

# Consumer Ombudsman's guidelines

## PHOTOGRAPHY AT SCHOOLS AND KINDERGARTENS

These guidelines apply to photographing children at, among other places, schools and kindergartens. The provisions of the Consumer Protection Act concerning marketing and contract terms have been taken into consideration in the guidelines, which explicate the set of principles concerning school photography (Dnro 81/40/875) confirmed by the Consumer Ombudsman in 1981.

Marketing aimed at children and commerce conducted through the medium of children are appraised against stricter-than-average criteria. This applies also to the marketing of photographs at schools or kindergartens. The information that the advertising contains must be factual and it must be ensured that a so-called negative contractual obligation is not incurred.

### HOMES MUST BE GIVEN ADVANCE NOTICE OF PHOTOGRAPHY

The agreement that a school makes with a photography business stipulates the categories of photographs to be taken. In some schools decisions on the matter are made by the principal, in others by the prin-

cipal together with the teachers. In the cases of some schools, pupils' parents also have an opportunity, for example through school boards or parent-teacher evenings, to influence the content of the range of photographs. It is to be desired that parents, as the purchasers of the photographs, would have the opportunity to express their views concerning the contents of the range.

The operating principles are the same when kindergarten children are photographed. A photography business makes an agreement with the kindergarten concerning the range of photographs to be taken. Parents of kindergarten children do not have a channel through which to influence the range of photographs comparable to that available to parents of schoolchildren. However, parents visit kindergartens daily and information on the range of photographs could be on display at kindergartens before the photography takes place.

In this case, it could be mentioned in the advance notification of photography that parents have the opportunity to see the range of photographs at the kindergarten on a specific date or dates.

A marketing method which involves a product being delivered to a consumer without having been ordered and the consumer having to take measures to avoid becoming bound by a contract is contrary to Section 2a of Chapter 2 of the Consumer Protection Act.

In order to ensure that a negative contractual obligation as defined in the foregoing is not involved, parents must be asked for their consent for a minor to participate in a photography session and for their agreement to accept the pictures to have a look at them. Consent can be given either orally or in writing. However, it is to be recommended that consent be requested in writing. The photography business or the school acting as its representative must send advance notice of photography to children's homes, and the associated written consent is returned by the pupil to the photographer or school.

### Content of advance notice

Notice of a photography session must be given by distributing a bulletin to homes a reasonable period beforehand. The advance notice must be sufficiently informative.

It must contain, in addition to the contact particulars and location of the photography business, at least the following information:

- date of photography session
- content of picture range
- prices and terms of contract for the picture range and its components
- a mention of the right of return and the date from which it is in effect
- directions for the photography session

### **RIGHT OF CANCELLATION**

The time reserved for the return of pictures must be long enough. A return period of less than fourteen days after receipt of the pictures is contrary to the Consumer Protection Act.

In marketing its services, a photography company itself actively contacts the consumer. The company uses the teachers and pupils at the school as its contact channels. Thus a priori a contract always comes into being without the parties to it being in each other's presence at the time. For this reason, marketing can be regarded as constituting distance selling in the meaning of Chapter 6 of the Consumer Protection Act.

The special distance selling provisions of Chapter 6 of the Consumer Protection Act apply also to distance selling of services. According to these provisions, the consumer has the right to cancel an order by informing the business practitioner of this within fourteen days of receiving confirmation. A confirmation, the contents of which includes information concerning cancellation of the order and instructions for doing this, must be delivered together with the photo-

graphs. Also an oral notification of cancellation of an order is valid.

The right of cancellation may not be limited by, for example, requiring that consumers bear responsibility for a certain excess, i.e. the amount in euro that they must pay when they cancel an order.

Accordingly, the period during which pictures can be returned begins only when parents have received the pictures to examine them. The right of return applies to all pictures, including classmate and passport photos.

### **DELIVERING PICTURES TO HOMES AFTER A PHOTOGRAPHY SESSION**

When a teacher or someone else is distributing pictures to pupils in a school, attention must be paid to the following aspects.

