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Sugar and Spice and all things Nice: Advertising to Children in the UK

Introduction

Once upon a time, not so long ago, an advertising agency with a client whose products were aimed at children would have thought that its cup was overflowing. Now, that cup seems to have become a poisoned chalice. Gone are the days when creative teams had freedom to come up with all sorts of appealing content, songs and lyrics. Instead, they are faced with tighter rules for the content and scheduling, and the fact that the whole concept of advertising to children is regarded by many, especially amongst parents (and consequently by Government), with opprobrium.

Of course, advertisers have reasons to promote their products to children. Research for a children's charity, Childwise, found that children in the UK spend over four billion pounds every year. Quite a significant sum in itself, it is certainly enough to make advertisers take an interest. Furthermore, advertisers have a right to inform parents and children of products which are legitimately for sale: that is the fundamental principle of commercial freedom of expression.

At the recent election, however, all three main parties made it part of their manifesto to "protect" children and called for a clamp down on "irresponsible marketing", "excessive commercialisation" and the "sexualisation" of children. Clearly therefore there is political pressure on the advertising industry to become more socially responsible in its approach to advertising to children, but in fact the rules are already quite stringent.

What laws are there about advertising to children?

Contrary to some misconceptions, even within the advertising world itself, there are in fact no specific laws relating to advertising to children, except, as of 2008, the rule in the Consumer Protection Regulations which states that "*including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them*"¹ is an automatically unfair commercial practice.

This law is certainly stringent, but unlike all but one of the other automatically unfair commercial practices listed in Schedule 1 to the Regulations, infringement of this rule is not a criminal offence. It can however lead enforcement bodies to ban the advertisement, which function has been handed primarily to the Advertising Standards Authority (ASA).

What Regulations are there?

There are, on the contrary, a significant number of rules in the CAP and BCAP Codes which deal specifically with advertising to children. Under the new codes, the importance of this area has been reflected in a number of ways, including moving the section on Children forward in both codes to a much more prominent position.

There is not enough space in this Ad Guide to set out all the rules in detail, but we will go on to identify some of the more pertinent restrictions. The new Codes, which come into force on 1 September 2010, can be found at the link below:

<http://www.cap.org.uk/The-Codes/New-Advertising-Codes.aspx>

The main essence of the rules in the CAP Code are that advertisements targeted at or featuring children:

- must contain nothing that is likely to result in their physical, mental or moral harm;
- must not exploit their credulity, loyalty, vulnerability or lack of experience;
- must not encourage them to pester their parents;
- must not encourage children to have an unhealthy lifestyle.

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1. Section 28, Schedule 1, Consumer Protection from Unfair Trading Regulations 2008

The rules in the BCAP Code are more detailed but they amount to the same. Clearcast's Notes of Guidance, however, go into much greater detail on advertising to children, both in their depiction and in respect of children as viewers, and any advertiser or agency which is intending to advertise to children on television should read these notes carefully, which can be found in section 7 at the link below:

<http://www.clearcast.co.uk/notes-of-guidance.html>

These codes are considered to be one of the toughest regimes in Europe, except of course in countries, like Norway and Sweden, where it is prohibited to advertise to children below the age of twelve. It should be noted though, that these prohibitions do not appear to have had any effect on children's habits, not least in the area of obesity, which is discussed in more detail below.

ASA Adjudications

There have been a string of ASA adjudications in the recent past which confirm their commitment to ensure that children are protected from harmful or inappropriate advertising.

An advertisement for No Added Sugar Ltd showed a number of young children surrounded by, and playing with, rubbish bags, including empty plastic carrier bags. The ASA upheld complaints that young children on seeing this might emulate the children in the commercial and play with plastic bags, potentially causing themselves harm.

An advertisement for the Volkswagen Golf which depicted scenes of violence and the use of weapons was ruled to be unsuitable to be seen by children and required a post 9pm restriction.

An advertisement appearing on lastminute.com for NH Hoteles showed a young girl in a bikini in a sexually provocative pose. The ASA upheld this stating that it was likely to be seen to sexualise children in an irresponsible manner and therefore was likely to cause offence. An ad for American Apparel showing a photo montage of a young girl stripping was deemed inappropriate because, although the model was actually 23, she looked under 16, and therefore the ad was considered by the ASA to sexualise children.

The ASA also upheld a complaint about a television advertisement for King.com, a gambling website, on the basis that the ad, through its animated and colourful content, was likely to be of particular appeal to children, and exploited the susceptibilities and credulity of children and raised unrealistic expectations with regard to winnings.

Even an anti-smoking television commercial for the Department of Health, which featured young children stating what they were not scared of (spiders, the dark etc) and what they were scared of (their mother dying), had an adjudication upheld against it, on the basis that, although the underlying message was important, the ad itself would cause distress to children listening to it.

