



Self-regulation of Sexist Digital Advertising: From Ethics to Law

David López Jiménez¹ · Eduardo Carlos Dittmar¹ · Jenny Patricia Vargas Portillo²

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Abstract

Advertising is a booming activity both in the physical realm and on the Internet. Online advertising is growing and is subject to legal standards, although some self-imposed ethical standards for the industry are needed. This has been called self-regulation. This article examines the important role that self-regulation (in the form of ethical standards) can play in addressing advertising that uses degrading and discriminatory images of women that compromise their dignity. Sexist advertising is a reification of women—stereotypes and sexist social models—that do not convey a realistic image of a woman’s abilities and potential. This article analyzes specific decisions on the subject issued by the Jury of the Spanish Association for the Self-Regulation of Commercial Communication. The Jury’s decisions are based on a code of ethics. The technical expertise and impartiality manifested in its decisions have produced a high degree of credibility and confidence in the organization.

Keywords Advertising · Electronic commerce · Ethics · Law · Self-regulation

Introduction

Advertising is a tool to enhance competitiveness, one of the most significant tools in contemporary society that economic actors employ to promote the acquisition or use of the goods and services they offer in the marketplace (Alpa 1986). It is a clear example of asymmetric information. It should be noted that advertising goes beyond the simple demonstration of product and service features. In effect, it is a medium that transmits, inculcates, and exalts certain values and behavior patterns that form a common foundation for the collective consciousness (Tato Plaza 1994).

Advertising is representative of contemporary society. Thus, it stimulates growth and innovation, enhances competitiveness, combats abuses of dominant positions, and expands consumer choice. To fulfill this important role,

advertising must garner a high level of consumer confidence. Therefore, it must be truthful, legal, honest, and loyal. Bad advertising (that does not meet all or some of these characteristics), even if it represents a tiny portion of the whole, will undermine consumer confidence, and all advertising will ultimately suffer some type of negative consequence (Nam et al. 2018).

Therefore, advertising must be regulated so that this does not happen, and such regulation will benefit all of society. There are two, complementary (non-exclusive) options: government regulation (hetero-regulation) and self-regulation, where an industry disciplines itself. In fact, for some time now, regulations have used various channels to promote self-regulation in certain sectors. One of them is advertising.

Of the various communication channels for disseminating advertising, one has recently stood out—the Internet. Indeed, advertising on the Internet is growing due to its inherent advantages and will presumably continue to grow in the future at a significantly higher rate than in other media (Lee and Cho 2019). However, not everything is positive in this area because regulatory problems have emerged. While it is desirable and appropriate to tightly control all digital advertising, in reality this is not currently possible. In any case, the Internet itself must self-regulate to compel the entire industry to assume more responsibility for consumer and user protection.

✉ Eduardo Carlos Dittmar
ecdittmar@eae.es

David López Jiménez
dlopez@eae.es

Jenny Patricia Vargas Portillo
jennypatricia.vargas@esic.edu

¹ EAE Business School, C. Joaquín Costa 41, 28002 Madrid, Spain

² ESIC Business & Marketing School, Av. Valdenigrales, 28223 Pozuelo de Alarcón, Spain

Controlling Internet content is a major issue that produces new challenges for the law and, undoubtedly, for companies operating on the Internet (Lloyd 2004). Unfortunately, the traditional method of controlling content does not work on the Internet. Indeed, States cannot try to control content independently that circulates through a communication channel that does not recognize territorial borders. Supranational solutions are therefore necessary. State regulation of the Internet must continue to play an active role, but complementary measures are emerging, including industry self-regulation, as noted above (Vega Vega 2006). One of the areas where this is clearly needed is Internet advertising that presents discriminatory and degrading portrayals of gender (Huhmann and Limbu 2016).

