

Children, Young People and Marketing Practises: A Guideline Issued by the Danish Consumer Ombudsman

Contents

1.0 Introduction

2.0 Laws and regulations

- 2.1 – The Marketing Practises Act
- 2.2 – Guidelines and guidances
- 2.3 – Special legislation

3.0 Definition of "children" and "young people"

4.0 Identifying advertising

5.0 Children as a target group

- 5.1 - General information
- 5.2 - Safety
- 5.3 - Violence, fear, strong effects
- 5.4 - Social values
- 5.5 - Product presentation
- 5.6 - Alcoholic beverages and drugs
- 5.7 – Tobacco
- 5.8 – Unhealthy foodstuffs
- 5.9 - Fashion, looks, identity and sex

6.0 School sponsorships and other marketing practises in school and day-care institutions for children and young people

- 6.1 - School sponsorships and sponsorships in day-care institutions and other forms of co-operation with businesses and trades
- 6.2 - Other types of marketing practises in schools and day-care institutions

7.0 Special types of marketing practises

- 7.1 - Direct mail
- 7.2 - Commercial communication via electronic mail (email), mobile telephone text messages (SMS), telephone and the like
- 7.3 - Clubs and taking out subscriptions
- 7.4 - Loyalty programmes
- 7.5 - Distance selling
- 7.6 - Exploiting information provided by children and young people
- 7.7 – Sales work and friend recruitment
- 7.8 - Competitions with prizes, gifts, etc.
- 7.9 – Telecom equipment and telecom services

8.0 Marketing directed at children and young people in specific media

- 8.1 - Television commercials
- 8.2 – Internet
- 8.3 – Cinema advertising and trailers displayed before and after children's films

9.0 Marketing in public places where the marketing is not directed at children and young people

Annex

1.0 Introduction

Section 8 of the Marketing Practises Act expressly requires business and trade to take into account the susceptibility, lack of experience and critical sense of children and young people when directing marketing activities to this target group. Young people and especially children cannot or may have difficulties assessing or seeing through information given. It is also expressly forbidden to use means such as violence and drugs, including alcohol in commercial communication directed to children and young people.

The present guideline is first and foremost intended as a tool for businesses, ad agencies, lawyers and other consultancies. It outlines the attitude of the Danish Consumer Ombudsman [DCO] as to how section 8 should be applied, and expresses the viewpoints that form the backbone of his administration of the Danish Marketing Practises Act with regard to this area. A guideline issued by the DCO should be perceived as a “general advance indication” in which he presents his standpoints on marketing questions in relation to specific issues.

Ultimately, it is left to the courts to decide whether a potential breach of the Marketing Practises Act is subject to penalty.

Businesses which market their products to children and young people must show consideration for this group of consumers/customers and acknowledge their ethical responsibility. The Act requires business and trade to embrace this responsibility which can be managed by means of ethical standards and rules established by the business itself or the trade. See the DCO’s attitude to self-regulation and social responsibility ([link](#))

The present guideline replaces the April 2002 guideline on marketing activities directed to children and young people.

The guideline does not purport to exhaust all matters pertaining to this area.

2.0 Acts and regulations

2.1. The Marketing Practises Act

Section 8(1) of the Marketing Practises Act sets out that

‘marketing activities directed at children and young people must be framed with reference to their natural credulity, lack of experience and critical sense, as a result of which they are readily influenced and easy to impress’

Section 8(1) is a benchmark reference which calls on business and trade to be careful when framing marketing activities directed to children and young people.

The provision sharpens the consequences of infringing other rules of the Act which are likely to apply in connection with children and young people. These are section 1 on good marketing practise, section 3 on misleading statements and section 4 on identification of commercial communication.

Violations of section 8(1), cf. section 1 are punishable by injunction, order or even penalty. The latter is conditioned upon the offence being a concurrent violation of e.g. sections 3 or 4, violations of which are punishable by fine.

Section 8(2) sets out that

'Marketing directed at children and young people must not directly incite them to violence, use of intoxicants (including alcohol) or other dangerous or inconsiderate behaviour, not make unwarrantable use of violence, fear or superstition in order to influence them'

This provision is aimed at rooting very gross and aggressive kinds of marketing.

Violations of the injunction laid down in section 8(2) are punishable by penalty unless a more severe sentence is incurred under other laws. See section 30(3) of the Marketing Practises Act.

See the Marketing Practises Act in full ([link](#))

However, Article 14 of the ICC Code on Advertising Practises is still a valuable frame of reference when contemplating marketing activities. The Article contains guidance on how to avoid misleading children and young people, harming them mentally, morally or physically and undermining social values. See annex one.

2.2. Guidelines and guidances

The guidelines below contain specific instructions as to children and young people. See www.consumerombudsman.dk for more information.

