

Advertising to children in France

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Continuing our series of legal briefings, Michel Béjot and Barbara Doittau outline French law relating to advertising to children and explain the comprehensive self-regulatory system that maintains advertising standards in France.

CHILDREN ARE A key target for advertisers as brand preferences often remain unchanged throughout life. Increasingly considered as potential consumers, children have ever larger allowances and have a significant influence on their parents' spending habits. French advertisers have spent as much as 150 million a year on advertising to children under the age of 12 and this figure is rising, particularly for food advertising.

Case-law relating to advertising to children is scarce in France. In general, French advertising regulations are quite relaxed compared with other European countries, such as Sweden. Rather than a set of general principles, specific rulings on advertisements are made on a case-by-case basis. It has been debated whether to increase the legal controls on advertising to children in France, but as yet this is not planned.

However, advertising in France is governed by an efficient self-regulatory system which ensures children's advertisements meet high standards and rarely provoke complaint from the authorities or consumers. It is felt the current legal system allows responsible advertising practices without requiring a frequent, and potentially unnecessary, intervention of the law. There are, however, some areas subject to specific regulations.

Regulated areas

Regulated areas include pornographic, tobacco and alcohol advertising. These rulings are briefly explained in the subsections below. Although

such products are for adults, French law includes some specific restrictions on marketing them to children.

Pornography

The French criminal code makes it illegal, on pain of up to three years imprisonment and a fine of up to 75,000, to 'make, carry, broadcast ... or commercialise a message ... of a pornographic or violent nature ... that may be viewed by a person underage.' This offence can be aggravated if the message is transmitted by telecommunications, such as on television or the radio.

Tobacco and cigarettes

The French *Loi Evin* of 1991 prohibits any direct or indirect advertising for tobacco products, and prohibition is strictly enforced. Although advertising to children is not specifically referred to in the *Loi Evin*, this ban on tobacco advertising would encompass any campaign or promotional offer aimed at children.

Non-compliance with the *Loi Evin* is sanctioned by a fine of up to 75,000 or up to 50% of the expenditure on the advertisement resulting in the infringement.

Alcohol

It is prohibited in France to encourage underage people to consume alcoholic drinks 'customarily and excessively'. Non-compliance with the code results in up to two years imprisonment and a fine of up to 45,000. If the advertising is aimed

at children under 15 or within a school, the fine may increase to 75,000.

It is prohibited to promote alcoholic beverages using any medium not listed in the *Loi Evin*. Therefore it is permitted to advertise alcohol on billboards, for example, but not on television or the internet which are excluded from the list.

The *Loi Evin* also prevents advertising for alcoholic drinks in publications aimed at children. Finally, the French Code *des débits de boissons* further specifies that alcoholic beverages should not be advertised on children's products.

Other products

There are a few other areas where advertising to children is subject to legal restrictions. For example, direct-to-consumer advertising for children's medicines is not permitted in France, and advertising of infant food is also regulated. Advertisements for computer games are subject to restrictions, and must include certain mandatory information. Finally, it is prohibited to promote religious sects to children by any means.

Media regulations

As well as these regulations on specific products, French law also includes restrictions relating to the media used for advertising.

Television

In 1992 a new law came into force to ensure advertisements on television do not take advantage of children's inexperience and immaturity. Advertisements on television should *not*:

- urge minors to purchase products or services by exploiting their inexperience or credulity
- urge minors to persuade their parents or any third party to buy the product advertised

- exploit or affect the confidence which children have in their parents, teachers or other adult role models
- present children in a dangerous situation without reason.

These provisions are in fact very similar to the codes maintained by the *Bureau de Vérification de la Publicité (BVP)*, the French advertising self-regulatory body.

Internet

Advertising on the internet is still something of a grey area in French law. Although in theory the restrictions on advertising of alcohol, tobacco and other regulated products should encompass advertising on the internet, in practice this has not always been the case. However, the French government is soon to vote on a new law regulating internet practices, which could make the rules for advertising on the internet clearer.

Magazines

Children's publications are subject to a number of regulations in French law. Advertisements in children's magazines must not depict anything dangerous to children. Certain subjects are not permitted in children's publications, for example any advertisement, illustration or story that praises lies, hatred, or that could inspire racial discrimination.

