

9 Germany (DE)

9.1 Introduction

In Germany three different regulations exist that specifically refer to alcohol marketing and advertising. The ‘Jugendschutzgesetz’ and the ‘Jugendmedienschutz-Staatsvertrag’, which are both statutory, and the non-statutory ‘Code of Conduct on Commercial Communication for Alcoholic Beverages’. Regarding advertising, the ‘Jugendschutzgesetz’ only deals with the broadcast time of commercials in movie performances and not with the content of commercials. The elements of the Council Recommendation are reflected in the ‘Jugendmedienschutz-Staatsvertrag’ in a very general form. § 6 (5) says that “Advertising for alcoholic beverages must neither be directed towards children and adolescents nor be designed to appeal especially to children and adolescents nor show them drinking alcoholic beverages.” The ‘Code of Conduct’ is in practice the main regulation of alcohol marketing and advertising in Germany and the way in which the elements of the Council Recommendation are reflected in German regulation in detail. The text of it is designed by the advertising and alcohol industry. The German Advertising Council, a self-regulatory agency of the German Advertising Federation, is responsible for the complaint and sanctioning system.

Regulation		Statutory / Non-statutory
1	Federal Protection of Minors Act (Jugendschutzgesetz)	Statutory
2	Interstate Treaty for the Protection of Minors from Unsuitable Media Content (Jugendmedienschutz-Staatsvertrag)	Statutory
3	Code of Conduct on Commercial Communication for Alcoholic Beverages (Verhaltensregeln des Deutschen Werberates über die kommerzielle Kommunikation für alkoholische Getränke)	Non-statutory

9.2 Federal Protection of Minors Act

Name of regulation:

1 Federal Protection of Minors Act (Jugendschutzgesetz)

Is this statutory or non-statutory regulation?

Statutory

Who made the text of this regulation?

German Federal Ministry of Family, Seniors, Women, and Youth

Which types of marketing are controlled by in this regulation?

- Labeling of sweetened alcohol-containing beverages (alcopops)
- Commercials and advertising in movie performances
- Sale and delivery of alcohol

Which alcoholic beverages are subject to this regulation? (in VOL.)

Alcoholic beverages in general

Sweetened alcohol-containing beverages (alcopops)

Whom is this regulation directed at or who has to adhere to it?

Persons with parental power, custodial persons, event and other business operators

Additional comments

There is no complaint procedure as we find it in several self-regulatory organisations. Concerning advertising, the JSchG only deals with the broadcast time of commercials and advertising programmes in movie performances and not with the content of commercials. Violations of this regulation seem to be most improbable.

9.2.1 Bans

Any bans on alcohol marketing practices in this regulation or code regarding the following marketing or advertising aspects are indicated with 'yes' in the following table. If a ban regarding this aspect is absent it is indicated with 'no'.

BANS						
	Location	Time	Media-channel	Type of product	Target-group*	Advertiser
Yes or No	No	Yes	No	No	No	No

* other than young people

9.2.2 Elements of Council Recommendation

Any elements of the Council Recommendation that are forbidden by this regulation or code (either literally or formulated in other words) are indicated with 'yes' in the following table. If an element is not forbidden at all, it is indicated with 'no'.

ELEMENTS											
	A Production	B Styles	C Children	D Drugs	E Violence	F Success	G Encouragement	H Events	I Media	J Free	K Other
Yes or No	No	No	No	No	No	No	No	No	Yes	Yes	Yes

Remarks on elements

- I § 11 Movie performances
 - (5) Commercials and advertising programmes for tobacco products and alcoholic drinks must not be shown before 6 p.m.
- J § 9 Alcoholic drinks
 - (1) The following bans shall apply to restaurants, stores and other points of sale:
 1. Brandy as well as brandy-containing drinks or food products with brandy above negligible level or
 2. Other alcoholic drinks
 must neither be sold to children and adolescents below the age of 16 years nor must their consumption by said persons be tolerated.
 - (2) Sub-Clause 1, No. 2 shall not apply to adolescents accompanied by a custodian.
 - (3) Alcoholic drinks must not be available from drinks dispensers in public.

