

## FRANCE



Michel Béjot

Bernard Hertz Béjot & Barbara Doittau

[bejot2@aol.com](mailto:bejot2@aol.com)

[bdoittau@bhbfrance.com](mailto:bdoittau@bhbfrance.com)

[www.bhbfrance.com](http://www.bhbfrance.com)

<b>1. Legislation:</b>	
<b>Topic:</b>	TV advertising for specific economic sectors (continued)
<b>Who:</b>	French Government
<b>When:</b>	October 2003
<b>Where:</b>	E.U., France
<b>What happened:</b>	<p>After much debate on the opening of certain economic sectors to advertising on television, a draft decree has been published. Today, the draft decree sets forth the following amendments to French regulations :</p> <ul style="list-style-type: none"><li>- TV advertising should be allowed for the press sector from January 1, 2004, on all TV channels;</li><li>- TV advertising should be allowed for the book publishing sector and the distribution sector from January 1, 2004, on cable and satellite channels only;</li><li>- TV advertising should be allowed for the distribution sector from January 1, 2007 on all TV channels.</li></ul>
<b>Comment:</b>	The draft decree should be presented to the European Commission on October 8, 2003 in order for France not to face proceedings for non-compliance with E.U. requirements. This draft decree is criticized by the French association of advertising agencies (AACC) in particular due to the fact that the consultations which took place during the process have not been taken into account

<b>2. Legislation:</b>	
<b>Topic:</b>	Sanctions for unsolicited commercial communications by fax and telephone
<b>Who:</b>	French government
<b>When:</b>	Decree n° 2003-752 dated August 1, 2003
<b>Where:</b>	France
<b>What happened:</b>	<p>As indicated in our previous reports, it is now prohibited in France to send unsolicited commercial faxes to individuals or companies who have not signed in a special register, indicating their acceptance.</p> <p>The decree of August 1, 2003 provides that a fine of 750 Euros per unsolicited fax is applicable in case of non-compliance. This fine applies when the unsolicited communication is sent to individuals. The decree does not deal with companies which are subject to such unsolicited</p>

	communications. However, principles of tort liability remain applicable in such instance.
<b>Comment:</b>	The CNIL ( <i>Commission Nationale de l'Informatique et des Libertés</i> ) has declared that it is satisfied with the adopted decree.  This sanction also applies to illicit commercial telephone calls made by automated machines.

<b>3. Legislation:</b>	
<b>Topic:</b>	Corporate patronage by producers of alcoholic beverage
<b>Who:</b>	French parliament
<b>When:</b>	Law 2003-709 dated August 1, 2003
<b>Where:</b>	France
<b>What happened:</b>	<p>The "Loi Evin" of 1991 on the advertising for alcoholic beverages provides that a decree is to be enacted to deal with corporate patronage by producers of alcoholic beverage.</p> <p>The decree that was subsequently enacted was cancelled by the <i>Conseil d'Etat</i>, and therefore the matter was not dealt with under French regulations. As a consequence, there was no more corporate patronage by producers of alcoholic beverages.</p> <p>The law of August 1, 2003 replaces the decree and aims at developing corporate patronage by producers of alcoholic beverages. The law provides that corporate patronage by producers of alcoholic beverage is allowed and that such companies may advertise their participation through a written mention only.</p> <p>The issue is to determine the scope of the notion of "<i>written mention</i>" : does it include the company's logo ? does it include a catch phrase ? On what documents may the company name appear ?</p>
<b>Comment:</b>	<p>There is a part of uncertainty in the interpretation of the new law. However, it is likely that the courts will take a restrictive approach, since French courts constantly seek to fight indirect and illicit advertising for alcoholic beverages.</p> <p>The courts are therefore likely to try and ensure that this new law does not provide a means of avoiding the restrictive regulations on the advertising for alcoholic beverages.</p>

<b>4. Legislation:</b>	
<b>Topic:</b>	Towards the end of self-regulation in the field of advertising ?
<b>Who:</b>	French members of Parliament
<b>When:</b>	February 2003
<b>Where:</b>	France
<b>What happened:</b>	A number of members of the Parliament in France recently decided to react against the abusive use of indecent advertising and issued a draft law.

	<p>They consider that, too often, ads showing women are shocking (especially for children who are likely to see the poster ads) and that there is often no link between the picture of a woman and the product advertised for. They also consider that this trend gives a negative image of France abroad.</p> <p>The draft law provides for a very general prohibition, to which criminal sanctions are attached :</p> <p><i>"Any offense against the dignity of the human being through degrading or humiliating advertising campaigns may be subject to a one-year imprisonment and a fine of EUR 45,000."</i></p>
<b>Comment:</b>	<p>The problem is to determine the scope of the offense, especially since criminal sanctions are applicable.</p> <p>The professionals, who prefer to remain under self-regulation principles, are opposing this draft law, which although reflecting a current trend is unlikely to be adopted.</p>

