



Submission by the Children's Rights Alliance to the Broadcasting Commission of Ireland in relation to the development of Phase II of the Children's Advertising Code December 2003

Introduction

The Children's Rights Alliance welcomes the opportunity to submit its views to the Broadcasting Commission of Ireland (BCI) in response to the Phase II *Consultation Document* on the development of the Children's Advertising Code.

The Alliance is a coalition of seventy-five non-governmental organisations concerned with meeting the needs and safeguarding the rights of children in Ireland. The aim of the Alliance is to secure the full implementation in the Republic of Ireland of the principles and provisions of the UN Convention on the Rights of the Child.

Consultation with Children and Young People

At the outset, the Alliance would like to welcome the efforts made by the BCI to engage in consultation with children and young people in the development of the Children's Advertising Code. Such consultation is in keeping with the requirements of Article 12 of the UN Convention on the Rights of the Child:

"State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

Undertaking consultation is also in keeping with the requirements of Goal One of the National Children's Strategy, which states that

"Children will have a voice in matters that affect them and their views will be given due weight in accordance with their age and maturity."

The Alliance wishes to make five core recommendations in regard to the development of a Children's Advertising Code.

Ban Advertising Directed to under 12s

Firstly, with respect to the issue of age, the Alliance welcomes the fact that the Commission has decided to define a child as any person under the age of eighteen. This is in line with the Article 1 of the UN Convention on the Rights of the Child. The BCI must now confront the task of constructing a Code with the knowledge that different levels of protection are required for children of different ages, in particular very young children.

According to the European Consumers' Organisation, "*It is increasingly difficult for children to distinguish between 'advertising' and ordinary entertainment (programmes, films).*" According to their survey research findings, "*Most children do not develop the ability to distinguish between advertising and programmes until the age of 6-8. However it is not normally until the age of 11 or 12 that children fully understand the purpose of advertising.*"¹

Given the inability of children under the age of 12 to 'fully understand the purpose of advertising' (cf. *Consultation Document*, Section 5.2, 'Inexperience and Credulity'), the Alliance calls for a total ban on advertising specifically targeted at this age group. The Alliance notes that Sweden's Radio and TV Act banned advertisements aimed at children under the age of twelve from the first day that commercial television was allowed in the country, 1 July 1991.

Definition of a Children's Programme

Secondly, with respect to the definition of a 'children's programme', the Alliance strongly urges the Commission to use the broadest possible definition for the construction of the Code in the understanding that a children's programme is a programme that children actually see.

The broadcasters' traditional reliance on day-part² to determine children's programming is no longer valid. The research findings presented in the *Phase II Consultation Document* confirm that children aged from 4 to 17 make up a significant portion of the audience for both fringe and prime-time programmes (including, for example, *Eastenders* and *Champions League*) none of which is targeted primarily to children. The research shows that in 2002 the twenty most popular programmes, ranked according to the ratings they achieved for viewing by children and young people aged between four and seventeen, included 'adult' soap operas such as *Eastenders*, *Fair City* and *Coronation Street*.³

Furthermore, the research findings on children's viewing by the time of day clearly demonstrate that children do not switch off at the RTE Guidelines' watershed hour of 9 pm but are tuned into night time programming also.⁴ Given that there is a blurring between 'child' and 'adult' programmes, the Alliance urges the BCI to adopt a Code that recognises that people under the age of eighteen see the majority of advertising that is broadcast.

¹ BEUC: The European Consumers' Organisation: Children and Advertising: Summary of the BEUC/CB Survey)

² This means a particular time of day. Within the Nielsen audience research, the day is broken up into particular day-parts so that we can check how many people were watching at particular times.

³ Broadcasting Commission of Ireland, *Children's Advertising Code: Phase 2 Consultation Document* 2003, p. 14.

⁴ p. 13.

Ban on Junk Food Advertising

Thirdly, the Alliance supports a ban on all junk food advertising aimed at children of any age. Article 24 of the UN Convention on the Rights of the Child obligates States to: “*recognise the right of the child to the enjoyment of the highest attainable standard of health...*” Under this Article, and arising from the overall requirements of the Convention, the State is obliged to take action to promote the health of children and to ensure that institutions and agencies do not by their actions damage children’s health.