Our proposal presupposes that ethics is an essential requirement for honest advertising (in the physical realm and on the Internet) that is respectful of human dignity and that is especially necessary in gender-focused advertising (Maciejewsk 2004). Various instruments have been adopted in this regard since the latter half of the twentieth century. On the subject of non-sexist advertising, the UN Convention on the Elimination of All Forms of Discrimination against Women in December 1979 is noteworthy. Subsequently, the 1995 Fourth World Conference on Women in Beijing became the starting point for the European Union's resolutions on the matter. In this regard, we can mention the EU resolution on the portrayal of women and men in advertising and the media, and the Council of Europe's resolution on sexism in advertising (European Parliament resolution of 26 June 2007). On May 27, 2008, the European Parliament's Committee on Women's Rights and Gender Equality approved the report on how marketing and advertising affect equality between women and men, which led to the adoption of European Parliament Resolution 2008/2038 of 3 September 2008. This resolution emphasizes persistent discrimination in the audio-visual media and affirms that advertising and media that transmit gender stereotypes are parties to this discrimination. The resolution also stresses the need to combat sexist stereotypes at all levels of society. Virtual advertising is by no means a neutral activity because its effects, although not consciously intended, transcend the individual and community it is meant to serve and can have either positive or negative (but never neutral) effects. The potentiality and transcendence of this type of advertising is what justifies the need to incorporate it into the legal and ethical realm.

The objective of this article is to analyze the potential effects of self-regulation on gender-focused interactive advertising that can be considered discriminatory or degrading. However, to provide a better grasp of what we will examine in this article, a brief analysis of two issues is useful. One issue is the concept and assumptions of self-regulation, and the other is self-discipline as an ideal tool

for instilling ethics in advertising. Last, we will consider the decisions issued by the Jury of the Spanish Association for the Self-Regulation of Commercial Communication (*Autocontrol*).

Self-regulation of Virtual Advertising

Technological advances, new forms of communication and the rise of social media have established the Internet as an advertising platform. Moreover, like any media channel, there are ethical issues to consider when interacting in the marketplace. The Internet is a space with many possibilities but also with few control measures, which is reflected in advertising practices. The concept of self-regulation will be defined next, as well as its assumptions and prerogatives. Once a sufficiently broad concept of self-regulation has been developed, we will analyze its role in the advertising field. Following that, we will examine the vital incorporation of ethics in advertising.

The Concept of Self-regulation

Self-regulation is the action and effect of "self-regulating", which is the act of regulating oneself. Although the meaning of the term "self-regulation" is in no way indisputable or unequivocal, it is often used as a synonym for self-governing, which should be understood as the ability to impose rules on oneself. The term is also used to refer to those principles, standards or techniques that define good practices in a profession (the *lex artis*), i.e., the appropriate patterns of conduct in the daily tasks of an activity that requires the application of certain technical or ethical knowledge, or at least of a certain degree of specialization.

Self-regulation is currently presented as an innovative blueprint that, due to its advantages, has obvious prospects for the future (Barkatullah and Djumadi 2018). Its novelty and the current interest that it has awakened is such that the effects of some of its principal features are spreading beyond its birthplace in private enterprise to the public realm, or at least has become a point of reference for public authorities to consider. The prerogatives of a self-regulating system are that it is voluntary, which greatly facilitates its practical application and compliance without needing intervention by public authorities (although the specifics of regulated self-regulation must be considered). Other prerogatives are flexibility; specialization—in many cases, the instruments of self-regulation are developed by experts in the field and therefore have been designed with the specifics of the field in mind; promotion of the development of standards that guarantee high levels of accuracy; transparency; prevention of infringements in the regulated area, especially if there are

mechanisms for prior assessment (thus, copy advice must be considered); the ability to bridge potential legal gaps, thereby improving the minimal level of protection established by legislators; and easy access—the instruments of self-regulation are generally accessible through the Internet. Last, one must consider the benefits of time and resources (legal and economic) saved on behalf of public authorities that these self-regulation techniques can provide in the various consumer protection models. This is because, in addition to the extra protection for consumers and users provided by these techniques, they can help to relieve the public legal system of these regulatory costs.

The self-regulation that constrains social relationships in a given sector has always existed in some form because any organization has some degree of self-regulation. The phenomenon of self-regulation presupposes the observance of behavioral guidelines (principles and ethical norms). The fulfillment of these guidelines has been established beforehand as an objective. At the same time, it is also an expression of commitment to social responsibility by a certain industry sector (Pollach 2011).

Because self-regulation is more informal than legislation and therefore lacks coercive capacity (such as a state would have), it can be ineffective in the absence of a favorable cultural environment and the proper organization of all the parties involved (Marsden 2008, 2018).

Self-regulation cannot be regarded as an excuse that relieves a legislative body from its responsibilities but should be viewed instead as a complement to legislation that is necessarily general and ambiguous (Aznar and Catalán 2010).

