

NETHERLANDS



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1. Case Report	Self Regulation
Topic:	New Code by the Nedelandse Voedingsmiddelen Industrie VEI (Dutch Food Industry)
Parties:	Dutch Food Industry
Where:	The Netherlands
When:	21 April 2004, published on www.VAI-voeding.nl
What Happened:	<p>The Netherlands, too, show an alarming increase in the number of cases of overweight and obesity. The food industry was called to account and subsequently it imposed a code of conduct on itself, dramatically restricting food advertising. In addition, special provisions were laid down in respect of advertising specifically aimed at children and advertising activities in schools.</p> <p>For example, in general the Code should encourage advertising for foods to be factually correct and complete, in particular as far as the advertised characteristics such as taste, size of portions and any contribution to a healthy life style / sensible diet are concerned.</p> <p>With regard to advertising aimed at children, the Code intends to prevent any moral or physical injury being caused to them. Therefore, advertising aimed at children must not encourage them to buy a certain product by taking advantage of their inexperience or gullibility. In addition, children must not be encouraged to persuade their parents to buy certain products and neither must the special trust that minors have in their parents, teachers or others be exploited.</p> <p>In practice this means that children's idols must no longer feature in food advertising, not even drawn portraits of them. Neither is advertising for confectionery featuring the Teletubbies or Harry Potter permitted any longer. In future no volume-driven sales actions must be conducted at secondary schools, such as saving product wrappings with which they can win a school party. Besides, only small packets must be sold at schools.</p> <p>Finally, it was agreed that the existing Sponsoring Code for schools will be followed.</p>
Comments:	Like many self-regulating arrangements, the Code does not lay down any sanctions, so we will have to wait and see to what extent individual manufacturers will comply with the Code. However, legislation is in the offing and mostly that appears an adequate inducement for the industry to comply.

2. Case Report	Self regulation
Topic:	Games of chance
Parties:	Dutch Gaming and Advertising Industry
Where:	The Netherlands
When:	September 2004
What Happened:	The Minister of Justice in the Netherlands intends to amend the Games of

	<p>Chance Act drastically, not only with regard to professional games of chance such as the Lotto, the Toto and the games played in casinos, but also with regard to promotional games of chance. In consultation with the industry, because amending the law is very time-consuming, he opted for a compromise, being self regulation.</p> <p>The remarkable fact is that the games of chance that were prohibited pursuant to the Act will be permitted. This policy of tolerance, which was practised in respect of crosswords, sweepstakes and competitions with a prize of high value, will now be formalised.</p> <p>The new Code will be based on the rule that promotional games of chance with an obligation to buy a product will be prohibited. Participation is permitted only if the sum payable does not exceed the cost of a telephone conversation or a letter (± € 0.50). In addition, the value of the total pool of prizes will be limited to € 100,000 - maximum. So far, the maximum value of the prize was limited, but the number of prizes and thereby the total pool of prizes was not limited.</p>
Comments:	As the Code is still in its draft phase, it is not clear what the final text will look like. It is urged to make it come into effect soon and the target date is 1 January 2005.

3. Case Report	
Topic:	Prize in a sweepstake
Parties:	IJ / Sparen en Gewinnen B.V. (SNG)
Where:	District Court of Alkmaar
When:	19 November 2003 Case number: ZA 02/370 published in the Consumer Law Magazine 2004/2, page 68
What Happened:	The company SNG organises a sweepstake. Plaintiff meets all conditions laid down for participation, but SNG refuses to pay out the prize. It argues that there are several winners and that the prize must be shared. As a result the winner is only entitled to € 2.67. According to the regulations, prizes lower than € 3 - are not paid out and therefore the participant receives nothing. Furthermore, SNG invokes the fact that a sweepstake organised by it is a prohibited game of chance in the sense of the Games of Chance Act and is therefore null and void by operation of the law. Complying with an invalid agreement is impossible. The Court refers to the history of Parliament and concludes that complying with an invalid agreement is possible in certain circumstances, in particular to the extent that the unlicensed lottery is no longer felt to be socially undesirable, illegal or punishable by large sections of the population and is tolerated by the government. The latter is the case in the Netherlands. The claim for payment of the first prize is awarded.
Comments:	Compliance with an invalid agreement can be claimed successfully in case of promotional games of chance.

