



Lund University
School of Economics
and Management
Department of Business Law
HAR333 Trade and Market
Bachelor Dissertation

Spring 2006

Product Placement

Licence to mislead?

Supervisor: Lea Hatzidaki-Dahlström

Author: Madeleine Trolle

<u>ABSTRACT</u>	4
<u>1 INTRODUCTION</u>	5
<u>1.1 Background</u>	5
<u>1.2 Purpose and Problem Formulation</u>	6
<u>1.3 Method and Criticism of the Sources</u>	6
<u>1.3 Delimitations</u>	8
<u>2 PRODUCT PLACEMENT</u>	9
<u>2.1 Introduction</u>	9
<u>2.2. Background</u>	10
<u>2.3 Reasons behind Product Placement</u>	10
<u>2.4 Definitions of Product Placement</u>	11
<u>2.4.1 General Definitions</u>	11
<u>2.4.2 Legal Definitions</u>	12
<u>2.5 Definition of Product Placement in this context</u>	13
<u>3 SWEDISH AND EUROPEAN UNION LAW</u>	14
<u>3.1 The Purpose of Regulation of Marketing Measures</u>	14
<u>3.2 The Marketing Act</u>	15
<u>3.2.1 Background</u>	15
<u>3.2.2 Purpose</u>	16
<u>3.2.3 The General Clauses</u>	16
<u>3.2.4 The Requirements on Openness</u>	16
<u>3.2.4.1 Identification of Advertisements</u>	17
<u>3.2.4.2 Denunciation of the Sender</u>	18
<u>3.2.5 Sanctions</u>	19
<u>3.3 The Radio and TV Act</u>	19
<u>3.3.1 Background</u>	20
<u>3.3.2 Advertising on Radio and TV</u>	20
<u>3.3.3 Sanctions</u>	21
<u>3.4 European Union Law</u>	22
<u>3.4.1 Background</u>	22
<u>3.4.2 European Union Regulations</u>	22
<u>3.4.2.1 An European Marketing Law?</u>	23
<u>3.4.2.2 Television without Frontiers</u>	23
<u>3.4.2.3 The updated TVWF Directive</u>	24
<u>3.5 Application of the Regulations on Product Placement</u>	26
<u>3.5.1 General Notification</u>	26
<u>3.5.2 Swedish Applications</u>	26

<u>4 SELF-REGULATIONS</u>	29
<u>4.1. The International Chamber of Commerce</u>	29
<u>4.1.1 ICC International Code of Advertising Practice</u>	29
<u>5 DISCUSSION AND ANALYSIS</u>	31
<u>5.1 The significance of the new TVWF Directive</u>	31
<u>5.2 Analysis of the regulations</u>	32
<u>REFERENCES</u>	35

Abstract

Product placement, the cooperative effort of advertisers and creators of entertainment products in which trademarked goods are embedded into popular entertainment products to encourage their consumption, overriding entertainment and artistic concerns is becoming a mayor player in TV economics.

The means in which this marketing measure may be practised in Sweden are regulated by legal rules and self-regulations. This paper deals with those regulations. The legal regulations this paper focuses on are the Marketing Act and the Radio and TV Act. Regulations of consequence but not as significant concerning the regulation of the practice are European Union Law and The ICC International Code of Adverting Practice.

Product placement have just recently been identified as practice of consequence by the Commission which proposes that the practice should not be considered to be a form of surreptitious advertising, as defined by the TVWF Directive. But a practice which is legal with some requirements, this to diminish the disadvantage the European TV Company market have comparing to the US Market, where the practice is legal.

Keywords: Product Placement, Surreptitious Advertising, Regulations, TVWF Directive

1 Introduction

1.1 Background

To gain a large impact with their marketing measures many companies chose to advertise in audio- and audiovisual media. Since the advertising output related to the traditional advertising space in these media becomes poorer, the focus today is on such marketing that is more difficult for consumers to avoid. An example on such marketing activities is surreptitious advertising. The most obvious form of surreptitious advertising is called product placement.

Surreptitious advertising means that one in other ways, without directly publishing that it is a marketing activity, advertises a product or service. Surreptitious advertising is a common phenomenon in marketing contexts today.

The fashion in which marketing may be practised in Sweden is regulated by legal rules, for example The Radio and TV Act and the Marketing Act. Since Sweden is a Member of the European Union, European Union law is as well applicable in Sweden. There are also self-regulations, often in the nature of non-legal standard formations, which business advocates or unions of business advocates have taken. Some form of governmental compulsion grants the conforming to the juridical rules. The self-regulations are distinguished by the opposite. The self-regulations operate frequently as complement directions to the legal rules by appointing what constitutes good business custom in specific areas. The legal rules can therefore be said to reflect the wishes of the community on how the market shall operate whilst the self-regulations correspondingly express the wishes of the industry.¹

The practice product placement enjoys different standards of regulation worldwide. Originated in the film industry, a traditionally unregulated industry, it has gone unnoticed by lawmakers and regulators for many years.

The differences between the members of the European Union are notable. European legislation ranges from a complete ban to almost indifference concerning the practice. The reason ought be that the Member States interpret the Television without Frontiers Directive differently.

¹ Svensson, 2004, p.7ff

In December 2005 the Commission submitted a proposal in which product placement is permitted but with some restrictions. But until the communication is accepted, product placement is outlawed.

However, product placement is big business on television in the United States and the film industry worldwide. Because of this, European advertisers have long argued that it is unfair to prevent them from paying program producers to place their products in a TV show, while European viewers are constantly exposed to branded features in American shows such as Friends and blockbuster movies such as the James Bond films. There are many ways around the regulations and it seems to be impossible to avoid the practice. One way for brands to get round the rules preventing paid-for product placement is by giving or loaning their products free of charge to TV production companies for use in their shows.

Another issue is, in feature films product placement can be protected by copyright and when a TV Company purchases the rights to a feature film the product placement is a part of the acquisition.

1.2 Purpose and Problem Formulation

The purpose of this paper is to elucidate the applicability of some of the marketing regulations mentioned above. The question this paper intends to answer is whether the law makers and other rulemaking authorities have gained the purpose of the laws and regulations in the area or if it may be that companies and organisations, in spite of the regulations, can take actions in opposition to the intentions with them. Further there will be a discussion concerning the significance of the new Television without Frontiers Directive communication.

1.3 Method and Criticism of the Sources

The method used during the work with the paper is primarily the traditionally law dogmatic method, meaning that the words of the law, preparatory work, case law and doctrine have been studied to gain the purpose with the paper.² Worth to mention is that in the study of juridical marketing questions guiding declarations generally are lacking. In the

² Hellner, 2001, p.22.

part concerning surreptitious advertising and product placement as a phenomenon most of the material has been obtained in the business economic literature and in articles in non-legal journals and magazines. Material to the part concerning self-regulations has mainly been taken from sites on the Internet.

