



Germany

Self-Regulatory Organisations

There are two main self-regulatory organisations in Germany:

1. **Zentrale zur Bekämpfung unlauteren Wettbewerbs e. V. (Zentrale) (Centre for Combating Unfair Competition)**
2. **Deutscher Werberat (DW) (German Advertising Standards Authority)**

Zentrale zur Bekämpfung unlauteren Wettbewerbs e. V. (ZEN) (Centre for Combating Unfair Competition)

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ZEN functions

- Investigates complaints about misleading advertising and unfair competition
- Initiates legal action in the civil courts against companies that infringe advertising legislation if the advertiser does not comply to extra-judicial warning notice
- Enforces the Unfair Competition Law working in co-operation with judicial authorities

- Applies statute law relating to unfair competition
- Offers advice to its members
- The Zentrale does not produce self-regulatory codes of practice; it applies statutes governing unfair competition written by legislators and operated by the industry, trade and consumer organizations.
- The rules apply to all media, including the internet.

General rules: The Zentrale applies all requirements in current, relevant legislation.

Sector-specific rules: Sector-specific legislation (not industry-generated codes of practice) includes: medical care advertising; medicines; food labelling

Relating specifically to children

Child/minor: The Zentrale has no formal, separate definition of child/minor; it follows statutory legislation.

Deutscher Werberat (DW) (German Advertising Standards Authority)

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DW functions

- Devising and implementing product- and sector-specific Codes and rules
- Adjudicating on complaints
- Adjudicating on written appeals
- Monitoring advertisements
- Responding to competitor or consumer complaints

The German Self-Regulatory Code

The DW, and the advertising industry in Germany use the ICC Code as a benchmark for judging acceptable standards. The DW produces its own sector- and product-specific rules, guidelines and statements.

General rules: The rules used as a guide are those in the ICC Code of 1997.

Sector-specific rules: The DW rules on advertising portraying or directed at children; advertising and teleshopping for alcoholic drinks; guidelines on images that may give rise to accidents; motor tyres; statements on denigration and discrimination; the portrayal of politicians; traffic noise in radio advertising.

Relating specifically to children

Child/minor: A child is a person under 14. A minor is aged between 14 and 18.

Specific requirements: The DW's guidelines require that:

- Such advertisements shall give no explanations by children about certain advantages or characteristics of a product, which seem unnatural for a child of that age.
- It shall not ask children directly to buy or consume anything.
- It shall not ask children directly to get others to buy such products.
- It shall not make abusive use of a child's confidence with third parties.
- Free gifts or similar means of advertising shall not deceive about the address of the company.
- Children's interest in games should not be used as a means of engaging their interest in the advertised product.
- No advertisement should portray a criminal offence or other impropriety.

The text of the German Self-Regulatory Code is included below.

The Law in Germany

(The Law applies equally to both Deutscher Werberat and the Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V)

Advertising is governed by civil law in Germany, which means that state and government authorities have no right of action. The DW does not have or seek statutory powers and its decisions are not legally binding; it has not been the subject of litigation. The Zentrale does not have statutory powers, but it is a registered association, judicially authorised to pursue collective actions or individual complaints in court if the Unfair Competition Act is infringed. It has not been the subject of litigation.

Statutory Authorities:

- The Zentrale has quasi-statutory rights.
- The Media Authorities on Advertising, Programming and Sponsorship on TV has statutory responsibility for TV.

Legislation: In addition to EU legislation, Germany has a considerable number of laws, including Treaties among the Federal States, which have a direct bearing on advertising. Much of this legislation applies to both adults and children and covers all media. Under German law, advertising may not be deceitful or misleading. In general advertising has to be 'correct about the characteristics, the origin, the way of manufacturing and the pricing of products'. The Broadcasting Treaty and the Common Advertising Guidelines of the federal media authorities for private broadcasting on Advertising, Programming and Sponsorship on TV contain detailed rules about children, as do the Advertising Guidelines for public broadcasters. The Media Authorities' sanctions include warnings, fines and withdrawal of the broadcasting licence. The Guidelines require companies to observe legislation and self-regulatory rules on a wide range of subjects: consumer protection; the environment; competition; alcohol; youth protection; food and consumer goods; drugs and healthcare.

Relevant legislation covers: Misleading advertising; unfair competition; comparisons; broadcasting; distance selling; medical care; medicines; discounts; sales promotions, services and premiums; prices; food; food labelling; trade marks; data protection; vehicles; education; financial services; tobacco; alcohol.

Specific prohibitions: Tobacco products on TV and radio; public service broadcast advertising after 20.00hrs, on Sundays and during school holidays.

Relating specifically to children:

Child/minor: The Civil Code defines a child as a person under the age of 18. Other legislation protecting young people in public places describes a child as a person under the age of 14 and a young person as between 14 and 18.

Legislation: There is no specific legislation that refers to minors and advertising in press, outdoor or cinema.

The Unfair Competition Act could impinge if an advertiser exploited the inexperience of children: 'Any person who, in the course of business activity for the purposes of competition, commits acts contrary to honest practices, may be enjoined from these acts and held for damages'.

Specific prohibitions: TV advertisements may not interrupt children's programmes (and have to respect the 'integrity and value' of any other programme they interrupt); they may not include direct exhortations to children to buy products; use of games to engage a child's interest in the advertised product; use of children as sex objects; tobacco, alcohol, medicinal products predominantly addressed to children under 14 are prohibited.

The Guidelines of the Media Authorities on Advertising, Programming and Sponsorship on TV as well as the guidelines for public broadcasters rule, for example, that advertisements on TV and radio:

- May not directly ask children or young persons to buy or otherwise consume, either by themselves or by their parents or third persons, the advertised goods or services.
- Advertising addressed to children and juveniles shall not harm their interests and shall not take advantage of their inexperience.
- Any commercial which is broadcast before or after a children's programme may not promote any product that has been shown in the programme. Merchandising for products from children's programmes may therefore not be advertised before or after the programme (this rule appears only in the Guidelines for private broadcasters).

Rules for TV generally also apply to radio. There are few specific rules on advertising in media other than broadcast, but publications and other forms of communication such as recordings or pictures that are likely to harm children or young people morally have to be listed and are not allowed to be accessible to them.

The German Code

These are the rules used by the DW; the Zentrale has no self-regulatory Code.

CHILDREN AND ADOLESCENTS:

These rules are based on Article 14 of the ICC Code:

- Advertising should not take advantage of their credulity or lack of experience.
- Advertising should not underplay the level of skill or the age required to use a produce, which means that product size, durability and performance of the product should not be misleading.
- Advertising should specify whether accessories are needed to use a product or obtain the results shown or described.
- A product that is a piece of a final assembled product should be indicated as such, as should the means to obtain the whole product.
- Where the results of using a product are shown or described, advertising should show what can reasonably be achieved by the average child or adolescent in the age range for which a product has been conceived.
- Indications of price cannot be such that they lead to an erroneous belief of the real value of the product, for example by using the word 'only'.
- No advertisement should allow children and adolescents to believe that the product is priced within reach of every family budget.
- Advertising must not contain any declaration or visual image that would have, mental, moral or physical harm or lead to dangerous situations or activities that would seriously threaten the health or security of children or youngsters or encourage them to meet strangers or go to dangerous or potentially dangerous places.
- Advertising should not suggest that using or owning a product confers physical, social or mental advantages over other children or adolescents of the same age, or that non-possession would have the opposite effect.
- Advertising should not undermine the authority, responsibilities, judgement, or tastes of parents, taking into account acceptable social values. Advertising should not directly incite children and adolescents to persuade their parents or other adults to buy the advertised product.