

Food and beverage advertising to children **When is a child a child?**

Introduction

Despite frequent calls for regulation of advertising to children and a proliferation of regulatory proposals in this field, particularly with regard to food and beverage advertising, there is no global consensus on the definition of a child.

Nonetheless, there is significant academic research on children's understanding of advertising and a number of legal definitions for other purposes, such as different ages of licence, for consent, voting rights and so on. Since the intent of food and beverage advertising regulation is to protect children from the perceived "potentially harmful effects" of advertising, it should be grounded in this evidence base.

This paper seeks to inform the debate by drawing on the academic and empirical evidence as well as looking at other legal precedents. Of particular importance is the evidence on children's understanding of the persuasive intent of advertising; the analysis of other legal precedents is useful to give some perspective on the proportionality of proposed measures for advertising in relation to other spheres of life.

1. 12 years old as the threshold for advertising regulations:

1.1. Most academic reviews recognise that by the age of 12 children develop their behaviour as consumers, effectively recognise advertising and are able to adopt critical attitudes towards it.

- "A descriptive model of the development of children's consumer behavior from infancy to 12 years of age [says that] **by age 12 children have become acquainted with all aspects of their consumer behavior** [...] they are able to feel wants and preferences, search to fulfill them, make a choice and a purchase, and evaluate a product and its alternatives. [By the age of 12] children's eye for detail and quality develops, and thereby, their ability to critically evaluate and compare products and information. [...] In this period, children develop a sincere interest in real-world phenomena, and they can be highly critical of entertainment and commercials that lack realism."¹

1.2. There is a strong degree of academic consensus that by the age of 12 children are fully capable of understanding the persuasive intent of advertising and have the necessary cognitive tools to critically assess it:

- **"By about 7 or 8 years of age, children have learned to identify the persuasive intent of advertising, distinguishing it from information.** From 12 years of age, children can surely articulate a critical understanding of advertising, even becoming skeptical or distrustful of it."²
- "An important issue in discussions about the influence of food and beverage advertising and marketing reaching children and youth relates to the stages of discernment. Before a certain age, children lack the defenses, or skills, to discriminate commercial from noncommercial content, or to attribute persuasive intent to advertising. Children generally develop these skills at about age 8 years, but children as old as 11 years may not activate their defenses unless explicitly cued to do so. [...] There is strong evidence that television advertising influences the food and beverage purchase requests of children ages 2–11 years. **There is insufficient evidence about its influence on the purchase requests of teens ages 12–18 years.** [...] There is moderate evidence that television

¹ The Development of a Child into a Consumer, Vlakenburg and Cantor, University of Amsterdam, University of Wisconsin-Madison, NL and US, 2001

² Livingstone and Helsper, Advertising Foods to Children: Understanding promotion in the context of children's daily lives, 2006; Ofcom, Childhood Obesity - Food Advertising in Context (review of academic research conducted by Prof. Sonia Livingstone, LSE, London, UK), 22 July 2004

advertising influences the food and beverage beliefs of children ages 2–11 years. **There is insufficient evidence about its influence on the beliefs of teens ages 12– 18 years.** [...] There is strong evidence that television advertising influences the short-term consumption of children ages 2–11 years. **There is insufficient evidence about its influence on the short-term consumption of teens ages 12–18 years.** [...] There is moderate evidence that television advertising influences the usual dietary intake of younger children ages 2–5 years and weak evidence that it influences the usual dietary intake of older children ages 6–11 years. There is also weak evidence that it does **not** influence the usual dietary intake of teens ages 12–18 years.”³

- **“Almost all eight year olds had an understanding of the commercial intent and advocacy nature of advertising.** They could apply this knowledge and critically evaluate advertisements. Subsequently they were more skeptical than younger children about claims made in advertising.”⁴
- **“This paper reports the findings of focus group research conducted to gauge the perceptions of 5-8 year old children regarding television advertising... By the age of seven many children perceived that advertising was an intrusion to programming. Almost all eight year olds had an understanding of the commercial intent and advocacy nature of advertising. They could apply this knowledge and critically evaluate advertisements.”**⁵
- **“By about 8 years of age they realise that this information is presented in advocacy and rhetorical ways.** In other words that advertising informs you about the world of goods and services but that this information is deliberately ‘dressed up’ by presenting only positive information and using techniques to attract your attention and make you interested.”⁶

