

FINLAND

**STUDY ON THE IMPACT
OF ADVERTISING AND TEleshopping
ON MINORS**

I. INTRODUCTION

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I. INTRODUCTION

The study on the impact of TV advertising and teleshopping on minors was carried out by International Research Associates (**INRA**) in collaboration for legal issues with the lawfirm **Bird & Bird** , for the 18 Member States of the European Union and the European Economic Area, and, for each country, in collaboration with a national law firm. For Finland the study was carried out by the **lawyers office Castren & Snellman, Helsinki**.

The aim of the study was to identify and describe the national provisions on advertising provided in legislation, regulation and self-regulatory codes, which are applied to advertising in each State for the protection of minors. In addition, the national system for the handling of complaints was described fully, covering administrative, legal and self-regulatory measures.

For most countries it was possible to identify and to comment upon official proposals of law. In this respect, the information received from professional associations in the advertising sector was very helpful, as were the comments made by national authorities, who had been sent the draft reports by the Directorate General Education and Culture.

Finally in each national report the consultants indicated the way in which the provisions of the TVWF Directive (unofficial consolidated version), have been implemented in national legislation concerning TV advertising and teleshopping directed at minors. Nevertheless, in view of the objectives of the Commission and to enable comparison, the reports also cover other media such as radio, press, outdoor advertising, cinema, and Internet.

The study was carried out, realised and presented using an identical layout for each of the countries studied to achieve a harmonised readable approach, and facilitate comparison .

Therefore, as well as the main definitions and general rules in the field of advertising and teleshopping directed at minors, each national report contains the regulation by sector and by media, as well as an identification of specific marketing techniques. Moreover, each national report is preceded by a summary which gives the essential characteristics of the country in question. An Excell table has been drawn up, using the same layout for each country, as well as a comparative table for the 18 States studied.

Finally a report has been drawn up on European and international regulation and self-regulation concerning advertising directed at minors.

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II. SUMMARY

Except for the implementation of the directives TWF in the audiovisual legislation the Finnish legislation has not been modified significantly (Act on Tv and Radio which came into force on 1 January 1999) and there are not currently any proposals concerning legislation on advertising directed at children.

1. Definitions

In Finland a minor is any individual who has not yet reached the age of 12.

There is no specific definition of a minor/child in specific legislation concerning advertising.

The Consumer Protection Act “marketing” covers all commercial communication, including advertising.

2. Regulation

a. General

General principles on advertising are found in The Consumer Protection Act of 20.1.1978 (good practices, protection of consumer interests, health...).

Most important however is the “Finnish Consumer Ombudsman” who is in charge of the enforcement of consumer legislation. His statements are published in guidelines which are not binding but have however, an important effect, since the Ombudsman applies them as a supervising administrative authority.

The Ombudsman has published several guidelines which contain rules on advertising and children: “Children and advertising”, “Sponsorship and other marketing in schools”..etc.. In general these rules state that special attention has to be paid to the general inexperience and restricted freedom of action of children, so that advertising directed at children must be viewed with special severity. In general advertising aimed at minors (even older than 12 or 14) should take into account their inexperience and will be judged in a stricter way than advertising directed at adults.

b. Media

The Act on TV and Radio operations implemented the European Directive TVWF and contains the rules on TV advertising, teleshopping and sponsoring. TV advertising has to respect certain general principles (recognisable, separate from programs, no subliminal techniques, respect for human dignity, not harming to the health, public safety, and environment, no discrimination). The Act implements the TVWF Directive’s provisions on advertising to minors.

The Finnish audiovisual legislation on this subject does not appear to go further than the TVWF Directive.

The Consumer Ombudsman also has guidelines for TV advertising directed at children (recognisable, clearly separated from programmes, not harmful for children, no violence, no persuasion to buy a product, no interruption of programmes with a duration of less than 30 minutes, no

sponsoring of children's programmes, cartoons may not be interrupted by animated advertising, advertising may not show characters of programs that are broadcasted at the same time).

In the Nordic Consumer Ombudsmen's position paper of 1991 all Nordic countries determined a common position regarding legislation on advertising (this non binding document also contains rules on advertising and children).

There are no specific rules for advertising directed at minors in the press, on posters or at the cinema.

As regards the Internet, the Consumer Ombudsman issued some Guidelines, amongst which: advertising may not incite a minor to order, may not ask the minor to communicate personal information, all advertising must be clearly distinguished from other content...etc

c. Specific provisions

Special legislation contains specific rules for certain products, for example :

alcohol : advertising for strong alcohol is forbidden and restricted for light alcoholic beverages ;

tobacco : all advertising is forbidden ;

food : references to health are not allowed;

d. Other marketing techniques

Direct marketing : The Person Information Act of 22.4.1999 applies to direct marketing. The Consumer Ombudsman has also created rules on direct marketing and children and on mail order sale.

Promotional sales practices : there are guidelines on children's clubs, Dial-it services and offers of special benefits.

The Consumer Ombudsman issued guidelines concerning sponsoring in schools to avoid abuse and exploitation of children's credulity.

3. Proposals of law

There are no current proposals in this field.

4. Self regulation

In Finland the ICC code is applied by the Board of Business Practice of the Central Chamber of Commerce. This self-regulatory body decides on disputes between companies and also provides copy advice. Its decisions are not binding but are generally accepted.

The Finnish Direct Marketing Association is the self-regulatory body for the direct marketing sector. It has issued "fair play" rules and rules for electronic consumer trade.

5. Handling of complaints

Authorities

The general supervision is carried out by the Consumer Ombudsman who gives advice and information on the correction of possible infringements. The Ombudsman acts both on his own initiative or on complaints from individuals. If no result is achieved a ban can be imposed on the infringing party (possibly combined with a penalty). If this is not accepted the case can be brought before the Market Court of Justice.

Supervision of special advertising rules in specific legislation on alcohol/food/medicines/finance is carried out by special competent national Agencies.

The Market Court of Justice can decide on cases based on provisions concerning advertising in the Consumer protection Act. The procedure is not open to private individuals who are obliged to send their complaints to the Ombudsman. District courts are competent for breach of Criminal law and can also decide on damages.

Self-regulation

The Board of Business Practice seeks to provide individual traders and companies with rapid and effective procedure to handle disputes concerning unfair trade practices.

In 1999 only 1 complaint concerned advertising directed at children (taking into account that the Board treated 9 complaints in total).

III. REPORT

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I. DEFINITIONS

Minors

According to the Act of 1 April 1999 on Guardianship (2 §), a minor is any individual who has not yet reached the age of 18. Decisions concerning minors are made by their legal guardians. At the age of 18 an individual attains majority.

At the age of 18 a person also receives eligibility and a right of vote. An 18-year-old may purchase light alcoholic beverages (< 22 %). Not before the age of 20 may a person purchase strong alcoholic beverages (> 22 %). A person is not entitled to adopt a child before the age of 25.

Legal Entitlement to Contract

At the age of 18 an individual receives capacity to contract, i.e. may acquire rights and obligations.

A minor is, as a general rule not entitled to control his own possessions, enter into a contract or perform any other legal acts (23 §). However, a minor may perform legal acts, which under the circumstances in question, are usual or of less importance.

A minor is also entitled to control income received as a minor from any work of his own. According to § 5 of the Act of 30 April 1970 on Employment Contracts a minor who has reached the age of 15 may enter into an employment contract.

Protection of Children

The protection of children is primarily based on the Act of 5 August 1983 on Children Protection.

Children are entitled to a safe and stimulating environment as well as a harmonic and versatile adolescence. Children shall, as a general rule, enjoy particular protection (1 §).

According to the Act on Children Protection a child is any person under the age of 18 and a young person any person under the age of 21. It is the task of the local social authority to supervise and develop the environment in which children and young people grow up and to prevent and remedy any unsatisfactory conditions. The guiding principle shall be what is considered best from the point of view of the child.

In the event the environment endangers or otherwise do not secure the health or development of a child or a young person, or if a child or a young person through its own behaviour endangers his own health or development, the local social authority is under an obligation to act in accordance with the closer provisions described in the said act.

Juvenile Delinquency

According to the Criminal Code (chapter 3 § 1) a person becomes criminally liable for his acts at the age of 15.

A person aged 15, but not yet 18, is considered a young person in respect of criminal law. The criminal consequences will be less severe for a young person. As a rule (chapter 3 § 2) a young

person can only be sentenced to a maximum of $\frac{3}{4}$ of the most severe penalty possible for the crime in question and in no case to more than a 12 year sentence.

A person aged 15, but not yet 21, is considered a young criminal in respect of criminal law. According to the Act on Young Criminals (7§) a sentence may always be conditional for a young criminal.

