

Children and advertising in Italy

In this article, continuing our series of legal briefings, **Maria Luisa Cassandro** and **Felix Hofer** outline the legislation in Italy relating to advertising to children.

THE ITALIAN ADVERTISING regulators tend to consider minors (all those aged under 18) as the most vulnerable consumers, requiring special protection against any potential attempt to harm their physical and psychological well-being through aggressive marketing techniques. Therefore, during recent years, ever more limitations and restrictions have been set with the aim of achieving a balance between the advertisers' need to promote their products and services and the public interest of granting minors proper protection from exploitation due to their lack of experience and natural sensitivity. The Italian legal system does not contain a consolidated act or special code with a harmonised framework encompassing advertising targeted to (or performed with) children. Such provisions are usually set by statutory law as well as by industry self-regulation and codes of ethics dealing with the regulation of specific sectors of marketing and advertising.

As a member of the European Union, Italy is bound to implement Community Law, i.e. the guidelines and the principles set by the EU. With respect to marketing, the EU specifically

regulates advertising targeted to children through the directives on television and broadcasting and on misleading advertising.

The Italian judicial and administrative authorities appointed to grant compliance with Community Law and enforcement of the domestic regulations are the civil courts, the Market and Competition Commissioner (an independent public authority competent in dealing with misleading and comparative advertising) and the Communication Authority (an independent public authority in charge of control in TV and radio advertising and in TV sales).

Self-regulation is administered by the Institute for Advertising Self-Regulation (IAP), a non-profit organisation, to which most advertising agencies, advertisers, advertising practitioners, media companies and their branch associations adhere. The IAP aims to ensure that all advertising is honest, truthful and directed at providing consumers with commercial information in compliance with the guidelines and prescriptions established by the Code of Advertising Self-Regulation (CAP). For more than 35 years, this code, although totally based on voluntary adherence, has proved quite effective and has periodically adapted to new developments in the advertising industry. It contains both general rules of behaviour and provisions concerning specific products or services. Compliance with the CAP's rules and action from the IAP are enforced by the following.

1. The review board. The board may ask for changes in an ad or issue a temporary desist order in cases of clear violations of the CAP.

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(The complaint may be raised by the board itself or at the request of a consumer or a consumer protection association.)

2. A claim filed with the jury. This may be done by those who feel prejudiced by a promotional message of any kind.
3. Several codes of ethics are applied to advertising by particular industry groups, such as private and public television and broadcasting companies, internet providers and the press.

Advertising to children

In Italy there are well-established restrictions and limitations concerning advertising specifically targeted to minors. These restrictions can fall under the umbrella of general interest (e.g. health and safety requirements), but also apply to particular categories of products or services (such as cigarettes and alcohol), and may relate to the type of media used to broadcast the ad.

General interest

Minors are considered 'vulnerable consumers', and so all advertising targeted to them has to fulfil some general requirements (regardless of the nature of the promoted product or service), established by both statutory law and self-regulation. Therefore any advertisement potentially able to reach children or adolescents would be considered misleading if it could (albeit indirectly):

- result in a threat to minors' safety
- take advantage of children's natural credulousness or lack of experience
- abuse the natural feelings of adults towards adolescents and children.

The CAP also recommends special attention for those advertising messages that are specifically targeted to (or accessible to) minors and requires that such promotional claims shall not

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contain elements likely to 'cause emotional, moral or physical harm' to children or adolescents, or to 'take advantage of their natural credulousness or lack of experience, or their sense of loyalty'. In addition, the Code specifies that this type of advertising shall not induce minors to:

- infringe generally accepted social behaviour
- perform actions or put themselves into situations that are dangerous
- believe that non-ownership of the advertised product implies inferiority, or that their parents are falling short of their duties
- urge other people to purchase the advertised product.

The IAP's review board and jury tend to have a fairly traditional approach to this issue. They do not feel that self-regulation should use the relaxation of standards of adult behaviour as a criterion for more flexibility in evaluating representations that could (directly or indirectly) upset children due to their indecent or vulgar content.