Since non-legal settlements are of consequence in the areas elucidated by this paper these have also been studied, especially settlements from the Radio and TV review committee. As a legal source the significance can be discussed. Indeed are courts not restraint to these form of settlements but the tendency to put them in practice is significant. The suitability of this may be questioned from a law and order perspective. On the other hand, special panels of lay assessor have often access to expertise that courts do not have the assets to put in disposition for a single trial, which means that their judgement often are well-founded and therefore valuable. This might be a bearing reason why courts shall show consideration for those settlements. In a similar way can the suitability and the juridical status of self-regulations as well be a topic of discussion. On the area of Market Rights it can be established that a mixed method has been applied concerning legislation and self-regulations. Self-regulations show many advantages inter alias, flexibility, trade adjustment and simpler and less costly application for the government. The disadvantages consist of uncertain effect, faint sanctions, the state that earnest companies are not reached and the risk that wider community interests are mixed with the interests of the parties. In the same way the legislation instruments in the area of Marketing Rights prove on weaknesses, inter alias, the difficulty to frame laws, rigidity and bureaucracy, control problems and official costs. The advantages with the legislation instrument are the accordance, law and order, efficient sanctions and non-partisan application of the legal system.³

Those are issues that I have taken in mind during the examination of the self-regulations and the laws of current areas in this paper.

³ Josefsson, 2001, p.209.

1.3 Delimitations

The paper deals with the regulation of product placement, a form of surreptitious advertising in audio- and audiovisual media i.e. in radio, TV and film contexts. The legal marketing regulations will be studied. Primarily is it the general regulations that are brought to the fore concerning surreptitious advertising and product placement such as the Marketing Act, the Radio and TV Act and the Television without frontiers Directive.

1.4 Disposition

In an introductory part will the phenomenon product placement will be accounted for, examples on definitions of the practise will be given both generally and legally. Thereafter a definition of the practice in this context will be accounted for. The introduction of the third chapter consists of the purposes of regulation of marketing measures. The Swedish and the European Regulations will thereafter be accounted for. The chapter ends with examples on the application of the regulations. In the fourth chapter the self-regulations are reported, however any examples of the application of these rules are not given due to the reason that such settlements are not official.

Finally a discussion will take place concerning the significance of the Commission's proposal of an updated "Television without Frontiers" Directive and an analysis where I tend to answer the earlier posed question.

2 Product Placement

2.1 Introduction

The concept product placement implies that a real commercial product, trademark or company name is used in fictional media, and the presence of the product, trademark or company name is a result of an economic exchange. When featuring a product etc. is not a part of an economic exchange it is called a product plug or prop placement.⁴

Many people believe that product placement began with the placement of Reese's Pieces in the feature film "E.T" as sales of the sweets rose 80 percent. However, Reese's Pieces was not the first product placement but the real breakthrough for the practice.

The first recognizable product placement having a direct impact on sales was both unintentional and negative for the undershirt industry. In "It Happened One Night", a 1938 feature film with Clarke Gable in the lead led to a drop in the undershirt sales in the U.S. The reason: Gable took his shirt off in front of the female lead and stood bare-chested. It was not until the 1950s when James Dean and Marlon Brando rode their motorcycles in T-shirts that undershirt sale began to rise.⁵

Today product placement is common in media. However it is seemed that the practice alone will not launch a brand but is a catalyst in generating enormous amounts of impressions as a part of the brand advertising and marketing mix.⁶

An example to which extent the practice has gone is in the feature film "Collateral" with Tom Cruise in the lead where there was a product placement, in average, every seventh second.

The practice product placement enjoys different standards worldwide. Originated in the film industry, a traditionally unregulated industry, it has gone unnoticed by lawmakers and regulators for many years.⁷

⁴ www.wikipedia.com

⁵ <http://www.itvx.com/SpecialReport.asp> 2006-06-01.

⁶ *ibid.*

⁷ Schejter, 2004, p. 4.

2.2. Background

Product placement has been used as a marketing tool during a long time, above all, in the United States. The TV programmes, known as soap operas have their origin in the phenomenon product placement and might be the outermost examples of the practice. It was the company Procter & Gamble who started producing shows on the subject of the company's soaps that were used in a several different contexts. The shows, that got the name soap operas were directed at the housewives in the United States and were normally aired during the day when the target group were at home performing their daily house chores.

Product placement sets high requirements on editorial quality and credibility on the productions that the products occur. The products may not be over-exposed so that the film or the TV programme appears to be untrustworthy. A product placement is often combined with a sponsor undertaking by the product company. When a company sponsor a programme it might be easier for them to negotiate for a product placement. However it can be hard to work with both sponsoring and product placement in the same programme not only can the product be over-exposed which may diminish the programmes trustworthiness, there are as well some legal aspects to cast.

2.3 Reasons behind Product Placement

One of the main reason behind that companies chose to product place, as well as using other forms of surreptitious adverting is that the effect of traditional audiovisual advertising is declining. Against a wisely implemented product placement a consumer cannot defend oneself, since the actual product exposure is done in the show the consumer chose to watch. A company may as well, through product placement, reach a long-term exposure that is far less resource demanding than traditional advertising. It is not uncommon that 10 percent of a feature film is financed by product placement.⁸

The arrival of new technology such as personal video recorders (PVRs) and video-on-demand content via cable or broadband, combined with the increasing number of homes with access to multi-channel television, is putting the traditional advertising spot under

⁸ Nylander, 1998, p. 37ff.

threat. For both advertisers and broadcasters product placement may offer a partial solution to the problem.⁹

The audiences are given more and more ways to skip commercial and that is why advertisers have to find new ways to expose their product or services.

2.4 Definitions of Product Placement

Even though the literature concerning product placement is not very extensive there are certain divided opinions how product placement shall be defined and what is product placement and what is not. A reason may be that there is more than one way to expose a product in media.

2.4.1 General Definitions

In 1994 one of the first definitions of product placement was given:¹⁰

“Product placement is a paid product message aimed at influencing movie (or television) audiences via the planned and unobtrusive entry of a branded product into a movie (or television program). The typical product placement stems from a symbiotic relationship between a moviemaker (who controls the opportunities for product appearances in a movie) and a product sponsor (who seeks such opportunities in exchange for valuable consideration).”

However, since 1994 there have been many developments and modifications to the concept product placement. A later definition of the concept brand (or product) placement reflects the trend of increasing the spectrum of implementations of brand placement:¹¹

“ Brand placement - a paid inclusion of branded products or brand identifiers, through audio and/or video means, within mass media programming”

This definition does not limit the use of product placement techniques to movies and TV programs, even though it is in those two medias that the practice still is most common.

⁹ Marketing week, 2006-03-17.

¹⁰ Balasubramanian, 1994, p. 29ff.

¹¹ Karrh, 1998, p. 35.

