



Decency in Advertising

A Global Compendium of the
Laws and Regulations

October 2011

GLOBAL ADVERTISING LAWYERS ALLIANCE

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

In Argentina, decency in advertising is connected to the concept of “legality”, meaning that the ad does not infringe against a person, group or community’s dignity, or its values or moral customs. Please bear in mind that freedom of speech is the rule in terms of advertising. However, the freedom of speech principle guaranteed by Art. 14 and 32 of the National Constitution has not been considered an unrestricted right. Accordingly, both principles – legality and freedom of speech - have to be balanced through self regulation and statutory law.

General

The Ethic and Self Regulation Code of the CONARP (Advertising Self-regulation Board) states that “advertising has to respect moral principles and moral customs” (Art. 1).

The Code also states that:

“...advertising must not contain expressions or audio or visual representations, nor inappropriate references that:

1. Offend society or the community’s moral customs.
2. Offend the native country, nation, or its symbols, national heroes or authorities.
3. Offend in any way institutions whatever their kind or composition.
4. Offend religious feelings.
5. Encourage illicit activities and lack of respect to law and authorities
6. Encourage discrimination of any kind.”

Moreover, those interests seek protection in the National Constitution (Arts. 14, 16, 41 and 42), our Civil Code (Arts. 953 and 1071) and the principle “alterum non laedere” of our penal law.

Accordingly, without having specific legislative regulation on decency in advertising, national doctrine and jurisprudence have understood as illicit advertising those ads containing obscene messages that show lack of decency or hurt moral customs.

Finally, the National Broadcasting Law N° 22.285, states that “advertising must keep to the terms of this law and its regulation, mainly with regard to family and moral customs”.

Please bear in mind that there is a Self Regulation Commission (SRC) within the council for self-regulating advertising (CONARP) that deals with claims against advertising made by any of their associates. The 10 member SCR can act either: (i) Ex-officio; or (ii) At the request of any person who files a complaint in respect of any ad that violates any provision of the Code of Self Regulation and Ethics for Advertising (Code). Within two days from the date of receipt of the complaint, the SCR shall meet and deliberate. If after the deliberation the SCR decides that no provision of the Code is violated by the ad, it shall inform the complainant of its decision.

If, on the contrary, the SCR concludes that there is a violation of the Code, then it shall inform the interested parties in writing of the infringing company or agency, pointing to the provisions infringed upon. The SCR shall also invite the interested parties for a hearing to present their views and arguments.

In the event the SCR decides the ad is contrary to the principles of the Code, it will ask the company and agency to withdraw (cease broadcasting) same within 24 hours. If the company and agency agree to this, then the SCR shall inform the complainant and close the file.

In case the company or agency does not respond or decides not to obey the resolution, the SCR shall inform this fact to the complainant within a 24 hour period, and shall inform the public through the media and press about the questioned ad and the attitude of the company/agency involved.

Unfortunately, resolutions issued by CONARP are not published so is very difficult to gain access to them.

Religion

Religion is considered an essential value of the society. In this sense, Art. 4 of the CONARP Code states that: "advertising must avoid everything that may injure the essential concepts and values of the society, such as:...g) religions..."

Minority Groups

On the subject, Article 1 of Law N° 23.592 provides sanctions and damages regarding any act of discrimination against race, religion, nationality, ideology or sex.

Gender/Stereotyping

It is important to mention that the Broadcasting Federal Committee (COMFER) together with the National Institution Against Discrimination (INADI), have created the "Observatory of Discrimination in Radio and Television" with the purpose of examining the content of advertising and sending "warnings" to the CONARP (Self Regulation Committee).

Regarding gender, during 2007 the Observatory made a follow up of different ads showing the degrading and stereotyping of women. One such advertisement, named "POCKER" for a PEPSI MAX product, depicted a group of three male friends having a conversation in a bar. A barmaid gives them three bottles of PEPSI MAX. One of them challenged the other two to determine which of them would get the most "beautiful" women in the bar for \$100, and the others agree and answer "LETS GO". The idea was to play a poker similar game but betting based on any of the most attractive parts of the body of the women. Then, the first boy sits at a table with two "long legs" women and expresses "LEG". The second boy walks with a group of five women of different height and exclaims "RUN" and the last one is surrounded by four voluptuous women, and shouts "POKER OF BOOBS".

The observatory considered that the woman was showed as an object of betting and of desire, emphasizing a pattern of domination where women are under men's rules.

Race

See the comments on law N° 23.592 for minority groups.

Sex and Sexual Preference

COMFER has frequently imposed fines to TV shows broadcasting images of naked women or any other images with explicit sexual content.

In a recent case, a TV show was sanctioned for advertising a Playboy video where three naked women were having explicit sex.

The COMFER usually controls in a very strict manner the content of TV shows and advertisements broadcasted on radio and on TV, and, in some cases, requests the CONARP to apply the Ethic Code.

Violence

COMFER has frequently imposed fines to TV shows broadcasting images of violence.

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

There is no common law or statutory regulation specifically governing decency in advertising in Australia. The regulation of such things as taste and decency in advertising is left up to industry self-regulation and in particular the Australian Association of National Advertisers' Code of Ethics ("AANA Code of Ethics") which is administered by the Advertising Standards Bureau through the Advertising Standards Board.

There is however anti-discrimination legislation at the Federal and State or Territory level that prohibits advertisements that indicate an intention to do something that is unlawful under that legislation and, depending on the nature of the advertisement, may be in breach of that legislation.

Also, depending on the content of the advertisement, the portrayal of an individual or an entity as indecent or engaging in an activity that is considered "bad taste" in an advertisement may amount to the common law tort of defamation or misleading and deceptive conduct in breach of the *Competition and Consumer Act 2010*.

General

Section 2 of the AANA Code of Ethics covers all types of taste and decency issues relating to advertising, marketing or promotional matters or activities that contain an "Advertising or Marketing Communication" in any medium. The only material that Section 2 does not cover is the label or packaging of a product. Specifically, Section 2 regulates taste and decency issues such discrimination or vilification of a person or section of the community on account of their race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief. It also regulates the portrayal of violence; sexuality and nudity, advertising to children and language. Section 2 also requires advertisers not to depict "material contrary to Prevailing Community Standards on health and safety". The term "Prevailing Community Standard" means "the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications". The concept of "Prevailing Community Standards" is a very fluid notion and what was previously considered acceptable can, due to a change in community standards, be subsequently reconsidered as unacceptable. For example, in February 2007 one of the most complained about advertisements in Australia was a billboard poster that advertised the treatment of male sexual dysfunction with the words "Want longer lasting sex?" The complaints were subsequently dismissed by the Advertising Standards Board, however in August 2008 a fresh wave of complaints concerning the billboard posters were made and the Advertising Standards Board this time upheld the complaints noting that "there has been a shift in community standards and the content of this billboard is no longer acceptable".

Religion

Section 2.1 of the AANA Code of Ethics states that "Advertising or Marketing Communications shall not portray people or depict material in a way that discriminates against or vilifies a person or section of the community on account of...religion...". Interestingly, religion is not covered in the anti-discrimination legislation of some States and Territories of Australia, or in Federal legislation, however advertisements of this nature may also be in breach of other industry codes of practice, for example the codes of practice that regulate program content and broadcasting on commercial and pay TV and radio.

Minority Groups

Section 2.1 of the AANA Code of Ethics states that "Advertising or Marketing Communications shall not portray people or depict material in a way that discriminates against or vilifies a person or section of the community on account of... race, ethnicity, nationality ...". In addition, advertisements of this nature may also be in breach of Federal and State or Territory anti-discrimination legislation as well as other industry codes of

practice, for example the codes of practice that regulate program content and broadcasting on commercial and pay TV and radio.

Gender/Stereotyping

Section 2.1 of the AANA Code of Ethics states that “Advertising or Marketing Communications shall not portray people or depict material in a way that discriminates against or vilifies a person or section of the community on account of...sex...”. “Sex” relates to biological and physiological characteristics of a person, as opposed to gender, which relates to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women. Although the AANA Code of Ethics refers only to “sex”, recent determinations have consistently interpreted this term not just to include physical characteristics of being a man or woman (such as having breasts or being pregnant), but also to include discrimination and vilification on the basis of gender. Advertisements of this nature may also be in breach of Federal and State or Territory anti-discrimination legislation as well as other industry codes of practice, for example the codes of practice that regulate program content and broadcasting on commercial and pay TV and radio.

Race

Section 2.1 of the AANA Code of Ethics states that “Advertising or Marketing Communications shall not portray people or depict material in a way that discriminates against or vilifies a person or section of the community on account of...race...” In addition, advertisements of this nature may also be in breach of Federal and State or Territory antidiscrimination legislation as well as other industry codes of practice, for example the codes of practice that regulate program content and broadcasting on commercial and pay TV and radio.

Sex and Sexual Preference

Section 2.1 of the AANA Code of Ethics states that “Advertising or Marketing Communications shall not portray people or depict material in a way that discriminates against or vilifies a person or section of the community on account of...sex...sexual preference...”. Blatant or gratuitous use of nudity in advertisements used in public places (such as billboards), especially where it has little or no relevance to the product advertised is likely to cause offence and provoke complaints and can amount to discrimination under section 2.1. Section 2.3 of the AANA Code of Ethics also states that Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone. In addition, advertisements of this nature may also be in breach of Federal and State or Territory antidiscrimination legislation as well as other industry codes of practice, for example the codes of practice that regulate program content and broadcasting on commercial and pay TV and radio.

Violence

Section 2.2 of the AANA Code of Ethics states that “Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.” Whilst “violence” is not defined in the AANA Code of Ethics, the Advertising Standards Board has considered that “violence” includes the consequences of violence, feelings of violation, shock and fright. In addition, advertisements of this nature may also be in breach of other industry codes of practice, for example the codes of practice that regulate program content and broadcasting on commercial and pay TV and radio.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

There is no legal definition of “decency” in advertising. The issue of decency includes the values which are acknowledged as good ethics in society.

General

The Act Against Unfair Competition generally prohibits advertising if it is contradictory to “good ethics” in business. Marketing or advertising violating the sense of decency may be illegal, if by the use of such practices an unjustified advantage may be gained against competitors in business.

The legislative acts regulating private and public TV in Austria contain further rules, to guarantee that TV advertising does not violate the sense of decency. In particular any discrimination based on race, gender, age, religion, nationality and disability is strictly forbidden.

In addition to this legislative act, the Austrian advertising industry established a so called “Advertising Council” (Werberat), which as an instrument of self control has established guidelines to be obeyed by the advertising industry. These guidelines particularly guarantee that the sense of decency is respected in advertising. The Advertising Council has no power to impose sanctions against the advertiser. However, the decisions of the Advertising Council may be published in order to inform the media and the public that a certain practice offends the rules of decency.

Religion

According to the guidelines of the Advertising Council no statements or images may be used which could violate the dignity of parts of the population or of ethical groups. Religious symbols must not be used in advertising.

Minority Groups

According to the guidelines of the Advertising Council all practices must be avoided, which could offend the dignity of minority groups. According to the acts on television any discrimination based on race, religion or nationality are strictly forbidden. Furthermore, any advertising practices which could violate religious or political opinions must be avoided.

Gender/Stereotyping

According to the acts regulating television any discrimination of gender is forbidden. In the same way the guidelines of the Advertising Council state that any discrimination of gender is forbidden.

Race

According to the acts on television any discrimination of races is strictly forbidden. Also the guidelines of the Advertising Council do not allow any statements or practices which discriminate ethical groups.

Sex and Sexual Preference

The strict ban on discrimination of gender includes a ban on any discrimination for certain sexual preferences. As to the advertisement shown at the end of this report the Advertising Council denied an offence against decency. However, it was recommended to apply a higher degree of sensibility in future campaigns.

Violence

According to the acts on television, marketing and advertising shall not promote any practice which may endanger health or safety. According to the guidelines of the Advertising Council, scenes of violence shall not be shown in advertising. Furthermore no statements or presentations shall be used, which could encourage people to brutal or aggressive behavior. Advertising in general shall not cause panic or fear.

Example

This advertisement was used for a Technical Inspection Agency particularly inspecting vehicles. The statement can be translated as follows:

“Don’t let just anyone get their hands on your chassis.”

It was decided that this advertisement is not an offence against decency.



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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
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DECENCY IN ADVERTISING

General

Except for clauses in different decrees governing audio-visual advertising broadcast on television, Belgium has no specific laws regarding decency in advertising.

There is case law on decency in advertising, but the national courts have to rule in law and therefore will not always find a way to consider an advertisement illegal just because is provocative or questionable from a decency perspective.

Quite generally, gender, race and origin are being protected by specific statutory provisions or laws, whilst other topics such as violence, religion, sex and nudity in advertising will be more difficult to sanction on the basis of civil torts liability (of which fair trade practices are an application). Courts always will make a balance of interests.

Besides the civil law means of recourse, decency in advertising can be prosecuted before criminal courts (on the basis of slander and criminal tort liability), but the examples are quite rare.

Religious and racial defamation are applications of the generally prohibited act of defamation (Article 443 Criminal Code). Defamation of public institutions is equally punishable.

False news is a distinct count of punishable behaviour.

Decency in advertising will most of the time be the topic of complaints and decisions or advices from the self-regulatory body overseeing advertising, the Jury for ethical practices in advertising (the "JEP"). As the name of the self-regulatory body reveals, violation of ethics, decency and taste are per excellence subject matters meant to be covered by the self regulation.

There is a long list of decisions with advice to block advertising on the principles of what our society feels to be decent or not decent. The advice to block or boycott an ad is very efficient in practice. The Belgian Direct Marketing Association can impose sanctions upon its' members. The decisions of the self-regulatory bodies do not necessarily refer to binding texts or to ethical codes, but decency in advertising is one of the subjects of specific codes of conduct in several industries.

Religion

Belgium has a number of officially recognised and supported religions. Belgium totally accepts a large number of not officially recognized religions. This right is embodied in Article 19 of the Constitution and imbedded in international treaties. The same counts for groups that show a particular cohesive and exclusive pattern around a particular cult, philosophy or belief.

A particular article that deals with a religion-related crime are Articles 142 - 145 Criminal Code:

- forcing or hindering people through violence or threat to participate in religious ceremonies;
- forcing or hindering people to observe the celebration of religious days;
- hindering, interrupting a religious service in churches or public places;
- injury to religious objects;
- causing damage to a religious servant in the process of the ceremony;

Promotion of all that behaviour equally qualifies as a criminal offence.

Again, the few decisions on religion are found in the decisions of the JEP, which dealt with religion in advertising and - different from state court case law -, there is some precedent ruling (advice) from the self-regulation vetting body 'Jury' on adult content with religious themes or connotation.

Minority Groups

Public and private institutions actively prosecute the targeting of minority groups in advertising. The actions can be both before commercial and civil courts in a cease and desist form of action, before criminal courts and before self-regulatory bodies such as the JEP or the Belgian Direct Marketing Association.

Gender/Stereotyping

Public and private institutions actively prosecute gender and stereotyping in advertising and increasingly so. The Institute on the Equality of Man and Women has put the subject on the agenda with several criminal and civil cases that were launched recently and received wide media coverage, such as the attack against a gender stereotyping advertising "rent-a-wife".

Race

Racism in advertising, if found to be given, will vigorously be prosecuted before criminal courts. Experience learns that some degree humor and a level of double meaning in advertising will be accepted.

Groups of persons that unite in an ideology that is contrary to the cornerstones of the democratic system are anti-constitutional. Nazism also goes hand in hand with racism. The Act of 1981 on Punishment of certain acts motivated by Racism and Xenophobia stands in the way of promoting Nazi ideology in public through writing or through other means of communication to several people. The Act of 23 March 1995 on Revisionism prohibits all minimizing, commending, approving or denial of genocide of the National Social Regime of the Nazi's during the Second World War.

Sex and Sexual Preference

On the basis of general principles, case law has made the following distinctions:

The general demarcation line under Belgian law is distinguishes content that is "contrary to the public decency" from content that is "not contrary to the public decency". The first is forbidden, the second is allowed. This demarcation line was applied by the supreme Belgian court (Cour de cassation). The Court determined that content is "contrary to the public decency" if the "content's only aim is apparently to stimulate in an extreme manner the sensuous feelings of the viewer or, if it violates the sense of shame of the average civilian because of the vicious, obscene, humiliating or perverse acts or positions on the sexual level".

Today, and from a strict legal point of view, the depiction of nudity, of erogenous zones or of erotic acts as such is not contrary to the public decency. It is the particular manner of the representation that can hurt the public decency (for example by the fact that violence is involved).

A more encompassing review up front or upon complaint of ads is conducted by the self-regulation body "Jep" or the Jury. The scrutiny of the Jury is broader than strictly legal and the Jury can deliver an advice to ban the ad through boycott. This broad ethical and moral scrutiny is typical for the audiovisual, outdoor and print advertising media.

The criterion of "contrary to the public decency" is difficult as a basis for objectively describing of what is allowed and what not. One can deduct from the court decisions relating to the mentioned criterion, that content involving bestiality, incest, rape, pedophilia, extreme SM and use of violence is generally not allowed (banned content).

Content that is allowed because not being contrary to the public decency, does not imply that this content can be made available to the whole Belgian population. "Indecent images, pictures or subjects that can stimulate the imagination of minors" (i.e. under 18 years) should not be sold, distributed or showed to minors. Within the content allowed, distinction should be made between content that does not consist of indecent images, pictures or subjects that can stimulate the imagination of minors and content that does consist of images, pictures or subjects that can stimulate the imagination of minors.

Minors. To be noted as well is that publicity for sexual services provided by or aimed at minors is not allowed.

Publicity for sexual services by means of a telecommunication device (like sex lines) and publicity for prostitution or lechery are banned as well, albeit, in fact, such ads are part of the daily advertising environment in print and audiovisual media. The article that foresees in this prohibition also expressly refers to the prohibition of publicity for sexual services provided by persons of whom is pretended that they are minors. The penalty for such publicity is twice as high as the sanctions on publicity for prostitution by adults. The Belgian Criminal law prohibits images, objects, movies, pictures and other image carriers depicting positions or sexual acts with pornographic character involving minors as well as representing minors (for example virtually created pictures). Creating a possible wrong impression as that the age is less than 18 is equally a criminal offense.

Violence

There is no statutory rule that generally prohibits the depiction of violence. Self regulation plays an important role in steering the show of violence the traditional media.

The showing of violence is in principle only forbidden when it takes place in a sexual content. Several rules are dedicated to the protection of the youth. First of all, no pictures can be shown in which minors are involved or represented that demonstrate actions with a pornographic connotation (example: a film commission makes sure that films that show too much violence or sexual scenes cannot be attended by minors).

Revolutionary content. The continuum of revolutionary behavior starts from freedom of expression and ends in terrorism. To be distinguished is revolutionary content geared towards abroad or towards Belgium and its institutions (Criminal Code, Articles 101 and following). In general, the borderline between acceptable and illegal revolutionary activity is not political: anyone who incites to violence or other illegal acts and anyone who perpetrates these acts is punishable under the Criminal Code. Article 322 Criminal Code: every association of malfeasance founded to commit an assault against persons or property is criminally sentenced.

Writing about terrorism is legal. Content about certain terrorist groups is legal, unless this content amounts to a subversive activity.

Suicide. The promotion in public of suicide, assisted suicide or euthanasia appears to be running afoul of the Criminal Code, because such public promotion appears to be so hard to reconcile with the respect for the human life of others. The promotion in public of suicide, assisted suicide or euthanasia refers to other persons (Article 392 Criminal Code : Killing with the intention to kill is homicide. Killing with premeditated intent is called murder (394 Criminal Code).

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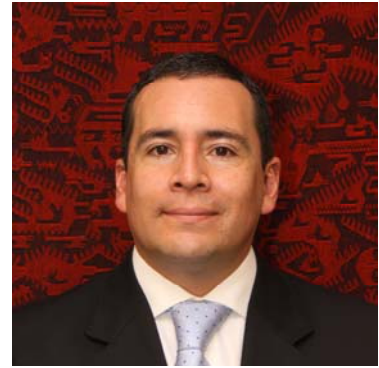
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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
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decency in advertising?***

DECENCY IN ADVERTISING

General

Regarding the topic of “Decency in advertising”, Bolivia does not count with specific regulation on the matter. There are, nevertheless, diverse municipal regulations that target different issues of decency in advertising. These regulations may vary in different regions of the country, but the essence of the regulations is very similar.

It is important to remark that in 2010 a bill protecting people from racism and any kind of discrimination has been approved. (Law 045) The advertising in Bolivia (as well as the press in general) must comply with this strict regulation. Any advertise that may cause susceptibility because of racism, gender, or other matters may be subjected to prohibition and severe legal consequences, including possible imprisonment. This norm may be applied to some of the following specific topics.

Religion

There are not specific regulations on the matter of religion in advertising.

Minority Groups

There is not specific regulation on the matter. As stated above, law 045 may be applied to advertising on this matter.

Gender/Stereotyping

Law 045 may be applied to advertising on this matter.

In the city of Cochabamba specific regulation exists that targets gender issues in advertising (Municipal disposition of December 15th 2009) According to this regulation, advertising cannot, i.e. set standards of female beauty as synonym for success, nor can place women as excluded from mayor economic decisions.

Race

Law 045 may be applied to advertising on this matter.

Municipal regulation of different cities prohibits advertising that show any kind of racist content.

Unfortunately, the disposition is not much elaborated, the definition of the term “racism” is not completely developed and must be further elaborated in order to allow the full application of the norm.

Sex and Sexual Preference

There is not specific regulation on the matter. Law 045 may be applied to advertising on this matter.

Violence

According to Municipal regulation of the city of La Paz (Municipal disposition Nr. 559/2008) any kind of advertising that contravenes public order and good standard behaviors is prohibited. Although the term is subjected to different interpretations, the violence in advertising may most probably be consider an alteration of the public order and good standard behaviors, and, as such, is prohibited. The Urban Advertising Unit (an entity that corresponds to the Municipal Government of La Paz) is in charge of the prevention of unlawful advertising in the city.

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

Brazil is one of the countries with the greatest cultural diversity in the world. The cultural differences that exist between the Brazilians can be seen in the many races, ages, accents, social backgrounds, traditions and religions that coexist all over the country. Consequently, the conception of morality and decency, which is everywhere a subjective concept and very difficult to be objectively defined, is impossible to be fixed in Brazil. In view of the impossibility of imposing objective rules of decency, there is no specific law comprising the definition of decency in advertising. The resolution of conflicts that arise in connection with decency issues in advertisements must be based on constitutional principles, on general legal provisions about good habits, public order, personal rights and good faith, on consumer protection rules, as well as on the ethical guidelines established by the Brazilian Advertising Self-Regulation body ("CONAR") in its self-regulation code.

Although self-regulation does not replace government and legislative regulation, it may be considered an ethical parameter which must be observed by every advertiser, and Brazilian Courts have already recognized the Self-Regulation Advertising Code as an interpretative tool for advertisements. CONAR is not an official agency and its decisions are not legally binding but simply ethically binding. However, the procedures filed before CONAR are quick and effective, and it is important to note that the great majority of the decency issues in advertisements are decided by CONAR, and not by the Brazilian Courts.

The way some individuals express themselves may sometimes offend others, especially in a country of so many different cultures, as Brazil. Therefore, certain groups of people have a very strong feeling of protection of their rights, especially when these groups represent minorities. However, the fight for their rights, which surely helps to put a limit in the so-called indecent advertisements, sometimes constitutes an exaggeration. At this point, CONAR's biggest challenge is to reasonably decide as to whether or not the advertisement infringed the ethical guidelines and the constitutional protection against any forms of discrimination, bearing in mind the constitutional principle of the freedom of speech. Although the principle of the freedom of speech is eventually put into consideration, CONAR is usually strict regarding some subjects that can be easily identified as issues that deserve special attention, such as the explicit sexual appeal and the advertisements aimed to children. In these cases, CONAR is usually deciding for the alteration of the advertisements in order to best protect the interests of the community as a whole.

General

The Brazilian Constitution sets forth that one of the fundamental objectives of the Federative Republic of Brazil is to promote the well-being of all, without prejudice as to origin, race, gender, colour, age and any other forms of discrimination (Article 3rd, Item IV). Furthermore, Article 5th, item IX of the Constitution establishes that: *'All persons are equal before the Law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of their right to life, to liberty, to equality, to security and to property, on the following terms: (...) IX: the expression of intellectual, artistic, scientific, and communications activities is free, independently of censorship or license.'*

Another law applicable to decency issues is the Brazilian Civil Code (Law 10.406/02), which establishes, in Article 187, that it is unlawful to overstep the limits of good-faith and good habits in the exercise of a right.

The Consumers Protection Code (Law 8.078/90) prohibits the abusive advertisement, i.e., which is considered discriminatory, which stimulates violence, which explores the fear or the superstition, which takes advantages of the inexperience of children, which disrespects environmental values, and/or which could be capable of leading the consumers to behave in a dangerous way (Article 37, §2º).

Regarding CONAR's Self-Regulation Code governs Respect and Decency in its sections 1 and 2, in which Articles 19 to 22 provide the following:

Article 19. All advertising activities shall respect the dignity of human being, privacy, social interest, institutions and national symbols, constituted authorities and family.

Article 20. No advertisement shall encourage or stimulate any type of offense or racial, social, political, religious or national discrimination.

Article 21. The advertisement shall contain nothing that may induce to criminal or illegal activities – or that may encourage, stimulate or incite such activities

Article 22. No advertisement shall contain statements or visual or audio presentations that may offend the decency standards of the audience it intends to reach.

Basically based on these articles, CONAR decides to ban or for the modification of advertisements considered "harmful" to decency and morality. However, in some cases, in spite of the complaints filed by Consumer Protection Associations or consumers themselves, CONAR members vote for the abandonment of the case, understanding that the advertisement does not violate any decency and/or morality principles.

Religion

Claim No. 90/07 was brought by CONAR due to a consumer's complaint against Ambev for the beer manufacturer Skol's advertising campaign where monks in a Buddhist temple practice martial arts to electronic music, imitating a DJ's movements and hold Skol's beer cans. The Defendant claimed that the campaign showed no sign of disrespect to any religion, and no cultural or religious authority figure filed any complaints. CONAR decided in favor of the defendant, and ruled for the abandonment of the claim.

Minority Groups

Claim No. 282/99 was brought by CONAR per requirement of the Public Prosecutors' Office, which asked for CONAR's opinion on the anti-piracy campaign which was being advertised by The Recording Industry Association, and was being considered by some authorities a discrimination against handicapped people, since the slogan was "a country which is not concerned about copyright is deaf, mute and blind". CONAR ruled for the abandonment of the claim, finding that the slogan was not discriminatory.

Gender/Stereotyping

Claim No. 149/07 was brought by CONAR due to a consumer's complaint against Telephone company Ol's advertising campaign in which overweight people are used as an element to represent competitor telephone companies and their disadvantages. CONAR understood that the campaign was not depreciative of overweight people, claiming it was a humorous approach, and decided for the abandonment of the claim.

Race

Claim No. 27/06 was brought by CONAR due to a consumer's complaint against Unilever, for the Hellman's advertising campaign in which a tribe of black cannibals decide not to eat a white prisoner after tasting Hellman's mayonnaise, claiming it represented a racial discrimination. CONAR ruled in favor of the defendant, determining the abandonment of the claim.

Sex and Sexual Preference

Claim No. 210/08 was brought by CONAR due to a consumer's complaint against beer manufacturer company Kaiser's advertising campaign in which a group of women dance ballet using short and tight clothes, and a man in the audience says "A man's place is at the Ballet". The consumer claimed that the rules for advertising alcohol beverages were disobeyed, since it is prohibited to use sexuality as the main purpose of the message. CONAR understood that the ballerinas appeared briefly in the campaign and did not wear provocative clothes. Therefore, CONAR ruled in favor of the defendant, determining the abandonment of the claim.

Violence

Article 26 of CONAR's code establishes that "*the advertisement shall contain nothing that may induce to violence.*" Based on this article, CONAR brought claim No. 280/06 against FIEO University's advertisement in which a consumer verbally offends a saleswoman, who, therefore, imagines herself physically attacking the consumer. In the end of the advertisement, there is a message which says that you must apply for the University in order to get a better job and not be offended by consumers anymore. CONAR banned the advertisement, which was considered unethical, disrespectful, prejudicial, and violent.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

General

Decency in advertising is governed in Canada primarily by self-regulation, rather than legislation. The Canadian Code of Advertising Standards (the "Code") is an industry self-regulatory code administered by Advertising Standards Canada ("ASC"). Consumer complaints raised under the Code are reported by ASC in its quarterly Ad Complaints Reports, while disputes between competitors remain confidential.