The type of food that is promoted in advertising is greatly at variance with the requirements of a nutritious diet, as recommended by public health experts. Themes of fun and fantasy or taste, rather than health and nutrition, are used to promote junk food to children. Advertisements show unhealthy foods in the best possible light. Fatty and sugary foods are associated with popularity, happy playground relationships and sporting success. In contrast, foods that feature in diets recommended by nutritionists get little promotional support through advertising. Tobacco advertising was banned from television when smoking-related diseases became a public health crisis. It is now time to face Ireland’s new public health crisis, obesity.

Cases of child obesity and illnesses, such as type II diabetes, which are linked to a poor diet, are increasing. Recent statistics from the Slán and Irish Universities Nutrition Alliance Surveys show population obesity levels rising by 1% per year between 1998 and 2000. According to Dr. Patrick Wall, Adjunct Professor of Food Safety at University College Dublin, and former director of the Food Safety Authority, “increasing obesity in children is a major concern. Children who are obese between six months and five years of age have a 25% chance of becoming obese adults and obese adolescents are 80% likely to become obese adults.”

The Alliance believes that children should not grow up with commercial pressures to buy, or to pester their families to buy, fatty or sugary or salty foods, or foods that are otherwise of low nutritional value, that put their current and future health at risk.

Ban on Alcohol Advertising

Fourthly, the Alliance advocates that there should be a ban on the advertising of alcohol.

International research indicates that advertisements for alcohol have a high appeal to children and young people, being considered humorous, stylish, having plenty of action and using music which appeals to children and young people.⁵ *The Impact of Alcohol Advertising on Teenagers in Ireland* (2001) report, commissioned by the Health Promotion Unit, showed that the favourite advertisements of all the age groups, both boys and girls, between twelve and seventeen, were those for alcohol.⁶ Television was the most frequently reported source of exposure to such advertising. Advertisements for alcohol were perceived by the young people in the study as promoting a desirable lifestyle and image, as portraying alcohol as a gateway to social success, as helping to provide confidence and social skills and to enlarge one’s circle of friends, as increasing sexual attractiveness, and as giving people more energy.

The Impact of Alcohol Advertising on Teenagers in Ireland study concluded that those in the youngest age groups (from 12 to 14 years were particularly susceptible to the claims of alcohol advertising, which they perceived as saying

⁵ C. Dring and A. Hope, *The Impact of Alcohol Advertising on Teenagers in Ireland*, Dublin: Health Promotion Unit, Department of Health and Children, 2001.

⁶ p. 19.

that “alcohol can help them have fun, make friends and become popular and those that don’t drink are missing out”. The older age group (15-17 years) perceived the message as “a person becomes more sociable, outgoing and extroverted” when drinking alcohol. Alcohol advertising was noted to be currently infringing the Irish Alcohol Advertising Code in a number of areas relating to children and young people⁷. The report called for a reduction in the exposure of children and adolescents to alcohol advertising.

The Alliance considers the findings and conclusions of this study to be extremely worrying. There is, of course, widespread concern at the incidence of drinking among young people, the increasingly early age at which children are drinking and the high incidence of binge drinking among teenagers⁸.

The Alliance considers that the drinking patterns among Irish children and young people represent a serious threat to their health and wellbeing in both the short and long term. Article 24 of the UN Convention on the Rights of the Child requires the Government to take effective steps to ensure that “children enjoy the highest attainable standard of health” and thereby have an obligation to reduce the threat posed to children and young people by alcohol consumption.

The Strategic Task Force on Alcohol Interim Report (2002) noted, from the available research, that banning advertising has been shown to have some effect on drinking behaviour and problems whilst regulating the content of alcohol advertisements and warning labels on alcohol containers was seen to have no effect. The *Interim Report* recommends that exposure of children and adolescents to alcohol marketing should be reduced without delay to protect children and reduce pressure on adolescents to drink.

The Alliance therefore concludes that a Code of Children’s Advertising, if it is to be worthwhile and effective in protecting children from harm and promoting their well-being, should include a ban on the advertisement of alcohol.