Other medias have lately been exposed to product placement, inter alias print (e.g. novels, short stories, lyrics), music videos and videogames.¹²

The Centre for Media & Democracy calls it a¹³ *“form of advertisement, where branded goods or services are placed in a context usually devoid of ads, such as movies, the story line of television shows, or news programs. The product placement is often not disclosed at the time that the goods or service is featured”*

The Swedish reference book *“National Encyklopedin”* defines product placement as following:¹⁴

“ A method to partly finance, above all, motion pictures by letting companies pay for usage or appearance of trademarks or products in the film ”.

2.4.2 Legal Definitions

According to European Union Law product placement is a form of surreptitious advertising and does not have a definition of its own. The definition of surreptitious advertising is stated in the “Television without Frontiers” Directive 89/552/EEC as amended by Directive 97/36/EEC, Article 1 c:

“Surreptitious advertising means the representation in word or pictures of goods, services, the name, the trademark 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 and might misled the public as to its nature. Such representation is considered to be intentional in particular if it’s done in return for payment or for similar consideration.”

However in the proposal submitted by the Commission in December 2005 product placement was identified as form of indirect advertising. *‘Where broadcasters can be*

¹² Karrh, 1998, p.37.

¹³ http://www.sourcewatch.org/index.php?title=Product_placement 12/4 2006 at 5.12pm.

¹⁴ http://www.ne.se/jsp/search/search.jsp?h_search_mode=simple&h_advanced_search=false&t_word=produkt_placering&btn_search=S%F6k+i+NE 26/3 2006 at 2.12pm.

charged for featuring a branded product in a programme'. A practice that is allowed in the United States, but so far illegal in Europe.

Indirect advertising is advertising for a product or service which is not the advertised object but that associates to the advertised object.

Since there is not an explicit ban of surreptitious advertising in Swedish regulations the practice is not defined nor is product placement. Although product placement is considered as surreptitious advertising since the "Television without Frontiers" Directive have been implemented in The Radio- and TV Act. Surreptitious advertising has been mentioned in case law a couple of times and in 1992 veiled advertising was said to be equivalent to surreptitious advertising¹⁵.

2.5 Definition of Product Placement in this context

Product placement is a cooperative effort of advertisers and creators of entertainment products in which trademarked goods are embedded into popular entertainment products in order to encourage their consumption, overriding entertainment and artistic concerns.

The definition of product placement in this paper covers any form of commercial communication consisting of the inclusion or reference to a product, a service or the trademark thereof so that it is featured within a programme, normally in return for payment or for similar consideration.

¹⁵ MD 1989:10.

3 Swedish and European Union Law

3.1 The Purpose of Regulation of Marketing Measures

The regulations that controls Swedish and European marketing measures provide for various purposes and safeguards different interests. In the foreground lays the interest worthy of protection, the consumer interest. The development of the Swedish Consumer and Marketing legislation has mainly occurred during the second half of the twentieth century. The breakthrough of the Market Economy during the first post-war decades resulted in a more consuming focused way of thinking in opposition to the production focused approach that earlier prevailed.

The Market demand came at this time to control the manufacturing of goods, services and other utilities instead of the production, that earlier controlled the demand. The consumer policy became through the Treaty of Amsterdam a policy area of its own within the European Union with the meaning that the association must take the needs and wishes of the consumers in consideration during the shaping of their policies. The consumer protection within the European Union shall attain a high level. Measures shall be taken that support the consumers' health, safety and economic interests and give the consumers satisfactory information. Those measures that are taken on a European legal level shall not restrain any Member State from retaining or introducing stricter protection measures assuming that they are in agreement with the Treaty and the Commission is informed about them.

The purpose of, for example, the Swedish Marketing Act, which is a law of general significance on the Market rights area, is to protect consumers and other businessmen from undue marketing, to maintain fundamental ethics concerning marketing in general, to provide the buyers with conditions to make premeditated choices, to protect them from misleading marketing and to provide rules to separate advertising from other information.¹⁶ In addition to the consumer political considerations, the regulation of marketing measures are of great importance as well the interest to maintain a free and efficient competition.¹⁷

¹⁶ Prop. 1995/95:123.

¹⁷ Svensson, 2004, p.7ff.

3.2 The Marketing Act

The Swedish Marketing Act, *Marknadsföringslagen* (1995:450) (MFL), comprises all marketing of products. The expression marketing shall in this context be realized in its widest sense. Marketing concerns, according to 3 § MFL, advertising and other measures in business and trade that are dedicated to promote any form of products or services. Having a single product or service for sale is considered marketing, even if done passively.

There are a few terms and notions of fundamental significance in the legislation that should be defined clearly:¹⁸

- Marketing: Advertising and other measures in business and trade activities that are devoted to promote the sale of and access to products, including letting. Thus the term marketing comprises now also purchasing promoting measures such as job advertisement.
- Businessman: Anyone who professionally runs an activity of economic nature, e.g. joint-stock companies, trading companies, economic associations, governmental and municipal companies, foundations and non-profit associations who runs business and trade activities.
- Consumers: Private persons (the purchasing general public) but also others who shall acquire a product for final consumption.
- Products: Goods, services, real property, job opportunities, and other utilities.

3.2.1 Background

The present Marketing Act came to force in January 1996. This after a special investigation was appointed in 1991 to look over, suggest changes and adjust the old Marketing Act to EEC rules. The investigation's extensive propositions to alterations resulted in an Act, *Marknadsföringslagen* (1995:450). The new act is based on the rules in the Undue Marketing Act that were applied in the 1970s and the rules concerning information duty, and respectively unfit and dangerous goods with which the law was increased. So, today MFL contains regulations concerning undue and unacceptable marketing, information duty, and unfit goods. Since 1996 a few changes and supplements

¹⁸ Svensson et al, 2002, p. 78f.

have been done, most recently (2004), an additional regulation of non-ordered advertising came to force.¹⁹

3.2.2 Purpose

The purpose of the Marketing Act is to promote the consumers and the business community's interest in relation to marketing of products and to counteract marketing that is undue to the consumers and businessmen (1 §). In other words, the law provides for the interests of the consumers and gives, at the same time, businessmen protection against undue marketing.²⁰

3.2.3 The General Clauses

In the Marketing Act there are three general clauses i.e. commonly kept regulations. The idea is that the content and boundaries of the clauses shall be settled by case law of the Market Court. 4 § MFL consists of two clauses, the first one renders the possibility to ban undue marketing and the second concerns the order to submit information. The third general clause (17 §) differs from the other two it focuses on unfit goods. Accordingly, a businessman who market products to consumers that are obviously unfit may be prohibited to continue with the marketing.²¹

3.2.4 The Requirements on Openness

Further, the Marketing Act contains ten specific paragraphs with explicit bans and requirements focusing on undue marketing, 5-13 §. It is a directory with rules also based on case law of the Market Court of many years and the aim is to prevent obvious unacceptable procedures.²²

5 § MFL is of special interest when it comes to the relevant areas of this paper. 5 § MFL states a requirement of openness in marketing. According to the first section of the law shall the design and presentation of all marketing be made in a fashion, clearly showing that it is a matter of marketing, so-called identification of advertisements. According to the

¹⁹ Svensson, 2004, p. 34.