Once these general considerations have been taken into account, we can define advertising self-regulation as a voluntary system established by companies in the advertising sector (advertisers, agencies and the media) to ensure that advertising activities (traditional and virtual) are conducted in a legal, honest and responsible manner for the benefit of consumers and users, competitors, the advertising market, and society in general (De la Cuesta Rute 2005; Fernando-Magarzo 2008; Guillén Catalán 2008). Thus, those who adhere to a system of self-regulation consciously commit to complying with ethics standards monitored by an independent control entity.

Self-regulation in the advertising industry is a self-governing system. The three actors in the industry, advertisers (pay the advertising expenses), agencies (responsible for advertising mode and content), and the media (act as advertising channels or supporting mechanisms) agree on minimum standards of conduct or ethics.

The self-regulation of cross-border advertising is a manifestation of the continuing development of non-state regulation, in other words, neither state legislation nor international regulations (usually found in international

conventions). This is significant not only for the regulation of commercial relations but also for consumer protection in an environment characterized by the growing presence of international consumer contracts (De Miguel Asensio 2005).

Although advertising on the Internet is subject to relevant laws, this alone seems insufficient or inadequate. In fact, although hetero-regulation (derived from the law itself) should serve as a baseline, it actually is not as effective as it should be. Indeed, there is a degree of hyper-regulation on commercial communication (as a consequence of external control) due to the wide variety of legislators, approaches (general regulations, media-specific and product-specific regulation), interests (such as economic competition and consumer protection), and controls (civil, criminal or administrative).

Considering the many factors pertaining to the issue analyzed here, such as the extraterritoriality of the Internet, the extraordinary speed of technological change, as well as the need to ensure high levels of protection for all of the actors in this space (adult and minor consumers, industry, government, in short—society as a whole), the most advisable approach is for existing regulations to be complemented (not replaced) by self-regulation (Boddewyn 1989). However, it is important to note that laws directly influence self-regulation (Petty 1996). If the instruments of self-regulation continue to reinforce the pertinent legal regulations, there will be fewer improvements in consumer or user protection; therefore, they will have limited effectiveness.

Code of Conduct and Supervisory Body

The assumptions for establishing a system of self-regulation in the advertising field are as follows: the prior agreement of industry members; the approval of a reference document, which is usually a code of ethics or conduct stating the requirements applicable to the entities that voluntarily comply with it; the creation of a body that verifies full and ongoing compliance with the code of conduct (a supervisory body) that is empowered to impose sanctions; and, if appropriate, the creation of a seal or icon to identify entities that comply with the system. While all of these requirements are important, two of them are fundamental: the reference document (usually a code of conduct) and the supervisory body.

Codes of conduct for interactive advertising include a set of ethics standards for good professional practices that exceed (in terms of their requirements) the legal regulations in effect. They are established to benefit the industry itself as well as to protect the rights and interests of consumers and users.

A distinctive feature of many self-regulating entities is the existence of a body whose main function is to approve and possibly amend the code of conduct itself. This entity

may be a board, committee, or council in which the three constituent sectors of the industry are represented: advertisers, agencies and the media. To ensure an impartial system, the oversight body responsible for the practical application of the code must be independent of the body responsible for its initial approval and any amendments, including updates.

The code of conduct can be applied in practice both before and after publication of the advertising. When applied before publication in the form of copy advice (or less frequently as a preliminary decision), the administrative arm of the self-regulating body is responsible. Application of the code of conduct after publication is normally the result of complaints, either by competitors or from the public (consumer associations, consumers, or a government entity).

The supervisory body is responsible for interpreting the code when examining cases of alleged code violations submitted by the administrative arm. An exemplary model of a supervisory body is the Advertising Jury, which is discussed in the last section of this article.

For a code of conduct to avoid becoming a meaningless piece of paper, compliance with the code must be verified and ensured by a supervisory body that is empowered to impose appropriate sanctions when violated. Otherwise, the code becomes a mere declaration of intentions or an ineffective propaganda instrument (Berleur 2002; Pouillet 2000).

Although the terms “self-regulation” (mostly associated with voluntary efforts and private sector autonomy) and “sanction” (associated with the public sector due to its distinctly coercive nature) might seem difficult to reconcile, they are not (Ginosar 2014; Koop and Lodge 2015). Indeed, they are clearly disciplinary sanctions in a private sector context that are traditionally imposed as natural extensions of the normative, self-regulating capacity of every organization.