**Promotions
by
Programme
Characters**

Fifthly, the Alliance calls for a ban on promotions by programme characters or presenters and advertiser-generated characters and rejects any use of personal endorsements by public personalities and celebrities who are, in effect, children’s icons. An exception could be made if the advertisement and the presence of the character is part of a public campaign directed towards children in order to promote nutrition, safety or education.

The Advertising Standards Authority in the UK has recognised that character ‘endorsements’ can make a particular brand more appealing to children. This is largely due to an emotional attachment of the child to the particular character. These character-endorsed products encourage children to ‘pester’ their parents (section 5.3). Often these character-endorsed products are junk foods.

⁷ Infringements included “the linking of alcohol use with social or sexual success, depiction of immoderate drinking, use of characters that appear under 25, implying that alcohol has therapeutic effects or improves physical performance, and the targeting of young people”.

⁸ Half of Ireland’s young people start to experiment with alcohol before the age of 12 and up to 15% reported having been really drunk. One in five 12-14 year old boys are current drinkers, 50% of 16 year olds girls and 66% of 16 year old boys are current drinkers. Binge drinking is a particular concern and one third of 15-16 year olds reported binge drinking regularly (drinking 5 or more drinks in a row).

RESPONSE TO QUESTIONS IN PHASE 2 CONSULTATION DOCUMENT

Section 5.1 Social Values

Do you believe that a section on social values should be included in the children's advertising code? If so, do you think that this should be stated *in principle*?

The Alliance believes that Article 12 of the Television Without Frontiers Directive should be incorporated explicitly into the Children's Advertising Code.

Section 5.2 Inexperience and Credulity

The children's advertising code will contain a rule regarding the inexperience and credulity of children. Do you believe the wording of the Television Without Frontiers Directive as outlined above is sufficient for the Irish children's advertising code? If not, which, if any of the above examples from the ASAI code and/or from other countries, provided above, do you wish to see incorporated into the Irish children's advertising code?

No. The Alliance believes the wording of the Television Without Frontiers Directive is insufficient.

The 'inexperience and credulity' of children should be recognised as a significant determining factor in the formulation of a Children's Advertising Code, as set out in the introduction of this submission. Studies have demonstrated that children are especially vulnerable under the age of twelve and it is difficult for them to distinguish between programming and advertising.

Given these research findings, and in the light of the overall requirements of the UN Convention on the Rights of the Child to protect children from harm and promote their well-being, the Alliance calls for a ban on all advertising directed towards children under twelve (see introduction).

Even with such a ban, children and young people, including those under twelve, will still see considerable amounts of advertising. The Alliance therefore recommends that the Code should include a strengthened version of Article 16(a) of the Television without Frontiers Directive, as follows: 'Advertising shall not directly *or indirectly* exhort minors to buy a product or service by exploiting their inexperience or credulity'. Likewise, Article 16(c) should be strengthened to state that advertising should not *directly or indirectly* exploit the special trust minors place in parents, teachers or other persons.

Recognition of the 'inexperience and credulity' of children underpins the Alliance's response to the following sections of the Consultation Document: 'avoidance of undue pressure', 'special protection for children in advertising', 'safety/avoidance of harm', 'parental responsibility', 'promotion by programme characters', 'product prohibitions' and 'factual presentations'.

Section 5.3 Avoiding Undue Pressure

The Code will contain a section on the avoidance of undue pressure. Do you believe the wording of the Television Without Frontiers Directive as outlined above is sufficient for the Irish children’s advertising code? If not, which, if any, of the examples outlined above from the ASA code and from other countries do you believe should be included in the Irish children’s advertising code?

The Alliance does not believe the Television Without Frontiers Directive is sufficient. Younger children have little or no money of their own and have to persuade their parents to buy products for them. Rather than advertising directly to parents, companies rely on pester power to make adults spend money they may not have on things they do not want to buy.

Advertising which presents products to children as ‘must-haves’ can be socially divisive, making children whose parents cannot afford them feel inferior or unpopular, and creating feelings of frustration and inadequacy, as well as leading families into debt.

A British study (Mc Carraher, 1998), published by the Parenting Education and Support Forum, found that 62% of parents who responded felt that the media influenced their children to buy things. Furthermore, the parents felt that the older the children were, the greater was the pressure exerted by advertising.

