



**Comparative study concerning the impact of control measures on
the televisual advertising markets in European Union Member
States and certain other countries**

CZECH REPUBLIC

LEGAL REPORT

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INTRODUCTION

Advertising and sponsoring are regulated by two laws in the Czech Republic.

The first one – Act no. 231/2001 of the Coll., on Operation of Radio and Television Broadcasting, as subsequently amended (hereinafter referred to as the “**Media Act**”),¹ **deals with the regulation of radio and television advertising, teleshopping and sponsoring.**

The second one – Act no. 40/1995 of the Coll., on Regulation of Advertising and Change and Amendment of Act no. 468/1991 of the Coll., on Operation of Radio and Television Broadcasting, as subsequently amended (hereinafter referred to as the “**Advertising Act**”),² **is focused on regulation of advertising in general. It sets special rules for advertising for specific products - e.g. tobacco, medicine, guns and ammunition, food and baby food etc.** With respect to the Media Act, the Advertising Act has a supplementary function, i.e. it applies to the extent which is not regulated by the Media Act.

The current Media Act dated May 17, 2001, which came into force on July 4, 2001. It substituted for the previous Act no. 468/1991 of the Coll., on Operation of Radio and Television Broadcasting, as subsequently amended. The reasons for new regulation were mainly as follows:

- Necessary transposition of the EC directive no. 89/552/EEC, amended by the EC directive no. 97/36/EC (hereinafter referred to as the “**Directive**”);
- Necessary transposition of the European Convention on Trans-border Television, signed by the Czech Republic in May 1999 and ratified after the coming into force of the Media Act;
- Stipulation of more effective regulation of the procedure before the Council on Radio and Television Broadcasting (hereinafter called the “**Media Council**”), the supervisory body in the area of radio and television broadcasting;
- More detailed prohibition of the assignment of the license needed to broadcast;
- Inclusion of the possibility to prolong the duration of the license to broadcast;
- Increasing the sanctioning powers of the Media Council;
- Increasing the protection of information plurality mainly by prohibiting cross ownership and concentration in media;
- Achieving the compatibility between regulations in the Media Act and those in the Advertising Act;
- Inclusion of the rules on support of European independent audiovisual production;

¹ In Czech: „Zákon č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání, ve znění pozdějších předpisů”;

² In Czech: „Zákon č. 40/1995 Sb., o regulaci reklamy a o změně a doplnění zákona č. 468/1991 Sb., o provozování rozhlasového a televizního vysílání, ve znění pozdějších předpisů”;

- Solution of problems originated due to the partial transfer of powers in frequency spectrum administration from the telecommunication regulator to the Media Council.

The regulation of television advertising, teleshopping and sponsoring is contained in Chapter V, Part IV, Articles 48 and the following of the Media Act. The rules correspond in general to those of the Directive.

As written above, the Advertising Act has mainly a supplementary function with respect to the television advertising regulation. It regulates advertising with regard to some specific products (for more details see Part IX hereof).

It is important to mention that some rules of the Media Act on advertising differentiate between a so called "statutory broadcaster" and a "licensed" one (the relevant rules are mentioned hereunder). Czech Television is the statutory television broadcaster pursuant to Act no. 483/1991 of the Coll., on Czech Television, as subsequently amended³

The statutory broadcasters are more restricted with respect to the volume of advertising they are entitled to broadcast. On the other hand, they are entitled to benefit from a compulsory fee paid by all persons (natural or legal) in possession of a TV set or radio set. This is to ensure that the statutory broadcasters can fulfil their public-related functions and are not dependent on proceeds from advertising. Currently, the obligatory fee is CZK 75 (EUR 2.5) for Czech Television and CZK 37 (EUR 1.2) for Czech Radio.

A licensed television or radio broadcaster is entitled to broadcast only upon the condition of having been awarded a broadcasting license. The administrative process of awarding the licenses is regulated by the Media Act, with the Media Council being the responsible state authority.

In the Czech Republic there are now:

- 2 nation-wide licensed television broadcasters broadcasting through ground radio transmission facilities and about thirty such local broadcasters;
- 5 nation-wide licensed television broadcasters broadcasting through satellites;
- numerous local licensed television broadcasters broadcasting through cable.

The Media Council has the function of supervisory body in the area of television and radio broadcasting. Should the rules regarding television or radio broadcasting be breached and remedied in a given grace period, the Council shall impose a fine of CZK 5,000 (EUR 160) to CZK 2,500,000 (EUR 80,000) (article 60, paragraph 1, letter 1) of the Media Act). Its decisions can be reviewed by the Czech courts. Given the fact that the current Media Act has been in force for less than three years, only a few relevant court decisions have been issued so far. Most of the issued court decisions concern either the licensing procedures before the Media Council or fines

³ In Czech: „Zákon č. 483/1991 Sb., o České televizi, ve znění pozdějších předpisů“;

imposed by the Media Council for infringing the prohibition to include in the programme during the period between 6.00 a.m. and 10.00 p.m. any programme unit or announcement which might endanger the physical, mental or moral development of minors.

I. DEFINITIONS

- Television broadcasting

Television broadcasting" shall mean primary dissemination of original television programmes and teletext, both intended to be received by the public in encoded or unencoded form, through ground (radio) transmission facilities (hereinafter only "transmitters"), cable systems and satellites, both in analogue and digital form.

Television (and radio) broadcasting shall not mean

- *providing of communication services focused on delivery of information or other messages on the basis of individual requirements;*
- *operating of telecommunication equipment and providing of telecommunication services pursuant to specific legal regulation;*
- *broadcasting of (radio and) television broadcasting via satellite, if such programmes are disseminated by a broadcasting operator on the basis of authorization (i.e. a license) to operate (radio and) television, or in the case of a statutory broadcaster when such broadcasting serves solely for the purpose of transmission of code signals to transmitters;*
- *communication of information related to the operation of technical means used for the implementation of radio and television broadcasting". (// art. 1 a. TVWF Directive)*

The definition generally corresponds to the one used by the Directive. However, there are some small differences in the services included in and excluded from television broadcasting to which the Media Act makes explicit reference.

- Broadcaster

Broadcaster "shall mean a legal entity or a natural person that prepares the programme, bears the responsibility for its content and uses a unique audio or visual identification, which guarantees no confusion, for dissemination of the programme through own means or through third parties. (// art. 1 b. TVWF Directive)

The programme means an intentional arrangement of individual units of television programmes and other parts of broadcasting within the framework of one broadcast programme".

The definition in general corresponds to the one used by the Directive. Moreover, it stipulates that the broadcaster shall use a unique audio or visual identification.

