

Consumer Ombudsman's guidelines

MINORS, MARKETING AND PURCHASES

Commercial persuasion targeted at minors has increased considerably. Ever younger age groups are the targets for advertising. The Internet is a new marketing channel, and mobile phones are also a channel for purchasing. An issue that is often related to advertising concerns the possibility for a minor to perform a legal act, in other words to make a purchase without their parents' consent.

These guidelines are intended to provide guidance in the practical work of planning advertising. The basis for these guidelines includes the established legal praxis of the Market Court and the Decisions of Consumer Ombudsman based on this.

The guidelines also contain statements of position and information regarding the possibilities for minors to perform a legal act. The guidelines also take a position on the marketing of mobile services and marketing via the Internet. These positions are partly based on the policy of the Nordic Ministers with responsibility for consumer affairs Marketing on the Internet aimed at Children and Young People and the position of the Nordic Consumer Ombudsmen on trading and marketing on the Internet. In addition to these guidelines, an Internet trader should also become familiar with the Consumer Ombudsman's practical guidelines for the Internet trader.

The importance of minors as consumers has been noticed and a direct

link has been found between advertising aimed at minors and the consumption patterns of families with children. It is important to turn minors into brand-loyal adult consumers. A new phenomenon in brand marketing is that products associated with the everyday lives of adults are also being advertised to interest minors. Children's parents, however, should still have the primary right to make the consumption decisions of the family, without their decision-making authority and rights to bring up their children being ignored.

Nowadays marketing targeted at minors can be broken down into four areas:

- Advertising aimed at minors, the product is intended for a child but an adult makes the decision to purchase.
- Advertising targeted at minors concerning products for which the children can make their own decision to purchase, without the parents.
- A minor sees advertising aimed at adults where the product is for adults.

- The advertising of products associated with adults' everyday lives is also sometimes made to be of interest to minors.

Commercialism and advertising surround today's children from toddler-age upwards. Advertising also seeks new ways for influencing minors and in many ways it has become difficult to recognize these as commercial messages. Sponsorship has become common, similarly product placement has already become an established but difficult to discern form of advertising. The combination of entertainment with advertising (advergames) on the Internet is already a reality in marketing targeted at Finnish children.

Are we overprotecting the children? It is natural that as children and young people grow into adulthood their experience of life, their skills and their knowledge in the consumer market grows. Children should be taught, for example, both at home and at school, media reading skills, but not all the responsibility can be shifted to the

home and the school.

But not everything is commerce yet – in the midst of advertising childhood as well as youthhood must still be protected. Hidden advertising is unacceptable in any form of marketing. Children should not have to be exposed to erotic or frightening advertising, for example, in public places. Marketing should not create stress in young people with regard to a stereotypical appearance, encourage them to break the law or to adopt racist or discriminatory attitudes. Advertisers should bear social responsibility by respecting the right of minors to a balanced environment in which to grow up.

The regulations set down in legislation provide a general framework for assessing good advertising practice and other compliance with the law. Advertising planners and media and advertising buyers should be clear about the regulations and guidelines. The Consumer Ombudsman and other authorities monitor marketing targeted at consumers and provide information and guidelines.

In addition to the issues dealt with in the guidelines, as far as the advertising of food products to minors and marketing in schools and day-care centres is concerned, there are other perspectives than those that come under the Consumer Protection Act. Supplementary sections concerning these issues are under preparation in collaboration with other authorities.

Thesis 1 MARKETING AIMED AT MINORS IS JUDGED ON A STRICTER BASIS THAN OTHER MARKETING

There is a difference between a minor's and an adult's life experience, knowledge and skills in the consumer markets. A minor is more susceptible than an adult to marketing ploys and to the influence of advertising. The

younger the minor, the greater the difference. Marketing aimed at minors must always be judged on a stricter basis. This principle can be seen in the preparatory work of the Consumer Protection Act,

Chapter 2 of the Consumer Protection Act concerns marketing. Marketing targeted at minors is generally judged against the general clause, according to which no conduct that is inappropriate or otherwise unfair from the point of view of consumers shall be allowed in marketing. It is deemed inappropriate when an advert is in conflict with generally accepted values of society. For its part, unfair marketing is when the marketing may have an influence on the consumer's rational decision to purchase.

from many Market Court Decisions,

The Market Court is a special court that deals with, for example, legal issues concerning markets and competition. An issue based on the Consumer Protection Act goes before the Market Court following an application by the Consumer Ombudsman. The current Market Court was established in 2002.

from directive concerning TV and radio advertising, and also from the ICC's International Code of Advertising Practice, which has a chapter devoted to marketing targeted at children.

In planning marketing targeted at minors, the following must be taken into account:

- a minor does not have the same ability as an adult to understand the meaning of advertising
- a minor is legally not fully competent
- the parents of a minor are responsible for their child's upbringing and have the right to decide upon the family's purchases.

The principles of these guidelines

should always be adopted as the basis for planning marketing when the marketing is targeted to minors, in other words, people under 18 years old.

Age limits as concepts

A minor's ability to understand marketing, and the determination of what constitutes a normal legal act for a minor is fundamentally affected by the age and level of maturity of the minor.

However, it is not possible to set exact age limits within the group of minors. It is clear that when marketing aimed at those below school age is being planned, the level of development of the target group sets different requirements than for campaigns directed at young people. As well as minors, these guidelines include the terms small child, child, child of school age, or young person in order to illustrate the differences in minors which an advertiser should take into account.

An advertiser should therefore in each case consider the content of the advertising message in relation to the good or service being marketed, the main target group and the advertising medium. The principles with the examples specify how the conformity to law of marketing aimed at minors is judged in practice.

The Decisions of the Market Court use the terms small child, child, young person, etc. The Market Court has not specified any age limits for these terms.