This shall not apply under the following circumstances:

1. A drink dispenser is located on a site not accessible for children and adolescents.
2. A drink dispenser is located in enclosed company space and furnished with mechanical devices or adequately guarded and supervised to the effect that children and adolescents have no access to alcoholic drinks.

K § 9 Alcoholic drinks

(4) Sweetened alcohol-containing beverages in terms of § 11, Sub-Clauses 2 and 3, Alcopop Tax Act, must not be commercially launched without the label “Not to be distributed to persons below 18 years of age, § 9, Protection of Young Persons Act”. This notice shall be attached to the sales package in type, size and colour of print identical with that of the trade or fancy name or with the marketing label or, in case of bottles, on the front label.

9.2.3 Procedures connected to the regulation

It is indicated whether the following procedures are (‘yes’ or ‘no’) connected to the regulation.

PROCEDURES						
	Pre-launch advice	Systematically searching for violations	Possibility to complain and to start a procedure	System of appeal	Sanctions in case of violators	Results published or publically announced
Yes or No	No	Yes	Yes	–	Yes	No

Pre-launch advice is not provided.

The search for violations is performed by the lower administrative agency.

Depending on the federal state this is normally either the local regulatory agency (Ordnungsamt) or the youth welfare office (Jugendamt).

Complaints can be made also to the lower administrative agency. If commercials and advertising programmes for alcoholic drinks have been shown in cinemas before 6 p.m it will be hard to prove afterwards. According to an associate of the regulatory agency of the city of Dortmund this case is improbable but would lead to a talk with the cinema operator.

Sanctions, where appropriate, are imposed by the lower administrative agency and can be a fine: according to § 28 (5) of the JuSchG the fine can be up to €50.000 for a violation of § 9 or § 11.

There is no information available about the minimum and maximum amount of time the procedure officially takes.

9.3 Interstate Treaty for the Protection of Minors from Unsuitable Media Content

Name of regulation:

- 2 Interstate Treaty for the Protection of Minors from Unsuitable Media Content (Jugendmedienschutz-Staatsvertrag)

Is this statutory or non-statutory regulation?

Statutory

Who made the text of this regulation?

The German federal states

Which types of marketing are controlled by in this regulation?

Electronic information and communication media (radio, television, internet)

Which alcoholic beverages are subject to this regulation? (in VOL.)

Alcoholic beverages in general

Whom is this regulation directed at or who has to adhere to it?

Broadcast and internet provider, see §3 (2)

Additional comments

According to the FSF (Freiwillige Selbstkontrolle Fernsehen – an organisation for the voluntary self-regulation of television) they mainly check television programmes (films, tv series, reality shows, ...) and are not involved in checking commercials. For that task they refer to the youth commissary (Jugendbeauftragter) of the channels. However, a youth commissary of a private channel informed us that they only pay attention to the broadcast time of alcohol commercials, not to the content of the commercials. Accordingly, there seems to be no systematic search for violations of § 6 (5) (6).

9.3.1 Bans

Any bans on alcohol marketing practices in this regulation or code regarding the following marketing or advertising aspects are indicated with 'yes' in the following table. If a ban regarding this aspect is absent it is indicated with 'no'.

BANS						
	Location	Time	Media-channel	Type of product	Target-group*	Advertiser
Yes or No	No	Yes	No	No	No	No

* other than young people

9.3.2 Elements of Council Recommendation

Any elements of the Council Recommendation that are forbidden by this regulation or code (either literally or formulated in other words) are indicated with 'yes' in the following table. If an element is not forbidden at all, it is indicated with 'no'.

ELEMENTS											
	A Production	B Styles	C Children	D Drugs	E Violence	F Succes	G Encouragement	H Events	I Media	J Free	K Other
Yes or No	No	Yes	Yes	No	No	No	No	No	No	No	Yes

Remarks on elements

- B § 6 (5) Advertising for alcoholic beverages must neither be directed towards children and adolescents nor be designed to appeal especially to children and adolescents nor show them drinking alcoholic beverages.
- § 6 (6) Subsections 1 to 5 are also valid for teleshopping. Teleshopping must

not urge children and adolescents to conclude contracts of sale, lease, or rent for goods or services.