- Television advertising

Television advertising "shall mean any public announcement, broadcast in return for payment or in return for other compensation or broadcast for the purpose of own promotion of the broadcaster, designated for the support of marketing, purchase or rental of goods or services or for achieving another effect pursued by the client ordering the advertisement or by the broadcaster". (*// art. 1, c. TVWF Directive*)

The above definition is applicable to general advertising, and is not limited to television advertising. The definition in general corresponds to the one used by the Directive.

- Surreptitious advertising

Surreptitious advertising "shall mean verbal or visual presentation of goods, services, business name, trade mark or activity of a manufacturer of goods or a provider of services, which is usually published in return for payment or in return for other compensation, within a programme unit, which is neither advertisement nor teleshopping by its nature, provided this presentation is made intentionally for the purpose of promotion and is capable of misleading the public". (*// art. 1 d. TVWF Directive*)

The definition generally corresponds to the one used by the Directive, however, it expressly stipulates that the surreptitious advertising is performed within a programme unit.

- Sponsorship

Sponsoring "shall mean any contribution provided by a natural or legal person that does not operate television broadcasting or production of audiovisual works, for the purpose of direct or indirect financing of television or radio programme units, in order to promote the name and surname of a natural person or name of a legal entity, company name, trade mark, sponsor or his services, products or other outputs". (*// art. 1 e TVWF Directive*)

The definition complies with the one used by the Directive.

- Teleshopping

Teleshopping "shall mean a direct offer of goods or services, which is meant for the public and which is included in (radio or) television broadcasting in return for payment or other compensation". (*// art. 1 f. TVWF Directive*)

The definition complies with the one used by the Directive.

- Other relevant legal definition for the analysis

Other definition used by the Media Act, which might be applicable for this analysis:

- **(Radio and) television retransmission** shall mean receiving of broadcasting of original (radio and) television programmes or of their substantial parts and their simultaneous, complete and unchanged dissemination for the public by means of transmitters, cable systems and satellites or other technical means. Unchanged dissemination shall also mean the dissemination of Czech version of a television programme, which was primarily broadcast in a foreign language.
- **Nation-wide broadcasting** shall mean (radio and) television broadcasting, which can be received by at least 70% of the population of the Czech Republic.
- **Programme network** shall mean joint preparation of programmes or of their substantial parts or mutual exchange of programmes or of their substantial parts and their simultaneous dissemination by several broadcasters.
- **Local broadcasting** shall mean broadcasting of a (radio or) television programme intended due to its reach for a locally defined area and prepared for this area.
- **Operator of (radio and) television retransmission** shall mean a legal entity or a natural person that makes the decisions on the composition of the programmes taken over from other sources and that disseminates such programmes through its own means or through third parties completely and without any change on the basis of authorization for the operation of retransmission pursuant to the Media Act.
- **Basic programme specification** shall mean the definition of prevailing genres in the total programme composition.
- **Programme** shall mean an intentional arrangement of individual units of radio or television programmes and other parts of broadcasting, including the flow of programme elements in radio broadcasting, within the framework of one broadcast programme.
- **Programme unit** shall mean a part of radio or television broadcasting which is consistent in terms of its content and structure and which is limited in time; in radio broadcasting programme unit shall also mean a programme element.
- **Teletext** shall mean a system of broadcasting of text or graphical information concurrently with broadcasting of a television signal, while the aforementioned information can only be displayed on the screen of a television set, which is equipped with an appropriate decoding device.
- **Subliminal communication** shall mean audio, visual or audiovisual information, which is intentionally designed to produce an influence on the subconscious of the listener or viewer, without leaving a possibility to perceive it consciously.

- **Basic programme offer** shall mean a set of programmes, which is provided by a cable system operator at the lowest price.
- **Cable system** shall mean a set of telecommunication equipment, which serves for the broadcaster or for the operator of retransmission for dissemination of programmes for subscribers at an agreed price; cable system includes television cable wiring, microwave systems of dissemination of programmes through transmitters or other technical means.
- **Set of technical parameters** shall mean in the case of ground transmission the frequency, radiated power and site of transmission.
- **Repeated violation** shall mean such violation which is penalized more than once during two consecutive calendar years.

Conclusion:

The explanatory report published with regard to the Media Act stipulates that the Act should contain the same or similar abstract of definitions as the Directive. Therefore, some definitions, such as the one of teleshopping, were newly included. The conclusion can be that there are no significant differences between the content of Directive definitions and that of corresponding definitions of the Media Act.

The slight differences, mainly of formulation nature, are mentioned in the above comments with respect to the particular definitions. The definition of the Television broadcasting emphasises with more details and some small differences, which services are included in or excluded from the television broadcasting. The Media Act definition of the Broadcaster stipulates, unlike the Directive, that the Broadcaster shall use a unique audio or visual identification. In the Media Act definition of the surreptitious advertising there is not emphasised the connection between the intention of promotion and the relevant consideration to the extent as it is in the Directive.

Moreover, the Media Act adds a set of supplementary definitions (e.g. Subliminal communication, Teletext, Programme unit), which are not contained in the Directive.

II. ADVERTISING RECOGNITION AND ADVERTISING PROGRAMME SEPARATION (Article 10 TVWF Directive)

a. Regulations

- Examination of the rules related to advertising and teleshopping spots recognition

Article 48, paragraph 4 letter a) of the Media Act stipulates that the television broadcaster shall ensure that advertising and teleshopping spots are recognizable from any other parts of the programme structure and are clearly separated therefrom by acoustic or optical or combined acoustic/optical means (and by acoustic means in the case of a radio broadcaster) (// art. 10 §1 TVWF Directive)

- Examination of the rules related to the separation between the commercial content and the programmes

In letter b) of the same article 4f of the Media Act it is expressly stated that the television broadcaster shall ensure that advertising and teleshopping are always broadcast in blocks between individual broadcasts (// article 10§1 TVWF Directive).

- Examination of the rules related to isolated advertising and teleshopping spots

Isolated advertising and teleshopping spots may be included in television broadcasting only exceptionally (// art. 10 §2 TVWF Directive).

- Prohibition of the use of subliminal techniques and surreptitious advertising

Article 48, paragraph 1, letter g) prohibits the use by broadcasters of surreptitious and subliminal advertising (// art. 10 §3 TVWF Directive)

b. Conclusion:

It can be concluded that the concise regulation of the advertising recognition and advertising programme separation in the Media Act strictly follows the content of Article 10 of the Directive. There are no specific rules that are not included in the Directive.

III. RULES RELATED TO INSERTION OF ADVERTISING AND TEleshopping SPOTS BETWEEN AND WITHIN THE PROGRAMMES (Article 11 TWF Directive)

a. Regulations

Duties of the television broadcaster regarding the inclusion of advertising and teleshopping in the programme are covered by article 49 of the Media Act.