<b>5. Case Report:</b>	
<b>Topic:</b>	Premium sales
<b>Who:</b>	<i>Sté Marie Brizard Berger diffusion c/ Sté Teisseire France</i>
<b>When:</b>	<i>Cour de cassation, Chambre commerciale, March 11, 2003</i>
<b>Where:</b>	France
<b>What happened:</b>	<p>French law limits the value of premiums offered along with a sale. As a general principle, the value of premiums may not be higher than 7% of the value of the main product. This court decision provides interesting but very restrictive indications on the method of calculation of the premium value.</p> <p>A company selling fruit syrup had added famous cartoon figures on top of its bottles. The <i>Cour de cassation</i> considered that the value of the premium included every cost necessary for the setting up of such premium, including special packaging and license fees for the use of the trademark.</p>
<b>Comment:</b>	<p>The main consequence of this decision is that the item eventually received by the consumers as a premium is of a very low value. The interest of the promotion is therefore very low as well.</p> <p>Non-compliance with regulations on premium sales is subject to criminal sanctions (a fine of up to 1,500 Euros per infraction). This matter was dealt with by the commercial section of the court rather than the criminal section, since this case was based on an action undertaken by a competitor on the ground of unfair competition.</p>

<b>6. Case Report:</b>	
<b>Topic:</b>	Sales outside official sales period
<b>Who:</b>	<i>Sté Weill Boutique</i>
<b>When:</b>	<i>Cour de cassation, Chambre commerciale, February 19, 2003</i>
<b>Where:</b>	France
<b>What happened:</b>	In our country report of September 2002, we discussed a decision handed down by the Paris Court of appeal, which interpreted strictly the criminal

	<p>law on official sales, by considering that a promotional operation could only be deemed a sales operation if it was <u>advertised</u> as aiming at the accelerated sale of stocks.</p> <p>We then underlined that the French administration takes a stricter approach, since it considers that there may be an illicit sale if the promotion <u>aims at</u> the accelerated sale of the stocks, even if this purpose is not advertised for.</p> <p>In the decision of February 19, 2003, the court took the same approach as the administration, considering that the promotional operation was an illicit sales operation even though the advertising of the accelerated sale of the stocks was not explicit.</p> <p>In this instance, the company had chosen to send invitations for private sales to a selected number of customers, for a period immediately preceding that of the official sales. The sending out of private invitations was deemed to constitute an implicit advertising of the promotion and the promotion was deemed illicit sales.</p>
--	--

<b>7. Case Report:</b>	
<b>Topic:</b>	Indirect advertising for tobacco
<b>Who:</b>	<i>Comité national contre le tabagisme</i>
<b>When:</b>	<i>Cour de cassation, Chambre criminelle, March 18, 2003</i>
<b>Where:</b>	France
<b>What happened:</b>	<p>A sports car magazine published photos of vehicles on which a sponsor's cigarette trademark could be seen.</p> <p>While the Court of appeal considered that the purpose of the magazine was to inform the readers rather than to promote tobacco trademarks and that there was no prohibited indirect advertising for tobacco, the <i>Cour de cassation</i> overruled this decision by considering that this was indirect advertising for tobacco products, irrespective of the purpose of the reference to tobacco.</p>
<b>Comment:</b>	This is a very broad definition of indirect advertising for tobacco products, which should lead publishers to great care.

<b>8. Case Report:</b>	
<b>Topic:</b>	Political spamming
<b>Who:</b>	La Droite Libre
<b>When:</b>	<i>Tribunal de Grande Instance of Paris, May 26, 2003</i>
<b>Where:</b>	France
<b>What happened:</b>	<p>In the context of the large strikes and demonstrations which took place in France last spring against the reform of the pension system, a political group suggested that anyone wishing to express his/her opinion against the strikes send e-mails to the main trade unions and to their leaders in order to overflow their e-mail systems.</p> <p>In a decision rendered in summary proceedings, the tribunal considered</p>

	that the intent was malicious and went against the normal exercise of the freedom of speech. The party which organized the operation had to pay 400 to 1,000 Euro in damages to each of the trade unions concerned. The judge also requested that the party stop inviting its members to send e-mails massively.
<b>Comment:</b>	This case was judged in summary proceedings in order to stop immediate trouble. To our knowledge, there will not be any decision on the merits which would allow to have more details on the grounds of action other than that of emergency and immediate trouble.

