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## LEGAL RESTRICTIONS OF USING TABOOS IN ADVERTISING IN FINLAND

Analyzing violence as a taboo

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### Objectives

The main objectives of this study were to research the vague regulations that control advertising. The study was also objected to show, how the Finnish Market Court interprets the law and what is the prevailing practice in advertising regulations.

The research was done by finding out if there are taboos in advertising in Finland, how the regulations are effecting on them and are taboos permanent or in process of change.

### Summary

The Literature Review sets up the theoretical framework for the research. It is a review of applicable legislation, self-regulation and controlling authorities.

The Analysis and Discussion part analyses two cases that have been handled in the Market Court and two other cases that have been recently broadcasted. Those cases create a foundation for the results.

### Conclusions

It seems that there exist some taboos in advertising in Finland. There are also several factors in the legislation or in prevailing practice, such as neutralizing element, image versus product advertising, and shock effect, which are effecting on taboos. Also if advertisement is marketing something else than commodities or is done by a non-commercial community, it might effect on interpretation of the legislation. Even though there does not exist clear pattern, it could be assumed that taboos are somehow in a process of change.

**Keywords:** *Advertising, taboo, prohibited advertisement*

**Language:** English

**Grade:**

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## 1.0. INTRODUCTION

### 1.1. BACKGROUND

Contemporary advertising is all the time seeking new forms and new places to penetrate. Existing Medias and commonly known ways of doing the marketing message include always larger risk of missing some potential clients. Nowadays advertisers tend to use more daring advertisements. They are pushing the limits all the time, in order to attain maximum number of consumers.

There exists no direct act in Finland that controls and restricts advertising. An essential part of legislation that applies to advertising is imposed in the second chapter of the Consumer Protection Act. The legislation is vague by nature and the control is based on self-regulation. Since Finland is a free democracy, there exists a Freedom of Speech Act. Even though it is not directly related to advertising, it is influencing that the advertising is controlled afterwards. Self-regulation with a vague legislation leaves plenty of grey area which would be handled by the Market Court.

### 1.2. RESEARCH PROBLEM

Since the advertising legislation is vague, the Market Court sets the contemporary prevailing practices. To some extent there might exist situations where different decisions of the court seems to be somehow in conflict with each other. Sometimes there occurs situations were the decisions are not based on the existing cases, and the jurisprudence has took step further in order to create precedent practices.

This research analyses several advertising cases in context of legal restrictions of using taboos in advertising.

The case material that the Market Court handles is quantitatively restricted. In average there have been introduced 19 new cases per year during the past five years (2000-2004). Most of the cases are related to different kind of altercations between companies. Few of the cases are related to advertising or other marketing related issues that are prosecuted by the Consumer Ombudsman. Furthermore, most of the advertising related cases seem to be handling usage of violence in advertising. Therefore the research analyzes a taboo mainly in context of violence.

### 1.3. RESEARCH OBJECTIVES

The research objective of this thesis was to show that there exist prohibited topics and that the advertising regulations are distinctly vague. The main objectives of this study were also to research the vague regulations that control the advertising and to show, how the Finnish Market Court interprets the law and what is the prevailing practice in advertising regulations.

### 1.4. RESEARCH QUESTIONS

The research was done by analyzing several advertising cases. The research questions were:

- Are there taboos in advertising?
- How regulations are effecting on taboos?
- Are taboos permanent or in process of change?

## 2.0. LITERATURE REVIEW

The literature review of this thesis is concentrated to be a review of rules and do's and don'ts in advertising. The subject matter of the literature review is unequivocal and therefore the reference books contain similar material.

In summary, the rules include a vague prohibition as a general clause with several detailed prohibitions and legislation. The main part of the rules, control and guidance of applying the common law is based on self-regulation and *International Code of Advertising Practice* by International Chamber of Commerce (ICC).

Regulation of marketing and advertising is categorized under the Market law. The market law regulates the activities and behavior of the business in the market. According to Pöyhönen (2002, 160) "The Consumer Protection Act is composed of provisions belonging to two different spheres of law". "The provisions of market law are concerned with the regulation of marketing and terms of contract". Later on the author states that the central provisions on marketing are located in the Consumer Protection Act.

Hereby it can be seen, referring to the rules which are imposed by law, advertising can be interpret under the freedom of speech, the Consumer Protection Act, unfair trading act and several laws about special products (Varhela, 1998) as will explained below.

## 2.1. SELF-REGULATION

Legislator has decided that publishing and communication in overall is enjoying freedom of having no censorship, while marketing and advertising can be regulated easier by other applicable laws. However, there is no such thing as prohibitions for commercial messages that effect in advance. Commercial communication is meant to be self-regulated in advance and regulated by legislation afterwards. (Varhela 1998, 15).

Self-regulating system means that the advertiser is responsible for the advertisement in a way, that there exists no control in advance. All published or broadcasted material should be lawful and should not grab the Consumer Ombudsman's attention. Self-regulating system is known as efficient and competent, although it is often criticized for small or even not existing retributions. If the authority is justified to give retribution, those are often confined to warning and prohibition of publishing the advertisement. The system is functioning and responding only for cases that had been delivered to it. (Rissanen Tiili Mäkinen 1990, 153-154) This means that if the advertisement is not impugned by for example consumer ombudsman or by other entrepreneur, the advertisement is continuously allowed to be presented.

Regardless of the self-regulating nature of the commercial communications, there is common law controlling marketing. It is allowing legal protection for all parties of advertising process. Regulations related to marketing are parts of *consumer protection legislation*. Those are more concentrated on benefit of end-user. (Sorsa 1998, 8)

Besides the common law in the consumer protection legislation, there is another valid legislation, what comes to the marketing activities. The legislation about *unfair trading* is generally regulating relations between entrepreneurs or businesses. It can be seen, that in some cases unfair trading between two or more companies, is unfair also for consumers. In general, it is relatively unclear definition what is considered to be unfair trading and what is not. By the current trends, it seems that unfair trading is defined as a punch of carefully considered activities that entrepreneur or company does. Those activities do not include anything dishonorable and unworthy acts. The legislation of unfair trading contains also article about prohibited marketing activities. Those include activities such as an untrue advertising. The article restricts also comparing advertising, usage of lottery and commercial secrets in some cases. (Sorsa 1998, 51-64) For addition of above, there are legislation also restricting advertising of some specific products and usage of some ways advertising: tobacco, alcohol and medicines, to mention some.

## 2.2. LEGISLATION

As it is concluded earlier, the main parts of the legislation that controls the marketing activities is in the consumer protection law. The general clause of consumer protection act about marketing states, that "marketing may not include any clause contrary to good practice or otherwise inappropriate from the consumer viewpoint" (Pöyhönen 2002, 161). The objective of marketing legislation is to guarantee enough quality information for consumer and to prevent impertinent marketing. Besides the legislation that somehow follows International Code of Advertising Practice, there are different special guidelines for advertising medium, such as the advertising in cable television, the regulations of sponsoring broadcasts and the Nordic regulations of television advertising. (Sorsa 1998, 178)

The Consumer Protection Act's first chapter and first section delimits the cases which the Act can be applied. The Act applies to the supply and selling of a consumer commodity and other marketing from business towards consumers. According to Rissanen, Tiili and Mäkinen (1990, 165) the other marketing activities might be such as offering fringe benefit, lottery or different kind of competition. They also might be general information about the commodity or the company which is attempting to build positive image about the company or its products.