- Examination of the rules related to insertion of advertising and teleshopping spots between the programmes

Article 48, b of the Media Act expressly states that the television broadcaster shall ensure that advertising and teleshopping spots are always broadcast in blocks between individual broadcasts.

The television broadcaster, whether statutory or licensed, may include advertising and teleshopping in broadcasts consisting of separate parts, or in sports broadcasts, or in other similarly structured broadcasts, or those containing intervals, but may only do so between such separate parts or in such intervals (// art.11 §1 TVWF Directive).

- Examination of the rules related to the insertion of advertising and teleshopping spots within certain programmes

Public broadcasters:

Public broadcasters may only include advertising and teleshopping in broadcasts consisting of separate parts, or in sports broadcasts, or in other similarly structured broadcasts, or those containing intervals, but may only do so between such separate parts or in such intervals.

Private broadcasters:

The licensed television broadcaster is entitled to, under the conditions described below, interrupt television broadcasting by advertising and teleshopping spots, unless such interruptions affect the coherence and worth of the broadcasts; in doing so, the licensed television broadcaster must respect the nature, duration and internal structure of the broadcast; in doing so, the licensed television broadcaster may not infringe on those rights of the owners of the broadcasts which were vested in such owners according to a special law (regarding copyright and intellectual property) (// art. 11§1 TVWF Directive)

Further limitations restricting the licensed television broadcaster are as follows:

The licensed television broadcasters may interrupt by advertising and teleshopping spots the transmission of audiovisual works such as feature films and television films (excluding series, light entertainment and documentaries) provided their scheduled duration is longer than 45 minutes, and may not do so more frequently than once in 45 minutes. A further interruption is only admissible provided their scheduled duration is at least 20 minutes longer than two or more 45-minutes periods of time (//art 11, § 3 TVWF Directive), provided however, that a period of at least 20 minutes has always elapsed between any two successive interruptions of such a broadcast by advertising or teleshopping (+/- // art. 11, §3 TVWF Directive).

As regards all other broadcasts, a licensed television broadcaster, may interrupt by advertising and teleshopping a programme provided its scheduled duration is longer than 30 minutes, but may not do so more frequently than once in 30 minutes, provided that a period of at least 20 minutes has elapsed between any two successive interruptions of the broadcast by advertising or teleshopping. (≠ TVWF Directive)

This condition is more restrictive than the Directive because it allows the interruption by advertising and teleshopping only with respect to broadcast of the duration longer than 30 minutes.

The scheduled time of duration of the broadcast as referred to in the above paragraphs shall be deemed also to comprise the included advertising and teleshopping and the announcement of the broadcast.

- Eventual prohibition of insertion of advertising and teleshopping spots within certain types of programmes

Advertising and teleshopping spots shall not interrupt news and political broadcasts, religious broadcasts and broadcasts for minors, unless their scheduled duration is longer than 30 minutes. Advertising and teleshopping spots shall not interrupt liturgical services. (//art. 11 §5 TVWF Directive)

Unlike the Directive, the Media Act does not make reference to children but to programmes for minors.

b. Conclusions:

The rules of the Media Act relating to insertion of advertising and teleshopping spots are different with respect to a statutory television broadcaster and a licensed one.

The regulation to be applied to a statutory television broadcaster is more restrictive : it may only include advertising and teleshopping in broadcasts consisting of separate parts, or in sports broadcasts, or in other similarly structured broadcasts, or those containing intervals, but may only do so between such separate parts or in such intervals.

The licensed television broadcaster is limited to the same extent as that stipulated in the Directive except:

- **The possibility to interrupt broadcast other than audiovisual work (such as feature films and television films): the Czech regulation allows the interruption by advertising and teleshopping only with respect to broadcast of a scheduled duration longer than 30 minutes.**

IV. QUANTITATIVE RESTRICTIONS (Article 18 TWF Directive)

a. Regulations

With respect to the time volume of advertising and teleshopping in television broadcasting, the Media Act (article 50) once again differentiates between a statutory television broadcaster and a licensed one.

- Examination of the percentage of maximum daily transmission time devoted to teleshopping and advertising spots and for other forms of advertising (20% in the TVWF Directive)

- For a statutory television broadcaster, the time devoted to advertising shall not exceed 1% of the daily broadcasting time. This proportion may be increased up to 10% of the daily broadcasting time by the broadcasting of teleshopping. During the period between 7.00 p.m. and 10.00 p.m, the broadcasting of advertising and teleshopping shall not exceed 6 minutes in one hour of broadcasting. (≠ TVWF Directive)

The time limit of the daily broadcasting for advertising and teleshopping is more restrictive for the Czech statutory television broadcaster than the general one specified in the Directive.

- For a licensed television broadcaster the time devoted to advertising shall not exceed 15% of the daily broadcasting time; the licensed television broadcaster may increase this proportion up to 20% of the daily broadcasting time by the broadcasting of teleshopping, with the exception of the broadcasting of coherent teleshopping broadcasts. The total time restriction of both advertising and teleshopping is equal to that of the Directive. Moreover, the permitted proportions of advertising and teleshopping within the total broadcasting time are set out (± // art. 18 §1 TVWF Directive)

- Examination the maximum daily transmission time devoted to advertising messages (15% in the TVWF Directive)

Public broadcaster:

As exposed before, the time devoted to advertising shall not exceed 1% of the daily broadcasting time for a statutory television broadcaster (more restrictive than the Directive)

Private broadcasters:

The time devoted to advertising shall not exceed 15% of the daily broadcasting time for a licensed television broadcaster. (//art. 18 §1 TVWF Directive)

- Examination of the maximum daily transmission time devoted to advertising and teleshopping spots within a given clock hour (20 % in the TVWF Directive)

The condition that during each hour of television broadcasting the time allotted to advertising shall not exceed 12 minutes, i.e. 20%, applies with respect to both types of television broadcasters. (// art. 18§ 2 TWF Directive)

- Examination of the factors to take into account or not for the calculation of the advertising time

The time of broadcasting of teletext shall not be deemed to belong in the daily broadcasting time for the purposes of permitted advertising and teleshopping daily time proportion (this provision is less restrictive than the Directive). Similarly to the Directive regulation, announcements made by the television broadcaster in respect of such a broadcaster's own programme units and the goods and services derived from such broadcasts, as well as announcements broadcast free of charge in the public interest and for the public benefit, shall not be deemed to be subject to the time restriction of advertising in broadcasting as referred to above (//art. 18 §3 TVWF Directive).

b. Conclusions:

The time limits for the maximum daily proportion of advertising and teleshopping specified in the Directive are the same for the licensed television broadcaster in the Media Act.