Clause 14 of the Code addresses Unacceptable Depictions and Portrayals, and is therefore the touchstone for questions of decency in advertising. The preamble to the clause establishes that simply because an ad is distasteful, or for a product or service which may be offensive to some people, this is not sufficient grounds for objection. It proceeds, then, to set out the prohibitions against unacceptable advertising on the following grounds.

Religion

Under Clause 14(a), advertisements shall not condone any form of personal discrimination, including that based upon religion. Clause 14(c) further prohibits demeaning, denigrating or disparaging any identifiable person or groups of people.

As a recent example, in 2009, a print ad for Joe Rockhead's Indoor Climbing Wall depicted a bobble-head doll that parodied Jesus, with the words "Bigger than Jesus". The ASC Council found that the ad inappropriately referenced and characterized Jesus in a way that was demeaning and denigrating to the Christian religion and to adherents of Christianity. As such, the ad was found to have violated Clause 14(c).

Minority Groups/Race

Clause 14(a) further prohibits ads which condone any form of personal discrimination based on race, or ethnic origin. This is in addition to Clause 14(c) which, as noted above, prohibits demeaning, denigrating or disparaging any identifiable person or groups of people.

In a recent example, the ASC Council reviewed a television commercial for Labatt beer 'Bud Light', in which an annoying pool party guest in a small bathing suit was making other guests feel uncomfortable. A 'Bud Light' character encouraged the annoying guest to leave the party by telling him, in German, that someone outside the pool party was selling 'schnitzel'. The ASC Council found this ad to portray an unflattering caricature of a German-speaking person, and therefore condoned the discrimination and denigration of German people contrary to Clause 14(c). In this case, Council was unable to find that the general impression conveyed by the commercial was altered or subordinated by the use of humour.

Sex and Gender/Stereotyping

In addition to the paragraphs discussed above (including Clause 14(a), prohibiting discrimination based on sex, and Clause 14(c), prohibiting demeaning, denigrating or disparaging a particular identifiable group), Clause 14(d) of the Code states: "Advertisements shall not undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population." This clause is commonly relied upon in complaints based on allegedly inappropriate gender portrayals.

The Code is supplemented in this case by ASC's Gender Portrayal Guidelines (the "Guidelines"). The Guidelines require that advertisers consider, among other things, an equality between the genders with respect to situations of authority and decision-making, and avoiding inappropriate use or exploitation of sexuality.

A recent example (apart from the common complaints against billboard ads for suggestively depicting the female body, commonly found to be objectifying and demeaning to women) is a decision from 2009 that considered a television commercial in which a man was shown attempting a simple home repair and was ridiculed by his wife, who used condescending language and a sarcastic tone of voice when speaking to him. The Council found that this ad was demeaning towards men by portraying them as incompetent, thereby violating Clause 14(c) of the Code. In this instance the humour was not enough to negate the overall demeaning impression of the ad.

Sexual Preference

As discussed above, Clause 14 through its various paragraphs prohibits discrimination based on sex, disparagement or denigration of an identifiable group of people, and ads which undermine human dignity or which display obvious indifference to, or encourage attitudes which offend the standards of public decency. We are unaware of any ads recently considered by ASC Council on the basis of a complaint that the portrayal of sexual preference was in violation of the Code, although we believe that these are the provisions of the Code that would be brought to bear on the Council's determination of such an issue.

Violence

Clause Section 14(b) of the Code states that ads must not: "appear in a realistic manner to exploit, condone or incite violence; nor appear to condone, or directly encourage, bullying; nor directly encourage, or exhibit obvious indifference to, unlawful behaviour." Realistic depictions of violence and aggression are therefore likely to be found in violation of this clause. This clause was amended in 2005, adding specific reference to bullying in light of concerns of a growing trend in this area among children. Since then, a handful of ads have been found to violate the Code on the basis of bullying.

For example, in 2011, consumers complained about a television commercial that depicted a man being verbally berated and harassed by friends and family because he had given them bad advice upon which they had relied to their detriment. The ASC Council held that the ad condoned and encouraged bullying, contrary to Clause 14(b).

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

Several references to decency in advertising can be found scattered around some legal texts. Some refer to this issue in a general way, like The National Television Council Act, which vows for “*the respect of the nation’s moral and cultural standards*” and can penalize television networks if they broadcast what any individual considers inappropriate forms of advertising. Some more specific acts refer to the advertising of certain products, like tobacco or alcoholic beverages, with prohibitions regarding special time slots for advertising in radio or television, or restrictions referring places where such products can’t be advertised.

But the matter at hand is mostly self-regulated by the advertising industry through the Chilean Code of Advertising Ethics, which is almost completely based upon the Advertising and Marketing Communication Practice Code of the International Chamber of Commerce. According to this Code, advertising “*shall not offend moral or decency standards that prevail in the community or any of its important groups*”, and shall not demean or denigrate any group or individual, “*especially regarding their race, ethnic background, religion, gender or sexual orientation.*”

Finally, it should also be noted that Chilean society is still very influenced by conservative and religious groups, which have an important amount of influence among public and private entities regarding moral and ethical issues. The advertising industry, as the rest of society, is quite aware of this and adjusts its actions so as to avoid any confrontation caused by complaints filed by the referred groups.

General

This Chilean Code of Advertising Ethics is enforced by the CONAR (Council for Self-regulating and Ethical Advertising), a non-profit organization which essentially acts as an Arbitration Court that resolve disputes or complaints regarding decency issues, among other subjects. According to the Code, advertising must respect the values, rights, and principles stated in the Constitution, especially regarding family morals and values, whilst also recognizing freedom of speech as a pillar of advertising.

CONAR’s members include advertising agencies, organizations that group independent advertisers, and various media like television networks, radio stations, magazines and newspapers. By paying their monthly membership fees, they can elect the members of the Board of Directors, and can file complaints for any behavior that contradicts the Code’s regulations. These complaints are handled first by the Board of Directors, and appeals are filed before CONAR’s Advertising Ethics Court. Sanctions imposed by any of these are binding for members of CONAR, and may range from the temporary interruption of an advertising campaign to expelling a member.

Religion

Several individuals filed a complaint before CONAR’s board of directors in response to an ad campaign designed by a travel agency. The ads allegedly induced the average viewer to believe that the Virgin Mary’s holy characteristic – her virginity - was false. CONAR acknowledged that the ad indeed showed that, but it was done in a humorous manner. This wasn’t considered to be offensive to the Catholic Faith or its followers. CONAR’s resolution in this case considers freedom of speech to be more valuable or noteworthy than the probable dislike of certain types of advertising by a part of society.

Minority Groups

Considering that there are no significant ethnical differences between members of the Chilean society, there have been no complaints regarding offensive acts towards minority groups in advertising. Anyways, the Code, based on international standards, condemns such a form of advertising.

Gender/Stereotyping

- In 2010, a complaint was filed against a campaign issued by a juice company that compared the preference that the public had for their products, with the choice that a teenage girl made among many different potential boyfriends, which belonged to different juvenile groups such as punks, goths and hippies. The girl finally chose the boy that had a more “normal” and traditional style. The juice company stated that the natural flavor of their products was a natural as the choice that the girl had made. The authorities ultimately decided that the campaign had a humorous style and did not offend the juvenile groups that were shown.
- In 2006, a supermarket's chain advertising campaign included images that to the Court were demeaning towards adopted children. CONAR considered that the ad portrayed adopted children as different to other children, as well as creating a negative connotation towards adoption, all of which could lead to unfair and important suffering for children and parents involved in this kind of situations. No sanctions were imposed, due to the company's quick removal of the ads.
- In 2005, Chile's Tourette Association filed a complaint against a phone company for what they considered denigration of people with Tourette's syndrome. The ad consisted of a reporter interviewing an individual that suffered such disease, and due to it he repeated incessantly a certain marketing catch phrase. CONAR ruled that such a campaign should be immediately removed.

Race

Race isn't an issue in Chilean society, basically because nearly all of its members fit inside the same racial background. Due to this, no cases referring race have been presented before CONAR, although some ads could certainly be considered racist in other societies.

Sex and Sexual Preference

- Also in 2005, several women complained about a famous jeans company that they considered to be highly erotic, demeaning to women, and inadequate for children. In this case CONAR considered that, although it contained partial nudity, the ad's contents couldn't be considered immoral, and taking into account that it was to promote a line of men's underwear, partial nudity wasn't inadequate. Nevertheless, CONAR recognized the campaign to be focused on a certain age spectrum, thus ordered the company to show its ads in places and times where it couldn't reach immature audiences. The company responded by removing the ad campaign altogether.
- In a 2004 complaint, an individual argued that photographs included in an ad campaign launched by a women's shoes company featured women performing actions that were explicit enough to imply lesbianism. To the petitioner, these acts were considered immoral, abnormal, and deviate, all of this against the Code's respecting decency in advertising. CONAR stated that lesbianism in today's society was a reality that shouldn't be ignored, and that the ads in question only presented that reality, and never promoted nor encouraged it. CONAR believes this subject is indeed a sensitive and controversial topic in Chilean society, so judging its morality or immorality was beyond CONAR's attributions for the time being.

Violence

In 2010, a complaint was filed against an advertisement campaign made by an NGO where a group of school children were shown being hanged and executed. The objective of the campaign was to raise awareness of the status of the educational standards in Chile. The ads were intended as a metaphor of the lack of possibilities those children would have once they graduated from their schools due to the poor quality of the education they received. The NGO argued that the campaign was meant to be disturbing in order to bring to the public's attention to this important issue. Nevertheless, CONAR finally decided that the campaign breached the Chilean Code of Advertising Ethics, as it resorted to violence to advertise and communicate their message.

In 2005, individual complained before CONAR about a clothing store's ad campaign which included images of bruised, battered women as a consequence of violence perpetrated upon them by their male partner. To resolve this, CONAR took into consideration that at that particular time, society was (and still is) very sensitive towards violence towards women, a subject that all of a sudden was heavily included in all forms of media. This, added to the fact that the Code explicitly condemns advertising that supports or encourages violent acts, made CONAR conclude that violence in advertising shouldn't be tolerated as a way of standing out before consumers. Violence in this particular campaign was considered unnecessary, unjustified, and totally out of context. This was accepted by the company, removing its campaign immediately.

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

In Costa Rica the only Law that deals with decency issues in advertising was initially enacted to protect the portrayal of women. The name of this Law is “Ley que Regula la propaganda que utilice la imagen de la Mujer” (Law regulating advertising that uses the image of women).

However, this Law has been interpreted to cover other matters regarding advertising, protecting decency issues in general. There is no self regulatory code in place.

Even though the Law was very specific and narrow in its purposes and objectives, one of its provisions prohibits any advertising that may offend the “dignity” of “family values”. Hence, any advertising that falls into these categories (whether or not it uses the image of women) would also be analyzed under these rules.

Although this law has been questioned repeatedly on Constitutional grounds, the Supreme Court has rejected all claims, asserting that Advertising may be limited for matters that are considered of general interest and public order, such as the avoidance of indecent messages.

There is also a self-regulation code that complements government regulation. However, the code is very recent and there has not been any case yet at the self-regulatory body.

General

The office in charge of implementation and enforcement of this Law is a governmental office called “Oficina de Control de Propaganda” (Office for the control of advertising), which forms part of the Ministry of Government and Police issues (Costa Rican equivalent to the Ministry of Interior).

All types of advertising are subject to this regulation, including the one originating in foreign countries.

This office has powers to pull out advertising considered in violation, and they also have the powers to clear advertising before publication.

However, the regulation leaves a very wide margin to determine what is offensive. As a consequence, one of the main criticisms made is that the official criteria is often determined by the personal opinion of the head of the office (who changes every few years). This office is known for sometimes adopting overzealous positions on the issues at hand, while in other periods in time being very lenient.

Religion

There are no recent known cases involving religion in advertising. This is not surprising since it is very unusual for local advertising to deal with religious symbols and subjects.

However, recently two campaigns were pulled out based on religious grounds. The first one was sponsored by the Church against “*in vitro*” fertilization. The campaign used voices of small children saying that they

were glad to be born, but partly sad because some of his/her brothers and sisters “had to die” during the *in vitro*” process.

The second campaign was posted by an NGO promoting the use of condoms. It was pulled out on the grounds that the drawings and characters used were too appealing to children. The complaint was filed by the Church.

Minority Groups

Like religion, advertising dealing with minority groups are very rare. Consequently, there has not been any recent (known) case about decisions dealing with these issues.

Gender/Stereotyping

This is the one issue that the office in charges pays more attention, and is also the main purpose of the Law regulating the issue.

Specifically, the Law prohibits the use of the image of women to promote sales in any demeaning form, or exploiting women’s sexuality.

There are a wide variety of cases in which the authorities have discussed and decided on these issues. Sometimes the mere presence of attractive women has been questioned for not having relation to the product sold. Others, the role played by women in the ads has also been questioned for being sexist.

The criterion of whether certain images may or may not be used is often casuistic, and is very difficult to draw a line or determine a trend in the decisions made by the authorities.

Race

Although sporadic complaints have been received, race is not normally an issue.

Sex and Sexual Preference

Sex issues are also very common. A significant number of ads that are pulled out are based on being sexually explicit or with direct reference to sex when it is unnecessary and unrelated to the product.

In fact, use of sex as a sales tool is – along with the portrayal of women – the main two issues that are expressly mentioned in the Law. It then follows that an important number of cases deal with this particular topic.

Violence

Violence is one of the issues that by extension, has been interpreted to be covered by the Law under the “dignity” matters. Although these cases are not common, one of the most highly publicized ones dealt specifically with this matter.

In this instance, an ad ran into trouble for showing a group of mothers hiring a hit man to kill a fictional character. This ad was pulled off and the case received a lot of attention from the media. Even though violence is not expressly mentioned in the Law, the actions taken by the office of advertising were not questioned.

CZECH REPUBLIC

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

In the Czech Republic, there is indeed a statutory as well as self-regulatory request for “decency” (in the sense of “good morals” or “good ethics”) in advertising.

Nonetheless, there are no special legal acts which would deal specifically with “decency” in advertising. The general legal regulation of the matter in question is comprised in several clauses of the Act on Advertising Regulation (act number 40/1995, Coll. Of Law, of 9 February 1995). More specific provisions are then to be found in the Act on Operating the Radio and TV Broadcasting (act number 231/2001, Coll. Of Law, of 17 May 2001) which – among other things – deals with the decency in radio and TV commercials.

But the issue of decency (ethics) in advertising is mainly left to the self-regulation of the advertising organisations themselves. The main self-regulatory document in this way is the so-called Advertising Codex (the present version is from 2009) issued by the chief self-regulatory body called The Advertising Council (short description of the structure as well as of the activities of The Advertising Council in English can be found here: <http://www.rpr.cz/cz/en.php>). The body within Advertising Council called The Arbitration Committee monitors that all the Council's members abide by the standards set out by the Advertising Codex. The Committee has unofficial, but widely respected authority to give a ruling in questionable cases. Everybody (physical as well legal persons from the public) has the right to file a complaint to the Committee concerning some seemingly unethical (i.e. Codex breaching) advertisement. If the Committee finds out that some provision of the Codex was violated by the advertisement, it can entail an obligation for the violator to change or to completely withdraw the unethical advertisement in the term of 7 days. If the violator does not obey the decision of the Committee, the Committee has the right to issue its decision to the wide public. The Committee deals with about 50 – 70 cases per year. All the decisions are publicized on the Advertising Council's website (in Czech language): <http://www.rpr.cz/cz/kauzy.php>.

General

The Act on Advertising Regulation generally states in its Section 2, Paragraph 3 that: *“Advertisement must not contradict good manners, and especially must not contain any discrimination based on race, sex or nationality or strike at religious convictions or national sentiments, jeopardize morality in a generally unacceptable way, denigrate human dignity, contain elements of pornography, violence or elements based on inducing fear. Advertising must not strike at political conviction.”*

The Act on Operating the Radio and TV Broadcasting prohibits in its section 48, paragraph 1, letter l) broadcasting *“commercials containing discrimination based on sex, race, colour of skin, language, faith and religion, political or other worldview, national or social origin, membership of national or ethnic minority, property, descent or other status.”* The Act also prohibits commercials which belittle human dignity (section 48, paragraph 1, letter j).

The Advertising Codex generally states in its Chapter I., Section 3.2 that: *“Advertisement must be decent, honest and truthful. It must be produced with the consciousness of responsibility towards the consumer as well as towards the society.”*

In its Chapter II., the Codex is more concrete on the general rules concerning decency, honour, truthfulness

and social responsibility of advertising, and states that:

Section 1.1. *“Advertisement must not contain statement and visual presentation which would violate in a gross manner the standards of decency and morality generally accepted by those whose are likely to be addressed by it. Mainly the presentation of human body must be carried out with full consideration of its effect on all types of readers and spectators. The violations of Codex will be judged with respect to the whole context, the relation between the advertisement and the product, the chosen target group and the media used.”*

Section 1.2. *“Above all, advertisement must not contain elements belittling human dignity.”*

Section 2.1. *“Advertisement must not be conceived as to abuse the trust of a consumer or to use the lack of his/her experiences or knowledge, or his/her trustfulness.”*

Section 2.2. *“Advertisement must not be based on the subliminal perception of a consumer.”*

Section 2.3. *“Advertisement must not be concealed, most of all it must not pretend that it is another kind of information spreading (scientific treatment, reportage etc.) than advertisement.”*

Section 3.1. *“Advertisement must not spread misleading information on one’s or another’s company, its products or services. Misleading information is even a piece of information which is true in itself, if – with regard to the circumstances and relations when it was made – it can mislead someone.”*

Section 3.2. *“Advertisement must not – based on misleading information – induce profit to one’s or another’s company at the expense of someone else.”*

Section 3.3. *“Advertisement must not contain misleading description of products or services which is capable of creating erroneous assumption that the described products or services come from certain state, certain area or place, or from certain producer, or that they possess certain special characteristic signs or special quality.”*

Section 3.4. *“For the purposes of this Codex, misleading description is also description of products or services with attached footnote serving for differentiation from the real origination, if this description is despite of the fact capable of creating erroneous assumption as to the origin or character of the products or services.”*

Section 3.5. *“Advertisement shall not be deemed misleading in the case that the description of products or services is generally established as the information serving for describing kind or quality of goods, if there is not an attached footnote capable of misleading as to the origin of the products or services.”*

Section 4.1. *“Advertisement must not use the motive of fear without justified reason.”*

Section 4.2. *“Advertisement must not abuse prejudices and superstitions.”*

Section 4.3. *“Advertisement must not contain anything which could lead to violent acts or encourage them.”*

Section 4.4. *“Advertisement must not contain anything which would in a gross and unequivocal way offend the nationalistic, racial or religious feelings of consumers.”*

Section 4.5. *“Advertisement can derive benefit from the traditions, customs and symbols, which are not usual in the Czech Republic (Santa Claus, for instance). Advertisement on the other hand must not deny or belittle the traditions, customs and symbols, which are usual in the Czech Republic (Father Christmas, St. Nicolas’ Day and Easter customs etc.).”*

Religion

There is no special provision on the use of religion in the Act on Advertising Regulation. Nonetheless, the Act generally prohibits discriminatory advertisements, as was stated above.

The Act on Operating the Radio and TV Broadcasting prohibits broadcasting of *“religious and atheistic”* commercials as well as commercials *“attacking faith or religious or political or other worldview”*.

The Advertising Codex has a special provision for the use of religion in the advertisements for alcoholic beverages. It states: *“Advertisement shall not implicate nor portray the consumption of alcoholic beverage in the proximity of sacred places or cemeteries. Advertisement shall not claim nor implicate that alcoholic beverage is consumed by the members of such religious group which forbids its members the consumption of alcohol.”*

Regarding the particular cases which were decided by The Arbitration Committee, there was for instance a case in 2004 (file number 020/2004/STÍŽ), where a private person filed a complaint claiming that the advertisement of the former largest Czech billing company SAZKA, a.s. “abused the symbols of Christian belief: the act of sanctification is a liturgical act, which applies to holy men or divine beings”. The advertisement in question was a set of billboards which invited consumers to attend the solemn opening of the new sports hall. The billboards called the sports hall “New cathedral sanctified to games.” The complaint was dismissed. The Committee substantiated the dismissal by saying that “the terms cathedral or sanctification cannot in this case be connected with the Christian church in particular.”

Minority Groups

The Act on Advertising Regulation does not include any special provision on minority groups in relation to advertising. Nonetheless, the Act generally prohibits discriminatory advertisements, as was stated above.

The Act on Operating the Radio and TV Broadcasting also does not include any special provision on minority groups in relation to advertising. Nevertheless, the Act also generally prohibits discriminatory advertisements, as was stated above.

The Advertising Codex does not include any special provision on minority groups in relation to advertising as well. However, as was said above, the Codex generally prohibits advertisements based on prejudice and superstitions as well as advertisements offending the nationalistic, racial or religious feelings of consumers.

In relation to minority groups, The Arbitration Committee mainly deals with (allegedly) racist advertisements. For instance, there was a case in 2009 (file number 018/2009/STÍŽ) where a private person filed a complaint claiming that the advertisement of GlaxoSmithKline, s.r.o. which promoted vaccination against viral hepatitis, was racist. In the advertisement called "Yellow Weeks", there was portrayed a woman with protective gloves on her hands standing near a man with black skin in city vehicle – which was understood as having a racist allusion by the complainant. The complaint was dismissed. The Committee substantiated the dismissal by accepting the argumentation of the advertiser that "hepatitis A nor hepatitis B is racially or in other way defined and it is not possible to determine the high-risk groups from the point of view of sex, sexual orientation, religious belief etc. (...) The graphic expression of the advertisement in itself does not in any way directly or indirectly hints to racist allusion of the message."

Gender/Stereotyping

The Act on Advertising Regulation does not include any special provision on gender/stereotyping in relation to advertising. Nonetheless, the Act generally prohibits discriminatory advertisements, as was stated above.

The Act on Operating the Radio and TV Broadcasting also does not include any special provision on gender/stereotyping in relation to advertising. Nevertheless, the Act also generally prohibits discriminatory advertisements, as was stated above.

The Advertising Codex does not include any special provision on gender/stereotyping in relation to advertising as well. However, as was said above, the Codex generally prohibits advertisements based on prejudice and superstitions.

When it comes to gender/stereotyping issue, it could be said that The Arbitration Committee chiefly deals with (reportedly) sexist advertisements. For example, in 2007 (file number: 067/2007/STÍŽ) several joint complainants filed a complaint against an advertisement for traditional Czech alcoholic beverage Fernet Stock. The advertisement showed a male character lying on a beach where he listens to his quarreling wife. Subsequently he gets up and rolls up his wife as if she was a sex doll. The complainants claimed that such action was offensive towards women. The complaint was dismissed. The Committee found out that there was no violation of the Codex, because "the situation showed is a well experienced scheme, which cannot be unambiguously understood just in the direction 'man towards woman', but also vice versa."

Race

See the text about minority groups above.

Sex and Sexual Preference

In the case of sex and sexual preference, there applies what was said about Gender/Stereotyping in advertisements above. I.e. there is no special provision about that in the Acts or the Codex, but it is covered by the general clauses banning the discrimination, or prejudice and superstitions in advertisements.

Violence

The Act on Advertising Regulation generally states that *"advertising must not support behaviour damaging the health or jeopardizing the safety of individuals or property or acts damaging the interests of environmental protection."* The Act also regulates the advertisements for guns and ammunition (as to the way such advertisements can be distributed).

The Act on Operating the Radio and TV Broadcasting generally prohibits *"commercials supporting behavior endangering health or safety, or behavior, which endangers the environment in a gross manner."*

The Advertising Codex, as was already said above, sets down that *"advertisement must not contain anything which could lead to violent acts or encourage them."* Regarding the advertisements for alcoholic beverages, the Codex states that *"the content of advertisement must not encourage the consumption of alcoholic beverage in dangerous or illicit situations or places, for instance before or during the activities requiring soberness, prowess or accuracy."*

As to the cases concerning the use of violence in advertisement, for instance in 2008 there was a case (file number 064/2008/STÍŽ), where several joint individuals filed a complaint against an advertisement called "Hunt whatever you like on Aukro.cz" (Aukro.cz is a Czech web site for consumer auctions). The complainants claimed that the advertisement was brutal and supporting violence and gender stereotypes. The advertisement showed a prehistoric man with a bludgeon who was towing away a woman whom he just "hunted down". The complaint was dismissed. The Committee accepted the explanation of the advertiser and

stated that the advertisement shows a classical joke used as a commercial message. According to the Committee, the advertisement was even more innocent owing to the fact that it was used in the internet environment which is by many of its users used for "hunting" the members of the opposite sex.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

Decency in advertising is not governed by specific rules, but it is generally believed that decency in advertising is governed in accordance with fair trading practices. The rule concerning fair trading practices can be found in the Danish Marketing Practices Act, 1. In every case the courts and the Danish Consumer Ombudsman in their decisions balance the public interest against the principle of freedom of speech.

General

In Denmark decency in advertising is considered to be governed under the Marketing Practices Act, Art. 1. The concept includes ethics, religions, minority groups, gender, sexual preferences and other areas, where advertising can be perceived as degrading or contemptuous. As the Danish Consumer Ombudsman (DCD) is supervising and helping the Danish courts in enforcing the Marketing Practices Act, he has elaborated guidelines concerning some questions in connection with decency in advertising and the interpretation of the term.

Religion

In 1991 DCD brought a charge against a shoe manufacturer. The shoe manufacturer inserted a full-page advertisement in a daily paper on Palm Sunday. The advertisement was showing a Pope of the Roman Catholic believe dressed in training shoes. The Pope is kneeling down carrying out a ritual. While the Pope was kneeling the mark of the shoes were shown. Under the advertisement it said: "Faith removes mountains. That's how it is in tennis – almost". All judges agreed that the advertisement was improper and indecent for certain groups in the public.

Minority Groups

In 2000 the newspaper "Ekstra Bladet" brought an advertisement. The advertisement said "Now there isn't any Pakis in your children's' school...except the cleaning staff". Even though the advertisement was meant as satire, the DCD found it discriminating. In a letter to Ekstra Bladet the DCD wrote that humour and irony in advertisement are normally no problem in connection with the Marketing Practices Act. Nevertheless, the DCD found that the kind of advertisement brought by Ekstra Bladet can be difficult to perceive as satire even though it can be perceived as such. The advertisement exposed a group of citizens as ridiculous, and therefore a certain group of the public can be offended by it. Ekstra Bladet disagreed with DCD, but decided to remove the advertisements.

Gender/Stereotyping

In the DCD's guidelines from February 1993 concerning sexism it is stated that advertisements may not be degrading or contemptuous. In 2008 the DCD decided that eroticism can be used as an eye-catcher, but the line is drawn, where eroticism is used in a degrading and contemptuous manner. An underwear producing company showed in four advertisements scenes with a nun, a nurse, a chambermaid and a secretary. The characters were shown after having sex with an unknown man and sniffing to the unknown man's underwear. The DCD was of the opinion that the advertising campaign was discriminating to the female gender.

Race

In 2000 the DCD received a complaint concerning promotional literature for a show with the title “now with negroes”. Even though the word is a depreciatory word in the United States, it has a neutral meaning in Denmark for persons with black skin. In the section concerning minority group is an example of a decision from DCD, which found an advertisement to be discriminating to a certain group of the public.

Sex and Sexual Preference

In 2004 the DCD received more than 100 complaints against an advertisement for an alcoholic drink displayed on advertisement display pillars and at bus stops. The advertisement showed two naked women in an intimate embrace. One of the women was holding a bottle with the product in her hand. The text on the advertisement was "Enjoy Shaker – with a twist". DCD found that the advertisement for the alcoholic drink had a clear sexual content – almost pornographic. It was found to be provocative and able to offend and insult a lot of persons. When a company decides to market its product in the public, the company has to consider the fact that the advertisement can be seen by all section of the population.

Violence

Advertisements with a violent message or which urges to violence are often considered as being in contrary to the Marketing Practices Act, art. 1. In 2007 an advertisement for clothes was showing pictures of young people engaged in duels with firearms or posing with firearms. DCD found that even though there is a certain amount of latitude for creativity in advertisements, the advertisement at issue was offensive. Most of the pictures had references to a fictitious world, namely the environment known from gangster films. These pictures were not offensive because it was clear they were fictitious. However, some of the elements from the campaign could be perceived objectionable and unpleasant because the elements could be perceived as an acceptance of abuse and violence and as an incentive to commit crime.