School photography: See the DCO guideline on school photography (not available in English)

Telecommunications area: See section 12 of the DCO guideline 'Best Practise in the Telecommunications Industry'. Instructions are here outlined as to which precautions players in the telecommunications market should take with reference to children and young people and their use of mobiles. ([link](#))

Point 2.8 in the joint Nordic statement position 'Marketing of price indications and comparisons in relation to electronic communication services' (not available in English)

See the joint Nordic statement on marketing of value-added mobile telephone services (not available in English)

Covert advertising: Points 2.1, 5, 6, 8 and 9.3 in the DCO guideline 'Covert Marketing Activities: Identifying Commercial Communication' are of particular relevance in relation to children and young people. (link)

Passbooks, payment instruments and webbanking: See the DCO guideline 'Young People and Payment Instruments'. The guideline lays down the interplay between Act on Certain Payment Instruments, Act on Guardianship and the principles of good marketing practise cf. section 1. (link)

E-commerce: Point 8 in 'Position Statement of the Nordic Consumer Ombudsmen on E-commerce and Marketing on the Internet' (link)

The Internet: Article 6 of 'ICC guidelines on Marketing and Advertising Using Electronic Media' (link)

Commercial communication targeted at children and young people: Article 14 of 'ICC Code on Advertising Practises'.

Alcoholic drinks: Point 5 of 'Regulation on Marketing of Alcoholic Beverages'.

2.3. Special Legislation

TV and radio commercials: Special legislation on TV and radio commercials applies alongside the rules laid down in the Marketing Practises Act. See the Radio and Television Broadcasting Act (link) and the Executive Order Concerning Radio and Television Advertising and Programme Sponsorship (link) – both administered by the Ministry of Cultural Affairs. See 8.1 below.

3.0 Definition of "children" and "young people"

No absolute age limits have been defined for the terms of "children" and "young people" in relation to marketing practices. As a main rule, the upper age limit should be 18 years of age, but a marketing activity should be assessed in relation to the age group to which it is targeted. Marketing activities directed to, say, small children, fall subject to different criteria than those targeted to teenagers.

However, the responsibility to assess contemplated marketing initiatives always lies with the trader. Should the concept and its design and contents lead to further precautions to be taken? And how do the nature of the product and its intended age group play into this? As a main rule, another set of criteria will be applied to marketing campaigns directed to small children than to those aimed at teenagers because young people aged e.g. 15-16 can see through many more kinds of marketing methods.

4.0 Identifying advertising

Section 4 of the Marketing Practises Act lays down that advertisements should be clearly distinguishable as such regardless of the form and media in which it appears. Violations of section 4, which makes covert marketing activities an offence, are punishable by penalty.

The Act requires commercial communication to be even more straightforward and transparent when targeted to children and young people. Both section 8 on children and young people and section 1 on the principles of good marketing practises may come into play with section 4 on commercial communication where a potential violation concerns this group of consumers.

Business and trade must take pains to ensure that commercial communication is clearly distinguishable as such. The more sophisticated and intricate the marketing activity, the more difficult it is for children and young people to identify it as such. Business and trade should also pay attention to the fact that very young children cannot distinguish commercial communication from other types of communication. After all, they need to learn the objective of commercial communication: to promote and boost sales of a particular product.

Businesses are not allowed to “sign” young people to display and use their products. Businesses seek out “poster people” to use their products at cafes and discos: in short, where young people go. The poster people are then supposed to wear pieces of clothing from the business’ line or use a particular mobile phone so that others get to see its functions. The young people are told not to disclose that they are paid to do it. An example of a violation of section 4 of the Marketing Practises Act, it is also considered an aggravating circumstance that the marketing activity is directed towards children and young people. For children and young people as sales staff and friend recruitment, see 7.7. below.

The development in media, the media convergence and the emergence of new technologies open up for new and more advanced ways of doing marketing, which makes it easy to target even very small children. The use of animations, sound effects and the element of interactivity make children and young people more vulnerable to potential covert marketing features as media, commercial messages, entertainment and games converge. Businesses launching marketing concepts directed towards children and young people in an interactive media forum should make sure that surreptitious marketing elements are left out. See 8.2.

For product placement and films, see 8.3.

5.0 Children as a target group

5.1 General information

In their marketing, business and trade should pay special attention to and take into consideration the means, contents, form and use of advertising, including in particular the age of the target group.

Marketing should not be designed to exploit children and young people's natural credulity, lack of experience, critical sense or the fact that children and young people are susceptible to influence. Marketing should not exploit children and young people's loyalty.

Marketing activities directed at children and young people should neither directly nor indirectly incite nor condone violent behaviour, drug use, including alcohol, or other dan-

gerous and reckless behaviour; nor should it make use of means such as violence fear or superstition. Violations are punishable by **fine** unless a more severe punishment is imposed under other laws.

Marketing should not have the effect of harming young people mentally, morally or physically.

5.2 Safety

Marketing should not encourage children and young people to actions that conflict with normal safety precautions at home, at school, in the traffic and similar places. Further, marketing should not encourage children and young people to dangerous, unhealthy or environmentally harmful behaviour.