Regarding the private broadcasters, the Media Act states that the maximum daily transmission time devoted to advertising messages may be increased from 15 % up to 20 % if it includes teleshopping broadcast with the exception of the broadcasting of coherent teleshopping windows.

The time limits for the statutory television broadcaster are more restrictive : it is, moreover, limited in advertising and teleshopping broadcasting between 7.00 p.m. and 10.00 p.m.

For the avoidance of any doubt the Media Act also states that the time of teletext broadcasting shall not be included in the daily broadcasting time for the purpose of calculation of advertising and teleshopping time proportions, which is less restrictive than the Directive.

V. <u>QUANTITATIVE RESTRICTIONS RELATED TO TEleshopping PROGRAMMES (Article 18 bis TVWF Directive)</u>

a. Regulations

In the Media Act, there is a difference between the regulation of the teleshopping windows with respect to a statutory television broadcaster and a licensed one.

- Examination of the minimum duration of windows devoted to teleshopping broadcast (15 minutes in the TVWF Directive)
- The statutory television broadcaster may insert teleshopping in its television broadcasting only under the general conditions described in Part IV above.

Therefore, the statutory television broadcaster is permitted to devote a maximum of 10% of the daily broadcasting time to teleshopping provided that during each hour of television broadcasting, the teleshopping shall not exceed 12 minutes. During the period between 7.00 p.m and 10.00 p.m., the broadcasting of advertising and teleshopping shall not exceed 6 minutes in one hour of broadcasting. It seems statutory television broadcaster may not broadcast teleshopping windows (≠ spots).

- The licensed television broadcaster may broadcast coherent teleshopping broadcasts (windows) lasting at least 15 minutes without interruption beyond the time restriction mentioned in Part IV above, i.e. 20% (advertising and teleshopping together) of the daily broadcasting time and 12 minutes in one hour maximum (// article 18 bis TVWF Directive).

The individual coherent teleshopping windows must have a clear sound and video making and at least 15 minutes must elapse between the broadcasting of any two successive coherent teleshopping windows. (≠ TVWF Directive)

The time of broadcasting of teletext shall not again be deemed to belong in the daily broadcasting time for the purposes of permitted teleshopping daily time proportion.

- Examination of the maximum number of windows (8 in the TVWF Directive)

During one day the licensed television broadcaster may broadcast a maximum of 8 coherent teleshopping windows. (// art. 18bis §2 TVWF Directive).

- Examination of the maximum daily duration (3 hours in the TVWF Directive)

The aggregate duration of such coherent teleshopping windows by the licensed broadcaster during the day shall not be longer than 3 hours (// art. 18bis §2 TVWF Directive).

b. Conclusion:

The rules relating to coherent teleshopping broadcasts (teleshopping windows) are the same as those in the Directive. However, they only apply to licensed television broadcasters. The Media Act also provides that a period of at least 15 minutes must elapse between the broadcasting of any two successive coherent teleshopping windows, which is not included in the Directive. Statutory television broadcasters can broadcast teleshopping only under the general conditions for statutory broadcasters specified in Part IV above.

VI. SPONSORING (Article 17 TVWF Directive)

a. Regulations

The rules of television sponsorship are contained in article 53 of the Media Act.

- Examination of the rules related to editorial independence of the broadcaster

The television broadcaster shall ensure that the content and scheduling of a sponsored programme unit cannot be influenced by the sponsor. Further the broadcaster shall ensure that the contents of sponsored programme units do not promote the sale, purchase or lease of the products or services of a sponsor or a third person through, in particular, specially mentioning such products in such programme units (// art. 17 §1 a. TVWF Directive)

- Examination of the rules related to the insertion of the sponsor's name or logo within the programme (beginning/end, break bumper, during all the programme)

The broadcaster shall mark any partially or fully sponsored programme unit with the trade name, visual symbol (logo), trade mark or brand name of the sponsor's products or services specifically at the beginning or at the end of such a programme unit. If the sponsor is a producer or distributor of therapeutic preparations the issue of which is bound to medical prescription, the sponsor's message may only contain the sponsor's trade name and/or logo (// art. 17 §1 b. TVWF Directive).

- Identification of the programmes that cannot be sponsored

News and political programme units and reporting programme units may not be sponsored; the only exception are programme units of separate service information including especially weather forecasts, traffic reports, time in sports broadcasts and exact time information. (// art.17 §4 TVWF Directive).

- Examination of the rules related to the content of the message (moving images, mention of the product, slogan, etc.)

Programme units may not be sponsored by the persons whose key activities include the manufacture or lease of products or provision of services, which, as the law stipulates, may not be the subject of advertising (cfr infra) (// art. 17 §3 TVWF Directive)

- Examination of the maximum duration of the mention and/or maximum daily/per hour volume

The Media Act does not stipulate any maximum daily duration of the sponsored programme units. It does not determine any ceiling for sponsorship profits, special system of taxation etc.

- Examination of other rules eventually limiting the volume of sponsorship (ceiling for sponsorship profits, special tax, etc.)

The Media Act does not determine any ceiling for sponsorship profits, special system of taxation etc.

- Examination of the extent to which it is possible to show a product or a trade mark during a programme

There is no explicit reference to the product placement in the Media Act. Therefore, the precise conditions imposed on the presentation of a product, services or a brand within a television programme are still missing. Unfortunately, the Media Council has not pronounced officially about the issue yet.

With regard to the current state of the relevant legal regulation and the position of the regulatory authority, i.e. the Media Council, it can be concluded that to show a product, services or trade mark within a broadcasting programme is possible without special restrictions. However, the general obligation of a broadcaster, stipulated in article 53 § 5 of the Media Act, to ensure that the contents of sponsored programme units do not promote the sale, purchase or lease of the products or services of a third party, through, in particular, specially mentioning such products in such programme units, shall apply. The decisions of the Media Council have not yet marked precise border between the product placement and presentation intended to promote the sale, purchase or lease of the products or services specially by mentioning them in the programme unit.

b. Conclusion:

The obligations of the television broadcaster contained in article 53 of the Media Act generally correspond to those of article 17 of the Directive.

It may be mentioned that the sponsored programme units can be identified not only by the name of the sponsor or his logo but also, with the exception of some producer or distributor of therapeutic products, by the trade mark or the brand name of the sponsor's products or services, which is less restrictive than the Directive.

The Directive excludes entities whose main activity is the manufacturing or sale of cigarettes or other tobacco products from sponsoring.

The Media Act, on the other hand, generally excludes from sponsoring such entities whose key activities include the manufacture or the lease of products or provision of services that, as the law stipulates (more details in Part IX hereof), may not be the subject of advertising.