### 2.2.1. Detailed prohibitions and requirements

In addition for the general clause, the act defines five deeper detailed prohibitions. Marketing should include the information that is necessary for the consumers' health and economic security. In addition marketing is not allowed to give false or misleading information. The third detailed prohibition is about controlling advertising discounts. Marketing is not allowed to promise receiving random benefit for consumer, if the customer is required to purchase the commodity. The last detailed requirement is declaring the prices of the commodities. (Pöyhönen 2002, 161-162)

### 2.2.2. Contrary to good practice

The general clause is often used when interpreting the legislation. The court receives then more power to consider the cases. Besides the detailed prohibitions and requirements, the marketing should always be permitted by the general clause. The statement "contrary to good practice" is *vague* prohibition. It would be interpreted by the court what would be good practice always at the time and according to the target group. The International Code of Advertising Practice contains also a similar general clause. However it defines more deeply what is considered to be good practice, which is often used as a reference in court. The legality of marketing is estimated by the general impression. Even the parts of the advertisement would be acceptable, the general impression may be against it. (Varhela 1998, 22-23)

The impropriety of the advertising is always estimated according to the decision making of the consumer. Usually consumers seemed to be estimated as a group and how the advertisement has affected the group. (Rissanen Tiili Mäkinen 1990, 168-169)

The International Code of Advertising Practice is developed by commercial bodies and it can not be held as a totally unbiased. The law should be applied by the allegation what is good practice among consumers and the target group of the advertising. In general, good practice means the esteems and good manners which are recognized in our society. (Sorsa 1998, 180-181)

If the advertisement does not commit an impediment or disadvantage for the consumer, it can be still interpreted under the general clause if it includes possibility of presenting those problems (Rissanen Tiili Mäkinen 1990, 169).

### 2.2.3. Contrary to good business practice

Similarly to the Consumer Protection Act, the general prohibition of *unfair practices in business activities* includes a general clause. According to Pöyhönen (2002, 166) besides protecting individual entrepreneurs, there is a common interest in having a functional market. The business and entrepreneurship must be contrary to good business practice in overall, and also towards other entrepreneurs. The evaluation between good practice and good business practice is vague, but there

still exist differences. Good business practice means honorable and sincere way to act in business and also towards competitors and consumers. It concerns also things like imitation and copying, comparative advertising and contempt of a competitor. (Varhela 1998, 57-67)

### 2.3. CONTROLLING AUTHORITIES

In overall, commercial marketing activities that are focused to end-users are enforced by *consumer ombudsman*. The second chapter §10 of the Consumer Protection Act states that "The Consumer Ombudsman is controlling the lawfulness of the marketing activities from the consumer viewpoint". There exists also an act about the Consumer Ombudsman. It is enacted in the law that there should be an authority that controls the best interest of consumers. In brief, the Consumer Ombudsman controls compliance with the Consumer Protection Act.

What comes to marketing industry, in first hand the Consumer Ombudsman is providing advices to keep marketing processes in limits of law. It has published a knot of guidelines for advertising and marketing. Those guidelines are relatively similar with International advertising standards and often used by Marketing Court and other authorities. The jurisdiction of the ombudsman includes almost every marketing activity focused to consumers.

The Consumer Ombudsman receives complaints about the published and broadcasted advertisements from the consumers. Most of those complaints are kind of overreaction of sensitive consumers. In cases where the Consumer Ombudsman defines the advertisement to be against the law or common practice, it could bring the case to the Market Court. Most of cases that the consumer ombudsman has approached have been negotiated and the advertisers have been freely willing to draw the advertisement back. In some cases the advertiser disputes the decision of having advertisement against the common rules. The consumer ombudsman is able to bring the case to the *Market Court*. The consumer ombudsman is also authorized partially to ban advertisement. This requires that the defendant or advertiser agrees with the prohibition. Even though the consumer ombudsman is not judicial powered, it is still possible to set a temporary ban until the court sets the final judgment.

The Market Court is a special court. Cases are complaint by the consumer ombudsman under the Consumer Protection Act or an entrepreneur under *contrary to good business practice* -legislation. In most cases the demand of complaint is that the defendant should draw back the advertisement. If the Market Court finds that the advertisement is against consumer protection or other law, it is judicially powered to prevent the distribution of the advertisement. More often than not, it uses a conditional imposition of a fine to make the decision more reliable. The market court is not able to set penalties. It is only allowed to enforce the conditional imposition of a fine to be implemented. (Varhela 1998, 92-96) If occurs that both, the consumer ombudsman and an entrepreneur are complainants, the Act about Market Court states that the ombudsman will be the primary complaint (Sorsa 1998, 52).

The International Chamber of Commerce has published general guidelines for advertising. Even though many countries have accepted those guidelines as principles of common business life, there exists no penalty for contravening the rules. The *International Code of Advertising Practice* is meant to be followed voluntarily by commerce and for additional interpretation by courts. The guidelines are universally applicable. They can be applied for product and service advertising as well as corporate advertising.

When applying the code, the significance of the media where it is published has to be notified. The guidelines should be interpreted in a way that the entire advertisement will become under investigation – not only concentrating some parts of it. (Sorsa 1998, 174-176) According to the International Code of Advertising Practice, advertiser, advertising company and the publishing media are all liable for advertisement.

#### 2.4. REASONS FOR LEGISLATION AND THE INTERPRETATION

Below are the main reasons and basic guidance for the interpretation of the “good practice” under the consumer protection law. Parts of the references are from the Finnish Parliament’s reasons for legislation. The following complies also with International Code of Advertising Practice. This study concentrates more on the affairs that are substantial to cases introduced later.

#### 2.4.1. Importance of the target group

As it has been mentioned before, the meaning of the target group is essential when estimating the legality of the marketing. Special attention should be followed, when the target group consists of children, aged, sick, debt-ridden people, unemployed and so on. Those people could be referred as a *weak consumer group*, which needs protection against marketing. Marketing which is focused on the weak group will be estimated more specific and critical in the court.

There exist several decisions by the Market Court where children have been the target group. Those cases are related for example emotions, child's natural need of having friends, and appropriate behavior patterns. In general, it is not allowed to resort to children's credulity, confidence and loyalty by stating for example, that if child is not going to buy the commodity, one is going to be "outsider" among the friends. Children are considered to have worse sense of understand marketing messages. (Varhela 1998, 24-27)

#### 2.4.2. Identifiably

The basic rule is that an advertisement should always be able to be recognized as an advertisement. The guidelines of the good journalism, made by the Union of Journalists in Finland, state that journalistic context should be clearly different from advertising or purchased announcements. This can be applied also for other marketing. The literature that contains commercial interests should be disposed critically. It is important that the line between journalism and commercial messages is clear. The need of identifiably culminates in the television advertising, where besides the context, the technical manner of representation needs to be clear enough from programs. (Varhela 1998, 23-24)

Besides the advertisement has to be easily identified, it is not allowed to contain misleading or untruthful information. The misleading information could consider being for example characteristics of the product, the way of using it, or an unclear sales term. If the advertiser is referring to some test

results of the product, those should also be able to identify to be real and well interpret. (Sorsa 1998, 190-192)