4. Case Report	
Topic:	Games of Chance, Lotto
Where:	District Court of Arnhem
When:	2 June 2004, case number ZA 03/606, published in JAVI august 2004 no.4
What Happened:	For over two years, Lotto, a Dutch licensee of games of chance, and Ladbrokes have carried on a lawsuit about the question whether Ladbrokes acted unlawfully to Lotto by offering games of chance on the internet that are accessible to Dutch residents without having a licence, in contravention of the Games of Chance Act. One of Ladbrokes' arguments is that the Games of

	<p>Chance Act is contrary to the principle of Free Trade of Services in the European Community. In its interlocutory decision the Court subscribed to the consideration of the European Court of Justice in the Gambelli ruling. It considers: "We should examine whether the national regulation, having regard to the manner in which it is applied in practice, actually serves the purposes put forward to justify it and whether the restrictions ensuing from that regulation, having regard to those purposes, are not disproportionate." This means that the Court establishes that the activities of the licensees should be aimed at actually reducing the fondness of gambling of Dutch people. However, according to the annual reports of Lotto, they actually aim for maximizing their sales and increasing their market share. They conduct excessive advertising and are sponsors of organisations such as the National Football Competition. All this indicates that the policy concerning games of chance in the Netherlands, as it is implemented in practice, also when taking the freedom of judgement to which the government is entitled into account, is insufficiently restrictive to justify companies offering foreign games of chance being prohibited from providing their services in the Netherlands.</p>
Comments:	<p>Before taking a decision, the Court requested the Minister of Justice, as the authority granting licences and as the minister responsible for the policy concerning games of chance, to react to the Court's provisional conclusions</p>

5. Case Report	
Topic:	100% advance payment
Parties:	Dell comp. Inc.
Where:	Court of Justice of The Hague
When:	6 July 2004, published in NJ 38 no. 483
What Happened:	<p>On the basis of its general conditions, Dell demands that consumers/buyers pay the full purchase price before the computer equipment is delivered. Pursuant to the law (sections 7:26 and 7:6 Netherlands Civil Code) in case of a purchase made by a consumer, a buyer can only be obliged to pay half the purchase price maximum in advance. Therefore, the condition in respect of full advance payment applied by Dell is in contravention of the law. It is deemed to be unreasonably onerous by the Court.</p>
Comments:	<p>Dell has instituted a procedure on the substance, but nevertheless it was ordered to leave consumers the option not to pay in advance until a judgement has been given in said procedure. Dell is to adjust its conditions of delivery for that purpose.</p>

6. Case Report	
Topic:	Models law
Where:	Decision of the Court of Justice of Amsterdam
When:	25 March 2004, case number 1308/02 KG, unpublished
What Happened:	<p>Two chips producers, San Carlo Food Group Europe SA and Smith's Food Group B.V., have a row about the packaging of their tomato and basilico chips. Smith's defends itself by invoking the fact that in the Benelux this model has only been published in black and white, so that colour protection cannot be invoked. In the first instance, this invocation is awarded. In the appeal proceedings the Court does not subscribe to this interpretation. In the International Registration, San Carlo complied with all requirements, including the colour statement, in which a colour code statement is not required. That they are reproduced in the Benelux in black and white only is not relevant. Subsequently, the Court held the view that to the informed user Smith's packaging does not give rise to a general impression other than the registered model of Unichips. Unarguably, differences between the two</p>

	<p>packagings and the model may be indicated, but they do not sufficiently derogate from the same general impression. In addition, the Court ruled, Smith's had sufficient possibilities for making its packaging less similar to the model of Unichips by means of the colour and/or pictures in such manner as giving the informed user another general impression. Smith's is prohibited from infringing the model right of Unichips and is ordered to organise a recall. Both obligations come into effect 21 days from the judgement being served. As a packaging takes about six weeks to produce, the Lay's Mediterana Chips will not be available for some time.</p>
Comments:	<p>The models law introduced in 2003 entitles the owner to a rather strong right. Model right infringement is assumed increasingly quickly. In view of the low registration fee, such registration is to be recommended at all times.</p>

7. Case Report	Self regulation
Topic:	Advertising Standards Committee
Where:	Decision
When:	1 July 2004, published on www.reclamecode.nl
What Happened:	The Advertising Standards Committee decided to interpret the Advertising Distribution through e-mail Code strictly. The result is that employees, too, may submit a complaint about unsolicited e-mail they receive at their workplace.
Comments:	As it is self-regulation, the question is whether the implementing authority, The Dutch Dialogue Marketing Association (DDMA), can and will implement the decision of the Advertising Standards Committee. Practice will have to tell.