The issue of the product placement is not explicitly regulated by the Media Act. Also the official stance of the Media Council is missing. Therefore, it can be concluded that the product placement is possible subject to the general condition that the contents of sponsored programme units shall not promote the sale, purchase or lease of the products or services of a third party, through, in particular, specially mentioning such products in such programme units.

VII. NEW ADVERTISING TECHNIQUES

a. Regulations

The Media Act, as well as the Advertising Act, does not make any reference to new advertising techniques, such as split screens, interactive advertising and/or virtual advertising. There is also no official opinion of the Media Council regarding these techniques.

We are of the opinion that the so-called new advertising techniques are permissible provided that they respect the general regulation in the Media Act (part thereof is specified above) and do not infringe the prohibitions set by the Advertising Act for some kinds of products.

b. Conclusion

The Czech law does not regulate so called new advertising techniques, such as split screens, interactive advertising and/or virtual advertising, and also the official stance of the Media Council is missing. The use of such techniques is not prohibited. Therefore, they can be used provided that general conditions of advertising stipulated in the Media Act and the Advertising Act are respected.

Given that there are also no rules regarding the new advertising techniques stipulated in the Directive, the Czech Republic is not obliged to perform any implementation in this respect before its accession to the EU.

VIII. GENERAL RULES RELATED TO ADVERTISING AND TELESHOPPING CONTENT (Article 12 TVWF Directive)

a. Regulations

The general rules regarding advertising and teleshopping content are contained in paragraphs 1, 2 and 3 of article 48 of the Media Act and also in article 2, paragraph 3 and article 2 c) of the Advertising Act.

The Media Act stipulates that broadcasters may not include in their broadcasting:

- advertising and teleshopping supporting conduct which endangers morality, customer interests or interests relating to health, safety or environment protection (// art. 12 d. and 12 e. TVWF Directive);
- advertising and teleshopping in which newscasters, moderators or editors of news and political broadcasts appear (≠ TVWF Directive);
- religious and atheist advertisements and teleshopping and political parties' and movements' advertisements and teleshopping, including those of independent candidates standing for the posts of deputies, senators or members of a city or local council or council of a higher-level-self-government unit, unless otherwise provided in a special act (≠ TVWF Directive);
- advertising and teleshopping affecting respect for human dignity (// art. 12 a. TVWF Directive).

In the same paragraph of article 48 of the Media Act there are also restrictions regarding advertising and teleshopping for minors, of tobacco, some therapeutic preparations and medical products which are specified in the following Part IX hereof, and surreptitious and subliminal advertising which is dealt with in Part II hereof.

Article 2, paragraph 3 of the Advertising Act stipulates restricting conditions for advertising in general, irrespectively of the medium, i.e. not limited only to television advertising. In accordance with the mentioned article the advertising may not infringe on good manners. It shall mainly not include any discrimination on grounds of race, sex or nationality, be offensive to religious or political beliefs, threaten morals in a generally unacceptable way, negatively affect human dignity, contain elements of pornography, violence and elements profiting from fear. Advertising shall not be offensive to political persuasion (// art 12 TVWF Directive in general).

Further, article 2, paragraph 4 of the Advertising Act stipulates that advertising shall not support conduct harmful to health or endangering persons or property security, as well as conduct harmful to environmental protection interests (// art.12 d. and 12 e. TVWF Directive).

b. Conclusion:

The content of article 12 of the Directive is almost literally implemented in article 2, paragraphs 3 and 4 of the Advertising Act. Therefore, the restrictions apply to advertising in general, irrespective of the means of its dispersion.

Unlike the Directive, the Media Act, which covers only television (and radio) advertising and teleshopping, does not make any special reference to prohibition of discrimination on grounds of race, sex or nationality (however, this could be taken as conduct infringing on good manners) and of being offensive to religious or political beliefs, but it is complemented by the Advertising Act. As described, the Advertising Act has a supplementary function to the Media Act.

On the other hand, there is a special rule prohibiting advertising and teleshopping, which is applicable to newscasters, moderators or editors. These persons are regarded by the law as possibly misleading the public with respect to the nature of the advertising.

The Media Act also explicitly prohibits religious and atheist advertisements or teleshopping and advertisements or teleshopping of political parties and movements.

IX. SPECIFIC PRODUCTS AND TARGETS

- Tobacco products (Articles 13 and 17 TVWF Directive)

Audiovisual regulations:

The Media Act prohibits television (and radio) broadcasters from broadcasting advertising to promote tobacco and the products thereof (article 48, paragraph 1, letter (f); // art.13 TVWF Directive). Tobacco manufacturers are also excluded from sponsoring programme units given that article 53, paragraph 3 stipulates that programme units may not be sponsored by entities whose key activities include the manufacture or lease of products or provision of services which, as the law stipulates, may not be the subject of advertising (// art. 17 §2 TVWF Directive).

The restriction on tobacco television advertising and sponsorship are in general the same as those specified in the Directive.

General regulation:

The other types of advertising for tobacco and products thereof, apart from television and radio advertising, are regulated by the Advertising Act. Article 3 of the Advertising Act states that advertising and sponsoring for tobacco products, the supposed effect of which is direct or indirect promotion of tobacco products, are prohibited, unless the Act expressly stipulates otherwise.

For the purposes of the Advertising Act regulation :

- free of charge distribution of tobacco products the purpose or direct or indirect effect of which is promotion of a tobacco product, and
- advertising that does not directly mention a tobacco product, however, it uses a trade mark or brand, or logo with the characteristics of the tobacco product, unless further stipulated otherwise

are also taken as advertising for tobacco products.

The use of a trade mark or a brand of tobacco products registered or used before the coming into force of the Advertising Act (April 1, 1995) for tobacco or other products or services is not considered as advertising for tobacco products provided that the trade mark or the brand is used for other products than tobacco products and that the information is disseminated in a way clearly differentiated from the one the information on tobacco products is disseminated.

The advertising prohibition does not include:

- statements exclusively aimed at professionals in the area of trade in tobacco products;

- advertising for tobacco products in specialized shops of tobacco products or in shop windows and adequate identification of these shops;
- advertising for tobacco products in plants where a wide selection of products or services is sold and provided that the advertising is situated in that part of the plant determined for sale of tobacco products sale;
- sale of publications containing advertising for tobacco products if the publications are published and printed in third countries and are not especially determined for the market of the Czech Republic.

However, the free of charge distribution of tobacco samples to the general public aiming to promote a tobacco product is prohibited.

