

G-Regs™

Germany – Advertising Guidelines / Radio Broadcasting



Full title: Common Guidelines (aka Joint Directive) of the State Media Authorities for advertising, to implement the separation of advertising from programmes, and for sponsorship as well as teleshopping on radio.

As per 23.02.2010

Advertising Guidelines / Radio (WerbeRL / HÖRFUNK)

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Pursuant to Article 46 in conjunction with Articles 7, 7a, 8, 8a, 44, 45 and 45a of the Interstate Treaty on Broadcasting and Telemedia (Article 1 of the Interstate Treaty on Broadcasting in reunited Germany of 31 August 1991, last amended by the 13th Amendment to the Interstate Broadcasting Treaty - RStV), the German state media authorities:

Landesanstalt für Kommunikation Baden-Württemberg (LFK),
Bayerische Landeszentrale für neue Medien (BLM),
Medienanstalt Berlin-Brandenburg (mabb),
Bremische Landesmedienanstalt (brema),
Medienanstalt Hamburg / Schleswig-Holstein (MA HSH),
Hessische Landesanstalt für privaten Rundfunk und neue Medien (LPR),
Medienanstalt Mecklenburg-Vorpommern (MMV),
Landesanstalt für Medien Nordrhein-Westfalen (LfM),
Landeszentrale für Medien und Kommunikation Rheinland-Pfalz (LMK),
Landesmedienanstalt Saarland (LMS),
Sächsische Landesanstalt für privaten Rundfunk und neue Medien (SLM),
Medienanstalt Sachsen-Anhalt (MSA),
Thüringer Landesmedienanstalt (TLM)

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have issued the following common guidelines for advertising, to implement the separation of advertising from programmes, and for sponsorship as well as teleshopping on radio:

The following guidelines (or directive) which has to be adopted in accordance with Article 46¹ RStV for the implementation of Articles 7, 7a, 8, 8a, 44, 45 and 45a RStV is intended to substantiate the provisions governing the options for advertising or sponsorship by commercial broadcasting for the purpose of funding their services; the provisions were revised in the 13th Amendment to the Inter-state Broadcasting Treaty (RStV)². They are based on the 13th Amendment to the Interstate Broadcasting Treaty, which implemented the advertising and sponsorship rules of European Law. European law obliges operators to cooperate in compliance with general legal principles of advertising within the broadcasting law. Advertising must not mislead, not prejudice the interests of consumers and not encourage behaviour prejudicial to health or safety of consumers and the protection of the environment. These objectives have been included in the guidelines. Given the variety and constantly changing programme and advertising structures, the guidelines require future review and updating by the State Media Authorities.

Rundfunkstaatsvertrag –
RStV (Interstate
Broadcasting Treaty)

Article 2: Definitions

Art. 2(2): For the purposes of this Interstate Broadcasting Treaty:

(No) 7. 'Advertising' means any form of announcement in broadcasting transmitted in return for payment or for similar consideration or transmitted for self-promotion purposes by a public-service or a commercial broadcaster or a natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment. Article 7(9) remains unaffected;

8. 'Surreptitious advertising' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising purposes and might mislead the public as to the actual purpose of the representation. Such representation is considered to be intended for advertising purposes, in particular if it is done in return for payment or for similar consideration;

9. 'sponsorship' means any contribution by a natural or legal person or an association of persons not engaged in broadcasting activities or in the production of audiovisual works, to the direct or indirect financing of a programme with a view to promoting the name, the trademark, the image of the person or association, their activities or their products;

10. 'Teleshopping' means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for

¹ Art. 46: Directives (Guidelines) - The state media authorities shall issue joint statutes or directives (i.e. common guidelines) for the implementation of Articles 7, 8, 8a, 44, 45 and 45a; the statute or directive (guideline) governing Article 8a shall in particular specify the prosecution of violations and the conditions for the participation of minors. (From 15th Interstate Broadcasting Treaty)

² The most recent amendment is 15th Amendment to the Interstate Broadcasting Treaty (1st Jan 2013)

