

Advertising to children in Poland

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On its road to EU accession, Poland adopted many legal acts, notably increasing not only the quality level of its legal system, but also social awareness of those new acts. The main aim of this legislative process was harmonization of Polish law with EU legal standards. Harmonization affected rules governing advertising, including advertising to children. We hope the following comments will clarify the Polish approach to this issue.

1. Scope of restrictions

Youngsters, as individuals under the influence of companies seeking to create lifestyles, are particularly exposed to commercial messages in their everyday life and activities. In attempting to identify legal framework of advertising to children in Poland we encountered difficulties in defining the scope of relevant provisions. Legal texts dealing with certain restrictions in advertising directed to children customarily use the word "minor" ("*małoletni*" in Polish). The actual meaning of this term is the same as "underage". In Poland "underage" means a person of less than 18 years old. However, in certain acts the term "children" ("*dzieci*" in Polish) also appears, which may lead to difficulties in interpretation of both terms and especially in their reciprocal relations, and, as a consequence, the scope of relevant restrictions.

2. Blanket ban on advertising to children?

Restrictions in advertising to children, commonly accepted in all European

legal systems, are also present in Polish law regulating advertising. As a general rule, radio and TV advertisements targeted at children should not directly exhort minors to purchase products (services), or encourage them to exert pressure on their parents or other persons to persuade them to purchase the products being advertised. It is also forbidden to exploit the trust minors place in their parents, teachers and other persons. Furthermore, an ad shall not unreasonably show minors in dangerous situations or be of a subliminal nature. Additional rules provide that such commercials shall not prejudice the physical, mental or moral development of minors and, what is particularly important, they should not be broadcast in a way that interrupts programs intended for children.

As shown above, Poland's implementation of the provisions of the Television Without Frontiers Directive in certain aspects goes beyond what was initially required. A good example is the specific provision prohibiting the use in advertising to children of the image or voice of persons who, within the three months before the ad is aired, were presenting news programs or programs for children.

3. Specific rules

3.1 Tobacco

The Law for the Protection of Public Health Against the Effects of Tobacco Use provides for a total ban on advertising tobacco products in all known media and places accessible

to children (TV, radio, schools and other educational institutions, children's and youth press, sports facilities and other public places). The ban is broadly defined as a prohibition of the public distribution of images of tobacco brands products or graphic symbols associated with them, as well as names and graphic symbols of the companies producing tobacco products which are not distinct from the name or a graphic symbol of tobacco products, serving to promote such a brand. Only "information about tobacco products" placed exclusively within the points of sale of these products is allowed. Information distributed for commercial purposes among firms dealing with production, distribution, and trade in tobacco products is not classified as an advertising.

In the same spirit, advertising and promotion of tobacco related accessories and imitations of such products and tobacco-related symbols are also forbidden.

3.2 Alcohol

The concept of the definition of advertising with regard to alcoholic beverages is almost identical to the one used for tobacco products. The scope of application however differs. Pursuant to the provisions of the Act on Sobriety and Prevention of Alcoholism, advertising of alcohol is forbidden in Poland. Beer advertising is the sole exception, if it is not targeted at young people. Such advertising, however, shall not be present on TV, radio and in theatres between 6 am and 8 pm, on video cassettes (or any other carriers) and in the press for young people and children. A general ban also exists with regard to beer advertising on a newspaper or magazine cover. Commercials on posts, billboards, and other fixed and mobile advertisement displays are allowed only if 20 per cent of the advertisement area is covered with visible and legible notices on the harmful effects of alcohol consumption and contains an

additional warning reading "sale of alcohol to the underage is a crime". None of the foregoing may be connected with the participation of minors.

Additionally, some self-regulatory rules may apply. A recent beer advertising campaign involving the famous goalkeeper Jerzy Dudek was recently questioned by the National Broadcasting Council. The Commission for Advertising Standards (a body established by a non-governmental Society of Polish Breweries, the guardian of rules of fair advertising in relation to beer) in its ruling assumed that every prohibition of advertising is a restriction of fundamental freedoms guaranteed by, for example, the Constitution, and thus should be interpreted narrowly. Pursuant to the Advertising Code, to be banned, a broadcast advertisement must have a *particular* influence on minors, i.e. it must have a greater impact on minors than on adults.

The Commission took the view that Jerzy Dudek is not particularly linked with the children's world since he is well known to both minors and adults. The campaign could not therefore be considered as being addressed to minors specifically. Furthermore, the Commission took the position that the essence of the TV spot (workers drinking beer after work), stage design (a pub in an industrial area) and colors used (lack of colors attractive to youngsters) strengthened the assumption that the campaign was addressed to adults. From the minor's perspective, Dudek's participation in the spot could even remain unnoticed.

3.3 Pharmaceuticals

All advertising relating to *any* medicinal product is forbidden if it is directed to children or containing any element that may be directed to them. Additionally, no advertising for medicinal products can be broadcasted on radio or television within 20 minutes preceding or

following a program targeted at young people.

3.4 Games and gambling

Pursuant to the Law on Games and Mutual Wagering, it is forbidden to advertise video lotteries, cylindrical games, card games, dice games, mutual wagering, slot machine games, or slot machine games with low prizes. "Advertisement" within the meaning of this law shall mean encouraging participation in these games, convincing about advantages of such participation, informing about the places where they are held and the possibility of participation.

Games that are not defined in the law on games and mutual wagering may be advertised according to general provisions, which are defined in Article 16 of the Act on Combating Unfair Competition. These restrictions refer to rules governing advertising as such and not the products being advertised. Apart from general provisions regarding misleading advertising susceptible to influence the customer's decision to purchase a product, advertising contrary to provisions of the law, good practices or offending human dignity, which are all forbidden, the legislator took into consideration children's special character and expressly outlawed advertising appealing to the emotions of customers by provoking fear, or by exploiting the superstitions or credulity of children.

3.5 Data protection

The Polish system of data protection is based on the general rule of a personal decision about disclosing any personal data. The system is, in general, consistent with analogous EU regulations. It is worth noting that processing of personal data shall be permitted only when, for example, a person whom the data concerns has given his/her consent. With respect to minors, according to the prevailing opinion of legal commentators, a minor does not have the legal capacity to grant a consent for processing their personal data, and

thus such processing would also require a separate approval from the minor's parents or guardians. The foregoing may thus effectively prevent direct marketing to children on the one hand, but could in theory restrain their everyday life on the other, even in common activities for youngsters like registering for internet services.

As the general aim of advertising is an inducement to buy, the above

mentioned laws may seem unclear. There may be certain difficulties in their interpretation and enforcement. In practice, a large part of the advertising broadcast on TV and radio is obviously directed towards children, taking into account the products in question (toys, sweets), the time when the advertisement is being aired (before and after programs for children) and the

persons participating (children or personages belonging to the children's world – for example movies, fairy tales). The regulators, however, seem to ignore that fact or interpret the law very broadly. Advertising remains a perfect field for puns, steering a middle course between prohibitions.