Advertising for tobacco products, as defined above, has to contain a special warning of the Health Ministry of the following wording: “Smoking causes cancer.” The warning has to occupy at least 20% of the advertising statement. The text of a written advertisement shall be placed on a white background along the bottom border of the advertising area. The text shall be printed in large, black and bold letters so that it reaches at least 80% of the height of the white background. The same, except with the previous sentence, applies to advertising disseminated in an audiovisual way.

Advertising, as specified above, may not

- be aimed at persons minor 18 years, especially through showing such persons or using elements, means or actions which are in particular addressing such persons;
- incite smoking by words or by, for instance, showing scenes with opened cigarette packets or scenes in which people are smoking or holding cigarettes, cigarette packets or other tobacco products or accessories.

Conclusion:

Television advertising for tobacco products follows the regulation set by the Directive and there is no significant difference. Television advertising for tobacco products, as well as sponsoring of a manufacturer, whose activity is mainly the manufacturing of tobacco products, is prohibited. Other types of advertising are regulated in a specific way by the Advertising Act, which permits advertising for tobacco products in a very limited extent.

- Medicines and Medical products (article 14 TWF Directive)

Audiovisual regulations:

The Media Act stipulates in its article 48, paragraph 1, letter e) that broadcasters may not include in their broadcasting advertising and teleshopping concerning therapeutic preparations and medical products the issue of which is bound to medical prescription (// art. 14 §1 TVWF Directive).

Article 53, paragraph 1 of the Media Act states that if the sponsor is a producer or distributor of a therapeutic preparations the issue of which is bound to medical prescription, the sponsor' s message may only contain the sponsor' s trade name and/or logo.

Article 5c, paragraph 4 of the Advertising Act stipulates that the sponsorship of television and radio programme units by persons whose activity includes manufacturing, distribution, issuance or sale of medical products can be only the promotion of the commercial name or logo of the person but shall not be the promotion of a medical product the issuance of which is conditioned by the prescription of a medicine doctor or that is fully or partly reimbursed from health insurance (// art. 17 §3 TVWF Directive).

The Media Act, unlike the Directive, set the same regime for television advertising and teleshopping, which is less restrictive than the Directive.

The Advertising Act set the following rules for all types of advertising (not only television and radio advertising) for human therapeutic preparations:

General rules

All information, persuasion and incentives intended for the support of prescription, supply, sale, issuance and consumption of human therapeutic preparations are also taken as advertising for therapeutic preparations. The following are also considered as advertising:

- visits of commercial agents for therapeutic preparations to persons entitled to prescribe, supply and issue such preparations;
- supply of samples of therapeutic preparations;
- support of prescription, issuance and sale of human therapeutic preparations by means of gifts, consumers' competition and offer or promise of any benefit or any financial or material reward;
- sponsorship of meetings attended by experts;
- sponsorship of scientific congresses with experts' participation and reimbursement of travel and meal costs connected with their participation therein.

Advertising does not include

- designation of human therapeutic preparations and package instructions in accordance with the special law⁴;
- correspondence necessary for answering specific questions regarding particular human therapeutic preparations and any supplementary materials of a non-advertising nature;
- sales catalogues and price lists provided that they do not contain a description of characteristics of therapeutic preparations; statements, notices or information regarding e.g. package changes, warning against negative effects of the therapeutic preparation;
- data on human health or illnesses if they do not contain any reference, even an indirect one, to a therapeutic preparation;

Only a therapeutic preparation registered in accordance with the respective law can be the subject of advertising. All information mentioned in the advertisement has to correspond to the data file on the relevant therapeutic preparation. Advertising has to support rational use of the therapeutic preparation by the objective, not exaggerated, presentation of its characteristics.

Advertising for therapeutic preparations directed at the general public

Only human therapeutic preparations that are, due to their composition or purpose, used without diagnosis, prescription or practical treatment by a medical doctor can be subject to advertising intended for the general public. The following items are excluded from such advertising:

- therapeutic preparations the issue of which is conditioned by a medical prescription;
- therapeutic preparations containing narcotic or psychotropic substances;
- therapeutic preparations the effectiveness of which has not been subject to evaluation in the registration proceedings.

Advertising intended for the general public shall not contain any references to indications of serious illnesses such as tuberculosis, venereal or other infectious diseases, cancer and similar illnesses, chronic insomnia etc.

Provision of therapeutic preparation samples is prohibited.

Advertising intended for the general public shall

- be formulated in such a way that it is clear that the product is a therapeutic preparation;
- contain the name of the therapeutic preparation as it is stated in a decision on its registration; if the therapeutic preparation contains only one curative substance also the general name thereof shall be stated in advertising;
- state clearly, in the case of a printed advertisement also legibly, the need for careful studying of the package instructions.

⁴ The Act no. 79/1997 of the Coll., as subsequently amended, on Medicaments and Change and Amendments of Other Related Laws (zákon č. 79/1997 Sb, o léčivech a změnách a doplňních některých souvisejících zákonů);

Advertising intended for the general public shall not:

- suggest that a doctor's consultation, intervention or treatment are not needed, in particular, by offering self-diagnosis elaboration or distant treatment;
- insinuate that the effects of using the therapeutic preparation are guaranteed and are not connected with any negative implications and are better or equal to effects of other treatment or another therapeutic preparation;
- insinuate that the use of the therapeutic preparation improves the health of a user;
- insinuate that the non-use of the therapeutic preparation negatively affects the health of persons (except for vaccination activities of the Health Ministry);
- be exclusively aimed at minors younger than 15 years;
- recommend the therapeutic preparation with reference to scientists, medical experts or persons simulating that they are experts (e.g. actors), who could due to their real or supposed social status support therapeutic preparation consumption;
- insinuate that the therapeutic preparation is a food or cosmetic preparation or other consumer product;
- insinuate that safety and effectiveness of the therapeutic preparation is guaranteed due to the fact that it is of natural origin;
- lead to a possibly incorrect determination of self-diagnosis on the basis of description or detailed depiction of a particular case;
- insinuate in an inadequate, exaggerated or misleading way the possibility of health recovery;
- use in an inadequate, exaggerated or misleading way changes originating in a human body and caused by a disease or lesion or results achieved by the use of the therapeutic preparation on a human body or part thereof;
- state that the therapeutic preparation is registered.

Advertising for therapeutic preparations focused on experts

Advertising for therapeutic preparations focused on experts can be disseminated only through communication means determined especially for such experts (e.g. expert non-periodical publications, expert periodical press, expert audiovisual programme units etc).

If the purpose of advertising is only being a reminder of a therapeutic preparation it shall contain only the name of the therapeutic preparation.

Advertising shall contain:

- Exact, up-to-date, provable and sufficient data enabling experts to form their own opinion on the therapeutic preparation. Data taken from expert publications or expert press have to be exactly reproduced and their source has to be cited;
- Fundamental information in accordance with the data file on the therapeutic preparation, including a date of approval or last revision;

- Information on issue of the preparation according to the registration decision;
- Information on reimbursement from means of public health insurance.

