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The SARFT Issues New Regulations for the TV Shopping Industry

Introduction

1. On 10 September 2009, the State Administration of Radio, Film and Television (**SARFT**) released 2 sets of regulations relating to TV shopping:
 - the *Measures on the Administration of Radio and Television Advertising Broadcasts* (**Measures**), and
 - the *Notice on Strengthening the Administration of Television Shopping Short-Form Infomercials and Home Shopping Programs* (**Notice**).

The regulations introduced a number of more restrictive and comprehensive provisions with a view to better regulating radio and television advertising.

We summarize below the key provisions of the Measures and the Notice, along with our initial assessment of their implications.

Measures

2. Effective 1 January 2010, the Measures will replace the 2003 *Provisional Measures for the Administration of Radio and Television Advertising Broadcasts*.

The Measures will apply to the broadcast of radio and television advertising. They define such advertising to include "television shopping short-form infomercials" as a sub-category of commercial advertising. Pursuant to the Measures, radio and television commercials must comply with regulations regarding content, style, the products being advertised, as well as the time at which the advertisements may be broadcast. The Measures also contain a number of provisions as to the supervision and administration of radio and television advertising broadcasts.

Prohibited Content

3. 11 categories of advertising content are prohibited, including:

- any that could be seen as insulting, discriminatory or prejudicial;
- any that infringes upon the legitimate rights and interests of others;
- any that damages cultural traditions and/or endangers the mental and physical health of minors; and
- any that is deceptive or misleading, particularly with relation to advertising medical products.

A list of 7 forms of advertising and types of products may not be aired by broadcasting entities, including:

- advertising in the form of news reports;
- advertising for tobacco or prescription drugs; or
- advertising for any food, drug or medical device designed to cure, cancer, liver disease or sexually transmitted diseases.

Broadcasting of Commercial Advertising

4. The broadcast of commercial advertising is limited to 12 minutes per hour per channel. The total amount of such broadcasting featured on radio stations between 11:00 – 13:00, and on television stations between 19:00 – 21:00, may not exceed 18 minutes per channel.

During a single television drama episode, commercial advertising may only be broadcast twice, with each broadcast not to exceed 1.5 minutes. Between 19:00 and 21:00 daily commercial advertising may only be broadcast once during a single episode, and must not exceed 1 minute.

Supervision and Administration

5. The SARFT departments at all levels, along with radio and television broadcasters, must ensure that the broadcast of radio and television advertising (including television shopping short-form infomercials) complies with the law.

Notice

6. The Notice distinguishes television shopping short-form infomercials from home shopping programs. In line with the Measures, the Notice classifies television shopping short-form infomercials as a form of commercial advertising. It also states that home shopping programs broadcast on dedicated television shopping channels are regulated as radio and television programs, and are thus subject to the *Regulations for the Administration of Radio and Television* and other relevant regulations in addition to the Notice itself.

7. The Notice regulates the content, format and channels for home shopping programs and television shopping short-form infomercials. It also sets forth basic qualifications for enterprises hoping to air such infomercials. In keeping with the Measures, the Notice requires the SARFT at all levels as well as all radio and television broadcasting entities to reinforce the supervision and inspection of television shopping short-form infomercials, and to assume responsibility for the content of home shopping programs.

Prohibited Content

8. The content that is prohibited in television shopping short-form infomercials and home shopping programs, includes any that:
 - is false or vulgar, contains exaggerated claims and misleads consumers or promotes products under false circumstances;
 - falsely states that products have received a particular qualification, award or honorary title, or uses false or fabricated evidentiary materials;
 - promotes pharmaceuticals, sexual health products, breast enhancement products, weight-loss products or height enhancement products; and
 - promotes products without displaying their name or their manufacturer's name and address.

Pre-Conditions for Advertisers

9. Television shopping enterprises wishing to air television shopping short-form infomercials must satisfy the relevant radio and television broadcaster that:
 - they have a good market reputation, a sound financial position, and quality-guaranteed products; and
 - they comply with a number of other conditions relating to their size, location, product policy and company history.

Channels

10. Television short-form infomercials are restricted from being broadcast on a host of prescribed channels, amongst which include news, international and television shopping channels as well as satellite channels between the hours of 18:00 to 24:00. Home shopping programs may be aired on television shopping channels. However, it is unclear whether they may be broadcast on non-dedicated shopping channels, and whether they are subject to the relating time limits for broadcasting commercial advertising.

Analysis

Purpose of the Measures and the Notice

11. The overarching purpose of the 2 sets of regulations is to enhance the regulation of the television shopping industry and address a number of recurring issues, such as inappropriate advertisement content, sales of restricted or highly regulated products, and customer complaints regarding television shopping short-form infomercials and home shopping programs and the products they promote.
12. By requiring its departments at all levels, alongside all radio and television broadcasters, to enforce the law more strictly, the SARFT clearly hopes to improve its supervision of the television shopping industry. The Notice also states that the SARFT intends to develop the television shopping industry, with state-owned enterprises from the radio, film and television sectors playing an active role. These goals are consistent with recent government policy initiatives throughout the cultural sector.

Implications of the Measures and the Notice

13. It is too early to assess how strictly the new regulations will be enforced, and / or to gauge what their real impact will be. However, with tighter controls on content and additional conditions imposed upon enterprises which wish to broadcast television shopping short-form infomercials, the SARFT has begun to establish a more certain and better-regulated industry.
14. Nevertheless, both pieces of legislation fail to specify or even reference what constitutes a "television shopping short-form infomercial" as opposed to a "home shopping program". It is thus difficult for advertising and home shopping enterprises to anticipate how their content will be classified. This, in turn, creates ambiguity with regard to how such content will be regulated by the SARFT. Until further regulations are released, advertising and broadcasting entities must rely on observation and / or discussions with local officials, perhaps even on an ad hoc basis, to determine how their advertising-related content will be treated.

Conclusion

The Measures and the Notice represent a concerted effort by the SARFT to improve the regulation and administration of the television shopping industry. The SARFT is focusing on regulating the content, type and broadcast schedule of television shopping short-form infomercials and home shopping programs, as well as on developing a set of prerequisite qualifications for television shopping enterprises wishing to broadcast them.

While the provisions should expedite the implementation of a better regulated industry, the failure to distinguish clearly between television shopping short-form infomercials

and home shopping programs may hinder the effective enforcement of the regulations. This also creates uncertainty for the producers and broadcasters of advertising-related television content.

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