Environment and ethics

Advertisements with an angle on environments or ethics must be correct and accurate, relevant and balanced, and clearly worded, so the consumer readily understands it. In 2008 a company marketed a gasoline product, using environmental claims and other instruments. DCD found that instruments such as flowers, grass, green colors and the like may not be used in marketing, if an environmental benefit can not be documented in a safe and proper basis. In 2010 DCD found that a campaign, where the website for a fictional law firm referred to methods, that would not be legal under Danish Law, was in contrary to the Marketing Practices Act, art. 1.

Self-regulation

No self-regulation replaces or supplements government and legislative regulation of decency in advertising.

DOMINICAN REPUBLIC

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

In regards to the subject of decency in advertising, the Dominican Republic has legislative regulation in the Constitution, Municipal Codes, Trademark Law and self regulation through the Ethics Code of the National Publicity Counsel. The term decency is not defined in Dominican Law, but the cultural background of the Country is very much inclined to Catholic moral values.

THE CONSTITUTION:

The Dominican Constitution establishes the right to public expression, as long as such expressions do not affect public order and morals.

PRESIDENTIAL RULE FORMING THE NATIONAL COMMISSION ON PUBLIC SPECTACLES & RADIO.

This commission has the right to ban from TV and Radio everything that might be of bad influence to the children and youth, or any corruption of the language or contradiction of good manners in any way. (Decreto 824 del 1971)

Code for Protection of Children has a rule that images, photos and advertising alcohol, tobacco, firearms, will be done respecting ethical, moral and social values of the human beings and family. (art. 21 Law 136-03)

Presidential Rule for application of Public Health Law, establishes that the advertising of drugs has to be in Spanish and in accomplishment of rules on ethics, decency and veracity. (art. 250, Decreto 246-06)

CODE OF ETHIC OF THE DOMINICAN PUBLICITY LEAGUE

It is a document approved by the association that includes most of the advertising that make business at the Dominican Republic, which can be consider as a "good intention" work, so that it would be fulfilled by good faith by the advertising that are members of this association. This Document includes rules for Decency

TRADEMARK LAW:

The Trademark Law establishes the prohibition to register trademarks that are contrary to morals and public order.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

In Ecuador there is no specific law governing decency in advertising. Several references to decency in advertising can be found scattered around different legal texts, even though there is no specific definition of the term “decency” in Ecuadorian Law. However the cultural background of the country is inclined to Catholic moral values.

The matter at hand is mostly self-regulated by the advertising industry through the Ecuadorian Association of Advertising Agencies (A.E.A.P), and their Ethic and Self-Regulating Code; as well as the statute of the Ecuadorian Association of Advertisers (A.E.A). The Statutes of the A.E.A.P and A.E.A institute a Court of Honor and as most of the advertising parties are members, several cases are handled by the Court of Honor.

When it comes to sanctions by control authorities such as the National Office of Broadcasting and Television Control of Ecuador, or even procedures before Courts of Honor according to the private statutes above mentioned, as publication of the cases is not prescribed, it is hard to gain knowledge of the case law.

Although self-regulation does not replace government and legislative regulation and is not legally binding itself, the Ecuadorian Supreme Court in an antitrust case has accepted that a professional ethical code should be the applicable parameter to determine the ruling principles on that specific area of the industry or commerce. (Case No. 7-IX-96, Official Register No. 78, 3-VI-97)

General

The Ecuadorian Constitution establishes in its Article 11 that discrimination based on ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, sexual orientation, disability or any other distinguishing feature is not allowed. Consequently all activity, including advertising, must comply with this constitutional principle. Complementally, Article 19 stipulates that contents with informative, educational and cultural purposes shall prevail in all types of media, which as well must promote spaces for the broadcasting of national independent production; and prohibiting advertisement that might lead to violence, discrimination, racism, drug addiction, sexism, religious or political intolerance or any other practice that might infringe rights protected by the constitution or any law.

The A.E.A.P's Code demands its members to advertise with responsibility, respecting the principle of freedom and loyalty among competitors and in harmony with Ecuadorian Law and Constitution (Art. 2). Furthermore all advertisement has to respect the dignity of the people, their privacy and social interests. (Art. 8). Art. 9 of the same Code forbids its members to advertise in any way that favors or stipulates racial, economical, social, political, national, cultural or religious discrimination or ignores the principles as stated in the UN Universal Declaration of Human Rights. Just as the advertisements have to follow the principles of honesty, truth and morality (Art. 11).

We do have more explicit regulations regarding TV advertising, throughout a Regulatory Law and resolutions issued by the National Office of Broadcasting and Television Control of Ecuador (CONARTEL), for example:

Article 49 of Resolution 5377, stipulates that any broadcast from 6h00 to 21H00 has to be suitable for all audiences and adapt their content to what is stipulated in Article 48 of the Regulatory Law of Broadcasting and Television: *Between 06:00 and 21:00 all means of communication are prohibited of transmitting scenes containing violent, cruel, explicit sexual or promiscuous acts. The objective will be the prevention and regeneration of vices and other social and individual moral deviations. The language used has to be morally admissible for the general public, avoiding the use of vulgar words, but respecting the use of popular language elements, which enriches the culture. Letter f) also stipulates: Stations will have to control the content of their broadcastings in order to prevent information that could be considered as promoting criminal behavior, or that attempts against moral principles, national idiosyncrasy, ways of living, religious believes and national values that should prevail over foreign values.*

The consumers Law also regulates in some way advertising content, but basically related to the product or service offered and comparative advertising. The only reference on decency would be regarding Violence.

Religion

The Ecuadorian Constitution as well as the A.E.A.'s Code explicitly forbids all discrimination based on religion. Distasteful or indecent use of religious content on advertising could be subject to sanction under general principles stated by the Ecuadorian Constitution and the Regulatory Law of Broadcasting and Television. As far as known there is no case law concerning religion in advertising, at least publicly litigated.

Minority Groups

The Ecuadorian Constitution forbids all discrimination based on any distinguishing feature, irrelevant if it is a feature of a minority or majority; therefore distasteful or indecent use of content related to minorities on advertising, could be subject to sanction under general principles stated by the Constitution. As far as known there is no case law concerning religion in advertising, at least publicly litigated.

Gender/Stereotyping

The Ecuadorian Constitution also forbids discrimination based on gender, therefore distasteful or indecent use of content related to gender on advertising, could be subject to sanction under general principles stated by the Constitution. No case concerning gender/stereotyping in advertisement has been made public until now.

Race

The Ecuadorian Constitution as well as the A.E.A.P's Code explicitly forbids discrimination based on race, nationality and culture. Therefore distasteful or indecent use of content related to race on advertising, could be subject to sanction under general principles stated by the aforementioned. No case regarding racial discrimination in advertising has been litigated as far as known.

Sex and Sexual Preference

Discrimination because of sexual orientation as well as showing explicit sexual or promiscuous acts is prohibited by the Ecuadorian Constitution, the Regulatory Law of Broadcasting and Television and resolution 5377 issued by the National Office of Broadcasting and Television Control of Ecuador. Therefore distasteful or indecent use of sexual content on advertising could be subject to sanction under the aforementioned dispositions. No case concerning this area has become generally known.

Violence

In virtue of Art. 11 and 19 of the Ecuadorian Constitution, Art. 48 of the Regulatory Law of Broadcasting and Television, art. 2 and 6 of the consumer Law, and art. 14 of the A.E.A.P's Code: violent content, or content that may lead to or induce violence, is explicitly forbidden. There are several cases concerning violence, for example: 1) a Radio Station was sanctioned because of "*promoting violent act against police authorities*" in one of the oriental provinces of Ecuador; 2) Broadcasting of a bullfight that included the death of the animal during the "general audience hours" generated a sanction against a TV channel; 3) The broadcasting of the TV series "The Simpsons" was banned during "general audience hours" because it was considered to promote religious and gender intolerance as well a violence.

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

In regards to the subject of decency in advertisement, El Salvador has legislative regulation in the Constitution, Municipal Codes, Trademark Law and self regulation through the Ethics Code of the National Publicity Counsel. The term decency is not defined in Salvadorian Law, but the cultural background of the Country is very much inclined to catholic moral values.

The Constitution

The Constitution establishes in Article 2, the right to physical and moral integrity for all persons in the country. Article 6 of the Constitution establishes the right to public expression, as long as such expressions don't affect public order and morals. Public spectacles can be censored through the law.

The Government has the obligation to protect the physical, mental and moral health of minors, as stated in Article 35. Article 55 of the Constitution declares that the objective of education is the spiritual, moral and social development for all.

The Salvadorian Constitution emphasizes the value of morals; hence the Government is capable by law of creating regulatory to comply with such obligations.

Ministry of Government

Based on Article 6 of the Constitution, the Ministry of Government is able to ban advertisement if it contravenes moral values and good customs.

The Ministry of Government has an office that is in charge of monitoring all public spectacles and their advertisement; in order to rate them and emphasizes in preventing the corruption of minors. Part of their activity extends to monitoring advertisement.

Regulatory on the Use of Advertisement in San Salvador

The San Salvador (Capital City) Regulatory on the Use of Advertisement, establishes in Article 7 a), the prohibition to use advertising in the City that goes against morals and good customs or decency. The interpretation of the term decency will be determined by the Municipal Authority.

Prior regulatory on the subject, established good customs as: moral rules that every person must follow and that can change due to the passing of time and social acceptance.

In order to use any advertisement in San Salvador, the interested party must file a request before the Mayor's Office, and must provide them with a sample of the advertisement. The Mayor's Office can deny the request if the advertisement is deemed to be indecent. A fine, removal of the advertisement and/or revocation of prior permits can be ordered by the Mayor's Office for the use of indecent advertisement in the Capital City

Trademark Law

Trademarks are an integral part of advertising. The Trademark Law establishes the prohibition to register trademarks that are contrary to morals and public order.

Ethics Code of the National Publicity Counsel

The National Publicity Counsel is a self-regulation authority, made of advertising firms, mass media enterprises and private corporations. They have an Advertisement Ethics Code, declaring the importance of decency in advertisement.

Article 10 of the Ethics Code, establishes that all advertisement must not contravene moral values, good customs and public order. The messages in advertisement must not contain affirmations that offend moral concepts generally accepted by the community.

In regards to the language used in advertisement, it must be used in accordance to universal principles of morals and good taste. Advertisement directed to minors must not offend them morally.

Special considerations are made in regards to advertisement of alcoholic beverages and tobacco products, on the use of pornography and indecent messages to promote them.

The National Publicity Counsel may order the suspension of the advertisement, request from its members to implement the ruling in regards to the suspension and/or make a public announcement in regards to any infraction to the Ethics Code.

Other topics which are mentioned in the Ethics Code are the obligation to respect human dignity, family as an institution protected by the government and not to promote any kind of discrimination or illegal activity.

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ROSCHIER

***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

In Finland decency in advertising is considered to encompass issues such as religious values, equality between persons and matters of taste. Regulating decency in marketing must be balanced against the right to freedom of speech which cannot be infringed without legitimate reasons. Despite freedom of speech, commercial speech may be limited if it for example is sexually degrading, racist or uses violence.

General

The Consumer Protection Act (20.1.1978/38, as amended) ("CPA") contains a general clause that prohibits marketing that is contrary to good practice or otherwise inappropriate with regard to consumers. The CPA defines further that the marketing is considered to be contrary to good practice when it evidently contradicts with the commonly accepted values of the society, and especially so if the marketing is discriminating, offends human dignity, religious or political beliefs or condones endangering someone's health, public safety or the environment.

The Consumer Ombudsman issues guidelines on good practice in marketing and supervises that marketing does not violate good practice. The Consumer Ombudsman may urge the companies to voluntary cease unacceptable marketing and if such marketing is not voluntary ceased, the Ombudsman has the power e.g. to initiate proceeding against the company with the Market Court.

The Council of Ethics in Advertising of the Central Chamber of Commerce also deals with good marketing practices. It is an industry self-regulatory body and issues statements on whether certain marketing is ethically acceptable but not on the lawfulness of the marketing. The Council's statements are based on the ICC rules and the Council's policy on good marketing practice which supplement the statutory regulations. The Council does not issue any sanctions, but its statements are publicly available.

Below some examples of Market Court's judgments and Consumer Ombudsman's decisions are briefly presented to give a picture on the practice on decency in advertising in Finland.

Religion

In 2005 the Consumer Ombudsman gave a decision on whether the TV commercials for Unilever's Sunsilk hair styling products disrespected the Christian religion and God. In the commercials a smoke cloud appears and there is lightning. A male voice from the cloud talks to a woman with a hair styling problems. Then two fingers reach down from the cloud and offer a hair styling product to the woman.

The Consumer Ombudsman found the commercials to be a humoristic way to present the company's hair styling products. The male voice of the commercial could not be considered to represent God or a specific god of any other religion. The commercials were in accordance with good practice.

Minority Groups

A Finnish actor dressed up as a Laplander in the Lappish national dress was featured in a TV Commercial for a Finnish electric appliance store chain. The actor's face was bloated and red, and his teeth were made black. The character was avid to get drunk and he was showed looking for something to drink from a refrigerator and making hand gestures resembling the wrist movement when tipping up a bottle.

The Consumer Ombudsman found that, although the character was first created for a TV sketch show and it was meant to be humoristic, the commercial was still contrary good practice and discriminatory against the Lappish people. According to the Ombudsman, the humorousness of the commercial did not make it in accordance with good practice since the commercial was clearly in conflict with such values as respect for human dignity and respect for equality between persons.

Gender/Stereotyping

In 2001 the Market Court found the marketing of the furniture company Masku Kalustetalo Oy to be degrading of women. One of the several TV commercials for the company begins with a male voice-over resembling a radio announcer. The spoken words are: "This commercial is not suitable to children". The K-18 symbol ("suitable for viewers over 18) appears on a black screen after which the former Miss Finland Lola Odusoga dressed in underwear appears on the screen. She is lying on a bed on her side and leaning her head against her hand. The picture angle is so that Lola's breasts are clearly visible. The male voice-over continues: "Now they are here. Namely the Monaco bed and Lola." The camera backs up and Lola runs first her hand on her leg and then on the bed. The male voice-over continues: "The Monaco bed now 599 euro including beading but not Lola. A caption appears to the screen: "The price does not include Lola".

The Market Court found that the former Miss Finland was portrayed in the commercials in a manner that objectifies women, and was sexist and degrading. Lola was the eye-catcher of the commercial and she was presented as a sex object. She was the main content of the marketing without any connection to the products being marketed. The marketing was degrading of women and contrary to good practice.

Race

A TV commercial for Leaf's Jenkki chewing gum portrayed an Indian playboy loitering about. The Indian style of the set and the Indian accent of the English spoke by the man made his ethnical origins obvious. With bright colored clothing and jewelry hanging around his neck, the man was portrayed as a stereotype of a foreign gigolo whose life revolves around conquering women.

The Consumer Ombudsman found that the character in the commercial may insult Indian men but also reinforce prejudices against all men of non-Western origin. The Consumer Ombudsman found the commercial to be contrary to good practice.

Sex and Sexual Preference

In Finland sexuality or nudity are not contrary to good practice but using them in a manner that degrades either sex may lead to a different outcome.

In October 2005 a print ad for Diesel was feature in a Finnish fashion magazine. The ad did not market any product but was designed strengthen the consumer image of the brand. In the ad a man is lying on a couch with a naked upper body. On the couch there are also three inflatable plastic dolls. The man's belt is unbuckled and his zipper is down. The inflatable dolls have a central role in the ad. The dolls' shape and clothing resemble those of Russian Matushka dolls. The round-shaped mouths of the dolls are the eye-catcher and resemble the shape that inflatable human shaped sex toys have.

The Consumer Ombudsman found that to many consumers, the dolls in the ad are a sexual reference. The ad depicts the woman's mouth only as a sexual body part and together with the image of zipped down jeans the sexual reference of the ad is even more obvious. The Ombudsman found that, as a whole, the ad was degrading of women since it used women simply as sexual objects. The ad was contrary to good practice.

A good example of permissible nudity in marketing is Unilever's TV commercial for Knorr soup from 2004. The commercial features a couple who are heating soup and getting ready to eat. After tasting the soup they look at each other with a smile. The man sets an egg timer to go off after 5 minutes. The couple starts to undress each other and laugh out of joy. They rush outside naked, roll in the snow and return back inside. Then the couple is shown sitting in their bathrobes at the kitchen table eating warm soup by candlelight. The commercial ends with a male voice-over saying: "Knorr soup. Brings the taste of life even to a cold day."

The Consumer Ombudsman found that both sexes were portrayed naked in the same way. There was no portraying of the naked persons in such angles or positions that would make their bodies sex objects or degrade their gender. Presenting nudity in a natural way was appropriate and the commercial was not considered to be contrary to good practice.

Violence

In Finland violence may not be used in marketing without justified reason. In 2005 IKEA's TV commercial featured two Asian men fighting. They had fishes as their weapons. The bedroom of a woman living downstairs was demolished as a result of the fight. The message of the commercial was that if your bedroom is demolished, you can get a new one from IKEA. The Consumer Ombudsman found the advertisement to

be contrary to good practice.

In 2011, use of violence in marketing was evaluated in connection with TV commercials of the online shop CDON.com. In the commercials, the family members were fighting violently with each other over the package ordered from CDON.com. In the commercials the sister pushed her brother to the ground, the mother hit the father in the head with the frying pan and the father threw the mother over the dinner table etc. In one commercial the father was also pulled to hang from the ceiling with a rope around his ankles. The Consumer Ombudsman found the commercials to be offending human dignity and thus contrary to the good marketing practices. The Consumer Ombudsman found that it was particularly indefensible, that the commercials were displayed so early in the evening that the children and young people were exposed to the negative effects of the commercials.

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BERNARD-HERTZ-BÉJOT



***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

For the purposes of the discussion on decency in advertising in France (such as violence, discrimination and gender issues), the relevant regulations are to be found in the French Criminal Code. French self-regulation rules also have to be taken into account by the advertisers.

General

The French Criminal Code notably punishes the following behaviors which could be used as a ground of action where such behaviors have been carried out through the advertising:

- The fact to record and/or broadcast images of offences against someone's physical integrity (generally acts of violence) (Section 222-33-3);
- The fact to discriminate someone because of his/her origin, sex, familial situation, pregnancy, physical appearance, name, health, handicap, genetic characteristics, habits (*moeurs*), sexual preference, age, political opinion, union activities (*activités syndicales*), ethnic group, nation, race or religion (Section 225-1)
- The offence to human's dignity, and notably the offence to the representation/image of a person (Section 226-8)
- The fact to encourage someone to commit a criminal offence against the French Republic (Section 411-11);

The French self-regulation body¹ (ARPP) also issued several Recommendations which concern the decency in the advertising, and notably the Recommendations on children, the image of the human person, the religion, or the security.

Notably, the Recommendation on the image of the human person prohibits the offensive advertising since the advertising should not be offensive to the public sensibility by presenting the image of the human person in a way which offends the dignity and the decency.

As a general rule, the presentation of a person which is, explicitly or not, degrading or humiliating is prohibited.

Finally, insofar as Each TV advertising must be submitted to the ARPP and seen by the ARPP (which issues

¹ Since June 25, 2008, the **Bureau de Vérification de la Publicité (BVP)** became the **Autorité de Régulation Professionnelle de la Publicité (ARPP)**, in which the following bodies have been created (i) the one called "*Conseil Paritaire de la Publicité*" aiming at reinforcing the relationships between the associations' representatives (for instance the associations defending consumers or the ecology) and the advertising professionals' associations; (ii) the second called "*Jury de déontologie publicitaire*", which consists of independent members in charge of the complaints against the ads which do not comply with the self-regulatory rules.

an opinion: “favorable”, “to be modified” “do not broadcast”), there are minors claims on the ground of the decency against TV ads.

Religion : French High Court (Cour de cassation), November 14, 2006

The trendy blue jeans brand *Marithé et François Girbaud* had a poster and magazine campaign created to promote its products. The ad was a picture based on Leonardo da Vinci’s Last Supper (“*La Cène*”), showing twelve women and a partially naked man.

The first instance decision (March 10, 2005), confirmed by the Court of appeal of Paris in a court order dated April 8, 2005, held that the ad was likely to disturb the Catholics who would see it. The court also held that an ad, having a commercial purpose, should not participate in debates such as religion.

The High Court overruled the Court of appeal's court order by considering that “*the sole parody of the form given to the representation of la Cène, which did not have the aim to offend the Catholics, nor to affect them in their consideration because of their obedience, does not constitute the insult [injure], personal attack destined to a group of person because of their religious appartenances*”.

To establish the offence of insult, the High Court considers that the insult should be objectively established towards a definite group, which was not the case in this instance according to the French High Court.

Integrity of human person : The campaign of the French magazine “Choc” against the drug, August 2005

The French magazine “*Choc*” is a tabloid which presents a lot of shocking photos about different subjects : society facts (for instance, photos taken after the cyclone “*Katrina*”); stars in a non-flattering situation or more generally, impertinent photos.

A campaign (press and poster), presented six photos of a drug-addicted woman (she disappeared a few years ago and obviously never gave her consent for such use of her image) between 29 and 39, which revealed her physical decadence.

The association “*Act-up*”, which is stemmed from the homosexual community and defends all the population affected by the HIV virus, has denounced the publication of this campaign in the French newspaper “*Libération*”. This association became indignant against “*the degrading image of a human person sent to the disgust of the readers*”.

Facing this controversy, the magazine “*Choc*” decided to stop this campaign.

Sex/image of the women : “Rent a car”, July 2006

“*Rent a car*” ran a new poster campaign presenting a bust of a woman (without her face), wearing a leathered suit (on which appear “*Rent a car*”s’ logos) opening the zip, and revealing her cleavage. The slogan was: “*the combination quality/prize to discover...*”

The ARPP considered that this advertising did not comply with the Recommendation “*Image of the Human person*”. This text notably provides that “*the advertising should not reduce the human person, and notably women, to an object*”. Similarly, the human body should not be used to promote goods or services that do not justify it.

This campaign was prohibited by the ARPP.

Violence : Dolce Gabbana, October 20, 2006

Dolce Gabbana published an ad in the French press which represented a very dark theatrical picture with young persons dressed in dark, a naked woman and a killed/dying man (either with a bullet in the forehead or with a knife wound on the chest) lying down on the floor. A character holding the murder weapon (a pistol or a knife) is standing, rooted.

This ad disturbed many consumers who sent letters to the ARPP, which required the advertisers and the medium concerned to stop publishing the controversial ad.

The ARPP held that this ad violated professional rules which prohibit violence in ads. Notably the Recommendation called “*image of the Human person*” provides that “*the advertising shall avoid any scene of violence, direct or implied and shall not urge on violence, moral or physical*”. Further “*the notion of violence covers all illegal and reprehensible acts sanctioned by the current regulation. The direct violence implies the representation of a violent act per se; the suggested violence is qualified by an atmosphere, a context or by the result of an act of violence*”.

GERMANY

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HEUKING KÜHN LÜER WOJTEK

Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

In Germany decency in advertising is mostly related to cases of so-called shock advertising and discriminatory advertising. Discriminatory advertising may include sexist advertising, advertising that discriminates against religions or disabled, ethnic or national discrimination, and advertisements that glorify violence or war. Explicit statutory regulations governing decency in advertising do not exist. As the constitutionally protected freedom of opinion has to be balanced against the interests of the individuals or groups concerned by the advertising, a consideration of the individual case is always necessary.

General

The main German law applicable with respect to integrity in advertising, the Act on Unfair Competition (UWG), does not include any specific regulations on decency in advertising, so these cases must be solved via the general clause of the law. With respect to the question of whether discriminatory advertising can be prohibited, the advertiser's constitutionally protected freedom of opinion must be taken into account and weighed against the interests of competition. To this extent, pure questions of taste play no role. If, however, an advertisement is violating human dignity, that the German constitution considers as the highest value, it is always considered unfair under competition law and may therefore be prohibited. A prerequisite for an advertisement violating human dignity is that the person in the advertisement is made a victim, either by having his/her subjective quality questioned or his/her equality with other people cast into doubt. The legal regulation is accompanied by the self-regulation of the advertising industry, embodied by the German Advertising Standards Council. The Advertising Council does not perform legal assessments, but rather pursues the aim of safeguarding public decency and public and prevailing morals on the basis of voluntary standards agreed by the advertising industry.

Religion

Legally, an advertisement is discriminatory on the grounds of religion if it violates the human dignity by disrespecting or dismissing religious groups without any factual background. An offensive representation or one that holds the religion up to ridicule alone would not be regarded as violating human dignity as long as the equality of those members of the religion with other people is not denied. Religious discrimination has been the subject of several complaints to the German Advertising Standards Council. In one case a poster advertisement showed a young woman in underwear. The woman was sitting with legs apart on a step, above her the slogan read "Fling wide the door!" The Advertising Council held that the slogan, which refers to the first line of a well-known German Christmas carol, in combination with the scantily clad woman, offended religious sentiments. In a further recent case a dispatch trading venture called "Quelle" launched its products and services in the run up to Christmas with the slogan "Quelleyuja". The Advertising Council did not share the complainant's opinion that this could injure religious sensitivities. The mere fact that "Quelleyuja" is similar to "halleluja", which is considered to be religiously shaped, is not enough for a breach of the standards agreed upon by the advertising industry.

Minority Groups

The Benetton advertisement "H.I.V. POSITIVE" went all the way to the Federal Constitutional Court. Benetton used an advertising image showing a naked human bottom with "H.I.V." printed on it and "POSITIVE" stamped at an angle across. The Federal Court of Justice considered this advertisement unfair under competition law as a result of violating human dignity. The Federal Constitutional Court, on the other hand,

reversed the decision of the Federal Court of Justice. The deciding factor was the fact that in the opinion of the Federal Constitutional Court, the statement made by the advertising image respected human dignity because the recipients would understand the representation as a denunciation and criticism of the social exclusion of AIDS patients and as denouncing social ills in connection with AIDS-related illness. The Federal Constitutional Court saw the advertising photo neither as a slur or mockery nor an exclusion or stigmatization. The simple fact that the image was used for advertising purposes was not considered to make the otherwise unobjectionable message violating human dignity. The determining factor was the content of the message, not the person making the statement.

Gender/Stereotyping

The Federal Court of Justice dealt with a case of discrimination against women in 1995. The subject matter of the case was the sale of small bottles of liqueur, with the words "breast grabber" and "panty stormer" on the label along with lewd, sexual images of women. The Federal Court of Justice found that these images constituted unfair competition because this gave the discriminatory impression of sexual availability as a possible consequence of consumption of the advertised alcoholic drink, which is violating human dignity. Cases of discrimination against women were the main focus of complaints received by the German Advertising Standards Council in 2010. They have recently even recognized an increase of discrimination against women in advertising, which is directly linked with the increase of advertising in the internet.

The Advertising Council issued a reproof against an advertisement for a hotel chain using the advertising slogans "24h open" and "sexy prices" on a postcard, which was illustrated with the picture of a woman wearing a bikini. The slogans were depicted across the genital area of the woman.

In a further case an event management company used a picture of an overweight woman in underwear looking into a refrigerator combined with the slogan: "Has your IT also passed its expiry date?" The Advertising Council didn't have to issue a reproof as the company voluntarily stopped using the objectionable advertising motif.

Race

Advertising involving ethnic or national discrimination are considered unfair under competition law if people are denied the claim to respect as a person or the principle of equality with other people is denied. There are few court decisions in this area. In 1995, the Federal Court of Justice found that an advertisement for a product offered in East Germany, "This product creates jobs for US", did not include a general claim of the inferiority of jobs in West Germany or overseas, but rather served the justified interest of the consumer in information. An advertisement for rental cars that included Cyrillic script with a German translation of the slogan "With our rental prices, it's not worth stealing one" was also not considered unfair. This was not considered a claim that all Russian speakers are in principle car thieves, but rather a humorous allusion to the fact proven by police statistics that many groups of car thieves recruit from Eastern Europe.

Sex and Sexual Preference

By far the majority of cases in this area are also cases of discrimination against women. It is significant in assessing unfairness under competition law whether the person is objectified as a result of presentation in sexual or erotic circumstances. A typical sign of this is considered to be that the person does not make his or her own decision, but rather is acting or tolerating something determined by a third party. Violating human dignity is only assumed if the person is presented as a victim of sexual violence or corresponding threats and no recognizable critical stance is taken by the advertisement. All representations depicting a large number of sexual practices or behavior occurring in real life, on the other hand, are not sufficient to constitute violation of human dignity. The advertising of a charitable aid organization using a photo of a dark-skinned, sad-looking girl of elementary school age holding a doll in one hand and with an adult man in western clothing pulling on the other hand was not classified as violating the human dignity of children. Although the subject was a representation of child prostitution, the representation was found obviously critical.