Marketing should not contain any statement or visual representation that could have the effect of children exposing themselves to unsafe situations or encouraging them to consort with strangers, to stay at or enter dangerous areas, use dangerous products or seek out dangerous situations in general.

Marketing should not unnecessarily show children and young people in dangerous situations.

Marketing should not contain any visual presentation or description of dangerous situations or of any situation ignoring normal safety precautions, unless for educational or social purposes. An authentic example is the clothing advertisement featuring models with bags over their heads. If children are inspired by such commercial messages they will most likely face great danger. The same goes for commercial communication depicting reckless use of fire or tightrope walking on train tracks.

5.3 Strong effects: Violence, dangerous or reckless behaviour, fear and superstition

Marketing activities should not directly nor indirectly incite nor condone violent behaviour, other dangerous or reckless behaviour or make improper use of violent effects, fear or superstition.

Marketing should not encourage to acts of violence, victimising or the like; nor should it contain representations of murder, violence, abuse or other criminal actions. To illustrate the point in question: Advertising toy guns by means of depictions of staged but nevertheless realistic battle duels is not acceptable.

Without valid pedagogical or social reasons, marketing concepts should not play on representations of murder, violence, abuse or other criminal actions. Staged suicides or quartering of human beings are for instance not acceptable means.

Marketing activities should not convey the impression that violent behaviour is condoned.

Reasonable and careful consideration should lie behind any use of fear or superstition as marketing means.

5.4 Social values

Marketing should not undermine social values by for instance suggesting that the possession, use or consumption of a product will give the child or the young person physical, social or psychological advantages over other children or young people of the same age. Nor should it suggest that the failure to own, use or consume such a product might have the opposite effect.

Marketing must not be designed to give children and young people the impression that their failure to own, use or consume the relevant product in any way makes them less privileged than other children and young people, or expose them to contempt or ridicule.

Marketing should not undermine the authority, responsibility, judgement or tastes of parents and others.

Marketing should not directly encourage children and young people to persuade parents or others to buy the advertised product for them.

5.5 Product presentation

Business and trade must be particularly careful with regard to product presentations directed at children and young people, as it is easier to mislead children and young people due to their lack of experience.

Business and trade must make sure that their marketing in no way mislead children and young people as to the true size, value, nature, durability, performance and price of the advertised product. Descriptions must be presented more carefully, accurately and realistically than in advertising directed at adults. This means that:

- it must be made clear if extra items (e.g. batteries or paint) are needed to use the product or to produce the result shown or described;
- it must be clearly indicated if the product forms part of a whole series including the method of acquiring the series and the total price. This applies e.g. if the individual parts form a coherent whole so that the individual parts are of very limited use and have limited utility value for the children and young people if they do not get the whole series or more parts of it;
- that price indications should not be of such as to give children and young people an unrealistic perception of the true value of the product, for instance by using the word "only";
- marketing should not imply that the advertised product is immediately within reach of every family budget;
- if the product is not intended for all children and young people the advertising should state the age range for which the product is intended;
- where results of product use are shown or described, the advertising should represent that which is reasonably attainable by the average child or young person in the age range for which the product is intended.

Where section 8 of the Marketing Practises Act on children and young people comes into play alongside section 3 of the same Act on misleading advertising, the requirements as to the contents and clarity of the commercial message are tightened.

5.6 Alcoholic beverages and drugs

Regardless of form, marketing promoting alcoholic beverages, whether wine, beer or alcohol, should not be directed to children.

Marketing activities must not directly nor indirectly incite consumption of drugs, including alcohol, cf. section 8(2) of the Marketing Practises Act. The ban means that eye-catching devices such as beer, spirits, narcotics etc. are strictly forbidden in advertising. To advertise a youth trip with the promise that it will be possible to get blind drunk is not acceptable under any circumstances.

A voluntary code applies. "Marketing of alcoholic beverages" is enforced by an enforcement committee. Item 5 bans alcohol commercials directed at children and young people.

5.7. Tobacco advertising

A general ban on marketing involving tobacco etc. was enacted on 1 January 2002, cf. Act no. 492 of 7 June 2001. The act is available on the National Consumer Agency's website: www.forbrug.dk.

5.8. Unhealthy foodstuffs

Businesses which sell and promote unhealthy foodstuffs such as sweets, crisps, soft drinks and the like have a particular responsibility to live up to when marketing this product range to children and young people. The choice of medium as well as the marketing concept and its contents should be subjected to careful consideration and with the age group in mind. Unhealthy foodstuffs should not be advertised in media targeted to children and young people.

Commercial communication promoting unhealthy foodstuffs should not give the impression that even moderate consumption of the unhealthy product may actually be healthy or guarantee you success. Commercial communication of this kind should not encourage or stimulate immoderate consumption of unhealthy foodstuffs or undermine healthy eating habits and lifestyles.