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	<p>payment, in the form of teleshopping channels, windows or spots;</p> <p>11. 'Product placement' means the identified representation in words or pictures of goods, services, names, trade marks, activities of a producer of goods or a provider of services in programmes in return for payment or for similar consideration in order to promote sales. The provision of goods or services free of charge shall be deemed to constitute product placement if said goods or services are of significant value;</p>
<p>Section 1 Advertising Guidelines / Directive</p>	<p>Definitions</p> <p>Sect. 1(1)</p> <p>Deemed not to constitute advertising are, in particular:</p> <ol style="list-style-type: none"> 1. References to one's own programme (e.g. programme announcements and trailers, self-promotion within the meaning of Article 9, Paragraph 1 nos. 1 and 2 of the TV Advertising Directive); 2. References to accompanying material for programmes (within the meaning of Article 9, Paragraph 2 of the TV Advertising Directive and Article 45, Paragraph 2 of the RStV [Interstate Broadcasting Treaty]); 3. Free public service announcements, including calls for donations in relation to charity appeals within the meaning of Article 7, Paragraph 9, Clause 3 and Article 45, Paragraph 2 of the RStV; 4. Mandatory announcements under the law in accordance with Article 45, Paragraph 2 of the RStV (e.g. within the meaning of Article 5 of the GlüStV [Inter-State Treaty on Gambling] as well as for OTC products under Article 4, Paragraph 5 of the HWG [Medicine and Remedy Advertising Law]); <p>Sect. 1(2)</p> <p>Other references not meeting the requirements of Section 1(1), nos. 1 and 2 are to be treated as advertising.</p> <p>Thematic placement is the programme integration of advertising claims for particular types of products and services broadcast for payment or similar consideration with the aim of promoting sales.</p> <p>Thematic placement of, in particular, an economic, political, religious or ideological nature is not permissible.</p>
<p>Rundfunkstaatsvertrag – RStV (Interstate Broadcasting Treaty)</p>	<p>Article 7: Advertising Principles, Obligatory Identification</p> <p>Art. 7(1). Advertising and teleshopping shall not:</p> <ol style="list-style-type: none"> 1. Prejudice respect for human dignity, 2. Include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation, 3. Be misleading or prejudice the interests of consumers, or 4. Encourage behaviour prejudicial to health or safety as well as grossly prejudicial to the protection of the environment. <p>Art. 7(2). Advertising or advertisers shall not influence the editorial content or other parts of a programme. Sentence 1 applies accordingly to teleshopping spots,</p>

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	<p>teleshopping windows and providers thereof.</p> <p>Art. 7(10). Advertising and teleshopping for alcoholic beverages shall not promote excessive consumption of such beverages.</p>
<p>Section 2</p> <p>Advertising Guidelines</p>	<p>Advertising Principles</p> <p>Sect. 2(1): In addition to Article 7, Paragraph 1, nos. 1 - 4 of the RStV, special statutory provisions apply to advertising and teleshopping, consumer protection, environmental protection as well as competition law. The advertising bans contained therein and the restrictions on the content of advertising are to be observed, in particular.</p> <p>Sect. 2(2): To safeguard the independence of programme planning, the broadcaster may not allow advertisers to exert any influence on programming. This means, in particular, that details of the programme may not be adapted to the advertisers' guidelines. It is also not permitted for advertisers to exert influence on the placement of programmes in the surrounding area of the advertising.</p> <p>Sect. 2(3): 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).</p> <p>Sect. 2(4): Furthermore, the relevant rules of conduct of the German Advertising Council regarding commercial communication for alcoholic beverages apply as last amended.³</p> <p>Sect. 2(5): The protection of children and young persons in advertising and teleshopping is provided for in Article 6 of the JMStV (Interstate Treaty on the Protection of Minors from Harmful Media) and Article 7 of the JuSchRiL (Youth Protection Guidelines) of the state media authorities as last amended</p>
<p>Rundfunkstaatsvertrag – RStV (Interstate Broadcasting Treaty)</p>	<p>Article 7: Advertising Principles, Obligatory Identification</p> <p>Art. 7(3): Advertising and teleshopping shall be readily recognisable as such and shall be clearly distinguishable from editorial content. Advertising and teleshopping shall not use subliminal techniques. New advertising techniques used shall also keep advertising and teleshopping quite distinct from other parts of the programme by optical means, on radio by acoustic means in a manner that is adequate to the media.</p>
<p>Section 3 (1)</p> <p>Advertising Guidelines</p>	<p>Identification Obligations</p> <p>Sect. 3(1):</p> <ol style="list-style-type: none"> 1. The commencement of radio advertising must be clearly identified by way of an acoustic signal (advertising jingle, announcement) and be perceptible for the listener. 2. Identification of radio advertising at the end or between the individual commercials is not required. 3. Identification of the end of radio advertising is necessary, however, if the advertising is otherwise not clearly separated from the following programme.