Over the years, Italian regulators have become increasingly sensitive towards protecting minors from marketing techniques that are too aggressive. The issue of general interest has grown increasingly relevant and has led to special prohibitions or restrictions of advertising referring to particular products (such as tobacco products, alcoholic drinks, toys and

medicines), whose use could be dangerous or, at least, require special caution.

Crucially, advertisers targeting minors with their marketing campaigns will have to consider the following limitations.

Cigarettes

Advertising of tobacco products is strictly banned in general terms, regardless of the age of the target audience. Obviously such total ban includes television advertising of cigarettes and any other kind of tobacco product (even if indirectly performed). In addition, since 2002, ASSOTABACCO, the Italian association representing all companies of the local tobacco industry, is promoting – jointly with the leading foreign producers – an intensive, campaign against children smoking.

Sales of tobacco products to children aged under 14 are forbidden; violation represents a criminal offence. Labels on cigarette packets now feature, in addition to other warnings, the following message: ‘Minors must not smoke.’ The labelling campaign against smoking among young people runs in tandem with a pilot project, which has enjoyed great success in schools. A popular Italian actress has been involved in an amusing ad, in which she explains to young people that smoking ‘won’t help you to feel more adult’.

Alcohol

Specific restrictions govern TV advertising of alcoholic drinks, which may not be targeted expressly to minors. In 2001, stricter limitations were established which impose a total ban on alcohol ads in the following instances:

- During TV programmes for children as well as during the 15 minutes preceding and following the broadcasting of such programmes.
- When an ad claims – without the explicit approval of the Department of Health – therapeutic benefits deriving from alcoholic drinks.

- When an ad shows children consuming alcoholic drinks or suggests such use in a positive light.
- Direct or indirect advertising of alcoholic drinks may not be shown in places primarily attended by children.
- Advertising of high-grade alcoholic drinks is banned during programmes aired on TV and radio between 4 and 7 pm.
- Such advertising is also prohibited in publications mainly targeted to children or at cinemas showing films specifically aimed at child audiences.

The Advertising Self-Regulation Code also contains a general provision which states that advertising of alcoholic drinks must not be addressed, albeit indirectly, to minors.

Pharmaceutical advertising

In compliance with the EU’s guidelines on advertising of medicinal products for human use, statutory law dictates that such advertising will be acceptable so long as it ‘shall not include any element which ... is addressed entirely or mainly to children.’

As for self-regulation, the CAP establishes that any advertising referring to medicine and medical treatment ‘must not be expressly targeted to children, either entirely or mainly, or induce minors to use the product without adequate supervision.’

Toys

Commercials, ads and all promotions concerning toys are clearly capable of strongly attracting children’s attention and of inducing the desire to obtain such products. Consequently, specific limitations are set in order to prevent toy advertising taking undue advantage of children’s weakness by inducing them to spend without any parental control or to press (‘pester’) their parents with requests to purchase a specific toy.

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These limitations are set mainly by the Advertising Self-Regulation Code, which contains a specific section dedicated to this issue. It states:

‘Advertisement for games, toys and educational products for children must not mislead consumers as to: the nature, performance and dimensions of the advertised product, the level of ability needed in order to use the product and the product’s price, especially when the purchase of complementary products is needed to make the product work.

Moreover any toy advertising must not minimise the product price or imply that its purchase is normally compatible with any family budget.’

Safety

As regards advertising for products that, when used, could have potentially dangerous results, there are no provisions specifically designed to protect children. However, ads for dangerous products have to respect the general rules on due consumer information, which usually relate to potential risks for consumers’ health and safety, as well as those concerning misleading advertising.

Specific electronic media

The Italian Legislator reserves special consideration for some of the media used to communicate marketing messages to the public. As well as provisions for television and radio advertising, it goes without saying that the risk implied by uncontrolled internet access by

minors is one of the main problems of the digital age and of the information society.

Radio and TV

Statutory law and industry self-regulation in Italy are strongly focused on protecting young audiences of radio and TV programmes as well as regulating advertisements aired during such programmes.