A Tool to Incorporate Ethics in Commercial Advertising

Creating an advertising campaign that strictly abides by ethical values is complex. There is a thin line between the socially acceptable and the public’s sensitivities. However, self-regulation can be applied to comply with ethics in advertising (Feenstra and González Esteban 2019). In no way does self-regulation imply a split between state and society because it does not entail a complete separation of the two. In contrast, it allows this new feature of civil society to develop fully, and it fully empowers the creative capacity of private entities to take advantage of it, thus enabling public and private interests to converge.

Documents that include ethical standards must be created such that these standards adhere to the law. With this in mind, we believe that a code of conduct should include the

best practices for advertising on interactive media that meet the needs of both the advertising industry and its consumers or users.

Regarding the content of these standards of behavior (usually compiled in a code of conduct), they go beyond a mere compilation of the legal regulations applicable to advertising, as they also include ethical considerations. In this regard, advertising, by its very nature, concerns conduct and ethos. Therefore, it is subject to ethical considerations.

Regarding ethical considerations, a brief pause is appropriate here to specify what is understood by ethics so that this concept can then be applied to advertising. Ethics represents a set of moral principles or values that govern the conduct of a person, group or organization, as well as coexistence in society. That said, as standards for assessing conduct, ethics are not always in perfect alignment with legal norms (Lamb et al. 1994). In any case, laws indicate the threshold for ethical action.

“Ethics” refers to people, not institutions, which is why the approach to ethics in advertising often adopts a relativistic perspective that prioritizes the will of an individual (Ferrell and Gresham 1985; Forsyth 1980). That it depends on multiple aspects should not be ignored, as these aspects include the moral principles that an individual accepts, the period in history, and the cultural environment of the set of ethics.

Ethics also represents a value that engenders trust in business relationships that consequently benefits those relationships. For this reason, from a market efficiency perspective, a company’s business activities must be oriented towards the common good (comprehensive human development), not just economic development. Although it may be obvious, for these behaviors to be ethical, the general behavior of society must also be ethical.

From the above discussion, we can define ethical advertising as communications that do not violate (thereby eroding general welfare) the set of social, cultural, religious and moral values of the social group that is affected by the message (Irakulis Arregui and Leñena Mendizabal 2008). Although ethical advertising will usually be lawful in practice, this may not prevent a commercial message from violating the set of social values we are discussing, thereby causing a certain uneasiness. Moreover, in practice, some advertising-related activities (especially evident in Internet advertising) may not be regulated by law but could be considered unethical.

For both traditional and virtual advertising, ethics is acquiring a very important role in all types of companies because an increasingly competitive environment has compelled companies to look for an advertising tool that will differentiate them from their competitors and increase sales and customer loyalty (Daems et al. 2019; Drumwright and Murphy 2004, 2009; Willett 2018). Thus, the ethical aspects

of an advertising message's content could be analyzed by examining both the veracity and the style or form of the message.

The volume of communications continues to grow, although criticisms of this activity are also growing because of certain behaviors and negative effects. These behaviors and negative effects are what self-regulation tries to prevent.

The Jury of the Spanish Association for the Self-Regulation of Commercial Communication

Women have been represented in advertising in many different ways since ads first appeared. However, sexist advertising still exists that portrays gender stereotypes exhibiting differentiated roles for women and men (Grau and Zotos 2016; Jones and Eagleton 2011; Jones and Reid 2010; Kroska 2011; Zayer and Otnes 2012), which affects consumer perceptions (Chan et al. 2007).

The fundamental objective of advertising as a product of a consumer society is obviously the purchase of a product or service. Claims about the body and sex are constantly present in the pursuit of this objective, and women often convey both aspects (Compton et al. 2019; Jones et al. 2008; Plakoyiannaki et al. 2008; Plakoyiannaki and Zotos 2009). Many studies have focused on female stereotypes in advertising (Baxter et al. 2015; Chu et al. 2016). All this focus on gender ultimately creates the idea in most of the public that there are two parallel worlds with roles that seem to be clearly defined within society and families. Advertising that constantly associates men with business and success while associating women with maternity or sex will inevitably permeate our perceptions (Gentry and Harrison 2010; Vokey et al. 2013; Zayer and Otnes 2012). The advertising industry has begun to consider this, as evidenced by the fact that increasingly more brands are venturing into different types of ads (Patterson et al. 2009). However, this has not led to the complete disappearance of sexist advertising (Lazar 2006; Zotos and Tschla 2014).

