

G-Regs™

## Germany – ARD/ZDF Guidelines



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| Full title:                | <b>ARD and ZDF guidelines for advertising, sponsorship, competitions and production aid dated 12 March 2010</b>  |
| Title of relevant section: | Chapter 3 – Content and structure of advertising<br>Chapter 4 – Infomercials<br>Chapter 5 – Teleshopping<br>Chapter 6 – Split screen<br>Chapter 7 – Virtual Advertising<br>Chapter 8 – Ban on surreptitious advertising and thematic placement<br>Chapter 9 - Paid product placement and free production assistance<br>Chapter 12 – Programme Sponsorship  |
| Preamble                   | The production and distribution of programmes is a public duty of ZDF. To co-finance this duty, ZDF is entitled to use sponsorship as an independent form of financing in addition to advertising. To safeguard the independence of programming and maintain neutrality vis-à-vis the competition in a free market and pursuant to the implementation of Article 16f of the RStV (Interstate Broadcasting Treaty) as amended by the 13 <sup>th</sup> Amending Interstate Treaty on Broadcasting, the following principles apply.   |
| Chapter 3                  | <b>Content and structure of advertising</b>  |
| Article 3.1                | Advertising of a political, religious or ideological nature is not permissible. This ban does not rule out so-called “Social Advertising”, such as advertising for charitable causes.  |
| Article 3.2                | Advertising may not violate human dignity, may not contain or encourage discrimination on the basis of gender, race or ethnic origin, nationality, religion or faith, disability, age or sexual orientation, may not be misleading or harm the interests of consumers and may not encourage forms of behaviour that endanger health or safety or extensively jeopardise protection of the environment. Advertising for alcoholic beverages must not encourage the excessive consumption of such beverages. The relevant rules of conduct of the German Advertising Council related to advertising for alcoholic beverages must be observed. Advertising must not violate any laws in terms of content and structure. To be observed in particular are the laws on the protection of children and young persons, the regulations regarding the ban on tobacco advertising in the Draft Tobacco Regulation, as well as the advertising restrictions for medicines and remedies contained in the HWG (Medicine and Remedy Advertising Law). |
| Article 3.3                | In the case of advertising also directed toward children and young persons or in which   |

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|                    | children or young persons are used, their interests must not be harmed nor may their lack of experience be exploited. The rules of conduct of the German Advertising Council concerning advertising with and in front of children in radio and television must be observed in this regard.   |
| <b>Chapter 4</b>   | <b>Continuous advertising programmes (Infomercials)</b>  |
| <b>Article 4.1</b> | Continuous advertising programmes are permissible. The advertising must represent the essential part of the transmission; the advertising nature must be clearly to the fore.  |
| <b>Article 4.2</b> | In television broadcasting, it is to be pointed out at the beginning of the transmission that it concerns a continuous advertising programme. Furthermore, it is to be pointed out during the entire course of the transmission that it concerns an advertising programme.   |
| <b>Chapter 5</b>   | <b>5. Teleshopping</b>   |
| <b>Article 5.1</b> | Teleshopping comprises the transmission of direct offers to the public for the sale of goods or the provision of services, including immovable property, rights and obligations in return for payment.   |
| <b>Article 5.2</b> | Teleshopping does not take place in public service broadcasting, with the exception of teleshopping spots. Teleshopping spots are deemed to constitute advertising within the meaning of Article 1.1. Furthermore, they must not encourage minors to enter into purchase, rental or lease contracts for goods or services.   |
| <b>Chapter 6</b>   | <b>6. Split screen</b>   |
| <b>Article 6.1</b> | Partial occupation of the broadcast image by advertising, i.e. parallel transmission of editorial and advertising content, is permissible – also in the form of ticker tape advertising - if the advertising is clearly separated from the remaining programme in visual terms and is identified as such. Unambiguousness is provided for, in particular, where the advertising window is differentiated from the editorial part of the programme by the lettering “Advertisement” throughout the entire course of the transmission. This advertising is taken into account fully for the duration of commercials, regardless of the size of the inserted advertisement. |
| <b>Article 6.2</b> | Split screen is not permissible in the transmission of religious services, children’s shows or current affairs programmes.   |
| <b>Chapter 7</b>   | <b>7. Virtual advertising</b>  |
|                    | The insertion of virtual advertising into programmes is permissible if this is pointed out at the beginning and end of the transmission concerned and it replaces advertising already present in the transmission slot. Static advertising present in the transmission slot may not be replaced by moving images. Other rights, especially copyright and ancillary rights, as well as advertising restrictions under German and European law remain unaffected.  |
| <b>Chapter 8</b>   | <b>8. Ban on surreptitious advertising and thematic placement</b>  |