Criminal Offences

According to the Criminal Code (17 chapter 17 §), the distribution of violent descriptions is prohibited. Anyone, who sells, lets or distributes, or for this purpose manufactures or imports films or other moving pictures or descriptions containing moving pictures showing *raw* violence will be criminally sanctioned.

According to the Criminal Code (17 chapter 18 §) the distribution of pornographic pictures is prohibited. Anyone, who sells, lets or distributes, or for this purpose manufactures or imports pictures or records of pictures, which in a way offensive to morality shows children, violence etc. will be criminally sanctioned.

The illicit possession of a photograph, video tape or any other realistic record of pictures showing a child involved in sexual intercourse or any other comparable sexual act or showing a child in any other way obviously offensive to morality is also criminally sanctioned (Criminal Code 17 chapter 19 §)

According to chapter 17 § 20 of the criminal code marketing, which is offensive to morality, is criminally sanctioned. The paragraph reads as follows:

“Anyone, who for the purpose of gain

- a) in public puts at general display,
- b) without the prior consent of the addressee delivers to someone or
- c) in a way raising general offence, in public, through an ad, leaflet, poster or any other advertisement offers for sale or shows
- d) pictures, records of pictures or objects, which are offensive to morality and thereby intended to raise general offence, will be penalised ...”

The same applies to anyone who “offers for sale or shows records containing texts or sounds, which are offensive to morality and thereby intended to raise general offence.”

II. REGULATION

1. Classification by media

1.1. General Principles on Consumer Marketing

1.1.1. The Consumer Protection Act

The General Provision

The Consumer Protection Act of 20 January 1978 contains general provisions on marketing. The Act aims at, inter alia, better protection of the interests of consumers in business-to-consumer marketing. In this context, marketing is defined as information targeted at consumers regarding consumer goods and companies. Marketing covers all commercial communication and, accordingly, advertising is considered as a means of marketing.

According to the act (chapter 2 § 1), marketing shall not be contrary to good practice or otherwise inappropriate for consumers. Any marketing, which does not include the information necessary for the health or the economy of the consumer is always to be considered inappropriate (chapter 2 § 2).

The general provision can be applied to all kind of marketing regardless of marketing method. Thus, television and radio advertising as well as teleshopping are within the scope of application of the Consumer Protection Act.

The targeted group of a marketing measure is essential when evaluating the appropriateness of it. Certain targeted groups are considered needing special protection, which means that marketing targeted at such a group will be evaluated on the basis of a more strict and critical standard than normal. Children constitute such a group.

There is no particular age defined in the Consumer Protection Act for children as a marketing target group. When deciding on the question of age, the result may not just depend on the age limits set in other laws and regulations, but must be evaluated in each case separately.

Free gifts and combined offers

Chapter 2, § 4, of the Consumer Protection Act states that, when products are offered at a combined price or buyers of a product are offered a second item free of charge or at a discount, the products offered must have an obvious connection. In practice, strict demands are made concerning this obvious connection.

The fact that the products are used simultaneously or for the same purpose is not adequate proof of obvious connection. This requires simultaneous use of the products to be recommended for the financial security or health of the consumer.

According to the Market Court, free gifts are not made acceptable by making the gift available for purchase or by its being part of the advertiser's normal range of products (MC 1982:7).

The Market Court has ruled that offers of free gifts are against the Consumer Protection Act when the consumer is allowed to keep the free gift even if he returns the product ordered. The justification for the ruling states that ordering a product by post constituted buying it from the

point of view of the consumer. Cancelling the transaction requires a second action from the consumer, that is, cancelling the transaction within seven days as required by the Consumer Protection Act. Marketing methods in which only consumers who order products receive additional benefits comprise ordinary mail order marketing with the aim of selling goods, and the additional benefits are then assessed according to chapter 2, section 4, of the Consumer Protection Act (MC 1982:7).

Marketing lotteries

Under chapter 2, § 5, of the Consumer Protection Act, marketing must not use promises of fortuitous gain which require purchase of a product or an offer to buy it. In other words, consumers must be given an equal opportunity to take part in lotteries and competitions whether they buy the product in question or not. Separate guidelines have been compiled on the limits concerning this marketing method under the Consumer Protection Act.

The said rules concerning free gifts and combined offers and marketing lotteries often become relevant in marketing targeting children, as will be seen from the Guidelines of the Consumer Ombudsman and the case law of the Market Court of Justice described in more detail below.

1.1.2. The Guidelines of the Consumer Ombudsman

The Finnish Consumer Ombudsman is the authority responsible for monitoring the enforcement of consumer legislation in the Finnish society. Statements of the Ombudsman are published in guidelines, which are of non-binding nature. The guidelines are based on Market Court rulings and the Consumer Ombudsman's recommendations. Since the Consumer Ombudsman applies the guidelines in his capacity as supervising administrative authority (please see subsection 7.2.1 below) with respect to the provisions concerning marketing contained in the Consumer Protection Act, the guidelines have great effect on the practices of the Finnish business community. The Consumer Ombudsman has issued the following guidelines directly concerning children: "Children and marketing", "Sponsorship and other marketing in schools", "Photographing in schools and day-care centres". Provisions concerning children are included in at least the following guidelines: "Mail order sail".

The Consumer Ombudsman has emphasised that advertising aimed at underage children should take into consideration the general inexperience of the youngster and their restricted freedom of action.

The Guidelines of the Consumer Ombudsman

The Ombudsman has issued the following guidelines with respect to special benefits:

"Free gifts are quite commonly promised especially in connection with the marketing of foods targeting children. According to the Consumer Protection Act, there must be a clear and acceptable connection between the free gift and the main product. As a rule, no measures have been taken if the free gift is of very little monetary value and marketing does not highlight it. However, value cannot be measured only in terms of money when children are in question. A child may appreciate a free gift of little money value more than the main product.

- An object that is not worth much money may be attractive to a child especially if it forms part of a collection. Therefore do not use collection series when marketing food products intended for children.

- You may offer two products for an inclusive price on condition that these products may be bought separately, i.e., the total price of the main product and of the free gift if bought alone is the same as the price of the two products bought together. State this clearly in your ad.
- Do not turn the packaging into the main issue especially if this overshadows the actual offer.
- When using a lottery to market a product, do not give the impression that participation in the lottery is only possible using a number marked on or a ticket attached to the product. Keep in mind that in this case the possibility of participating in the lottery without purchasing the product is not a true alternative in the light of the Consumer Protection Act.”

The Consumer Ombudsman has taken the following stand with respect to the definition of a child in the “Children and marketing”-guidelines:

“In Finland there is no particular age defined for children as target group. It is obvious, however, that small children are unable to distinguish advertisements and commercials from other types of communication. They become aware of the purposes of advertising only at a later age. Several international studies indicate that marketing directed at children under 12 must be viewed with special severity. Only after this age do children learn to recognise traditional advertising and to realise its sales promoting nature. These, in turn, are the prerequisites for a healthily critical attitude. On the other hand, in International Codes of Advertising Practice a child refers to anyone under the age of 14. However, the objective of these guidelines is not to fix a definite age at which a person no longer is a child. Likewise, it is difficult to define the age of a target group with an accuracy of one year. In other words, advertising aimed at underage children - even if they are older than 12 or 14 - should take into consideration the general inexperience of these youngsters and their restricted freedom of action. Young people who have not been specially trained to do so find it difficult to recognise marketing methods that go beyond traditional advertising. “

With respect to children as a targeted group of marketing the Consumer Ombudsman has issued the following guidelines:

“A particularly severe stand should be taken to marketing directed at children. Children constitute the target group not only when marketing is aimed directly at them but also when it promotes a product that interests children. Advertisers should also keep in mind that advertisements and commercials may reach a child even when not targeted at children.

Marketing must not exploit the gullibility, trust and loyalty of children and youngsters. No claims must be made to the effect that if a child or young person does not purchase the promoted article or service he will not make friends, have the same opportunities to develop himself or be accepted by the community.”

Furthermore, the following should apply when presenting a product to children or youngsters:

“Children and youngsters must not be given a misleading picture of the quality, size, value, durability or performance of the advertised product. These same guidelines must be applied when designing the packaging.”

Finally, the following general rule is mentioned in the guidelines:

“A child must be able to recognise immediately an ad or a commercial. As children have a limited ability to do so, the requirements set for advertising aimed at children must be all the more strict.”

“Children do not necessarily understand that a brochure or client newsletter is also an advertising medium and are unable to view reader advertisements as critically as clear-cut ads...”