Parents must be allowed to decide upon the marketing activities aimed at their children (Market Court 1980:13, 1981:9, 2002:12)

The firm had organised a competition in conjunction with the newspaper advertising ... a primary school child is not usually able to assess the improbability of receiving a random benefit. (Market Court 1981:9)

It is possible that a small child, for example, is the first to have contact If the child succeeds in opening

the bottle ...hair shampoo is generally kept out of reach of small children ...a situation of this kind causes parents concern for their child's health. (Market Court 1992:15)

The prize in the draw organised by the firm appealed to children and young people in particular ... children and young people at least may have thought that buying the product was the only way to participate in the draw.

(Market Court 1996:12)

... Primarily for children and young people, the danger that the target group did not recognize the writing as an advert was greater than usual ... (Market Court 2000:12)

According to the preparatory work for the Consumer Protection Act, in assessing the unfairness of marketing, marketing targeted at minors must be judged on a stricter basis...Children and young people do not have the same ability to evaluate as adults ...Parents must be allowed to decide on the marketing actions targeted at their children ... The responsibility for bringing up children and young people lies primarily with the guardians of the children and young people ...The decisions for purchases of goods for children and young people are generally made by their guardians...By targeting the marketing activities directly at children and young people in school without the consent of their parents or other guardians ...Children and young people in particular are not able to evaluate in the same way as an adult the rights and obligations and the economic significance of these with regard to the said contractual relationship...In most cases at least the parents of children and young people are responsible for the more important purchases in the family ... The firm had not obtained the consent of the parents of the minors to whom the marketing was targeted prior to commencing the marketing...for direct marketing addressed to minors. (Market Court 2003:80)

Thesis 2 **AN ADVERTISER HAS SOCIAL RESPONSIBILITY. THE HUMAN DIGNITY OF MINORS MUST BE RESPECTED.**

According to the United Nations Convention on the Rights of the Child, a child's human dignity must be respected and parents must be assured the freedom for their child's upbringing. The Convention regards anyone under the age of 18 as a child.

Under the Finnish constitution children must be treated as individuals on an equal basis. Furthermore, under the constitution the State must support the possibilities of families and others responsible for the care of a child to safeguard the child's well-being and individual growth. Under the Child Protection Act a child has the right to a secure and stimulating environment to grow up in, to balanced and all-round development, and a priority for special protection. Marketing which violates human dignity or attempts to marginalize the parents' possibilities to fully act in the upbringing of their children is inappropriate.

The human dignity of a minor appearing in an advert must also be respected. A child or young person may not be shown in an advert in an insulting, humiliating, belittling or materialistic manner. There must generally be a good reason for using a child in advertising. Children can only be used as performers if they are a natural element of the environment shown or are necessary to illustrate the use of the product. Even then a child in an advert may not express a direct appeal to buy. In any case care should be taken not to give the impression that the child is being used as the means to sell the product.

The Market Court regarded as unfair advertising in which a child was used

to present the advertising message in such a way that a child made a direct request to an adult to buy a toy boat. (Market Court 1987:13)

Because children were linked (in a hamburger restaurant) in a natural way in adverts, the use of children in the television advert was not unfair from the consumers' point of view. (Market Court 1987:13)

During children's TV viewing time, with respect to their content and manner of presentation adverts should be such that they do not have a harmful affect on children. The use of children as performers in adverts should be approached with caution. (Market Court 1990:16)

Adverts in which children appear tend to appeal particularly to children. (Market Court 1995:016)

In an advert for a mobile telephone, a child presented its Christmas gift wish with the message "Dear Father Christmas, bring me a mobile phone...". The Consumer Ombudsman regarded the advert as inappropriate as the child made a clear exhortation to purchase in the advert, playing on both children's and parents' feelings. (Consumer Ombudsman 99/41/2989)

In an advert for a furniture shop the parents are standing in a living room and a child is jumping up and down on a sofa. The child's father says, among other things, "...children must be made to understand that the living room is for grown-ups." At the same time the father uses a remote control to open up a trapdoor in the floor, through which the child falls. In the next scene the man uses the remote control to close the living room door, which the child bumps into. The Consumer Ombudsman regarded the advert as problematic in terms of the generally acceptable and legally ratified educational and social objectives. (Consumer Ombudsman 1997/40/1589)

The portrayal of characters in an advert often does not correspond to real

life. Certain models of appearance are often created and admired in adverts, causing stress to young people, and now even to children, about their appearance. The boundary between an ordinary person and a model appearing in an advert can easily be blurred when it concerns a target audience whose character is just in the process of being formed. Advertisers can be required to bear social responsibility with regard to which role models and attitudes are created for minors in adverts.

In an advert a girl of around 10 years old says that she likes Chupa Chups lollipops because they contain 0% fat. The Consumer Ombudsman regarded the advert as unfair as it created the impression that this was a healthy snack, because it does not contain fat, and the advert communicated the message through a child that even children and young people should check the fat content of products and pay attention to weight control. (Consumer Ombudsman 2003/40/3721)

A private hospital advertised, among other things, breast and face enhancement surgery to 13 year-olds. The Consumer Ombudsman advised the firm to pay heed to the impact of such advertising on the development of children and young people. (Consumer Ombudsman 2003/40/5580)

Nor is it acceptable in marketing to play on parents' responsibility for upbringing by arousing feelings of guilt. Advertising should therefore not give the impression that by purchasing a product a parent will be successful in bringing up a child. Nor should advertising create an impression with minors that human dignity, the quality of life and social relationships can be bought.