²⁰ Ibid.

²¹ Nordell, 2004, p. 48ff.

²² Svensson, 2004, p. 38.

second section shall it also be apparent who is responsible for the marketing, so-called denunciation of the sender. 5 § MFL constitutes a codification of the case law developed by the Market Court and its precursor the Market Council and the rules concerning openness that have long existed in non-judicial systems of norms, among others in the International Chamber of Commerce's International Code of Advertising Practice.

This fundamental principle signifies that advertising and other marketing measures shall easily be clearly distinguishable as such and it shall be possible, without doubt, to make a difference between advertising messages and other information. Most commonly it is the appearance of the description that explains that it is a matter of advertising. It is considered essential for the consumers' interests that advertising does not appear as being free from commercial interests but openly shows its real nature.²³

The regulation is directly sanctioned, which implies that a marketing measure that is not in agreement with the requirements of the regulations can be refuted not only with a ban that is sanctioned with a fine or an injunction according to 14-15 §§ MFL but also with a sanction fee according to 22 § MFL, a so-called market disturbance fee.

The Market Court and its precursor the Market Council have developed a rather fixed case law concerning the requirements on openness. Though, case law on the audiovisual area is sparse. Most of the settlements have been about statements in print. Case law from the Market Court of 1995 primarily refers to advertisements in other medias than the audio- and audiovisual.

3.2.4.1 Identification of Advertisements

When it comes to identification of advertisement it can be established that it is contrary to the law to design or present commercial advertisement in a paper or magazine in such way that it appears to be editorial material.²⁴ That goes for advertising in audiovisual media too, which is clear since the settlement of the Market Court (MD 2002:13). When a Swedish pension and fund administration company was banned under a penalty of a fine to market the company's funds by designing the advertising (a TV commercial) in such way that it was easily mistaken for editorial material. There are different ways to identify advertisements one is to clearly differ the advertisement from the rest of the material with a

²³ Svensson et al, 2002, p. 135.

²⁴ Ibid., p. 136.

very obvious border, known as marking of advertisement. According to the Market Court may a faint marking be compensated with providing the advertisement a clear denunciation of the sender.²⁵ The rule concerning identification of advertisement is a bit complicated. Problems have been given attention in the doctrine and one of them is that there is not a clear border between how advertisement content and editorial media content shall be designed and, the language of the advertisements as well as the outlines for editorial content change over time.²⁶

One of the few cases from the Market Court concerning identification of advertisement in audiovisual media was in the borderland of sponsoring and surreptitious advertising. The case concerned a transmission of the TV-programme *Båtlivet* on the Nordic Channel, a channel transmitted by satellite from Sweden. In parts in the programme three different companies presented their products. Parts of the programme were somewhat of an informative nature. The Market Court affiliated in this case with the regulations of the Television without Frontiers Directive concerning sponsoring since there were not any particular sponsorship regulations in Swedish law at the time and commented that promotion of sales in advertisement stressing parts of programmes may not be transmitted in sponsored programmes. In this case were the advertisers in the contributory list in the end of the programme. This information were not enough since it was not shown in connection with respectively commercial in the programme. The settlement elucidates that identification of advertisement and denunciation of the sender must be done in connection with the advertising message so that the consumer does not believe that it is a matter of an editorial element.²⁷

3.2.4.2 Denunciation of the Sender

The principal rule concerning denunciation of the sender is that a businessman in his marketing shall state the firm or name under which the business operates. Sometimes it might be enough if the advertisement states a well-known trademark that directly associates with a certain company and thus provides the essential identity information.²⁸ The rule concerning denunciation of the sender does not require any other information of

²⁵ MD 1980:12

²⁶ Nordell, 1999 p. 851.

²⁷ MD 1992:19

²⁸ Svensson et al, 2002, p.144.

the sender that might make it easier for the receiver to contact the businessman but the information on the identity of the sender. The reason is that the regulation is applicable on all forms of medias and it is not very useful to provide addresses or phone numbers on radio or TV.²⁹

3.2.5 Sanctions

There are several sanctions that can be obtained according to MFL, depending on what regulation that has been infringed. At breach against the general clauses in 4 § the main sanctions is ban or enjoinderment. The ban or enjoinderment may be combined with a fine.³⁰

As a result of the Marketing Act of 1995 a new sanction were introduced – a marketing disturbance fee (22 §). A breach, with intent or negligence, against the directory of rules (5-13 §§) may result in such a fee. The fee will be debited to the businessman who has infringed the regulation or substantially contributed to the infringement. Those who can be affected are thus advertising agencies whom create and produce advertising and marketing measures, newspapers or magazines, and radio and TV companies whom distribute marketing. Infringement of the directory of rules may as well result in liability for damages. All marketing measures that are in opposition to one or several of the rules in the directory are also covered by the general clauses. The sanctions for the infringement of whose are ban or enjoinderment (14-17 §§). A businessman cannot be ordered to pay a marketing disturbance fee simultaneously as a fine been ordered. The fine has been given precedence, this to avoid double consequences for the same action.³¹

3.3 The Radio and TV Act

In Sweden, advertising on the radio and on TV is a rather new phenomenon since advertising on air earlier was prohibited. The Radio and TV Act, *Radio- och TV-lagen* (1996:844) (RTL) is applicable on transmissions of sound-broadcasting radio- and TV-

²⁹ Svensson et al, 2002, p.144.

³⁰ Ibid., p. 86f.

³¹ Svensson et al, 2002, p. 85ff.

programmes directed to the public (chapter 1, 1 §). A transmission is directed to the public if it is accessible, without a special request, to anyone who wants to receive it.³²

3.3.1 Background

The Radio and TV Act came to force in December 1996 and replaced several rules that had regulated different types of radio and TV activities. With RTL a more uniform, clearer and easy-grasped legislation was brought about. However, the act did not result in any significant changes of the rules in cause. The act is valid on transmissions of TV-programmes if the transmission can be received in any state, committed by the agreement concerning the European Economic Area, if the company operating the transmission activity is established in Sweden, according to the “Television without Frontiers” Directive or if the company uses a frequency granted by Sweden, satellite capacity appertaining to Sweden or a satellite up-link situated in Sweden. The Act is therefore not applicable on TV3, Channel 5 or ZTV since these channels are transmitted by satellite from the UK, and are not established in Sweden according to the definition of the “Television without Frontiers” Directive.³³

3.3.2 Advertising on Radio and TV

Chapter 7 in the Radio and TV Act contains the particular regulations concerning advertising on radio and TV. In several respects the regulations are more precise, comparing to the Marketing Act. The reason behind that is that the legislation has been adjusted to the EC Directive, “Television without Frontiers”.

A major issue with advertisements on commercial radio and TV is to differ the advertising from the editorial media context. There are several rules in the act that forbids such surreptitious advertising. Hence, there are strong requirements that the commercials should clearly be separated from the rest of the programme context (cf. 5 § MFL). The rules that are equivalent with the bans against surreptitious advertising consist partly of the regulations in chapter 6, 4 § RTL concerning bans against undue prominence which prohibits favouring commercial interests on a programme that is not identified as

³² Ibid., p. 520f.