Violence

We are not yet aware of any court decisions on advertisements that glorify violence. In this area too, an advertisement is prohibited under competition law if it is violating human dignity, for example, because it promotes real violence against other people and thereby makes it clear that these people are inferior. A case that self-regulation under the German Advertising Standards Council considered as glorifying violence was an advertisement by the German TV broadcaster RTL2, which showed the picture of the smiling protagonist of a show who has blood in his face. The advertising text for the image said, "Don't be afraid - He just wants to kill." and "You should not kill. Let him do it for you." There was no reproof in this case because the broadcaster voluntarily stopped using the objectionable advertising motif.

GREECE

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

For the purposes of Greece; decency in advertising concerns topics related to morality, ethics, social responsibility, trust, truth and respect.

General

In Greece the regulatory body ruling advertising, is the Greek National Council for Radio and Television (NCRTV), founded in 1989, an independent administrative authority that supervises and regulates the radio television market. According to the Greek Constitution the monitoring of radio and television broadcasting and the enforcement of administrative penalties in case of law infringement are under the sole competence of NCRTV.

Apart from the existing statutory legislation, the said authority has adopted a Code of Conduct for TV/radio advertising. In the field of advertising industry self-regulation, the "Hellenic Code of Advertising & Communication Practices" supplements government regulation.

According to Greek law and Codes of Conduct, advertisements should be legal, decent, honest and truthful. They should not exploit the consumers' lack of experience or play on consumers' superstitions, fear and religious beliefs. Advertising shall not mislead the consumer or cause any confusion relevant to the products, people and companies involved. Additionally, under Greek law, television advertising shall respect human dignity and shall not offend standards of decency or inset discriminations based on race, sex and religion. Emphasis is set on the protection of the children from the risks of advertising. The decisions of NCRTV are published and everyone can have access on them. Nevertheless, the case law of NCRTV on decency advertising is rather poor.

Religion/ Exploitation of superstition

Religion, as a taboo issue, is a realm not easily brought up. As a consequence, there is no such decision which condemns advertisements that offend religious beliefs or tenets so far. The Greek Constitution and the law prohibit the insult of religion in advertising. Our firm has, in numerous occasions, defended in court with absolute success foreign film producers who faced claims of religious and nationalistic groups, who were claiming the prohibition of the cinema release and broadcasting of various films (Last temptation of Christ, Great Alexander etc), which were considered by the plaintiffs as constituting an offence to religion and the "good morals of Greek Orthodox citizens". The case law established in this field by these favorable decisions, which enjoyed wide publicity and contain a legally sound reasoning, provides a fairly safe environment for advertisers too.

Concerning the issue of superstitions' exploitation, NCRTV has repeatedly sanctioned TV stations for broadcasting advertisements of fortune-tellers, astrologers etc.

Minority Groups

Referring to minority groups, it could be said that there are some advertisements which bring out indirectly their inferiority. However, there is no relevant case law.

Gender/Stereotyping

As it concerns gender/stereotyping, it is worth saying that a large amount of advertising provides in a direct or indirect way stereotype ideas for the role of woman in society. In advertisements women are brought out among the classic frame: "mother-housewife-sex symbol". In the first case the advertisements provide

products related to the traditional role of a woman as a mother and housewife, while in the second case advertising targets on men by displaying woman as an object of men's desire. For example, an advertisement for fast internet connection displays a woman kneeling and trying to fix the cables on her desk. Behind her is standing the department manager holding a cup of coffee. The dialogue is as follows:

-Woman: I am still trying to fix...

-D. Manager: Take your time

Then a subtitle passes through the screen: "internet which "kneels" your company?" and a male voice sounds: "Conn-x at work. Fast and reliable internet."

This advertisement was monitored by NCRTV which held that it offends the dignity of women.

Race

Concerning racism, Greek law prohibits race discrimination.

Sex and Sexual Preference

On a television program it repeatedly broadcasted an advertisement which provides telecommunication services. It displayed young couples having fun, while the following audio messages were broadcasting: "Contact with the best group of people, with fun, fantasy, humor and make new friends, refresh and meet new people. Call the most popular contact line in Greece and make a date with the person that interests you the most. This phone call may change your life". NCRTV found that the above advertising message implies and has sexual content, and has forbidden its broadcasting.

The Court of Appeal, though, concluded that the broadcasting of the said advertisement has no such purpose and allowed again its broadcasting.

Violence

There is no case law relating to the issue of violence and advertising. Law and Codes of Conduct expressly prohibit the presence of violence in advertising.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
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decency in advertising?***

DECENCY IN ADVERTISING

In Guatemala there are several norms that recognize and protect advertisement as a manifestation of the Right of freedom of expression and freedom of access to information as established in the Political Constitution of the Republic and applicable international agreements. Notwithstanding, there are restrictions that apply based on criteria regarding health, minors, security and others.

The legal regulations that apply to advertisement, contained in the aforementioned norms, establish that all advertisement should be exercised under an ethical and legal framework based on the truthfulness, loyalty, morality, decency, honesty, legality and privacy principles.

General

Advertisement should also respect the dignity and rights of people, entities, institutions, national symbols and authorities. On this lines, the Advertising Code of Ethics establishes that Advertisement should not contain statements or visual presentations that:

- (a) Offend national or international symbols, authorities or people, entities, or institutions;
- (b) Induce unlawful, subversive, or disrespectful activity against the law or authority;
- (c) Induce discrimination among people or social groups for any reason;
- (d) Induce the audience to create false expectations on audience;
- (e) Formulate or contain comparisons based on dishonest or disloyal factors;
- (f) Contain demeaning expressions of other products or competitors;
- (g) Anonymous advertisement is not permitted;
- (h) Advertisement should avoid the visual presentation or description of dangerous practices or situations that may put in danger the security of people, goods, or the environment.

REGULATIONS THAT APPLY FOR SPECIFIC TYPES OF ADVERTISEMENTS:

Advertisement and Propaganda for Minors and Youth

Without prejudice to the provisions related to Minors contained in other regulations, the Advertising Code of Ethics, in its article 11, establishes that all advertisement directed to minors and youth, should inform truthfully and avoid promoting or inciting unreasonable expectations of the qualities or use of the products being advertised.

The above cited code establishes that the following rules should be observed in advertisement directed to Minors and Youth:

- (a) Respect ingenuousness, credulity, inexperience, and sense of loyalty of Minors and Youth;
- (b) Do not offend minors morally;
- (c) Do not undermine the social values of Minors and Youth by suggesting that the use of or possession of a certain product will provide physical, social, or psychological advantages over other minors and youths;
- (d) Do not undermine the authority, responsibility, judgement or criteria of parents;
- (e) Avoid using mandatory phrases that command minors to obtain the product by any means.

Advertising Alcoholic drinks and Restraint Beverages

The Advertising Code of Ethics, article 9, the Regulations for Advertising Alcoholic Drinks, Wines, Beer, and Fermented Beverages; and Article 49, of the Health Code, coincide in the following advertising norms applicable to the above referred matter:

- (a) Protect people's health from the risks related to excessive consumption of alcoholic drinks, wine, beer, and fermented beverages;
- (b) Protect consumers and people in general from advertisement that incites the consumption of alcoholic drinks, wine, beer, and fermented beverages;
- (c) Protect people by establishing restricted areas for the consumption of these products;
- (d) Refrain from (prohibitions):
 - Inciting the abuse of alcoholic drinks consumption.
 - Targeting children and Youth
 - Advertising alcoholic drinks, wine, beer, and fermented beverages by radio or television during children's programming.
 - Associating, directly, the consumption of alcoholic drinks with driving.
 - Using images or scenes that attempt against decency and propriety.
 - Showing direct consumption of alcoholic drinks, wine, beer, and fermented beverages using human models, animated pictures, athletes or public figures.

Cigarettes and Tobacco Advertisement and/or Propaganda

The Advertising Code of Ethics, article 21, and The Health Code, both agree in establishing that all cigarette and tobacco advertisement should refrain from (prohibitions):

- (a) Inciting consumption abuse;
- (b) Directing it to minors and youth;
- (c) Presenting it during children's programming and schedules when the audience is mainly minors and youth.

Comparative Advertising

The Advertising Code of Ethics, article 28: establish the following: advertising that involves the comparison of products or services, do not have to denigrate or deform the image, qualifiers, or attributes about the other product. Advertising that involves the comparison of products or services shall have, as objective, to inform to the consumer the advantages of the advertised product, and it should:

- (a) Be applied exclusively to comparable products.
- (b) respect the rights of the intellectual and industrial property from third parts; and
- (c) Be based on true and right facts.

HUNGARY

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

Act on Business Advertising Activity, Act on the prohibition of unfair commercial practices and specific sector regulations govern decency in advertising.

Industry self-regulation, which supplements legislative regulation, has a relatively long tradition in Hungary (the first Hungarian Code of Advertising Ethics was adopted by the Hungarian Advertising Association back in 1981).

General

An underlying principle of advertising activity is that advertisements shall be fair and they are fair if they meet the legal and moral regulations of the generally accepted, righteous marketing practices.

According to the Hungarian Code of Advertising Ethics, all advertisement must be legal, decent, honest and truthful.

In advertising, the moral-ethical standards generally accepted by society and approved by the general public must be kept in mind.

As a direct application of that principle, advertisements shall not contain elements or convey an impression which offend the generally accepted moral-ethical norms of society.

Religion

Advertisements in Hungary shall not offend any ideological (including religious) persuasions.

Religious symbols, motifs shall be used in advertisements solely within the confines of good taste, befitting the subject-matter.

Minority Groups

According to the Code of Advertising Ethics, advertisements shall not contain any bias against peoples, nationalities, ethnic groups, age-groups, religion or handicap, nor shall they support views of this kind.

Recently Albannach, a Budapest-based Scottish cultural organization, filed complaints to the Hungarian Consumer Protection Authority over Burger King's promotional campaign "Skót Ajánlat" ("Scottish offer"), a very cheap cheeseburger-and fries combo. The Scottish organization stated that the offer, implying that the offer is so worth-value that even a Scot would buy it, promotes stereotypes of Scots as misers. Burger King

has also placed caricatures of Scots on posters placed inside its shops.

Gender/Stereotyping

Advertisements shall not contain any bias against genders nor shall they support views of this kind.

Race

Advertisements shall not contain any bias against ethnic groups nor shall they support views of this kind.

Sex and Sexual Preference

Unmotivated, gratuitous use of erotica and sexuality is prohibited in advertising. Representation of the human body within the confines of good taste is not objectionable, however, the way of representation shall not offend against personal rights, especially human dignity.

Advertisements shall not contain any bias against sexuality nor shall they support views of this kind.

Violence

Advertisements shall not contain elements or convey an impression which inspires, supports or justifies aggressive, violent or illegal acts, rough antisocial behaviour.

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

General

Advertising communication is a mix of arts and facts subservient to ethical principles. In order to be consumer-oriented, advertisement will have to be truthful and ethical. It should not mislead the consumer. If it so happens, the credibility is lost.

H G Wells has rightly said "**Advertising is legalised lying**". Advertising is criticized because selling carries a stigma. Centuries ago, Anacharis, had said, "the market is the place set aside where men may deceive each other". Even to this date despite the rise in consumerism and efforts to counter market deception, buyers are still gullible and are not particularly on guard against deception. To leave an impact on its consumers, the advertisers create desires, shape attitudes, mould temperaments, alter social values and raise many an ethical question. To which there is no easy answer. Ethics, the advertisers say, is fine for the secure, but a greater market share is all the slipping company needs.

The Constitution of India in **Part III** enshrines rights which are described as Fundamental Rights and under **Article 19 (1) (a)** all citizens shall have right to freedom and expression and Freedom of the Press is a part of this Fundamental Right. But **Article 19 (2)** imposes reasonable restrictions on the exercise of the right conferred in the interests of decency or morality. The words decency or morality as used in the Indian constitution has been understood as opposed to obscenity. Again under the Indian Penal Code punishes a person who sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any obscene object.

Chapter II of the Advertising Standards Council of India (ASCI)

In order to enforce an ethical regulating code, the Advertising Standards Council of India was set up. This Code for Self-Regulation ensures that Advertisements are not offensive to generally accepted standards of Public Decency. Advertisements should contain nothing indecent, vulgar or repulsive which is likely, in the light of generally prevailing standards of decency and propriety, to cause grave or widespread offence.

Religion

In India Advertisement should conform to laws and should not offend against morality, decency and religious susceptibilities of people. The success of advertising depends on public confidence and no practice should be permitted which tends to impair this.

On March 23rd The Advertising Standards Council of India (ASCI) sent a letter to Naukri.com with reference to complaints received against a Hari Sadu TV Commercial asking the TVC be withdrawn since the manner in which the name Hari was being used was highly objectionable as it was a sacred and pious name. The esteemed and high powered Consumers Complaints Council adjudged Hari Sadu as a creation of fiction bearing no resemblance to any living figure or any religious god or deity either.

Minority Groups

Advertisements which are discriminatory in any way are not permitted in India, therefore an advertisement which is found to insult or abuse any particular class of society cannot and is not permitted in India.

Gender/Stereotyping

Majority advertisements featuring children show boys in diverse, challenging and macho roles while girls are portrayed in a more stereotyped and objectified manner. In a TVC of a Life Insurance Company **ING Vysya Ltd.** in India, the ad stated, showing a new father holding his baby daughter. The ad when viewed as whole portrayed avoidable gender insensitivity. But as soon as the complaint was made, the advertiser withdrew the TVC.

Race

To safeguard against the indiscriminate use of Advertising Chapter III of the Code does not permit any advertisement which derides any race, caste, colour, creed or nationality. In an advertisement it was shown that "Dark skinned people will become fair skinned after using '**Roop Amrit Fairness Cream**' as People with dark skin will not succeed in life and will suffer a lot". According to the **THE CONSUMER COMPLAINTS COUNCIL (CCC)** these claims are not only racial but they are totally baseless. This commercial demeans people with black/dark skin and promotes low self-esteem among dark skinned people. The Advertisement was discriminatory in its implication. The TVC was withdrawn and the Advertiser assured that the claims will not be repeated again in future advertisements.

Sex and Sexual Preference

Instead of making people aware of the necessity of safe sex and benefits of birth control. Condom ads continue to intrigue the youngsters with the unique feel it has to offer. Lately, Microsoft, Google and Yahoo were issued notices by India's Supreme Court, following a complaint that they were promoting techniques and products for the selection of an unborn child's sex through advertising and links on their search engines. The advertisement of products and techniques to aid in the selection of an unborn child's sex is an offense under India's Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act.

Violence

Again under **Chapter III. 1 (a)** Advertisement that tends to incite people to crime, promotes disorder, violence and intolerance are not permitted in India. There was an Advertisement issued in public interest in which Statements were made - "Please do not kill absolutely innocent people" "If you have to fight, fight with those with whom you have a problem". Message conveyed in the advertisement is erroneous and misleading. Statement is abominable. This is clearly an insidious exhortation to those who believe in their misguided cause. If one considers the very existence of the Indian state a problem, this line suggests that you fight the Indian state. Advertisement tends to incite people to crime, promotes disorder, violence and intolerance, therefore the Ad. Agency had to withdraw the commercial.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

There is no specific definition of “decency” in Irish advertising but it would generally be perceived to include anything that affects gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the traveller community.

General

Most of the regulation of decency in Irish advertising would be through industry self regulatory codes. The Advertising Standards Authority of Ireland Code of Standards for Advertising, Promotional and Direct Marketing has a specific section on decency in advertising and there are also various industry codes which regulate specific products e.g. the Alcohol, Marketing Communications and Sponsorship Code of Practice. In addition the Broadcasting Commission of Ireland has a code of practice on broadcast advertisements. The Consumer Protection Act, 2007 governs misleading advertising but generally complaints regarding decency would be directed to the ASAI or BCI.

The ASAI Code specifies that advertisement should contain nothing that is likely to contain grave offence on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the traveller community. The Code does however state that the fact that an advertisement is offensive to some people on the grounds of decency does not mean it is automatically in breach of the Code. The Broadcasting Commission of Ireland Code also prohibits advertising which supports or condones discrimination on the same grounds as the ASAI Code.

Religion

The ASAI Code states that advertisements should not ridicule or exploit religious beliefs, symbols, rites or practices. In October 2005 the bookmakers Paddy Power were forced to withdraw a billboard advertisement (see copy attached) based on the famous painting “The Last Supper” by Leonardo Da Vinci. The poster was emblazoned with the slogan “*There’s a place for fun and games*” and adapted the famous painting of the Biblical story of the Last Supper showing Jesus with a stack of poker chips and other apostles playing cards and roulette. The ad received hundreds of complaints and Paddy Power was forced by the ASAI to withdraw it. They replaced the posters with a blank billboard which said “*There’s a place for fun and games – apparently this isn’t it*”



Minority Groups

The ASAI Code does take into consideration the diversity in Irish society and states that advertisements should be responsive to the diversity when referring to people within the groups listed in the general list above. There have not been any complaints upheld against advertisements that we are aware of however relating to minority groups.

Gender/Stereotyping

The ASAI Code states that advertisements should respect the principle of the equality of men and women. They should avoid sex stereotyping and any exploitation or demeaning of men and women. In April 2008 Paddy Power were forced to withdraw the attached advertisement for their bingo site which featured a man contemplating breastfeeding a baby with the slogan "*where have all the women gone*". A large number of complaints were received on the grounds that it was sexist in suggesting that all women would abandon their babies to play bingo.

Separate to the ASAI Codes the Equal Status Act, 2000 governs discrimination on the grounds of gender and although it has not been done to our knowledge a complaint could be addressed to the Equality Authority.



Race

Again both the BCI Code and the ASAI Code prohibit advertising which discriminates on the ground of race. In addition if the advertisement was seen to encourage racial discrimination it could be seen as incitement to hatred and treated as a criminal offence under the Public Order Acts.

Sex and Sexual Preference

As detailed above advertisements which discriminate on the grounds of sex or sexual orientation are prohibited by both the ASAI and BCI Codes. In 2001 a poster advertisement for a magazine for gay men which depicted two men dressed in rival GAA football jerseys caused widespread controversy and was the subject of complaints to the ASAI. It was withdrawn before the investigation completed but after achieving the requisite amount of publicity for the magazine in question! More recently a complaint against Sony Playstation for a radio advertisement was rejected by the ASAI. The ad featured a conversation between a father and son where the son confessed to the father that he supported a rival football team and was playing with them on the computer game. The father suggests it's just a phase and eventually says *he "never thought he'd see his son play for the opposition"*. The complaints were that the advertisement was homophobic and offensive and said that it created the illusion and idea that parents did not want to accept a gay son. The ASAI Committee however disagreed and said that they felt most listeners would understand the ad referred to sporting teams.



Violence

Both the ASAI and BCI Codes state that an advertisement should not contain anything that might encourage violence or anti social behaviour. In the past this has generally centred on advertisements for computer games. If the game is of a violent nature then quite often the advertisements might breach the Codes. In 2005 the attached poster advertisement for Sony was withdrawn after complaints that it encouraged violence with the image of the man with the baseball bat and the text "*if you like a bit of clubbin'*". A radio advertisement for the same game featuring gangsters talking about blood and weapons in their trunk was the subject of complaints to the BCI and was also withdrawn.



ISRAEL

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

General

The law, as defined in the different acts and regulations, attempts to safeguard against advertisements which are not decent and offensive towards the viewing public. Needless to say, the area is quite complicated, controversial and has been elaborately addressed by the courts when interpreting the relevant laws and regulations. Advertisements which are regarded by some viewers as indecent may be acceptable to others. Thus, the courts and the regulatory bodies have the task of maintaining a balance between freedom of Speech and the protection of sectors within the viewing/consuming public. Decisions rendered by the regulatory bodies may be challenged at the courts.

First and foremost, according the Israeli constitution, as prescribed in the Basic Law: Human Dignity and Liberty, it is prohibited to violate the "life, body or dignity of any person". Thus, in extreme cases, plaintiffs/viewers that find advertisements very offensive may claim that their dignity has been violated.

Some of the relevant advertising laws relating to television and radio clearly prohibit advertisements which violate "good taste, the dignity of a person or public feeling". In short, advertisements must be decent.

Religion

Advertisements containing religious messages are prohibited in television by the Second Television and Radio Authority Rules (Television Advertising Ethics) - 1994 and the Communication Rules (Bezek and Broadcasting) (Advertisements, Services and Sponsorship Broadcasting on designated Channels) – 2004. The former Rules relate to private television stations (in contrast to state/national television) and the latter Rules relate to private television broadcasted through cable and satellite. Similar laws apply to radio broadcasted advertisements.

Minority Groups

Minority groups are clearly protected by the Basic Law: Human Dignity and Liberty and general prohibition clauses relating to "good taste, dignity and public feeling". Moreover, television and radio related acts/regulations contain clauses/sections which unequivocally outlaw advertisements which harm minority groups or any group of people.

Gender/Stereotyping

Advertisements which stereotype or are gender/offensive are prohibited by the above-mentioned laws and regulations. Needless to say, the courts have a difficult task determining which advertisements stereotype or are gender/offensive to a degree which justifies judicial intervention.

As an example, in the case of Netto M. A. Food Commerce Ltd. Vs. The Second Television and Radio Authority et al, the Israel High Court of Justice would not rule against a Thai Noodle advertisement which claimed that "Not every Thai (woman) is hot and ready within four minutes, but Magic Noodles are". The court held that the visual portion of the advertisement is reasonable and not offensive. The participating actors are fully dressed and there is a comic atmosphere. The problematic portion of the advertisement is the background narration: "Not every Thai (woman) is hot and ready within four minutes".

The court explained that though some may not like the advertisement and find it vulgar, in light of the current advertisements and programs, which are full of sexual images and violence, there was no justification in rejecting the advertisement. When weighing the benefits of disqualifying the advertisement against the advertisers' freedom of commercial speech, the latter's right should prevail.

Race

As with religion and minority groups, the relevant laws and regulations prohibit advertisements which may be offensive towards individuals of a certain race. As an example, the Second Television and Radio Authority Rules (Television Advertising Ethics) – 1994 unequivocally prohibit advertisements which agitate "prejudice, discrimination or harm to an individual or a group of individuals"

Sex and Sexual Preference

Though many of the relevant laws/regulations prohibit the outright display of sexual relations and the display of individuals as victims of sexual violence, many advertisers use sexually provocative means to promote their goods and services.

Although the courts and the relevant regulatory bodies will occasionally reject sexually provocative advertisements, it seems that their approach is quite open. As an example, in the High Court of Justice case of Yifora Tabori Ltd. Vs. The Second Television and Radio Authority Council et al, the court accepted the petitioners' following advertisement:

The police, in search of a bottle of orange juice, chase a young woman dressed in minimal clothing. During her escape, in an attempt to conceal the bottle, the woman inserts the bottle into the pants of a young man. A policeman searches the young man and discovers a bulge, caused by the bottle, in the young man's pants. The policeman smiles, walks away, the young woman pulls the bottle out of the young man's pants, offers him a drink and walks away.

The court, considering The Basic Law: Freedom of Occupation (1994), held that the advertiser's rights of occupation and freedom of speech can be violated to an extent no greater than is required. Sexual innuendo in advertisements - in contrast to the display of explicit sexual acts - does not within itself, harm the public's feelings to a degree that would justify censorship. However, one must consider when the advertisement is broadcasted, for example late at night in contrast to morning hours. Acceptable sexual innuendo, when broadcasted to adults, may be unacceptable for children.

Although the court ruled in favour of the advertiser, it added that sexual innuendo which is harmful to human dignity, degrading or which encourages sexual harassment or violence is not acceptable.

Violence

The relevant laws and regulations prohibit advertisements which contain excessive violence. Moreover, the Consumer Protection Regulations (Advertisements and Marketing Methods Targeted at Minors) - 1991, places additional restraints on advertisements containing violence. Advertisements which agitate minors to commit acts which are harmful towards their health or safety - are prohibited.

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

General

(1) The 'Consumer Code' (Legislative Decree no. 206 of 2005), while setting a general ban with respect to unfair commercial practices (Article 20/1), explicitly considers (Article 20/2) as incorrect and unfair any commercial conduct not compliant with good professional or business practices (where patently indecent marketing would be held as in violation of such practices).

(2) Implementing (through Legislative Decree no. 44 of 2010) the EU Directive on Audio-Visual Media Services the previous Regulation (Legislative Decree no. 177 of 2005) of TV and Radio broadcasting services was renamed in "Consolidated Act on Audio-Visual and Broadcasting Services" and amended in order to adapt its provisions to new media.

Article 3 grants, among others, as a general and fundamental principle that of respect of a person's dignity (indecent content would fall afoul of such respect requirement).

Article 32/5 requires programs aired not to favoring hate with respect to race, sex, religion or nationality. The newly added Article 36-bis (no. 1/c) specifically sets that all audiovisual commercial communication: may not imply prejudice to human dignity and shall not result in (or promote) discrimination based on gender, race ethnic origin, nationality, religious or personal beliefs, age or sexual orientation.

(3) The Code of Marketing Communication Self-Regulation:

- sets a basic 'fairness' requirement, involving that *"marketing communication must be honest, truthful and correct avoid anything likely to discredit it"* (Article 1), where indecent ads are frequently held as discrediting the marketing industry as a whole,
- additionally states that *"marketing communication should not contain statements or audio or visual treatments depicting physical or moral violence that may be considered indecent, vulgar or repugnant to prevailing standards of decency"* (Article 9),
- makes clear (Article 16) that commercial communication, acceptable in certain media, not necessarily (and automatically) may be considered as suitable for any other marketing technique being such result dependent both, on the characteristics of the products/services promoted as well as on the media used (finally, compliance with the Code's provisions does not prevent media companies from applying stricter standards).

Religion

According to Article 10 of the Self-Regulation Code *"marketing communication should not offend moral, civil and religious beliefs"*, but the general attitude versus the specific topic is a rather relaxed one, save the case when ads result in patently blasphemous representations.

The Jury of the Institute for Advertising Self-Regulation (IAP) in 2011 had to deal with a case where it was felt that commercial communication had been pushed beyond an acceptable level.

The case originated from a cease and desist injunction issued by the IAP's Review Board against a campaign of a fashion designer showing: (a) Jesus crucified with a header stating *"Father forgive them as they do not know what they are wearing ..."* and the additional slogan *"May the Lord save Made in Italy"*, (b) Jesus while attending the Last Supper, handing out clothes under the header *"Take and wear them all .."* with the same slogan, (c) Jesus healing the cripple under the header *"Italy, wake up, rise and walk on your own"*. Again with the identical slogan. In its decision the Jury held that the first two ads, involving some of the most intimate aspects of Christian belief (Crucifixion and the rite of the Holy Communion) in combination with a clearly commercial intent, were infringing on the provisions set in Article 10 of the Code, would be perceived as desecrating and therefore appeared likely to cause widespread offense to the religious sensitiveness of a significant number of citizens. The initial cease and desist injunction was therefore confirmed. The Jury did not reach an identical conclusion as to the third ad, considering that it made reference to a "situation less important or, at least, less present in believers' general perception."

Minority Groups

This aspect is covered by the provisions of the initially mentioned Consolidated Act on Audio-Visual and Broadcasting Services, which:

- require providers of audio-visual or broadcasting services to properly respect all rights set by law for minority groups (so Article 8),
- prevent commercial communication from resulting in prejudice to human dignity and from determining any form of discrimination (so Article 36-bis).

Programs meant to promote hatred or to favor intolerant attitude with respect to race, sexual preferences, religious beliefs or nationality would clearly infringe on these prescriptions.

Gender/Stereotyping

Gender related stereotyping such as associations as men – soccer/car/bikes/beer or women – beauty care/cooking/shopping may still be found very frequently in local commercial communication.

Despite periodic efforts performed both, by national and international pressure groups as well as by the Members of the European Parliament, despite significant rhetoric spent on the subject and despite a formal Communication (COM/2006/0092) from the EU Commission to the Council and the European Parliament, dedicating a section to *"Elimination of gender stereotypes in the media"* (see no. 5.3.), little concrete action could be seen up till now as to improving portrayal of gender in advertising.

Race

The comments above on Minority Groups also cover the issue of discrimination based on race. The characteristics of a multi-ethnic society (and an increasing relevance of immigrants as a potential target public) induce companies to be cautious and sensitive about racial discrimination in their commercial campaigns. Some of them incurred in pitfalls and had to take severe lessons on how intensely 'community control' is capable of censoring and reacting against racist messages or ads, stirring widespread echo about offensive campaigns and therefore exercising negative impact on brands involved in such parties.

Recently a renowned cosmetics producer had hastily to withdraw and to apologize for a campaign featuring a young model holding in his right hand – in the attitude of a bowling player - the head of an apparently colored man with an afro hairdo. The headline invited the public *"Take care of your aspect as if it mattered to you: Re-civilize yourself!"* Within a few days the Internet community submerged the company with protest about the ad, which was felt as highly offensive to afro-Americans.