5.9. Fashion, looks, identity and sex

Marketing should not employ means such as unrealistic and distorted beauty or body ideals. The use of such means in commercial communication directed at children and young people is highly likely to have a very negative influence on their self-confidence and self-respect.

Sex and sexual undertones must also be avoided. It may affront the natural modesty of these age groups and introduce them to a whole new world which they are not fully qualified to navigate.

6.0 School sponsorships and other marketing practices in schools and other day-care institutions for children and young people

6.1 School sponsorships and sponsorships in day-care institutions and other forms of co-operation with business and trade

School sponsorship is a special type of marketing practice according to which companies and business organizations e.g. offer free tuition and tuition resources to schools, e.g. books, other written materials, computers, software etc. Day-care institutions are typically offered materials, toys, CDs, videotapes etc. Due to financial inability and difficulties of otherwise providing up-to-date tuition materials, it is tempting for schools and institutions to accept such offers. Such tuition material could engage the sympathy of teachers, parents and pupils for the sponsoring business and its products. As for the schools, school boards are responsible for the tuition material provided including material offered by companies and organisations.

School boards and day-care institutional management should be aware of the indirect - or hidden - advertising effect of a sponsorship agreement or an agreement to pilot an activity in relation to product development. It would therefore be desirable if they prepare a sponsorship policy defining the extent to which sponsorships are wanted, the educational value, and how parents should be involved in these discussions and decisions.

Parents should be informed of the school's policy and if in fact the school has entered into such agreements. When requested by a parent the school/institution should state the name of the business with which an agreement has been made. It should be stated that the co-operation does not entail any commitment on part of the parents and pupils, and that it concerns marketing only.

In addition to the other principles in these guidelines, businesses and trades should follow the principles below when dealing with school sponsorships, day-care institutions and the like:

- The name, logo, trademark, figures and the like of the sponsoring business should to the least possible extent be put onto tuition material, toys and other sponsored materials. Similarly, mentioning and use of the name, logo, trademark, etc. should be reduced to the least possible in the tuition and other activities such as games, competitions and the like;
- Tuition material, toys and other sponsored materials should not be accompanied by or contain advertisements and other marketing activities. This also applies to tuition or other activities;
- Parents should be consulted for consent prior to their children's participation in activities and tuition offered by advertisers and marketers;
- Tuition material, tuition or other activities should not directly or indirectly encourage children/young people to buy or use the products of the sponsors or other

products or services. This includes appeals to parents to buy or use the product in question;

- Statements included in tuition material, tuition or other activities that may be understood as if goods and services offered by certain companies are better or worse should be avoided and as a minimum substantiated;
- The authority of teachers and schools/institutions should not be exploited to convey the impression to children, young people and parents that the child/young person will be less privileged or exposed to contempt or ridicule if they do not buy or use the product or services sold by the sponsors or others.
- Children, young people and teachers should be free to assess sponsors and their products critically;
- The co-operation between sponsors, teachers and possibly the parents should not oblige these to use the sponsored materials.

The above principles should also be applied to other types of cooperation initiated between businesses and daycare institutions.

Advertising including branding, logo, trademarks and the like should not be present in schoolbooks or any other material related to tuition. This also applies to cases where businesses and trades representing a certain product are not involved in the actual promotion of this product. Children are subconsciously exposed to, and possibly influenced by, names and products arousing their attention in this manner, and therefore tuition materials should not in a biased manner deal with and focus on certain named/branded products. Products that are represented in schoolbooks and other tuition materials should be represented and called by their generic names, i.e. the function of the product rather than the brand.

Commercial messages and advertising can, however, be represented in tuition material insofar it is used in media tuition and other similar activities where interpretation etc. of commercial messages is relevant.

6.2 Other types of marketing practices in schools and day-care institutions

A school is an educational institution where marketing campaigns have little to do. The school management has to consent to having marketing campaigns carried out at school premises together with the childrens' parents. These two parties alone decide the extent to which the children should be exposed to marketing activities.

Generally, the principles of these guidelines should be followed.

Marketing in the form of samples and the like should not be sent directly to children and young people.

7.0 Special types of marketing practices

The DCO fully accepts that children and young people are allowed to pay **in cash** with pecuniary gifts or pocket money. Children, 15 years of age or older, can furthermore dispose freely of money earned after school.

Children below the age of 18 cannot, however, enter into agreements which involve credit arrangements. This means that businesses and traders cannot offer children below the age of 18 to order goods on credit, take out a subscription or shop on the Internet without having been granted consent* from their guardian or parents. This applies regardless of whether they earn their own money.

The circumstances listed here have a vital importance for the reading and interpretation of point 7 in general.

Furthermore, it lies with the trader to make a concrete assessment of whether the planned marketing activity, including its contents and idea, target group and the functionalities and characteristics of the product in general should lead to extra precautions to be taken to protect children and young people.

