

## **KRS: fines imposed on unlawful advertising directed at children may reach billions of HUF**

**Advertisers must fully abide by the legal restrictions on advertising to children, as the law, and its operation, grants extra protection to children as a target group – suggests the legal expert at Kovács Réti Szegheő Attorneys at Law.**

Since the target group of children is vulnerable and easy to manipulate, the legislator has enacted a series of legal restrictions to ensure their protection. Such provisions are also contained for example in the Act on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities, and in the Act on Media Services and on the Mass Media.

Despite all that, practicing parents are faced with the pervasive exposure of advertisement geared at enticing children to purchase day by day, even during children's programming and the evening cartoon blocks – notes Dr Mónika Kapetz attorney.

### **Prioritised protection**

Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices (Unfair Commercial Practices Act) grants twofold protection to children as consumers. Firstly, it grants prioritised protection to children, as a target group.

Secondly, the Schedule annexed to the act incorporates the so called 'black list', which, among the unfair commercial practices – i.e. practices which are regarded as unlawful without any further condition to be met – includes the 'direct exhortation to children to buy advertised products, or persuade their parents or other adults to buy advertised products for them'.

In cases where the Hungarian Competition Authority investigated advertisements designated to children, it has established that in order to guarantee the protection of children, the Act on Unfair Commercialisation also curbs ads targeting consumers who may influence the consumer choice of the person who will actually purchase the product.

To sum it up, commercials where the campaign is aimed at persuading children to pester their parents to buy certain products will be deemed illegal – notes the expert of Kovács Réti Szegheő Attorneys at Law.

### **Enforcement practice**

It is important, that for the decision to be brought in the case there is no such condition as a contract concluded under civil law. What is more, the violation may be established irrespective of whether the purchase of the advertised product has actually taken place. Ads will be considered as advertisement designated for children, even if it is the parent, de facto, to purchase the product.

The established law enforcement practice has shown that ads will be deemed to be in breach of the law even if they do not contain explicit calls on the customer to 'buy the product'. It is a sufficient condition for infringement if the advertisement stimulates the child to get the product, for example in case children get gifts (e.g.: toys, stickers, etc.) subject to purchasing a given product.



The legislator, in case of the ‘blacklisted’ facts, assumed that those materially distort the economic behaviour of consumers, which is why the proceeding authority does not investigate the aggressiveness of the message or its impact on minors. The occurrence of the fact in and by itself constitutes the infringement, irrespective of any further conditions.

### **Cognitive and emotional defencelessness**

Obviously the legal restrictions were not aimed at banning the production of ads for kids on the whole, but owing to the different levels of emotional and cognitive development of children and grownups and the differences in their perception, product features that are desirable for children and adults are different – adds Dr Mónika Kapetz.

Often, advertisements are not about the benefits of having the advertised product, but the disadvantages of not owning it, and ads of this type have a dramatic impact on children.

Research has shown that there is compelling need for protecting children from the exposure to advertising. Children aged 3 to 4 years have trouble distinguishing commercials from reality, and between 5 to 7 their interpretation is one-sided, as they frequently accept commercials’ claims at face value. For them ‘what is not true is a lie’. Children are not capable of understanding the worth of money until they reach the age in which they become familiar with the elementary arithmetic operations.

### **Huge responsibility**

Dr. Mónika Kapetz stresses that the above facts clearly show the enormous responsibility of advertisers when it comes to determining the content and design of ads.

Law enforcement organs examine the features of each advertisement regarding form and content individually and on a case-by-case basis, in order to establish whether the advertisement for kids violates the statutory restrictions. During the inspection particular attention is paid to the investigation of ‘direct exhortation’.

The good news is that the protection of children enjoys priority for advertisers and NGOs alike, since their collaboration extends the protection to a much broader range, but much is left to do still.

Parents who are concerned about ads they consider unlawful may report their complaints to the Consumer Protection Authority.

The Consumer Protection Authority is the Hungarian authority that takes action against unlawful advertising pursuant to the Unlawful Commercial Practices Act. However, if the infringement in question exerts material influence upon competition, it is the Hungarian Competition Authority that will go after the case. If necessary, the Consumer Protection Authority will refer the complaint ex officio to the Hungarian Competition Authority.



**It is not a typing error: the fine may add up to HUF 2 billion**

In case the Consumer Protection Authority establishes the violation of advertising laws, it may ban the continuation of the infringement, and may impose a consumer protection fine ranging from HUF 15 thousand up to HUF 2 billion, if so prescribed by law.

The Competition Authority may also impose the same legal consequences on the enterprise infringing the law, where the maximum amount of the fine may reach 10 percent of the amount of the net sales revenues of the preceding financial year of the offending enterprise.

Ultimately, the expert of Kovács Réti Szegheő Attorneys at Law notes that when it comes to ads designed for children, the penalty imposed on violation of the law is yet another reason that makes it advisable for advertisers to fully abide by advertising law requirements.