As a general principle, binding both the public as well as the private television broadcasting system, radio and TV ads ‘must cause neither moral nor physical harm to minors, and cannot be aired during cartoon programmes.’

A specific ban applies as to ‘broadcasting of programmes that could be harmful for the emotional and moral development of minors, that include scenes of gratuitous violence or pornography, that encourage intolerant behaviour based on differences of race, sex, religion or nationality’, while ‘films that are prohibited to minors under 14 cannot be shown, either uncut or in part, earlier than 10.30 pm or later than 7 am.’

Additional protection is sought through restrictions aimed at preventing ‘all moral or physical jeopardy to minors’. According to the respective provisions, TV advertising must not:

- directly urge minors to purchase a product or a service, taking advantage of their inexperience or credulousness
- directly urge minors to persuade their parents or other people to purchase these products or services
- take advantage of the special trust that minors have in their parents, their teachers or other people
- show minors in dangerous situations without justification.

Industry self-regulation has also significantly contributed to improving children’s protection with respect to programmes broadcast on radio and TV through a number of ethic codes issued

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during the past ten years. In particular, on 29 November 2002, all Italian broadcasting companies undersigned the TV and Minors Self-Regulation Code. According to its rules, broadcasting companies are called on to avoid any commercial or promotion which might impair physical, mental or moral development of minors. To that end, protection of minors from advertising's harmful effects is achieved at three different levels:

1. *General protection*, which encompasses ads broadcast at any time. Ads should comply with the following requirements: (a) they cannot show minors in dangerous situations; (b) they cannot depict minors consuming alcoholic beverages, tobacco products or drugs; (c) they cannot exhort minors to buy a product by exploiting their inexperience or credulity; (d) toy ads shall not mislead minors with respect to the nature, size and characteristics of the advertised product.
2. *Strengthened protection*, which covers airing time when the junior audience is particularly high, but with the support of an adult's presence (from 7 am to 4 pm and from 7 to 10.30 pm). Any advertising, expressly addressed to minors, and able to damage their psychologi-

cal and moral well-being, is banned during these periods.

3. *Specific protection*, which provides for airing time when the junior audience is unlikely to be supported by an adult (from 4 to 7 pm and during programmes directly addressed to minors). All advertisements must be easily recognisable and distinguishable from a broadcasted programme. Advertisements concerning: (a) alcohol, (b) entertainment phone services, (c) condoms (except so-called 'social campaigns') are not allowed.

The rules governing the Italian broadcasting system have recently been renewed. The new provisions have strengthened the measures for protecting children during broadcast programmes and have formally recognised the importance of the recent TV and Minors Self-Regulation Code as a binding set of guidelines for all broadcasting corporations.

In addition, the new law has introduced one of the most significant amendments to the existing principles governing advertising, by prohibiting the use of children under 14 for any kind of TV commercial or promotion. This new provision will obviously have a tremendous impact across the entire marketing and advertising industry.

Furthermore, the Italian public broadcasting corporation, RAI, has drawn its own specific criteria, intended to perform a sort of pre-clearance on the ads submitted by advertisers for broadcasting: the so-called 'Norme SACIS', i.e. SACIS standards. These standards in principle strictly comply with the criteria contained in the CAP of the IAP and are also meant to avoid any kind of TV and radio advertising, able to reach children, which could be detrimental to their imagination and to the balanced development of their personality.

In particular, the SACIS standards require that in all cases where children and adolescents are addressed by ads or where the attention of a

junior audience is particularly gained, the claims and promotional messages must be absolutely clear as to the intended aims as well as to the nature of their content (wherever the content is a result of imagination, the gap between fantasy and reality must be easily identifiable).

The internet

As already mentioned, controlling internet access by minors has become a key problem for all regulators concerned about the risks of children's exposure to harmful content distributed on the web. In view of such concerns, the new Ethic Code signed in November 2003 by the four major Italian internet provider associations has introduced specific measures, directed at preventing minors from coming into contact with material that may prove illegal or be harmful to them. The code promotes conditional access, i.e. a special mode enabling access (via special identifying procedures and/or facilities, such as user identification code, password or a smart card to content otherwise not available to the users. In addition, classification or rating systems will be provided and applied to content subject to conditional access.