A firm advertised its clothing catalogue on TV as "A large envy-making issue". The advert depicted the

feelings of children dressed in school clothing towards fashionably dressed children. The Consumer Ombudsman regarded the advert as unfair as it created the impression that certain types of clothes make a child happy and in this way appealed to children as well as to the parents' responsibility for upbringing. (Consumer Ombudsman 2003/40/3810)

An advert depicted a minor's loneliness in connection with a family's moving home. Purchasing the advertised good was linked to happiness and friends gathering together. The Market Court regarded the advert as being inappropriate, as it gave the impression that the advertised product could compensate for friends and reduce loneliness. (Market Court 1990:16)

In a tour operator's advert a family was pictured holidaying on a sandy beach. The commentary stated that "It's never too late to get a happy childhood." In his ruling the Consumer Ombudsman stated that the advert gave the impression that good and close relationships and a happy childhood could be achieved in return for money. The advert also tried to exploit both the parents' desire to provide their children with something good as well as the parents' bad conscience concerning the child's upbringing. (Consumer Ombudsman 1997/41/2017)

Sweets were advertised with the wording "With sweets you get friends." The Consumer Ombudsman regarded the advert as being inappropriate as it led one to understand that loneliness could be avoided by buying sweets. (Consumer Ombudsman 1996/40/0989)

The Consumer Ombudsman regarded as unfair an advert in which the picture and the text "School. Friends. A mobile phone for all" clearly communicated to both children and adults that unless a child had a mobile phone, they would not have friends. (Consumer Ombudsman 2000/40/2528)

In one advert a child was sitting with other children around a table covered in playing cards saying in a friendly fashion "Hey, friends!". An older child sitting next to the first child turned and said to the child "Get out of here! This isn't for you." Following this incident a voice can be heard saying: "With this game you can become the toughest Pokemo trainer in the yard, and the others won't be able to do a thing about it." The Consumer Ombudsman regarded the advert as being inappropriate as it utilized the rejection of a child and the need for social success as a ploy to promote sales. (Consumer Ombudsman 2001/40/0392)

Children may imitate behaviour models in adverts. Adverts therefore may not show situations where people act in a manner that is contrary to the generally accepted values of society, or situations which, when copied, may cause children to injure themselves or others. Furthermore, advertising may not contain elements that are frightening to children.

Products such as tobacco and alcoholic beverages may obviously not be marketed to minors. These products may not even be advertised indirectly by including references to such products in advertising, for example.

A firm distributed shampoo product samples to homes through letterboxes. The Market Court regarded the method as unfair as there was the danger that a small child would come into contact with the sample. (Market Court 1992:15)

In an advert a child wearing spring-soled shoes is bouncing about bumping into other people and knocking a sales table over. Although an adult consumer would regard this as being exaggerated and imaginary a child might find the scenes in the advert to be more realistic. The Market Court

found the advert to be inappropriate as it depicted indifference and carelessness towards the safety and property of other people as acceptable behaviour. (Market Court 1995:16).

In a television advert a cooking stove manufacturer wanted to emphasise the child safety aspects of a stove by showing a dangerous situation in which a small child touches the oven door when the oven is switched on. The Consumer Ombudsman regarded the advert as unfair as the advert showed a child whose model of behaviour might lead to a dangerous situation in homes that did not have a safety stove. (Consumer Ombudsman 1994/40/0635)

Ice-cream was advertised in a children's magazine and at bus stops by means of a demonic figure. The Consumer Ombudsman deemed as unfair advertising aimed at children, that uses scaring children as an effect. (Consumer Ombudsman 98/40/1074)

Rolls were advertised on television in the early evening using a horror story as an effect. The Consumer Ombudsman regarded the advert as unfair as it used elements that would frighten children and the advert was shown at a time when children would be viewing. (Consumer Ombudsman 99/40/1814)

Sweets were marketed in a package resembling a cigarette pack. The Consumer Ombudsman pointed out that marketing involved more than TV or printed advertising, for example. The product package is also a part of the marketing that is judged according to the Consumer Protection Act. Familiarising children with tobacco products and using chocolate cigarettes to create a positive attitude towards tobacco is illegal. (Consumer Ombudsman 2001/40/4822)

Violence and discrimination may not be used as a ploy in marketing targeted at minors.

In an advert two karate figures were

demonstrating their skills using violence. The Market Court found that showing pictures depicting violence was particularly harmful to children as they did not generally have any concept of the kind of consequences even a single blow or kick could cause. (Market Court 1988:11)

In a close up in a toy advert a small cartoon character was swinging enemies by their legs and banged their heads together. Following this a boy played with a toy soldier resembling the cartoon character in a violent fashion. The Market Court held that using the depiction of violence and giving a harmful impression to children in an advert for a toy to be inappropriate. (Market Court 1990:19)

Chewing gum was marketed in a cardboard box that had pictures of topless women. The Consumer Ombudsman regarded the marketing as unfair; when a product that was of particular interest to children was linked to materialistic, naked pictures of women, which had no relevant connection whatsoever with the product itself. (Consumer Ombudsman 2002/40/4414)

A magazine was advertised on television using an imaginary issue. On the screen a large-breasted woman told about the new magazine for the "full-bodied woman". The advert emphasized women's breasts and took breast measurements, stating that the cup size was not large enough. The Consumer Ombudsman stated that the women were portrayed in a demeaning way, as mere sex objects. The advert highlighted the old stereotype of a blonde, big-breasted woman, hinting that such women are illiterate. The advert turned more inappropriate in that the advert was shown at a time when children would also be viewing. (Consumer Ombudsman 2003/40/1107)

The Internet and mobile services

With regard to Internet pages aimed

at minors, the advertiser must take particular care to inspect the website regularly. Any functions or material placed on the site that are unsuitable for children or young people or that do not conform to the current laws regarding the mental or physical protection of minors should be removed from the site. The suitability for children of links on the site should also be checked at regular intervals.

In addition to websites aimed at minors, there are websites where the majority of users are children and young people. These include websites marketing Internet-based cards, logos and graphical communications. Pictures and communications that interest children should be clearly separated from material suitable for adults only.

There are no space limitations on the Internet, it is therefore easy for the webmasters to give the necessary information regarding the content of the website. It is recommended that websites aimed at minors provide information about the existence of various filter programs and ways to block sites. It would also be good to advise minors to ask their parents to look at this material.

It is recommended that the rules about Internet etiquette and being careful on the Internet be placed on websites aimed at minors. If there are discussion boards on websites for minors, or if minors are encouraged to use discussion boards, the advertiser has a duty to provide such information.

The Internet is a tool that can give minors access to sites that are clearly intended for adults. For this reason filter and blocking programs should be developed to prevent minors having access to material that is only suitable for adults.