Certain commercial messages may be communicated only on the Internet or on multiple media channels that portray a degrading or discriminatory image of women.

According to article 3.a) of Spain's Law 34/1988 (11 November 1988), the General Advertising Law (GAL), the following is unlawful: "advertisements that portray women in a degrading or discriminatory fashion, either by specifically and directly using their bodies or parts thereof as mere objects unrelated to the product being promoted, or their image associated with stereotyped behaviors that violate the basis of our legal system while contributing to generate the sort of violence referred to in Organic Law 1/2004 of 28 December 2004 on comprehensive protection measures

against gender-based violence". This type of law should be viewed positively because it sanctions advertisements that portray women in stereotyped roles and behaviors that violate the principles of dignity and individuality of every human being. This type of law also makes it possible to eliminate the stereotyped image of women associated with the domestic aspects of life, where they are often placed in the background and where their work is underappreciated.

The abovementioned law enables the identification of two different premises that lead to the degrading treatment of women that insults their dignity. However, it should be noted that a strict interpretation of both modalities based on a literal reading of the law could imply an unconstitutional restriction of the freedom of enterprise and, consequently, of the freedom of expression. Advertising is considered an integral part of the rights to freedom of information and freedom of expression. This is recognized by the European Court of Human Rights, European national courts, North American courts, and the most sound scientific doctrine of various countries and, of course, Spanish law. However, advertising activities are not in themselves completely neutral or innocuous. They can be offensive and harmful because of the serious economic consequences they usually cause when basic ethical principles are not observed, and when they violate the governing regulations.

In addition to the necessary role played by legal regulations and public controls, the interesting, complementary role of self-regulation must be considered when encouraging the correct treatment of the image of women in advertising (Van Hellefont and Van de Bulck 2012).

Let us turn now to advertising that portrays the female body or body parts as objects unconnected to the product being promoted. An advertisement should not be regarded as unlawful just because it depicts a female image. Indeed, for an advertisement to be unlawful, three conditions must be met: the use of the female body to draw attention to the advertisement when the core message should be what captures the target audience's interest; the use of the female body as an object, which will largely depend on the role it plays in the overall context of the advertisement; and the lack of any association whatsoever between the image used and the product advertised. Various decisions handed down by the Jury for Advertising Self-Regulation deal with this specific issue and will be discussed later in this article.

The Jury for Advertising Self-Regulation Jury is an independent entity associated with *Autocontrol de la Publicidad S.A.* (based in Spain), an organization created in 1977 (Medina and An 2012). *Autocontrol* members include advertisers, agencies, and media, encompassing more than 75% of the advertising industry in Spain. *Autocontrol* is the only private sector organization in Spain that the European Commission has incorporated into the European Extra-Judicial Network and therefore adheres to European Commission

Recommendation 98/257/EC of 30 March 1998 that stipulates that bodies with responsibility for the out-of-court settlement of consumer disputes must respect the following principles: independence, transparency, opposition, effectiveness, legality, liberty, and representation.

The functions, composition and operation of the Jury are defined in *Autocontrol's* statutes (11 May 1995, amended on 26 April 2011), articles 44-50, and in the Jury's own bylaws (23 April 1997, last amended on 2 October 2013). The Jury consists of a president, six vice-presidents, and 20 members of indisputable impartiality. It is important to strictly enforce the requirement that Jury members cannot have any kind of relationship with member companies.

The Jury acts in plenary sessions or subcommittees. Plenary sessions are required to approve draft codes and rules of conduct developed by the subcommittees and to resolve appeals of subcommittee decisions. The six subcommittees are each presided over by a Jury vice-president and are empowered to issue opinions requested by the association; prepare draft codes and rules of conduct for the association; resolve appeals of code and rules of conduct violations applied by the association; respond to requests for clarification of decisions; arbitrate any advertising-related issues submitted to them; and address advertiser requests for reviews of copy advice. This last function is a voluntary, confidential, and normally non-binding advisory service on the legal and ethical rectitude of an advertising campaign or project prior to publication. It may be requested by the advertiser itself, an advertising agency, or the publication/broadcasting medium. In Spain, the only entity that provides this type of service is *Autocontrol's* Technical Office. This Office includes lawyers and publicists who, once the copy advice has been submitted, assess whether a particular advertisement complies with the regulatory and ethical standards indicated in the codes of conduct. If the copy advice is noncompliant, then a negative copy advice decision is issued.