In conclusion, and in accordance with the Market Court’s reasoning and the guidelines of the General Ombudsman, a general principle has been adopted in the Finnish legal praxis, according to which marketing targeted at children is judged on a stricter basis than marketing in general, because children are more susceptible to advertising than most people due to their inexperience and credulity.

There are no rules contained in the Consumer Protection Act concerning the use of children in ads. According to the guidelines of the Consumer Ombudsman “Children and marketing” it should, however, be considered carefully in each case if and how to use children in ads, since their presence is rarely essential.

The following guidelines have been given:

“Children in ads must never be placed in situations that might harm the child or others were he to imitate the situation in real life.”

“A child has an immature sense of propriety. Therefore children must not even in ads be permitted to behave in ways that violate generally accepted norms.”

“Children must not otherwise either be used in advertising in a manner that violates generally accepted educational and social objectives.”

“Ads must not exploit children’s loneliness or their fear of being rejected. In general, efforts must be made to avoid arousing strong feelings in children.”

“Children in ads may not incite the audience to buy a product.”

Case law

The Market Court of Justice has in case MC 1990:16 found a television advertisement, where a very small child was portrayed alone, inappropriate, because the ad suggested that the marketed product would replace friends or cure loneliness.

In case MC 1995:16 the Market Court of Justice found a television advertisement inappropriate, because a nonchalant and unconcerned behaviour of a child was presented in a way, as if such behaviour was acceptable.

1.2. Radio and Television

General rules

Act on Television and Radio Operations

In Finland, the Directive “Television without Frontiers” 89/552/CE, as amended by the Directive 97/36/CE, has been implemented through provisions of the Act on Television and Radio Operations (744/1998). The Act sets forth provisions, inter alia, on the programmes and television advertising, teleshopping and sponsorship. The Act came into force on January 1, 1999. The provisions in the Act state whether applicable to television and/or radio. If silent on the matter it shall be considered to apply to both forms of media. As relates to the above mentioned Directive it is not expressly stated for each provision, which provision in the Directive is imple-

mented thereby. Please find attached as exhibit 1 to this report an unofficial translation of said Act.

In the Act advertising refers to any form of announcement in television or radio broadcasting in return for payment or for other consideration by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property or rights and obligations, or in order to promote its own operations.

Teleshopping, in turn, refers to direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return of payment.

The Act contains general provisions on television and radio advertising and special provisions for protection of minors. The general provisions apply to all kind of advertising, irrespective of the age of the target group.

According to the general principles adopted in the Act (§ 21), television and radio advertising shall be readily recognisable as advertising and teleshopping as teleshopping. They shall be kept separate from other parts of the programme service by optical or acoustic means. Advertising and teleshopping shall not use subliminal techniques. Surreptitious advertising and teleshopping is also prohibited. Furthermore, television and radio advertising or teleshopping spots shall not prejudice respect for human dignity nor be offensive to health, public safety or the environment and nor shall they include any discrimination on grounds of race, sex or nationality (§ 23).

In the special provision on the protection of minors (§ 25) it is stated that television and radio advertising shall not cause moral or physical detriment to minors. Television and radio advertising shall not:

- exhort minors to buy a product or service by exploiting their inexperience or credulity;
- directly encourage minors to persuade their parents or others to purchase the goods or services being advertised,
- exploit the special trust minors place in parents, teachers or other persons,
- unreasonably show minors in dangerous situations.

Teleshopping spots shall correspondingly comply with the above explained provisions. In addition, they shall not exhort minors to conduct for the sale or rental of goods and services.

The Act contains detailed provisions on insertion of advertising and teleshopping spots, time limits for teleshopping spots and television advertising as well as radio advertising. As far as children's programmes are concerned, they shall not, when scheduled duration is less than 30 minutes, be interrupted by advertising and or by teleshopping.

The Finnish Consumer Ombudsman supervises compliance with the provisions of the Act concerning ethical principles of advertising and teleshopping spots and with those regulating advertising and teleshopping targeted to minors. In addition, under the Consumer Protection Act, the Consumers Ombudsman may also address all broadcasts violating the other provision of the Act on advertising, teleshopping and sponsorship if their contents constitute unsuitable or misleading marketing from the point of view of consumers.

Other rules concerning television and radio advertising

Marketing Requirements set forth in the Licence

Operation of television and radio broadcasting is subject to a licence applied for from the Council of State (the licensing authority).

The licensing authority has right to the licences regulations relating to the programme service as well as marketing. These regulations are rather general and no special regulations on marketing targeted at children exists in the licences.

Specific rules for television advertising

The Consumer Ombudsman has issued the following “Children and marketing” guidelines concerning television commercials:

“The main consideration in TV commercials aimed at children is that they be easily recognised.

“See to it that the presentation of your commercial can be distinguished from other TV programs with respect to image, text and sound.”

“Commercials must not affect children harmfully.”

With respect to time limits and broadcasting times the Consumer Ombudsman has issued the following guidelines:

“Children’s TV programs - especially if they last less than 30 minutes may not include commercial breaks.”

“Commercials featuring frightening elements such as loud noises and aggressive images must not be broadcast at a time when they might be viewed by small children.”

The following guidelines apply to the technical realisation of television commercials:

“Special care must be taken to distinguish TV ads from children’s programs.”

“TV commercials must not use excerpts of children’s programs being broadcast at the same time, nor may they feature the same characters.”

“Animated children’s programs should not be cut up by animated commercials.”

“Violence must not be included in any form in advertising aimed at children.”

“Attempts to persuade a child to buy a product are forbidden. More particularly, sales pitches may not be put into the mouths of familiar cartoon characters or other children.”

“Children’s programs may not be sponsored.”

The Nordic Consumer Ombudsmen’s Position Paper to Television Advertising

The Nordic Consumer Ombudsmen have issued a common position paper in 1991 regarding the requirements of the marketing legislation and the legal praxis for television advertising in the Nordic countries. Similar marketing legislation in the Nordic countries enables adoption and development of common guidelines. As television marketing crosses the borders, the Nordic Ombudsmen have emphasised the importance of a common approach. The position paper is not a legally binding document, but the guidelines adopted therein have an effect on what is considered as acceptable television advertising.

The Ombudsmen have particularly paid attention to the Television without Frontiers Directive when drafting the position paper.

In addition to the general provisions on marketing, the position paper contains provisions on marketing directed to children. Along the lines of the Consumer Protection Legislation and the Act on Radio and Television Operations, it is emphasised in the guidelines that children's inexperience or credulity should not be exploited in advertising.

1.3. Press, Posters and Cinema

There are no specific laws, regulations or other administrative decision as relates to marketing and advertising explicitly in the press, by posters or in cinemas. The general rules on marketing and advertising mentioned in section 3.1.1 apply.

1.4. Internet

General rules

Net marketing means marketing to customers of products, which are offered, ordered, produced or distributed in an electronic way, for example through a telephone net, the Internet, cable-TV or any similar communication system. It is recognised by the Consumer Ombudsman, that net marketing is comparable to mail order sale.

There are no specific laws or regulations applicable to net marketing. Consequently, the marketing rules, i.e. the rules contained in the second chapter of the Consumer Protection Act, apply to net marketing as well.

Other rules

The "Children and marketing" -guidelines of the Consumer Ombudsman includes the following provisions regarding Internet:

"Children are fascinated by the Internet precisely because of its interactive nature. Even small children know how to surf the Net and move from one home page to another. However, parents or other adults are not always there to keep a watchful eye. It is very easy for an advertiser to reach vulnerable target groups through the Internet. Therefore, they must exercise special caution when posting ads on the Internet.

- Children must not be asked to give personal information, nor may their user profiles be handed over to third parties for commercial purposes.
- Mark clearly which ads are meant for children and separate them from the rest of the material.
- Do not link commercial home pages to other Web-sites intended for children.
- Avoid direct interaction between characters in commercials and children.
- Do not ask children to place an order through the Internet."

The Nordic Consumer Ombudsmen's position paper to trading and marketing on the internet and in similar communication systems

The position paper is intended to form the basis of a common Nordic position in national as well as international contexts. National negotiation situations may, however, make it necessary to modify the principles in the spirit of compromise.

The common position comprises trading and marketing on the Internet and in similar communication systems. The common position comprises cases in which it must be assumed that the trader through his/her marketing intends to affect supply and demand on the Nordic market.

The common position include the following chapter concerning marketing directed at children and young persons:

“- The recommendations expressed in sections 1 to 9 of this common position apply to marketing directed at children and young persons subject to the more rigorous rules contained in this section. Moreover, specific provisions of the country in question applies.

- The marketing should be elaborated in such a way that it is obvious to that age group - which is the target group - that it is a question of marketing.