Sexy postcards were on offer on an Internet-based service aimed at children. The Consumer Ombudsman asked the service provider to remove

the cards from the website as they were not suitable for the users to handle or send. (Consumer Ombudsman 2003/40/0542)

An Internet website advertised logos amongst which was one called "blossi". The Consumer Ombudsman viewed the "blossi" logo as encouraging the use of cannabis. Cannabis is classified as a narcotic substance in Finland, the use of which is forbidden under the laws governing narcotic substances. The Consumer Ombudsman reminded the advertiser that advertising that encourages involvement in illegal activities is in breach of the Consumer Protection Act. In his ruling the Consumer Ombudsman pointed out that even though the advertising was not directly aimed at children and young people, it did concern them as some products of interest to children and young people were being advertised. Mobile phone logos are specific examples of such products. (Consumer Ombudsman 2002/40/2955)

For the purchase of certain products age limits are expressly defined in, for example, the laws governing public order, alcohol and the examination of graphical programs. Age limits exist to protect the safety of children and young people and to protect their well-being. In such cases it is the responsibility of the service provider to ascertain that the purchaser is of full age (e.g. the Alcohol Act), or the existence of a guardian's consent (Public Order Act).

When various games or films are offered through the Internet or mobile environment, their suitability for minors and any applicable age limits must also be taken into account. If it specifically concerns material that is forbidden by law to minors, such as pornographic films for example, the service provider must organize their operation so that minors cannot access this material. Consequently minors

would not be allowed to purchase or view films with adult content, or even excerpts shown in the service for promotional purposes.

For example, the Public Order Act calls for the express consent of a guardian with respect to the purchase of air guns. If a seller wants to offer these products on the Internet, the authenticity of the guardian's consent must be verified.

Thesis 3 ADVERTISING THAT GENERALLY REACHES MINORS CAN BE JUDGED ON THE SAME BASIS AS ADVERTISING TARGETED AT MINORS

In public places minors see advertising that is not specifically targeted at them. In outdoor advertising, transport media and in shop windows, for example. Such advertising that minors are generally exposed to has been judged on the same basis as marketing that is targeted at minors, if it has contained material that is not suitable for minors.

The marketing of pornographic or violent material may not reach children or young people in any form. Displaying such products in a store is also an element of marketing. Material that is intended for adults only must be located so that minors do not have the possibility to encounter it.

In his ruling concerning the outdoor advertising of underwear, the Consumer Ombudsman stated that the advertising medium must also be taken into account when judging advertising. In the case of outdoor advertising public space is used and one cannot avoid encountering the advertising. Outdoor advertising also reaches children and young people. For this reason the advertising can be judged in the same way as advertising targeted at children. Intrusive advertising violates a consumer's right to a

peaceful environment and strengthens the frequently prevailing sexual stereotypes. (2003/40/2176)

The Consumer Ombudsman drew the attention of the Federation of Finnish Commerce and Trade and the Petrol Dealers' Association to the location of pornographic magazines in stores and petrol stations. Material that is intended for adults only must be kept separately from material that is also offered to children and must be located so that children are not exposed to the marketing. (Consumer Ombudsman 2002/80/6592, 2003/80/0699)

An advert for a pop group's album showed a pair of female legs spread wide apart with a pornographic drawing depicting a woman's sexual organ in between. The Consumer Ombudsman regarded the advert as demeaning to women and, as the advert was shown on public transport, also regarded the advert as exposing children and young people to unsuitable sexual stimuli. (Consumer Ombudsman 2004/40/1139)

Children are also exposed to advertising that is broadcast on TV and radio while children are still up, shown at the cinema before a children's film, or on a children's video. In these cases advertising that is only suitable for adults obviously cannot be shown. Advertisements that frighten children or contain dangerous models of behaviour are also not suitable for showing in these cases.

In its ruling 1990:16 the Market Court stated that taking into account the broadcast times of a firm's advert and several of the programmes where it was intended to show the advert, the target audience for the advert also included children.

In its ruling 2002:7 the Market Court held that the target audience for product advertising of interest to children, shown during programmes intended

for other than children, could also include children. In this case the advertising can be judged in the same way as advertising targeted at children.

Rolls were advertised on television in the early evening using a horror story as an effect. The Consumer Ombudsman regarded the advert as unfair as it used elements that would frighten children, and the advert was shown at a time when small children would be viewing. (Consumer Ombudsman 99/40/1814)

Certain hotels advertised pornographic films by showing a film excerpt without charge, so that a minor switching on the TV might see the advertising. The Consumer Ombudsman regarded the advertising as unfair at it also reached minors. (2002/40/5656)

Thesis 4

THE DECISION-MAKING AUTHORITY ALWAYS LIES WITH THE PARENTS FOR PURCHASES THAT COST MORE THAN POCKET MONEY

Minors can buy products that would be normal for them and that are reasonably priced in relation to their pocket money, and can specify their earnings for work. Parents make decisions for other purchases.

Under the Guardianship Act a minor can only independently perform legal acts that are of a normal nature and of minor significance under the circumstances. A legal act that a minor is not entitled to perform is not binding unless a guardian has given consent. (the Guardianship Act, Chapter 4)

In judging the need for a guardian's consent, matters to be taken into account include the age of the purchaser, and the price and quality of the purchase. In terms of the quality, the important issue is whether the product is one that persons of that age would generally buy, in other words

whether it is a normal purchase for the minor.

A firm did a tattoo on a minor without a guardian's consent. The Consumer Ombudsman stated that a tattoo is a procedure that is very difficult, painful and expensive to reverse. For this reason, entering into an agreement to have a tattoo cannot be regarded as a normal legal act that a minor can perform without the consent of a guardian. (Consumer Ombudsman 2003/41/2190)

Purchasing on credit can never be referred to under the law as an insignificant legal act. A minor can therefore not take out consumer credit. Purchasing on credit also involves an invoice being subsequently sent to the purchaser. An invoice can therefore not be sent to a minor, nor can a minor be the subject of debt collection connected with the purchase of a consumer good. The ban on purchasing on credit applies to all the incomes of a minor. A minor cannot even use their earnings to purchase on credit.