#### 2.4.3. Health claims

Health claims in the advertising are relating to three different parts of legislation. First, the *target group* is considered to be sick and thereby under special control. They may not be as critical towards the advertisements as they should be. Health claims are also considered to be facts. Claims should be easily able shown to be true. It does not change the nature of the claim who is presenting it, for example a private person or a doctor. The third point is that if the advertisement is stating that the product will improve the health or extract a disease, it is examined under the *medical law*. Hereby it is against good practice under the consumer protection to publish an advertisement containing a health claim without first examining it under the medical law. (Varhela 1998, 30-31)

#### 2.4.4. Safety

The International Code of Advertising Practice article 13 states: "Advertisements should not without reason, justifiable on educational or social grounds, contain any visual presentation or any description of dangerous practices or of situations which show a disregard for safety or health." Even though it is not allowed by methods of marketing to provoke anybody to do something illegal, the consumer protection law does not regulate safety of the product or service published in advertisement. If the target audience is children, there should be paid extra attention for the safety. The advertisement is not allowed to be as an example of bad or unsafe behavior for the children. (Varhela 1998, 31)

#### 2.4.5. Violence and fear

According to Sorsa (1998, 182) society is not favoring violence and the use of it. The general instruction for usage of violence and fear in advertising is that it is not accepted if the product or service

is not related by any chance to violence or fear. In overall, disposing towards usage of violence and fear is negative. The preamble is that showing violence in advertising is conniving brutalizing of the society. The society is not accepting violence in any form of action and it claims that if violence is shown in a regular basis in the advertisements, the violence becomes familiar and usual form of behavior. Even though using violence and fear in advertising seems to be negatively regarded, it is still possible to use it. It is obvious, that when the target group is children, usage of violence or fear is heavily forbidden. (Varhela 1998, 31-32) Sorsa (1998, 183) concludes the conversation with a statement, that sometimes in advertising there is used pictures of real world war, terror and destruction. Also in these advertisements will be estimated by general principles: by estimating the connection between advertisement and the product or service. It is also essential which things are the focuses of the advertisement.

Also the International Code of Advertising Practice speaks against of usage of violence and fear in advertisement. The article IV section 2 states that advertisement should not play on fear without justifiable reason. The section three is similar with the commonly understood good practice what comes to the violence in overall. It states that "Advertisements should not appear to condone or incite violence or to encourage unlawful or reprehensible behavior". Even though the current formulation of the International Code of Advertising Practice seems to be prohibitive for violence, it has been in interpreted in practice in a way that violence should not be used without justifiable reason.

#### 2.4.6. Sex and erotic

Against the common assumption, sex and erotic in advertising is allowed. There exists no precedent case that has been discussed about. Nudity nor sex is not contrary to good practice unless the case involves things concerning equality or discrimination, or pure pornography. It could be presumed that using nudity or sex only as an eye-catcher is more ambitious than with a product or service that is somehow involved with sex, erotic or nudity. (Varhela 1998, 34-35) The consumer ombudsman has argued several cases where nudity has been used as an eye-catcher, but any of those has not been judged in the market court or any other court.

#### 2.4.7. Equality, discrimination

It is regulated by the Finnish legislation and the International Code of Advertising Practice, that advertisement should not contain any discrimination. Often inequality and discrimination is understood in Finland to occur between man and woman. Besides that, it applies also for example equality of race, religion, age and nationality. It seems that in practice all cases are related to equality between sexes. The council that controls the equality in advertising has made basic guidelines for advertising from point of view of discrimination. The main idea is that it is not allowed to use man or woman as a sex object or eye-catcher without existing relation to the product or service. (Varhela 1998, 32-34)

#### 2.4.8. Special products

Besides the Consumer Protection Act, there exist special provisions for different commodity groups. The control and judgment can be done by estimating both legislations, the Consumer Protection by the consumer ombudsman and special provision by the special authority. The highest level of restrictions has been set down for tobacco industry and marketing strong alcohol. It is totally restricted to advertise or in other ways market those for consumers. The distributor chain advertising is an exception. Any kind of image and indirect marketing is still forbidden. The mild alcohol beverages are allowed to be marketed, but with several limitations. Advertising of groceries and medicine are on relatively similar basis since the advertisement is not allowed to contain any claims of being healthy or some kind of health related product. Medicines require always permission from the National Agency for Medicines. Also regulated advertising branches are insurances, package tours, accommodation, securities, and advertisement by credit institutions. (Varhela 1998, 71-82)

### 2.5. APPLYING THE CONSUMER PROTECTION ACT

As it has been mentioned earlier, the first paragraph of the Consumer Protection Act adjusts the conditions when the act does apply. There are four key words which all are required to enforce the law. Those key words are: "consumer", "commodity", "marketing the commodity" and "entrepreneur". The

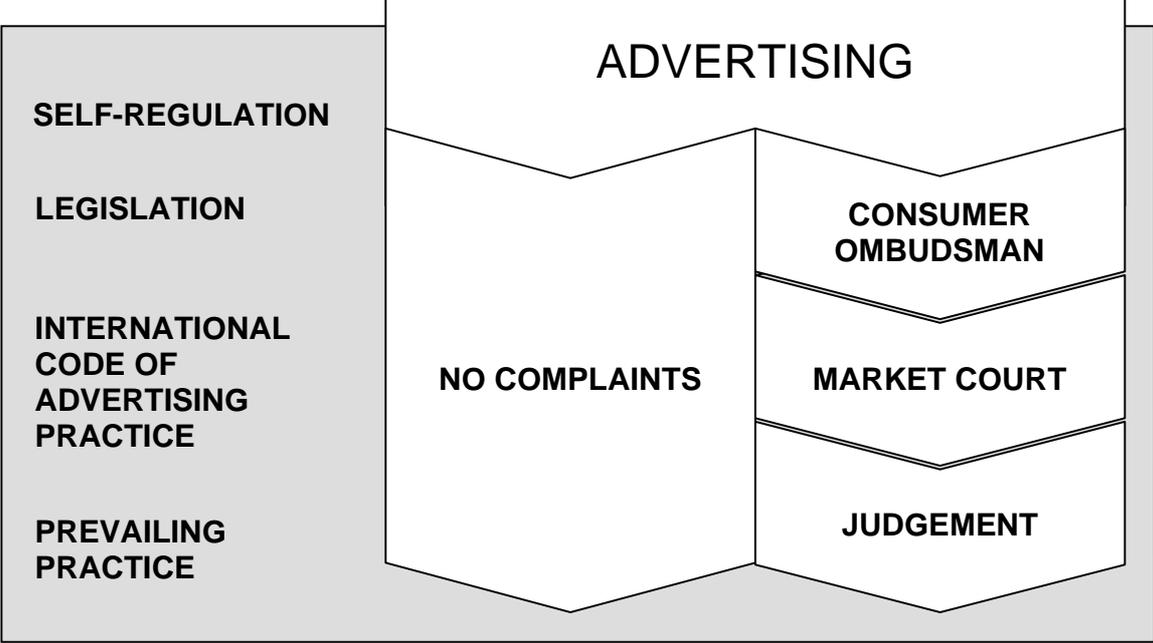
text of a law states clearly what is meant by those key words. In core, the entrepreneur should be understood in large scale. It does mean as well sole entrepreneurs as large corporations. The Consumer Protection Act applies only when an entrepreneur is marketing a commodity to consumer. (Kempainen 1978, 1<sup>st</sup> chapter)

The statement above is interesting in meaning, that there might exist advertising that can not be regulated or guided by the legislation. That kind of advertising could be for example religious or political, or any other that does not try to sell anything to consumers or other ways is related to commodities.