While the Alliance recognises parental responsibility in the upbringing of their child (dealt with in section 5.6), it holds that it is impossible for parents to combat a multi billion-dollar industry. The power which the advertising industry can exercise, its recognition of the influence it can wield over children and its willingness to exploit this are well expressed in the comment: "If you own this child at an early age, you can own this child for years to come." (Mike Searles, President of the marketing company Kids 'R Us)

The Alliance suggests that the Code should incorporate an amended version of Article 16(b) of the Television without Frontiers Directive, as follows:

Advertising “shall not directly or *indirectly* encourage minors to persuade their parents or others to purchase the goods and services being advertised *or imply that everyone can afford the product – by, for example, using words such as ‘only €xxx’.* Children must not be made feel inferior, unpopular or disloyal if they or their family do not buy a particular product or service.”

Section 5.4 Special Protection for Children in Advertising

The code will include a section dealing with the special protection of children in advertising. In that regard, which if any of these areas should be included in this section.

Children and young people are vulnerable members of society and for this reason special attention must be given to their protection. In the view of the Alliance the Code should include provisions along the following lines:

- Children should not appear in advertisements unless such an 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.
- Children should not be used in advertisements to formally present products or services that they could not be expected to buy themselves or to comment or to provide testimonials on products or services.
- Adult actors should not be used to portray children.
- Advertising must not provoke anxiety in children regarding their bodily appearance. Neither must it portray any child in a sexually provocative manner.
- Children must not appear naked or in a state of partial undress.

Section 5.5 Safety/Avoidance of Harm

Which, if any, or all, of the examples outlined above that draw on examples from Ireland and other countries, do you believe should be included in the children’s advertising code? In answering please make reference to the following headings as appropriate.

The Alliance welcomes the Commission’s inclusion of this heading bearing in mind the State’s obligation under Article 17 (e) of the UN Convention on the Rights of the Child to *“Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well being....”*

Taking into consideration Article 17, the Alliance recommends the incorporation of the Television Without Frontiers Directive 16 (d), the Irish Statutory Code and the ASAI code into the Children’s Advertising Code.

Having regard to (f), namely Diet and Nutrition, the Alliance urges a total ban on junk food advertising (see section 5.8).

In addition, the Alliance urges the BCI to protect children from advertisements for medicines and remedies. Children are susceptible to pressure to take supplements which are claimed to boost energy and performance, particularly around the time of school examinations. For this reason advertising should not suggest that normal good health can be improved by using a product.

Furthermore, advertising should not portray children in possession of medicines without the presence of a parent or some other adult authority figure. Advertising of over-the-counter medicinal products and curative treatment should avoid being addressed exclusively or principally to children or inducing them to the use of a product without appropriate supervision.

Section 5.6 Parental Responsibility

The Consultation Document notes that Article 18 of the Convention on the Rights of the Child states: *“parents ..or legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.”*

It might therefore be argued that parents can limit the amount of TV a child watches, can watch TV together with their child, can plan their child’s viewing and discuss the commercial strategies put forward by advertisers. But even if parents successfully

follow this routine, their ability to control the advertising that children see or hear remains quite limited.

Advertising is not rated for viewing in the way that film is and can be very sophisticated; it is sometimes very difficult for parents to judge what might be the intended target audience age group. Furthermore, access to radio and TV is not limited to the home. Children can access broadcast mediums at school, in public places and in friends' houses.

The responsibilities and duties of parents and guardians are stressed throughout the Convention on the Rights of the Child. But the Convention also emphasises the role of the State in supporting and supplementing the role of parents. The Alliance would argue that the State has an duty to ensure, through an official Children's Advertising Code, that advertisers recognise their societal obligations to support parents in their role and ensure that children are not subject to irresponsible and potentially damaging advertising (see section 5.1). It is the duty of advertisers to be truthful measured on the basis of children's ability to interpret messages.

Section 5.7 Promotion by Programme Characters, Advertiser Generated Characters and Personal Endorsements

The Alliance calls for a ban on the promotion by programme characters and advertiser generated characters as well as any use of personal endorsements by public personalities and celebrities who are, in effect, children's icons. An exception could be made if the advertisement and the presence of the character is part of a public campaign, directed at children, to promote nutrition, safety or education.

