

PROMOTING TO CHILDREN

ISSUES RELATED TO CHILDREN'S MARKETING

DEFINITION OF A CHILD

Minor child is typically 18 and under. In addition.....

FTC and FCC regulate: Children under the age of 13

CARU regulates: Children under the age of 12 (except for online where the age is 13 and under)

THE REGULATORS

Federal and state laws regulate marketing to children. Specific enacted laws, such as the Children's Television Act and the Children's Online Privacy Protection Act also come into play. Individual network guidelines also regulate children's marketing issues. Self-regulatory agencies, such as The Children's Advertising Review Unit, the Direct Marketing Association, and the Electronic Retailing Association and the Entertainment Software Ratings Board all have voluntary guidelines that regulate member behavior. In some cases, large retailers, such as KMART and WALMART may also "regulate" a company's message or trademarks.

FEDERAL TRADE COMMISSION (FTC)

FTC regulates unfair and deceptive advertising in all media, through Section 5 of the FTC Act (the "Act")

1. Section 5 of the Federal Trade Commission Act (the "Act") prohibits deceptive and unfair advertising claims, which states, in relevant part, that a practice is *deceptive* if a representation or practice is likely to deceive a consumer acting reasonably under the circumstances. And ad is *unfair* if it causes – or is likely to cause -- an injury that is (a) substantial, (b) not reasonably avoidable, and (c) not outweighed by countervailing benefits to consumers or competition.
2. There are no specific provisions related to children, but the FTC interprets a "consumer acting reasonably under the circumstances" provision to reflect a child's reading ability, possible experience limitations, and savvy, when determining whether an ad is deceptive or unfair.
3. The FTC looks at all advertising claims directed at children but takes a particularly focused approach toward things that are typically or actively

marketed to children, such as toys and games, events, food, and 900-type phone numbers.

FEDERAL COMMUNICATIONS COMMISSION

The FCC regulates the timing, number, and placement of advertisements related to children. In addition, recent legislation proposed would make the FCC more visible in children's advertising. The Children's Television Act of 1990 regulates the provides that commercials directed at children meet the following criteria:

1. The number of commercials must not exceed 10.5 minutes per hour during the weekdays, and 12 minutes per hour on the weekends. Violators may not only face strict fines, but may also put in jeopardy their television broadcast license.
2. The commercials may not be "program length," such as informercials, during children's programming. A program length commercial is considered a commercial that is aired before, during or after a program contains a product that is featured in the program. *Note:* the length of the commercial is not necessarily a determining factor.
3. "Host-selling" is prohibited. During children's programming time, a featured character in a program may not subsequently appear in a commercial.
4. There must be a "clear separation" between the program and the commercial. Because children cannot always distinguish between fantasy and fact, the FCC requires that advertisers and television broadcasters make it clear when a commercial comes on. Typically, this is done with a visual and audio cue such as "*After These Messages We'll Be Right Back.*"
5. Commercials advertising program-related products must also be separated by non-program related material.

CHILDREN'S ONLINE PRIVACY PROTECTION ACT ("COPPA")

The Children's Online Privacy Protection Act ("COPPA") was enacted to regulate privacy in online marketing. The FTC uses COPPA to regulate online activity directed at children under 13.

1. The basic provisions of COPPA restrict the amount of personally identifiable information a marketer or advertiser can collect from children under 13. Personally identifiable information includes the *last name* of a child, his or her *email* or *street address*, or a child's *phone number*. In some cases, the collection of *cookies* may also be inappropriate, if there is no provision for destroying the cookies once a visitor leaves the site.
2. COPPA requires that web site operators and those who advertise online, and who direct their advertising at children (or are likely to be visited by children), must do the following before collecting information:
 - a. Post an easy-to-access privacy policy that outlines with specificity the information it collects from visitors.