³³ Nylander, 1998, p. 17ff.

advertising. In the confines of surreptitious advertising is sponsoring, in the sense that others than the radio or TV Company fund a programme. According to chapter 7, 8 § RTL sponsoring is permitted but it must be stated appropriately who the contributor is in the beginning or end of the programme. Tobacco and liquor companies are not allowed to sponsor programmes, chapter 7, 9 § RTL. The news or programmes with news commentaries cannot be sponsored.³⁴

In RTL there are requirements that acts elucidating on the border between commercial and editorial programme content. There is, inter alias, a reference to the rules concerning identification of in advertisement in MFL. However RTL consists rules concerning the matter, as well.. The observance of most of the rules concerning advertising and sponsoring are supervised by the Radio and TV Review Committee, *Granskningsnämnden för Radio och TV* (GRN). The Swedish Consumer Agency, *Konsumentverket*, observes the rules in RTL concerning advertising aimed at children, bans against newsreaders and others to take part in commercials and bans against advertisements of pharmaceuticals.³⁵

3.3.3 Sanctions

The premier sanction that an infringement of the regulations in RTL concerning advertisements and sponsored programmes may involve is an order to pay a particular fee. The sanction is not compulsory at a breach of the regulation since the legislation states that the one who disregards may be ordered to pay a particular fee.

Licenses are required to broadcast certain types of radio and TV. Companies with these licenses can be affected by other sanctions. They can get their licenses retrieved if the regulations concerning advertising and sponsoring in chapter 7 RTL has been infringed substantially (Chapter 11, 2 § RTL).

³⁴ Nordell, 2004, p. 83ff.

³⁵ Nylander, 1998, p. 46.

3.4 European Union Law

3.4.1 Background

The European Economic Community (EEC) came into existence following the signing of the Treaty of Rome in 1957 by the six original Member States, France, Germany, Italy, Belgium, The Netherlands and Luxemburg, This Treaty represented, particularly, the culmination of a movement towards international cooperation which had been growing throughout the twentieth century.³⁶

The aims of the treaties (a second Rome Treaty was signed by the same Member States) were primarily economic, to create a ‘common’ market in Europe but not exclusively. The founder members of the EEC were enthusiastic by ideals as well as economic practicalities. As stated in the preamble to the EEC Treaty, its signatories were ‘*Determined to lay the foundations of an ever closer union among the peoples of Europe*’, ‘*Resolved by thus pooling their resources to preserve and strengthen peace an liberty*’³⁷.

The principle institutions as set up by the original EEC Treaty to carry out the Community’s tasks are: The Assembly or Parliament, The Council, The Commission and The Court of Justice.³⁸

With the ratification of the Maastricht Treaty in 1993 the European Economic Community changed its name and became the European Community. With the two other pillars³⁹, the European Community also became known as the European Union, which exists today.

3.4.2 European Union Regulations

The Treaties of Rome, as amended by the Treaty of Amsterdam, and more commonly known as the EC Treaty is the fundamental source of rights within the European Union and makes up the EU primary legislation. The treaties empower the Council and Commission to make three types of legislation, so-called secondary law. (1) Regulations, which are designed to achieve uniformity of law among the Member States. They are of general

³⁶ Steiner et al, 2003, p.3f.

³⁷ Treaty establishing the European Economic Community, EEC Treaty

³⁸ Steiner et al, 2003, p.19.

³⁹ Common Foreign and Security Policy (CFSP) and Police and Judicial Co-operation in Criminal Matters (PJCC)

application and usually have direct force of law in all Member States without the need of further legislation i.e. they are directly effective. (2) Directives, which seek to harmonise the law of Member States. They are instructions to Member States to bring their laws into line by a certain date. The States themselves are free to choose the methods by which the changes are implemented e.g. by Act of Parliament or statutory instruments. (3) Decisions of the Court of Justice, which are Judgements of the Court of Justice on matters of European Law that are binding on courts within the Member States.⁴⁰

Regulations are obligatory in all their elements are directly applicable in all Member States. The regulations have direct effect so they come to force without passing through national laws. Since European Union Law is supreme over the laws of the Member States, any national laws contrary to the regulations are overruled. A directive, on the other hand, must transpose the objectives into national law before becoming applicable.⁴¹

3.4.2.1 An European Marketing Law?

European Union Law does not contain a uniform Marketing Law. It has joint rules for parts of the marketing law, for example deceptive advertising and TV commercials. Since a uniform law is absent, the national law in every Member State is effective with major differences as a result. This is shown especially in cross-boundary advertisement where it can be difficult to determine which country's national law is applicable. Since television broadcasting is considered as a service according to EC Treaty, the principles of free movement of goods and services are of consequence in the regulation of the marketing. According to them national restrictions that are discriminating and complicate or prevent the trade on the common market are prohibited.⁴²

3.4.2.2 Television without Frontiers

The Directive 89/552/EEC as amended by Directive 97/36/EC, "Television without Frontiers" (TVWF Directive) consists of several rules concerning TV and is the cornerstone of the European Union's audiovisual policy. It rests on two basic principles: The free movement of European television programmes within the internal market former

⁴⁰ Keenan et al, 1998, p 25f.

⁴¹ Hettne et al, 2005 p. 24ff.

⁴² Svensson et al, 2002, p. 666.

commonly known as the "country of origin" principle and the requirement that television channels where practicable, reserve half their broadcasting time for European works.⁴³

The two basic principles aim to ensure the free movement of broadcasting services within the internal market and at the same time preserve certain public interest objectives, such as cultural diversity, the right of reply, consumer protection and the protection of minors. They also intend to promote the distribution and production of European audiovisual programmes, for example ensuring that they are given majority position in television channel's programmes schedules. The rules must though remain proportionate to the objectives and the audiovisual market is changing⁴⁴.

The rules concerning advertising are in the articles 10 to 20. A few examples are: Advertising ought to be fitted in between the programmes, but may occur in the programme if it is easily identified (art. 11). Advertising may not discriminate race, gender or nationality. Elements that appear offending for peoples religious or political believes may not be transmitted. Advertising encouraging behaviour dangerous for people's health and safety is prohibited. Tobacco adverts may not occur on TV (art. 13) and liquor adverts may only occur under special circumstances (art. 15).

The Member States may nationally establish more strict rules concerning advertising on TV and Pay-TV. Those rules are not applicable on channels transmitting from another Member State.⁴⁵

3.4.2.3 The updated TVWF Directive

The European Commission submitted a proposal in December 2005 to adapt the Directive to developments in the field of TV broadcasting. In the report the Commission proposed a work programme to open a debate on the possible need to adjust the EU regulatory in this field because of the developments in market and technologies. In advertising new techniques such as split screens, interactive advertising, virtual advertising, and (even) product placement have been developed. In April 2004 the Commission adopted an interpretative communication to clarify the meaning of certain provisions in the Directive. The communication specifies particularly how the relevant rules are to be applied on split

⁴³ <http://europa.eu.int/scadplus/leg/en/lvb/l24101.htm> 8/6 2006 at 6.29pm

⁴⁴ Modern Advertising Rules, Information Society and Media, European Commission.