A debt collection letter sent to a guardian contained the text: "Guardian! Your child has an unpaid debt!" Because a minor is not legally competent to take on a debt, debt collection activities directed to a minor are inappropriate. In his ruling the Consumer Ombudsman stated that the text gave an erroneous impression concerning the party responsible for the debt and that the use of the text was therefore contrary to good debt collection practice. (Consumer Ombudsman 2002/41/4761)

See also the Consumer Ombudsman's guidelines Debt Collection Procedure in Consumer Debt Collection and Photography in Schools and Day-care Centres

Parents must be allowed to decide on

marketing targeted at their children. As the people responsible for their children's upbringing, parents also have the right to decide on the family's purchases without having their parental rights for their children's upbringing being ignored by advertisers appealing directly to children. Advertising should not question the decision-making authority of parents, nor should it give children the wrong impression concerning their competence.

Direct marketing may not be sent to persons under 15 years old without their parents' consent. This principle may not be circumvented by sending the direct marketing in the parents' name, but in such a way that appeals to this age group.

Furthermore, direct marketing to 15 – 18 year olds must also be approached with particular caution. This principle is expressed in the Decisions of the Market Court and Consumer Ombudsman.

Advertising may not present a direct incitement for children to buy. This means that an advert may not contain expressions such as "buy, try, you'll receive, you'll feel". Nor can an advertisement ask children to persuade their parents or others to buy the advertised product. Nor can children be encouraged to ring a telephone service number that is subject to charge.

The Market Court deemed marketing in which the outer cover of a package addressed to parents had a cartoon character and a direct and indirect incitement to open the package, and which aroused the interest of children, as unfair. Methods that are persuasive and appeal strongly to children must be avoided in marketing targeted at children and in comparable direct marketing. On the basis of the outer cover the direct advertising package had to be regarded as targeting children, even though the package was addressed to a guardian. (Market

Court 1984:11)

The reasoning for Market Court Decisions 1980:13 and 1981:9 makes evident the principle that parents must be allowed to decide with regard to marketing actions targeted at their children. (Market Court 2000:12)

A mobile phone operator had sent minors direct marketing letters which contained a completed subscription agreement and a SIM card. The Market Court deemed the method unfair as the firm had not ascertained whether the guardians of the minors had given their consent to the direct marketing. (Market Court 2003:80)

A bank marketed debit cards to minors in a direct marketing letter. The Consumer Ombudsman deemed the method unfair, particularly as a good was being marketed to minors for which a young person would not be able to decide independently. (Consumer Ombudsman 2002/41/6634)

A private hospital marketed to 13 year-olds, among other things, breast and face enhancement surgery. The Consumer Ombudsman reminded the firm that direct marketing could not be targeted at minors without their parents' consent. (Consumer Ombudsman 2003/40/5580)

The Market Court regarded advertising (for a hamburger meal) targeted at children to be unfair if the child is presented with a direct incitement to buy, or if it plays on the emotions of the children in the target group in an otherwise inappropriate way. (Market Court 1987:13)

Digital agreements, payment for mobile services and personal information

A minor may not buy over the Internet on credit. He or she may have access to other forms of payment comparable to cash, for example a pre-paid payment system, digimoney or a mobile wallet. Parents may have also given a minor the possibility to use an online banking password or

credit card.

Minors have been able to use mobile phones not only for telephone calls but also for purchasing products without a guardian's consent. This has been made possible by a term in the subscription agreement under which the owner of the subscription – not the minor who is the keeper – is responsible for all the charges incurred through the use of the subscription. According to this term the keeper of the subscription therefore also pays for all purchases via the mobile phone, irrespective of who has made the purchases or the size of the purchases. Therefore the technical means for the payment of mobile phone charges have not yet been developed in such a way to be able to take into account the possibility for a minor only to make purchases of a normal or insignificant nature. The view of the Consumer Ombudsman is that this condition can be regarded as unreasonable in the current situation. The same rules should be followed in respect of the payment of mobile charges as for other purchases made by minors.

A child may not be encouraged to use mobile services by means of a direct incitement to buy. Therefore no encouragement for children to buy a mobile phone or enticement for them to use various mobile services should be presented in connection with products that interest children, such as on breakfast cereal packets, or in children's magazines and entertainment websites. This also applies to advertising during children's TV programmes.

Internet websites for children often have games where a child must agree to various conditions and rules. Even though it may not concern a purchase, the service provider must obtain a guardian's consent for this if it is not a normal, legal act for the child.

For taking into account the special position of minors it has been possible,

for example, for a service to set limits for a child's possibilities to make purchases. A guardian can also expressly notify his or her child's subscription as a user of the service. For this purpose a child can be asked to supply the guardian's e-mail address. However, if subscribing to a service leads to significant legal responsibilities, subscription is not possible without the genuine consent of a guardian. A child can also be advised to ask his or her guardian to take a close look at the service. For its part, the clause for giving consent can be formulated in such a way that it is expressly the guardian's own act ("As the child's guardian I have read the conditions and accept ...", "I accept that my child becomes a member ...").

Several Internet services require the submission of personal information. However, personal privacy is at risk on the Internet. Service providers must also bear responsibility for encouraging minors to be cautious in submitting their personal information, in order to ensure both their economic and personal security.

When judging the collection of personal data the important factors are the age and level of maturity, as well as the purpose for which the information is being collected, and any legal responsibilities or obligations that may arise as a consequence of the collection.

In practice it has been accepted in individual cases for a service to request the necessary information from a minor in order to ascertain the contractual party's competence to perform a legal act. In certain situations the e-mail address of a guardian may be requested in order to inform the guardian of a child's subscription to a service. In a competition, for example, the information necessary in order to be able to send any prize can be requested. However, the legally significant responsibilities that arise

in conjunction with the collection are always important.

An advertiser may not:

- ask a minor for consent to send direct advertising to an e-mail address or mobile phone
- entice minors to give information about themselves, their families or their friends
- offer minors a reward for divulging personal information
- use research, competitions or other similar methods to collect personal information about minors from children.