## 2.6. THEORETICAL FRAMEWORK

The theoretical framework of the study culminates in the square of effecting elements around the interpretation of advertising or other commercial communication. As it has been mentioned earlier in this study, the legislation is the main factor effecting on the advertising. The legislator has the final decision via the court, what comes to the interpretation. The loosest controller, ethics, does not seem to have any true juridical power towards the advertisements, even though for example public opinion is relatively strict effecter. Between the legislation and ethics, there are guidelines for advertising provided by the International Chamber of Commerce. Maybe the most important and often interpret part is the general clause that is included in Finnish Consumer Protection Act: "Contrary to good practice".

Figure 1: Legislation and contemporary advertising



The theoretical framework includes the core elements of the Literature Review which correspondingly sets up the limitations for the analysis. It also outlines the research and interpretation of cases of this study. The differences between the chosen cases will be interpreted according the four different stages that now have been introduced. As the headline of the thesis states, this study is concentrated in legal restrictions.

### 3.0. METHODOLOGY

#### 3.1. CHOISE OF TOPIC AND RESEARCH METHOD

##### 3.1.1. Overview of own subject

It seems that there exists no proper research about relation between legislation that restricts advertising, and methods of advertising that may be called taboos. According to the Wikipedia dictionary, a taboo is a thing that is not appropriate to discuss about. As a form of advertising the taboo might be quite similar what could be found from the dictionary, but it might have also other forms, such as commonly known things that are not appropriate for example to broadcast.

The taboos might not be permanent since the world is always changing. Some things and taboos might be same for centuries, while the others are in the process of change. A good and simple example is how people would adopt a different approach when talking about sex and other gender issues now and fifty years ago. This is an example that everyone may have their own view point. Nowadays there are more and more advertisements pushing the limits in order to gain the maximal attention. Sometimes those more clear limits have been exceeded and sometimes those limits are just not clear enough to be recognized. Many existing advertisements have been commented by the Consumer Ombudsman and several have been handled in the Market Court. This study researches whether there are taboos in advertising, are those permanent or in process of change and are there still loop holes for using some taboos. The study is concentrated on violence as a taboo.

##### 3.1.2. Choice of research method

The research first introduces the basic rules and legislation of advertising in the literature review. The analysis is composed of several case studies that have been analyzed under the theoretical framework.

The research method is qualitative. It analyses few cases by measuring the differences between them. Still, the cases are interpreted by the author, inside the theoretical framework that has been set up, and according to the legislation that has been described in the literature review.

### 3.3. SELECTION OF CASE COMPANIES

There are two opposite main cases that have been handled in the Market Court. There are also two supportive commercials that have been broadcasted in television early 2005. Those cases have not been commented by the Consumer Ombudsman. The first two cases or advertisements have been chosen primarily because both have been handled in the court and they are relatively similar to each other. Violence is related to the both cases in one way or another. The last two supportive cases are also in a way pushing the limits, but they contain elements that might cause them being acceptable in public.

The number of usable cases is restricted since the Market Court handles relatively small amount of cases during the year. Most of those cases are not related to the Consumer Protection Act, they are more or less related to solving differences between two or more companies. The most often interpret area by the Market Court of the Consumer Protection Act seems to be violence. This is way this research uses cases related to violence.

### 3.5. DATA COLLECTION AND ANALYSIS METHOD

Two Market Court cases are available in an unabridged form in the [www.finlex.fi](http://www.finlex.fi), a government hosted internet site. The supportive cases have not been handled in the court and therefore there exist no official description of commercials in written form. The other one of commercials was available in internet, provided by the brewery. It was not possible to get a hardcopy of the other, the anti doping commercial. Description of it in this research was described by the author without seeing the advertisement at the same time.

The sources are reliable. The commercials that have not been handled in the court are in supportive role in this study. Accordingly, the meaning of the reliability of those advertisements can not be emphasized.

The analysis is deductive. The thesis analyses the cases in a way of trying to find out if there exist hypothesizes that have been set up in advance in the Research Questions. The thesis uses secondary data.

### 3.6. EVALUTATION OF QUALITY

The research is limited by the quantity of the analyzed cases. It has its largest influence on the last research question, are the taboos permanent or in process of change. The first two questions can be analyzed properly, respectively with same results if repeating the study.

The research concentrates on analyzing the effects of legislation on advertising between the customer and business. It does not involve relations between businesses or business-to-business advertising. Neither the study involves analysis between ethics and advertising, although there might exist several topics and areas that should be aware of. As the caption outlines, the thesis examines legal restrictions of using taboos in advertising in Finland, and more specific analysis violence as a taboo.

## 4.0. DISCUSSION AND ANALYSIS

The discussion and analysis part researches different case studies from the view point of the research problem and research questions. The first section "How regulations are effecting to taboos" concentrates to analyze reasons why some advertisements have been banned and some other, but similar have been not. The second section "Are there taboos?" continues from the second section by proving, that there really exists at least some taboos in the field of advertising and marketing in Finland. The third section "Are taboos permanent or process of change" analyses the prevailing practice between now and then.

### 4.1. HOW REGULATIONS ARE EFFECTING ON TABOOS

As it seems and also later on has proved in the second section, purposeless usage of violence in advertising is reprehensive. However, the legislation is vague and the final decision power lies in the hands of the Market Court judges. Besides the several more unambiguous advertisements that have been restricted due the violence, there exist some interesting advertisement cases which lie between the acceptable and unacceptable borders. One of those is the Benetton case that has been mentioned also earlier in this thesis. The other ones, which have been recently broadcasted in Finnish commercial channels, have not been criticized by the Consumer Ombudsman even though there exist elements that at least in some light could be suspicious.

#### 4.1.1. The Benetton Case

The case (Market Court 1995:6) is about an outdoor advertising campaign of Oy U.C.B. Finland Ab, a company marketing commodities under the Benetton trademark in Finland. The photograph in the poster represented a t-shirt and a 'camouflage trousers' pierced by a bullet and stained by blood. The clothes belong to a Bosnia soldier. The posters included the Benetton trademark.

The case makes some differences in two ways to other advertisements that has been analyzed in this research. First, there is no actual violence. The photograph is of course related to the war topic and actually in the real situation in the Bosnian war. Both, the Consumer Ombudsman and the Market Court agrees that the topic wakes up negative perceptions and emotions among consumers. Still, there is no actual violence or victim of it, only the consequence of getting shot. The clothes stained by the blood and pierced by the bullet are said to be real. Second, other large difference in the Benetton's advertisement is being in the grey area between the product advertising and the image advertising. Benetton has become earlier known from the shock causing advertisements that has said to be nothing to do with the clothes Benetton is marketing.

The Market Court states in the reasoning of the case, that the advertisement is done to profile Benetton image and this way to promote sales. It is a self-evident fact that every kind of advertisement, also negative, will gain publicity for the advertiser and publicity, especially journalistic one is the thing every marketer wants. The Consumer Ombudsman argues also the similarity with statement, that cause effect between product and image advertising is unambiguous. This way there should not be separated image and product advertising while interpreting the Consumer Protection Act. For the defense, Benetton states that the primary purpose of the advertisement is to provoke conversation about the constitutional violence. It continues that it does not have any need to promote sales since they have showed very high figures recent years.

Public social effecting by the commercial corporation is somehow debatable. As it has been seen often in the history of the large corporations, the growth speed is slowing in some point, when the corporation has reached enough large areas and there is nothing new to penetrate in the markets. This makes the motives of the Benetton questionable. Could such large company's aim be to provoke really international and national conversation about institutional violence and other issues related to "make the world better"?