⁴⁵ http://www.eu-upplysningen.se/templates/EUU/standardRightMenuTemplate_2288.aspx 8/6 2006 at 6.31pm.

screens, mini-spots, telepromotions, virtual sponsorship and interactive sponsorship. According to case law of the Court of Justice, the interpretative communication applies the principle that the ban of a principle or type of advertising is valid only if the Directive explicitly provides it for.⁴⁶

Product placement is one of the advertising types that have been explicitly defined in the proposal submitted by the Commission. This is the first time the use of product placement advertising has been set in a clear legal framework. The rules will allow clearly identified product placement but in news, current affairs and children's programmes. It is still prohibited with adverts for tobacco and prescript drugs. To prevent surreptitious advertising, which is prohibited, the consumers will be informed at the beginning of a programme that product placement is in use.⁴⁷

Hence, the proposed directive supports the new forms of advertising and makes a difference between product placements as such from surreptitious advertising and prohibits product placement that takes the form of surreptitious advertising by a broadcaster. But, still there are no rules on product placement in independently produced works and feature film.⁴⁸

One of the reasons of the definition and the permission of product placement is to prevent the legal uncertainty that exists because of the discrepancy between the European Union and the United States. Product placement that is common in American programmes is generally banned in all European countries but Austria. However it is accepted if an imported show is being aired and today there are many shows with product placement. The discrepancy is positioning the European industry at a disadvantage with the US market.⁴⁹

According to the proposal shall the quantitative limits on advertising shall be removed and the rules on inserting advertising in TV programmes be greatly simplified. Broadcaster, and not regulators would be permitted to chose the best moment to insert advertising in programmes, rather than being obliged, as they are now, to allow at least 20 minutes between advertising breaks. The proposal specifies that cinematographic films,

⁴⁶ Fifth report from the Commission to the council, the European Parliament, The European Economic and Social Committee and the Committee of the Regions on the application of Directive 89/552/EEC "Television without Frontiers", 10.2.2006, Brussels

⁴⁷ Out-Law, Europe set to relax rules on TV product placement, <http://www.out-law.com/page-6455>, 31/3 2006 at 10:44 am.

⁴⁸ Modern Advertising Rules, Information Society and Media, European Commission

⁴⁹ Out-Law, Europe set to relax rules on TV product placement, <http://www.out-law.com/page-6455>, 31/3 2006 at 10:44 am

children's programmes, current affairs programmes and news must not be interrupted more than once every 35 minutes. The 12-minute upper limit on all advertising in any given hour would stay.⁵⁰

So, the changes aim to stimulate competition within audiovisual media that should widen consumer choice, promote economic growth and help to create new jobs in the EU.⁵¹ However the proposal has not yet been approved and is therefore not yet applicable.

The proposal, which eases the rules on advertising got some criticism at its launch. 13 of the Member States, including Sweden, threatened to stop the Directive. If the proposal submitted by the Commission is stopped the commercial TV Companies will miss substantial income possibilities. Today the European commercial TV market turns over approximately 270 billion SEK.⁵²

3.5 Application of the Regulations on Product Placement

3.5.1 General Notification

The case law examples that follow in this part are only examples from Sweden. Since the regulations applicable on the practice, as defined earlier are, primarily national legislations I have chosen not to study those. When it comes to EC case law, the judgements are sparse. Only one case concerning surreptitious advertising has been mentioned in EC case law, the Bacardi France case C-429/02. The main issue in this case was not whether it concerned surreptitious advertising or not but a matter of the marketing of alcoholic drinks in a Member State. The case mentioned is not of consequence in this paper.

3.5.2 Swedish Applications

Product placement is considered surreptitious advertising in Sweden. There is no explicit ban against the practice in Swedish legislation. However, in most cases surreptitious advertising as defined by the Directive, may be affected by the rules concerning openness in MFL and the rules concerning bans against undue prominence in The Radio and TV Act (6, 4 §). The Swedish regulation reaches a bit further than regulations in the Directive since

⁵⁰ http://www.eu-upplysningen.se/templates/EUU/standardRightMenuTemplate_2288.aspx

⁵¹ Modern Advertising Rules

⁵² Dagens Industri, Sverige nobbar EU:s nya reklamregler, 2006-01-18

the rules in MFL are applicable on marketing irrespective of which medium it occurs in and the rules in RTL ban undue commercial favouring even if the description does not have the intent to serve as advertising.

The observance of most of the rules concerning advertising is supervised by the Radio and TV Review Committee, *Granskningsnämnden för Radio och TV* (GRN)⁵³.

According to GRN case law a mentioning of a company name or trademark outside advertised time may be accepted, if it is motivated by an information or entertainment interest. The less the information or entertainment interest is in a certain case, the less is the space for benefit, i.e. to which extent the focus on a trademark or company name is permitted. In those cases where the transmissions are under conditions totally controlled by the TV Company, certain demands are required on restrictiveness of the exposure of trademarks or company name. It is the benefit, the exposure of the product itself that shall be motivated and not the judgement of the entertainment interest whether the programme is popular or has a large audience.⁵⁴

According to GRN case law a commercial interest exists if it can be assumed that the product or service in question is supplied by someone who professionally operates an activity of economic nature⁵⁵. Whether the activity is operated with a profit aim or not is not assigned a conclusive meaning in the context⁵⁶.

TV 4, the only commercial channel transmitted from Sweden, has been forced to stop airing the Oprah Winfrey Show since the American superstar constantly talks about products and gives samples to the audience. This is considered undue prominence and prohibited according to Swedish regulations. Another show transmitted by TV 4 that also has been investigated and ordered to pay a penalty fee is the programme Dr. Phil that also consists of product placement.⁵⁷

Examples where product placement occurred (and got convicted) in TV programmes and feature film produced in Sweden are:

The, in Sweden famous, wine expert Bengt Frithiofsson spoke warmly about his “own” wines on a TV 4 morning show, this well-known example of undue prominence resulted in

⁵³ Nylander, 1998, p. 46

⁵⁴ GRN, Granskat och klart tema, 2003, p.53.

⁵⁵ SB 429/04.

⁵⁶ SB 545/03.

