

Consumer Ombudsman's Interpretative Advice on the Prohibition of Commercial Advertising to Children on Television

By a reference to Section 4 of the Swedish Marketing Act (1995:450), such commercials are considered to be unfair. A violation of the provision is sanctioned by a prohibition, subject to a default fine, and in certain cases a market disruption charge. Sanctions may be applied to advertisers, advertising agencies, advertising film producers and also the broadcasting programme company.

There are a number of factors that influence the assessment of whether a commercial has the purpose of attracting the attention of children under the age of 12. This catalogue is intended to provide assistance when making such an assessment. The instructions are not complete and compliance with them does not constitute a guarantee that the commercial advertising film would be considered lawful by the Court.

Relevant statutory provisions

1. Commercial advertising may not occur during or immediately after a programme that is primarily intended for children under the age of 12 (see Radio and Television Act, Chapter 7, Section 7). The prohibition is general and applies to all television commercials irrespective of which product is marketed. Commercials that are broadcasted before or after a childrens programme with only a "greetings element" as a break in the programme are considered to be broadcasted in "immediate conjunction" to it.

2. Certain persons/characters from childrens programmes may not be used in commercials (Radio and Television Act, Chapter 7, Section 4, 2nd paragraph).

The prohibition comprises natural persons, role figures and animated characters, if they can be regarded as having a prominent role in the childrens programme. Prominent role means that they often appear as programme leaders or in similar reoccurring ways in the childrens programme in question. Anita and Televinken were, in their time, examples of a natural person and a role figure that could not have been used in television commercials. Bear and Skurt are other examples of role figures that may be assessed in the same way. A person is only subject to this in the capacity or role in which he/she is recognised from the childrens programme on television.

A. Prohibition against certain placing of commercial advertisements and use of certain persons/characters

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2. Certain persons/characters from childrens programmes may not be used in commercials (Radio and Television Act, Chapter 7, Section 4, 2nd paragraph). The prohibition comprises natural persons, role figures and animated characters, if they can be regarded as having a prominent role in the childrens programme. Prominent role means that they often appear as programme leaders or in similar reoccurring ways in the childrens programme in question. Anita and Televinken were, in their time, examples of a natural person and a role figure that could not have been used in television commercials. Bear and Skurt are other examples of role figures that may be assessed in the same way. A person is only subject to this in the capacity or role in which he/she is recognised from the childrens programme on television.

B. The prohibition of commercial advertising to children

In the following, a number of factors are presented that taken together in various combinations may mean that the commercial is deemed to be aimed at attracting the attention of children under the age of 12. However, the decisive issue is how various factors interact - i.e. a comprehensive assessment must be always be made.

Always think through:

1. What are the goods or services advertised?
2. How is the commercial designed/presented?
3. In which context is the commercial broadcasted?

1. What are the goods or services advertised?

The commercial advertising prohibition does not apply to any particular type of product. It applies as soon as television commercial may be considered to be intended at children under the age of 12. As the product may be used by persons of widely varying ages, it is of great importance whether the product can typically be viewed as used by children under the age of 12. For example, many toys and games by reason of their design can be considered intended for children under the age of 12, while others are intended for teenagers or older persons. Any age marking appearing on the product may be an important factor in the assessment of whether the product is typically viewed as used by children under the age of 12 or not. Other products such as food, beverages and sweets may also, broadly speaking, clearly appeal to children under the age of 12.

Some products can generally be considered to be clearly directed at children under the age of 12. If a commercial for an obvious childrens product is not to be at risk of being subject to the commercial advertising prohibition, it is important that the other circumstances do not support such a view. Indeed, the more clearly the product is directed at children under the age of 12, the more important it is that the design/presentation of the commercial and the point in time at which the commercial is broadcasted should indicate that the advertising is not intended for this target group, (see further below).

2. How is the commercial designed/presented?

2.1 The introduction, i.e. the introductory seconds of a commercial advertising film are important for whether it should be considered to be intended for children under the

age of 12. Indeed, a commercial should be assessed applying the overall impression it portrays as a starting point. However, if the introductory part contains pictures that typically viewed appeal to children (for example, pictures of animals or toys, or have sound such as children laughing, a child's voice or melody from a child's song) the remaining part of the film is at risk of being considered to have the purpose of attracting the attention of children.

2.2 If the person participating and/or the voice of the speaker directs the words directly at children, the commercial may be considered to have the purpose of attracting the attention of children. There is a particularly great risk of this if children or children's voices participate or if childlike characters, for example cartoon characters or dolls, participate.

Examples of designs that may mean that a commercial is considered to be intended for children is the case when a girl or boy speaks to another child in the film about how good/fine a product is. If a girl or boy or a cartoon character that faces the camera and speaks about what fun it is to play with a particular toy, this very strongly suggests that the commercial is intended for children.