The Market Court agreed with the Consumer Ombudsman's statement about that the photograph is done in the way it reminds consumer about the specific war. During the Yugoslavian war, the mass media has penetrated the topic with several detailed and shocking new, photographs and clips.

Consumers who have seen the poster, have understood it as an advertisement, but besides that it often reminds them about the horror showed in the news. The ombudsman also states that the advertisement increases anxiety instead of provoking conversation. Both the Consumer Ombudsman and the Market Court have not come out with a fact that there are still many Finns who have experienced the horror of the World War II, and often in the front. Those people have lived several decades with the horrors of the war, and seeing the Benetton outdoor advertisement could bring those old memories from the past to alive. Of course the mass media might cause, and probably causes the same effect, but it has been stated in the International Code of Advertising Practice that advertisement should not play on fear. The advertisement is also questionable since it has a commercial purpose. On behalf of above, the advertisement should have been examined from other perspective by the Market Court.

After all, it seems that the crucial factor for the case was that the advertisement causes fear or just negative emotions against Benetton or war in overall. The advertisement does not contain actual violence. In the decision of the case the Market Court states that the advertisement might cause negative emotions and image towards Benetton. It is still not illegal, since the court sees that it does not affect fear among the people.

In the case, the Consumer Ombudsman argues that the advertisement is meant to promote sales and to gain publicity, although the defendant states the advertisement is pure image advertising without any relations to clothes Benetton is marketing. As it has been mentioned in the chapter 2.5.5. "Violence and fear", the general principle is that there needs to be connection between advertised product and violence. The Market Court states in its reasoning that even though the advertisement is not straight forward product advertising, it still reminds the consumers about the brand. The Market Court has not taken the stand in this case about the question between product and image advertising. As it has been earlier mentioned in the chapter 2.6. *Applying the Consumer Protection Act*, "marketing the commodity" definition should be filled in order to apply the act. If the law would be interpret straight forward in this case, there is no such thing as commodity. The defendant claims that the photograph in the poster is corporate advertising. For example, there is no prove of those clothes being similar to ones that Benetton is marketing. In the travaux préparatoires of the Consumer Protection Act the legislator states

that the law should be vague in order to respond to all the time changing world of advertising. The ombudsman pulls out this fact also in the Benetton case. It seems that the relation between product advertising and image advertising is a grey area in the jurisprudence, even though the ombudsman claims that the photographs is related shock effect instead of image making.

According to the decision of the court, it seems that because of missing the vital element, the commodity in the advertisement the claim of the Consumer Ombudsman has been rejected. It is obvious in the Raisio case, that there exist a commodity. Besides the girl is eating the ice cream at the end of the commercial, the defendant has confirmed that the campaign was a part of the launch of the new Carlshamn ice cream. When comparing cases in this way, it really seems that there exists the need of having to fill the "commodity" requirement.

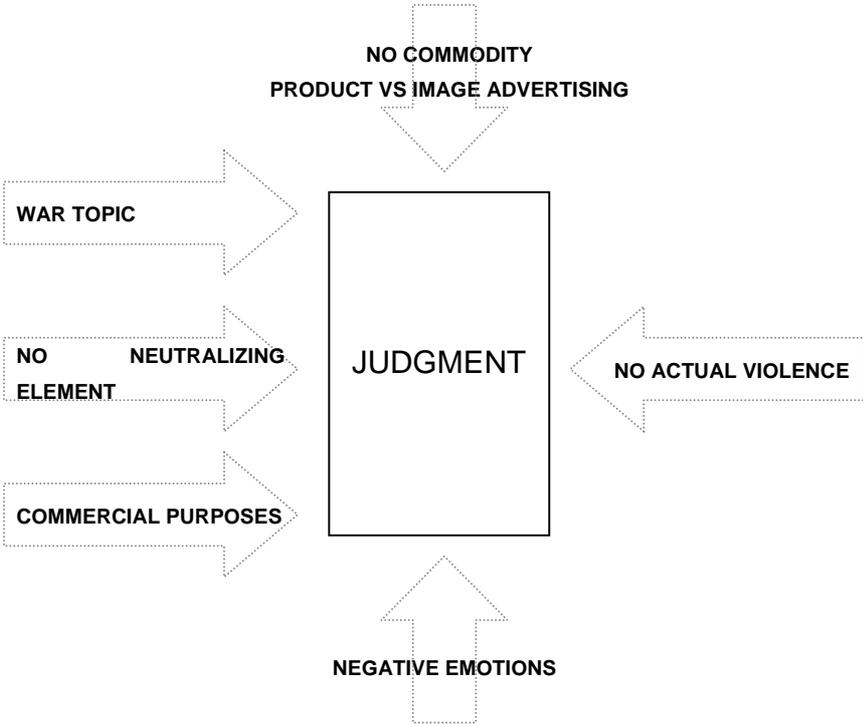
In the decision of if the Benetton case three judges of the Market Court states, that the advertisement does not contain any neutralizing element. The reasoning of the court does not take an opinion about the neutralizing element. The statement becomes rather special again, when comparing with the Raisio case. The television commercial of the ice cream ended happily, and the oppressive atmosphere was gone. This was referred in the defense of Raisio as a neutralizing element. To highlight the positive effect on consumers the Raisio refers to the research results of effectiveness and opinions of the commercial. The research shows that consumers felt the commercial more entertaining than average grocery advertising. There were no results of campaign being irritating or disapproved. Later on in the reasoning of the case, the Market Court states as an answer for the defense that there is no reason for being more tolerant if advertisement contains neutralizing element. The shooting incidence has still happened. It seems that there exist various interpretations of usage of neutralizing element between the cases by the Market Court.

In the defense Benetton states that the outdoor poster should be interpret as journalism, more than advertisement. Benetton refers to its previous campaigns that have also been aimed to concentrate and provoke conversation over different kinds of global human problems. It continues that those previous and this current advertisement can not be interpreted as a common advertising, since the photographical journalism in the advertisements is reaching photographical realism which can be easily

compared to the ones that contemporary news and media in overall represent. In this context there should be reminded, that Raisio's commercial contains a historical background from 1700's. It still can be clearly and easily recognized as a commercial. The commercial was broadcasted in television which is common media for news and other journalistic material, whereas outdoor posters have been used through out the years only for advertising. This makes the justification, of the photograph being journalistic, lamer since the outdoor poster is not a normal form of journalism.

As a conclusion for analysis of Benetton case can be said, that to adopt the advertisement as a journalistic work, the world still needs to change. Even though the photograph can not be considered as violence or causing fear more than usual advertisement, the court didn't really took opinion of several things such as difference between image and product advertising and "journalistic interpretation". This means, there is no prevailing practice or precedent of those mentioned above after conclusion of the case.

Figure 2: Issues effecting on judgment of the Benetton case



#### 4.1.2. Lapin Kulta Case

Since the Lapin Kulta beer's television commercial has not been commented by the Consumer Ombudsman, there exists no written description of it. However, the advertisement is available in the brewery's internet site. The commercial was broadcasted during winter 2005 in Finnish commercial television channels. A brief description of case is following.