As of any visit with the purpose of promoting a therapeutic preparation, a commercial agent has to provide the visited expert with a relevant data file and information on reimbursement of the preparation.

In connection with advertising it is prohibited to provide, promise or offer to experts any gifts or other benefits unless they are of negligible value and have a connection to the performed expert activity. The extent of refreshment freely provided during sales promotion has to be proportionate and have a supplementary purpose with regard to the principal purpose of the meeting. In connection with advertising of a therapeutic preparation experts are not permitted to request or accept advantages mentioned above.

Samples of therapeutic preparations can be provided only to persons who are entitled to prescribe or issue them and only in a limited amount of the smallest registered packing available on the market, labelled “Sample – not for sale” or “Free sample”. Samples containing narcotic or psychotropic substances may not be provided. Samples can only be provided upon the written request of a person who is entitled to prescribe or issue them. The request shall be signed and contain the date of issuance.

Medical products

All information, persuasion and incentives intended for support of prescription, distribution, sale and issuance of medical products are also taken as advertising. Advertising also includes:

- Visits of commercial agents to persons entitled to prescribe, distribute, issue or sell medical products with the purpose of advertising for medical products;
- Provision of medical products samples;
- Support of prescription, issue or sale of medical products by means of gifts, competitions, offer or promise of any benefits or financial or material reward for persons entitled to prescribe, issue or sell medical products;
- Sponsoring meetings of persons entitled to prescribe, distribute, issue or sell medical products;
- Sponsoring scientific congresses with participation of persons entitled to prescribe, distribute, issue or sell medical products and also reimbursement of costs, such as meal and travel costs, connected with participation of such persons;

Only a medical product that meets conditions for market distribution stipulated by the specific law⁵ can be subject to advertising. Only a producer or an importer of a particular medical product can be the beneficiary of the advertisement.

The advertisement for the medical product has to include:

- information from which it can be clearly deduced that the product is a medical product;
- name and designation of the medical product in accordance with the name and designation in the statement on concordance⁶ issued with regard to this medical product;
- determined purpose of medical product use in accordance with the purpose listed in the relevant instructions for use.

If a medical product that does not correspond with the special law⁷ is used for demonstration it has to be visibly marked, e.g. with a notice stating “Sample – not for sale”, so that it would be evident that it is not determined for the market.

The following medical products cannot be subject to advertising directed towards the general public:

- products the issuance of which is conditioned by a medical doctor’s prescription;
- products that can be supplied only to medical institutions, social care institutions and persons working in the medical field;
- products the application of which is possible only in connection with treatment or supervision by a medical doctor.

Advertising focused on the general public must contain clear, in the case of printed advertising also well legible, instructions for careful reading of the instructions for use and consultation with an expert, if needed.

Advertising for medical products directed towards the general public may not

- suggest that the mere use of a product can influence the state of health and, therefore, that expert medical treatment is not needed;
- suggest that the use of a product in accordance with its determined purpose cannot cause any negative side effects;
- be aimed exclusively or predominantly at minors younger than 18 years;

⁵ Article 13 of Act no. 22/1997 of the Coll., as subsequently amended, on Technical Requirements on Products and Change of Some Related Laws (“Zákon č. 22/1997 Sb., o technických požadavcích na výrobky a změně některých souvisejících předpisů”);

⁶ E.g. Act no. 22/1997 (specified above); government regulation no. 181/2001 of the Coll., by which Technical Requirements on Medical Products are Set, as subsequently amended („Nařízení vlády č. 181/2001 Sb., kterým se stanoví technické požadavky na zdravotnické prostředky“); government regulation no. 191/2001 of the Coll., by Which Technical Requirements on Active Implantable Medical Products are Set, as subsequently amended (nařízení vlády č. 191/2001 Sb., kterým se stanoví technické požadavky na aktivní implantabilní zdravotnické prostředky, ve znění pozdějších předpisů);

⁷ See footnote no. 2;

- attribute to a medical product such effects that are not provable;
- insinuate that the effect of a medical product can be equal to that of another medical product, or be even better;
- lead to possibly incorrect determination of self-diagnosis on the basis of detailed description of a particular case.

If advertising for medical products is only aimed at persons entitled to prescribe, distribute, issue or sell such products it can be disseminated only in communication means predominantly intended for such persons (e.g. non-periodical expert publications, periodical expert press, expert audiovisual programme units). Further, it has to contain sufficient, provable and objective data that enable persons entitled to prescribe, distribute, issue or sell medical products to form their own opinion on the therapeutic contribution of such particular medical product.

Conclusion:

The regulation of television advertising for therapeutic preparations and medical products in general corresponds to the regulation set in the Directive. However, unlike the Directive, the Media Act states the same regulation for advertising and teleshopping for therapeutic preparation and medical products, which is less restrictive than the Directive.

There are a lot of specific rules regarding general advertising for therapeutic preparations and medical products set in the Advertising Act. This law differentiates between the regulations mainly with respect to whom the advertising is focused on – either the general public or experts. These provisions comply with the EU regulation on advertising for medicine for human use.

- Alcoholic beverages (article 15 TVWF Directive)

The Media Act contains a specific reference to advertising for alcohol or alcoholic beverages in art. 52 stating that:

Advertising and teleshopping in respect of alcoholic beverages shall not

- (a) be specially aimed at minors or in particular, depict minors consuming alcohol beverages (// art. 15 a. TVWF Directive);
- (b) link the consumption of alcohol to enhanced physical performance or to driving (// art. 15 b. TVWF Directive);
- (c) create the impression that the consumption of alcohol contributes to social or sexual success (// art. 15 c. TVWF Directive);
- (d) claim that alcohol has therapeutic qualities or a stimulating or sedative action or is a means to resolve personal conflicts (// art. 15 d. TVWF Directive);
- (e) encourage immoderate consumption of alcoholic beverages or present abstinence or moderation in an unfavourable light (// art. 15 e. TVWF Directive);
- (f) emphasise a high content of alcohol as a positive quality of the beverage (// art. 15 f. TVWF Directive).

The advertising for alcoholic beverages is also regulated in a general way in the Advertising Act (article 4 thereof). The extent of the restrictions is the same as the one in the Media Act.