The businessman should take into account the development stage of the target group and therefore should not take advantage of children's and young persons' credulity and lack of experience. If entertainment features form part of the marketing - in the form of, e.g., play, games and the like - this entertainment should not be combined with or interrupted by advertising features.

Children and young persons should not be encouraged to give information about themselves, the household or about any other persons. Giving information may not be made a condition of gaining access to contents.

- Children/young persons should not be offered rewards (money, gifts or anything else of a monetary value) for staying on or participating in activities on the Internet. This rule does not prevent the holding of prize competitions that neither directly nor indirectly have the effect that the child/young person stays longer on the businessman's homepage.

- Businessmen should use the techniques available at any time for allowing parents to limit the material to which their children have access via the Internet.

- Children and young persons should not be encouraged to buy goods or conclude contracts via the Internet, and appropriate precautions should be taken to ensure that children and young persons do not make purchases or conclude contracts via the Internet.

- Businessmen, whose marketing is directed at children and young persons should not use hyperlinks to places containing material that is not suited for children and young persons, or which do not comply with existing legislation.”

Case law

The Market Court of Justice 1997:2

2. Specific rules: classification by sector

2.1. Alcohol

General

Act of 8 December 1994 on alcoholic beverages

A person who is 18 years old may purchase light alcoholic beverages (>1,2 % < 22 %). Only at the age of 20 may a person purchase strong alcoholic beverages (> 22 %). Alcoholic beverages with a tenure between 1,2 and 2,8 % may not be sold to persons under the age of 18 (16 §).

Alcoholic beverages – regardless of the tenure - may not be served to persons under 18 years (24 §).

Rules on advertising

All advertising, indirect advertising included, and sale promotion of strong alcoholic beverages is in general prohibited (chapter 5, 33 § 1 subsection).

However, advertising and other sale promotion activities are permitted if:

included in a professional publication of the accommodation, restaurant or retail sector, provided the publication has been approved of by the Product Supervision Centre; or
included in any other printed work distributed to people involved in the sale of alcoholic beverages, provided the circulation and methods of distribution are in accordance with the provisions of the Ministry of Social Affairs and Health;
performed in licensed, retail or manufacture premises

All such advertising and sale promotion shall, however, be performed in accordance with the provisions issued by the Ministry of Social Affairs and Health (5 chapter 33 § 4 subsection).

There are no special provisions relating to minors as far as strong alcoholic beverages are concerned. The general ban applies to minors as well.

Advertising, indirect advertising included, and sale promotion of light alcoholic beverages, is as a general rule permitted (5 chapter 33 § 2 subsection). However, such advertising or sale promotion measures are prohibited if:

the advertising aim at minors or any other persons, to which alcoholic beverages may not be sold in accordance with the act, or if minors or said persons are used in the advertising;

- the use of alcoholic beverages is combined with driving a motor vehicle;
- the higher tenure of alcoholic beverages is emphasised as a positive quality;
- heavy consumption of alcoholic beverages is described in a positive manner or sobriety or moderate consumption presented negatively;
- suggesting that consumption of alcohol increases performance or promotes social or sexual success
- suggesting medicinal, therapeutic, refreshing, sedative or anti-conflict effects from alcohol and

- they are contrary to good manners, unfair practices are being used from the consumer's point of view, or if they otherwise give false or misleading information about alcohol or the use, effects or other characteristics of alcohol.

The same provisions apply if the advertising or sale promotion measure is connected to the advertising or sale promotion of any other products or services. Such advertising or sale promotion measures are considered indirect advertising or sale promotion.

Other rules

Decision no 841/1995 of the Ministry of Social Affairs and Health on advertising and other sale promotion of strong alcoholic beverages and product information

The decision includes provisions applicable to the occasions when advertising and sale promotion measures of strong alcoholic beverages are permitted. There are no provisions relating to minors contained in the decision, since all advertising and sale promotion measures targeting minors are banned.

Instructions no 1/02/1995 of the National Product Control Agency for Welfare and Health of the Ministry of Social Affairs and Health on advertising of alcoholic beverages

Based on the Act of 8 December 1994 on alcoholic beverages these instructions were issued and delivered to the Provincial State Offices to be applied in the supervision of advertising and sale promotion of alcoholic beverages. The underlying idea is to develop a nation wide code of practice for the supervision authorities. The instructions are not binding.

The instructions include detailed provisions relating to the advertising of light alcoholic beverages aimed at minors. The instructions contain examples of measures considered to be prohibited as indirect advertising measures. For example the use of the name or any other distinctive marks of alcoholic beverages in connection with the advertising of products minors use, or which are designed for minors, such as toys, games, sports equipment etc, is prohibited. The instructions contain examples of situations, when an advertisement shall be considered aimed at minors or likely to affect minors. All advertising and sale promotion of alcoholic beverages in connection with sports, music or any other events arranged for or targeting minors, TV-programs for minors or any children's magazine, is prohibited. Advertising and sale promotion measures are not allowed in school buildings or any other premises intended to be used by minors or usually visited by minors. Likewise, teenage idols, such as film and sport stars and rock artists, may not be used in advertising, since the advertising might be considered targeting minors.

2.2. Tobacco

General

Act of 13 August 1976 on measures to reduce smoking

Smoking is prohibited (5 chapter 12 §):

- in premises intended for children in day-care centres or for pupils at schools and in such outdoor premises of day-care centres or schools primarily intended for persons under the age of 18;

- in premises reserved for the public and the customers at national agencies, authorities or similar public premises;
- at public events arranged indoors and to which the public has free entry;
- indoors in public means of transportation;
- at places of work in premises intended for common and public use as well as for customers;
- at the bar disk and in the play rooms of restaurants and similar facilities, unless the employees cannot be protected from inhaling the smoke.

Tobacco products and smoking utensils may not be sold or otherwise delivered in business to persons under the age of 18 (10 §).

Rules on advertising

All forms of advertising, including indirect advertising, and sale promotion of tobacco products are prohibited (4 chapter 8 § 1 subsection). Advertising or sale promotion in connection with the advertising or sale promotion of any other products, or the use of a label, mark or other distinctive mark, which might refer to a tobacco product, is considered indirect marketing. The ban applies to all tobaccos, imitations of tobacco products as well as tobacco utensils. However, there is not a total ban on showing for example a cigarette in an advertisement, provided the advertisement might not in any case be considered as advertising or sale promotion of the tobacco product shown in the advertisement.

The ban does not apply to foreign printed works, the primary aim of which is not the advertising of tobacco or related products (4 chapter 8 § 2 subsection).

Although all forms of advertising and sale promotion aimed at customers are prohibited, sale promotion information given by manufacturers or importers is allowed, provided it is directed to professionals involved in the sale of tobacco related products. Such information may include information of the price, contents, characteristics and production of the tobacco product in question (4 chapter 8 § 3 subsection).

The ban is general and applies therefore to minors as well.

Other rules

Decree of 25 February 1977 on measures to reduce smoking

The decree contains detailed provisions on packages and labels of tobacco products. As a general rule, tobacco products have to be marked with a warning, that smoking is very harmful for the health.

Food Products

General

Act of 17 March 1995 on Food Products

Correct and sufficient information shall be provided both on the packages, brochures and advertisements of food products and otherwise. Misleading information may not be given about food products. It is in general not allowed to make any reference to health or medicine in information about food products (6 §).

Rules on advertising

There are no other specific rules regarding advertising and sale promotion contained in the Act on Food Products. Neither are there any specific provisions regarding minors. Consequently, the general rules concerning advertising contained for example in the Consumer Protection Act apply to the advertising and sale promotion measures of groceries as well.

Other rules

Supervision Instructions no 11/97 of the National Food Administration on statements on medicine and health

The instruction lists prohibited and permitted statements used in advertising and other sale promotion of food products. A statement, according to which you may prevent, treat or cure a disease or its symptoms by consuming the food product in question is for example prohibited.

Decree of 10 May 1991 on marking of packages for food products, Decision of 10 May 1991 of the Ministry of Trade and Industry on marking of packages for food products

The said decree and decision contain provisions on marking of packages for food products. There are no specific provisions concerning minors contained in any of the said acts.

Case law

The Market Court of Justice 1980:14, 1985:11, 1987:13, 1990:19, 1991:9, 1996:20

From the case law of the Market Court of Justice concerning packages of different products, food products included, a general rule has developed, according to which an interesting package of a product may not rule the advertisement in stead of the product it self. If the targeted group of the advertisement is children, solely a visible display of the package might suffice for the advertisement to be considered inappropriate. In case 1987:13 the Market Court of Justice prohibited the marketing of a hamburger meal in a toy boat intended to be the package of the said product as well as the tray for the meal.