⁵⁷ Resumé, Produktplacering dyrt för TV 4 2005-03-03 p.7

a 500 000 SEK fine for TV 4 .⁵⁸ Even the non-commercial TV channel SVT has been convicted by GRN for advertising in ordinary programmes. In the TV series “*Rederiet*” company names were exposed several times in a manner considered undue.⁵⁹

The popular TV programme “*Så ska det låta*” on SVT was convicted for undue prominence because one of the guests on the show wore a t-shirt with brand print. The exposure of the brand was considered to profit the trademark in question and therefore was the element was in opposition to the regulation in the Radio and TV Act concerning the ban against undue prominence (6, 4 § RTL).⁶⁰

When it comes to feature film the examples are many. One example is in “*Hamilton*” when the leading role opens a door with a petrol station card and the company name is zoomed in during several and long seconds.⁶¹

⁵⁸ SB 85/97

⁵⁹ I.e. SB 103/02

⁶⁰ SB 295/03

⁶¹ SB 232/01

4 Self-Regulations

Legislation is not the only way to regulate an area. There are measures in systematized forms that can be followed by a sole company, a group of companies, a line of business, or the business community as a whole. These measures are called self-regulations. If legislation or self-regulations are applied on an area depends on which area one is operating. On the area of Market Rights, and more specific, the area of regulating advertising, self-regulations are common. There are three main types of self-regulation: One-sided recommendations from the business community, a trade association, or an more exhaustive association, More or less voluntary trade and industry organisations and authorities, and Committees or similar authorities controlling the rule application with means of bringing pressure to bear.⁶²

4.1. The International Chamber of Commerce

ICC is the world business organization. ICC groups thousands of member companies and associations, engaged in international business, from over 140 countries. The organisation was founded in Atlantic City, USA in 1919 and its headquarters have always been situated in Paris, France. ICC promotes an open international trade and investment system and the market economy. One of the main purposes of ICC is to provide self-regulation through creating and introducing rules and codes of conduct. Despite the fact that these rules and codes are voluntary they are observed in thousands transactions daily and have become a natural part in international trade. Business leaders and experts from the ICC membership establish the business stance on broad issues of trade such as marketing ethics.⁶³

4.1.1 ICC International Code of Advertising Practice

ICC has developed basic rules, or so-called codes, as an expression for the business community's recognition of its social responsibilities in respect of commercial communications. The Code was first issued in 1937 and has been revised six times since.

⁶² Johnsson, Lars, Marknadsrätten, särskilt reglering av reklam, SvJT, 2001, p. 294.

⁶³ http://www.icc.se/eng/eng_index.htm 8/6 2006 at 6.34pm.

The Code applies to all advertisements for the promotion of any form of goods or services. The ethical standard of conduct that the Code sets is to be followed by all concerned with advertising, whether as marketers or advertisers, advertising practitioners or agencies, or media, and is to be applied against the background of the applicable law.⁶⁴

The basic principles state that no advertising should be such as to impair public confidence in advertising (art. 1). They also state that advertisements should be so framed as not to abuse the trust of consumers (art. 3). Article 12 deals with identification of advertisements. This article states that advertisements should be clearly distinguishable as such, whatever their form and whatever the medium. If a medium contains news or editorial matter the advertisement should be presented so that it will be readily recognized as an advertisement. The responsibility for the observation of the Codes lies up on the advertiser, the advertising practitioners or agency as well as up on the publisher, the media company or other supplier. The implementation of these articles is dealt with in article 23 and it says that the Code is to be applied nationally or internationally, and should be the basis for the decisions by bodies set up for the purpose of self-regulation. In Sweden that body is The Market Ethic Council, *MarknadsEtiska Rådet* (MER), serve that purpose.

4.1.2 Settlements by The Market Ethic Council

MER is the authority that observes the ICC framework in Sweden. An overlook of the comments made by the Council since 1993 shows that only one comment concerns the rule concerning identification of advertisements.⁶⁵ However, that matter did not concern advertisement in audio and audiovisual media and are therefore not of consequence in this paper. Only a few settlements after 1993 concerns alleged surreptitious advertising, and these were both a matter of alleged surreptitious advertising of alcoholic drinks.⁶⁶ All in all it can be said that when it comes to the application by MER of ICC International Code of Advertising Practice concerning surreptitious advertising are not of great significance today. Although it is not said that the rules does not have any significance in the matter since companies actually complies with them. The case might be that this is one of the reasons why matters have not been up for trial.

⁶⁴ ICC International Code of Advertising Practice

⁶⁵ Comment 10/2

⁶⁶ Comments 10/99 and 2/01

5 Discussion and Analysis

5.1 The significance of the new TVWF Directive

The proposal submitted by the Commission concerning the need to adjust the current Directive because of the developments in market and technologies did, as mentioned earlier, result in a few raised voices. But those mostly concerned the extension of the advertisement space in TV.

The acknowledgement that product placement is no longer only a form of surreptitious advertising got a more positive reception. Even if the communication has not yet been adopted many advertisers look at the practice as pretty much legal already. The allowance of the practice will give Europe the possibility to go after the money that the business clearly alters. Media reports estimates that advertisers paid more than 300 million USD to producers and networks during the 2003-04 TV season, in the United States. Many of the placements were shown on European TV as well but without a giving the European advertisers the possibility to participate. Unfair? Most likely.

Since there are so many ways around the regulation concerning product placement it seems about time that practice got acknowledged. Traditional commercial breaks can today easily be skipped, because of technological developments. So, an advertiser does not get many opportunities to expose their feature on TV but as an actual part of the programme the consumer has chosen to watch.

A very important issue when it comes to product placement is not to destroy the actual content of the programme, since that only will diminish the trustworthiness of the programme and that might result in less viewers etc. So, the product placement must be done carefully so that the programme still is trustworthy but still in a way so the feature is notable for the consumer.

I find that the proposal is important and that it is good that the practice no longer is seen passed. The meaning with advertizing is to sell products and services so why not let the rules be the same for both Europe and the United States.

5.2 Analysis of the regulations

The regulations concerning surreptitious advertising, and therefore as well, product placement, in Sweden are in my opinion good in those media covered by RTL. In those media is the exposure of products and trademarks something well observed by GRN. Firm case law have has been evolved on the area, meaning that the exposure of products and trademarks is not allowed if it is too typical. Reasonable consideration has been taken concerning, inter alias, the possibility for TV Companies to affect to what extent a product or trademark shall be exposed. In this matter, what makes Swedish regulation in this context strong is, inter alias, that the advertising criteria is not conclusive in RTL. Instead, the fact that a product is being exposed is something taken in consideration. This makes it a bit easier for GRN who does not have to evaluate whether it is a matter of a commercial agreement between a company and a TV Company. To the consumer, whom in the end is the one to be protected by the legislation, it is not of consequence whether that is the case or not.