When a guardian's consent is needed, the method of merely ticking a box in an Internet-based shop is not an adequate means for safeguarding the guardian's legal position. However, the digital signature has not yet become an established method for ascertaining a person's identity. What is important is how the guardian's and the child's legal position is provided for in the service as a whole.

Consent can be given, for example, by means of the guardian's signature, which is sent separately by post or telefax. Consent can also be received digitally, for example by either parent's e-mail, on the condition that the consent can be confirmed by, for example, telephone, e-mail, letter or fax.

An Internet service was specifically targeted at children. The service gave children the possibility to make unlimited purchases using text messages. A solution was arrived at through negotiation with the other party. The service would try to prevent the service being used by the youngest children. Registration with the service requires ticking a box to show that a guardian has read and accepted the terms for using the service. The child is asked for the e-mail address of the guardian and the guardian is informed of the child's registration by e-mail and is advised to take a close look at the service and

at the pages providing an extensive information pack for parents. The guardian has the possibility to request that the user's home computer be blocked from using the service. Furthermore, the service provider has set a limit for the amount of money spent each week. Following the changes the Consumer Ombudsman regarded the service as a whole, taking into account the technical development at the time of the ruling, as being in conformance with the Consumer Protection Act. (Consumer Ombudsman 2002/40/6905)

Thesis 5 ADVERTISING MUST BE IMMEDIATELY RECOGNIZABLE AS ADVERTISING

The commercial purpose must always be clearly made apparent in marketing, no matter whether the target group is adults or children. Small children are generally unable to distinguish advertisements from other information. Only at around the age of 8 does a child become aware of the commercial purpose of advertising. Taking into account a child's insufficient ability to understand advertising, the requirements for advertising to be recognizable as such are stricter than normal. The age of the target group is taken into consideration when judging recognizability in individual cases.

Hidden advertising is never acceptable. Entertainment material or programmes may therefore not include advertising messages. The recognizability of advertising becomes blurred if the marketing is dressed up in an editorial form, as a strip cartoon or as an article, for example. Cartoon or other characters familiar to children in another context may not in any case be used in advertising in a way that a child would not immediately be able to recognize as advertising.

Particular attention must be paid to keeping editorial and advertising

material separate in publications intended for children. It is particularly difficult for small children to recognize advertising. Linking advertising with editorial material does not usually enable the identification of adverts, when it concerns a publication of interest to small children.

A publication that consisted of various commercial messages aimed at children and young people had been put together in its entirety to resemble an editorial publication. The Market Court regarded the marketing as unfair as the publication was primarily targeted at children and young people and the danger that the target group had not recognized the writing as advertising was greater than normal. (Market Court 2000:12)

Local traders and individually named products had been used as the drawing subjects in a children's colouring book. Advertising slogans and firms' logos had been placed around the pictures. The Consumer Ombudsman regarded the hidden advertising in the colouring book as unfair. (Consumer Ombudsman 2001/40/0602)

Television and radio advertising must be separated from other programmes by means of picture or sound identifiers. In its form of presentation advertising must also be distinguishable from other TV programmes, in terms of image, text and sound.

Characters familiar to children in another context may not be used in TV advertising in a way that cannot immediately be recognized as advertising. Commercials must not use excerpts from children's programmes being broadcast at the same time, nor may the characters that feature in these be used to persuade children to make a decision to purchase. Commercials that are 100% animated may not be shown during animated children's programmes.

Advertising must be distinguishable from other television programming not only technically, but also in terms of content and method of presentation. (Market Court 1990:19 and 1991:1)

The Market Court has forbidden the broadcast of advertising on television during short children's programmes. (Market Court 1990:19 and 1996:9)

The Market Court deemed an advert as inappropriate, when during the broadcast of a cartoon series a soldier character that featured in the series was advertised in such a way that the advert could be confused with the cartoon series. (Market Court 1990:19)

Adverts are often glanced at superficially. An advert must therefore be immediately recognizable as an advert, without looking at it more closely. (Market Court 1994:17)

At the end of a children's animated series a song was broadcast which contained an indirect incitement to purchase as well as the names and the pictures of the characters featuring in the series. A new character appeared in each episode. The presentation of the character had no connection whatsoever with the plot of the programme. The add-on products for the programme were collectable cards and various toys based specifically on the characters featuring in the programme. In his statement to the Finnish Telecommunication Administration Centre the Consumer Ombudsman stated that this was a matter of hidden advertising, in which the entire plot of the programme was based on collecting the characters.

The requirements for recognizability are underscored on the Internet

New technology offers the possibilities for more than just presenting and mentioning products. The Internet uses powerful means: moving images, sound and interaction, through which children become directly involved in

the action such that they themselves participate in marketing games. Advertising easily remains hidden from children when their attention is captured by the entertainment and games sessions. The combining of games and entertainment (such as the so-called advergames) often leads to an inability to recognize advertising.

However, the new possibilities for communication cannot ignore the principle that advertising must easily be recognizable as such. The level of maturity of the target group must be taken into consideration with respect to recognizability.

Games and other entertainment must be clearly distinguishable from advertising. The advertising of products and brands targeted at children may not be dressed up as a game or activity page. Nor may such marketing be combined with games or activity sites in such a way that makes recognizability impossible. Nor can games etc. concentrate on the advertising message. If entertainment content is sponsored, the name of the sponsor must be mentioned, but the sponsor's advertising aimed at children may not be linked to this.

Websites for children generally contain various services that enable children to contact their friends. A child can, for example, send cards or other greetings to their friends via e-mail. These messages and other such greetings may not contain advertising.

Thesis 6 CORRECT, TRUTHFUL AND ADEQUATE CONCRETE INFORMATION ABOUT PRODUCTS

Children interpret the advertising messages they receive in a very concrete manner and they do not have an adult's ability to understand the humour, irony or other hidden messages used in advertising. Nor can a child understand

the difference between imaginary and factual matters. For this reason advertising aimed at children must be sufficiently concrete for a child to correctly understand the advertising message.

The advertising must clearly state the total price of the individual product. The price information may not give an unrealistic impression of the value of the product. In connection with the price the advertising may therefore not contain unsubstantiated expressions such as "just, only, pocket money" etc. Nor may it give the impression about the price that every family could afford to buy the product.