<b>9. Case Report:</b>	
<b>Topic:</b>	Trademarks and sub-levels of domain names
<b>Who:</b>	Studyrama c/Mairie de Paris
<b>When:</b>	<i>Tribunal de Grande Instance</i> of Paris February 28, 2003
<b>Where:</b>	France
<b>What happened:</b>	The city of Paris owns the website <a href="http://www.paris.fr">www.paris.fr</a> , to which they added a section for the young citizens of Paris, accessible at <a href="http://www.jeunes.paris.fr">www.jeunes.paris.fr</a> . The tribunal considered that this sub-level domain name constituted a trademark infringement against the trademark of a magazine named "Jeunes à Paris".
<b>Comment:</b>	<p>The tribunal prohibited the city of Paris from using the sub-level domain name. However, the tribunal did not order the transfer of the name to Studyrama, the owner of the magazine Jeunes à Paris.</p> <p>This decision is justified by practical reasons, since ordering the transfer of the domain name <a href="http://www.jeunes.paris.fr">www.jeunes.paris.fr</a> to the magazine owner would have deprived the city of Paris from the domain name <a href="http://www.paris.fr">www.paris.fr</a>.</p> <p>This is the first decision handed down in France on a question involving a sub-level domain name.</p>

<b>10. Case Report:</b>	
<b>Topic:</b>	The legality of systems of protection against the copying of music CDs
<b>Who:</b>	EMI Music France vs. consumer associations
<b>When:</b>	<i>Tribunal de Grande Instance de Nanterre</i> June 24, 2003 and September 2, 2003
<b>Where:</b>	France
<b>What happened:</b>	<p>EMI Music France placed a system of protection against the copying of music on its CDs.</p> <p>Consumers realized that the protected CDs could not be played on a number of CD-players, in particular on car systems.</p> <p>In the first instance, the tribunal considered that the selling of such CDs, without warning the consumers that they might be impossible to use on certain players, constituted a deceit of the consumers. The tribunal thus ordered that EMI Music France place a specific warning on its CDs.</p> <p>In the second instance, the tribunal considered that the fact that the CDs</p>

	could not be played on one type of car system constituted a hidden defect. The tribunal ordered that EMI reimburse the purchaser of the CD of the price of the CD.
--	--

<b>11. Self-regulation</b>	
<b>Topic:</b>	Sexist advertising campaign
<b>Who:</b>	La Meute (an international feminist network acting against sexist advertisements, <a href="http://lameute.org.free.fr/index/">http://lameute.org.free.fr/index/</a> ) Renault Clio
<b>When:</b>	Spring 2003
<b>Where:</b>	France
<b>What happened:</b>	<p>A television advertising campaign conducted by Renault for its Clio faced criticisms by La Meute. The ad presented a man winning the lottery and comparing the key elements of his life "before and after" winning the lottery, the catch being that he kept his Clio in both cases. The ad showed a fat ugly wife "before" and a sexy woman "after" winning the lottery. The ad was therefore deemed sexist.</p> <p>Renault reacted humorously against this criticism by showing a second campaign reversing the original idea : this time, a woman wins the lottery, keeps her Clio, and takes a handsome husband instead of her ugly one.</p>

<b>12. Self-regulation</b>	
<b>Topic:</b>	Sponsorship of sports events
<b>Who:</b>	Sporsora
<b>When:</b>	June 2003
<b>Where:</b>	France
<b>What happened:</b>	<p>Sporsora, an association of the main actors of sports sponsors, has sent to the minister of sports a draft charter for sponsors' ethics.</p> <p>Through this document, the sponsors who will sign the charter undertake to comply with principles regarding violence, cheating and doping. Non-compliance with this charter could lead to the breach of the sponsorship agreement with an athlete, an organization, a federation or a company in charge with the organization of the event.</p>
<b>Comment:</b>	Sponsorship of sports events in France represent an estimated yearly budget of 1.5 billion Euro.

<b>13. Self-regulation</b>	
<b>Topic:</b>	Development of comparative advertising in France
<b>Who:</b>	- Vico - Les Inrockuptibles
<b>When:</b>	May 2003 and September 2003
<b>Where:</b>	France
<b>What happened:</b>	Comparative advertising is still not used very frequently in France. It has been used in fields where the accuracy of the comparison is easy to evidence, such as for instance the audience of radio stations or the rates charged by telecommunication companies.

	<p>A more daring campaign, however, was recently conducted on TV and on the Internet by the second largest manufacturer of dried mashed potatoes (Vico), against the largest manufacturer (Moussline).</p> <p>Furthermore, another campaign was recently launched in magazines by "Les Inrockuptibles", a cultural magazine, against another cultural magazine (Telerama).</p>
<p><b>Comment:</b></p>	<p>The Vico ad seems to be compliant with the applicable regulations (which are the implementation of the EU requirements on comparative advertising), and thus the ad did not lead to any legal action.</p> <p>In particular, the ad quotes the trademark "Moussline" using a very neutral typography, so as to avoid claims according to which Vico would try to benefit from Moussline's notoriety. The ad also compares objective elements of the products : the new Vico dried mashed potatoes are 100% potatoes, whereas Moussline's have additional ingredients. (See an extract of the ad below).</p> <p>More recently, the weekly cultural magazine "Les Inrockuptibles" launched an ad against another weekly cultural magazine, "Telerama". The ad did not really constitute comparative advertising, since it did not compare objective elements of the products. However, the name "Telerama" appeared dozens of times in the ad and Telerama requested that this ad be stopped because Telerama believed the ad was parasitical. "Les Inrockuptibles" chose to remove the ad in order to avoid further legal action. (See the ad below).</p>
	