- b. Provide notice to parents or guardians regarding the information it collects and its usage.
 - c. Provide a reasonably secure screening manner with which to screen out children who are under 13, without alerting them to why they have been denied access to areas of the site.
 - d. Secure verifiable parental consent if the operator is collecting information from children under 13.
 - i. An email sent to a parent's address and with a follow-up email is often a reasonable test.
 - ii. Depending on the circumstances, a phone call or signature-fax may be required.
 - e. Provide parents with access at any time to all information collected on a person's child, and give parents the right to delete whatever information they choose at any time.
 - f. Have reasonable procedures and safeguards in place to protect the confidentiality and security of the information it collects.
3. COPPA does not require verifiable parental consent in the following cases:
- a. A child's email address is collected in order to secure the initial consent.
 - b. A one-time email request for information by a child is answered, so long as the email address is destroyed after the response is provided.
4. The FTC considers the subject matter and the attractiveness of the website when determining whether a site must be COPPA compliant. The lines are not clearly drawn, however, and some sites not directed and children may – because of their subject matter – be required to comply with COPPA. Considerations include:
- a. Cartoon images that attract children
 - b. The existence of games or puzzles
 - c. Attractive or charismatic trademarks or characters, even if the characters may not have been designed initially to attract kids (Joe Camel, South Park kids, etc.)

CONSUMER PRODUCT SAFETY COMMISSION

In some cases, the CPSC may get involved with prizes that are given or awarded to children. In 2003, the CPSC ordered the recall of approximately 38,000 BEARISTA BEAR children's tumbler cups, which were being handed out by Starbuck's Coffee Company. The straws had the potential to break off and become a choking hazard. Similarly, Halo Burger was required to recall 9,000 flashlights because of a problem with battery leakage.

Any time a consumer complaint is lodged against the actual prize, it is safe to assume that the CPSC is going to investigate the matter. *Note:* make sure that prize or gift

manufacturers know the audience to which the product is being given. In some cases, this can change the manufacturing process (and cost).

STATE LAW

State attorneys general and some state government agencies. In some cases, private citizens may bring causes of action, but in most states, actual injury and loss must be proven. California has some of the strictest state compliance issues, holding generally, that advertisers who market to children can be held to a higher standard in terms of false advertising claims. This is consistent with Federal law.

CARU

Children's Advertising Review Unit (CARU) is the self-regulatory body of National Advertising Division of the Better Business Bureau. Although CARU has no specific legal authority, it uses as regulatory leverage the FTC, with which it has a close relationship. CARU has created a series of self-regulatory guidelines for advertisers who want to market to children (www.caru.org), which apply to all advertising (print and electronic media) that is directed at children under 12. The basic principles include the following:

1. Advertising should take into account the general sophistication, level of understanding, and maturity of the audience to which the spot is directed.
2. A child's imagination should not be exploited.
3. Products not appropriate for children should not be promoted to children.
4. Information should be clear and truthful, at a child's level of understanding.
5. Positive social behavior should be depicted in the commercial.
6. The parent-child relationship should be constructively portrayed.

CARU identifies a number of areas where advertisers may run into special problems. For instance, children may not be aware that sweepstakes do not guarantee a prize or that a premium associated with a product is not a permanent option.

NETWORK GUIDELINES

Many networks, particularly those that have a great deal of children's programming, have delineated guidelines to assist marketers with their advertising. Since networks run the risk of losing their broadcast license for non-compliance with appropriate advertising, it is in their best interest to provide marketers with a do's and don'ts list before they spend money on the creative aspects.

The CBS Network has a number of general guidelines to help its advertisers comply with rules regulating children. They include the following:

1. Popularity Proscription: Consistent with the CARU guidelines that have a similar provision, CBS mandates that no claim may imply that children will get peer approval or increased popularity by purchasing a product.