7.1 Direct mail

Children and young people are often not able to recognise the commercial objective of direct mail. This entails the risk of a child ascribing more positive value to the letter/advertisement because it is addressed directly to the child.

Marketing in the form of direct mail with businesses and trades calling upon children's and young people's attention by mail, e-mail or in any other way should not take place unless parental consent* has been obtained, or if it is a necessary or natural consequence of a contractual relationship which should be in accordance with section 6, subsections 3-6 of the Danish Marketing Practises Act.

When parents have given their consent to the direct mail marketing, and when letters are hereafter dispatched to the child or the young person, the general rule is that these guidelines should be observed.

7.2 Commercial communication via electronic mail (e-mail), mobile telephone text messages (SMS), telephone and the like

The general rule is that it is considered an offence to forward commercial messages and advertisements via electronic mail (i.e. spam mail), text messages and the like without prior request, cf. section 6, subsection 1 of the Danish Marketing Practises Act. Parents can on behalf of their children request forwarding of such electronic messages. When parents have consented* to having commercial messages forwarded via electronic mail and the like, and when commercial messages are hereafter forwarded, these guidelines should be observed.

Businesses and trades should not encourage children to ring a stated telephone number with a view to obtain product information and conduct similar marketing. A telephone call will in general be more persuasive and powerful than ordinary marketing designed for e.g. written media, and therefore it assumes the status of direct marketing.

7.3 Clubs and subscriptions

Children and young people should not be able to join clubs or take out subscriptions without their parents' written consent*. It should be stated in the marketing material if the clubs and subscriptions in question particularly appeal to children and young people, and when it concerns agreements that entail rights and obligations for which minors cannot take responsibility or assess.

When the parents have approved of a club membership or subscription, and letters and products are hereafter sent to the child, the general rule is that these guidelines should be observed.

All mailings and offers must be in concordance with the membership contract or subscription. If extra offers are made in addition to the ones included in the agreement, the offer should state in writing that orders are accepted only with parental consent.

If for instance a music club advertises in a magazine for children, the advertisement should not contain particularly tempting offers such as additional CDs, prize competitions and emphasise chances of winning. Most children and young people will fail to recognise a potential lack of price transparency and the consequences of an order, i.e. membership of a club. The advertisement may tempt young people to send in their registration without their parents' consent.

7.4 Loyalty programmes

It should not be possible for children and young people to join loyalty concepts or customer binding programmes without parental consent*. When it concerns offers to children and young people or requests to state certain personal information, mail in connection with these concepts should be sent to the parents.

7.5 Distance selling

It should not be possible for children and young people to shop by mail order or any other form of distance selling without parental consent*.

7.6 Using information provided by children and young people

It is legal to ask children and young people to state their name, address or e-mail address with the purpose of sending marketing material to them. The parents should then give their consent* to the material being sent and in general the material should be consistent with these guidelines.

Businesses and trades should not encourage children to provide any other personal information about the child itself or the child's family, friends etc.

Businesses and trades should not ask children and young people to state names and addresses of friends, members of their families and others who may be interested in buying or receiving a product or service. This rule applies irrespective of potential prospects of gifts and/or prizes as an appreciation of help.

7.7 Sales activities and friend recruitment among children

Businesses and trades should not use children and young people to sell their products. The objective of this approach is to get the children to act as sales staff for the business or trader or to act as recruitment agents. The procedure chosen may be improper and take its departure in exploiting children's natural credulity and loyalty.

Friend recruitment is when a business encourages existing customers to find new customers among friends and acquaintances in return for goods/products characterised as gifts or other reward.

Friend recruitment is when a business or trader approaches children and young people in sports or youth clubs in order to get them to act as sales staff for the business, i.e. by selling mobile phones where part of the proceeds go to the club. Young people may fail to comprehend the commercial objective and they cannot foresee potential difficulties of selling the products. This is an example of business exploitation of young people's loyalty towards their club, the goodwill of parents and friends towards young people and the goodwill of the population towards children. Those recruited, friends or family, may find it hard to decline offers from someone they know.

In connection with the introduction of the present Marketing Practices Act (2005), a political agreement, based on a memorandum about friend recruitment schemes among children and young people, was prepared. The memorandum concludes that the employment of children and young people as recruiters as a main rule is in breach of section 8 of the Marketing Practices Act on children and young people as well as a contravention of section 4 on covert advertising in the event that the recruitment arrangement is kept undisclosed.

Children and young people should always be able to earn money after school in supermarkets etc. or to participate in conventional sales and marketing activities in relation to collection of funds for their local club. Scouts may for instance sell Christmas trees at the local gardener in return for some of the proceeds, to mention an example.

7.8 Prize competitions, gifts, etc.

Businesses and traders should proceed with care when it comes to employing marketing methods which leave the product itself out of focus. They have to keep in mind that children and young people are easily tempted when it comes to offers accompanied by promises of gifts and participation in competitions with good prizes and chances of winning. Sales promotional activities and arrangements should therefore be employed with caution. The rest of the guideline must be observed in that connection.