³ German Advertising Standards Council (*Deutscher Werberat*) [Code of Conduct on Commercial Communication of Alcoholic Beverages](#) – April 2009

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4. The acoustic signal must guarantee the clear separation of the programme from the advertising through the nature of its design and form and the duration of its transmission and must differ distinctly from the station identification and from the programme announcements normally used.

Rundfunkstaatsvertrag –
RStV (Interstate
Broadcasting Treaty)

Article 7: Advertising Principles, Obligatory Information

Art. 7(4): Advertising may occupy part of the broadcast picture provided that the advertising is kept optically separate from the other parts of the programme and is clearly identified as such. Such advertising will be included in the calculated duration of spot advertising pursuant to Articles 16 and 45. Article 7a (1) applies accordingly.

Art. 7(5): Infomercials shall be permitted provided that the advertising character can be clearly recognized and that the advertising constitutes a substantial component of the programme. They must be announced as infomercials at the beginning of the programme and identified as such for the entire duration of the programme. Sentences 1 and 2 shall also apply to teleshopping.

Section 3(2)

Advertising Guidelines

Infomercials

Sect. 3(2):

1. Infomercials are transmissions with a minimum duration of 90 seconds in which advertising is presented in an editorial format, the advertising nature is clearly to the fore and the advertising represents an essential part of the transmission.

2. In radio broadcasting, it is to be pointed out at the beginning of the transmission that is concerns an infomercial. The advertising nature is to be pointed out during the course of the transmission.

Rundfunkstaatsvertrag –
RStV (Interstate
Broadcasting Treaty)

Article 7: Advertising Principles, Obligatory Information

Art. 7(6): Virtual advertising may be inserted in programmes provided that:

1. The insertion is pointed out at the beginning and at the end of the programme in question, and
2. It replaces advertising already existing at the site of transmission.

Other rights remain unaffected. Sentences 1 and 2 shall also apply to teleshopping.

Art. 7(7): Surreptitious advertising, product placement and thematic placement as well as similar practices shall be prohibited. As far as exceptions are admissible pursuant to Articles 15 and 44, product placement must meet the following requirements:

1. Editorial responsibility and independence concerning content and scheduling must not be prejudiced;
2. the product placement shall not directly encourage the purchase, rental or lease of goods or services, in particular not by making special promotional references to such goods or services, and
3. the product shall not be unduly prominently placed; this shall also apply to goods of minor value provided free of charge.

There shall be clear information concerning product placement. Product placement shall be identified at the beginning and at the end of a programme as well as at its continuation following an advertising break, or on radio by a similar adequate

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identification. Obligatory identification shall not apply for programmes not produced by the broadcaster itself or produced or commissioned by a company affiliated to the broadcaster, if it is not possible to establish at reasonable expense whether they contain product placement; information to this effect shall be given. The broadcasting corporations forming the ARD association, the ZDF and the state media authorities shall stipulate a uniform system of identification.

Article 44: Admissible Product Placement

In derogation from Article 7(7), sentence 1, product placement shall be admissible in broadcasting

1. in cinematographic works, films and series, sports programmes and light entertainment programmes unless they are children's programmes,

or

2. where there is no payment, but only the provision of specific goods or services free of charge such as production props and prices, with a view to their inclusion in a programme, unless the programmes concerned are news programmes, current affairs programmes, advice and consumer programmes, programmes for children or religious broadcasts.

Light entertainment programmes shall exclude in particular programmes which - alongside elements of entertainment - are of a predominantly informative nature, are consumer programmes or advice programmes including elements of entertainment as well as programmes in regional window services and window services pursuant to Article 31.

Section 4

Advertising Guidelines

Surreptitious Advertising

Sect. 4(1). Presenting commercial goods or the producers of the same, or services and the providers of the same outside of advertising spots is not deemed to constitute surreptitious advertising if it is done for predominantly dramatic reasons related to the programme, especially for the purpose of depicting the real environment as well as fulfilling obligations to provide information.

Sect. 4(2). This applies to own productions as well as co-production and commissioned or purchased productions.

Sect 4(3). Whether the mentioning or depiction of goods, services, names, brands or activities of a goods manufacturer or service provider is provided for intentionally in the programme by the broadcaster for advertising purposes and can mislead the general public as to the actual purpose of such mention or depiction is to be established in individual cases based on the indicators available (e.g. intensity of the presentation, whether the name or trademark is shown on its own).

Sect. 4(4). A mention or depiction is deemed to be intended for advertising, in particular, where it is done for payment or similar consideration.