The commercial begins with snowy pictures from Lapland. First there comes out a "blue team" person's head who's watching down to hill. Then the "alarm" device, made from empty beer cans, makes the sound. The picture moves to the larger scenario, showing the blue team arraying in the snow fortress. Meanwhile the red team approaches with a Roman attacking style, having the sleds as shields. The snow fight starts. After while, it seems that the attacking red team would win the battle. Few guys in the blue team fortress seem to be shaking their heads in a way that their last option must be used. Three guys from the blue team loose a catapult with a giant snowball. The giant snowball seems to be falling over the whole red team. The commercial ends when blue team is starting to drink Lapin Kulta beer with a text "Greetings from the North".

The advertisement is interesting since it is using true violence that is not easy to recognize. In action, one snowball can damage a person seriously, such as tough punch. Although snowball fights are heavily forbidden for example in the schoolyards, a snow fight as a phenomenon sounds more like having fun than violence from ordinary people. It seems that this advertisement is not going to be criticized or disapproved by consumers or the Consumer Ombudsman.

The commercial is clearly entertaining and it can be seen that it is made with accuracy. It is stunning in a way that was lacked almost in every other commercial that was broadcasted at the time. It sticks out positively from all the rest. Consequently the advertisement could be seen including a neutralizing element, in addition to violence.

If considered that the Lapin Kulta commercial contains violence and a neutralizing element, it should be analyzed by the Benetton and Raisio cases. Hereby it seems that mild violence with extremely good

neutralizing element would be allowed as in Lapin Kulta commercial, while severe violence with a neutralizing ending would be prohibited. The Benetton case is slightly different from the television commercials, but the poster might have caused some fear in smaller groups of consumers without having any neutralizing element. It is necessary to notice that in the Benetton case three judges come out with that statement of the advertisement lacking a neutralizing element. Now the decision pattern of the court with neutralizing elements effecting seems to be more accurate. Mild violence or causing only some fear is unambiguously more acceptable than severe violence or causing truly fear. The neutralizing element effects same logical way, for example good neutralizing element could be change in the atmosphere of a commercial movie, that makes the advertisement funny and same time acceptable while still including a severe violence.

#### 4.1.3. Anti doping case

The anti doping commercial was broadcasted during winter 2005 in Finnish commercial television Channel Four. The advertisement invoked lots of anxiety and indisposition among some people. Still the commercial was not commented by the Consumer Ombudsman. The commercial movie is not in the distribution anymore. Furthermore, it was impossible to get the film or information about producer from the television channel. A description of the commercial is following.

The grayscale commercial starts with an attracting woman sitting on a chair. Suddenly her eye begins to turn black, like somebody has punched her. The transformation goes on. Little by little the majority of her body parts begin to look like mugged. After a short transformation process she got several dressing over her wounds, also in the head. The chair she used to sit begins to transform into wheelchair. Meanwhile the transformation process goes on the woman tells, that athletes might behave unexpected. She continues that "it is understandable since they are often under heavy pressure". When approaching the climax of the commercial, she states that "Sometimes they might be also violent. I know it best. My husband is an athlete". The commercial ends with a text of "Don't start a steroid course".

The television commercial is very oppressive and anxiety increasing. To some extent it has caused nausea. Even though there is no straight violence, the advertisement is one step further if compared with the Benetton case which showed only the clothes of a soldier. Here is a technically extremely well done victim of violent act. The violence does not occur in television, but due to good realization of commercial, a viewer could feel the woman's pain in his or her own skin. The advertisement does neither cause fear, if the definition would be interpreted literally.

The advertisement is interesting to interpret in three ways. First, it does not market any commodity. Second, it does not contain violence although it is causing very powerful same kind of emotions, and third: could the advertisement now really be interpreted as journalism?

As it has been mentioned previously often, the interpretation of the Consumer Protection Act requires that an advertisement includes marketing a commodity, whereas the anti doping commercial did not include it. Further, it is not a commercial message as an advertisement; instead it is more like contribution to public welfare. If the law would be interpret as the travaux préparatoires at the beginning meant to, the advertisement could not be restricted or prohibited without simultaneously creating even stricter rules for interpretation. Although the world of advertising is changing all the time, the step to prohibit a non-commercial advertisement would be very large. It is a sign of acceptance since the Consumer Ombudsman has not reacted the advertisement. Lacking the information about the advertiser could be also somehow misleading. Directly it is not however against the legislation. Also, it is not valid when estimating if it is possible to interpret the case under the Consumer Protection Act about being contrary to good practice since it is obvious that the advertisement does not have commercial purposes.

If the advertisement would be claimed to be illegal by Consumer Ombudsman, the Market Court would probably state that there exist a reason for showing violence or causing fear. The advertiser is showing results of violence and ending text highlights the message that "Don't be violent and cause damage to others". From this view point showing violence in advertisement would be suitable as far as the message emphasizes not to use violence. At least as Sorsa (1998, 182) states that there exist a need of having relation between product and violence in order to use violence in advertising, the condition is

now fulfilled. Since the advertisement message referred above, it could be seen as justified to use violence in this advertisement.

Even though the commercial does not contain straight violence, it has argued to be violent. All previous judgments of the Market Court that are related to violence contain straight violence towards person or people. The International Code of Advertising Practice does not separate different kinds of violent behavior patterns or how those should or should not be used. It contains only a kind of a request not use violence. Still, the Market Court has emphasized in previous cases' interpretation meaning of containing any violence. This anti doping case could be considered similar to the Benetton. Since the Benetton case is far tamer and causing only some if any fear and anxiety, it could be found strange why the ombudsman does not even comment the advertisement.

In the Benetton case the Market Court did not come out with a statement if the poster could somehow be interpreted as journalistic rather than advertisement. The same question is relevant also with this advertisement. Since there is no commercial purpose and furthermore, the media that was used is commonly used for news and other journalistic programs, the advertisement initially seems to be journalistic. Nevertheless the theory of marketing recognizes a kind of a public advertising, or advertising that aims to affect to public welfare, as a form of advertising. There exists a purpose that the advertisement aims for, even if it would not be related on commercial purposes. Consequently this advertisement is done by purpose of effecting people, even though it might provoke public and private conversation. Hereby it can not be seen as a form of journalism.

#### 4.1.4. Conclusion: how regulations are effecting on taboos

Nowadays more and more advertisements are pushing the limits when trying to gain the maximum publicity. It seems that when pushing the limits is done professionally and cunning way, it is often also allowed. From two example cases could be recognized same pattern of showing victim of violence, instead of showing straight violence to consumers. There exist also way of using different kind of neutralizing elements, for example having happy or humorous ending in the commercial movie. Even though violent scenes have often been prohibited afterwards, the Market Court has stated that it is not

illegal of causing negative image or emotions, as far as an advertisement is not causing fear. As it has been mentioned also before, the Market Court considers showing otherwise illegal or inappropriate acts in advertising prohibited. It seems that securing consumers' rational buying decision is not anymore the primary motive for creating preamble provisions.

There can not be recognized clear pattern how the Market Court would interpret difference between product advertisement and image advertisement. Also opinion of interpreting some advertisements as journalistic works is ambiguous, although it seems that the world has not changed enough for interpreting multinational corporations' advertisements as a public discussion.

According to cases that this research has analyzed, it can not be said how the advertisements' media selection is effecting the estimation and the judgment of the Consumer Ombudsman and the Market Court. However it seems to be clear that advertisement can not be prohibited or restricted if the advertiser is non-commercial organization or advertisement is not aiming to market a commodity.