Sex and Sexual Preference

Just like in many other countries, sexism is still a huge plague affecting the local advertising industry. Based on the truly unfortunate, but widely applied criterion of "sex sells", a broad range of products and services are frequently promoted through racy campaigns (e.g. in the fashion and automotive sector). Therefore one of the most frequent complaint areas the Self-Regulation system is called to deal with is that referring to sexist ads. Notwithstanding the IAP's Review Board issuing an increasing number of desist injunctions and the Jury frequently halting campaigns considered as in clear breach of the decency requirements and professional good practices set by the Code, a number of advertisers both, local subjects as well as companies active on an international level, insist in pushing their commercial communication as much over the edge as possible.

In Spring 2011 the IAP's Jury served a local fashion company with a cease and desist order for the poster ad shown below, which was found in violation of Articles 1 (requirement of making use of fairness in and of avoiding discredit to marketing), 10 (ban of content considered indecent, vulgar or repugnant to prevailing standards of decency) and 11 (proper consideration of children's and young peoples perception).



Earlier this year the Minister for Equal Opportunities and the Institute of Advertising Self-Regulation have signed a joint Memorandum where parties agree that complaints objecting against 'sexist' commercial communication will benefit from a 'fast track' proceeding in front of the IAP's Review Board and Jury.

Violence

As already reported in the introducing general comments, the Code of Marketing Communication Self-Regulation expressly states that *“Marketing communication should not contain statements or audio or visual treatments depicting physical or moral violence that may be considered indecent, vulgar or repugnant to prevailing standards of decency”* (so Article 9).

The Consolidated Act on Audio-Visual and Broadcasting Services also requires (Article 32/5) that programs aired have to restrain from favoring hate with respect to race, sex, religion or nationality, while another provision (Article 36-bis) sets an identical requirement for all commercial communication and additionally (see Point no. 1/c/3) establishes that such communication may not induce behavior prejudicial to a person's health or safety.

JAMAICA

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

DECENCY IN ADVERTISING

The ***Obscene Publications (Suppression of) Act, 1927*** criminalizes advertisements (by whatever means) that are aimed at assisting in the circulation, traffic or procurement of obscene material and their suppliers. However, the applicable penalty seems to be a mere 'slap on the wrist'. Upon summary conviction before a Resident Magistrate, an offender is liable for a fine not exceeding forty dollars (approximately US\$0.48) and in default of payment, imprisonment for a term not exceeding three months.

The recently amended Constitution, The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 saves the provisions of Obscene Publications (Suppression of) Act, 1927 by providing that nothing contained in or done under the authority of any law in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, relating to obscene publications shall be held to be inconsistent with or in contravention of the provisions of the Charter.

At Common Law, the courts are empowered to impose greater restriction on the use of obscene advertising than the prevailing ***Obscene Publications (Suppression of) Act, 1927*** allows. The decisions of the United Kingdom House of Lords in ***Shaw v DPP [1961] UKHL 1 (04 May 1961); [1962] A.C. 220; [1961] 2 All ER 446*** and ***Knulier v DPP [1972] 2 All E.R. 898*** provide persuasive precedence to Jamaican Courts. Both cases interpreted the UK equivalent of the Jamaican Act and dealt specifically with 'illicit advertising'. They confirm that such advertising may constitute a common law offence of conspiracy to corrupt public morals. On this charge, it is no defence that the material and/or service advertised is not in itself illegal by virtue of not having been previously considered by Parliament or the Courts. In fact, according to ***Shaw's Case***, the courts retain the residual power to "enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the state; and it is their duty to guard it against attacks which may be more insidious because they are novel and unprepared for".

Although the courts have a role in regulating decency in advertising in Jamaica once cases are brought before it, until more adequate legislation is in place industry self regulation is relied on to ensure continued decency in advertising.

General

The Broadcasting and Radio Re- Diffusion Act 1949 and its accompanying regulations including **The Television and Sound Broadcasting Regulations, 1996** do not explicitly regulate decency in advertising. However, such regulatory oversight may be implied under the core duties of the Broadcasting Commission as overall regulators of the electronic media. Furthermore, under this statutory regime, licensees are not allowed to permit the transmission of any indecent or profane matter or any matter that contravenes Jamaican law. It would appear that indecency is defined according to industry standards or otherwise by Regulation passed by the Broadcasting Commission from time to time under the Act.

Religion

Jamaica's Constitution protects the individual's freedom of conscience, expression and peaceful assembly and association. This includes religion. ***The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011*** affords the right to freedom from discrimination on the ground of (i) being male or female; (ii) race, place of origin, social class, colour, religion or political opinions. There are, however, limitations on these rights which are designed to ensure that the enjoyment of the rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. Religious advertisements are permissible within the limitations stated in the Constitution and are generally allowed by industry standards.

Minority Groups

Minority groups are generally afforded the same rights and freedoms under the Constitution as noted with respect to religion. However, apart from the general headings of gender (i.e. male or female), race, place of origin, social class, colour, religion and political opinions the Charter does not mention specific minority groups. It would appear that industry self regulation and cultural mores play a key role in determining which ads are aired by minority groups. Each broadcasting entity weighs the pros and cons of airing minority ads and ultimately makes a decision in its best interest. Recently, for example, an ad campaign by gay rights lobby group, Jamaica Forum for Lesbians, All-sexuals and Gays (J-FLAG) was shelved by one local television station who cited its reasons for not airing the ad as including problems with the ad's structure; the likely reactions from religious leaders and the wider society; the possible legal liabilities for the media house stemming from showing the ad; and that the media house was not consulted by the lobby group during the process of making of the ad. (Read more at: http://www.jamaicaobserver.com/news/Blow-to-gay-ad---TVJ-rejects-J-FLAG-s-PSA_9463727)

Gender/Stereotyping

Industry self regulation, cultural mores and the market tend to determine decency and regulate ads accordingly. The fear of backlash from consumers which include powerful women's rights lobby groups restrict the presence of ads that are heavily stereotyped to depict especially women, children and persons with special needs in a negative light. Stock characters are, however, present in ads, but these are usually used for and received as comic relief.

Race

As noted above, the same Constitutional protection afforded on the basis of religion is applicable to race.

Violence

The public interest has seemingly been used to justify the ***Crime Stop*** campaign which uses graphic and violent re-enactments of actual crimes committed in Jamaica as part of the national anti-crime strategy. Read more at: <http://jamaica-gleaner.com/gleaner/20090208/lead/lead5.html>

Private security firms have also used similar dramatic representations as well as shows of force through images of heavily armed guards on patrol to advertise their services and allied products. There is no express provision to preclude such a practice and arguably, this may be permissible since the actions depicted are representative of 'self defence' wherein persons are lawfully permitted to use up to deadly force in defence of life and property.

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KIM & CHANG

Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

General

There are two notable acts that govern decency in advertising: (1) the Promotion of the Motion Pictures and Video Products Act which establishes the standards necessary to determine the acceptance level of malfeasance or harm to minors in advertisements and commercials for motion pictures and video products, and (2) the Broadcasting Act which sets forth matters necessary for the review of broadcast advertisements.

The Broadcasting Act (the "Act"), in particular, prohibits broadcast advertisements that contain expressions that cause or incite any discriminatory act on the basis of citizenship, race, sex, age, occupation, religion, belief, disability, social status, or geographical tie. The Act also deals with decency in advertising with respect to dignity, safety, dignity of nation, and environmental preservation, and politics.

Religion

Under the Broadcasting Act and the Broadcast Advertisement Review Regulation promulgated under the Broadcasting Act by the Korea Communications Standards Commission, religious broadcast advertisements shall not have any contents related to religion or religious beliefs except for those related to the notification of events held by a religious organization or the sales of religious products. An exception exists in the case of a broadcast with specialized programming on missionary work.

Minority Groups

There is no specific statutory law or regulation governing decency in advertising relating to minority groups.

Gender/Stereotyping

There is no specific statutory law or regulation governing decency in advertising relating to gender/stereotyping other than the Broadcasting Act and the Broadcast Advertisement Review Regulation which state that broadcast advertisements shall not contain expressions that cause or incite any discriminatory act on the basis of gender/sex, among others.

Race

There is no specific statutory law or regulation governing decency in advertising relating to race other than the Broadcasting Act and the Broadcast Advertisement Review Regulation which state that broadcast advertisements shall not contain expressions that cause or incite any discriminatory acts on the basis of race, among others.

Sex and Sexual Preference

Under the Promotion of the Motion Pictures and Video Products Act and the Malfeasance Guideline promulgated under the Promotion of the Motion Pictures and Video Products Act, any depiction of obscenity in advertisements and commercials shall be reviewed in light of the overall context and by applying the classification standards of motion pictures and video products, while being mindful of the following:

1. any excessive depiction of sexual act, such as methods of sexual acts, or facial expression, moaning, and bodily excretion in connection with sexual acts;
2. any detailed and obscene depiction of male and female buttock, anus, genital, or public area or hair and any direct and detailed depiction of masturbation using a bodily part or a sexual device;

3. any depiction of bestiality, or promotion of any deviant act, such as an orgy, incest, and sadistic and masochistic salacity, or of any sexual relationship that is generally not accepted as permissible by society, including among others, rape and prostitution; and
4. any promotion of sexual acts between minors, or any distortion of sexual ethics by, among others, depicting women merely as the subject of prostitution or sexual acts.

Violence

Under the Promotion of the Motion Pictures and Video Products Act and the Malfeasance Guideline, any depiction of violence in advertisements and commercials shall be reviewed in light of the overall context and by applying the classification standards of motion pictures and video products, while being mindful of the following:

1. any detailed depiction of bodily injury, such as dismemberment, or abandoning of corpse;
2. any material posing the risk of impairing traditional family values, such as infliction of bodily harm, assault, or murder of a lineal ascendant or descendant;
3. any provocative depiction of brutal murder, violence and torture, or promotion of such acts;
4. any beautification or promotion of physical or mental abuse, such as sexual violence, suicide, and self-torment; and
5. any beautification of violent act or any depiction of the like in an attractive manner for entertainment purposes, or any promotion of criminal act by depicting in detail a criminal modus operandi.

LUXEMBOURG

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MOLITOR

Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

General

Luxembourg law does not have general provisions on decency in advertising. The provisions likely to apply to such issues are scattered through several texts.

Thus, the Luxembourg law of 27 July 1991 on electronic media, as modified (the "**Law on electronic media**") provides that audiovisual commercial communications must not prejudice respect for human dignity. There is no equivalent to this for printed advertising.

Also, indecency in advertising – whatever the media at hand – may give rise to criminal sanctions (imprisonment from 8 days to 1 year and to a fine from EUR 251.00- to EUR 12,500.00) when falling under the provisions of articles 385 et seq. of the Luxembourg Criminal Code which prohibits affront to public decency ("*outrage aux bonnes mœurs*"). Other specific criminal offences might be applicable in the event advertising includes discrimination or incitement to hatred based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation (see below).

Finally, the code for ethics enacted by the Luxembourg self-regulatory advertising body, i.e. the Luxembourg Commission for Ethics in Advertising, provides that advertising must respect human dignity. In this respect, advertising has to refrain from creating any denigration, offence or contempt for either male or female. Representation of the body in advertising must be decent and not excessive.

Religion

The Law on electronic media prohibits advertising which contains incitement to hatred or discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.

Such discrimination may also give rise to criminal liability whatever the media.

Minority Groups

See question on Religion

Gender/Stereotyping

See question on Religion

Race

See question on Religion

Sex and Sexual Preference

See question on Religion

Pursuant to the Law on electronic media, any TV and radio programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence are forbidden, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts (the same rules apply to Radio Services).

Moreover, as of the law dated 16 July 2011 on the protection of children from all forms of sexual exploitation and abuse amending the Luxembourg Criminal Code, the manufacture, transport, distribution by whatever means and however supported, of a message of a pornographic or violent character or of a character seriously violating human dignity may give rise to criminal proceedings where the message may be seen or perceived by a minor.

Taking, keeping, recording or transmitting a picture or representation of a minor where that image or representation has a pornographic character is, of course, a criminal offence in Luxembourg.

Violence

See question on Sex and Sexual Preference

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

General

The Malaysian advertising industry is guided by both the Malaysia Code of Advertising Practice ('MCAP') and the Communications and Multimedia Forum of Content (more commonly referred to as the Content Code). These self-regulatory codes set out guidelines and procedures for good practice and standards in the advertising industry. The Content Code demonstrates a commitment toward self-regulation by the advertising industry in line with the essence of the Communications and Multimedia Act 1998.

In respect to our discussion on decency in advertising, it should be noted that the Content Code provides that advertisements (in all forms) should not contain any element, which is likely to attribute to serious or widespread offences on grounds of race, religion, sex, sexual orientation and physical or mental disability. In addition, advertisements must not contain statements or presentations, be it in audio or visual form, which may prove offensive to the standards of decency prevailing among those who are likely to be exposed to such advertisements.

Religion

It should be noted that as Islam is recognized as the official religion in Malaysia, it is unsurprising that the advertising Content Code is heavily influenced by both the principles and values promulgated by Islam. With this view as a yardstick, advertisers and broadcasters in the industry are obliged to filter the content of their respective advertisements to be in conformity with the basic tenets of Islam. Advertisers are to ensure that any religious content which is aired does not intentionally or unintentionally convey any form of religious condemnation or attack on people of other faiths which may likely lead to disharmony. Further, any wrongful, fanatical, critical or insulting content, which is aimed at any form of religion, is strictly not permitted in light of the fact that Malaysia is a multi-racial society consisting of various religions.

Furthermore, it should be known and stressed upon that religion is a fairly sensitive issue for many Malaysians to touch upon. It was reported that a local daily newspaper was ordered to shut down after it was found to have published an image of Jesus holding a cigarette and a can of beer, which is clearly and undoubtedly blasphemous to followers of the Christian faith. This clearly reinstates that any form of

religious-based depiction or portrayal in advertising is not condoned.

Minority Groups

Malaysia is home to a variety of people from all walks of life, creed and social standing. Her cross cultural diversity has paved way for her people to live in social tolerance amongst each other and it is with this sentiment that the Content Code echoes the need for advertising content to respect, promote and protect cultural diversity amongst fellow Malaysians. The advertising guidelines found in the Code are aimed at providing and protecting the interest of minority and marginalized groups, which are to be upheld and protected at all means.

Gender/Stereotyping

With regard to the element of gender stereotyping in the Malaysian advertising industry, it should be noted that the use of either men or women as principal agents in adverts by highlighting certain characteristics which appeal to the opposite sex is not entertained.

In addition, advertisements must not project women as an object for sex nor demean their status as women or be depicted to merely satisfy men's desire and gratification. Any advertisement, which is to be aired, must portray positive images of women folk.

Kindly note that any advertising content which degrades either sex by encouraging negative portrayals such as lewd conduct or behaviour through means of dressing or camera focus on certain parts of the human body is strictly prohibited and frowned upon by the advertising fraternity.

Parallel to our discussion above concerning the aspect of religion in advertising, please also note that since the Content Code is in line with the values of Islam, female models appearing in any form of advertisement must be confined to the acceptable dress codes in Malaysia, which more or less stipulates that a female model is to be clad in attire which covers their body from their neckline to their knees. Any form of skimpy clothing or attire, even if in the form of a swimsuit or undergarment is not permissible for advertising purposes.

Race

As mentioned above, Malaysia consists of ethnically diverse people groups. The majority of people who make up Malaysia are of Malay descent followed by the Chinese, Indians and other minority groups such as the Orang Asli (indigenous people). Therefore, the advertising industry are urged to follow guidelines in the promotion of each individual race in safeguarding advertisers and consumers and promote peace and harmony among the diverse people groups in the country.

A prime example of this was seen in the government's initiative to ban pan-Asian faces from advertisements as such advertisements were not representative of local Malaysian demographics. According to the Information Minister, using pan-Asian models (models who are of Eurasian descent) would mean downgrading local faces. Currently a ban on pan-Asian faces is in force in two government owned television stations, which have a strong Malay following. The ministry confirmed that the said ban would eventually be extended to all forms of media coverage.

Sex and Sexual Preference

The guidelines in the Content Code specifically stipulates that any sex scenes and/or nudity is not condoned and is strictly prohibited from being screened, aired or published in any form of media in the country. Any form of scene, which is sexual in nature, sexually explicit, impolite or is deemed indecent in accordance to local acceptable standards and norms are not permitted. Even kissing scenes between two consenting adults will not be permitted for purposes of advertising.

In relation to the prohibition of scenes of a sexual nature in advertisements, it should be noted that any portrayal of women, men and children in a demeaning manner as mere sexual objects of desire is also prohibited.

Violence

The depiction of violence in advertising is not thoroughly prohibited and is given some leeway where news reporting, discussion or analysis programs and sporting events are concerned. However, advertisers are to adhere to guidelines which provide that violence, be it physical, psychological or even incitement to violence be portrayed responsibly and not excessively.

Scenes depicting detailed brutality or physical anguish or agony through sight or sound must be avoided altogether. Additionally, images containing explicit and excessive injuries and aggression which are considered offensive to a certain section of society (namely children) and should therefore be avoided.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

General

Decency is part of the issues considered by the Mexican system. Both the related laws and the self-regulation entities approach the concept.

Religion

Freedom of religion is a constitutional right. Therefore religion in advertising can be employed as long as no pejorative terms against other religions are employed.

Minority Groups

Mexico has many indigenous minority groups. Most of the time advertising is aimed at the majority of the population, but when minorities are considered, it is very common to be in a supportive way, specifically by the government. Therefore it is very rare to see decency issues arise out of minorities in advertising.

Gender/Stereotyping

Stereotyping is allowed and often used in advertising as part of a marketing plan.

Race

Some advertising in Mexico makes jokes about certain races. The jokes should not be indecent and usually are part of a “catchy” and good faith campaign. Nevertheless, both the laws and self-regulation in Mexico do prohibit offensive content to certain groups of people or statements that promote racial discrimination.

Sex and Sexual Preference

Sex is commonly employed in advertising in Mexico, but it has to comply with decency issues regarding the Ministry of Government Contents Office, which prohibits vulgar sexual content in advertising.

Violence

Violence is addressed as forbidden content, but if it is employed to orientate the population it can be employed. Advertising must avoid statements that denigrate or offend national heroes, promote criminal acts, violence or turmoil among the population.

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VAN TILL advocaten

***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

General

In the Netherlands no specific laws regarding decency in advertising exist. We have no case law on rules of civil law, however under certain circumstances indecency in advertising could be regarded as tort (article 6:162 EV civil code). We are not aware of any court decision on decency in advertising based on a complaint by a consumer. However, we have some decisions based on tort especially when it concerns unfair competition and/or comparative advertising, discrimination and slender. When we define decency as a violation of ethics and matters of taste, those items are governed by rules of self regulation especially the Dutch Advertising Code as concluded by the Stichting Reclame Code.

According to paragraph 2 of the Dutch Advertising Code, advertising shall conform with the law, the truth and the requirements of good taste and decency.

As everyone will agree, there is no accounting for tastes: what some people hold to be tasteful others will detest. It is hardly impossible to judge ads properly on the item of decency. However, if you are appointed to judge advertisements on the subject of decency you will have to see that you develop some more or less objective criteria on which your decision is based. These days in the Netherlands that will be the Gut/Springenheide consumer, so the average well informed, observant and cautious consumer. However in some cases we see that the views of an irrelevant minority could be decisive.

Due to the decision of 1981 in the case Boycott Outspan by the Court of Appeal in Amsterdam the Dutch Advertising Code was changed in 1983 in this way that a distinction is made between commercial and non-commercial advertising. In case of non-commercial advertising (such as political advertising, advertising by pressure groups or ideal advertising) advertisements normally are judged only on objective criteria such as conformity to the law and the truth among which misleading, imitation and insults, but no longer such advertisements are judged based on the requirements of good taste and decency.

In the Outspan advertisement the head of a black African was squeezed on an orange press by a white hand, followed by a statement on the political situation in South Africa and the claim Boycott Outspan oranges. The RCC judged this advertisement as tasteless and not justified by the ideology of fighting apartheid. The civil court decided that the RCC has to be very reserved in judging political advertisements and in this specific case infringed the liberty of speech.

In the year 2009 the Dutch Advertising Code Committee judged on 51 cases on the item of decency. In the year 2010 on 75 cases. In the year 2011 up till November on 24 cases. As an average half of all the complaints were upheld.

Religion

Probably because of the fact that the Netherlands is very tolerant in matters of religion, we don't have many cases on this item.

However I remember one case in which we see two Catholic priests standing in a hallway while you hear

Gregorian music. One priest claims to the other pointing to the floor that is..... (trademark) carpet. The TV film was judged to be humoristic and not infringing requirements of good taste. There are more decisions on non-Christian religions such as Bhagwan and Buddhism.

Characteristic is the recent decision on a commercial by Red Bull. We see Maria and Joseph in the stable visited by the "four" wise men. Apart from the biblical presents one of them brings Red Bull. Maria asks: "why a bull, I already have an ox". Then the Wiseman speaks: "Maria, Red Bull is the energy drink that gives you wings. Where do you think the angels come from?" The angels sing hallelujah. The RCC decides that the event is described clearly extraordinary ludicrous and apparently meant humoristic. One cannot appreciate this, but it is not infringing the subjective criteria of the Code.

Minority Groups

On minority groups however there are hundreds of decisions on decency for example on the Royal family, foreigners, soldiers, homosexuals, managers, small people, ex-prisoners, temporary workers, part timers, unemployed people, postmen, butchers, Belgians, Russians, Chinese, Turks, Moroccans, Indonesians, Surinamers, etc. In all those cases you see that if the advertisement is clearly over the top and with the intention of humor, most of the time the complaints in such cases are not upheld.

In a commercial for carpets Napoleon was portrayed and parts of the first lines of the Marseillaise were played. The RCC decided that the use of (parts of) national anthems in commercial communication harms the function thereof and thus is infringing on good taste. Similar to that decision is one on the music Land of Hope and Glory, although this is not the official British anthem.

Gender/Stereotyping

In the 80s and early 90s there were hundreds of complaints based on the men/women role in advertisements where women were portrayed as exclusively suitable for housekeeping such as doing dishes, shopping, looking after children etc.; unsuitable for handling technical products such as washing machines and dishwashers, financial dependent on men, and only suitable for subordinate administrative jobs, persons who don't know what they want, say no when they mean yes and whose love is for sale. This pattern we recognize in those years in many advertisements on washing powder, dishwashing liquids, washing machines, home appliances, cars, employment advertisements etc.

As for stereotyping I refer to a decision on the product Tic Tac. In a radio commercial we hear in a Dutch spoken report with a strong Chinese accent what the tongue of the oldest Chinese ping-pong player of the Netherlands would hear when sucking on a Tic Tac. The RCC decides that the story itself is absurd and there is clearly no relation with reality. The commercial is meant humoristic. For that reason it is not seriously suggested in the commercial that Chinese people in the Netherlands generally speak poor Dutch.

Sex and Sexual Preference

In practice the use of sex or sexual themes most of the times means showing feminine nudity. Although recently there was a complaint on an advertisement by Diesel jeans showing a nude male, it was judged similarly as feminine nudity. The RCC judges whether the nudity is relevant for the product and functional. The use of nudity in advertisement on itself is not infringing good taste and/or decency. This only is the case if the advertisement is vulgar or ambiguous. This judgment is subjective and you can see that clearly if you compare the complaints from the 70s and 80s with those of 2008. I refer to a recent decision on Calvé Today, a sauce used with vegetables. We see the wife who just cooked beans. The husband enters the kitchen and picks up the product Calvé Today. The man lifts his wife on the kitchen table, spreads her legs and puts the cooking pan between her legs. He takes a carrot and squeezes her face. She takes a bite. Next the man squeezes her tongue with a piece of broccoli and eats it himself. Next the wife clears the kitchen table, the man takes off his jacket and they lay down on the kitchen table where the man squeezes the wife with a potato on a fork. At that time the kitchen door opens and children enter. They look frightened.

The RCC decides that it is inappropriate and tasteless to confront the public with a form of preparation to sex especially since the children find their parents in this situation in the kitchen. However the RCC in appeal decides that although the sensual aspect of the acting cannot be denied, it is apparently exaggerated and for the average consumer not afflicting requirements of the taste. The fact that the commercial is meant to be humorous contributes to the conclusion of the RCC. The average public will not be shocked. Once more since the public, including youngsters, having in mind what they read in the papers and magazines and see on TV and films, cannot be confronted any longer with such sensual acting in a way that it should be considered an infringement of good taste. The RCC in appeal also considers that the judgment is based on the fact that the wife is not purely in a denigrating role as a sex object, but enjoying the game together with her husband.

A combination of sex and violence we see in the decision by the RCC on the billboards of the Theater Company Amsterdam. As advertisement for their latest play they use a billboard on which you can see the back of a woman bending forward and hands who hit her on the bottom where the skin is red colored. The RCC decides that the nudity itself is not conflicting with good taste, but the combination of the photography

together with using the verb "take" which can be understood as "having sex" with the suggestion of violence (red skin) makes that the total advertisement is not conform requirements of good taste and decency.

We notice that the position where the advertisement is used can be a decisive factor in the judgment. Sex and violence in advertisements aired before 20.00 hrs will likely be banned. Likewise a billboard for funeral expenses insurance near an old people's home or a graveyard will be banned.

Violence

In the Netherlands we regularly see decisions where ads based on violence are prohibited. Most of the time these are advertisements for promotion of computer games, trailers for cinema films and promos for TV programs. We see two returning items, the violence is too excessive for young children a therefore these advertisements can only be aired after 20.00 hrs, and further the compilation of the game, film and/or program makes the advertisement too violent although the entire programs is not infringing requirements of good taste.

I mention a recent decision, a preview of a program on bullfighting. The RCC decides that these pictures are shocking for young children. The fact that the commercials are aired on a special rate by which the advertiser has no influence on the time of airing is no excuse for the advertiser. Such pictures can only be aired later than 20.00 hrs.

Another decision was on a TV commercial of Lays chips. We see a girl entering the train and sitting down in a compartment where a boy is eating chips. She's kind to him but when he doesn't offer her chips, she decides to throw his backpack out of the window. The boy leaves the train to pick up his backpack but when he wants to enter the train the doors close leaving him behind while the girl eats his chips. The RCC decides that it's absolutely dangerous to make people leave a departing train especially when using violence to do so. In this case the fact that the commercial is meant to be humorous doesn't influence the decision by the RCC.

In October 2010 a horror feature film was released on the subject of Saint Nicolas. The film was promoted by means of posters and TV. These posters were published all over the country, among others near crèches and kindergartens. On these posters Santa Claus is imaged as a horror ghost.

Complaints were also directed to a leader which was shown on TV as an advertisement for the feature film.

In total about 150 complaints were filed against these advertisements by shocked parents and psychologists. However the complaints were not upheld by the Dutch Advertising Code Committee. This decision was confirmed on appeal.

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HESKETH HENRY
The Art of Law

***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

Decency in advertising in New Zealand is governed by a combination of legislation, namely the Fair Trading Act 1986, ("FTA") Human Rights Act 1993 ("HRA") and the New Zealand Bill of Rights Act 1990 ("BOR") and the self-regulating body, the Advertising Standards Authority ("ASA") and its' Codes of Practice.

General

The ASA is a self regulating body whose combination of codes, principles and rules regulate advertising in all media. The codes are extensive and are based on truth, fairness and decency. Decency is specifically addressed in the ASA's Code of Ethics which states "advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services)".

The complaints process applied by the ASA is well defined, with advertisers being entitled to defend their campaigns prior to the ASA adjudicating in relation to a complaint. All decisions are reported which often results in considerable media coverage, particularly where "big brand" names are involved. Where a complaint is up-held the advertiser is requested to voluntarily and immediately withdraw the advertisement. A rule, which is invariable followed.

This process is available to any member of the public who believes that an advertisement is in breach of the ASA's rules, including those that relate to decency. There is no charge for individuals who lay a complaint. This together with the generality of the ASA's rules make it a far more accessible process for the average person, than trying to pursue a claim through the Courts under the BOR or the HRA.

Specific

Although complaints are made to the ASA on a variety of issues that arise in relation to decency, such as religion, minority rights, race, and violence, it is gender stereotyping and using sex to sell where the majority of complaints are received.

The ASA received a complaint about an advertisement promoting "Charlie's" all natural juice. The complaint concerned a cartoon style advertisement which depicted two school age boys, one of whom was Marc Ellis (ex-All Black and then owner of Charlie's juice), reflecting on how things used to be. The two boys were seen watching their mate's mum sunbathing nude over the back fence, quickly followed by the memory of her squeezing two oranges for juice. The complainant believed that the advertisement was simply a crude sexual innuendo, which indecently linked the squeezing of oranges to the woman's breasts and should not have been permitted during a family viewing time slot.