The Jury only intervenes when a dispute arises and acts in accordance with a procedure governed by the principles of equality (of all parties), of the right to a public hearing, and the adversarial principle. Although the Jury does depend on *Autocontrol* for administrative support, the Jury is not an appendage of the association. It includes experts from different knowledge domains: law, economics, advertising, communications, sociology, etc., that are increasingly used. In spite of its recent birth, the advertising self-regulation system created by *Autocontrol* has become the preferred mechanism for dispute resolution in Spain, even more so than the courts of justice.

The Jury only addresses commercial advertising issues, thereby excluding political, institutional, and religious advertising. Furthermore, according to article 13.2 of the Jury's bylaws, the advertisement must have been broadcast

in Spain sometime in the prior 12 months, including cross-border advertising (article 12.2 of the Jury's bylaws). The Jury will also address advertisements broadcast abroad that have been firmly condemned by a national self-regulating body that is an EASA (European Advertising Standards Alliance) member, if there are indications that the advertisement will also be broadcast in Spain (article 12.3 of the Jury's bylaws).

Similarly, in accordance with article 13.3 of the Jury's Rules of Procedure, claims relating to a commercial communication that has been resolved or is being processed in a judicial or administrative proceeding shall not be accepted by the Jury for processing. Also noteworthy is that if the Jury becomes aware of an advertising-related lawsuit submitted to a court of justice, then the Jury will immediately suspend any corresponding case that it has in process.

The documents that serve as the basis for the Advertising Jury's decisions are not strictly rules of law because if they were, then the Jury could be infringing upon the jurisdictions and functions of judges and courts. Conflict resolution in interactive advertising is based on the advertising code of conduct as well as on the *Confianza Online* seal of trust. The standards of *Confianza Online* should be viewed as ethics guidelines even though they sometimes contain enhancements to the rights of potential consumers and users that go beyond the applicable regulations. In practice, however, this distinction weakens because self-regulatory instruments establish compliance with legal norms as a basic standard of ethical behavior. This enables the Jury to sanction non-compliance with laws as a behavior that violates advertising ethics.

The technical authority and the impartiality demonstrated by the Jury's decisions, issued by prominent jurists and experts with outstanding reputations in the sector, have led to a high level of credibility and confidence in the Jury since it first began, throughout the advertising industry, the government, and society overall. Whenever parties have appealed to the Spanish courts after having first submitted the issue to the Advertising Jury, the court decisions have largely aligned with the Jury's initial decisions. Thus, it is clear that the Jury has issued sound decisions based on a code of ethics that are highly relevant in Spain's common courts.

In short, we can acknowledge that the Advertising Jury is the main protagonist of the new Spanish system of self-regulation in advertising. It is a body that specializes in issues of ethics in advertising, with absolute functional autonomy and independence and composed of independent individuals (Muela-Molina and Perelló-Oliver 2014; Perelló-Oliver and Muela-Molina 2019; Tato Plaza 2005). Now that we have analyzed this Jury, we will examine some of its decisions regarding the treatment of women in advertising that is degrading and compromises their dignity.

Advertising Jury Decisions Regarding Discriminatory Advertising Based on Gender

There have been numerous decisions in this area issued by the *Autocontrol* Jury. We will focus on cases pertaining to the digital space, while acknowledging that some of these have also been observed in the traditional or physical world. Occasionally, these cases have occurred in both spaces simultaneously.

First, we will look at the Jury's decision resolving an individual's complaint against an advertisement created by MediaMarkt that was published in print and on the Internet. The top part of the advertisement had the following phrase "See the best forwards in the world" inside a rectangle of a soccer field, with a highlighted arrow pointing towards a household appliance. Next to this rectangle and slogan was the waist-up image of two women in tight shirts of the Brazilian national soccer team. The complaint submitted to the Jury questioned the parallel between the World Cup and a video camera, referring to the models' breasts with the advertising catchword "forwards". It also argued that women or female body parts were used as objects, which is unlawful and violates a woman's dignity. In this case, the *Autocontrol* Jury decided that article 3 (especially "[Code of Conduct and Supervisory Body](#)" section) of the electronic commerce and interactive advertising code of ethics had been violated.