Prize competitions, promises of gifts, and similar tempting offers constituting marketing practices directed at children and young people should be used cautiously and be consistent with these guidelines.

With regard to prize competitions the importance of section 11, subsection 1 of the Danish Marketing Practices Act should be noted. According to this subsection businesses and trades should not make draws, prize competitions etc., in which the results partly or completely are left to chance and participation is conditioned by purchase.

The subsection does not, however, apply to marketing practices specifically directed at

children below the age of 15, if the value of the individual prize does not exceed DKK 5 and the total prize value of the complete marketing activity does not exceed DKK 5.

7.9. Telecom equipment and services

Special care should be taken when targeting marketing of telecom equipment and service at children and young people. Section 12 in 'Telecommunications: Best Practise' outlines best marketing practises in the telecommunications business in relation to children and young people.

As minors cannot take out a subscription on their own, many parents chose to take out the subscription in their own name and pass the mobile on to the minor. This arrangement has proven problematic for a number of reasons in practise, either because no maximum limit service has been selected to the subscription or because the service is put on stand-by without parental knowledge or consent.

Other technical features such as SMS content services, the use of the mobile telephone as a payment instrument etc. may likewise lead to more consumption, with more money to paid as the result. Hence the importance of informing parents and other adults who are likely to hand over mobile telephones to minors of the maximum limit option.

On concluding a subscription agreement, the consumer should inform whether the mobile is intended for a minor. If that is the case, the carrier must ensure the availability of adequate information for the purchaser about potential risks arising from children's use of mobile telephones, and what preventive measures should be taken to reduce these risks. The carrier should be made aware that a minor is the actual user of the mobile telephone as it will make it easier for him to inform about services offered to reduce potential risks. But information about risks relating to children's use of mobile telephones should also appear from the order confirmation form, the introduction letter or other information material.

Definition of consent:

A consent must be 'fleshed out', i.e. it should be unambiguously stated for what purpose consent is given, and it should likewise be stated how to annul the consent given.

As a rule, consent is given to a specific business or trade.

Consent submitted as a letter, completion of a form or the like must be signed by a parent and sent to the business via regular mail. Consent can also be obtained electronically: it may for instance be submitted via a parental email address provided that it can be checked telephonically, by letter or fax.

If parental consent is required, the business must state it clearly in relation to the marketing activity carried out.

8.0 Marketing directed at children and young people in specific media

8.1 Television and radio commercials

The Marketing Practises Act is not the only piece of legislation under which radio and television commercials may be legally assessed. Special legislation protecting children and young people below the age of 18 also apply for radio and television commercials. The special legislation concerning radio and television commercials covers the activities of radio and television broadcasters, and the Radio and Television Board is the competent authority with respect to radio and television enterprise. The Board has the competency to decide in matters where radio and television broadcasters may have violated the special rules concerning minors and commercial communication in those two media, among other things. See the Danish Ministry of Culture's website: www.kum.dk

8.2 Internet

Section 4 of the Marketing Practises Act lays down that advertisements should be clearly distinguishable as such regardless of the form and media in which it appears. Where these requirements are related to section 8 of the Act on children and young people, the over-all requirements to clear identification of commercial communication are tightened in the event that children and young people are exposed to it. This means that great care should be taken to ensure that commercial communication is straightforward and easy to distinguish as such – also in interactive media. Online games in which brands and products used as props appear regularly may, according to the Marketing Practises Act, be in breach of not only section 8 – and thereby possibly section 1 on the principles of good marketing practise due to the general intensification of the Act in respect to this age group – but, depending on the circumstances, also section 4 on covert advertising.

A game promoting marketing activities where the commercial intentions behind are obvious is, on the other hand, legal if it appears on the business' own website. Products, brands, logos etc. which do not belong to the trader must however not appear in the game or plays.

If a business buys its way into a chat room or fun sites in order to regularly expose children and young people to commercial messages and advertising, it acts in breach of section 8, subsection 1 and, depending on the circumstances, section 4.

Section 4 sets out that advertising should be clearly distinguishable as such regardless of the nature of the concept, design and the medium through which it is transmitted. So section 4 along with section 8 on marketing activities directed towards this age group make it much harder to get away with careless marketing concepts.

Business and trade should as a minimum observe the following principles – including the guideline in general.

- Further, a clear distinction must be made between marketing directed at children and young people and marketing of products and services that are intended only for adults
- Children and young people should not be urged to buy products or enter into other agreements via the Internet

- Appropriate measures or regular checks ensuring that children and young people do not make purchases and enter into agreements via the Internet must be in place. See 7 above.
- Children/young people should not be promised a reward (money, gift or anything else) for staying on a website or participating in one of its activities;
- Parents should be encouraged to participate in and/or supervise their children's activities on the Internet;
- Marketing should not include links to other websites on the Internet if these do not comply with the rules of these guidelines;
- Businesses and trades should use the at any time existing techniques that enable parents to control or limit the amount of material to which their children have access via the Internet.