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| Article 8.1   | Surreptitious advertising is the mentioning or depicting of goods, services, names, brands or activities of a goods manufacturer or service provider in transmissions where it is included by the broadcaster intentionally for advertising purposes and can mislead the general public as to the actual purpose of such mention or depiction due to a lack of identification. A mention or depiction is deemed to be intended for advertising purposes, in particular, where it is done for payment or similar consideration.   |
| Article 8.2   | Surreptitious advertising, thematic placement and corresponding practices are not permissible.   |
| Article 8.3   | Mentioning or displaying products is permissible if and insofar as this is absolutely necessary for journalistic or artistic reasons, in particular for the purpose of presenting the real environment. Insofar as products are mentioned or displayed in accordance with sentence 1 above, the promotion of commercial interests is to be avoided by way of the type of presentation where possible (e.g. market reviews instead of individual presentations, avoidance of promotionally effective camera work and – especially in the case of series – changing the products and displaying different features).   |
| Chapter 9     | <b>Paid product placement and free production assistance</b>   |
| Article 9.1   | Product placement is the identified mentioning or display of goods, services, names, brands or activities of a producer of goods or a provider of services in programmes for payment or similar consideration with the aim of promoting sales. The free provision of goods or services (production assistance) is deemed to constitute product placement insofar as it is mentioned or displayed and the item or service concerned is of significant value. Production assistance is deemed to be of significant value when it exceeds 1% of the expenditure on the programme or the sum of €1000. Items and real property not freely available commercially are not included. If more than one contribution is made by the same partner, the value of the contributions is added together.  |
| Article 9.2   | Product placement is not permissible in principle. By way of derogation, product placement is permissible within the meaning of Article 9.1 in the following cases:  |
| Article 9.2.1 | <p>Paid product placements in third-party productions:</p> <p>Paid product placement is permissible in movies, films and series, sports transmissions and light entertainment shows not produced or commissioned by the broadcaster itself or by any company affiliated to the broadcaster (third-party production) insofar as it does not concern programmes for children (Article 2.1, Clause 2).</p> <p>Deemed not to constitute light entertainment programmes are, in particular, transmissions that are essentially of an informative nature in addition to having entertainment elements, consumer programmes and advice programmes with elements of entertainment.</p> <p>Co-productions are deemed to constitute third-party productions where the broadcaster only provides a minor share of the financial resources and therefore does not normally have any crucial or decisive say in the design or organisation of the production.</p> |
| Article 9.2.2 | <p>Production assistance of significant value:</p> <p>The free provision of goods or services as production assistance or prizes is permissible insofar as it does not concern news transmissions, current affairs programmes, advice</p>  |