The advertiser defended the advertisement on the basis that the advertisement was cartoon style, only implied nudity, as nothing could be seen and that it was couched in humour to avoid any serious innuendo. The advertiser also took the additional step of having the advertisement re-classified as "adult only" adjusting the time slot to after 8:30pm. The ASA up-held the complaint stating that the advertisement did not meet the required sense of decency and sense of social responsibility required despite the fact that it was in cartoon style and had been re-classified. The advertisement was subsequently withdrawn, although not before Marc Ellis, appeared in a number of television and radio interviews about the advertisement and the ASA's decision, thereby gaining as much quasi-advertising of his product as possible.

Although the ASA is a well respected self-regulating body, it has become apparent that the scope of its

jurisdiction is not sufficiently wide to catch all forms of indecent advertising.

In 2007, in order to advertise an up-coming event, the organizer of an Erotica Expo planned and ran an inner city parade. The parade ran during a weekday lunchtime through the main streets of Auckland, and was themed "Boobs on Bikes". The parading of topless women was considered by many to be an unacceptable and indecent form of advertising.

There was widespread knowledge of the parade, mainly via the interest afforded it by the press and interviews given by the organizer. The parade attracted approximately 80,000 people, but did not contain any signs or logos which linked the parade to the Expo. Nor was there any indication as to who the advertiser was. It was on this basis that the ASA dismissed the numerous complaints it received stating that it had no jurisdiction over the parade as it did not in fact advertise anything.

Due to the breadth of public concern about the parade, and the fact that it was unable to be dealt with by the ASA the local council hurried through a by-law aimed at preventing any parade that was "offensive". The council then sought an interim injunction to prevent the parade on the grounds of indecent exposure resulting in an offensive event, only to have its application denied. The Judge found that although the parade was in all likelihood tasteless, it did not necessarily make it offensive. The Judge also questioned whether the by-law was in breach the HRA.

Clearly the form and medium in which one advertises will be important in assessing whether or not the same content might be considered indecent or not.

NICARAGUA

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

In Nicaragua, there is no particular Law that regulates decency in advertising (and the term decency is not defined in Nicaraguan Law). Nonetheless, the legal system has adopted provisions contained within various bodies of law that regulate advertising in specific areas, such as tobacco products, alcoholic beverages, medicinal products, the use of children in advertising, etc.

The Constitution

The Constitution establishes the right to freely express opinion in public or in private, individually or collectively, in oral or written form and by any other mean.

Trademark Law

The Trademark Law establishes the prohibition to register trademarks that are contrary to morals and public order.

General

The General Law on Media and Social Communication (Act No. 57) establishes that advertisement has a responsibility towards consumers and the Nicaraguan society; its production, scope, content, duration, origin, and distribution on radio, motions picture and television programming, as well as other media, shall be regulated.

Furthermore, said Law provides that mass media have the duty to contribute to the strengthening of national and personal values; consequently, while carrying out their duties, they shall:

5. Promote respect for the founders of the Nicaraguan nationality; patriotic symbols and our heroes and martyrs, as well as to historic phrases and events, which cannot be used for commercial advertising.
6. Emphasize the participation and actions of women; respect their dignity, not using them as commercial or sexual objects.
7. Encourage the integral development of Nicaraguan children and young people, stimulating social media to spread material of interest to the social and cultural formation of children, as well as protecting them against any information and material potentially harmful to their wellbeing and normal development.
8. Promote the strengthening of the family as a fundamental core of society, driving values of respect, solidarity and absolute equality of rights and duties.
9. Encourage a humanitarian, supportive, respectful, and responsible social attitude towards people with disabilities, promoting their full incorporation into society, challenging discriminatory conceptions and values that tend to limit their equality with other human beings.
10. Promote the development of the people's spiritual and cultural levels; the country's customs and traditions, the correct use of the Spanish language and the languages of the communities of the Caribbean coast and the values of Nicaraguan nationality.
11. Avoid exposition or display of criminal actions, specially, those involving minors or crimes relating to people's honor.
12. Promote respect towards and the dignity of people and their private lives.
13. Respect the freedom of conscience, beliefs, and Nicaragua popular traditions.
14. Not to spread racist or discriminatory sentiments of any kind.

By design of the above cited Law, the Department of Interior is responsible for classifying entertainments and public events with respect to their nature, ages for which they are not recommended, locations and times on which their presentation is not adequate. It is also in charge of prohibiting advertisement agencies and media

to disclose advertising messages of a commercial, political or other nature, inciting the use of drugs, prostitution, and child pornography, among others.

REGULATIONS THAT APPLY FOR SPECIFIC TYPES OF ADVERTISEMENTS

Advertisement for minors and youth

The Childhood and Adolescence Code, establishes that “It is prohibited to advertisement agencies and media owners and their workers, to disclose advertising messages of a commercial, political or any other nature, inducing boys and girls and adolescents, through any media of social communication, to use drugs, tobacco products or alcoholic beverages; engage in prostitution or child pornography, or that exalt vice or would be disrespectful to their dignity”.

Advertising alcohol and tobacco

The Law of Consumer Protection and its Rules and Regulations restrict promotional campaigns of products whose continuous or prolonged use imply risks to human health, such as tobacco and alcohol. Such campaigns must include a warning about the dangers of the use of the product, in accordance with the size of the package, stating that “the use of alcoholic beverages/tobacco products is harmful to your health”. The use of minors, patriotic or religious symbols, or any other element, implying a message of inducing young people or children to consume such products, is prohibited in this type of advertising.

The Law of Control of Tobacco Products strictly prohibits advertising or advertisement of tobacco products via mass media, such as the press, radio and television, as well as through signs or billboards, among others.

Advertising can only be made in the following manner:

1. within inner spaces in points of sale;
2. in tobacco stores;
3. in magazines, publications and movies directed to adults; and
4. one-to-one contact with informed consumers, 18 years old and older, with previous access control.

Advertising of tobacco products shall not contain any reference that would harm the integrity, dignity or intelligence of people, especially women, adolescents or children.

Advertising medicinal products

The Law of Drugs and Pharmacies (Act No. 192) and its Rules and Regulations (Decree No. 6–99) regulate advertisement of prescription and nonprescription drugs. The Pharmacy Administration of the Ministry of Health is the public entity in charge of its application and monitoring. Advertisement of medications destined to mass media should be previously registered and approved by the Pharmacy Division.

Comparative advertisement

In Nicaragua comparative advertisement is permitted, under the following conditions:

- That the comparison refers to facts that are objectively comparable.
- That no false or inaccurate information is included.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

There are no case laws or statutory regulations governing decency in advertisement in Nigeria. Advertisement practice in Nigeria is regulated by the Nigerian Code of Advertising Practice & Sales Promotion ("The Code") which was issued by the Advertising Practitioners Council of Nigeria (APCON), pursuant to the provisions of the Advertising Practitioners (Registration Etc.) Act, CAP A7, LFN 2004.

The Code complements all relevant laws in Nigeria, as well as existing rules and regulations of APCON.

General

The Code requires, as a general rule, that all advertising must be "legal, decent, honest, truthful, and mindful of Nigeria's culture." It provides that all advertisements should be prepared "with a sense of social and professional responsibility and must conform to the principles of fair competition, as generally accepted in business."

In recognition of the need to promote decency in advertising and elucidation of that requirement, the Code stipulates that no advertisement shall contain or use any visual illustrations or words or sounds that offend public decency and no advertisement shall be obscene or offensive.

Religion

As far as religion is concerned, the Code specifically provides that no advertisement shall exploit religious beliefs, mislead people, or employ miracles as a bait to elicit patronage. It further prohibits advertisements promoting a particular faith or belief from offending the right of other people to hold contrary beliefs or convictions. Further, advertisements are prohibited from promoting or exploiting superstitions or negative myths, notwithstanding that such superstition or myth is in respect of any aspect of culture, philosophy or world view.

Minority Groups

The NCAP Code does not contain any provision specifically dealing with Minority Groups. However, it generally provides that no advertisement shall denigrate any person or group of persons, firm, organisation, industry, or commercial activity, profession or product, or seek to bring it or them into public contempt or ridicule. It is submitted that the scope of this provision is wide enough to protect Minority Groups from indecent advertisement.

Gender/Stereotyping

The Code stipulates that no gender shall be depicted as subservient, superior or inferior to the other. As instance where this provision may have been invoked was in respect of an advertisement by a telecommunications company which involved communication between a woman in the village announcing the birth of a baby boy to another in the city. There were complaints against this advertisement, as a section of the public opined that the advertisement appeared to imply that a certain sex was more preferred than the other. In consideration of the gender concern raised, the advertisement was modified, in which case there was no mention of the sex of the baby in the advertisement.

Race

As earlier stated the Code prohibits the denigration of any person or groups of persons etc, in or by an

advertisement. This provision is adequately worded to also prevent the publication of advertisements with racial or ethnic slur.

Sex and Sexual Preference

The Code prohibits advertisements that exploit, depict, or suggest sexual behavior either in obvious or implied context. Even where sexual products such as condoms are to be advertised, the code provides that such advertisements should be made in such manner that it shall not encourage indecency.

The Code also prohibits advertisements that permits or portrays nudity particularly in advertisement of alcoholic beverages. In practice, as a concrete issue, sex and sexual preference hardly feature in advertisements in Nigeria, which is largely due to the moral and religious beliefs of people.

Violence

On the issue of violence, the code provides that advertisements shall not play on or exploit fear or distress in an attempt to induce patronage and same shall not depict violence against people.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

The legal standard (good marketing practice) stated below related to ethics will be in force at marketing that are offending the moral or ethic standards counted as universal standards in the Norwegian society.

General

An ethic standard was amendment in 1997 to § 1 in the Marketing Control Act of 1972 (MCA) (The General provision).

The amendment was made due to a demand of an ethic standard that had a “wider range” than the term “good business practise” or “unfair on consumers”.

The new Norwegian Marketing Practices Act came into force 1 June 2009. The act is based on the implementation of the EU directive 2005/29/EF concerning unfair business-to-consumer commercial practices.

The ethic standard is continued, and Section 2 Good marketing practice, etc states the following:

“Marketing shall not conflict with good marketing practice. In the assessment, emphasis shall be given to whether the marketing offends against general ethical and moral views, and to whether it employs offensive means.

The marketer and the designer of the marketing shall ensure that the marketing does not conflict with the equality of the sexes and that it does not exploit the body of one of the sexes or convey an offensive or derogatory appraisal of women or men.

In determining whether the first or second paragraphs have been infringed, emphasis shall be given to whether the marketing stands out as particularly intrusive by reason of its design, format or scope, or other means employed.”

As a legal standard the substance will be made clear through practise.

Religion

Marketing seen as discrimination of religion, race or nationality can be in conflict with good marketing practise.

In 1997 The Consumer Ombudsman (COM) concluded that to compare Mocca pudding with the wholly KABA stone in Mekka was in conflict with good marketing practice.

Children

The legal standard is also used in connection with marketing against children, but it is important to notice that in the new Marketing Practices Act from 2009 it includes a separate chapter called “Special protection of

children”

The Norwegian Consumer Ombudsmann (COM) pays close attention to marketing towards children and he has a relatively strict practice in this area.

In a case from 1999 the COM considered a McDonald advertisement for the meal Happy Meal in a Donald Duck & Co magazine in conflict with good marketing practise.

With Happy Meal followed a new toy every week. The toys when collected in 4 months could be fit together to a big Mickey Mouse-figure.

COM argued that this would appeal to children's collection requirement and increase the pressure to buy.

Diff. examples

Before the amendments was made to § 1 in the MCA in 1997 a well known case was brought to the Market Council (MC) in 1994.

Benetton did some extensive advertising with pictures of bloody clothes from a dead soldier from Bosnia in the war in Yugoslavia.

The MC concluded that the advertising was unfair on consumers.

In 1999 (after the ethic legal standard was amended, MC concluded that it was in conflict with good marketing practise to make the impression that the police did not take driving against red light seriously.

The examples are still relevant also regarding the new legislation.

Violence

Also the use of violence in advertising will be in conflict with good marketing practice.

In 2005 the COM concluded that it was in conflict with good marketing practise in an advertising movie for glasses to show an inquiry with torture.

In the movie a man with glasses had water thrown in this face, his head beaten hard toward a table while his hands were tied behind his back. On top of that he was threatened.

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AFRA
Alfaro, Ferrer & Ramirez

Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

The issue of decency in advertising in Panama is difficult to group into one category. There is really no specific statutory regulation or case law on the matter. Instead, the matter of content is self-regulated by private agreements among television and radio stations, and, to some extent, regulated by the different laws and regulations that deal with a subject of public concern, such as health and violence (For example, regulation prohibiting the advertisement of tobacco and liquor to show the models taking the products to their mouths). Similarly, the specific aspect of advertising content is self-regulated by agreements among advertising firms, similar to those of radio and television stations.

It should be pointed out that the Panamanian Constitution, in its Article 85, provides: "Social communication media are instruments of information, education, recreation and cultural and scientific diffusion. When used for publicity or propaganda, those should not be contrary to the health, moral, education, and cultural formation of society and national conscience. Its operation will be regulated by law". Even though there is extensive legislation regulating the operation of communication media, the regulation of its content is difficult to achieve because of freedom of speech concerns.

General

In 1969, the recently installed military dictatorship created the National Board of Censorship, with the objective of controlling the content of press. Among other things, the Board had the faculty to block graphic media, radio and television programs that offended Christian morals, national dignity or that exhibited exotic propaganda and theories that threatened the "democratic and republican regime" of the country. More than once, free speech advocates warned that these regulations could be abused to silence communication media.

In 1999, legislation was passed empowering radio and television with the faculty of self-regulation. Therefore, the National Board of Censorship's only remaining duty was to control public exhibitions and cinema. Then, in 2005, the National Board of Censorship was eliminated by Law no. 22 of 2005, leaving the rating of movies in the hands of local movie distributors, based on an agreement with the Government in which movie distributors commit to the coordination and contribution in the divulgation of existing laws and regulations intended to protect minors and family from material hazardous to their integral development.

Religion

There is no specific state regulation dealing with decency in advertising in the context of religion.

Recently, a graphic advertisement depicting a crucified person was denounced by religious groups and society. Without a legal basis to remove the advertisement, activists approached the owner of the advertisement to plead their case, and the owner voluntarily removed the advertisement, presumably to avoid being churned by its clientele.

Minority Groups

There is no specific state regulation dealing with decency in advertising in the context of minority groups, and we know of no situation where an advertisement has been questioned on such grounds.

Gender/Stereotyping

Law 4 of 1999, dealing with equal opportunity, mandates that the State shall promote a dignified image of women in the communication media, and shall avoid programs, writings, advertising images and stereotyped models implying superiority or inferiority of men or women.

We know of no situation where an advertisement has been questioned on such grounds.

Race

There is no specific state regulation dealing with decency in advertising in the context of race, and we know of no situation where an advertisement has been questioned on such grounds.

Sex and Sexual Preference

There is no specific state regulation dealing with decency in advertising in the context of sex and sexual preference.

In 2004, citizens objected to a billboard advertisement for a gentleman's club containing the picture of woman in provocative pose and clothing. Even though the mayor of the city is empowered by Municipal regulation to order the removal of outdoor advertisements that are contrary to the moral and good customs, he declined to intervene saying that the advertisement was indeed offensive, but that being a strong advocate of freedom of speech he could not censor the add. The mayor explained that only the National Board of Censorship (which still existed at the time) had the faculty of censorship.

Violence

There is no specific state regulation dealing with decency in advertising in the context of violence, and we know of no situation where an advertisement has been questioned on such grounds.

PARAGUAY

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BERKEMEYER
ATTORNEYS AND COUNSELORS
Since 1951

***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

Regarding the topic of “Decency in advertising”, Paraguay counts with a Municipal Ordinance which has jurisdiction over the capital, Asunción, and with self regulation provisions established by private associations, namely, Regulation, Provisions and Study of Communications Centre (CERNECO) and National Commission of Advertising Self Regulation (CONAR). In spite of the fact that the self regulation provisions are not mandatory, the compliance of the same by the associated companies is very high since they carry a systematic effect and consequently, a great commercial impact in the market.

Municipal Ordinance N° 24877/88

This Municipality of Asunción’s Ordinance prohibits any type of advertisement against decency, uses and customs. (Article 1). Every advertisement, forbidden to be addressed to youth under 18 in cinemas or theatres, needs express authorization of the Municipality. Non compliance of said provision would carry sanctions which depending on their seriousness could vary from fines equivalent to 20 minimum wages (approx. US\$ 6,700) when committed for the first time, up to temporary and permanent closure of the company dealing with the advertisements.

Self Regulation

The Advertising Self Regulation contains an express provision on decency in advertising by establishing in Article 12 the Principle of Decency.

The aforementioned article provides that advertisements should hold principles of truth, loyalty, decency, honesty, legitimacy, fair competition and trust. Consequently it shall not, *inter alia*, diminish other products, competitors, activities or professions by disregarding its qualities or by trying to obtain consumers’ rejection.

Other provisions contained in the Advertising Self Regulation in relation to decency are the following:

- a) Exploiting negligence. Morality: Article 9 establishes that advertisements should prevent the promotion of hazardous acts or risks by exploiting negligence, especially when addressed to children. In consequence, article 10 establishes that advertising should have morality, good customs and it should be maintained within the public order.
- b) Discrimination: Article 9 establishes that it is not permitted any kind of discrimination based on race, social, political, religious or sexual grounds in advertisements.
- c) Other protections: Articles 26, 28, 30 provide for the protection of intimacy, the environment, children, respectively.

Self Regulation Case

In Paraguay, self regulation is still applied to advertising which is coupled by an enforcing entity called the National Commission of Advertising Self Regulation (CONAR).

The only case on this subject was brought to the CONAR on August 29, 2006 by which the company Watson had an advertisement with the phrase “Yes, daddy” (Sí, papá) which had a negative social impact because of the image of a woman (sexual features) that coupled with such phrase induced to think that she was completely subject to the man’s will. Many sectors of the society and public institutions such as the Women’s Secretariat and the Capital’s Municipality demanded the removal of these advertisements. It was alleged that it violated Articles 7 and 10 of the Self Regulation Code and its principles.

The advertisement was removed and the company was forced to change its advertisement.

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Abogados

***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

In Peru freedom of speech is the rule in terms of advertising. Therefore, the Unfair Competition Law (hereinafter, the UCL), approved by Legislative Decree 1044 on June, 2008, suppressed any reference to decency in its regulation, because it was difficult to consider an advertisement illegal just because is questionable from a decency perspective (an abstract concept). Considering this point of view, the UCL only regulates a “*social adequacy principle*” in order to avoid publicity which induced discrimination and illegal acts (the goal is to protect human dignity and equality status). However, according to the recent Consumer Code (hereinafter, the Code), approved by Law 29571, publicity that induces *antisocial* acts is forbidden. Thus, this Code reintroduced the subjective concept of decency, since acts that are considered contrary to decency may be deemed antisocial.

The administrative authorities in charge of this matter are: in first instance the Commission of Unfair Competition; and in second instance, the Competition Defense Court. Both authorities are part of the National Institute for Defense of Competition and Intellectual Property Protection – INDECOPI.

Industry self-regulation (conformed by the National Association of Advertisers – ANDA and the National Commission of Self-Regulating Advertising-CONAR), which supplements legislative regulation, has specific provisions related to decency in adverting. However it is not widely used because it is not mandatory and also more restrictive than the UCL and the Code.

General

According with the UCL, acts against the “*social adequacy principle*” consist in the dissemination of advertising which has the following effect:

- (i) To induce to commit an illegal act or to discriminate or offend due to origin, race, sex, language, religion, opinion, economic condition, among other reasons, and;
- (ii) Promote products or services of an erotic content to minors. These products or services are restricted to adults and may only be offered in written press. Also, the advertising of such products and services through television or radio is only permitted between 1:00 a.m. and 5:00 a.m.

In addition, the Code points out that in order to avoid publicity against the “*social adequacy principle*” it is not permitted ads that may lead the addressee of the advertisement to commit antisocial acts. This may include acts against decency.

Religion

Any reference to religion in advertising shall not induce to discrimination or offend. As far as we could ascertain, there is no record of cases of advertisements considered to be offensive to any kind of religion.

Minority Groups

Most of the time advertising is aimed at the majority of the population. Therefore it is not common to see decency issues arise out of minorities in advertising. Thus, as far as we could ascertain, there is no record of cases of advertisements considered to be offensive to any minority group.

Gender / Stereotyping

In Peru complaints in the past years have been based on the women role in advertisements (e.g. woman doing housekeeping such as washing clothes) and also against publicity which use models in bikinis in order to promote certain products (e.g. alcohol beverage, cars, among others). As a rule, those cases don't have success because the authority in charge uses a very flexible approach that favors freedom of speech. Thus, these kinds of ads usually don't exceed the limit of bad taste.

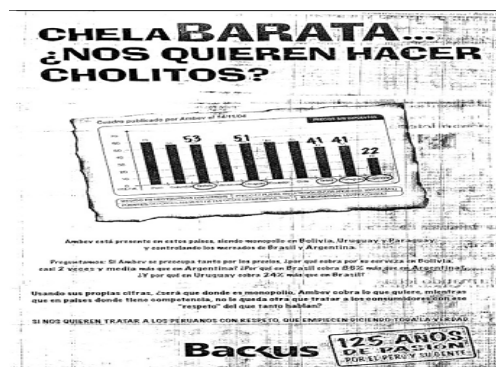
However, some ads were considered illegal because they showed woman body like an object or in a subordinated position before men. For example, the following ad was published by cable TV company in order to promote its program "FX":



I wait at home.
FX. The first male channel.

Race

The attached publicity, disseminated within the framework of a campaign against a beer producer, was considered illegal by the authority after complaints that it reinforces the discriminatory idea that a person who can be considered as "cholo" is a person could be easily deceived.



Sex and Sexual Preference

As we stated previously it is forbid to promote products of services of an erotic content to minors. For example, the authority has sanctioned several advertisers who used newspapers to advertise this kind of services. It is because newspapers are available to the general public, not just adults.

ViolenceCase 1:

In order to promote its sodas, a transnational company, showed a well-known Peruvian soccer player kicking a soda vending machine in order to obtain one of them without depositing the respective amount of money.

This ad was considered illegal because encouraged aggressive and illegal behaviors. In addition, a reasonable consumer could be stimulated to perform objectively similar behavior.

Case 2:

A well-known sports newspaper released a television spot in which the addressee of the advertisement could appreciate pejorative expressions of a father (a newspaper's journalist) to his son because the goal he had scored was very bad. The idea of the spot was to suggest that newspaper journalists were always impartial.

This ad was considered illegal by the authority because it showed behaviors or situations that may be able to induce cruel or degrading treatment to children and adolescents.

POLAND

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SOŁTYSIŃSKI KAWECKI & SZŁĘZAK

***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

General

Companies seek through advertising to attract consumer's attention that will result in purchases of their brands. It is common practice to play on consumers' feelings and consumer's behavior or, to the contrary – on their fears and beliefs. De gustibus et coloribus non est disputandum. With regard to advertising both legislators and the industry agree: advertising must find a balance between freedom of expression, recipient's personal interests and his right to receive true information.

A Polish law reflects religious and moral standards. Both statutory regulation and industry self-regulation solve problems resulting from coexistence and interaction between interest of consumers and the industry's right of promotion. Polish law does not specifically regulate issues connected with decency in advertising. The main regulation is the Law on Combating Unfair Competition, which provides only that *advertising contrary to provisions of the law, good practices or offending human dignity* shall be an act of unfair competition. On the virtue of this Law the President of the Office for Competition and Consumer Protection may i.e. prohibit practices infringing rights of weaker market participants.

Soft law of course supplements legislation, making rules set forth by law more intelligible to citizens. Self-regulation is made through two basic acts, which create standards in advertising:

1. Code of Ethical Advertising
2. IAA's Advertisement Code of Conduct.

Please find below selected examples of how these acts are applied in practice.

Discrimination on the grounds of gender



Advertisement cannot cause any discrimination on grounds of race, sex and gender.
The following advertising was placed on billboards and advertising in gazette.



*Send the elephant to Ustroń [a Polish health resort]
and rush yourself to Media Markt*

This advertising was commonly considered as discriminating, but the Advertising Council adopted a standpoint that, even if the slogan may be found disgusting by some recipients, it does not infringe the Code of Ethical Advertising as it is an obvious pun.

Religion

 <p>ZNAM 69 SPOSOBÓW NA ZACHOWANIE DZIEWICTWA - A TY?</p> <p><i>I know 69 ways to preserve virginity – and you?</i></p>	 <p><i>The spot refers to the Holly family and the three kings, with a fourth offering the Red Bull. Mary wonders why a bull is being offered since they already have cows. The fourth king answers that it is an energy drink, which lends wings to the drinker – this is how angels fly.</i></p>
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These two advertisements were the most criticized in the past year. The Advertising Council found that both are discriminating with regards to religion and thus infringe the Code of Ethical Advertising. In the case of the Red Bull advertisement, one arbitrator submitted a *votum separatum* in favor of advertising as Christmas in his opinion became an element of popular culture and jokes related to religion are commonly accepted. The arbitrator further considered that this advertising does not comprise any slogan which could be considered as intentionally offensive. The arbitrator also found that topics related to religion are increasingly commercially exploited without being at the same time questioned by the Catholic Church.

Violence

Advertising shall not promote violence.

Violence is not broadly used in advertising. In fact, there was no advertising published in Poland referring directly to violence which has been prohibited.

Wolczanka's advertising (below) was published in exclusive men's magazines, but it was not commented neither by the industry nor the regulatory bodies.



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SOCIEDADE
DE ADVOGADOS, RL

***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

According to the Portuguese legislation, the notion of Decency in advertising involves matters of morality, human dignity, respect for national, religious and historical symbols, individual rights and freedom and commercial and consumer's interests aiming the convergence of all these social interests and public policy defined under the Portuguese Constitution.

General

The Decree-Law n.º. 330/90 also known as the "Advertising Code" was published in 1990 establishing the core principles and rules for advertising in Portugal.

Under this law, two bodies were created for the purposes of supervision, dispute resolution and sanctions imposition.

The Consumer's Institute (IC) verifies the compliance with the "Advertising Code" and is also entitled to settle disputes that might occur in the market.

The Commission for Imposition of Sanction in Advertisement is responsible for the application of sanctions and provisional and protective measures when required.

Founded in 1991, the Civil Institute of Self Discipline in Advertisement (ICAP), as a civil society organization, also plays an important role in the discipline of the advertisement in Portugal through its Code of Conduct and its Arbitration Board working alongside with IC for the same purposes. ICAP is a member of EASA – European Advertising Standards Alliance and its Code of Conduct was acknowledged and recognized by the International Commerce Chamber (ICC).

The great majority of the cases related to advertisement are settled within these two institutions (IC and ICAP) although the judicial appeal is always admissible.

Below are brief examples of such cases.

Religion

In 1994, one of the private television channels granted broadcasting rights to a religious community for a daily period of 30m, raising a national debate if it should be considered as non commercial advertisement.

The definition of Advertisement, initially solely connected to a commercial aspiration, was now adjusted to include cases of non commercial advertisements.

As so, under the new amendments of Articles 3 and 7 of the “Advertising Code” advertisements with political or religious content are strictly forbidden.

Minority Groups

As far as we could ascertain, there is no record of cases of advertisements considered to be offensive to minority groups in Portugal in the last 10 years.

Gender/Stereotyping

Case I

A recent advertisement campaign was launched with the publication of a calendar exposing the body of a woman with a cow’s head and body parts with butcher’s designations. ICAP found this campaign offensive and degrading for the female condition and it was immediately withdrawn.

Case II

The Committee for Equality and Women’s Rights filed a complaint against a company that commercializes water heaters for their commercials and outdoors considering that it diminishes the image of women in general.

The first outdoor used the image of a young woman in a sensual position with the expression “Its HOT BABY” and the second one had three images with a correspondent word for each:

Image 1 – Woman “HOT”

Image 2 – Man “INTELLIGENT”

Image 3 – Water heater “HOT AND INTELLIGENT”

IC did not consider this campaign as offensive or discriminatory as it only enhances the sensual side of women and does not intend to label men and women with these sole characteristics.

Case III

In a recent campaign for home cleansing products launched by a company which used the slogan “mummy buys and we offer to the daughter”. The promotions consisted in the offer of a miniature set of a mop and bucket in the purchase of a regular size mop and bucket. The complainants argued that the slogan is gender discriminatory as it indicates that only women are responsible for domestic tasks. ICAP found that this campaign did not offend basic principles of equality between gender and it is not discriminatory.