The Guidelines of the Consumer Ombudsman

The Consumer Ombudsman has on several occasions undertaken measures in cases relating to the advertising of food products such as bubble gum and soft drinks, when said products have been marketed with the help of different card series or other collection items. The use of collection series has not been totally banned, provided at least that the total costs of the collection series can be estimated and the consumer, i.e. the child, can be sure of the contents in the product purchased in advance.

According to the "Children and marketing" -guidelines issued by the Ombudsman:

" Make sure that consumers who buy cards that are part of a series and are sold in sealed bags have a chance to verify the content of the bag or have any duplicates replaced either di-

rectly by the manufacturer or importer or by their representative within the period of publication of the card and at minimum cost. This same principle applies to any collection items contained in sealed packages."

Medicines and Health

Medicines

Rules on advertising

Act of 10 April 1987 on Medicines

Sale of medicines is licensed in Finland (21 §). The marketing of medicines may not be insignificant or induce people to an unnecessary usage of drugs or give a false or exaggerated picture of the contents, origin or medicinal significance of the product in question (91§). Only the marketing of medicines for which a sale permit has been issued is allowed.

The general rules on marketing and advertising included in the Consumer Protection Act apply to the marketing and advertising of medicines as well. There are no specific provisions concerning minors. Consequently, the general rules on advertising and sale promotion relating to minors apply to the advertising and sale promotion of medicines as well.

Other rules

Instructions on Marketing Medicines no 3/97 of the National Agency for Medicines

Advertising of other than licensed medicines is prohibited. Likewise, the advertising of medicines, for which a prescription is required, is prohibited.

The instruction includes a list of banned statements, which may not be used when marketing medicines. For example an advertising measure may not give an impression that visiting a doctor is unnecessary or that the effect of the medicine in question is guaranteed.

Natural Products

There are no separate provisions relating to the advertising of natural products. According to the case law of the Market Court of Justice (MT 1994:17) natural products may not be advertised as medicines, nor may it be suggested that they have any therapeutic effects.

Cosmetics

There are no separate provisions relating to marketing or advertising of cosmetics contained neither in the Decree of 22 March 1996 on Cosmetics nor in the Decision of 22 March 1996 on Cosmetic Products of the Ministry of Trade and Industry. Consequently, the general rules concerning advertising, contained for example in the Consumer Protection Act apply to the advertising and sale promotion of cosmetics as well.

Chemicals

There are no separate provisions relating to marketing or advertising of chemicals contained in the Act of 14 August 1989 on Chemicals. Consequently, the general rules concerning advertis-

ing, contained for example in the Consumer Protection Act apply to the advertising and sale promotion of chemicals as well.

Education

General

Children resident in Finland are subject to compulsory education, which is funded by tax revenue. The obligation starts at the age of 7 and ends when the program for comprehensive school is finished or otherwise after 10 years. The normal time reserved for the program of the comprehensive school is nine years, comprising six years of lower level and three years of upper level comprehensive school. There is no compulsory primary school.

Rules on advertising

There are no laws or regulations relating to marketing and advertising involving minors as far as education is concerned. Consequently, the general rules concerning advertising, contained for example in the Consumer Protection Act apply to the advertising and sale promotion in day-care centres, schools etc. as well.

The Guidelines of the Consumer Ombudsman

The Ombudsman has taken the following stand with respect to schools and day-care centres as marketing channels:

“Advertisements and other publicity material may not be distributed at schools and day-care centers unless the consent of the parents has been obtained in advance for example at parent-teacher meetings. This in turn risks bestowing a semi-official label on advertising.

- Teaching material must not contain ads. Advertising may only be used for educational purposes.”

In the “Sponsorship and other marketing in schools” -guidelines the Ombudsman has adopted the following rules relating to identification of marketing and unsolicited marketing:

“-The commercial nature of sponsorship and other marketing in schools should be clearly recognisable.

- Pupils and their parents should be given clear information about the commercial co-operation and the contents of the commitment.

- Teaching material should be marked clearly with its source and purpose, or the source or purpose should be explained to the pupils in some other way decided by the school before the material is used within the classroom.

- Advertisements and other commercial messages should be distinguished from the teaching material or the educational content of the material. Surreptitious advertising or other disguised forms of marketing should not occur.

- If pupils take part in event marketing, competitions or other forms of marketing which differ from traditional advertising, the pupils should be told what they are involved in. Where under-age pupils are concerned, permission should be obtained from their parents for participation in such events.

- All commercial material should state clearly who produces it or sponsors it. Sponsored mate-

rial should not contain merchandising slogans or logos, with the exception of the identifying logo of the sponsor.

- Only marketing materials addressed to a school or its teachers should be sent to schools. Advertisements should not be sent directly to pupils.

- Advertisements sent to schools should only invite the schools to apply for additional material or to participate in promotional activities.

- Pupils should not be given or sent product samples without the school's permission.”

The Consumer Ombudsman has also issued guidelines concerning photographing at schools and day-care centres.

Case law

The Market Court of Justice has in cases MC 1980:13 and MC 1981:9 stated that the consent of the teacher does not suffice to allow marketing and advertising measures in day-care centres and schools. The same rule applies regardless of whether it is the teacher or a third person performing the marketing or advertising measure. The consent of the parents is required in each case. In a recent case (which was published 5 July 2000) the Market Court of Justice prohibited the distribution of a magazine named 'Family 2000' in schools without the prior consent of the parents. According to the Court, the magazine was an advertising publication mainly containing advertisements in the form of written articles.

2.3. Toys and Objects for Children

Rules on advertising

There are no provisions concerning advertising or marketing contained in the Act of 26 March 1997 on the Safety of Toys. Consequently, the general rules concerning advertising, contained for example in the Act on Consumers' Protection apply to the advertising and sale promotion of toys as well.

Case law

The Consumers' Ombudsman has found the advertising of a hamburger meal together with toys inappropriate, since there was no relevant connection between the meal and the toys. The fact that the separate price of each product was mentioned did not suffice to make the marketing permitted. It was also found inappropriate, since the idea was to create a picture for children that there is always a toy combined with the meal

In addition, please see case 1980:13 mentioned in subsection 3.3.5 above as well as the Guidelines of the Consumer Ombudsman in subsection 3.1.1.2.

Banking Services

General

Act of 31 December 1996 on Credit Institutions Operations

According to the act (52§) a person aged 15 may enter into a deposit agreement with a deposit bank. In the case of a younger person the consent of the legal guardian is required. The rule is

based on the provision in the Act on Guardianship, referred to above in subsection 2.2, according to which a minor is also entitled to control income received as a minor from any work of his own. According to § 5 of the Act of 30 April 1970 on Employment Contracts a minor who has reached the age of 15 may enter into an employment contract.

A cash card may be given to a minor aged 15-17 on the same grounds. According to the practice of the deposit banks cash cards are given to 11 years old, provided the consent of the legal guardian is given.

Rules on advertising

The act applies for example to all deposit banks. When marketing their products, credit institutions are under an obligation to give their customers all necessary information, i.e. information which might be of relevance for the customers in making decisions concerning the said product (82 §). The presenting of false or misleading information as well as use of bad manners or otherwise unfair practices is banned.

There are no specific rules regarding advertising targeting minors.

Other rules

Act of 26 May 1989 on Bond Markets

According to the general rule bonds may not be marketed by presenting false or misleading information or by using bad manners or otherwise unfair practices (2 chapter 1 §).

Instructions on procedures to be applied in the marketing of bonds of the Finance Inspection

Said instructions contain no provisions on marketing or advertising as relates to minors.

Leisure

Package Tours

Rules on advertising

Act of 28 November 1994 on Package Tours

The Act contains provisions on what information need to given when marketing package tours. There are no specific rules relating to minors.

Films and video tapes

General

According to the Act and Decree on Film Inspection, the Act on Performing Film Inspections and the Act on Inspection of Videos and other Pictures, the State Film Inspection Authority decides, in advance, on the approval of all films, with the exception of certain productions financed or produced by the state itself. The Authority may not accept a film if:

- its contents are contrary to the law or good manners;

- it is immoral, brutalising or harmful to the mind by raising fear or in any other way, having consideration to how the scenes are filmed or in what connection presented; or
- presenting it would endanger public safety or national defence or make foreign relationships worse.

The Authority may prohibit the film to be shown to a person under 16 years of age, and under certain circumstances to a person under 18 years of age. The Authority is also entitled to set other age limits for films and videotapes. The most important criteria taking into consideration by the Authority when setting these age limits are violence, sex and fear.