International regulations state that advertising must not exploit the natural gullibility and lack of experience of children and young people nor undermine the authority of parents. It is self-evident that the school must ensure that a child does not feel it is in a disadvantaged position relative to its classmates. This idea is expressed also in the Basic Education Act (628/1998). Among the things that education must promote are culture and equality in society.

Children are a consumer group who can be regarded, for example on the basis of their limited knowledge or experience, as unusually susceptible to the influences of marketing. This was stated already in the Government's Consumer Protection Bill. In its case law, the Market Court has confirmed the principle that a child's dependence on friends and teachers must not

be exploited in marketing (Market Court cases 1980:13 and 1981:9).

These principles must be taken into consideration also when marketing school photography. When photographs are taken at school, it must be ensured that photography and the delivery of pictures does not give rise to a conflict between a child and other pupils or between child and home. Nor may a child be placed in a situation of inequality relative to its classmates. The same principle must be observed in the case of kindergartens.

### **Pictures in a closed envelope**

Pictures must be given to children in closed envelopes and care must be taken to ensure that they do not open the envelopes beforehand. In the cases of children who have already learnt to read, the envelope could bear a text along the lines of: May be opened only together with your parents. The photography company and school must also agree that a teacher tells the children to take the envelopes to their parents unopened.

This will make it possible to reduce the incidence of children exchanging pictures before their parents have decided to buy them. It can also lessen the likelihood of disagreements between parents and children over the need to buy pictures. After all, it is obvious that a child will most often want the entire range of pictures featuring itself or at least the series of pictures that its friends want. It can be difficult for the child to understand why its parents hold a different view. The younger the child, the more accentuated this aspect becomes.

### **Terms of payment, order and return**

The Decree on Price Marking requires the prices of goods and services to be shown in a way that is clear and unambiguous as well as easily understandable and noticeable from the consumer's perspective. The invoice accompanying the pictures must contain appropriate price details, i.e. the total cost of the picture range and itemised prices of its constituent parts, the terms of payment and the terms of order. Clear instructions for returning the pictures must also be provided and there must be a statement that the return period is at least 14 days from the date of receipt of the pictures. An envelope large enough to return the pictures must also be enclosed.

The Consumer Protection Act requires a business engaged in distance selling to reimburse consumers the cost of returning items if they can be returned by post in the ordinary way. For this reason, the most recommendable procedure is for the recipient to pay the postal costs for the return envelope.

### **RIGHT TO RETURN PICTURES BALANCES OUT SALES METHOD**

When a sales method is appraised from the perspective of consumer protection, the main emphasis in the legal appraisal is the return of pictures. When advance notice of photography sessions is given, parents can give their consent for their

children to participate and agree to receive the pictures to look at them. This also ensures that no negative contractual obligation is incurred.

Marketing of photography must be appraised as a single totality. When account is taken of the sub-factors associated with marketing, such as the place where the photographs are taken, marketing channels; teachers and children, the right of return acts as a balancing term of contract in this sales method.

It is not possible in practice to refuse permission for a child to take part in a photography session even if the child does not produce its parents' written consent. The right to cancel an order for pictures ensures that parents can look at the pictures at their leisure at home and buy only those they find necessary. Thus parents can return all pictures. In addition, it must be possible to return pictures without undue effort.

### **ORDERS PLACED BY MINORS REQUIRE GUARDIAN'S SIGNATURE**

The Consumer Ombudsman has in numerous decisions consistently adopted the view that marketing material must not be sent direct to minors and that minors need a guardian's consent when they place an order.

Although 15-year-olds are free to decide what to do with funds they have earned through their own work, the Consumer Ombudsman

has pointed out in several decisions that an order must bear a guardian's signature.

### **The picture range can also be sent to parents by post**

There is nothing to prevent a photographer sending pictures to a schoolchild's home by post. When this is done, the letter must be addressed to the parents. This also avoids children having to act as intermediaries in the deal.

For more about the Consumer Ombudsman's guidelines see the Internet address:

<http://www.kuluttajavirasto.fi>