Sect. 4(5). Even in the case of the permissible presentation of products and services, the promotion of advertising interests is to be avoided as far as possible by way of the editorial design (*form/ arrangement*)

Rundfunkstaatsvertrag –
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Article 7: Advertising Principles, Obligatory Information

Art. 7(8): Television advertisements and teleshopping may not feature individuals who

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Broadcasting Treaty)	regularly present news or current affairs programmes. Art. 7(9): Advertising of a political, ideological or religious nature shall be prohibited. Sentence 1 applies to teleshopping accordingly. Public service announcements transmitted free of charge, including charitable appeals, shall not be considered as advertising within the meaning of sentence 1. Article 42 remains unaffected.
Section 5 Advertising Guidelines	Social Advertising In the case of social advertising within the meaning of Article 7, Paragraph 9, Clause 3 of the RStV, this concerns transmissions broadcast by the operator free of charge which contain a direct or indirect call for responsible, socially desirable behaviour or provide clarification regarding the consequences of individual behaviour (e.g. appeals promoting health, the safety of consumers or protection of the environment as well as appeals for charitable causes).
Rundfunkstaatsvertrag – RStV (Interstate Broadcasting Treaty)	Article 7: Advertising Principles, Obligatory Information Art. 7(11): Article 7, Paragraphs 1 to 10 shall also apply to teleshopping channels. Article 7a Insertion of Advertising and Teleshopping (1) Broadcasts of religious services and children's programmes must not be interrupted by advertising or teleshopping spots. (2) Isolated advertising and teleshopping spots shall remain the exception on television; this shall not apply to the transmission of sports events. The insertion of advertising or teleshopping spots on television shall not prejudice the integrity of programmes, taking into account natural breaks in transmission and the duration and the nature of the programme, and the rights of the right holders. (3) The transmission of films with the exception of series, serials and documentaries as well as cinematographic works and news programmes may be interrupted by television advertising or teleshopping once for each scheduled period of at least thirty minutes.
Section 6 Advertising Guidelines	Insertion of Advertising and Teleshopping Programmes for children are those aimed predominantly at persons under 14 years of age in terms of content, form and transmission time. Individual programmes that are structured by connecting elements in such a way that they appear as a homogeneous children's programme are also deemed to constitute a children's programme.
Rundfunkstaatsvertrag – RStV (Interstate Broadcasting Treaty)	Article 8: Sponsorship (1) In programmes which are partially or wholly sponsored, the financing by the sponsor shall be pointed out in justifiable brevity and in an appropriate manner at the beginning or at the end of the programme; the reference may also be by means of a moving image. Alongside or in place of the name of the sponsor the company logo or a trade mark, another symbol of the sponsor, a reference to his products or services or a similar distinctive sign may be shown. (2) The content and scheduling of a sponsored programme shall not be influenced by the sponsor in such a manner that the editorial responsibility and independence of the broadcaster are prejudiced. (3) Sponsored programmes must not encourage the sale, purchase, rental or lease of products or services of the sponsor or a third party, in particular by making special

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references.

(4) Programmes may not be sponsored by undertakings whose principal activity is the manufacture or the sale of cigarettes and other tobacco products.

(5) Sponsorship of programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but may not promote particular medicinal products or medical treatment available only on prescription.

(6) News and political information programmes may not be sponsored. The transmission of sponsorship logos shall be prohibited in children's programmes and religious broadcasts.

(7) Paragraphs (1) to (6) shall also apply to teleshopping channels.

(8) Paragraph 7 (1), (3) and (8) to (10) shall apply accordingly.

Section 7

Advertising Guidelines

Sponsorship

Sect. 7(1): Under Article 2, Paragraph 2, no. 9 (RStV), sponsorship represents an independent form of financing in addition to advertising revenues. It is not subject to the advertising provisions of Article 7 and Article 45, Paragraph 1 of the RStV.

Sect. 7(2): Paragraph 1 also applies to short transmissions, such as weather reports. The sponsoring of advertising, such as commercials, infomercials or teleshopping windows is not permissible.

Sect. 7(3):

1. The reference to the sponsor may only take up the period of time that is required to clearly perceive the reference to the third-party financing by the sponsor.

2. In addition to or in place of the sponsor's name, the product name, brand and a reference to its products or services can also be mentioned. This is also permissible in the form of an explanatory supplement.

Sect. 7(4): The sponsor reference must establish a clear reference to the sponsored programme.