Rules on advertising

There are no specific laws or regulations regarding advertising of films and videotapes targeting minors.

In addition, please see subsection 2.5 above.

Sports events

Rules on advertising

There are no specific laws or regulations dealing regarding advertising of sports events targeting minors. However, there is case law of the National Product Control Agency on Welfare and Health relating to this question, according to which:

The advertising of beer was prohibited in connection with a snow board competition, since most of the persons interested in the sport are children under the age of 18.

The advertising of light alcoholic beverages on the clothes of participants aged under 18 in sports events is prohibited. However, such advertising was permitted on the clothes of those members of a team, who were at least 18 years old.

In addition, please see subsection 3.2.1 above.

Vehicles

General

The Decree of 7 September 1990 on Drivers' Licences

The different categories of vehicles are defined in the decree (5§). The required age to drive different categories of vehicles are mainly the following:

- 15 years: moped, tractor, snow scooter
- 16 years: motorised bicycles
- 18 years: motorcycles and motorised vehicles
- 21 years: motorised vehicles for the transport of more than 8 persons, driver not included and certain combined vehicles

Rules on advertising

There are no specific provisions regarding marketing or advertising of vehicles.

Arms

General

Cutting weapons

According to the Act and Decree of Cutting Weapons the manufacture for the purpose of sale and the trade of dangerous cutting weapons is prohibited. There are no age limits contained in the act.

Guns

According to the Act and Decree on Guns the manufacture, purchase and possession of guns require a permission issued by the local police authorities. Such a permission can only be given to a person who is 18 years old. Providing the gun shall be used for hunting purposes or sports activities, a permission may be given to a person who is 15 with the consent of the legal guardian.

Rules on advertising

There are no specific provisions regarding marketing and advertising of cutting weapons or guns.

Miscellaneous

Decree of 18 November 1983 on information required in connection with marketing apartments.

The Decree of 30 January 1987 on necessary information about consumers' products defines the product information that need to be presented to consumers about products mentioned in the Act on Product Safety of 12 December 1986.

These Decrees contains no specific provisions concerning advertising or marketing as relates to minors.

3. Proposal of legislation on advertising directed at children

There are no proposals of law regarding marketing, advertising or sale promotion targeting minors pending at the moment, nor are any such law reforms under work. However, the Consumer Research Centre has recently performed a research on minors and commercial influence on the internet. Furthermore, the Consumer Authority is preparing a check-list to be applied on commercial offers on co-operation. This check-list will, when finished, be distributed to schools. It is the task of the Consumer Authority to support all consumer related education together with the Education Administration.

The implementation of Directive 97/7/EC of the European Parliament and the Council 20 May 1997 on the Protection of Consumers in respect of distance contracts is pending at the moment. The necessary amendments will be made into chapter 6 of the Consumer Protection Act, which concerns home and mail order sales.

A proposal has also been given for the amendment of the different laws and regulations relating to the inspection and films and videotapes. The idea is to create a common system for the inspection of all different moving pictures. According to the proposal, which has not yet been accepted, the compulsory advance inspection will be covered by a system, where all films not inspected will be prohibited for under 18 years old.

III. SELF REGULATION

1. General rules

There are different arrangements within trade trying to secure the acceptability of the business and offering a possibility to interfere in possible inaccurate practices. The idea is to promote and preserve good business manners.

1.1. The ICC 1997 International Code of Advertising Practice

Since the code is familiar within the international community, the contents of it, or any other of the ICC Codes, will not be presented in this study.

However, it should be emphasised that the case law of both the Consumer Ombudsman and the Market Court of Justice are influenced by the international code. Also other institutions, such as the Board of Business Manners of the Central Chamber of Commerce, applies the code in its activities.

1.2. The Board of Business Manners of the Central Chamber of Commerce

The Board assists companies in defining good business manners. The Board gives its decision within a short period of time to marketing disputes between companies. A company may request an advance opinion whether an intended marketing measure is in conformity with good business manner or for example the ICC 1997 International Code of advertising practice (please see subsection 3.1.3 above). The decisions of the Board are opinions. The Board may not give any binding decisions. The impact of the opinions rendered by the Board is, however, significant and the opinions are in general followed.

The Board does not in its opinion making apply the Consumer Protection Act directly. The Board review the matter from the point of view of generally accepted standards of procedure and in particular from the point of view of the ICC 1997 International Guidelines on Direct Marketing.

1.3. Rules Issued by the Finnish Direct Marketing Association

The Finnish Direct Marketing Association (Finnish DMA) represents the major direct marketers in Finland. The member companies of the association include the largest book and magazine publishing companies, mail order houses, direct selling companies, companies in trade and industry, banks, insurance companies, DM advertising agencies, DM planning agencies, as well as many other service enterprises in the field, such as addressing, mailing, printing and telemarketing companies.

The objective of the Finnish DMA is to support the direct marketing industry and the members of the association in establishing a good and trusting relationship with consumers, media, business, industry, the authorities and government institutions.

Direct marketing companies representing several different sectors of the DM industry share the view that the interests of consumers, the national economy and business will be best served, if the marketing of goods and services is targeted with the best possible precision to those poten-

tially interested in the particular products and services offered. Effective direct marketing does not waste the resources of the consumer or the environment, it makes profitable business possible and does not disturb those uninterested in the offered product or service. The short distribution channel in the direct marketing industry makes competitive pricing possible. The general object of direct marketing is in establishing a secure, permanent and personal relationship with the customer.

The Finnish DMA has issued Rules for Fair Play (see below) and Rules for Electronic Consumer Trade (see subsection 5.2.2 below).

1.3.1. Fair Play Rules

These Rules for Fair Play aim at covering the legislation and rulings on direct marketing, as well as defining the fair treatment of customers required by the commercial practice. The Rules for Fair Play shall be applied in the spirit and to the letter of the rules. Direct marketing is evaluated by the general impression created in the target group.

All direct marketing shall be honest and truthful as well as in accordance with the law and prevailing standards of decency.

All means of communication; written, visual, electronic and spoken are being used in direct marketing. The Rules for Fair Play are applicable to all direct marketing directed to consumers regardless of the means of communication or form of marketing.

The rules contain the following provisions relating to marketing targeted at children and young people:

“Marketing to children and young people shall be subject to special care and consideration. The limited experience and knowledge of children and young people shall be taken into consideration, at the same time not underestimating their ability of reasonable judgement.

The gullibility of limited experience of children and young people shall not be taken advantage of. Appealing to emotional feelings or to a child’s relationship with his parents or friends is not acceptable.

The guardian’s approval must always be acquired before accepting orders from minors.”

1.4. The Finnish self-regulatory committee for premium rate services (PRS)

Finnish self-regulatory committee for PRS is a self-regulating organisation which monitors all service providers in the telecommunications networks.

The committee for premium rate services which, in addition to the chairman, consists of five members. The committee members represent ethical, market-oriented and legal expertise as well as network operators, service providers and the Finnish Teleforum Soc. The Finnish Self-regulatory Committee for premium rate services is a body of trust which is assisted by a full-time ombudsman for premium rate services. Their actions and rulings are based on the basic set of norms for premium rate services.

The Finnish Self-regulatory Committee for premium rate services and the ombudsman together form a self-regulatory organisation for premium rate services which is meant to assist the service

providers, consumers, network operators, authorities and media in matters concerning premium rate services.

The objective of the basic set of norms for providing premium rate services by phone is to get all service providers to adhere to a code of good conduct. In particular, these are matters connected with marketing, numbering, price information and service classification.

The Finnish Self-regulatory Committee for premium rate services and the ombudsman supervise compliance with the basic set of norms. The task of the Finnish Self-regulatory Committee for premium rate services is to create and maintain good and ethically acceptable conduct in the provision of premium rate services among those operating in the field.

1.5. Classification by media

1.5.1. Television

The MTV Principles and Guidelines on Television Commercials

The licence of the Finnish TV channel MTV3 includes a provision, according to which a maximum of 15 % of the broadcasting time may be commercials.

The licence of the Finnish TV channel Nelonen includes a similar provision.

MTV3 has prepared its own principles and guidelines on Television Marketing. The guidelines include provision concerning Children and TV-commercials both from the point of view of the children as a watcher and the children as an actor.

1.5.2. Radio, press, posters and cinema

There are no self regulation rules as relates explicitly to marketing and advertising in the radio, press, by posters or in cinemas.

1.5.3. Internet

1.5.3.1. Telephone services

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The Finnish Self-regulatory Committee for premium rate services and the ombudsman supervise compliance with the basic set of norms. The task of the Finnish Self-regulatory Committee for premium rate services is to create and maintain good and ethically acceptable conduct in the provision of premium rate services among those operating in the field.