In addition, French law restricts the advertising of any magazine or newspaper with content unsuitable for, or that could endanger, young children. It is also against the law to advertise immoral publications in children's magazines.

Billboard advertising

Billboard advertising is not subject to any specific regulations relating to children. However, French mayors have the power to issue regula-

tions to protect morality in their municipality. A mayor may therefore ban advertisements that, in his or her opinion, jeopardise law and order. Some mayors have used this power to prohibit billboard adverts for telephone sex or similar services.

Other marketing techniques

Direct marketing is subject to government regulation, although there are no extra restrictions on direct marketing of children's products.

Competitions and other similar promotions are used widely by French advertisers. There are no specific legal restrictions for children's competitions, but if the competition is for adults, and the prize unsuitable for a child, then organisers will often require authorisation from a parent or legal guardian for entry.

Premium sales are a popular method of marketing in France. This technique is subject to a number of strict regulations, in particular with respect to the premium value.

Advertising and promotions in schools are prohibited in France. However, several companies have successfully promoted products in schools by producing educational material.

Self-regulation in French advertising

In addition to the laws already outlined, advertising in France is controlled by self-regulation. The BVP is a reactive self-regulation body, able to respond swiftly when facing new issues, such as the recent debate about obesity and eating habits.

The BVP reviews all television advertisements before broadcast. In the case of other media, such as in print or on the radio, the BVP gives its opinion – if necessary – after an advertisement is published or broadcast, unless the advertiser has sought advice beforehand, which is optional.

If an advertiser does not comply with a BVP decision, the BVP may request that the advertisement is withdrawn. Further sanctions are formal warnings and adverse publicity. If applicable, the advertiser or agency may also lose its membership of the BVP; this has a significant deterrent effect.

The BVP produces recommendations on controversial advertising issues which constitute a professional code of ethics. These recommendations are based on the principles of the Code of the International Chamber of Commerce.

The BVP has actively focused on advertising to children, regularly updating or replacing recommendations.

BVP recommendations

The main principle behind the BVP recommendations for children's advertising is that advertisers should not take advantage of children's credulity and inexperience. The BVP insists advertisers consider the following:

- *Identification*: an advertisement should be easily identifiable as such by children.
- *Social responsibility*: an advertisement should not promote behaviour which is anti-social, illegal, goes against citizenship values, damages the environment or is disrespectful of others. The BVP recommendations also state that advertisements should not undermine the authority of adults.
- *Dignity and decency*: consideration of dignity is currently an important issue in French statutes and case-law. Principles of dignity and decency should be seriously taken into account when creating an advertisement.
- *Violence*: advertisements should not show acts of violence, make violence seem ordinary or induce children to reproduce aggressive or violent behaviour.

- *Safety*: advertisements should not encourage children to put themselves in a dangerous situation.
- *Fair advertising*: in addition to the general regulations applicable in France on fair advertising, the BVP recommendation states that advertisements aimed towards children should not be misleading and should take their age and immaturity into account.
- *Education of the young consumer*: the BVP recommends that an advertisement should not suggest that the possession or use of a product may give children physical, social or psychological superiority over those who do not own or use such a product. Advertisements should not give a judgement on the price of a product (for example, 'this only costs ...') and an advertisement should not suggest that the purchase of a product is essential.
- *Interactive advertising*: when an advertisement invites children to spend money, for instance by calling a telephone number, it should explicitly call for parental intervention.
- *The internet*: advertisements should not encourage children to set meetings, whether online or offline, with people they do not know.
- *Eating habits*: the BVP recently addressed the issue of children's eating habits and urged advertisers to comply with a number of rules. In particular, advertisers should not depict and promote snacking, compulsive eating, excessive eating and an inactive way of life. In addition, advertisements should not give the wrongful impression that food products enable children to have better school or sports results.

This recent extension of the recommendation to take account of a potential link between childhood obesity and food advertising shows the ability of the current self-regulatory system to react quickly to changing circumstances. To date, France is the only European country to amend its advertising code in this way.

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