2. No Pressure Language: CBS requests that pressure language be avoided. For instance, “*act fast or you might lose out,*” may be inappropriate under the CBS guidelines.
3. Claim Substantiation: CBS requires that all claims must be substantiated in advance with the Program Practices Department.
4. No Confusing Special Effects: messages that appear too quickly or special effects that might confuse children as to the quality or characteristic of a product should not be used.
5. Celerity Endorsements: CBS does not prohibit the use of celebrities to sell a product, but reserves the right to review them on a case-by-case basis.
6. Prohibition against limiting words: use of terms like “only” or “just” are generally prohibited.
7. Premium Offers Heavily Scrutinized:
 - a. Prior submission to the Program Practices division with information about dates, and geographic areas, as well as POP information.
 - b. Submission of ancillary materials, such as in-store ads and circulars that will compliment the promotion.
 - c. The premium generally should not exceed 20 seconds or, if a commercial shorter than 40 seconds, then one-half the total time, though there are exceptions, depending upon the premium.
 - d. There must be a still photo (called a “limbo display”) of the premium for at least 2.5 seconds.

LAUNCHING A SUCCESSFUL AD PROMOTION

Navigating the maze of promotion issues can be made easier by categorizing a company’s goals and knowing what you’re looking for as you go through. The guidelines set forth by CARU are a helpful start and it also helps to create checklists of the types of issues that might arise in an advertisement review.

Checklist for scripts and visuals for print, electronic media, and television campaigns

- ❑ The script should remind children to seek their parents’ permission if a sweepstakes or a send-away gift is involved.
- ❑ The script should not apply excess pressure on the child to purchase the product, even though the “no purchase necessary” option is available? (“*The more you buy, the more chances you have to win*”)
- ❑ The prize or product should be appropriate for the age focus. (“*Get your hot curling iron today*”)
- ❑ If a sweepstakes, the script should tell children that purchase of the product does not increase their chances of winning and provide information on how to enter for free.

- ❑ The script should not mislead kids as to how many prizes will be awarded or given out. (*"It's a mega-bonanza of prizes. We're going crazy!"*)
- ❑ In a contest, the child should know precisely what effort he is required to put forth in order to enter.
- ❑ The script should not use words like "hurry" and "don't wait?"
- ❑ The script should not imply that those who don't buy the advertised product are uncool. (*"Don't be like Joey... get yours before you don't get invited to the party."*)
- ❑ If the promotion involves a gun-like product, the target must be an inanimate object, not a person, and should not imply that the gun is for shooting people.
- ❑ If the promotion involves food, effort should be made to encourage appropriate consumption. (*"Eat Ketchup to Win!!!"*)
- ❑ The script should not promote illegal behavior (*scratching a bar code off a carton before buying the product*), unsportsmanlike behavior (*"I win, you're lame."*), or selfishness (*"Get your own box."*).
- ❑ Images should not depict use of the product or prize in a way that confuses the child about the prize's characteristics (*If a Barbie doll cannot walk, it should not appear to be free-standing*)
- ❑ Ancillary advertising to support a promotion or an ad should be placed in magazines that are age appropriate; a contest directed at 15-24 year olds is not appropriately placed in a magazine directed at 6-15 years old children.
- ❑ Commercials should not be anxiety-provoking (*Sorry, honey, we don't have enough money to buy food*).

SPECIAL ONLINE ISSUES

- ❑ Children must be able to access some general games and activities on a children's website without having to register or provide personally identifiable information.
- ❑ Children must be given a neutral age-screening page that does not allow them to use the back button if they have entered in an incorrect birth date.
- ❑ Parents should be able to link to the web site's privacy policy (see earlier information under COPPA)

SPECIAL ISSUES, MARKETING NO-NO'S, AND HOW TO GET YOUR AD AGENCY TO CARE ABOUT THIS STUFF

ONLINE PLAY TIME

Advertisers should be careful to not directly relate the amount of online play time a child spends at a sponsor's site to the chances that child has to win.

KIDS' CLUBS

1. The club should be age appropriate. Those clubs that involve celebrities should consider the appropriateness of the celebrity's behavior, before creating a kids' club.
2. A child should perform some affirmative act and should receive something in return.

3. The club sponsor should maintain an ongoing relationship with the child, pursuant to parental permission.
4. There should be a specific benefit to joining the club; the club should not merely be a sales tactic.

PURCHASES ONLINE

1. Website directing products at kids must have a clear and conspicuous statement that the sale is limited to person's 18 years or older.
2. In the event of an unauthorized purchase by a child, websites should offer a reasonable means for return of the item.