Case IV

A car dealer launched a campaign that consisted in a radio commercial in which a young couple are having a conversation on the phone and the wife, who is in the first stage of labor, is desperate to get to the hospital. The husband pretends that he cannot hear his wife due to bad reception on his cell phone and disconnects the call proceeding to the purchase of the vehicle encouraged by the salesman.

Complainants found this commercial offensive to the basic principles of decency, social responsibility and morality.

ICAP agreed with the merits of this cause and the commercial spot was immediately withdrawn.

Race

As far as we could ascertain, there is no record of cases of advertisements considered to be racist in Portugal in the last 10 years.

Sex and Sexual Preference

One of the beer companies sponsored a website called “Hetero Pride” that promotes the interaction between heterosexual people, through which the beer is advertised as “The Real Beer”.

The complainants invoke that the use of the word “Pride” indicates a discriminatory attitude towards the homosexual community as there is a highly known association named “Gay Pride” and the word “Pride” itself is associated on an international basis to the gay community.

It was claimed that this campaign promotes homophobia and it is inappropriate in a tolerant and pluralistic society as it infringes the constitutional rule of equality under which nobody can be privileged, aggrieved or limited for their sexual orientation (article 13 of the Portuguese Constitution).

ICAP found that the campaign was not discriminatory and therefore did not violate the rule of equality. ICAP argued that the website has a specific target group with the same rights and limitations as all others and by no means this campaign privileges, aggrieves or limits the interests of people with different sexual orientations.

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WOOD
OLTENASU &
ASSOCIATES
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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

The term “decency” is a theoretical concept, which is subject to change and which has to be assessed on a case by case basis.

In Romania, decency in advertising is promoted both at the level of the legislative acts issued by the State and at a self-regulatory level. According to Law No. 148/2000 regarding advertising (the “**Advertising Law**”), advertising has to be decent, correct and carried out in the spirit of social responsibility. Also, according to the Code of Practice in Advertising (the “**Code of Practice**”) issued by the Romanian Advertising Council (“**RAC**”), a commercial communication has to be fair, accurate, clear and decent.

The Romanian Advertising Council was established in 1999 at the initiative of several Romanian advertising companies, in association with the International Advertising Association. The activity of RAC is based on the Code of Practice which is a set of rules promoting ethics and decency to be observed by all entities involved in advertising. The declared aim of the Code of Practice is to support the development of a decent and fair business environment in Romania by providing a guide that informs the consumer and the industry in an accurate, fair and decent manner.

General

According to the Advertising Law, decent advertising must not:

- (a) be misleading;
- (b) be subliminal;
- (c) prejudice the respect for human dignity and public morals;
- (d) include discrimination based on race, sex, language, origin, social origin, ethnic identity or nationality;
- (e) infringe upon religious and political convictions;
- (f) prejudice the image, honor, dignity and private life of persons;
- (g) exploit the superstitions, credulity or fear of persons;
- (h) prejudice the security of persons or instigate to violence;
- (i) encourage behavior which causes damage to environment.

The guidelines mentioned above are also provided by the Code of Practice. In addition, Decision No. 220/2011 of the National Audiovisual Council (“**NCA**”) regulating the audiovisual content (“**Decision No. 220/2011**”) promotes equity and non-discrimination in all audio and visual media programs involving ethnical, religious or sexual minorities.

Religion

As regards the Advertising Law, advertising which infringes upon religious beliefs is prohibited.

Also, at self-regulatory level, the Code of Practice establishes that a commercial communication has to take into consideration the sensibilities related to religion.

In this respect, the NCA sanctioned an energy drinks manufacturer for presenting an advertisement that allegedly offended religious beliefs. In such advertisement, upon the birth of Jesus Christ, four magi appear before Him holding gifts. The fourth magus offers a can of energy drink to Mary and presents it as the angels' drink.

In another case, the NCA banned, for the same reasons, an advertisement for electric and electronic devices, in which two individuals attack a priest wearing a clerical outfit. Later, they realize that they mistook the priest for Batman.

Minority Groups

The NCA sanctioned an advertisement for a rum flavored chocolate brand called ROM, for reasons of ethnic discrimination. In such advertisement, one of the characters wishes to buy a bar of ROM chocolate and orders: "A small ROM, please!". The seller returns to the customer and brings with him a *Roma* (gypsy) child. The NCA considered that the play of words (the word designating the ROM chocolate is similar to the term for the *Roma* minority group) was discriminatory and, consequently, banned the advertisement.

Gender/Stereotyping

In an advertisement for *Lays* chips within the *Be Ready!* sweepstake, one of the winners, a girl, is presented while getting a breast implant from the prize money. The National Agency for Equal Chances between Men and Women informed the NCA, claiming that the commercial promotes sexist stereotypes regarding women. The NCA admitted the complaint and decided that the advertisement transmitted the idea that a woman defines herself exclusively through her physical qualities and promotes plastic surgery, and consequently, banned it.

Race

The "*Academia Catavencu*" newspaper advertised its future edition on a TV channel, presenting a commercial in which burning medieval cities and battle scenes were portrayed followed by images from the present, featuring Marko Bela and Kelemen Hunor (living Romanian politicians of Hungarian origin), while being appointed ministers in the Romanian government. In the background, a voice tells the story of the Hungarian people and their conquests, culminating with their becoming ministers in Romania. The NCA decided that the advertisement breached the legal legislation by presenting them as subjugators.

Sex and Sexual Preference

The NCA decided to broadcast, only after 22:00 hours, a commercial for a Durex lubricant. The NCA took into consideration the fact that the commercial did not present products that prevented sexually transmitted diseases or unwanted pregnancy, but products whose aim was to boost sexual performance and that, according to Decision No. 220/2011, promotions for sexual products and services may not be broadcasted.

Violence

According to the Code of Practice, commercial communications must not contain statements or representations that instigate verbal, physical or psychological violence. Also, an advertisement must not encourage a violent, aggressive, anti-social or illegal behavior, prejudice personal safety or incite violence. To apply the above mentioned principles, the NCA decided to ban an advertisement for a corn-puff snack brand, in which the head of an individual eats snacks from the carpet while the headless body is walking confused around the room. The makers of the advertisement explained that the commercial presented an absurdly humorous situation which illustrated the concept of "*Indestructible optimism in any situation*". However, the NCA did not agree with such point of view and decided that the ad was vulgar, disgusting and shocking and it infringed upon the principles of non-violence.

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A · L · R · U · D
LAW FIRM SINCE 1991

Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

The application of decency regulations may vary from one to another region of Russia, since influenced by local culture and nationality traditions.

General

Advertising activity in Russia is regulated mainly on the federal level. Also respective court practice and decisions of the Regulator in the field, i.e. the Federal Antimonopoly Service of the Russian Federation ("FAS"), as well as decision of its regional departments also have an impact on the interpretation of the regulations and enforcement practice.

The federal law envisages self-regulatory bodies in the advertising, but this is a dormant legal institute as there are no such bodies in Russia by now. Therefore the only state body which is entitled for regulation in the field of advertisement and for supervision of compliance with the Russian legislation on advertising is.

General requirements to advertisement are established by the Federal Law "On advertisement" No. 38-FZ as of March 13, 2003 (the "**Law**").

The Law bans using in advertising

- swear-words, rough and offensive images,
- comparisons and expressions, including in respect of sex, race, nationality, profession, social status, age, language of individual and citizen,
- official state symbols (flags, emblems, hymns), religious symbols, cultural heritage (historical and cultural monuments), nationalities of the Russian Federation and cultural heritage, included into the List of World Heritage.

Religion

Russia is a multinational and multi-faith country. The Law provides only the general restriction with respect to hurting religious feelings of consumers. The existing practice shows that use of religious symbolic in advertising of products, that have no strong relation to Russian culture or respective religion, in most cases is recognized as violation of the Law.

For example, in 2011 a regional Internet-provider "Interkon" distributed advertisements with a claim: "Interkon it is a "Super-Hit. Connect together with Interkon in spring". The ad depicted a woman dressed as a nun, holding a notebook in her hands. Below the picture it was written: "She has heard".

The regional department of FAS decided that such advertisement contains images of Christian symbols and may offend the feelings of Christians. The advertisement was banned.

Minority Groups

As noted above rough and offensive advertisements are generally prohibited in Russia. This ban also covers those adverts, which are offensive with respect to certain groups of people.

The KTO prohibited a number of advertisements as offending feelings of veterans of the Second World War: most of these ads used USSR and the Second World War symbolic together with some patriotic slang words with deformed meaning.

In another case a distributor of plastic windows promoted its services picturing a soviet soldier holding a plastic window. The advert claim stated: "We have took away the best of the Germans. We return it for 2000 rubles". The advert was banned by FAS.

There are few cases of banned advertisements based on the reason of offensive character for minority groups. Generally even if an advertisement offences minority group, there are always other grounds for its banning.

Gender/Stereotyping

The current FAS and court practice shows that advertisings that contain rough and offensive pictures, comparisons and expressions in respect of gender are subject to banning as well as those, which support offensive stereotypes.

One of the most illustrative examples of banned stereotyping in advertising was Procter & Gamble's TV advert of Lenor (a washing conditioner). The TV advert showed a woman sitting at her office desk and thinking about her family, house and vacations instead of work. The voice-over said: "What does a woman think of at her work?" FAS banned the advertisement as it asserted the stereotype that a woman is an unprofitable worker.

In 2011 FAS decided that the advertisement of MTS (mobile operator) forms inferiority complex related to the visual unattractiveness among young individuals. The TV advertisement showed a young man, who came to a "blind date". The man was disappointed when he saw that his possible girlfriend may be a girl with brackets. The advertisement was brought to FAS attention by a consumer claim.

Race

Based on the specificity of Russia as a multinational country, respective banned adverts mostly have rough and offensive content with respect to nationality, rather than race. However there are few cases related to race.

A sushi and pizza delivery company distributed an out-door advertisement of its new product – rolls with black rice. The advertisement depicted a dark-skinned man offering rolls with black rice. The advert claim stated: "Do you want some black ... rice?" FAS decided that such advertisement violates the legislation on advertisement and banned it. The advertiser tried to challenge the FAS decision in a court and then in a court of appeal; as a result the decision was upheld by the courts.

Sex and Sexual Preference

There are few adverts banned in Russian because of sexual preference. At the same time FAS often draws attention to the fact that some adverts, banned because of their erotic character, dishonor women.

In 2011 the regional office of FAS Russia banned the advertisement of the shop offering shoes and accessories. The advertisement showed a young woman wearing a fur mantle, boots and holding a handbag. No over clothes were put on. FAS recognized this image as indecent and shameless one; even the distribution of that advert through the magazine available to non-defined number of persons was identified as contradicting to the moral principles, accepted by the society. The advert was banned by FAS.

Other advertisement was also considered as indecent pictures a woman eating a banana, the line stated: "Always Want ® Ice-cream. Delivery of All Frozen. " The case was initiated upon the claim of the department of consumers' market and entrepreneurship of the administration of the city of Tolyatti, which received a number of respective claims from consumers and clergy. The claim stated that this image may be unconsciously interpreted as pornographic. It was also specified that the advertisement clearly unambiguously was connected with one of the most offensive human carnal pleasures.

Violence

The advertisement of a night club "РАЙ" showed a blooded Barbie's head and invited to a party called "Kill Barbie". The Barbie's head was spitted on a fork. The advertisement was placed at the facade of the night club in the centre of Moscow and was publically available to all categories of individuals, including children, religious and old persons. FAS decided that such advertisement called for physical violence, especially taking into consideration the way it was distributed and the fact that a Barbie is a childish doll, not-associated with any kind of violence. The advert was banned by FAS.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

General

The advertising sector in Singapore is primarily self-regulatory. The Advertising Standards Authority of Singapore ('ASAS'), which is an 'Advisory Council' to the 'Consumers Association of Singapore' (CAS) (a non-profit, non-governmental organization, which promotes fair and ethical trade practices) oversees and regulates advertising activities in Singapore. The ASAS relies on a system of guidance and voluntary compliance, which it believes is extremely beneficial and flexible in terms of resolving Disputes.

The general principles of the ASAS states that, 'advertisement should not contain anything that is offensive to the standards of decency prevailing among those who are likely to be exposed to them'.

Religion

Singapore is a secular multi-religious country due to its diverse ethnic mix of peoples originating from various countries and most major religious denominations are present in Singapore. In light of this, publications and public discussions of religious issues are generally considered out of bounds, and the ASAS states that all advertisement shall not subvert the shared values in Singapore's society including racial and religious harmony. (Preamble, para 1.4(e)).

Minority Groups

It should be noted that as Singapore is made up of ethnically diverse people groups, the government of Singapore has been implementing ways to transcend religious and racial boundaries in order to promote national unity. In so doing, the rights, customs and beliefs of many minority groups have been taken into account and the ASAS has set up various guidelines in order for advertisements to be within the standards of decency of the all the various ethnic groups in Singapore.

Gender/Stereotyping

In regards to gender stereotyping in Singapore, the advertising industry is guided by the general principles set forth in the ASAS whereby advertisements should portray all person's male or female in a manner, which is respectful of their dignity and person, and they should not be commoditized.

Race

As mentioned above, Singapore is country that consists of many people from different ethnic and social backgrounds and in light of this the advertising industry must take steps to ensure that all advertisements do not subvert the shared values in Singapore's multi cultural society by respecting the various races.

Following this, the advertising industry should take steps to curb any racial disharmony by filtering such content as required in advertisements in order to be general acceptable by all.

Sex and Sexual Preference

The Government of Singapore has stated that censorship of violence and sexual themes is necessary in view of the fact that the majority of the Singaporean populace is deeply conservative, and censorship of political, racial and religious content is necessary to avoid upsetting the balance of Singapore's delicate

multi-racial society.

Further to this, government bodies such as the Board of Film Censors (BFC) and the Media Development Authority (MDA) have been consistently reviewing and implementing various regulations and laws in order to stop the advertisement of sexually related themes through the media.

Violence

In addition to the above, the Media Development Authority (MDA) had implemented guidelines such as an official video games classification system and film classification system in order to give the advertising industry general guidelines on advertisements, which contain violence and sexual or indecent content.

Depiction of violence is allowed only to and extend whereby it is not excessive and is portrayed responsibly, however violence is generally prohibited for advertisements that are targeted towards children.

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

For the purposes of the discussion on decency in advertising in South Africa, issues such as honesty, fear, violence, discrimination and gender issues will be canvassed. The relevant regulations are to be found in the Code of Advertising Practice of the Advertising Standards Authority ("the ASA Code").

General

The ASA Code states, as a general rule applicable to all advertising, that advertising must be "legal, decent, honest and truthful" and that all advertisements should be prepared "with a sense of responsibility to the consumer".

The Code contains a definition of discrimination which is important to this discussion. Discrimination is defined as meaning "any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly:

- imposes burdens, obligations or disadvantages on; or,
- withholds benefits, opportunities or advantages from;
- any person on one or more of the following grounds:
 - race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or,
- any other analogous ground".

The Code also specifically prohibits "offensive advertising" by stating that "No advertising may offend against good taste or decency or be offensive to public or sectoral values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."

Religion

Religion is a ground specifically covered in the above definition of discrimination and the ASA has considered many complaints that advertisements are offensive based on religious grounds.

The ASA is not against religious commentary and even parody, but has, in the past, taken the view that advertising should not make fun of the central tenets or principles of a particular religion.

Recently the ASA has banned a number of adverts on the basis that they are offensive on religious grounds. These have included advertisements which made use of Jeff Dunham's Ahmed the Dead Terrorist character as well as an advertisement which used angels to promote an adult entertainment club.

Minority Groups

The ASA had cause to rule on an advertisement for a large retailer of electronic goods. The advertisement depicted people of Chinese descent asking, in heavily accented English, for a discount on various goods, including a banana and sweets (candy). The complaint was that the advertisement depicted Chinese people as stupid.

The ASA ruled that the advertisement was acceptable, as it amounted simply to a humorous parody.

Gender/Stereotyping

The ASA has received countless complaints based on gender discrimination or stereotyping. One such advertisement, for a GPS (satellite navigation) unit, depicted a man and woman driving together.

The woman continually reminds the man of things that need to be done, to which his answer is always

that he has completed the various errands. The woman asks "Is there nothing you need me for anymore" and the man, smiling, asks his GPS unit to locate a hotel.

The ASA ruled that the advertisement was not discriminatory, as it did not prejudice the woman or withhold any benefits from her. Nor was the advertisement ruled to be offensive.

The ASA has also received numerous complaints regarding advertisements which depict female strippers. In a number of these complaints the ASA has considered whether this amounts a negative gender portrayal, which is prohibited by clause 4.22.

In its findings in these matters, the ASA has confirmed that the objectification of women, or men for that matter, does not automatically amount to a negative gender portrayal. Accordingly, advertisements which objectify women, but do not express a negative view or lower women's worth, will not violate the ASA code.

Race

In 2003 a significant decision was made by the Final Appeal Committee of the ASA. The advertisement depicted a "witch doctor" or traditional healer using a cold and flu remedy (the advertised product) while making his, mostly rural and all black, patients believe he was using a traditional remedy for their colds and flu. The complaints against this advertising were on the grounds that this advertisement implied that the black patients were stupid and naïve.

The ASA decided that the advertisement did not discriminate on the basis of race.

In 2011, the ASA received a complaint regarding an advertisement for a newspaper in which the character, speaking with coloured accent, says that as a result of reading the newspaper he forgets about his hangover and his wife forgets that he was drunk the previous evening.

The complaint averred that this negatively stereotyped coloured people and was therefore discriminatory. The ASA held that an advertisement which makes limited use of stereotypes will not be discriminatory unless it conveys the message that the stereotype applies to all members of the group concerned.

Sex and Sexual Preference

In a complaint against a billboard for a strip club, the ASA had to decide whether an advertisement, in which the outline of the nipple of one of the models could be seen, was offensive.

The ASA considered the fact that children would be exposed to the billboard but ultimately ruled that the billboard was not offensive. The women in the billboard advertisement were fully clothed and were not in suggestive or sexual poses. The only suggestion of impropriety was the nipple seen through the clothing.

In recent decisions the ASA has confirmed that images of scantily clad women are product relevant to strip clubs and that these businesses cannot be prevented from advertising purely on the basis that some individuals may be offended by the content. However, the ASA pointed out that the advertisements used should still not be overtly sexual or objectively offensive.

This leniency does not appear to have been extended beyond the adult entertainment environment. For example, in 2008, the ASA ordered the withdrawal of an advertisement for an alcoholic beverage which focused heavily on the breasts of the women ordering the drink.

It must be noted that the ASA takes into account the placement and timing of these sorts of advertisements and, in the case of television commercials, will allow more overtly sexual advertisements late at night than during prime time viewing. However recent decisions have indicated that even where overtly sexual advertisements are flighted late at night, this should only be done during programming with similar content.

The ASA has also been called on to determine whether the use of adults, who are portrayed as being under the age of 18, in a sexual manner amounts to the portrayal of children to be sexually appealing, which is prohibited by clause 14.3.

In the advertisement the girls who, although the actors were over 18, clearly appear to be younger teenagers, flash their breasts during a music concert. The ASA ruled that this violated clause 14.3 and ordered that the advertisement be withdrawn.

Violence

On the issue of violence, the ASA was faced with a television advertisement depicting a hijacking scene. The advertisement was for a product with which the user could advise friends and family that he or she was in danger. The ASA did not rule against this use of violence, both because the rate of violent crime in South Africa is very high and also because the use of violence in this advertisement was product relevant. If the use of violence was gratuitous, the ASA may have held a different view.

Recently, the ASA has received a number of complaints regarding advertisements which depict violent car accidents in an effort to promote road safety. One of these advertisements depicts a collision between a minibus taxi and a train after the taxi driver fail to stop at a level crossing. The advertisement then implores people to obey the rules of the road and railways.

The ASA distinguished this advertisement from others which display people being killed or about to be killed on the basis that it is in the public interest to discourage irresponsible and dangerous driving, and therefore that the use of violence and fear was reasonable and justifiable.

SPAIN

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

General

According to Article 3 of the General Advertising Act, any advertising which violates the dignity of persons or the rights and values stated in the Spanish constitution, especially those referring to childhood, youth and females is illegal.

Article 10 of the Spanish Constitution states that the dignity of human beings is one of the fundamentals of the Spanish political system and social peace.

According to the advertising self-regulation codes of the most important private advertising associations, advertising must respect legality and especially the values, rights and principles stated in the Constitution. Furthermore advertising may not violate good taste, social decorum and good custom. It must avoid endorsing discrimination based upon race, nationality, religion, sex or sexual orientation, as well as human dignity in general.

Regarding good taste and/or social decorum there are no general rules that may apply. Therefore each advertising campaign must be analysed individually in order to determine if it violates dignity, good taste and social decorum.

Religion

In 2007 the Catholic Church in Spain felt to be offended by a promotion of the football club FC Getafe for the season 2007/2008. The spot included several scenes from the bible suggesting that one should rather believe in the club than in God. First the president of the FC Getafe refused to withdraw the promotion, but in the end he gave in because of the public pressure.

Heineken has recently (June 2008) withdrawn all its adverts from a Spanish television show "Saved by the Church" for the anti-Christian contents of the show.

Minority Groups

An advert for the restaurant chain Bocatta in 2004 was banned following complaints from the Spanish Agricultural Labour Union, who said that it portrayed rural people in a negative light. The responsible agency argued that the intention was not to cause offence, but to point out, in a comic way that would be understood by a young audience, the various inconveniences of living in the countryside.

The song that accompanies the images of rustic characters begins "Dawn in the town and already the intense aroma of dung floats in the sky..." before going on to list other adversities that one can expect to encounter in a rural setting, such as calluses from field work, having to deal with impudent animals, and suffering lumbago as a result of hard manual labour. The advert ends by declaring that Bocatta customers can enjoy the fruits of the countryside without having to undergo any of the aforementioned hardships.

Gender/Stereotyping

In 1992 the Federation of Progressive Women in Spain (Féderación de Mujeres Progresivas) claimed against the company FEBER S.A. for their publicity for toys for being sexist and discriminatory and there

violating the values guaranteed the Art. 14, 10.1 and 39.4 of the Spanish constitution.

The publicity was strictly separated for boys and girls. While the advert for the girls only offered dolls and things for the household and kitchen the advert for the boys with any kind of toys related to the outside world and different professions.

AUTOCONTROL (the competent self-regulating organ) confirmed that the advert indeed was discriminatory and therefore illicit and FEBER S.A. had to stop their campaign.

This year (2011) AUTOCONTROL has dealt with two cases regarding the use of women's body images in the advertising for products. One complaint was brought against the print advertising of the clothing brand POLO showing a young woman wearing only riding boots and covering her private parts with a trophy.

Another print advertising was a promotion for online gambling offered at the webpage www.bet-at-home.com with a close-up of a woman's hip with her pants down and showing underwear, with the words: "if you can read this it's your lucky day!"

In both cases AUTOCONTROL has ordered to withdraw the campaigns concluding that the adverts have infringed the respective provision of the Self-Regulation Code that prohibits the presentation of the women's body as a mere object and detached from the advertised product aimed at attracting the attention of the viewer.

Race

In 2007 a private person claimed against the Spanish company Sinersis for infringing the prohibition of racial discrimination according Art. 10 of the advertising self-regulation code in a campaign for their shop for electronic devices Tien 21.

The advert shows a seller (characterized in a funny way) welcoming a family (mother, father and a child) in a shop for electronic devices. The mother asks for a "small refrigerator for the beach". The seller, who speaks with an accent from Argentina, offers her a huge fridge that fits 347 litres on sale. When the mother ask whether this is really what she needs the seller says "Señora, please, father, mother, son and friiiiidge" and transforms into Pinocchio.

Then there is a voice in the off saying that "don't let you tell you stories, buy only what you need. We will help you. Come to Tien 21".

In this case AUTOCONTROL decided in favour of Sinersis as they considered it obvious that the advert had a funny and fictive character and did not intend to offend Argentine people.

Sex and Sexual Preference

In 2007, Dolce & Gabbana started an advertising campaign with pictures that aroused attention because of its violent and sexual attitude. The picture most critiqued shows a woman with a very short and tight dress lying on the floor who is hold down on her wrist by a male model without shirt while 4 other male models are watching intensively.

The responsible organisation of the Spanish Ministry of Labour and Social estimates the picture to arouse sexual violence and could be understood as if "the use of violence as a medium of subduing women was acceptable".

As a consequence the Women Institute asked Dolce & Gabbana to recall their campaign. Under the increasing pressure, also from the Italian trade union, Italian parliamentarians and Amnesty International, Dolce & Gabbana drew back their campaign first in Spain.

Violence

In 2001 Mitsubishi launched an advert showing a men looking like an executive who walks through a subterranean garage when he sees a vehicle with a sign saying "General Director". There are some voices in the off saying "Have you seen the car of the General Director? It's impressing. Wouldn't it be great to try the new car of the General Director"? The executives goes to the car gets some sharp thing out of his pocket and pinches two wheels of the car while one hears the words: "Rule number 1: The General Director may never buy a better car than the president". Then the man goes to a car with a sign saying "president" and leaves the parking garage.

The Union of Consumers (UCE) in Spain has claimed Mitsubishi for inciting violence in the advert. Although AUTOCONTROL also considered the arguments of Mitsubishi that the advert is obviously exaggerated and shown in a humorous way, the jury decided that the advert nevertheless violates the regulations of the Code of Conduct that prohibits advertising that incites any acts or violence (Art. 5) or illegal behavior (Art. 6) and condemns Mitsubishi to withdraw the advert and to repeat it in the future.

As Mitsubishi did not obey the decision of AUTOCONTROL, which is only binding for members or parties who subdue themselves to their decision, the UCE went to court which confirmed the decision of AUTOCONTROL.

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WISTRAND

***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

For the purposes of Sweden; decency in marketing is considered to involve ethics, religious values and matters of taste. Regulating these areas, and enforcing such rules, can often be questionable from a freedom of speech point of view, and due caution must be taken. The interest of freedom of speech must be balanced against the individual's interest in not being violated because of his/her gender, race, origin or religion etc.

General

In Sweden there are no specific rules for the protection against e.g. racism or discrimination or matters of decency in advertising. The Marketing Practices Act (MPA) aims primarily to protect the consumers in their capacity as just consumers. This is why the MPA includes a general clause stating that advertising must not be improper. Section 5 of the MPA states that marketing must be in accordance with good marketing practices. Advertising that is contrary to good marketing practices is considered improper. What good marketing practice signifies is not clearly defined, and the laws on marketing do not contain special provisions for the protection of the individual interest groups. The International Chamber of Commerce's (ICC) rules on marketing are however influential. Questions regarding good marketing practice are dealt with within the trade and industry's proprietary regulatory system. This order is expressly confirmed in the preparatory works to the MPA. There is one principal body within this self-regulatory system; The Swedish Advertising Ombudsman (RO). The RO's task is to give announcements on good marketing practice. The RO's decisions are publicly available and are sent to the media for information. The RO does however not dispose of any economic means of sanction. Below, examples of statements from RO as well as the MER and the ERK (predecessors of the RO) are briefly elaborated upon.

Religion

In a case from 2005 the MER reviewed a case where a Swedish Internet Service Provider was complained against for having ridiculed a religious procedure in TV-commercials. In the commercial a man partaking of the Holy Communion receives the sacramental wafer (the Body of Christ) which he quickly eats. He is then offered the chalice (the Blood of Christ) and greedily gulps down a lot of wine holding the chalice with both hands. When asked to stop the man slurs that he is on his way to a party.

The MER found that the commercial among active Christians would be considered blasphemous and vulgar, and would by others be considered at least highly inappropriate. The MER found that the commercial in question was offensive and contrary to good marketing practices.

Minority Groups

In the marketing of satellite dishes together with subscription of channels for one hundred Swedish crowns (SEK) a broadcasting network used the Swedish expression "hundralappen" together with an image of a Lappish man. The advertising was a play with words since the first part of the expression used refers to the SEK 100 the package cost per month, and the other part "lappen" is a slang word for a Lappish person. Hundralappen is however also an expression for a one hundred crown-bill.

The MER found that the general public would not perceive the commercial as discriminatory against the Lappish people. The MER also found that in the commercial there was no judgment regarding Lappish people. The commercial was therefore not discriminatory according to the MER.