2. Existing definitions of a “child”

- **UNESCO** defines early childhood as ages 0- 8 years.⁷
- **Religions define a child as below 13 or 14 at the oldest:** most Catholic and Protestant confirmations occur between 13 and 14. According to Jewish Law, children reach the age of maturity at 12 years for girls and 13 years for boys. In Islam, boys are considered mature at 13-14 and girls are considered mature at 12-13.
- **The school going age** is comparable in most countries, and reflects the psychological development of children: primary/elementary school usually goes from 6 to 12, followed by secondary school from 12 onwards.
- **In the US,**
 - **The Centers for Disease Control (CDC)** identifies adolescents and young adults as ages 10–24 years.⁸
 - **DHHS Office of Disease Prevention and Health Promotion Healthy People 2010** uses the following delineations: children – 1-9 years; adolescents – 10-19⁹.
 - **American Obesity Association:** Obesity rate charts define children as ages 6-11 and adolescents as age 12-19.¹⁰

³ Institute of Medicine, Food Marketing to Children and Youth: Threat or Opportunity, 2005

⁴ Children’s Perceptions of Advertising – 2001, Bulmer, Massey University, Auckland, NZ

⁵ Sandy Bulmer, ‘Children’s Perceptions of Advertising’, Department of Commerce, Massey University, Auckland, New Zealand, Working Paper Series, No. 01.05 (2001)

⁶ Brian Young, The Role of Advertising in the Life of the Child: A Review of some empirical findings, 1999

⁷ http://portal.unesco.org/education/en/ev.php_URL_ID=45373&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁸ <http://www.cdc.gov/HealthyYouth/AdolescentHealth/NationalInitiative/index.htm>

⁹ <http://www.healthypeople.gov/Document/HTML/Volume2/16MICH.htm>

¹⁰ http://www.obesity.org/subs/fastfacts/obesity_youth.shtml

- **DHHS Office of Disease Prevention and Health Promotion Healthy People 2010** uses the following delineations: children – 1-9 years; adolescents – 10-19¹¹
 - **Federal Trade Commission Children's Online Privacy Protection Act (COPPA)**– In October 1999, the FTC issued the Children's Online Privacy Protection Act, which requires children's Web site operators to post comprehensive privacy policies on their sites, notify parents about their information practices, and obtain parental consent before collecting personal information from children under the age of 13.
 - **Children's Advertising Review Unit (CARU) Self-Regulatory Program for Children's Advertising** – CARU principles and guidelines cover national advertising primarily directed to children under 12 years of age in any medium and under 13 years of age online.
- There is no common EU classification system for the age **rating of films and other audiovisual content**. However, national systems share a common pattern, where there are often cut-off points around the ages of 12, 15-16 and 18. For example, the British Board of Film Classification¹² (BBFC) categorises films, videos, DVDs and games into: Universal, Parental Guidance, 12, 15 and 18.
 - Audiovisual content classified as suitable for 12 may contain: strong language, though infrequent; nudity, though brief and discreet; references to sex, though not beyond what is familiar to most adolescents; some violence, but no emphasis on injuries or blood and no dwelling on the detail; misuse of drugs, but infrequent and not glamorized or instructional.
 - Audiovisual content rated 15 may contain: frequent strong language, though not in continued aggressive use; nudity is allowed in a sexual context without strong detail and without restrictions in a non-sexual context; sexual activity may be portrayed but without strong detail; there may be strong verbal references to sexual behaviour; strong violence, though not dwelling on the infliction of pain or injury; scenes of sexual violence, though discreet and brief; drug taking may be shown, though the film as a whole should not promote it.
 - In the EU, there are no common definitions of a child, **although advertising legislation and self-regulation often define children as under 12s**: In Belgium, the Flemish Decree on audiovisual defines children programmes as those addressing children younger than 12 years. Self-regulatory food advertising codes in the Netherlands and Spain (PAOS) define children as under 12.
- 3. Legal definitions which infer cognitive ability:** Governments often have to set age limits when defining at what age a 'child' can start performing actions normally associated with adulthood. This involves assessing their cognitive abilities and discerning when a child can become fully responsible for their actions.
- **The age of criminal responsibility:** the age of responsibility presupposes that children are capable of going through the necessary cognitive processes of forming the mens rea (guilty mind) of a criminal offence. In India, Bangladesh, Nigeria, Pakistan, South Africa, Sudan, Tanzania and Thailand, the age of responsibility is set at 7 years. In Scotland, the age of responsibility is 8 years, In England and Wales and Northern Ireland the age of responsibility is 10 years and in the Netherlands and Canada the age of responsibility is 12 years. In most of the US States, the age varies between states but is normally not lower than 7 years.
 - **The age of consent:** the age of sexual consent in 16 of the 27 European member states is below the age of 16 years¹³
 - **Marriage:** in nearly every country in Europe, almost every US state and in the vast majority of countries worldwide, 16 years olds can marry with parental consent.
 - **Driving:** 15/16 year olds can drive in the US, Australia, Canada, New Zealand and 17/18 year olds in the EU.

