



Traders must ensure that their advertising is properly released when third parties intervene

Ruling of the Advertising Jury of Autocontrol of 11 September 2014 (Individual vs. Reckitt Benckiser España, “Durex”)

Background

This ruling was given as a result of a claim filed by an individual against an advertisement of Durex personal lubricants. The advertisement was being shown at a pharmacy office through a screen facing the street. The claimant considered that the content of the video was not appropriate for minors and that, therefore, it was not apt to be made public through a medium that does not allow parents to prevent its viewing.

The trader argued that the liability should, in any case, be of the pharmacy, because the company could not control the manner in which the advertisement was being released. On the other hand, the company also claimed that the watershed for content suitable for minors –as established in the General Law of Audiovisual Communication– had been respected when placing the purchase orders for the advertising slots, so the company considered that it could not be regarded to be in breach of said rules.

Decision of the Advertising Jury

The Jury did not accept the position of the trader, and concluded that the rules on audiovisual communication argued by the defendant could not be applied, through analogy, to the release of an advertisement through a digital screen because, strictly speaking, this was not a television broadcast.

However, the Jury states that this does not mean that the advertising released through

these media should not be subject to limits or restrictions. The Self-Regulation Code on Advertising approved by Autocontrol prohibits making age-inappropriate advertising contents available to minors. The Jury has ruled in several occasions that, in order for this rule to be breached, it is necessary that the broadcast must take place at a time and place where a particularly large gathering of minors can be found.

The Jury then concluded that the company, as trader, was responsible for adopting all measures reasonably necessary to ensure the correct broadcast of their advertising through pharmacies. The ruling of the Jury understands that the trader can only be exempt of responsibility if the company could have proven that, despite having adopted all cautions that apply in this case, the pharmacy had broadcast the advertisement against its instructions and requests.

On the other hand, the Jury understands that it may not be considered that the above-mentioned rules had been breached because the claimant did not provide any evidence that the broadcast of the advertisement had taken place at a time where there was a large gathering of minors.