1.5.3.2. Rules for Electronic Consumer Trade

The rules for electronic consumer trade were prepared jointly by the Finnish Direct Marketing Association and the Federation of Commerce and Trade. The purpose of these rules is to share information about the special features and appropriate codes of conduct relating to electronic consumer trade. Both associations hope that these rules will be followed by as many electronic vendors as possible.

The rules contains the following provisions concerning advertising aimed at children and the young:

“All the advertising aimed at children and the young will be appraised according to criteria that is stricter than usual. When the order is being submitted, it is advisable to make sure that the guardian has approved of the order made by the minor.”

1.6. Classification by sector

1.6.1. Medicines

Instructions on Marketing Medicines of the Medicine Industry Association

The members of the association have undertaken to apply these instructions, which contain detailed provisions on what information may and may not be given in marketing and advertising drugs. Separate instructions have been made for consumers and personnel employed within the health care sector.

There are no other self regulation rules as relates explicitly to a certain sector.

IV. SPECIAL MEANS OF COMMUNICATION

1. Introduction

The laws and regulations referred to above, which concern marketing and advertising, apply regardless of what media is being used. Due to the different character of all forms of media available today, i.e. the press, television, radio, electronic media, outdoor marketing, direct marketing etc, it will not be certain that an advertisement, which is found appropriate, if used in one media, necessarily will be accepted as appropriate, if used in another media.

Some provisions relating to the specific media used have been issued, for example the Act on Radio and Television Operations, which has been described in subsection 3.2 above. The act includes provisions regarding advertising, teleshopping and sponsoring on the radio or television.

Case law

The Market Court of Justice 1982:20, 1983:4, 1987:13, 1988:4, 1990:19, 1991:4, 1992:10, 1994:7, 1995:16, 1996:7, 1996:8, 1996:9

2. Direct Marketing

2.1. Introduction

The same marketing rules, i.e. the rules contained in the second chapter of the Consumer Protection Act, apply to direct marketing as well.

In all direct marketing the provisions contained in the Person Information Act of 22 April 1999 have to be applied.

From the case law of the Market Court of Justice it can be concluded, that the advertiser has to take into consideration both the characteristics of the product marketed and the situation of the addressee, i.e. the customer. This is due to the fact that direct marketing, by using the name of the customer, is very personal. Furthermore, the direct marketing has to include information of the intention to sell, what kind of a product is offered and who is offering. From the envelope it should already be able to see who the sender is as well as understand that the contents are marketing materials. It is inappropriate to send mysterious invitations or contact requests. (The Market Court of Justice 1981:16, 1983:4, 1984:11, 1987:4, 1987:11, 1988:3, 1991:5, 1992:10, 1992:12, 1992:14, 1992:15, 1995:14, 1995:25, 1996:7)

The “Children and marketing” - guidelines of the Consumer Ombudsman include the following general provisions concerning direct marketing:

“As children have a limited ability to grasp the commercial nature of advertising, they easily imagine that in direct marketing the advertiser is personally interested in them. This misconception is rendered easy by the child’s self-centred thinking.

- Direct-mail advertisements must not be addressed to children. Even if such mail is addressed to the children’s parents it is forbidden to print cartoon characters on such mail or to include invitations for a child to open the letter or buy the product in question”

2.2. Legislation

2.2.1. Mail Order Sale

2.2.1.1. General rules

Mail order sale means offering products to the consumer through a leaflet, catalogue or advert. The buyer decides to order the product based only on a picture and text, without seeing or trying the product first. Thus, the mail order sector has special features for both the consumer and the business concerned.

Chapter 6 of the Consumer Protection Act contains provisions concerning home and mail order sale and the minimum requirements, which a company engaged in home or mail order sale must meet with in its operations. A general rule applicable to both home and mail order sale is the unconditional right of the consumer to cancel the order or the purchase made. This right of cancellation is valid for seven (7) days in both cases (chapter 6 § 3 and 6).

2.2.1.2. Other rules

The Consumer Ombudsman has issued "Mail order sale" – guidelines. These guidelines include the following provisions relating to minors:

"The Consumer Ombudsman requires mail order forms to carry an entry requiring those under 18 to gain permission from their guardian for mail order purchases (1159/41/80). Otherwise, the marketing may be considered inappropriate."

The "Children and marketing"-guideline of the Consumer Ombudsman include the following provision concerning mail-order advertising addressed to children:

"If the target group of your mail-order advertising are children or youngsters, make sure to state that if the client is under 18 years of age the order form must be signed by his parents."

2.2.1.3. Case law

The Market Court of Justice 1980:11, 1980:12, 1981:3, 1981:19, 1982:7, 1989:10, 1990:20, 1991:5, 1992:12, 1993:1, 1997:8

2.2.2. Home Sales

2.2.2.1. General rules

Home sales means offering products to the consumer by phone or in person in some other place than the place of business of the company.

The general rules applicable to home sales has been reviewed under subsection 6.2.1 above.

2.2.2.2. Other rules

The Consumer Ombudsman has issued guidelines concerning home sales. The guidelines emphasise that persons under the age of 18 are minors, which are entitled to enter into contracts, only if the contract can be considered of little significance or usual. The consent of the legal guardian is required in all other cases. According to the guidelines a contract with a minor in-

cluding a consumer credit cannot be considered usual and, consequently, always requires the consent of the legal guardian. According to the guidelines the seller has to take into consideration, among other things, the age and circumstances of the consumer.

2.2.2.3. Case law

The Market Court of Justice 1980:1

2.2.3. Net Marketing

Concerning net marketing please, see subsection 3.1.4 above.

2.2.4. Marketing by Agents

2.2.4.1. General rules

According to the “Home Sales” – guidelines of the Consumer Ombudsman marketing by agents is a form of home sales.

Please see subsection 6.2.2.2, concerning home sales, above.

2.2.4.2. Other rules

The “Children and marketing” – guidelines of the Consumer Ombudsman contain the following provisions relating to marketing by agents:

“A child is easily influenced by his peers. It is therefore easy for a child representing a product to put pressure on his friends.

- If you use underage agents to market your products to other children, do not tie their earnings to the number of orders placed.
- See to it that the underage agent’s guardian agree to have the child represent your products.”

2.2.4.3. Case law

The Market Court of Justice 1980:1

2.2.5. Teleshopping

2.2.5.1. General rules

Concerning the Act on Radio and Television Operations please see subsection 3.1.2 above.

2.2.5.2. Other rules

The “Children and marketing” –guidelines of the Consumer Ombudsman include the following provision concerning teleshopping:

“Do not sell products to children on TV shopping programs. They are often broadcast at hours when children are alone at home and may purchase the product without their parents’ knowledge.”

Self-regulation

The International Chamber of Commerce has issued its International Guidelines on Direct Marketing, which have been described in subsection 5.1.3 above.

The Direct Marketing Association has issued "The rules of fair play", which have been described in subsection 5.1.2.1 above.

The Self-regulatory committee for PRS has issued "The basic set of norms for providing premium rate services", which have been described in subsection 5.1.4 above.

3. Sales Promotion

3.1. Legislation

The Guidelines of the Consumer Ombudsman ("Children and marketing")

Children's clubs

"Companies often establish "children's clubs" to inform children about the company and its products. Sometimes the club's activities do not amount to more than sales promotion. Children are not always aware of this; instead, belonging to the club provides them with a sense of security and an identity.

- If you form a "children's club" to promote the image of your company or the sales of your product, request the parents' consent before letting a child join.
- The membership bonuses of a "children's club" set up for commercial purposes may be subjected to the free gift provision of the Consumer Protection Act if a bonus is contingent on the purchase of a product."

Dial-it services

"Children's and youngsters' lack of experience and knowledge makes it difficult for them to understand the financial consequences of dial-it services. Both parents are often absent from home and cannot supervise the use of the telephone. Nonetheless, they are the ones who must pay the bill.

- Do not encourage children and youngsters to order a product by calling a telephone number subject to a charge, especially if the price of the product is to be included in the ordinary telephone bill. Phone bills are paid by the subscriber, usually the parents. Besides, teleselling constitutes a transaction on credit and according to the Guardianship Act, persons under the age of 18 may only make cash purchases.
- If you offer the possibility to order products from a dial-it service, do make it clear at the same time that products can also be ordered free of charge.
- Do not invite children to participate in a marketing lottery through a dial-it service."

Special benefits

Please see subsection 3.2.3 above and the Guidelines of the Consumer Ombudsman.

3.2. Self-regulation

There are no self-regulation rules as relates explicitly to sales promotion.

