

FRANCE



Michel Béjot
 Caroline Bouvier
 Bernard Hertz Béjot
bejot2@aol.com
cbouvier@bhbfrence.com
www.bhbfrence.com

1. Legislation	
Topic:	Advertising for food and the fight against obesity
Who:	Secretary of Health and Solidarity
When:	Decree of February 27, 2007
Where:	France
What happened:	<p>With effect from February 28, 2007, health messages have to be added to advertising for manufactured food products and drinks on television, cinema, radio, newspaper and on posters and marketing flyers of supermarket distribution.</p> <p>The messages are the following:</p> <ul style="list-style-type: none"> - <i>“For your health, eat at least five fruits and vegetables per day”;</i> - <i>“For your health, practice sport regularly”;</i> - <i>“For your health, do not eat too rich, too sugared, too salted”;</i> - <i>“For your health keep off eating outside meals”.</i> <p>Concerning the TV advertising, the health message will have to be included in a fixed or moving window streamer (<i>bandeau fixe ou défilant</i>) or in a screen following the advertising message. When possible, the health message will have to be supplemented, at the end of the advertising, by a reference to the website www.mangerbouger.fr.</p> <p>Concerning the scope of the requirement and notably the scope covered by the wording the <i>“manufactured products”</i>, the Department of Health and Solidarity issued a document (a <i>Note</i>) on February 28, 2007 notably specifying the food products concerned.</p> <p><u>Concerning the drinks</u>, the advertising for drinks without added sugar, salt or sugar substitutes (<i>édulcorant de synthèse</i>) will not be submitted to the health message (for instance, coffee, tea, herb tea, chicory). Similarly, fruit juices and milk that do not contain added sugar, salt or sugar substitute should not be concerned by the health message.</p> <p>Concerning <u>manufactured food products</u>, the products concerned are those prepared with added ingredients (<i>“ajouts”</i>) or those that have been transformed in their substance. Therefore, the products available to the public “as is” are excluded (for instance fruits and vegetables, spices and aromatics). The products that have just been cut (fresh meat or fish), packed (for instance eggs in carton, oranges’ bag, honey as defined by regulation), frozen and/or tinned without any other addition except water, are not concerned.</p>
Comment:	<p>A French Consumer Association (UFC-Que Choisir) conducted an inquiry among 704 persons (parents and children aged 8 and more). The Association broadcast an ad promoting chocolate cereals in which the following message was added: <i>“For your health, do not eat too rich, too sugared, too salted”.</i></p> <p>The results are disconcerting: 48 % of the interviewed persons (including 57 %</p>

	<p>of children) did not see the message!</p> <p>Then, the researcher re-broadcast the ad by designating the window streamer. After that, 32 % of the parents and 42 % of the children declared that they had difficulties to read it since (i) their attention was devoted to the images of the ad (37 % of the answers), (ii) the characters were too small (32 %), (iii) the window streamer moved too fast (26 %).</p> <p>Worse. When asked to explain the message in light of the product advertised, 66 % of the interviewed persons responded that the cereals are healthy (“<i>équilibrés</i>”), while, the advertised product contains 37 % of sugar....</p> <p>In light of this inquiry, UFC-Que Choisir considers that the mandatory message is too general and does not procure to the consumer any practical means to determine the nutritional advantages of the food products.</p> <p>A measure of the impact of the mandatory health messages will require that they be broadcast for a few months.</p>
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2. Legislation	
Topic:	Advertising for the distribution sector allowed on TV
Who:	<i>French Government</i>
When:	Decree of October 7, 2003 – Implementation in January 2007 concerning all French TV channels
Where:	France
What happened:	<p>The economic sectors which were prohibited from advertising on television in France were subject to the Decree of October 7, 2003 which came into force <u>on January 1, 2004 concerning certain sectors</u>, such as press (TV advertising is allowed for the press sector on all TV channels since January 1, 2004) and book publishing (TV advertising is allowed for the book publishing sector and the distribution sector since January 1, 2004, on cable and satellite channels only).</p> <p>Concerning the distribution sector, the authorization to advertise products on the TV wireless network (<i>réseau hertzien</i>; i.e. cable and satellite excluded), the authorization had been postponed until January 1, 2007.</p>
Comment:	<p>The CSA (<i>Conseil Supérieur de l’Audiovisuel</i>) issued a Recommendation in 2004 concerning what may and what may not be done in this context.</p> <p>The BVP also explained, in a Recommendation dated June 2006, how to comply with the new regulation.</p> <p>Notably, all advertising promoting commercial events are excluded from the authorized TV advertising for the distribution sector, irrespective of whether or not the operations are linked with the offer of products or services. This means that not only the advertising for a game or a contest organized by a distributor, but also the advertising for the exceptional opening of a distributor’s store, are excluded.</p> <p>However, the announcement of the arrival of a product is not considered as a prohibited advertising if such announcement is not linked to a limited duration or a limited inventory.</p> <p>Similarly, while the announcement of temporary advantages or services (for instance exceptional mortgage rates) is prohibited on TV, the advertising for permanent advantages (such as fidelity cards) is allowed.</p> <p>Further, if a distributor extends his scope of activities (for instance, it opens a cafeteria), within this context, it loses its distributor’s “hat” and is entitled to advertise, on TV, commercial events linked to this new activity.</p>