See article 8 of the "Position Statement of the Nordic Consumer Ombudsmen on E-

commerce and Marketing on the Internet" on marketing directed at children and young people. See also article 6 of ICC Revised Guidelines on Advertising and Marketing on the Internet, see attachment 2.

8.3. Trailers and cinema commercials shown in connection with children's films

Cinema commercials and trailers shown in connection with children's films should be consistent with this guideline in general. Violent, frightening or pornographic scenes, or scenes promoting the consumption of alcohol, should not be shown in cinema commercials or trailers.

To agree to have one's products promoted in connection with a children's film will not in general be in keeping with the considerations that business and trade is required to take under section 8 of the Marketing Practises Act. This applies regardless of whether the existence of such agreement is stated in the rolling titles. Children and young people will rarely read these titles; the youngest age group cannot read it whatsoever.

Films intended for a grown-up audience are likely to appeal to children and young people, who may watch these films. Business and trade should therefore thoroughly consider whether these films should be subjected to the same standard with respect to product placement as the children's films mentioned above.

The DCO attitude to product placement is evident from his response to the hearing on the Directive 'Television without Frontiers'.

9.0 Marketing in public places where the marketing is not directed at children and young people

Children and young people come across marketing activities that are targeted at adults - and adults only - every day. This happens at home and in public places. Businesses and trades should take this into account when ensuring that their marketing does not

expose young people to unacceptable encounters with e.g. violence or sex whether it appears on posters in the streets, in public places and on vehicles, advertisements and display of films in shops, aeroplanes, long-distance busses and cinemas.

Film and game sequences and shots likely to frighten children or expose them to improper behaviour, including violence and sex, should not be shown in display windows or near the shop entrance. The voluntary content rating system, PEGI, may form the background against which precautions are taken, but it depends on the individual circumstances.

Shops should not put on display magazines, films etc. with pornographic or violent content on the front page where children cannot help seeing them.

In their marketing business and trade should be very careful when depicting children and young people, as this in general will arouse young people's interest and convey the impression that the product is particularly suitable for children/young people.

Where the product is targeted to grown-ups, but intended for children and young people or is likely to catch their attention, the marketing business should consider whether the contents of the marketing activity or the choice of medium through which it is promoted should lead to additional precautions to be taken with regard to children and young people.

Annex (to be added)

- Attachment 1: Sections 1-3, 4 and 8 of the Danish Marketing Practices Act
- Attachment 2: Sections 16 to 23 in Executive Order concerning Radio and Television Advertising and Programme Sponsorship
- Attachment 3: Article 14 in the ICC International Code of Advertising Practice (1997 Edition)
- Attachment 4: Article 6 in ICC Revised Guidelines on Advertising and Marketing on the Internet

Attachment 1: Sections 1-3, 4 and 8 of the Danish Marketing Practices Act

Part 1

Purpose and scope of the Act

Good marketing practice

1. Traders subject to this Act shall exercise good marketing practice with reference to consumers, other traders and public interests.

Scope

2. This Act applies to private business activity and to public activity to the extent that products and services are offered in the market.

(2) Sections 1 and 3 and Section 13 subsection 3 and subsection 6 No. 1 do not apply to businesses subject to the Financial Business Act to the extent that the Minister for Economic and Business Affairs has issued regulations in the areas concerned.

(3) Section 13 subsections 2 and 4 and Sections 15 and 16 do not apply to businesses subject to the Financial Business Act.

Part 2 General rules of market conduct

Misleading, derogatory references etc.

3. Incorrect, misleading or unreasonably perfunctory statements designed to influence demand for or supply of products, real property, other property, labour and services must not be employed.

(2) Subsection 1 also applies to statements that are unwarrantable when made to other traders or consumers as a result of their form or because they relate to immaterial matters.

(3) Misleading practices similar in significance for supply and demand to those referred to in subsection 1 or equivalent practices must not be employed insofar as they are unwarrantable when employed vis-à-vis other traders or consumers as a result of their specific form or because they relate to immaterial matters.

(4) Where factual statements are made, these must be capable of being substantiated by documentation.

Advertising identification

4. An advertisement shall be framed in such a way that it will be clearly understood to be an advertisement irrespective of its form and irrespective of the medium in which it is couched.

Part 3 Consumer protection

Marketing directed at children and young people

8. Marketing directed at children and young people shall be framed with specific reference to their natural credulity and lack of experience and critical sense, as a result of which they are readily influenced and easy to impress.

(2) Marketing directed at children and young people must not directly or indirectly incite them to violence, use of intoxicants (including alcohol) or other dangerous or inconsiderate behaviour, nor make unwarrantable use of violence, fear or superstition in order to influence them.