The Advertising Standards Authority in the UK has recognised that character 'endorsements' can make a particular brand more appealing to children. This is largely due to an emotional attachment of the child to the particular character. These character-endorsed products encourage the children to 'pester' their parents (see section 5.3). Often these character-endorsed products are junk foods ie fatty and/or sugary and/or salty foods that put their current and future health at risk. (see section 5.8)

Section 5.8 Production prohibitions

What products do you believe should be prohibited from being advertised to children? Please provide a rationale for your views.

The Alliance supports a ban on all junk food advertising aimed at children of any age. Article 24 of the UN Convention on the Rights of the Child obligates States to: *"recognise the right of the child to the enjoyment of the highest attainable standard of health...."* Under this Article, and arising from the overall requirements of the Convention, the State is obliged to take action to promote the health of children and to ensure that institutions and agencies do not by their actions damage children's health.

The type of food that is promoted in advertising is greatly at variance with the requirements of a nutritious diet, as recommended by public health experts. Themes of fun and fantasy or taste, rather than health and nutrition, are used to promote junk food to children. Advertisements show unhealthy foods in the best possible light. Fatty and sugary foods are associated with popularity, happy playground relationships and sporting success. In contrast, foods that feature in diets recommended by nutritionists get little promotional support through advertising.

Tobacco advertising was banned from television when smoking-related diseases became a public health crisis. It is now time to face Ireland's new public health crisis, obesity.

Cases of child obesity and illnesses, such as type II diabetes, which are linked to a poor diet, are increasing. Recent statistics from the Slán and Irish Universities Nutrition Alliance Surveys show population obesity levels rising by 1% per year between 1998 and 2000. According to Dr. Patrick Wall, Adjunct Professor of Food Safety at University College Dublin, and former director of the Food Safety Authority, "increasing obesity in children is a major concern. Children who are obese between six months and five years of age have a 25% chance of becoming obese adults and obese adolescents are 80% likely to become obese adults."

The Alliance believes that children should not grow up with commercial pressures to buy, or to pester their families to buy, fatty or sugary or salty foods, or foods that are otherwise of low nutritional value, that put their current and future health at risk.

The Alliance also advocates a ban on the broadcast advertising of alcohol.

International research indicates that advertisements for alcohol have a high appeal to children and young people, being considered humorous, stylish, having plenty of action and using music that appeals to children and young people.⁹ *The Impact of Alcohol Advertising on Teenagers in Ireland (2001)* report, commissioned by the Health Promotion Unit, showed that the favourite advertisements of all the age groups, both boys and girls, between twelve and seventeen, were those for alcohol.¹⁰ Television was the most frequently reported source of exposure to such advertising. Advertisements for alcohol were perceived by the young people in the study as promoting a desirable lifestyle and image, as portraying alcohol as a gateway to social success, as helping to provide confidence and social skills and to enlarge one's circle of friends, as increasing sexual attractiveness, and as giving people more energy.

The Impact of Alcohol Advertising on Teenagers in Ireland study concluded that those in the youngest age groups (from 12 to 14 years) were particularly susceptible to the claims of alcohol advertising, which they perceived as saying that "alcohol can help them have fun, make friends and become popular and those that don't drink are missing out". The older age group (15-17 years) perceived the message as "a person becomes more sociable, outgoing and extroverted" when drinking alcohol. Alcohol advertising was noted to be currently infringing the Irish Alcohol Advertising Code in a number of areas relating to children and young people¹¹. The report called for a reduction in the exposure of children and adolescents to alcohol advertising.

The Alliance considers the findings and conclusions of this study to be extremely worrying. There is, of course, widespread concern at the incidence of drinking

⁹ C. Dring and A. Hope, *The Impact of Alcohol Advertising on Teenagers in Ireland*, Dublin: Health Promotion Unit, Department of Health and Children, 2001.

¹⁰ p. 19.

¹¹ Infringements included "the linking of alcohol use with social or sexual success, depiction of immoderate drinking, use of characters that appear under 25, implying that alcohol has therapeutic effects or improves physical performance, and the targeting of young people".

among young people, the increasingly early age at which children are drinking and the high incidence of binge drinking among teenagers¹².