#### 4.2. ARE THERE TABOOS?

By the explanation of several dictionaries, a taboo means a prohibition that is based on some supernatural or sacred thing, issue, or object. Originally a taboo found from the Polynesian folklore with a meaning that some issues are sacred and this way so perilous that it should not be talked about. In the contemporary world a taboo often means something that should not be mentioned due to modesty reasons. In this research the context in which the taboo subject is handled, the taboo has more similar meaning with a word *prohibition* or such, in the world of advertising.

As it has been mentioned in the Literature Review, Finnish legislation does not include clear prohibition or restriction for advertising or other commercial messages. The general clause of the Consumer Protection Act's chapter that handles marketing, states that advertisement should not be contrary to good practice. Afterwards, this concept of good practice is somehow explained, but still the Market Court remains greatest interpretation power.

The International Code of Advertising Practice by the International Chamber of Commerce could be seen as a guideline for the interpretation and self-regulation. It contains also similar general clause with the Consumer Protection Act's marketing chapter. Besides, it defines more deeply different kind of improper marketing activities. Those include for example statement, that "advertisement should not play on fear without justifiable reason" and "advertisements should not appear to condone or incite violence".

The "violence" statement in the International Code of Advertising Practice is slightly inconsistent with the preamble of the Consumer Protection Act and more, with the Finnish Market Court's interpretation pattern. In the chapter 2.5.5. of this research it has been stated that the preamble is, that showing violence in advertising is conniving brutalize of society. Violence has been seen as very indefensible in larger scale within the western societies. The legislator emphasizes often the need of reducing the violence, also ones showed in the advertisements. When comparing the opinion of the legislator with the last statement in previous paragraph, the law would seem to be stricter. However it is essential to remember, that the International Code of Advertising Practice is voluntarily made by chambers of commerce. It does not have any institutional power or justification.

In the Benetton case (Market Court 1995:6) which would be introduced later, the Consumer Ombudsman argues for the claim that people should have an emotional privacy of their own. This was connected to the argument that people's attitude towards war might vary, but all over the world and among all the people it is negative. The ombudsman sees the case in the way that it is improper to use negative images in advertising. Later on the Market Court disproved the assumption. The ombudsman argued also that the advertisement was abusing people's fear against war. It was also stated as a commonly know assumption that people may become torpid and insensitive against violence or horror the war carries with. This might be the main reason besides the fact, that violence is not desirable way to behave in our society, for considering it as an unsuitable element in advertising. For the defense of the Benetton, it should be noticed that the advertisement or more clearly the photograph of the poster did not contain any straight violence, only bloody and bulled stained clothes of Marinko Gagro, a Bosnian soldier shot in 1993.

#### 4.2.1. Raisio Case

When observing the Raisio case (Market Court 1998:18), all the elements of the advertisement are relatively similar with the older cases that have been convicted as a contrary to good practice. Besides the atmosphere of the commercial is oppressive and there exist usage of straight violence. This advertisement contains a scene where an older housemaid shoots towards a soldier. Especially with the Raisio case, the ombudsman refers to a psychological research that television violence has greatest effect on women by increasing their anxiety.

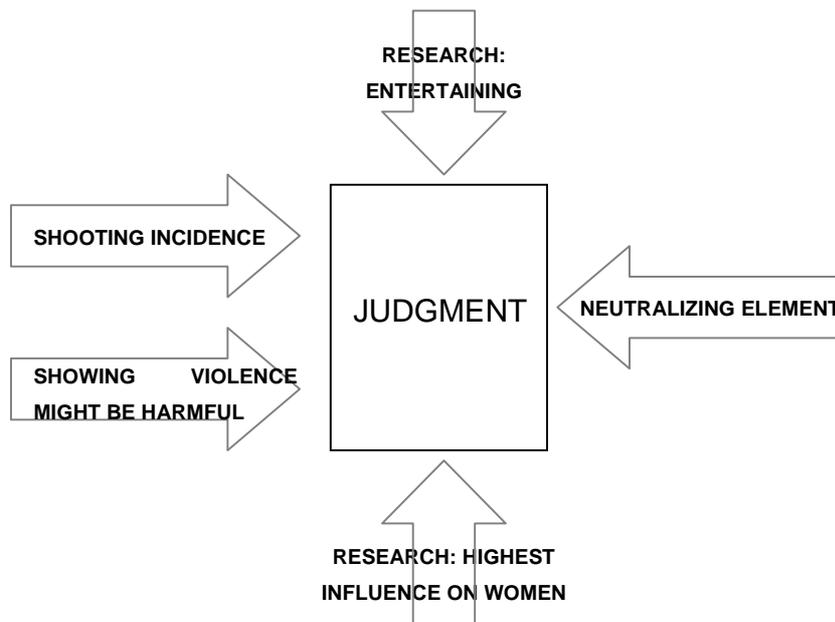
The main reason for the claim of the Consumer Ombudsman is that there is no justifiable reason for usage of violence. A grocery product does not have anything to do with violence. The ombudsman refers also to one old decision of Market Court (1984:5) where the court stated that "showing violence might have harmful influence on people". Besides the atmosphere is oppressive and anxiety increasing, the reasoning seems not to be in relation with the travaux préparatoires of the Consumer Protection Act. According to research Raisio or the Television Channel conducted, the commercial did not affect negatively on people. Instead it was seen entertaining. According to the travaux préparatoires, the primary purpose of the Consumer Protection is to protect the rational buying decision of consumer. By superficial examination using violence should not effect to the consumer's rational buying.

In the Raisio case a happy ending, which could be seen as a neutralizing element, does not affect the decision of the Market Court. On top of it all, the ombudsman appeals for ignorance of neutralizing element.

The case won by the Consumer Ombudsman. This time it seems that the shooting incidence was the decisive factor and the research that showed the advertisement to be entertaining and not condemnable was totally ignored. The defendant refers to notion that the Consumer Ombudsman has got complaints from consumers about the Raisio's commercial. The defendant claims that those complaints are made only by few narrow-minded persons and those could not be held as a general public opinion. It could be interpreted, that in this case neither public nor few person's opinion did not

affected the handling and decision. In the reasoning of the Market Court, the violence factor seems to be so heavy that it might have been disposed the case.

Figure 3: Issues effecting on judgment of the Raisio case



#### 4.1.2. Conclusion: is there a taboo?

Even though in the Benetton case the defendant won the case, it seems that violence is a taboo in advertising. Besides the Raisio case there have been several cases (e.g. 1984:5, 1988:11) throughout the years which the defendant company had to admit their loss when the advertisement contained straight violence, such as punch, kick or shooting. The main reasoning seems to be the effect of showing violence to people. It is presumable that there exist also many other different taboos. Due to the outline and huge amount of material, this study was concentrated on violence as a phenomenon.

The main purpose of the Consumer Protection Act is to protect the rational buying decision of consumer. At this extent it would be rational that showing violence would be allowed. It is hard for a person to think a situation where violent scene in commercial film effects in a way that a consumer is

not able to make a rational buying decision. However violence could be seen as a taboo in advertising. According to the Market Court decisions it is not allowed to use violence in advertising. The reasoning is that violence as a way of acting and way of behavior is indefensible and also illegal. The reasoning of Market Court states that it is contrary to good practice to include elements in advertisement which are otherwise illegal or unsuitable. With this basis it could be assumed that for example showing usage of drugs or rape in advertising would be restricted in most cases.

Respectively, the Benetton case is interesting in a way that it is said to be the referring to the institutional violence. Presumably many governments and inhabitants would not consider war as acceptable phenomenon. However the Market Court does not give an opinion about the acceptance of institutional violence in the reasoning or judgment of the case.