Attachment 2: Sections 16 to 23 in *Executive Order concerning Radio and Television Advertising and Programme Sponsorship*

Special rules on the protection of children and young people under the age of 18

16. Advertisements directed at children and young people may not be presented in such a way that they may have a mentally or morally detrimental effect on such persons. They may not be presented in such a way that they exploit children and young people's natural credulity and loyalty, or their special confidence in parents, teachers or others. They may not undermine such persons' authority and responsibility.

17. Advertisements may not unnecessarily show minors in dangerous situations, or encourage or incite children and young people to stay in or enter dangerous areas, use dangerous products or generally put themselves in dangerous situations.

18. Advertisements may not directly appeal to children and young people to persuade others to buy the advertised product, or promise them prizes as a reward for winning new purchasers.

19. Advertisements may not undermine social values, for example by conveying the impression that the possession, use or consumption of a product in itself will give children or young people physical, social or psychological advantages over other children or young people, or that the failure to own, use or consume such a product may have the opposite effect. It shall not be permitted for advertisements to be designed to give children and young people the impression that their failure to own, use or consume the relevant product will in any way make them less privileged than other children and young people, or expose them to contempt or ridicule.

20.-(1) Particular care shall be taken to ensure that advertisements will not mislead children and young people as to the size, value, type, durability or performance of the advertised product. Advertisements for toys shall give a clear indication of the toy's actual size. Where the use or the shown or described result of the product requires an extra attachment (e.g. batteries), this shall clearly be stated. Where a product forms part of a series, this shall be clearly indicated, as shall how to obtain the series.

(2) Statements of price may not give children and young people an unrealistic idea of the value of the product, e.g. by using the word "only". No advertisement may suggest that the advertised product is easily affordable by any family.

(3) Advertisements shall indicate the degree of skill required to use the product. Where the result of the use of the product is shown or described, the result presented in the advertisement shall be reasonably achievable by an average child in the age group for which the product is designed.

21. Figures, puppets and similar which are important and regular elements in children's programmes may not appear in advertisements for products of particular interest to children. Persons affiliated with children's programmes may not advertise products of particular interest to children.

22. Advertisements for chocolate, sweets, soft drinks, snacks and similar may not indicate that the product may replace regular meals.

23.-(1) Children under the age of 14 may only appear in television advertisements where such appearance is either a natural element of the depicted environment, or necessary *in order* to explain or demonstrate the use of products associated with children.

(2) Children under the age of 14 may not recommend or provide testimonials endorsing products or services of any kind.

Attachment 3: Article 14 in the ICC International Code of Advertising Practice

(1997 Edition)

Children and young people

Article 14

The following provisions apply to advertisements addressed to children and young people who are minors under the applicable national law.

Inexperience and Credulity

- a. Advertisements should not exploit the inexperience or credulity of children and young people.
- b. Advertisements should not understate the degree of skill or age level generally required to use or enjoy the product.
 - i. Special care should be taken to ensure that advertisements do not mislead children and young people as to the true size, value, nature, durability and performance of the advertised product.
 - ii. If extra items are needed to use it (e.g. batteries) or to produce the result shown or described (e.g., paint) this should be made clear.
 - iii. A product which is part of a series should be clearly indicated as should the method of acquiring the series.
 - iv. Where results of product use are shown or described, the advertisement should represent what is reasonably attainable by the average child or young person in the age range for which the product is intended.
- c. Price indications should not be of such as to lead children and young people to an unrealistic perception of the true value of the product, for instance by using the word 'only'. No advertisements should imply that the advertised product is immediately within reach of every family budget.

Avoidance of Harm

Advertisements should not contain any statement or visual presentation that could have the effect of harming children and young people mentally, morally or physically or of bringing them into unsafe situations or activities seriously threatening their health or security, or of encouraging them to consort with strangers or to enter strange or hazardous places.

Social Value

Advertisements should not suggest that possession or use of a product alone will give the child or young person physical, social or psychological advantages over other children or young people of the same age, or that non possession of the product would have the opposite effect.

Advertisements should not undermine the authority, responsibility, judgement or tastes of parents, taking into account the current social values. Advertisements should not include any direct appeal to children and young people to persuade their parents or other adults to buy advertised products for them.

Attachment 4: Article 6 in ICC Revised Guidelines on Advertising and Marketing on the Internet

Advertising to children

Article 6

Advertisers and marketers offering goods or services to children online should:

- not exploit the natural credulity of children or the lack of experience of young people and should not strain their sense of loyalty;
 - not contain any content which might result in harm to children;
 - identify material intended only for adults;
 - encourage parents and/or guardians to participate in and/or supervise their children's online activities;
 - encourage young children to obtain their parent's and/or guardian's permission before the children provide information online, and make reasonable efforts to ensure that parental consent is given;
 - provide information to parents and/or guardians about ways to protect their children's privacy online.
-