RTL is applicable on advertising on radio and TV. In the matter of TV RTL is only applicable on transmission via satellite that originates from Sweden. The regulation does not comprise, as earlier emerged, TV3, Channel 5 and ZTV. Areas that the rules in RTL not are applicable but where surreptitious advertizing is brought to the fore are for example marketing in newspapers and magazines, on sport arenas and on the cinema. The rules in RTL concerning identification of advertisements are very clear and are applied diligently. Advertising in other media, including those just mentioned, are directed to MFL's general rules concerning identification of advertisements and denunciation of the sender. The case law concerning those general rules according to MFL is quite sparse. Especially when it comes to advertisements in audiovisual medium comparing to the case law according to RTL. The problem ought to be that when applying MFL it must be shown that it really is a matter of marketing, a requirement that does not exists in RTL where one apparently have a more objective view on marketing. Surreptitious advertizing on cinema or on TV channels not covered by RTL is therefore harder to get hold of. In those non- obvious cases, it must be shown that it a matter of a commercial message and not a part in the, by other regulations, protected production, something considered quite hard. Presumably, this is one of the reasons to why product placement in those contexts not has been on trial correspondently in those media. It might not be accurate to state that surreptitious

advertising in those media is permitted but in practice it is probably only obvious cases that are put on trial. Thus, a discrepancy occurs between what concerns satellite transmissions from other countries than Sweden and transmissions from Sweden. In consideration with the country of origin principle in the TVWF Directive, Sweden does not even have the right to trial identification of advertisements according to MFL if it is a matter on transmission from other Member States. However, surreptitious advertising is not permitted according to the TVWF Directive so probably, in theory, there shall not occur any discrepancy. If it in another Member State, that are to see to that the rules of the TVWF Directive are complied with concerning transmissions to Sweden, exists equivalent lack of regulation as mentioned above it may result in that the surreptitious advertising cannot be gotten to. This actually means as a matter of fact that the regulation becomes different. Seen from a effective point of view it appears doubtful that foreign authorities controls transmissions aimed at the Swedish market. Concerning the matter of transmissions from countries outside the European Union it is a fact that they do not yield under the frame of RTL, which means that concerning on the regulations in the country where the TV Company transmits from, surreptitious advertising will be transmitted in a large quantity.

A difference between MFL and RTL is that MFL primarily aims at the advertisers whilst RTL aims at the transmitting TV Companies. The rules differs as such since the rules RTL establishes last gives the TV Companies power to control what should be done with an advertisement. Maybe it could work as an incentive for advertisers to not use the space for surreptitious advertising to extensively if these as well had some responsibility according to RTL. Today may advertisers more or less try to negotiate a space for product placement without taking any risks. MFL have as mentioned earlier never been used to get to product placement except from MD 1983:17, when it was a matter of extensive product placement with a clear commercial emphasized element.

Seen in general, in marketing measures the tendency seems to be that advertisers seek to use advertising methods that in a minimum extent appears to be advertising. The marketing rules are aimed to give the consumer's the foundation to free choices. But when the advertising is designed in such fashion that the consumers no longer are aware that it is advertising they are exposed to, it can be questioned how free the choice actually is.

The methods used by advertisers changes because the consumers are no longer as receptive to the current marketing. Examples of this are the declining numbers for TV advertisements. The inventiveness in the industry is grand and when the lawmakers make a move are the lines of business one step ahead with the next form of marketing that yet has not been regulated.

References

Official print

Prop. 1995/95 The New marketing Act

Marknadsföringslag (1995:450)

Radio- och TV lag (1996:844)

The Television without Frontiers Directive 89/552/EEC as amended by Directive 97/36/EC COM (2006) 49 final. FIFT REPORT FROM THE EUROPEAN COUNCIL, THE EUROPEAN PARLIMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE OF THE REGIONS

Litterature

Brink, Torsten, Stenlund, Anders, Ström, Lars-Erik, Svensson, Carl-Anders, Praktisk Marknadsrätt, 7 uppl., Norstedts Juridik, 2002

Hellner, Jan, Metodproblem i rättsvetenskapen, Studier i förmögenhetsrätt, Jan Hellner, 2001

Hettne, Jörgen, Otken Eriksson, Ida, EU-Rättslig metod, Norstedts Juridik, 2005

Keenan, Denis, Riches Sarah, Business Law, FT Prentice Hall, 1998

Nordell, Per-Jonas, Marknadsrätten. En Introduktion, Norstedt, 2004

Nylander, Christina, Radio- och TV- rätt, Norstedts Juridik, 1998

Steiner, Josephine, Woods, Lorna, Textbook on an EC Law, 8/e., Oxford University Press, 2003

Svensson, Carl-Anders, Den svenska marknadsföringslagstiftningen, Studentlitteratur, 2004

Articles

Balasubramanian, S.K., "Beyond Advertising and Publicity: Hybrid Messages and Public Policy Issues", Journal of Advertising, XXIII, 4, 1994 s.29-46.

Dagens Industri, "Sverige nobbar EU:s nya reklamregler", 2006-01-18.

Johnsson, Lars, Marknadsrätten, särskild reglering av reklam, SvJT, 2001 p.293-299.

Josefsson, Carl, "Lagstiftning eller självreglering? Olika aspekter på frågan om när och hur lagstiftningsinstrument bör användas", SvJT, 2001, p. 206-218.

Karrh, James, "Brand Placement: A Review," Journal of Current Issues and Research in Advertising, 20, 1998, p. 31-49

Marketingweek, "Is product placement commercial salvation?" 2005-03-17.

Modern Advertising Rules Information Society and Media, European Commission, 2005.

Nordell, Per-Jonas, "Marknadsföringens öppenhetskrav – reklamidentifiering och sändarangivelse", SvJT, 1999, p. 846-872.

Resumé, "Produktplacering dyrt för TV 4", 2005-03-03.

Schejter, Amit, "Product Placement as an international practice: Moral, legal, regulatory and trade implications", 2005

Booklets

Granskat och klart – tema, Granskningsnämnden för Radio och TV, 2003

Case Law

The European Union Court
C-429/02

The Market Court

MD 1980:12

MD 1983:17

MD 1989:10

MD 1992:19

MD 2002:13

Non-legal Case Law

Settlements by the Radio and TV Review Committee

SB 85/97

SB 232/01

SB 103/02

SB 295/03

SB 545/03

SB 429/04

Comments from the MarketEthic Council

10/99

2/01

10/02

Dictionaries

<http://lexin.nada.kth.se/sve-eng.shtml> Swedish/English, English Swedish dictionary online.

Prismas Engelska Ordbok, Norstedts Akademiska Förlag, 1998.

Internet

www.europa.eu, Gateway to the European Union.

www.eu-upplysningen.se, The EU information center.

www.icc.se, International Chamber of Commerce.

www.itvx.com, iTVX is an Information Technology company created by a team of experts encompassing the fields of product placement, media research and technology for the specific purpose of continuously measuring the "quality" of product placement and branded entertainment.

www.konsumentverket.se, The Swedish Consumer Agency (Konsumentverket) is a state agency whose task is to help the general public in Sweden with consumer affairs.

www.ne.se, National Encylopedin, The mayor lexicon in Sweden.

www.out-law.com, IT and e-commerce legal help from international law firm Pinsent Mansons.

www.sourcewatch.org, a collaborative project of the [Center for Media and Democracy](http://www.prwatch.org) (<http://www.prwatch.org>) to produce a directory of the people, organizations and issues shaping the public agenda.

www.wikipedia.com, the free encyclopedia.