Gender/Stereotyping

In a series of advertisements with the name "Sorry Girl!", the Discovery Channel portrayed women in impractical, but fashionable, clothes who consistently failed to perform typical male everyday occupations such as lighting the barbecue or sawing off tree branches. In the house a man was seen watching TV. A speaker voice apologizes for that Discovery Channel now broadcasts so many good TV-shows that the men cannot break loose from watching.

The ERK concluded that the advertisements in question ridiculed women and preserved an old-fashioned view of the gender roles. The ERK found the advertisements to be gender-discriminatory.

Race

There has not been a single case from the MER the last five years where advertising has been found racist. During the same time the MER has tried three complaints. In 1992 the MER tried a case regarding the marketing of American trucks. The marketing featured a large, white man which seemingly without effort averted an attack from a small, Asian man. The poster had the caption "Real men don't eat sushi".

The MER found the marketing to have ridiculed and discriminated against the Asian man, and therefore violated the ICC's basic rules.

Sex and Sexual Preference

In a recently launched marketing campaign for condoms of the brand Love Support the National Swedish Association for Sexual Information (RFSU) used expressions such as "Do a good deed. Get laid" and "Do you want to save the world? Get laid more often." At the bottom of each advertisement the caption "When you buy Love Support condoms SEK 5 goes to fighting HIV/AIDS in Zambia" was inserted.

It was claimed that the marketing campaign in question encouraged casual sexual relations.

The MER found that the marketing did not violate the ICC's basic rules. The MER argued that the expressions used had a humorous approach; although it is likely that many people would not appreciate the humorous approach. The MER also paid attention the RFSU as organization, and argued that this organization probably is commonly regarded as an organization conducting serious information activities.

Violence

In 1997 Diesel released a book with the title "Fight me – diplomacy is a kick in the face – A beginner's Guide to Self-Defence". The book was offered free of charge in stores that sold Diesel clothing.

The book was written in English and began with a disclaimer in which the publisher disclaimed every responsibility for any damages caused by the advice and instructions provided in the book. The book contained texts on self-defence, assaults et cetera, but first and foremost a large number of images featuring men, women and children dressed in Diesel clothing. These persons were often featured involved in violent situations. Some images also featured the results of violence, such as mutilated body parts and lying bodies. At the end of the book there was an index which listed the garments the models on each of the images were wearing. The last spread of the book contained a text from Diesel stating that Diesel not in any way intended to glorify, or encourage, violence.

The MER found that featuring bloody and mutilated body parts is perceived as very shocking and unpleasant by most people. To feature such images in advertising lacking any logical connection to the marketed goods would probably be regarded as vulgar or highly inappropriate by most readers. The MER considered the images and texts to have had a design portraying an indulging attitude towards the use of brute violence. The MER found that the book violated the ICC's basic rules in a flagrant and serious way.

Morality

In outdoor advertisement, primarily in the vicinity of bus stops and subway stations, the dating site Victoria Milan used expressions such as “100 % anonymous” and “Make your life vivid – have an affair”. Victoria Milan is a dating site targeting people who already are in relationships. A large number of complaints were filed with the RO arguing that the service and advertisements were offensive and promoted unfaithfulness.

The RO considered that it was not competent to review a (lawfully) provided service as such, but only the challenged advertising. The RO concluded that the advertisements reflected the service provided and that the advertisements were obviously linked to that service. Accordingly, the RO could not criticize the advertisements in question as they were not contrary to the ICC’s basic rules.

TURKEY

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MEHMET GÜN & PARTNERS

***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

In Turkey, decency in advertising is highly related with the moral values, ethics, public order, personal rights and good faith. The referenced issues have been regulated by relevant laws, by-laws or communiqués. Mostly, the principles governing the decency in advertising are challengeable in respect to the restriction of creativity and the frontiers of marketing. However, the general point of view borne by the relevant regulatory authorities is likely to be strict in this regard; as the decency and the protection of the consumer are considered to be more important than the creativity and marketing in Turkey.

General

The basic legal requirements for advertisements in Turkey are regulated by the *Act on Establishment and Broadcasting of Radio and Television Institutions numbered 6112, the Regulation on Fundamentals and Procedures of Broadcasts of Radio and Television Establishments, the Regulation on the Principles and Fundamentals of Practices Regarding the Commercial Advertisements and Announcements and the Consumer Protection Law.*

In line with the Consumer Protection Law numbered 4077; the advertisements shall be in compliance with the applicable laws, the general principles determined by the Advertisement Board, general ethics, public order, individual rights and good faith principle. In case of any ad investigation rendered upon any breach claim of the above captioned principles, The Board cooperates with and takes the opinions of Expert Governmental Institutes, Universities etc. in the examination of the claims' accuracy.

Under Turkish law, the general principles for decent advertising are as follows:

- The advertisements should not include discrimination and any violation to human being.
- The advertisements shall not be insulting to the human dignity and violating the personal rights.
- The views overdriving public emotions can not be used in the advertisement.
- The advertisements shall not be based on discrimination related to religion, language, race, creed, philosophical opinion and sex and shall not be abusing of the above cited values.
- The advertisements should definitely not contain statements or scenes abusing sexuality and shall not contain pornographic scenes either.
- The advertisements shall not abuse public fears and superstitious beliefs.

The Act on Establishment and Broadcasting of Radio and Television Institutions numbered 6112 and the Regulation on Fundamentals and Procedures of Broadcasts of Radio and Television Establishments also bears collateral provisions in this respect. Namely, as per the Act numbered 6112, the advertisements should

not be contrary to justice, equity and good faith principles; should not promote any kind of discrimination; should not be misleading; should not damage to the physical, mental and moral development of children and should not include women abuse. On the other hand, in line with the referred regulation, the advertisements shall also not be contrary to the national and moral values of the public and Turkish family structure.

With regard to the consumer complaints, the Advertisement Board is entitled to accept and assess the complaints or commence an investigation ex officio in cases of breach of the advertising principles set forth in the relevant legislation. The penalties which the Board is entitled to impose are; the precautionary banning of the ad up to 3 months, the correction of the ad, the banning of the ad and the monetary penalty (amounting to around TL 73,950 [approximately € 30,000] for nationally published advertisements). The decisions of the Advertisement Board are also subject to appeal before the authorized Administrative Court within 15 days as of the notification date of the decision to the concerned party.

With regard to the TV and Radio broadcast principles and complaints, the Radio and Television Supreme Counsel is entitled to hold for the following sanctions depending on the nature and effect of the breach of the broadcast principles: Warning, apology declaration, stopping of the TV/radio program or whole channel broadcast, administrative monetary fine and cancellation of the broadcast license. The compensation claims against the polluters or the breachers to be held by the third parties before the civil courts are also reserved in any case.

Religion

There have not been many cases observed on religious abuse or discrimination in advertising in Turkey. The Advertisement Board is very strict in this respect; to the effect that, on the one hand the religion elements is not used in the ads in Turkey generally except the ads regarding Ramadan Fest (i.e. Ad of Coca-Cola in every Ramadan period yearly) or Sacrifice Fest and on the other hand the religion has become so sensitive in Turkish society nowadays in connection with the political approach of the government that no one wants to meddle therein.

Recently, the Advertisement Board has ruled to fine Pepsi Cola in Turkey because of a campaign announcement in its website, namely "*The participants' photos with turbans will not be accepted*". The Advertisement Board ruled that such announcement causes discrimination and damages the personality rights of the people with turbans because of their religious beliefs.

Minority Groups

In Turkey, the discriminative usage of minority groups in the ads is not permitted. Therefore, we have not observed any cases in this respect in Turkey.

Gender/Stereotyping

As a concrete issue, gender discrimination or stereotyping does not constitute a challengeable topic launched in the ads in Turkey. However, sometimes the certain characteristics of woman (such as a low car parking ability) or men (being lazy and needy at home or aggressive in traffic) might be used in the ads in a sense of humor basis. Despite some complaints of such ads, the Advertisement Board has not ruled for a fine for any such ads, bearing in mind that there are very few indeed.

In a recent case, the Advertisement Board penalized a health institution due to its advertisements emphasizing that their gynecology department is composed of women doctors only, so that the patients can come comfortably.

With regard to stereotyping, some are created by TV serials or programs which have been adopted by the society and they might be used in the ads for several purposes. In a recent case, there was a complaint against the TV ad for Turkish Telekom in which a very famous Turkish comedian played and pretended to be a goggle. In time, this has become a well-known and loved stereotype in Turkey while the real goggles began to complain thereon as it is humiliating the goggles. At the end, the Advertisement Board did not rule any fine for Turkish Telekom.

Race

In Turkey, it is not common that the characteristics of certain races are used in the ads in a humiliating way; since it is not legally permitted in anyway and on the other hand the Turkish society is very sensitive on this issue. Besides, sometimes the accent of the LAZ people who are from the Black Sea region of Turkey is used in the ads; but the way they talk or act or their traditions are never been launched in a humiliating manner and such ads are considered so indulgently in the society that there have always been Black Sea people jokes told throughout Turkey from past to present; but never in a discriminative way, just on the ground of sense of humour.

Sex and Sexual Preference

In the recent decisions of the Advertisement Board, many sex shops in Turkey were penalized due to their

advertisements basing on the grounds that the advertised sexual products, tools and accessories are launched as if they may be considered as medicine and might be used for treatment; however may damage to human's health; also the leaflets of the referred products and tools can easily be seen by the children which might effect their physical and psychological development badly. In addition to these, the Advertisement Board penalized a chicken firm, namely "Banvit" due to its one of the advertisements containing some scenes and voice effects which might be associated as sexual and that it is contrary to the general moral values.

Besides, in a recent decision of the Radio and Television Supreme Counsel, it has been held that the broadcast of a well-known TV Serial shall be prohibited due to an expression used in the serial by some of the actresses namely "düdüklemek" which is a slang term for sexual intercourse in Turkey.

Violence

Recently, the Advertisement Board has rendered their decisions on this subject. Whereas; the Board penalized an ad about a football game in which a deathbed person is shown and an expression suddenly comes to screen such as "Football is not a game. It is a life or death matter" basing on the ground that the ad promoted people to violence.

Additionally, the Advertisement Board has penalized the ad for "Vivident Full Fruit" in which a man with a big knife suddenly jumps on the fruits in an aggressive way in order to get their juice for the gum" as being violent tempting. Likewise, the Advertisement Board penalized the ad for "Vestel-Regal" television in which a man who chooses to buy another branded television is badly hit and hurt by a fighter woman as it emphasizes that a person is exposed to violence due to his personal choices.

The Radio and Television Supreme Counsel, also, has prohibited the broadcast of a very famous mafia TV serial namely "Kurtlar Vadisi" as containing so many violent and bloody scenes and being violence tempting especially for children and teenagers.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

The terms 'taste' and 'decency' are usually used together in the UK. 'Taste and decency' is an abstract concept, and what offends against taste and decency is largely subjective. It is an area that changes over time, and shifts with public sensibilities. It is influenced by demographical, racial and religious factors, national tastes, current affairs and other perspectives as well as by both regulatory guidance and legislation.

General

The advertising industry in the UK is monitored by a system of self regulation and legislation. In certain circumstances advertising that offends taste and decency might be sufficiently serious as to amount a tort, an illegal act or even a criminal act. Relevant areas of law to be considered are those relating to the Obscene Publications Act 1959, the Racial and Religious Hatred Act 2006, the Equality Act 2010 (which consolidates the law in relation to disability and sex discrimination, among others), and the laws of defamation.

In practice, most issues are not this serious. There are a number of regulatory bodies which give guidance in certain areas, depending on the type of advertising media. The Advertising Standards Authority ("ASA") is the independent body set up by the advertising industry to police the rules laid down by the Committee of Advertising Practice. The CAP Code relates to non-broadcast advertising (including on-line) whereas the BCAP Code covers broadcast advertising (radio and television) and they both enshrine principles stated at law. All advertising broadcast on UK television is also subject to pre-clearance by a body called Clearcast which assesses advertising for legal and regulatory compliance generally, including taste and decency, before authorising broadcast.

The principles stated at Rule 4 of both the CAP and BCAP Codes respectively indicate the approach of the ASA to 'taste and decency' issues:

CAP: Marketers should take account of the prevailing standards in society and the context in which a marketing communication is likely to appear to minimise the risk of causing harm or serious or widespread offence.

BCAP: Advertisements must not be harmful or offensive. Advertisements must take account of generally accepted standards to minimise the risk of causing harm or serious or widespread offence. The context in which an advertisement is likely to be broadcast must be taken into account to avoid unsuitable scheduling.

The CAP and BCAP codes and related Help Notes outline general requirements and areas to avoid, but do not of themselves provide an advertiser with precise guidelines as to what is acceptable. By and large this can only be done through constant reference to the ASA's adjudications. Both members of the public or competitor may lodge a complaint about an advert in the UK. Upon receipt of a complaint the ASA may investigate the advert and publish an adjudication. Below we have set out some recent examples of adjudications on adverts that have been complained about on grounds of 'taste and decency' issues.

Religion

The population of the United Kingdom is multi-faith and multi-cultural but research also shows that many people have no strong religious commitment. The CAP and BCAP Codes identify religion as an area in which marketers should take particular care to avoid causing serious or widespread offence. However, the ASA says in one guidance note that they "...aims to reflect, rather than shape public opinion" and that it "will try to recognise the most central and sacred aspects of religion. It is not, however, the aim of the ASA to make

advertising a religion-free zone”.

In 2010 a magazine advert for Antonio Federici ice cream showed a heavily pregnant woman dressed as a nun standing in a church holding a tub of ice cream in one hand and a spoon in the other (the text stated "Immaculately Conceived ... Ice cream is our religion"). The ASA said it considered that the use of a nun pregnant through immaculate conception was likely to be seen as a distortion and mockery of the beliefs of Roman Catholics. It therefore concluded that to use such an image in a light hearted way to advertise ice cream was likely to cause serious offence to readers, particularly those who practised the Roman Catholic faith.

Gender/Stereotyping

In 2009, a TV advert for OvenPride which included a voice-over that stated "so easy, even a man can do it" prompted 673 complaints. Most complainants considered that the advert suggested that men were stupid and lazy while others considered that the advert suggested that cleaning was generally a woman's job. The advert had been cleared by Clearcast who approved it because "it was clearly pantomime, slapstick and very silly". The ASA did not uphold the complaint because although the advert used mild humour to refer to traditional gender stereotypes. It considered that the overall impression was such that it did not portray either gender in a way that stigmatised, humiliated or undermined them by using harmful stereotypes.

Race / Minority Groups

In 2010, a TV advert for a bingo website showed a white man wearing a dinner suit and a black man in a floral shirt sitting by a fire on a beach. Everything the white man said, the black man repeated (in song form, while playing a ukulele). Two complainants challenged whether the advert was likely to cause serious or widespread offence, because they believed it presented a negative racial stereotype.

Sex and Sexual Preference

There are complaints that arise both from people who find the depiction of homosexual people or themes in advertising distasteful because they are against homosexuality, and from homosexual people themselves who sometimes find the depiction of homosexual people in advertisements to be either patronising or to reinforce negative stereotypes. This can be a difficult line for the ASA to tread.

In 2008, Heinz attracted controversy after a TV advert for its 'Deli Mayo' range depicted two men kissing. Interestingly, Heinz pulled the advert of its own accord, provoking outcry that it offended many gay, lesbian, transgender, and straight people by doing so. Around 200 complaints were made to the ASA but eventually the ASA Council decided that the advertisement should not be formally investigated because it "considered that whilst some viewers may have personal objections to any portrayal of same-sex kissing, there was nothing in the content of the advertisement that would constitute a breach of the TV Advertising Code."

Violence

Adverts for computers games can be a particular problem for the ASA when it comes to violence in advertising. For example, in 2007 a poster on the London Underground, for the computer game 'Burnout Dominator', showed a wrecked sports car that had crashed into a wall, with glass fragments scattered on the ground, with a detached tyre burning in the foreground and the headline "inner peace through outer violence". A number of people complained that the reference to and depiction of violence in the poster was offensive and also that it condoned and was likely to encourage violence, dangerous driving and anti-social behaviour, such as vandalism.

The complaint was upheld because the ASA considered that the advert's placement on the London Underground meant that it would be viewed by many, including young people. The imagery, coupled with the reference to violence, could be seen to condone a violent lifestyle, anti-social behaviour or dangerous driving. It concluded that the advert was irresponsible.

Hot Topic: Sexual Imagery in Outdoor Advertising

Adjudications are not the only place to find guidance for advertisers. From time to time, the ASA will publish a statement on a particular matter to give some more detailed guidance about the types and content of advertising it will consider to be acceptable or not. For example, sexual imagery in outdoor advertising has been a hot topic of late, following a government investigation and report on the commercialisation and sexualisation of childhood. On 7 October 2011, the ASA published a statement setting out some boundaries and examples of imagery that will fall on the right or wrong side of the line. Whilst not directly referring to the 'taste and decency' parts of the CAP and BCAP codes, the statement's comments and views will feed into the ASA's general approach to reviewing adverts complained of that contain potentially offensive or overtly sexual imagery.

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***Is there case law or any statutory regulation governing decency in advertising in your jurisdiction?
Does industry self-regulation replace or supplement government and legislative regulation of
decency in advertising?***

DECENCY IN ADVERTISING

General

Decency in advertising in the United States is generally self-regulatory in nature. While the Federal Communications Commission ("FCC") has authority to govern obscene, indecent and profane network television and radio broadcasts, this authority is primarily directed at broadcast programming content, not advertising. Nevertheless, the FCC's actions towards broadcast programming often influence industry self-regulation; an example of if such influence is set forth in more detail below. In addition, the FCC's definition of indecent material is often used as a benchmark for industry self-regulation. The FCC defines indecent material as material that depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards for the broadcast medium. Indecent material, however, is protected by the First Amendment and therefore can not be banned entirely, but can be restricted to the hours of 10:00 pm to 6:00 am when it is less likely that children will be viewing or listening.

The Children's Advertising Review Unit ("CARU") is the advertising industry's self-regulatory body which monitors and reviews advertising directed to children under 12. CARU both initiates and receives complaints about advertising practices, and determines whether such practices violate the program's standards. When it finds violations, it seeks changes through voluntary cooperation of advertisers. CARU's core principles state, among other things, that advertisers should "avoid social stereotyping and appeals to prejudice" and should "incorporate minority and other groups in advertisements" and should "capitalize on the potential of advertising to serve an educational role and influence positive personal qualities and behaviors in children, e.g., being honest, and respectful of others, taking safety precautions, engaging in physical activity." In addition, the guidelines provide that advertisers "should not convey the impression that possession of a product will result in more acceptance of a child by his or her peers or that lack of a product will cause a child to be less accepted by his peers."

Radio and television stations and print publications have their own advertising guidelines with which advertisers must comply. These guidelines are often broad which gives the stations and publications flexibility in their review and approval process. They can outright reject advertising, restrict the broadcast to certain hours or programming slots or even allow the advertisement subject to any consumer complaints. In general, stations and publications will reject or restrict advertisements which they feel might be offensive to any portion of their viewing audience. Thus, as the gate keepers of their mediums, many ads that might be considered indecent are never even seen or heard about by the public. And even if an "indecent" ad ends up published the ad is often short-lived, as it is not uncommon for public interest groups and consumer complaints to successfully convince stations, publications and even advertisers themselves to remove advertising that the public finds offensive or indecent.

Examples of the industry's own self-regulation as well as the FCC's influence on the industry are provided below.

Religion

There have not been any widely publicized instances of an advertisement being rejected or banned because it attacked or ridiculed a religious group. This is most likely because the mediums themselves often have guidelines that forbid ads targeting religion. For instance, the ABC television network guidelines forbid any advertisement "which misrepresents, ridicules, or attacks an individual or group on the basis of ... religion ..."

Minority Groups

Snickers chocolate bar ran an ad during the 2007 Super Bowl which featured two burly mechanics who accidentally kiss while sharing a Snickers bar, and then attempt to make up for it by yanking out clumps of their own chest hair. The ad received outrage from gay rights organizations as being demeaning to homosexuals, causing Snickers to take the ad off-air.

A child-targeted ad for Ironkids bread was brought to CARU's attention by a consumer complaint. The ad depicted a mother and son asking, "Have you ever seen a kid eat wheat bread?" and then answering, "I only know one kid who eats wheat bread," as a visual appears of a little girl wearing glasses. The boy then states, "What a little dork." CARU found that the commercial violated CARU's guidelines because it implied that children who eat wheat bread will not be accepted by their peers and also because the advertisement did not attempt to encourage positive social behavior and respect for others. CARU recommended the ad be removed from air.

Gender/Stereotyping

In 2000, the television network NBC aired a Nike advertisement that was meant to spoof classic horror films. The ad featured an Olympic runner outrunning a chainsaw killer wearing a hockey mask. The ad ended with the attacker collapsing in exhaustion and the tagline "Why Sport? You'll Live Longer." The advertisement received over 2,000 negative telephone complaints about it being "offensive to women" and prompted NBC to remove the ad.

Race

In 2007, Intel removed an ad from its advertising campaign for its Core 2 Duo Processor after it received numerous complaints that the ad was racist. The ad featured a "team" of identical African American sprinter employees in the set positions ready to sprint through the office and a Caucasian IT manager standing over them looking pleased. The headline read: "Multiply Computing Performance and Maximize the Power of Your Employees." The ad created enough controversy that not only did Intel pull the ad, but also Intel issued a public apology.

Sex and Sexual Preference

One of the best examples of how the FCC's actions can influence the industry as a whole occurred during the 2004 Super Bowl when Justin Timberlake and Janet Jackson, two well known American musicians, performed during the Super Bowl half-time show. As part of the performance, Mr. Timberlake ripped off part of Ms. Jackson's bustier. However, there was a "wardrobe malfunction" which resulted in the baring of Ms. Jackson's breast. The incident received public outrage leading to the FCC levying a \$500,000 fine against the CBS television network for airing the incident. And as a result, the media and advertising industries saw an overall chilling effect on programming and advertising. For example, numerous networks subsequently implemented a five-minute broadcast delay for live programs such as the Grammy Awards and Oscars. A year later, www.GoDaddy.com, a domain name registrar, aired a spot spoofing the Janet Jackson "wardrobe malfunction" during the 2005 Super Bowl. The spot featured a scantily clad model struggling to keep her top on while testifying before "broadcast censorship hearings." The spot which was scheduled to air twice during the Super Bowl was pulled from its second airing after the National Football League complained to Fox.

In July of 2008, the United States Court of Appeals for the Third Circuit rejected the FCC penalty against CBS finding that the FCC arbitrarily and capriciously departed from its prior policy of accepting fleeting broadcast material from the scope of actionable indecency. In addition, the Court found that the FCC could not impose strict liability on CBS for acts of independent contractors. The FCC appealed to the Supreme Court which remanded the case back to the Third Circuit. The Third Circuit's decision is still pending as of October 2011.

A commercial for Dove provides another example of how much influence the FCC standards have on industry self-regulation. In 2007, the broadcast networks refused to air a Dove skin and hair care products commercial featuring unclothed women over 50 (with all private parts discretely covered) because the networks believed it violated the FCC's "implied nudity" regulation.

Violence

Violence in advertisements is a controversial topic in the United States because research has found a

correlation between exposure to violence in the media and aggressive behavior in children. In 2008, the Chicago Transit Authority ("CTA") removed ads promoting the launch of the Grand Theft Auto IV video game. While the ads did not themselves depict violence, the ads garnered many complaints due to the overly violent nature of the video game itself. As a result, the makers of the video game Grand Theft Auto IV filed suit against the CTA for breach of contract and violation of its right to freedom of speech. The parties eventually settled and the CTA ended running the ads.

Although, not about advertising per se, the June 2011 United States Supreme Court decision in *Brown v. Entertainment Merchants Association* will likely have an impact on the advertising industry in the area of violence and self regulation. In *Brown* the Supreme Court struck down a law in California that banned the sale of violent video games to minors. The law tried to define video games very similarly to the way that obscenity is defined under law; however, unlike obscenity, the Court held that violent speech is constitutionally protected speech and must pass the test of strict scrutiny – it must be narrowly tailored and advance a compelling state interest. The video game industry has a self-regulatory body called the Entertainment Software Ratings Board ("ESRB") that, much like the Motion Picture Industry Association ("MPAA") does for movies, rates video game content and its appropriateness for minors. The Court in *Brown* determined that the ESRB efforts rendered non-compelling California's state interest in helping parents protect their children from depictions of violence.

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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING:

In Venezuela there is no regulation which establishes the principles governing decency in advertising, but there are specific dispositions in different laws, such as the recent “Law for protecting people in the access to goods and services”, which substitutes the “Consumer Protection Law” and the Radio and TV Social Liability Law”.

Also the “Ethical and Self-regulation Code for Commercial Communications (ESCCC)” of the National Advertisers Association, contains a general principle applicable to advertising messages.

General

In Venezuela, there is a constitutional principle which establishes that the discrimination based on race, sex, religious views or social conditions is not allowed. Consequently all activity, including advertising, must comply with this constitutional principle.

The ESCCC establishes as a general principle for commercial communications that “Commercial communications shall not praise, incite or show behaviors such as illegal, antisocial, xenophobic, discriminatory or offensive based on sex, race, religion, belief, opinion or ideology.”

The “Law for protecting people in the access to goods and services” qualifies as abusive all advertising which discriminates and infringes moral values”

Sex and Sexual Preference

The Radio and TV Social Liability Law establishes “qualified elements” of language, violence, health and sex, applicable for the classification and timetables for programming.

Respecting “sex elements”, programs which contain sexual sounds and images without educative purposes can be broadcasted after 7:00 pm. Also, programming containing explicit nudity or sexual behaviors is prohibited in all times.

Although there is no express disposition in the Law, these elements could be applicable to advertising as well, with the respective restrictions and sanctions.

Violence

The Radio and TV Social Liability Law expressly prohibits advertising oriented to children using violence elements.

Also the technical regulation of this Law establishes that advertising regarding “war toys” such as weapons and armament can only be broadcasted after 10 pm.

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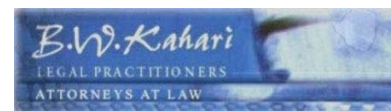
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Is there case law or any statutory regulation governing decency in advertising in your jurisdiction? Does industry self-regulation replace or supplement government and legislative regulation of decency in advertising?

DECENCY IN ADVERTISING

General

Decency in advertising is first of all a matter of social and cultural norm and customs. The industry is self-regulated. Aspects of legality, decency, honesty, truthfulness and the public interest will take a centre role when an advertisement is considered offensive or distasteful. The latter may and often does include advertisements which are viewed as politically incorrect. An advertisement which criticizes or is satirical, or draws unfavourable comparisons of a political party may, particularly during an election time, be censored as indecent or lack honesty or harmful to the public.

Although there is no legislation specifically defining or regulating decency in advertisements, the following are some of the laws which may be considered:

- The Miscellaneous Offences Act [Chapter 9:15] read with the Censorship and Entertainments Control Act [Chapter 10:04] deals with advertisements that contains indecent or obscene material and possible prosecution
- The Criminal Penalties Amendment Act, 2001 [No. 22 of 2001].

The Zimbabwean Advertising Media Association has a Code of Standards and its general principle is:

“All advertising accepted for publication, transmission or broadcast will be governed by the general principle that it will be legal, decent, honest and truthful “

As such they provide advice as well as internal discipline of their members.

Religion

Though the majority of Zimbabweans are Christians there are many other religions practiced and the right to religious freedom is respected. There are no cases involving discrimination against any religion in advertising in Zimbabwe.

Minority Groups

In Zimbabwe there have been no cases on issues relative to rights of minorities in advertising.

Gender/Stereotyping

The Constitution of Zimbabwe provides for gender equality and there is a Ministry of government which deals with issues related to gender. There are also persons and organizations advocating for gender equality in Zimbabwe. However, there are no regulations to prevent discrimination, stereotyping or negative connotations in advertising in Zimbabwe. This aspect is self-regulated as would be guided by the above statement related to decency. Although there is a high rate of literacy, and particularly urban Zimbabweans

who are very well educated, the advertising industry is still evolving and it is likely that stereotyping may be present in some adverts and may very well be overlooked or not found offensive or if so no one acts to stop or prevent the offensive advertisement.

Race

This is not an issue in Zimbabwean advertising in relation to goods and services.

Sex and Sexual Preference

Under the current political and to some extent religious environment, where homosexuality is illegal, there are no advertisements involving sexual preferences in Zimbabwe.

Violence

An advertisement which would advocate or promote violent behavior in Zimbabwe would not be advisable as it would likely leave the advertiser and perhaps the proprietor of the goods and services advertised liable to prosecution. The general principle is that all advertisements which would depict violence are to be vetted before being released to the public to ensure against incitement to violence. Any form of promotion or advocacy to violent behavior is not taken lightly in Zimbabwe.