Under no circumstances may persons participating or voices, irrespective of age, directly or indirectly encourage children to purchase.

2.3 Cartoon characters may often be considered to be intended to attract the attention of children under the age of 12. Such elements should therefore be used with caution. This particularly applies in the case of marketing of products that are clearly appealing to children. Of course, encouragement to purchase directed at children may not appear. This also applies when the cartoon character is the company's or a product's trademark or logo symbol.

3. In which context is the commercial broadcasted?

Viewing figures for TV4 indicate that after 21.00, in most instances, only a small number of viewers are comprised of children under the age of 12, particularly on Monday to Thursday. Therefore, there is little risk that commercial advertising films broadcasted later than at this time in the evening would be considered intended for children under the age of 12. Some regard must, however, be taken to which programme is being broadcasted. The proportion of children viewing may, for example, be larger than normal even after 21.00 if a sports programme or family programme is being broadcasted. One may also assume that the proportion of viewers comprising children is greater on Friday and Saturday evenings, for which reason 21.00 cannot generally be expected to apply as a limit for children viewers under the age of 12.

C. Some examples

Some hypothetical examples are given here on how a comprehensive assessment of commercial advertising may be conducted. The examples below are used in an endeavour to illustrate how a reasoned evaluation may be conducted concerning the question of whether a commercial has the purpose of attracting the attention of children under the age of 12. These examples must not be taken as unequivocal answers; it is the Court that ultimately determines how the Act is to be interpreted.

The Broadcasting Commission considers issues concerning placement of commercials in conjunction with childrens programmes.

PRODUCT: Chocolate bar - where the product as such has a rather neutral design, but it is sold in a bag of sweets that displays cartoon characters.

Assessment

Great care should be taken in the marketing if the sweet bag is orientated towards children, e.g. if it is a typical Saturday sweet treat for children. The design/presentation of the commercial is very important. It should not include the bags cartoon characters in any animation, but only in a neutral so-called pack shot of the bag. It should be possible to show the product, but in that case only with the aim of providing information by means of an informative and neutral voice. Nor should music that appeals to children be used. Subject to the precondition that the advertising film is in this way neutral and orientated towards adults, the film may be broadcasted at all times around the clock, except in conjunction with childrens programmes. If the product can be assessed as being child-orientated and if the film contains doubtful elements, such as cartoon characters or the like, the film should not to be broadcasted around programmes when many children are expected to be in the television audience, or the film ought to broadcasted later than 21.00 in the evening, depending upon the programme in conjunction with which it is broadcasted.

PRODUCT: Breakfast cereal

Assessment

There are great differences between various kinds of breakfast cereals. Breakfast cereals for children usually have a name and packaging that appeals more to children than to adults. Furthermore, in some cases such packages also contain a little toy specially intended for children. If the product can be considered to be child-orientated, great care should be taken as regards both the connections in which it is broadcasted and its design/presentation. The inclusion of a cartoon character or dolls, or allowing the entire film to be a cartoon, probably requires that the commercial is not broadcasted in a situation when there is risk that children will be watching the television. Allowing children to speak about the product cannot be recommended. However, children may participate in the film.

PRODUCT: A jigsaw puzzle

Assessment

Jigsaw puzzles are used by all age groups. If the puzzle is a Bamse puzzle with 48 pieces for children of 3 years or above, marketing must be conducted with great care. No moving cartoon elements can be recommended, nor that the commercial is broadcasted in conjunction with sports programmes or family programmes. If the puzzle, for example, has 1,000 pieces and represents a city view, marketing may be conducted more freely. However, it is still not recommended that the film should focus on children, e.g. by children appearing in the introduction of the commercial and thereby attract the attention of children.

PRODUCT: A computer game

Assessment

There are computer games for children and adults of all ages. Computer games for children are specially designed for the capacity of children. Sometimes cartoon characters, etc. are included. Games are often labelled with age limits. The marketing of computer games for children must be conducted with care. No cartoon elements or moving pictures from games that particularly attract children can be recommended, nor commercials broadcasted in conjunction with sports programmes or family programmes. Nor can it be recommended that an element in the film contains the voices of children, action sequences or anything else that may be considered to particularly attract the attention of children.

PRODUCT: Services, zoo

Assessment

Visits to zoos are often an attraction for the whole family. The important matter to bear in mind in such cases is to design/present the commercial so that it addresses the parents instead of arousing the curiosity of children. Directing a film at the family as a unit may be permitted. However, childish attributes are not recommended, above all else not as an element in the introduction of the commercial. Nor is it suitable to broadcast the film in conjunction with a sports or family programme.

Swedish Consumer Agency/Consumer Ombudsman

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