Particularly with regard to online marketing campaigns, the code – in compliance with the EU Directive on Electronic Commerce – focuses on protection of minors against the impact of commercial communication, especially when unsolicited or aimed at exploiting a minor's weakness.

The code also intends to reduce significantly the widespread practice of illegally collecting children's personal data through online marketing. To this end the code's provisions require a specific enquiry about the user's age. With respect to minors, internet providers and members of the self-regulation system are allowed to trace users' identities or to process their personal data only having first obtained explicit prior consent from duly informed parents.

Advertising with children

In the past, marketing and advertising campaigns for many products featured children as actors in ads targeted to children as well as to adults. Such practice is now subject to stringent limitations, introduced by the recent amendments of the rules governing the local broadcasting system. According to the new provisions, the use of children under 14 in TV commercials or promotions is now prohibited.

During parliamentary sessions this limitation has given rise to intense discussions among members of the Italian House: opponents argued that such restriction would necessarily result in a serious obstacle to fair competition in certain market/industry sectors, as many companies (those manufacturing products aimed at children) could no longer rely on children as 'ideal testimonials' for those products.

Nevertheless, a majority vote in favour of the new provision was achieved and the ban has been in force since May 2004. It remains to be seen how and to what extent this restriction will affect the marketing and advertising industry.

Employing minors younger than 18 but older than 14 in advertising campaigns and promotions

The use of children under 14 in TV commercials or promotions is now prohibited. Employing minors younger than 18 but older than 14 in advertising campaigns promotions is possible, but some legal requirements still have to be met

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According to the CAP, the ban on employment of children and adolescents for advertising purposes is to avoid possible abuse caused by adults having inappropriate feelings towards youngsters.

The previously-mentioned SACIS standards also provide some general rules of conduct with respect to the use of minors involved in radio or TV commercials. These rules, which do not refer explicitly to specific products, recommend that the role of children and adolescents in advertising should not be exploited to persuade adults to feel obliged to purchase a product as a proof of their love and sense of duty and responsibility towards their children. In addition, the SACIS standards require the following:

- The parts taken by children and adolescents in advertising have to be balanced with respect to the characteristics and type of advertised product.
- Using nude children should occur only when such representation is in line with the nature of the advertised product and meets the need of explaining its function.
- Moreover, the dignity of minors, both as performers as well as the target of ads, must be maintained by avoiding distorting caricatures and by representing scenarios that are wholly spontaneous and natural.
- Advertising messages may not show children and adolescents in unsafe or dangerous situations (e.g. leaning out of a window, using dangerous products such as drugs, insect powder or disinfectants) or portray them handling, without adult supervision, matches or lighters, or mechanical or electrical appliances likely to cause injury when improperly used.
- Under no circumstances should advertising messages discredit values commonly accepted or related to the area of sexuality.

Conclusion

Non-European advertisers wishing to penetrate markets in Europe should be aware that, even though the EU intends (through its directives and regulations) to adopt a common legal framework, factors relating to advertising targeted to children may be subject to the specific national legislation of the various member states.

It is noteworthy that the so-called Television Without Frontiers Directive establishes a specific distinction between programmes (not to be broadcast at all) which might seriously impair the physical, emotional or moral development of minors (e.g. programmes involving pornography or gratuitous violence), and programmes which are likely to impair the physical, emotional or moral development of minors (to be broadcast where – by selecting the viewing time or via appropriate technical means – it is accepted that minors will not normally hear or see such broadcasts). However, each the national authority defines the criteria which dictate whether or not a programme causes serious harm to the development of minors.

Subsequently, while it is up to each national authority to assess what shall and shall not be broadcast, the powers of the EU's legislative bodies are limited to a check of whether differing regulations set by domestic legislation respect the principle of proportionality of the distinctive measures laid down in community law.

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