Food and Soft Drinks

There is undoubtedly a problem of obesity amongst some children in the UK. There are concerns, voiced particularly by certain non-governmental organisations, that this rise in obesity is being caused by advertising "unhealthy" foods to children. As a result of this, and a failure by the food industry to deal effectively with the issues at the time, a raft of tough restrictions were implemented by CAP for both the content and the scheduling of advertisements for foods or soft drinks that are high in fat, sugar or salt (HFSS).

a. Content Restrictions

These include requirements in the CAP Code that:

- Advertisements must not condone or encourage poor nutritional habits or an unhealthy lifestyle
- Advertisements for HFSS products aimed at pre-school or primary school children must not include a promotional offer
- Advertisements for HFSS products aimed at pre-school or primary school children must not include licensed characters or celebrities popular with children (although this does not apply to brand characters, such as Tony the Tiger)
- Advertisements must not try to sell to children by directly appealing to emotions such as pity, fear or self-confidence
- Advertisements addressed to children must not urge children to buy or persuade others to buy, and must avoid high-pressure or hard-sell techniques
- Advertisements must not give a misleading impression of the nutritional or health benefits

Again, the rules in the BCAP Code, although more detailed, essentially amount to the same.

b. Scheduling Restrictions

There are also scheduling rules to take into account. Advertisements for HFSS products may not be shown in or around programmes directed at, or likely to appeal particularly to, audiences below the age of 16. This means that television commercials for HFSS products cannot be

shown during children's programming, nor can they be shown around programmes where there is a high percentage of children watching, known as the "120 Index". This is measured by broadcasters, but essentially means that many programmes such as *The Simpsons* and *Friends* would be included, although soap operas fall outside the index, to the irritation of so-called consumer groups.

Social Networking

One of the Government's increasing preoccupations in respect of children is social networking sites. Commentators believe that there are over 100 social networking sites aimed at young people. Although there is evidence that many young people do not take notice of advertising in its more traditional sense (i.e. in a social media context that would include pop-ups and banners), there are numerous other routes to attract their attention, including games applications and sales promotion techniques.

In 2007, Dr Tanya Byron was asked by the Government to look into the risks to children from exposure to potentially harmful or inappropriate material on the internet and in video games. Her review was published in 2008 and, amongst other things, recommended that the advertising industry "take steps to "future proof" the current system for regulating advertising to take account of new forms of online advertising which are currently outside remit" and that slightly more opaque recommendation that "the advertising industry works with media owners to raise awareness amongst advertisers of their obligations under the CAP Code to advertise responsibly to those under 18 on the internet".

As a result of this report, the Committee of Advertising Practice (CAP), the industry's self-regulatory body, has announced a proposal to extend the remit of the CAP Code to cover all promotional messages online, including therefore those on corporate websites. This is aimed in particular at ensuring that all advertisers, whether on their own websites or when advertising through third party websites (be they standard websites or social networking sites), adhere to the principles set out in the Code when advertising to children. In effect, it attempts to stop advertisers from using unregulated avenues to launch inappropriate, socially irresponsible campaigns aimed at children, which is how many activities on the internet are perceived.

Advertisers and their agencies need to use their common sense when developing advertisements and promotions aimed at children. Rules in the Codes already require that consent is obtained from parents before children can enter prize promotions and this applies to promotions on websites (corporate and third party) as well as other platforms.

Advertisers do need to exercise caution when collecting any information from children, not just for prize promotions. Advertisers are encouraged to:

- Post a clear and comprehensive privacy policy on their website describing their information practices for children's personal information;
- Provide direct notice to parents and obtain verifiable parental consent before collecting personal information from children;
- Give parents the choice of consenting to the advertiser's collection and internal use of a child's information, but prohibiting the advertiser from disclosing that information to third parties;
- Provide parents access to their child's personal information to review and/or have the information deleted;
- Give parents the opportunity to prevent further use or online collection of a child's personal information;
- Maintain the confidentiality, security, and integrity of information they collect from children.

Final Thoughts

The Labour Government has over the last two years requested two separate reports in relation to advertising to children. In addition to Tanya Byron's 2008 review, a separate review into the impact of the commercial world on childhood was commissioned in 2009 by the Department for Children, Schools and Families, known as the Buckingham Report. Clear evidence, therefore, that the protection of children is high up on the agenda of the Government. Since then, David Cameron and the Conservative Party has also targeted the commercialisation of children as a priority.

The advertising industry needs to ensure that it is socially responsible in all areas where it engages with children: in traditional areas, such as advertising on posters and television, but increasingly in social media and on the internet. The proposed extension of the CAP Code to cover corporate websites only exacerbates this issue. Advertisers need to remember to treat children with kid gloves!

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