Another noteworthy Jury decision is the case of the Association of Communication Users' complaint about an advertisement by Dolce & Gabbana published in print and on the Internet. The advertisement featured a woman dressed in a body suit lying face-up on the floor with bent knees, and a shirtless man leaning over her and holding her down by her wrists. Meanwhile, four other men (two with their shirts unbuttoned and a third with no shirt) look on impassively. The Advertising Jury upheld the claim because the advertisement conveyed a message of sexual submission by the woman to a man who was in a position of strength or dominance. For the Jury, a woman's unwilling sexual submission is a manifestation of gender-based violence. The advertisement was considered to have violated human dignity by implying an attack on sexual freedom.

The Advertising Jury's guidelines establish the following requirements for determining whether an advertisement is unlawfully discriminatory due to a violation of the dignity of women: 1) the advertisement uses the female body or body parts for capturing attention, that is, it is used as a means of attracting the viewers' attention and usually has erotic connotations; 2) the woman is represented in a passive role, without an active protagonist role or connection with the advertising argument; and 3) there is absolutely no connection between the female image portrayed and the product being promoted.

Second, the rule we are analyzing—article 3.a) of the GAL—considers that abusive treatment of women has occurred when an image of a woman is associated with stereotyped behavior. Therefore, to apply this guideline to the specific case we are examining, the advertisement must convey the message that the activities portrayed are exclusively feminine or specific to women. The aim is to promote a more modern, active and dynamic vision of women who currently enjoy the same professional opportunities as men, while men are now more involved in caring for children and the family.

The Advertising Jury recently issued an opinion in this regard. Specifically, the *Asociación de Consumidores en Red*, an Internet consumer advocacy group, submitted a complaint about an Internet advertisement from Procter & Gamble. The complaint stated that the advertisement discriminated against women by portraying them in a stereotyped role of being exclusively responsible for purchasing personal hygiene products (even though the products were for both males and females) and cleaning products and not depicting any men performing tasks related to these products. In addition to targeting women almost exclusively, the advertisement even contained expressions that explicitly articulate stereotypes. An overall analysis of the type of advertising discussed in this article gave us an appreciation of a number of circumstances that, when assessed as a whole instead of individually, can lead to the perception that advertising reflects stereotyped behaviors with obvious gender-based role assignments. Thus, as a whole, and with no evidence that could change this perception, all the elements found in the advertising analyzed indicate that women, because of their role, are the sole and exclusive targets of advertising, being typical users of the products promoted.

Since advertisements published in certain advertising channels can be judged to violate the standards of good taste and social decorum indicated in article 8 of the advertising code of conduct, the decision of the Jury regarding the Live-show website case should be discussed.

This case pertained to outdoor advertising by the Audiomat Company that consisted of a billboard alluding to a pornographic show and depicting a naked woman next to the slogan "The hottest show in Spain... live and interactive. Internet: www.Livesshow.es".

The Jury ruled that considering the target audience, the wrong advertising distribution and access channel was used in this case because outdoor advertising is indiscriminately displayed. In other words, there should be restrictions on the distribution channels for advertisements with some type of sexual content or with erotic or pornographic images. In this regard, advertising campaigns that use an unsuitable medium (for example, television advertisements that ignore time-of-day restrictions and the Internet) could be judged to violate standards of good taste when they can

be indiscriminately viewed by some especially vulnerable groups, such as minors.

Sex-Related Personal Advertisements in Digital Newspapers and Specific Websites: The Impacts of Legislation and Self-regulation

Special mention should be made of advertisements for sex in digital newspapers and specific portals dedicated exclusively or in part to these purposes. The latter constitute a very widespread type of advertising today that is also sent in the form of unsolicited electronic communications. However, just because they can be easily found in different media (not only on the Internet where they have proliferated enormously) does not mean that they are lawful (Salvador Cordech and Rubí Puig 2010).

In this regard, we believe that this type of advertising could be punishable under various laws. First, consider the second hypothesis of GAL article 3.a) that makes illegal any advertisements portraying images of women associated with stereotyped behaviors that violate the fundamental principles of this law by contributing to gender violence.

