregulación de la Publicidad de Bebidas Alcohólicas” (Article 1). Code of Self Regulation for the Advertising of Beer between “Cerveceros de España” and “Unión de Consumidores de España” (UCE), a well-known Spanish Consumer Union.
3.2. Drugs and health	Code of Conduct passed by the “Asociación Nacional de Especialidades Farmacéuticas Publicitarias” (the Spanish Association of Laboratories that market drugs that may be advertised) (Article 12).
3.3. Toys	Code of Conduct regarding advertising for children signed between the Association of Toy Manufactures and the Unión de Consumidores de España (UCE).
3.4. Detergents	Spanish Association of Detergent Manufacturers) (Article V.b).

OTHER ADVERTISING TECHNIQUES

1. Direct marketing

2. Promotional sales practices

Act 3/1991, of 10 January 1991, on Unfair Competition. Article 8

Act 7/1996, of 15 January 1996, ruling Retail Trade (Articles 32 to 34).

Code of Conduct regarding advertising for children signed between the Association of Toy Manufactures and the Unión de Consumidores de España (UCE). Article 6

HANDLING OF COMPLAINTS

1. Self-discipline	Jurado de la Publicidad from the Asociación de Autocontrol de la Publicidad
2. Administration proceedings	Principles of Royal Decree 1398/1993 establishing the rules to be followed, with general character, by the Administration in the administrative proceedings
3. The judicial procedure: action for cessation and rectification	General Act 34/1988, of 11 November 1988, on Advertising (Article 25 to 33).

REGLES PAR SECTEUR