If the product is part of a series forming an entity, the price information must also, as in other cases, state the overall price equally clearly. Without a clear exemption, advertising may not show products without including the price of the product advertised.

In TV advertising it is not sufficient to present factual information simply as text, but it must be stated verbally so that small children in the target group can also understand.

Product packaging with pictures appeals strongly to children. The packaging should give children the correct picture of the product. It is difficult for children to imagine the real content of a package if the packaging also has pictures of unconnected products, or gives a false picture of the size of the product or the amount. Text alone is not sufficient to rectify a misleading impression given by a picture.

A koala bear with three cubs was pictured on a package. However, the package only contained two cubs. Written on the package was the text "Surprise babies, but how many?". The Consumer Ombudsman advised the firm to ensure that the information given through the markings on the package was not misleading in relation to the content of the pack-

age, and that the consumer does not get the impression that the number of products contained in the package was a matter of chance. (Consumer Ombudsman 98/40/1801)

Mobile services

The price and other essential conditions for entering into an agreement must be given in a manner suitable for minors, clearly and in a way that makes the information easy to find. In case of problems occurring, the service provider's name, address and telephone number should be easy to find from the website. Marketing information is regulated under the Consumer Protection Act, Act concerning information society services, and the Decree on the Indication of the Prices in Marketing Consumer Products.

Several mobile services such as chat, competitions and games interest minors. Because the invoicing for purchases via a mobile phone is made in arrears, it is especially difficult in practice for children to calculate the costs that mount up. Evaluating the reasonableness of mobile charges is also influenced by how clearly the price is expressed.

When advertising logos, ringtones, graphical messages and various entertainment services the price of an individual order must be clearly stated or, if this is not possible, the bases for determining the price should at least be stated.

In the case of a service that is valid until further notice, the price of the service or the bases for determining the price should be clearly made evident to the user. The advertising should always show the total price if possible. The advertising should also clearly state how and under what conditions the service can be terminated.

If a monthly charge is levied for a service, the advertising must also state how many messages are included in the price. If a charge is levied both for sending as well as for receiving

messages, these prices and the basis for determining these prices must also be stated separately.

If participation in a game or competition requires several text messages to be sent without noticing it a child can easily become a keen player, unable to estimate the costs that mount up. The advertising should therefore include not only the price of an individual text message, but also, for example, a ready-calculated typical price for an entire round of the competition or game. If in any case more than one message must be sent in order to receive a prize, the lowest possible number of messages needed to reach the prize should be stated. Children should not be enticed into sending several text messages. If, owing to the nature of the game, it is not possible to give the exact number of messages, an estimate should be given.

When advertising a game, the most important rules must be given, as these determine the game content and the costs incurred. This information must be easily available before starting to play the game. The information should be stated in a way suitable for the medium. On television, for example, simply referring to a www website or to Teletext pages is not sufficient. The players must have genuine possibilities for accessing the information easily.

Several services only work with certain types of subscriptions or with certain phone models. It must be easy for users to find this information or a notice concerning compatibility requirements. If the use of the service requires precise installation instructions or other instructions for use, these must also be presented with sufficient clarity. These should be available, for example, in their entirety on the Internet.

Thesis 7

NO LOTTERIES OR COMPETITIONS WHERE PARTICIPATION IS THROUGH PURCHASING A PRODUCT

Marketing lotteries are sweepstakes or competitions held in order to promote the sales of a product, in which a consumer can win a benefit based on chance. The general rule is that it must also be possible to participate in the lottery or competition without purchasing the product. The presentation of the lottery must not dominate the advertising such that the product itself is in a secondary position.

The rule is stricter with regard to competitions and lotteries targeted at children. Children are not able to realistically assess the improbability of getting a prize in the same way as young people or adults. They readily make a decision to purchase simply on the basis of an attractive prize. Lotteries or competitions where participation is possible by purchasing a product may therefore not generally be targeted at children. Promotional methods of this kind may not even be shown on the packaging in a way that appeals to children.

A competition was held in conjunction with the marketing of a children's magazine, with products of interest to children as prizes. The Market Court regarded the marketing as unfair as the marketing was carried out through teachers, and a primary school child is generally unable to assess the improbability of receiving a benefit by chance. (Market Court 1981:9)

In its Decisions 1995:16 and 1996:12 the Market Court held that marketing lotteries targeted at children must be judged on a stricter basis than average because a child's ability to assess the improbability of receiving a benefit by

chance is weaker than that of an adult.

Under no circumstances may a child be encouraged to participate in a lottery by telephoning a service number subject to charge. A child is probably not able to start estimating the price of the service, nor does a child realistically regard other means for participation as options worth considering.

The target group for games or competitions targeted at children may not be enticed to send text messages by referring to prizes or other benefits.

A prize shown in an advert was particularly interesting to a child. The phrase "ring and win" was used in the advert. The options shown for participation tended to give a child the impression that ringing a subject-to-charge service number was the only way to participate in the lottery. The Market Court regarded this marketing as unfair. (Market Court 1995:16)

Attached to a soft-drink bottle was a label with a lucky number, which was entered in a lottery for a yo-yo. Children at least may have gained the impression from the label that the only way to participate in the lottery was with the lucky number and by purchasing the product. The marketing was unfair. (Market Court 1996:12)

A telephone call to a subject-to-charge service number was presented in advertising as the main way to participate in a lottery. Although the label on the soft-drink bottle contained text informing the price of a call, a child would probably not start to estimate the cost of a telephone call on the basis of this. The marketing was unfair. (Market Court 1996:12)

Giving consent for direct marketing or even a statement that his or her personal information will be used for this purpose may not be used as a condition for participation in a marketing lottery targeted at minors. Only a guardian can give consent.

Thesis 8 A GIVEAWAY MAY NOT BE THE MAIN ITEM IN MARKETING

A giveaway is an additional benefit offered to the purchaser of a product. The additional benefit may never dominate the marketing at the expense of the main product, no matter whether the target group is children or adults.