#### 4.3. ARE TABOOS PERMANENT OR IN PROCESS OF CHANGE

It could be seen, that there are roughly two kinds of advertisements that contain violence. Violence might be severe, like in the Raisio case and other cases that the Market Court has strictly prohibited. The slacker type of violent advertisement might contain some violence with an excuse like humor, but essential is that there exist a truly neutralizing element. In this context we could analyze if violence as a taboo is permanent or in process of change.

If we for the beginning simply compare earlier introduced cases that have been prohibited in the Market Court, there exist no signs of process of change between 1984 and 1998 in advertisements that contained straight violence. The Market Court has relatively small amount of cases to handle each year, and from those the smallest part is cases that are related to Consumer Protection Act and furthermore to interpretation of usage of violence. It could be stated only as a general assumption, that at least the jurisprudence would not be recognize a phenomenon were prevailing practice would loosen. Contemporary broadcasting industry offers more and more violent programs, so it could be assumed that the issues the legislator could easily control, such as advertising, would not get too cruel, while the other things remains developing further.

In a slacker kind of advertisement there exists a neutralizing element. These kinds of advertisements are not easily able to be analyzed if the taboo is permanent or in process of change, due to there is always different kind of neutralizing element in every advertisement. It becomes almost impossible to measure how much the neutralizing element has influenced the decision of the Market Court, even if the element could be recognized. In case the advertisement would be comparable to each other, there would be same kind of problem that with the advertisements including straight violence: there are not enough cases handled in the Market Court that there could be recognized some kind of historical pattern.

Although it was not possible to measure are taboos permanent by a quantitative research, there could be made some suppositions according to other analysis conducted in this research. As it has been mentioned before, a part of the Consumer Protection Act that regulates the advertising is vague in order to give a chance for interpretation to the court. The general clause is vague because the legislator believes that the world of advertising is changing all the time, and the control should remain contemporary.

The International Code of Advertising Practice states, that "advertisement should not appear to condone or incite violence". According to the travaux préparatoires, the primary purpose of the Consumer Protection Act is to protect the consumers' rational buying decision and to guarantee enough quality information about the commodities. The Market Court's decision of denying usage of violence as an effect in advertising is based on assumption that showing violence could be harmful for people. The last one was stated in the court's reasoning in the Market Court case 1984:5. The Market Court has made also decisions, that using elements which are illegal or otherwise objectionable are contrary to good practice if used in marketing. When sticking in the definition of the Consumer Protection Act, the way of interpretation of the Market Court seems to be somehow strict and overprotective. It is hard to imagine a situation, how violence in advertisement could effect on consumers' rational buying decision. In Benetton and Raisio cases, the defendants are claiming that showing violence is not necessarily harmful for people. Neither the Consumer Ombudsman nor the Market Court are referring to any research which states that showing violence is harmful, even though

there exist several researches at least about effects of broadcasted violence. It remains as a topic for conversation, if the violence in advertisement should be allowed since it is allowed in the broadcasted television programs.

According to what is stated above, taboos might be in a process of change. Still it does not necessarily mean that violence is changing as a taboo in larger scale, for example meaning that it would become generally accepted in advertising. The form of restrictions might be changing and especially the interpretation of the "thin red line". It seems to be nearly impossible that applying the legislation would be permanent. The prevailing practice is living and changing as the contemporary world changes its forms of advertising.

## 5.0. CONCLUSION

The conclusion of this thesis is a summary of findings of analyzing the cases inside the framework which was introduced in the Literature Review. The results could be divided in three categories by the research questions: are there taboos, how regulations are affecting them, and are taboos permanent or in process of change.

What comes to the Market Law and regulating advertising, the Market Court holds the greatest interpretation power since the legislation is such vague. According to the analysis of several cases, it seems that violence is a taboo in advertising in Finland. It is not restricted by direct legislation, but the current prevailing practice that created and interpreted by the Market Court prohibits the usage violent advertisements. To support the Market Court interpretation, there exists a recommendation stated by International Chamber of Commerce that "advertisement should not condone or incite violence". There are several cases handled in the Market Court that justifies the assumption.

The line between being just prohibited or being a taboo becomes more obvious when observing it in the context of Travaux Préparatoires. There has been stated that the primary purpose of the Consumer Protection Act's chapter two is to protect consumers' rational buying decision. It has been mentioned earlier in this study, that there seems to be no justification for prohibiting violence in advertising in this extent. However the Market Court has decided that using acts in advertisements, that otherwise are illegal or against common approved things, is contrary to good practice and that way also illegal. When observing the situation with the fact that prohibition of using violence in advertising is a consequence of the Market Court's interpretation, violence could be also referred as a taboo.

Regulations are effecting on taboos in several ways. The first one is about the interpretation of the question does advertisement need to include *marketing a commodity* in order to make Consumer Protection Act applicable. The amount of image advertisements has increased during the years. At the moment the Market Court has not given an opinion about differences between product advertising and image advertising. Since the legislation is vague and there are no cases besides the Benetton involved with the question, it seems that it is still required to fulfill all those elements in order to apply the Act.

Currently it seems that usage of shock effect is allowed as far as the advertisement does not cause fear or include violence. However including a neutralizing element in advertisement might improve the tolerance of the Consumer Ombudsman and the Market Court. Still, there exists no clear opinion by Market Court, even though they have commented that the Benetton poster is lacking a neutralizing element. Hereby it seems that there exist several different interpretations or at least Market Court opinions, what comes to usage of a neutralizing element.

After all, there exist no contemporary prevailing practice for differences between image and product advertising, journalistic interpretation of advertisement and usage of a neutralizing element. Still there are some possibilities to use violence advertisements. If the advertisement is non-commercial and is not marketing any commodity, it seems that there is no excuse to prohibit the advertisement. This kind of advertisers could be for example related to politics, religion or otherwise to effecting public welfare. Besides advertisements without commercial purpose, there might be a chance of violent advertisement being legitimate if there exist a reason for being violent. This has also been stated in the International Code of Advertising Practice by the International Chamber of Commerce. It remains somehow unclear, how the Market Court would judge an advertisement that is violent but image advertisement. Probably it would still be contrary to good practice.

According to the analysis, it seems that taboos in advertising are partially in a process of change. There can not be recognized clear pattern of behavior since there does not exist enough cases handled by Market Court through out the time. The assumption is based on estimates that have been explained in more detailed in the Analysis. Still, it seems that since the broadcasting industry is somehow allowed to show violent programs for segmented audience, the advertisements can not contain violence due to it has specific commercial purposes influencing on consumers.

## 5.1. SUGGESTIONS FOR FUTURE RESEARCH

This research was concentrated on legal restrictions of using violence in advertising. Since it is only related to smaller amount of advertisements, it would be interesting to analyze other advertisements

which are pushing the limits, in context of ethics. There exists *Mainonnan Eettinen Neuvosto*, an ethical council for advertising in Finland. It is not juridical powered, but it gives recommendations about ethical standards. The council handles also cases that are not in direct influence of the Consumer Protection Act.

Business-to-business advertising acts a great role in world of marketing. There exist several guidelines and vague legislation which regulates relations between businesses. It would be also interesting topic to research, how regulations are affecting business-to-business marketing. The world of advertising is wide and often regulations and ethics are vague. There presumably exist lots of topics to research and analyze, that has not penetrated yet.



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