The advertisements noted here are those that largely appeal to socially established gender stereotypes in which women suffer from a submissive, devalued, and reified role.

In this sense, GAL article 5.1 anticipates the possibility of making advertisements for specific goods and services subject to a prior administrative authorization process or subject to special laws when there is a need to safeguard constitutionally recognized values and rights. According to GAL article 5.2, such a determination will allow the form and conditions for sex-related electronic advertising messages to be prescribed. Of course, this will make it possible to temper or restrict, where appropriate, the use of certain terms, claims, images, and videos with a high level of erotic content. It will also be possible to restrict advertisement size and accessibility on certain channels and websites where security measures have been implemented to this effect, especially to protect certain groups. All of the abovementioned measures would be taken to benefit human dignity and nondiscrimination based on gender as well as to protect children and youths.

There are at least three alternatives for action regarding the type of advertising discussed in the preceding paragraphs. If the advertisement was judged to be unlawful, then according to article 6.1 of the Law of Unfair Competition (see Chapter IV, article 32), the following actions can be undertaken (with respect to the case analyzed here): declare an instance of unfair competition; issue an order to cease and desist the unfair conduct or to prohibit it in the future; or declare a prohibition of the conduct even if it has not

yet occurred. Second, if the need for prior administrative authorization and/or special rules had been approved (in accordance with the GAL article 5.1) and these provisions were subsequently violated, then per GAL article 5.6, this would constitute an infraction of the effects foreseen in the General Law for the Defense of Consumers and Users and in the General Health Law. Third and last, the applicability of standards of self-regulation could be invoked, which in the advertising industry would be the code of ethics. Even though this third measure has been promoted by Spanish regulations, by non-binding European documents, and even by some parliamentary groups because of the positive results seen in other countries near Spain (a large number of these advertisements have been eliminated, especially in some reference media), this measure has not actually produced the desired effects.

So far, the various actors in this area have demonstrated little willingness to restrict (through agreements embodied in ethical codes) advertisements with sexual content published on the Internet. Moreover, some flawed precedents exist in areas related to this discussion. In this regard, an agreement signed between the Spanish Association of Newspaper Publishers and the Spanish Ministry of Health to restrict alcoholic beverage advertising in newspapers was later ignored by this association.

In short, it would be desirable to subject this type of advertising to government regulation, complemented by additional instruments of self-regulation.

Conclusions

Of all the various communication channels used to disseminate advertising, one has recently risen above all the rest—the Internet. Indeed, due to its inherent advantages, Internet advertising is growing at a significantly higher rate than is advertising disseminated through other channels.

States can no longer act alone to control materials circulating through a communication channel that has no territorial borders. Supranational solutions are therefore necessary. State regulation must continue to play an active role on the Internet, but complementary measures are being taken such as advertising sector self-regulation. One of the areas where this trend is especially noticeable is discriminatory or degrading Internet advertising based on gender.

The wording of GAL article 3.a) enables the identification of two different cases that exhibit treatment that is degrading and that violates the dignity of women. In one case, the female body or body parts are used specifically and explicitly as objects unrelated to the product being promoted. The other case portrays abusive treatment of women when their image is associated with stereotypical behaviors. In short, sexist advertising involves a reification of women

when it portrays stereotypes and sexist social models in advertisements that do not convey a realistic portrayal of the competence and potential of women by communicating stereotypes about gender roles, by using the female body to attract attention and as a sexual object. This type of advertising should be considered unlawful.

The *Autocontrol* Jury, by applying the codes of ethics developed for advertising, has seized the opportunity to render decisions on several relevant cases, thereby becoming a paradigm to emulate in this respect. The documents that serve as the basis for the Advertising Jury's decisions are not strictly rules of law because if they were, then the Jury could be infringing upon the jurisdictions and functions of judges and courts. Conflict resolution in interactive advertising is based on the advertising code of conduct as well as on the Confianza Online seal of trust. The standards of Confianza Online should be viewed as ethics guidelines even though they sometimes contain enhancements to the rights of potential consumers and users that go beyond the applicable regulations. In practice, however, this distinction weakens because self-regulatory instruments establish compliance with legal norms as a basic standard of ethical behavior.

Compliance with Ethical Standards

Conflict of interest The authors declare that they have no conflicts of interest.

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