The Market Court regarded as unfair the advertising of a hamburger meal targeted at children, in which a package in the shape of a toy boat occupied the central position. The product packaging might appeal strongly to children. One can presume that it is relatively easy to entice a child to buy the actual product by means of the product packaging. The prominence of the product packaging in advertising tends to divert the child's attention away from the product itself being marketed. (Market Court 1987:13)

The Market Court regarded as unfair the marketing of a child's meal in such a way that the toy contained in the meal was the main item shown in the advert, with the product itself remaining in a secondary position. (Market Court 2002:7)

Marketing a giveaway in conjunction with products of interest to children must be approached from a different viewpoint than in other cases. Children are not able to evaluate the value of a giveaway in the same way as adults. A giveaway of little monetary value may be more attractive to a child than the main product itself, making it easy to influence the purchase decision by means of the giveaway. Special care must therefore be taken when advertising products of interest to children to ensure that the presentation of the giveaway in the advertising or packaging does not make it become the main item of interest for a child.

The Market Court regarded as unfair the advertising of a hamburger meal targeted at children, in which a package in the shape of a toy boat occupied a central position. (Market Court 1987:13)

When products for adults are advertised using a giveaway that is of interest to children, the planning of the advertising should take into account the right of parents to make the purchase decision, and the dominance of the main product in the advertising.

A giveaway of interest to children must be appropriate in terms of safety standards. The giveaway product may not contain any hidden advertising or material unsuitable for children.

A "Piglet" soft toy was advertised as a giveaway with a washing powder. The Consumer Ombudsman regarded the television advertising as unfair as the giveaway dominated the advertising at the expense of the main product. Furthermore, the use of a children's toy as a giveaway may result in children trying to influence their parents' purchasing decision. (Consumer Ombudsman 2003/40/4423)

If a collectable series is linked to a product, collecting the series can easily become the main issue for a child. The advertising may not give rise to a situation in which minors pressure their parents into buying a product just because of the collectable series. Parents have the right to make decisions on the family purchases without a child's interest in collecting being exploited in the advertising of the main product. Collectable series may not therefore be linked with, for example, the advertising of breakfast cereals.

As a supplement to a children's magazine, a firm distributed a comic that contained empty speech bubbles. The text for these came from the detach-

able labels of a lemonade bottle. To a child, the label with the speech bubble may be more important than the drink itself. The Consumer Ombudsman regarded marketing targeted directly at children, appealing to a child's interest in collecting, as unfair. (Consumer Ombudsman 1104/41/79)

A firm advertised chocolate bars, whose packet contained collectable ice-hockey player cards. The products with their packaging contained several incitements to purchase. The Consumer Ombudsman regarded it as probable that children would buy the products simply in order to get the collectable cards, and regarded the exploitation of children's interest in collecting to be unfair in marketing. (Consumer Ombudsman 1992/40/1341)

The use of loyal-customer benefits in marketing targeted at minors can also easily lead to an emphasis on the benefits instead of the products to be purchased. Loyal-customer benefits should not be referred to in advertising targeted at those under 15 years old. If loyal-customer advertising is targeted at minors over the age of 15, the product offered under the loyal-customer concept must be a purchase that can be considered as normal for this age group. It must also be possible to purchase it for cash, not on credit.

Thesis 9 GUARDIAN'S CONSENT FOR CHILDREN UNDER 15 YEARS OLD WORKING AS AGENTS

Firms sometimes market their products using minors as agents. No marketing through an agent may be targeted at children under 15 years old. A guardian's consent is always required for a child under 15 years old working as an agent. Minors are mainly interested in the rewards offered, but the amount

of sales to be made to receive these is difficult to envisage.

Minors are very susceptible to the influence of their friends and easily become subject to pressure from their friends working as agents. Minors should therefore not be encouraged to market products to another minor.

A bank promised a free ticket to a football match to members of their children's club who procured a new member. The Market Court regarded marketing, which tends to lead children to pressuring each other as unfair. (Market Court 1980:13)

It should also be pointed out that money, bonus awards etc. earned by minors constitute compensation for work. The recipient must report this income to the taxation authorities. The advertising must therefore inform the fact that money or awards received are subject to tax. A realistic picture of an agent's work and rewards must be given.

Thesis 10 THE RESPONSIBILITY FOR MAR- KETING LIES WITH EVERYBODY ON WHOSE ACCOUNT IT IS IMPLEMENTED

With respect to advertising, responsibility lies not only with the trader, but can also extend to, for example, the advertising agency or advertising medium. Under the Consumer Protection Act, as far as responsibility is concerned, the way in which the different parties have participated in preparing the advertising is not important. The determining factor is on whose account the advertising has been carried out.

The Act on Radio and Television Operations expressly regulates the re-

sponsibility of the medium for the advertising it broadcasts. The Consumer Ombudsman also monitors compliance with certain of the regulations within this Act.

An advertisement for a toy figure was shown during a children's programme. According to the commentary, the figure "strikes, hits, jumps and kicks" for practically the whole duration of the advert. The Consumer Ombudsman regarded the advert as contravening the Act on Radio and Television Operations as well as the Consumer Protection Act. Under the Act on Radio and Television Operations, the use of behaviour that endangers health, general safety or the environment is not favoured in a TV advertisement, nor may TV or radio advertising cause moral or physical harm to children. It was pointed out to the TV channels that the ban on the use of violence in advertising targeted at children is absolute. The toy advert flagrantly violated the law as the toy figure is a product of direct interest to children and the advert was specifically broadcast during children's programmes. (Consumer Ombudsman 2003/40/4587, 2003/40/4588, 2993/40/4589)

A trader that undertakes advertising is responsible for the manner in which the advertising is carried out. A trader that carries out advertising must act in such a way that the trader commissioning the advertising can bear responsibility for the advertising. (Market Court 1981:1)

Other traders on whose account the advertising is implemented can also be regarded as traders who commission or undertake advertising. A trader implementing advertising can be, for example, a trader who plans advertising work or a publisher of advertising, e.g. an advertising agency, or media publisher or other owner. (Market Court 1996:9)