It states that the advertising for alcoholic beverages may not:

- encourage the excessive use of alcoholic beverages, or ironically or negatively evaluate abstinence or moderate use of alcoholic beverages (// art. 15 e. TVWF Directive) ;
- be focused on minors younger than 18 years, mainly show minors under 18 years or people that look like minors under 18 years while consuming alcoholic beverages or use any elements, means or actions that address minors under 18 years (// art.15 a. TVWF Directive) ;
- connect alcohol consumption with better performances or with car driving (// art. 15 b. TVWF Directive);
- suggest that alcohol consumption contributes to social or sexual success (// art. 15 c.; TVWF Directive)
- state that alcohol in drinks has any therapeutic, stimulant or sedative effects or can be used as a means of resolving personal problems (// art. 15 d. TVWF Directive);
- emphasize that the high alcoholic content is a positive quality of beverages (// art. 15 f. TVWF Directive)

Conclusion:

The Media Act regulation of advertising for alcohol and alcoholic beverages corresponds to the regulation of the Directive. Moreover, this regulation is not limited to television advertising but it is extended to any kind of advertising due to the rules of the Advertising Act.

- Minors (article 16 TVWF Directive)

The Media Act stipulates in article 48, paragraph 2 and 3 that broadcasters of television broadcasting may not

- exhort children and minors to buy a product or a service by exploiting their inexperience or credulity (// art. 16 §1 a. TVWF Directive);
- directly encourage children or minors to persuade their parents or a third person to purchase the goods or services being advertised (// art. 16 §1 b. TVWF Directive) ;
- exploit the special trust children or minors place in their parents or other persons (// art. 16 c. TVWF Directive) ;
- unreasonably show children or minors in dangerous situations (// art. 16 §1 d. TVWF Directive).

The television broadcaster shall ensure that teleshopping meets the rules set out above and that teleshopping does not exhort minors to contract for the sale or lease of goods and services. (//art 16.2 TVWF Directive)

In accordance with article 32, paragraph 1, letter g) and h) of the Media Act the broadcaster shall not include in the programme during the period between 6.00 a.m. and 10.00 p.m. any programme unit or announcements which might endanger the physical, mental or moral development of minors. It shall ensure that any programme unit, to which the restriction referred to above applies, is immediately preceded by a verbal warning of the unsuitability of the programme unit for minors and is broadcast outside the mentioned period of time. Further, it should be labelled with a pictorial symbol warning of the unsuitability of the programme unit for minors, such symbol shall remain on the screen throughout the time of broadcasting.⁸

The Advertising Act rules (article 2c) deal with advertising for minors in general, and are not limited to television advertising. Advertising shall not

- support conduct endangering minors' health, psychological or moral development;
- recommend the purchase of products or services by exploiting minors' inexperience or credulity (// art16 §1 a. TVWF Directive);

⁸ The Media Council has imposed a lot of penalties as a consequence of breach of this provision. The Court has several times (in a casuistic way) pronounced on what content of a programme might endanger the physical, mental or moral development of minors (e.g. decisions 28 Ca 619/2002 or 38Ca 436/2002).

- encourage minors to persuade their parents, legal representatives or third persons to purchase goods or services (// art. 16 §1 b. TWF Directive);
- exploit the special trust minors place in their parents, their legal representatives or other persons (//art. 16 §1 c. TVWF Directive);
- show minors in dangerous situations in an inadequate manner (// 16 §1 d. TVWF Directive).

The rules are almost the same as those in the Media Act.

Conclusion:

The rules of the Media Act regulate television advertising in the same way as the Directive. The same or similar rules apply to advertising for minors in general on the basis of the Advertising Act.

- Other products with special advertising regulation

Food and baby food

Some conditions are set for advertising for food and baby food by the Advertising Act – articles 5d, 5e and 5f.

Advertising for food may not mislead mainly

- with respect to characteristics of food, its composition, durability, origin or origination, way of manufacturing and production;
- with respect to characteristics and effects that the food does not possess;
- by evoking that food have some special characteristics which in fact are possessed by all kinds of food;
- by stating that the food has the capacity to prevent, treat and cure human diseases or by making references to such capacities; this does not apply to mineral waters and food intended under special laws for specific nutrition.

Advertising for infant formula must contain only scientific and materially correct data. It can only be placed in publications focused on infant care and in scientific publications and may not lead to the conclusion that the baby food is equivalent to mothers' milk or even better.

In-shop advertising that is able to incite the general public to purchase infant formula by means of handing out samples, a special way of exposure, reference to discounts or special advantages.

Manufacturers and sellers of infant formula are prohibited from distributing in public free or discounted products, samples or gifts with the purpose of supporting sale. The mentioned prohibition also covers distribution of discounted products, samples and other promotional materials to pregnant women, mothers or members of their families

in public. The prohibition, however, excludes the provision of gifts or discounted products to medical or humanitarian organizations or charities for their internal use or distribution outside of these institutions.

Advertising for infant formula and baby food

- must contain necessary information on proper use of the product and may not discourage breast-feeding;
- may not contain notions like “humanized” or “motherized” or similar expressions giving the impression that the product fully substitutes natural breast-feeding;

Advertising for infant formula

- must contain the visible text “Important notice” making reference to the priority of breast-feeding and recommending that the product be used upon the advice of independent experts on medicine, nutrition or medications or other persons professionally occupied with the care of infants and small children;
- may not contain a picture of an infant or another picture or statement that could idealize the substitution of mothers’ milk; however, it can contain a graphical image for easier identification of a product and for preparation instructions.

Advertising for infant formula and baby food focused on pregnant women and mothers of small children must always contain unequivocal information specified by legal regulations.

Guns and ammunition

Advertising for guns and ammunition is regulated by the Advertising Act, article 6 thereof.

Advertising for guns and ammunition can be disseminated only

- To experts and entrepreneurs in the area of manufacturing and sale of guns and ammunition;
- In rooms where guns and ammunition are manufactured, offered, sold, used or exposed or where relevant contracts on guns and ammunition supplies are concluded;
- In expert publications and periodical press focused generally on guns and ammunition and other printed materials intended for sellers and holders of guns and ammunition.

Funereal activities

Advertising for funereal services, preservation of human bodies, running of a crematorium or public cemetery (hereinafter collectively as “**funereal activities**”) can only contain the following data:

- Commercial name or name of the entrepreneur in funereal activities;

- Specification of the provided services, possibly also of supplementary services;
- Address of a workplace determined for contact with customers;
- Telephone and fax number, e-mail address or website address;
- Business hours for the public;
- Company's logo or other graphical symbol.

Advertising for funereal activities may not be:

- Used in rooms of a medical institution or social care institution;
- Recommended by means of letters, leaflets, electronic mails or other addressed form.

It is prohibited to conduct any kind of advertising in connection with the announcement of a person's death.

Conclusion:

The Advertising Act contains the same restrictions as the Directive; however, it set special rules for advertising for food, baby food, guns, ammunition and funereal activities.

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