3. Case Law	
Topic:	Three fashion photographers against a number of the famous fashion businesses: the fashion <i>couturiers</i> won.
Who:	Three fashion photographers
When:	Paris Court of appeal, January 17, 2007
Where:	France
What happened:	<p>A number of the famous fashion businesses, among which Dior, Chanel, Hermès, Jean-Paul Gaultier, Vuitton and Givenchy, brought an action against three fashion photographers on the ground that they posted on the Internet, without their authorization, the pictures they took during their fashion shows. Two of them (one Brazilian and one American) posted tens of photographs of dresses designed by famous couturiers a few hours after their shows. These photographs were notably available, for a fee, on an American website.</p> <p>While the first degree criminal court (<i>Tribunal correctionnel</i>) acquitted the three photographers, the Paris Court of appeal overruled the judgment on January 17, 2007.</p> <p>According to the rules from the Fashion Federation destined to monitor the exploitation of the pictures, it is prohibited to photograph more than 7 models by dressmaker. In addition, these photographs can only be broadcast by the press medium which accredited the photographers to attend the fashion shows.</p> <p>The Paris Court of appeal considered that "<i>the fashion businesses have copyrights on their creations and on their shows insofar as they are original</i>" [i.e., the criterion allowing the acknowledgment of the French copyright].</p>
Comment:	While one of the defendants' lawyers considers that the court showed conservatism by applying the copyright case law to this case; according to the Fashion Federation, however, " <i>the court order reminds that, at the time of the new technologies allowing the anarchic broadcasting of fashion pictures, the use of new media remains submitted to a legal framework</i> ".

4. Case Law	
Topic:	Advertising and religion do not mix so badly...(epilogue)
Who:	<i>Marithé et François Girbaud</i>
When:	High Court (<i>Cour de cassation</i>), November 14, 2006
Where:	France
What happened:	<p>The trendy blue jeans brand <i>Marithé et François Girbaud</i> had a poster and magazine campaign created to promote its products. The ad was a picture based on Leonardo da Vinci's Last Supper ("<i>La Cène</i>"), showing twelve women and a partially naked man (see ad below).</p> <p>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.</p> <p>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 appurtenances".</p>
Comment:	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.

5. Self-regulation	
Topic:	Advertising and violence
Who:	Dolce Gabbana
When:	October 20, 2006
Where:	France
What happened:	<p>Dolce Gabbana recently published an ad in the French press which represents a very dark theatrical picture with young persons dressed in dark, a naked women and a killed/dying man (either with a bullet in the forehead or with a knife wound on the chest) lied down on the floor. A character holding the murder weapon (a pistol or a knife) is standing, rooted.</p> <p>This ad disturbed many consumers who sent letters to the BVP (<i>Bureau de Vérification de la Publicité</i>), which required the advertisers and the medium concerned to stop publishing the controversial ad.</p>
Comment:	<p>The BVP held that this ad violated professional rules which prohibit violence in ads. Notably the Recommendation called "<i>image of the Human person</i>" provides that "<i>the advertising shall avoid any scene of violence, direct or implied and shall not urge on violence, moral or physical</i>". Further "<i>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</i>".</p>