C § 6 (5) Advertising for alcoholic beverages must neither be directed towards children and adolescents nor be designed to appeal especially to children and adolescents nor show them drinking alcoholic beverages.

§ 6 (6) Subsections 1 to 5 are also valid for teleshopping. Teleshopping must not urge children and adolescents to conclude contracts of sale, lease, or rent for goods or services.

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§ 6 (6) Subsections 1 to 5 are also valid for teleshopping. Teleshopping must not urge children and adolescents to conclude contracts of sale, lease, or rent for goods or services.

9.3.3 Procedures connected to the regulation

It is indicated whether the following procedures are ('yes' or 'no') connected to the regulation.

PROCEDURES						
	Pre-launch advice	Systematically searching for violations	Possibility to complain and to start a procedure	System of appeal	Sanctions in case of violators	Results published or publically announced
Yes or No	Yes	Yes	Yes	Yes	Yes	Yes

Pre-launch advice is provided by organisations that are certified by the KJM (Commission for the Protection of Minors from Unsuitable Media Content, Kommission für Jugendmedienschutz). For television the FSF (Freiwillige Selbstkontrolle Fernsehen – an organisation for the voluntary self-regulation of television) is responsible. For the internet the FSM (Freiwillige Selbstkontrolle Multimedia-Diensteanbieter – an organisation for the voluntary self-regulation of the multimedia services) is responsible.

The responsible state media authority for broadcasting (Landesmedienanstalt) monitors the adherence to the treaty. To fulfil this task the commission for the protection of minors from unsuitable media content (Kommission für Medienschutz = KJM) was installed, § 14 (2). The KJM certifies self-regulative o (e.g. FSF, FSM). Jugendschutz.net is responsible for searching for violations on the internet. Jugendschutz.net is organisationally linked to the KJM. When jugendschutz.net registers violations, it informs the provider about the violation as well as certified self-regulative and the KJM.

There are multiple possibilities for complaining. A complaint can be addressed directly to the KJM. Concerning television a complaint can also be made to the self-regulative FSF. Concerning the internet a complaint can be directed at jugendschutz.net or to the self-regulative organisation FSM. They provide hotlines and complaint forms.

Marketing practices can be continued as long as legal proceedings are ongoing. The possibility of complaining is made known to the public. On the homepages of jugendschutz.net, FSF, and FSM the possibility of complaining is explained. Sanctions, where appropriate, are imposed by KJM, FSM, FSF and according

to the KJM consequences depend on the severity of the violation. Possible consequences are:

- formal hint
- rebuke
- reduction of broadcasting time
- broadcasting ban
- initiating regulatory offence proceedings

Members of the self-regulatory can also receive a public rebuke or a fine by the self-regulatory organisations or be excluded from the organisation.

The results of procedures are publicly announced. The FSM reports examples of complaint procedures on its homepage: <http://www.fsm.de/de/Praxisbeispiele>.

There is no general information available about the minimum and maximum amount of time the procedure officially takes. KJM: From April 2003 until September 2005 the KJM dealt with 229 broadcasting cases (135 completed) and with 848 internet cases (733 completed).

FSM: In the year 2004 the FSM processed 977 complaints (4% are still in progress).

9.4 Code of Conduct

Name of regulation:

3 Code of Conduct on Commercial Communication for Alcoholic Beverages (Verhaltensregeln des Deutschen Werberates über die kommerzielle Kommunikation für alkoholische Getränke)

Is this statutory or non-statutory regulation?

Non-statutory

Who made the text of this regulation?

German Advertising Federation (Zentralverband der deutschen Werbewirtschaft, ZAW) and producer and importer association, federations and organisation.

Which types of marketing are controlled by in this regulation?

Commercial communication

(the use of any communication instrument by a business enterprise with the primary objective of promoting the sale of goods or services, excluding editorial content)

Which alcoholic beverages are subject to this regulation? (in VOL.)