Sect. 7(5):

1. The sponsor reference must be made at least at the beginning or end of the transmission.

2. A reference to the sponsor within a programme before and after each commercial is permissible.

Sect. 7(6):

1. The sponsor(s) of the sponsored programme may be mentioned in references to sponsored transmissions.

2. Programme announcements may not be sponsored.

Sect. 7(7): A sponsored programme normally encourages the sale, purchase, rental or lease of products or services of the sponsor or a third party where products or services are presented, generally recommended or otherwise highlighted as being preferable in the programme which are offered by the sponsor or a third party during the

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transmission.

Sect. 7(8): Advertising bans outside the provisions of the RStV normally also include sponsorship bans (sports betting, tobacco and medicinal product advertising).

Sect. 7(9): Political, ideological or religious organisations may not sponsor programmes.

Sect. 7(10): Inserting names of companies, products or brands as a programme title (title sponsorship) is permissible if

1. the general requirements under Article 2, Par. 2, no. 9 and Article 8, Par. 2 – 6 of the RStV are met
2. no advertising effects come to the fore when mentioning the name, company logo, product name or a brand in the title of the programme.

Rundfunkstaatsvertrag –
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Article 8a – Prize Games

(1) Prize game programmes and prize games shall be permitted. They shall be transparent and shall protect participants. They must not be misleading and must not harm the interests of participants. Information shall be provided in the programme in particular on the costs of participation, the entitlement to participate, the design of the prize games and the solution to the task posed. The concerns of the protection of minors shall be preserved. Costs charged for participation must not exceed a fee of EUR 0.50; Article 13 sentence 3 remains unaffected.

(2) Upon request of the body in charge of supervision, the broadcaster shall submit all documents and provide all information required to control the correct implementation of the prize game programmes and prize games.

Section 8

Advertising Guidelines

Prizes/ Competitions

In the case of cash or non-cash prizes being awarded in connection with competitions and quiz shows presented in an editorial format, it is permissible to mention the name of the company three times or give a brief description of the prize for the purpose of explaining the product. The charters of the state media authorities concerning competition shows and competitions (competition show legislation) remain unaffected.

Rundfunkstaatsvertrag –
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Broadcasting Treaty)

Article 45: Duration of Television Advertising

(1) The proportion of television advertising spots and teleshopping spots within one hour shall not exceed 20 per cent. Sentence 1 shall not apply to product placements and sponsorship announcements.

(2) Announcements made by the broadcaster in connection with its own services and programmes and ancillary products directly derived from said services and programmes, public service announcements and charity appeals broadcast free of charge as well statutory references are not considered to be advertising.

(3) Paragraphs (1) and (2) as well as Article 7a shall not apply to channels exclusively devoted to advertising.

Article 45a: Teleshopping Windows and Self-promotion channels

(1) Windows devoted to teleshopping which are transmitted in a service not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes. They shall be clearly identified as teleshopping windows by optical and acoustic means.

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(2) Articles 7 and 8 shall apply accordingly to self-promotion channels. Articles 7a and 45 shall not apply to self-promotion channels.

Section 9

Advertising Guidelines

Teleshopping

1. In the case of radio teleshopping windows, it is to be pointed out at the beginning of the show that it concerns a commercial transmission. Reference is to be made to the nature of the programme as a continuous commercial transmission/commercial transmission during the course of the transmission.
 2. In the case of teleshopping, the costs incurred in conjunction with the order must be clearly shown or explained.
 3. Teleshopping offers are subject to Article 6 of the JMStV.
 4. Teleshopping transmissions lasting less than 15 minutes are permissible. Article 3, Paragraph 2, no. 3 of this Directive applies accordingly.
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Section 10

Advertising Guidelines

Self-Promotion

Sect. 10(1): Self-advertising channels are independently licensed services, the content of which is used for a company to present itself to the public at large. They do not serve to directly promote the sale of goods or services. Articles 7 and 8 of the RStV remain unaffected.

Sect. 10(2): It is to be guaranteed through the presentation and programme identification that self-advertising channels can be recognised as such.

**Rundfunkstaatsvertrag –
RStV (Interstate
Broadcasting Treaty)****Article 63: Transitional Provisions for Product Placements**

Article 7 (7) and Articles 15 and 44 shall not apply for programmes produced prior to 19 December 2009.

Protocol explanation of all countries to § 7 para. 7 of the Interstate Broadcasting Treaty

Countries expect broadcasters with product placement to arrange a binding code of conduct with associations of advertisers and producers.

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