4. Sponsorship – Sponsoring

4.1. Legislation

4.1.1. General rules

There are no general laws or regulations applicable to sponsorship or sponsoring.

4.1.2. Other rules

In the “Children and marketing” -guidelines of the Consumer Ombudsman concerning the technical realisation of television commercials it is said that commercials may not be sponsored.

The Guidelines of the Consumer Ombudsman concerning sponsorship and other marketing in schools

Sponsorship in schools means marketing undertaken by a firm or an organisation, based on a co-operation agreement between the sponsor and the school. It is characteristic of sponsoring that the company or organisation expects also a contribution from the school. The sponsor company uses the school’s image for marketing purposes. The financial support the school receives from the sponsor is not comparable to charity.

These sponsorship guidelines aim to define, on a basis of statutory provisions and legal praxis, how sponsorship can be carried out in schools without violating the marketing provisions of the Consumer Protection

The following sponsorship principles are contained in the guidelines:

- “- Sponsorship should be decent and truthful.
- Sponsorship should not play on the fear, credulity, loyalty or inexperience of children and young people.
- Sponsorship materials or activities should not include any explicit encouragement to buy the sponsor’s goods or services.

The authority of the teachers or of the school should not be exploited in a way that make pupils or their parents believe that pupils will attract unfavourable attention or are given a disadvantage at school, if they do not buy or use the sponsor’s products.

- Pupils and teachers should be allowed to be critical of the sponsor or its products.
- Sponsorship should not encourage children to persuade their parents to buy the sponsor’s products.
- Sponsorship should not include claims that particular goods or services are superior or inferior to others, unless documentary evidence is available to that effect.”

In addition, please see subsection 3.2.8 above.

4.2. Self-regulation

There are no self-regulating provisions as relates explicitly to sponsorship or sponsoring.

V. HANDLING OF COMPLAINTS

1. Introduction

There is no general censorship concerning marketing or advertising in Finland. No authority is entitled to demand an advertisement or other marketing measure to be approved by it in advance. All supervision is, consequently, carried out afterwards.

2. Self regulation

2.1. The Board of Business Manners of the Central Chamber of Commerce

Please see subsection 5.1.1 above.

2.2. The Finnish Direct Marketing Association

According to the provisions of the Fair Play Rules issued by the Finnish Direct Marketing Association (please see subsection 5.1.2 above) the primary responsibility for the observance of the code shall rest with each company. In case of any breach of the code, companies shall make every reasonable effort to satisfy the complainant. The Finnish DMA shall establish complaint handling procedures. Such complaints handling shall be free of charge for the consumers. We have no information that such procedures have been established so far.

The other self regulation rules referred to in section 5 above contain no provisions of complaint handling the main idea of the provisions lying in their preventive effect.

2.3. The self-regulatory board for PRS

According to the basic set of norms issued by the committee (please see subsection 5.1.4 above) each service provider is responsible to observe the rules.

In case of breach of the rules every consumer is entitled to complain to the committee. The committee shall handle the complaints free of charge to the consumers.

The committee handles annually more than 200 complaints or contacts.

3. Administrative Proceedings

3.1. The Ombudsman

The general supervision of all consumer related marketing and advertising, i.e. the application of the provisions in the Act on Consumer Protection, is the responsibility of the Consumer Ombudsman. His primary task is to ensure the lawfulness of all marketing and advertising measures aimed at consumers by giving advice and information on how to correct possible infringements, which has come to his knowledge. The Ombudsman may act on his own initiative or due to a complaint made by a private person. The Ombudsman will primarily try to solve any conflicts through negotiations (The Consumer Protection Act chapter 2, § 8 subsection 2).

In case no result is achieved from negotiations, the Ombudsman is entitled to issue a marketing ban on the infringing party. The ban is normally combined with a penalty. The Ombudsman is

entitled to act in cases, which are not of a major significance for the application of the law in general or otherwise. In other cases the Ombudsman will bring the matter directly to the Market Court of Justice.

The Ombudsman is entitled to issue an interim ban.

In the event the infringing party does not accept the ban, he is under an obligation to inform the Ombudsman of this within a set time limit, after which the Ombudsman will consider whether to bring the case to the Market Court of Justice or not.

The Ombudsman is also the supervising authority with respect to the provisions relating to marketing, teleshopping broadcasts and sponsoring in the Act on Television and Radio Operations. The procedure for handling a complaint under the said Ac is the same as the one described above.

3.2. The National Product Control Agency for Welfare and Health

The supervision of advertising and sale promotion relating to *alcoholic beverages* is the responsibility of the National Product Control Agency for Welfare and Health (STTV) of the Ministry of Social Affairs and Health.

In the event alcoholic beverages are unlawfully advertised, the STTV may prohibit the continuation of such unlawful marketing. A penalty may be combined with the ban. The STTV is, furthermore, entitled to order rectification, if this is considered necessary with respect to the obvious harm caused by the unlawful advertising.

There is a right of appeal to the Market Court of Justice for the infringing party.

The Ombudsman supervises the conformity of advertising measures relating to alcoholic beverages on the basis of the general provisions included in the Consumer Protection Act.

The supervision of advertising relating to *tobacco products* is also the responsibility of the STTV.

3.3. The Food Products Authority

The supervision of the marketing provisions included in the Act on Food Products is the responsibility of the Food Products Authority. However, the general supervision of the conformity of any marketing and advertising measures concerning groceries with the Consumer Protection Act is the responsibility of the Consumer Ombudsman.

The Food Product Authority is entitled to prohibit the infringing party to persist in its unlawful marketing aimed at the public. A penalty may be combined with the ban and rectification may be ordered as well.

There is a right of appeal to the Provincial Court of Uusimaa.

3.4. The National Agency for Medicines

The supervision of the marketing and advertising provisions contained in the Act on Medicines is the responsibility of the National Agency for Medicines. The Agency is entitled to prohibit a marketing measure found to be unlawful. The Agency may order rectification, if this is consid-

ered necessary from the point of view of the medical safety having been endangered. A penalty can be issued together with the ban.

The general supervision of the conformity of any marketing and advertising measures concerning medicines with the Consumer Protection Act is the responsibility of the Consumer Ombudsman.

3.5. The Finance Inspection

The supervision of the Act on Bond Markets and the Act on Credit Institutions is the task of the Finance Inspection. The general supervision of the conformity of any marketing and advertising measures concerning products mentioned in the said acts with the Consumer Protection is the responsibility of the Consumer Ombudsman.

4. Judicial proceedings

4.1. The Market Court of Justice

The Market Court of Justice has jurisdiction to decide in cases based on the provisions concerning marketing and advertising contained in the Consumer Protection Act. The cases are brought to the Market Court of Justice by the Ombudsman in accordance with the procedure described above. No private person is entitled to bring a case before the Market Court of Justice, but has to make a complaint to the Ombudsman, who will decide on any possible measures to be taken (The Consumer Protection Act 2 chapter 8 § 1 subsection, The Act on the Market Court of Justice 6 §).

In the event an infringement is established, the Market Court of Justice is entitled to demand the infringing party to seize its unlawful practice, i.e. the marketing or advertising measure in question. A ban to this effect will consequently be rendered by the court. The Market Court of Justice is also entitled to demand rectification by the infringing party, if considered necessary with respect to the obvious damage caused by the marketing or advertising measure. It is the discretion of the Market Court of Justice to decide how the rectification shall be done in practice.

A court order is usually combined with a penalty, which may be deemed payable unless the infringing party obeys the court order within the time limit set. At the same time as the penalty is deemed payable a new higher penalty will be issued.

The decision of the Market Court of Justice is final. Only as far as the amount of the penalty is concerned there is a right of appeal.

The order issued by the Market Court of Justice is not a criminal penalty.

4.2. The District Courts

The Market Court of Justice only decides on the issue whether the marketing or advertising measure is in conformity with the law. Consequently, the Market Court of Justice has no criminal jurisdiction, nor does it have jurisdiction to award damages.

Only rarely, i.e. only in serious cases, will a measure found to have violated any of the laws and regulations on marketing or advertising, also constitute a breach of the provisions contained in the Criminal Code. In the event of such a breach, the District Court will have jurisdiction to decide on the case after the preliminary investigation has been performed.

The question of damages will also be decided by the District Court. So far there have been no cases where damages would have been awarded based on the liability for a marketing measure solely. This is due to the strict provisions contained in the Act on Damages (chapter 5 § 1), according to which damages will be awarded for economic loss suffered only if there are very important circumstances justifying such damages.

If the infringing party is, however, also found guilty to a breach of any of the provisions contained in the Criminal Code he will be responsible to pay damages for the economic loss caused to a third party in accordance with the Act on Damages.