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|               | and consumer programmes, and children's shows (Article 2.1, Clause 2) of transmissions of religious services.   |
| Article 9.2.3 | Other instances of production assistance:<br><br>Other instances of production assistance are permissible in all programme formats.   |
| Article 9.3   | Reasonable and appropriate remuneration amounts are to be agreed in principle for the acquisition of rights to productions as well as services and objects provided for the making of productions. Insofar as product placement or production assistance is permissible, it must meet the following requirements. This also applies where the production assistance is not of significant value:  |
| Article 9.3.1 | Editorial responsibility and independence with regard to content and the transmission slot must remain unimpaired. There are deemed to be indications of journalistic or artistic freedom of presentation being restricted if<br><br><ul style="list-style-type: none"><li>- The reporting initiative does not come from the editorial office but, rather, from a producer, service provider or an agent. This is especially true if their products are the object of the contribution,</li><li>- The name or products of the production assistant appear in the contribution without these being absolutely necessary for journalistic or artistic reasons,</li><li>- The concept of a programme is tailored to a producer or service provider being able to present its products without appearing to be explainable by way of considerations relating to content or editorial format,</li><li>- the value of the contribution is so substantial that it can be assumed that editorial decision-making freedom is no longer guaranteed.</li></ul>   |
| Article 9.3.2 | Product placement must not directly prompt the purchase, rental or lease of goods or services, especially not through sales promotion references to such goods and services.  |
| Article 9.3.3 | The product must not be highlighted too strongly. Article 8.3 applies in this regard.   |
| Article 9.4   | Clear reference must be made to paid product placement in accordance with Article 9.2.1 as well as to free production assistance under Article 9.2.2. It must be identified appropriately at the beginning and end of a transmission as well as on its continuation after a commercial break or on radio by way of an equivalent indication.<br><br>Identification is carried out at the beginning and end of the programme by displaying the letter "P" for at least 3 seconds. In the case of paid production placement, the following lettering is displayed in addition: "contains product placement". In the event of free production assistance under Article 9.2.2, the following wording is displayed: "supported by production assistance".<br><br>If both occur in a programme, the wording "contains product placement" is displayed. In television broadcasting, in the case of production assistance in accordance with Article 9.2.2, the name of the production assistant appears additionally in the credits or, if these do not exist, in another suitable written manner at the end of the programme. The names are displayed in alphabetical order below the heading "Production assistance was provided for this programme by...". This is displayed in the normal font size without any logos or (figurative) trademarks. Other production assistants can also be named for reasons of transparency. |

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|              | No remuneration or similar consideration may be agreed or paid for such mention.   |
| Article 9.5  | If it cannot be determined with reasonable effort in the third-party programme whether paid product placement under Article 9.2.1 or free production assistance under Article 9.2.2 is contained in a transmission, the identification obligation does not apply. It is to be pointed out in the videotext or telemedia service announcement accompanying the programme or in another suitable manner that the clarification was not necessary (e.g.: "This programme might contain product placements"). Deemed to constitute reasonable effort is where the broadcasting company requests the vendor in a contractual or other manner to submit a declaration as to whether the transmission contains product placement. |
| Article 9.6  | The aforementioned provisions do not apply to programmes produced before 19 December 2009.   |
| Chapter 12   | <b>Programme sponsorship</b>   |
|              | Sponsorship is deemed to be any contribution by a natural person or legal entity or association of persons not involved in broadcasting activities or the production of audio-visual works for the direct or indirect financing of a programme in order to promote the name, brand or appearance of the person or association of persons, its activity or its services.  |
| 12.2         | Sponsorship must not impair the performance of the public service programming duty or the independence of programme planning.  |
| 12.3         | In the case of programmes that are fully or partly sponsored, clear reference must be made to the financing by the sponsor at the beginning and/or end of the transmission with reasonable brevity and in an appropriate manner; such reference is also possible by way of a moving image in this regard. In addition to or in place of the sponsor's name, its company logo, another symbol of the sponsor, a reference to its products or services or a correspondingly distinctive symbol can also be displayed. The provisions concerning the ban on surreptitious advertising apply. Article 12.6 otherwise applies.  |
| Article 12.4 | Reference may not be made to the sponsor in programme trailers for sponsored programmes.   |
| Article 12.5 | The possibility of the sponsor setting requirements for or exerting influence on the content or placement of the sponsored programme is to be ruled out.   |
| Article 12.6 | The sponsored programme must not provide any incentive through special references or presentations to sell, purchase, rent or lease the sponsor's products or services.  |
| Article 12.7 | The interruption of sponsored programmes by advertisements is permissible in accordance with the provisions concerning the insertion of advertisements.  |
| Article 12.8 | Political, ideological and religious organisations may not sponsor programmes. Programmes may not be sponsored by businesses whose main activity concerns the production of cigarettes and other tobacco products.   |
| Article 12.9 | In the event of programmes being sponsored by companies whose activities include the   |

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production or sale of medicinal products and medical treatments, sponsorship can be carried out for the company's name or image but not for particular drugs, medicines or medical treatments that can only be obtained with a doctor's prescription.

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**Article 12.10**

News transmissions or political information programmes (e.g. political magazines) may not be sponsored. The displaying of sponsor logos is prohibited in children's programmes and transmissions with religious content.

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**Article 12.11**

The acceptance of financial assistance or other benefits in kind as consideration for the creation or placement of sponsor announcement beyond what is permissible in accordance with Article 12.3 is prohibited.

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