Alcoholic beverages: containing alcohol in any quantity, excluding beverages that are allowed to be designated alcohol-free.

Whom is this regulation directed at or who has to adhere to it?

Not directly described in the regulation. But mainly directed at the advertising industry.

9.4.1 Bans

Any bans on alcohol marketing practices in this regulation or code regarding the following marketing or advertising aspects are indicated with 'yes' in the following table. If a ban regarding this aspect is absent it is indicated with 'no'.

BANS						
	Location	Time	Media-channel	Type of product	Target-group*	Advertiser
Yes or No	No	No	No	No	No	No

* other than young people

9.4.2 Elements of Council Recommendation

Any elements of the Council Recommendation that are forbidden by this regulation or code (either literally or formulated in other words) are indicated with 'yes' in the following table. If an element is not forbidden at all, it is indicated with 'no'.

ELEMENTS											
	A Production	B Styles	C Children	D Drugs	E Violence	F Success	G Encouragement	H Events	I Media	J Free	K Other
Yes or No	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes

Remarks on elements

- C 2.1. Commercial communication for alcoholic beverages shall neither promote drinking of alcoholic beverages by minors nor show minors in the act of drinking or promoting the drinking of such beverages.
- E 1.3. Commercial communication for alcoholic beverages shall not create any association between the consumption of such beverages and violent, aggressive or dangerous conduct.
- F Commercial communication for alcoholic beverages shall not:
 - (8.1) make any claim relating to improvement of physical performance as a result of consuming alcoholic beverages.
 - (8.2) give the impression that consumption of alcoholic beverages promotes social or sexual success.
- G Commercial communication for alcoholic beverages:
 - (2.1) shall neither promote drinking of alcoholic beverages by minors nor show minors in the act of drinking or promoting the drinking of such beverages.
 - (2.2) shall not be conveyed by media the majority of whose editorial content addresses minors.
 - (2.3) shall not make any claim or representation to the effect that minors are not old enough to consume alcoholic beverages and so provoke drinking.
 - (2.4) shall not show persons stating that they drank alcoholic beverages as minors.
- H 2.2. Commercial communication for alcoholic beverages shall not be conveyed by media the majority of whose editorial content addresses minors.
- I 2.2. Commercial communication for alcoholic beverages shall not be conveyed by media the majority of whose editorial content addresses minors.
- K Commercial communication for alcoholic beverages shall not:
 - (3.) show athletes drinking or promoting drinking.
 - (7.1.) make any claim relating to the disinhibiting effect of alcoholic beverages.
 - (7.2.) make any claim relating to the elimination or relief of anxiety.
 - (7.3.) make any claim or representation relating to the elimination or resolution of psycho-social conflicts.

9.4.3 Procedures connected to the regulation

It is indicated whether the following procedures are ('yes' or 'no') connected to the regulation.

PROCEDURES						
	Pre-launch advice	Systematically searching for violations	Possibility to complain and to start a procedure	System of appeal	Sanctions in case of violators	Results published or publically announced
Yes or No	Yes	No	Yes	Yes	Yes	Yes

Pre-launch advice is provided by the German Advertising Council (Deutscher Werberat). This is a self-disciplinary agency of the German Advertising Federation (Zentralverband der deutschen Werbewirtschaft, ZAW). It is possible to ask the advertising council for pre-launch advice on the basis of a description of an advertisement or a campaign but it is not possible to present an advertisement to the advertising council and ask whether it is within the code of conduct or not. Complaints can be made to the German Advertising Council. Marketing practices can be continued as long as legal proceedings are ongoing.

The possibility of complaining is explained in the publication “Deutscher Werberat Jahrbuch 2005” and on the homepage of the German Advertising Federation.

Sanctions, where appropriate, are imposed by the German Advertising Council and can be a public rebuke.

The results of procedures are publicly announced every year in the “Deutscher Werberat Jahrbuch”, in press releases and via the internet:

http://www.interverband.com/dbview/owa/assmenu.homepage?tid=69392&catid=4351&from_home=/werberat.

According to the German Advertising Council the procedure officially takes 10 days on average.