¹¹ <http://www.healthypeople.gov/Document/HTML/Volume2/16MICH.htm>

¹² www.bbfc.co.uk

¹³ http://en.wikipedia.org/wiki/Ages_of_consent_in_Europe

- **Bans and restrictions on advertising to children already exist:** Sweden and Québec are the only jurisdictions worldwide which ban advertising to children. Sweden defines a child as under 12, Québec as under 13.
4. The Ofcom case: In relation to the recent regulatory provisions in the UK, an analysis of the Livingstone reports of 2004 and 2006 reveals that nearly all of the evidence cited by Livingstone is not applicable or relevant to children above 12 years. Of the 49 key studies cited by Livingstone in both reports, only nine studies (18%) of those specifically examined the link between obesity and food and drink advertising. Of these nine studies, none examined the impact on older children. In other words, none of the studies reviewed by Livingstone that actually examined the supposed link between food advertising and obesity considered children over the age of 12 years. The children studied in these reports were aged between 2 and 12 years and, indeed, the sample sizes provided were extremely small, with all sample sizes falling between 42 and 192 children. **None of the 49 key studies cited by Livingstone in either the 2004 and 2006 reports found that older children, e.g. those above 12 years old, should be targeted for restrictions to food advertising.**

Livingstone¹⁴ concludes that:

- **Before the age of four or five**, children regard advertising as **simply entertainment**.
- **Between four and seven**, they begin to be able to **distinguish advertising from programmes**.
- **By the age of eight**, the majority has generally grasped the **intention to persuade**.
- **After eleven or twelve** they can articulate a **critical understanding** of advertising.

Conclusion

In the light of this review of the academic evidence relating to children's understanding of advertising and of the existing definitions of a child in other domains, it can be concluded that:

- Advertising rules should reflect the needs of children.
 - Children under 6 deserve particular attention, as they may not yet be able to identify an advertisement as such.
 - Children between the ages of 6 and 12 generally understand the persuasive intent of advertising, but care should be taken because they may not have developed a critical understanding.
 - Above the age of 12 the evidence is that children today are equipped with an advanced critical understanding of advertising and can even be more sophisticated media consumers than adults.
- Advertising rules should reflect the rights and responsibilities that young individuals are given in other spheres of life, for example:
 - If it is permitted for a person aged 15 to watch films containing frequent strong language, sexual activity, violence and drug taking, it would seem quite disproportionate to ban that person from being exposed to food and beverage advertising.

¹⁴ Ofcom, Childhood Obesity - Food Advertising in Context (review of academic research conducted by Prof. Sonia Livingstone, LSE, London, UK), 22 July 2004

- Likewise, it would seem illogical to prevent a 16-year old from being exposed to food and beverage advertising, when they are allowed to engage in sexual relations and get married.
- Overall, the evidence points to the need for advertising to take particular care when addressed to children below the age of 12. This should be reflected in codes of conduct, which should contain particular provisions for children pre-school and primary school age.

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