The Alliance considers that the drinking patterns among Irish children and young people represent a serious threat to their health and well-being in both the short and long term. Article 24 of the UN Convention on the Rights of the Child requires the Government to take effective steps to ensure that “children enjoy the highest attainable standard of health” and thereby have an obligation to reduce the threat posed to children and young people by alcohol consumption.

The Strategic Task Force on Alcohol Interim Report (2002) noted, from the available research, that banning advertising has been shown to have some effect on drinking behaviour and problems whilst regulating the content of alcohol advertisements and warning labels on alcohol containers was seen to have no effect. The *Interim Report* recommends that exposure of children and adolescents to alcohol marketing should be reduced without delay to protect children and reduce pressure on adolescents to drink.

The Alliance therefore concludes that a Code of Children’s Advertising, if it is to be worthwhile and effective in protecting children from harm and promoting their well-being, should include a ban on the advertisement of alcohol.

Section 5.9 Factual Presentation

Which if any or all, of the examples provided, do you believe should be included?

- Special care must be taken to ensure that advertisements do not mislead children as to the true size, value, durability and performance of the product nor should they understate the degree of skill or age level generally required to use the product e.g. advertisements should identify material intended only for adults
- Advertisements for a product that is part of a series should clearly indicate this, as well as the method of acquiring the series and the on-going cost.
- If additional items are needed for the functioning of an advertised product (for example, batteries), this should be clearly stated; a notice in small print should not be considered sufficient.
- The price indication should not be such as to lead children and young people to an unreal perception of the true value of the product, for instance by using the phrase ‘only € xxx’. No advertisement should imply that a product is within the reach of all family budgets.

Section 5.10 Price and purchase terms/comparison claims

Which, if any of all, of the examples of rules drawing on the ASAI code and from other countries, referring to price, comparison claims and substantiation do you believe should be included in the children’s advertising code? Please make reference to the specific rules under each of the three headings – price, comparison claims and substantiation – that you wish. Are there additional rules in relation to price, comparison claims and substantiation that you

¹² Half of Ireland’s young people start to experiment with alcohol before the age of 12 and up to 15% reported having been really drunk. One in five 12-14 year old boys are current drinkers, 50% of 16 year olds girls and 66% of 16 year old boys are current drinkers. Binge drinking is a particular concern and one third of 15-16 year olds reported binge drinking regularly (drinking 5 or more drinks in a row).

believe should be included in the children's code? Please outline what each of these rules are and provide a rationale for their inclusion.

Advertising which compares an advertised product with another product may be difficult for children to understand and evaluate. Comparative claims should be based on real product advantages that are understandable to the child audience.

1. Comparative advertising should provide factual information. Comparisons should not falsely represent other products or previous versions of the same product.
2. Comparative claims should be presented in ways that children can clearly understand. Consultation with children can assist further with the development of this section.
3. Comparative claims should be supported by appropriate and adequate substantiation.

Section 5.11 Identification, separation, insertion/scheduling of advertising. In addition to the general requirement under the Television Without Frontiers Directive that advertising must be distinguishable from television programmes, which, if any or all, of the examples outlined above, do you believe should be included in the children's advertising code?

The Alliance considers that the question of ensuring that advertising is clearly separated from programmes is a crucially important one for a Children's Advertising Code.

This is so, firstly because of the evidence referred to earlier that children under twelve may have difficulty distinguishing between advertising and programmes; secondly, because of the vulnerability of children and young people to the messages and lifestyles portrayed in advertising; and, thirdly, because 'children's advertising' should be considered as all advertising that children may see.

The viewer must therefore be able to recognise advertising immediately with respect to image, text and sound.

Section 5.13 Assessment – How should a children's programme be defined?

The Alliance has already indicated that it considers 'children's programmes' and 'children's advertising' to be the programmes and advertising that children view, regardless of the intended primary target audience or time of day shown.

Section 5.14 Administration and Implementation of the Code - Are you satisfied with the manner in which the Commission intends to monitor broadcasters for compliance with the children's advertising code?

In the structures to be put in place for the monitoring of compliance with the Code, for responding to complaints and for review of the Code, there should be representation of organisations working with or for children. The question of how to ensure on-going consultation with and involvement of children and young people, in line with the requirements of the UN Convention on the Rights of the Child and Goal One of the National Children's Strategy, needs also to be addressed.