

## EACA Monthly Newsletter - August-September 2010

### EU & National News

#### Advertising



#### Report on 'the impact of advertising' discussed in Parliament

MEP Philippe Juvin (French Conservative) has published a self-initiative report which looks at the implementation of the current advertising rules - including the Unfair Commercial Practices Directive and the Audiovisual Media Services Directive - but also at online advertising techniques, self-regulation and the protection of vulnerable consumers.

The report was discussed in the lead Committee for Internal Market and Consumer Protection (IMCO) on September 13th and the Women's Right & Gender equality (FEMM) Committee adopted its draft opinion on September 28th.

Mr Juvin's report did not receive any major critiques within the IMCO Committee however some MEPS expressed their concerns on unfair & intrusive commercial practices, disguised advertising, advertising to children and online privacy.

The opinion adopted by the FEMM Committee is also fairly moderate and makes the following recommendations, it:

- calls on the Commission, the Member States, the civil society and advertising self-regulatory bodies to fight against gender stereotyping;
- calls all Member States that have not yet done so to set up an advertising 'watchdog body';
- calls advertising agencies and media professionals to reconsider the promotion of extremely skinny models;
- takes the view that advertising can be an efficient tool in challenging and confronting stereotypes and a lever against racism, sexism and discrimination;
- urges the Commission to promote comparative research and documentation among Member States concerning the image of women being projected by advertising and marketing content and to identify good practices for effective and gender-friendly advertisement.

The 'Juvin report' will be voted in the lead Committee at the end of October and in plenary at the end of November.

#### Children



#### Children exposed to fewer food ads in Europe

The EU pledge has now been signed by 12 major companies including Burger King, Coca-Cola, General Mills, Mars, Nestlé© and PepsiCo, who have committed to advertise responsibly. Within this framework, most of the biggest food brands in Europe have transformed their marketing activity aimed at children.

Research done by Accenture Media Management concludes that firms representing nearly 70% of food adspend in the European Union have adapted their strategies in this area. It assessed the period from 2005 to 2010, and said the majority of corporations no longer promoted products to children under 12 years old or now only ran ads covering "better for you" goods.

Such a move sought to ensure conformity with the European Commission's Platform on Diet, Physical Activity and Health and applied to TV, print, the web and communications in primary schools.

Accenture's analysis of 580,000 sample TV spots in Greece, Hungary, the Netherlands, Poland, Portugal and Spain demonstrated a 98.9% compliance level. Based on an appraisal of almost 50 websites mainly used by children in the same countries, just one erroneous example was identified.

Overall, Accenture's review revealed the amount of exposures for food on all TV shows and channels has declined 36%. Many manufacturers have adopted stringent nutritional criteria to define healthier products, but even here the number of commercials has dropped 60%.

Elsewhere, monitoring of print ads in magazines specifically for this demographic available in France, Portugal, Spain and the UK yielded a 100% approval rating. Separately, BDRC Continental surveyed 400 schools in Belgium, Italy, Slovakia and the UK, and discovered brand owners met the rules on 92% of occasions.

"These independent audits show how self-regulation can help deliver on public policy objectives and why it should not be discounted from the policy mix."

Cadbury and Wrigley are set to join the EU Pledge after respective takeovers by Kraft and Mars, while Procter & Gamble, Intersnack, Lorenz Snack-World, Unichips-San Carlo and Zweifel Pomy-Chip have also signed up.

Source: *World Federation of Advertisers, WARC*

#### Data protection

#### European Roundtable on the benefits of Online Advertising for Consumers

On 17 of September, Neelie Kroes, Vice President of the European Commission responsible for the Digital Agenda gave a speech during a roundtable entitled "Towards more confidence and more value for European



Digital Citizens" on the benefits of online advertising for consumers.

Neelie Kroes is the Commissioner responsible for the Digital Agenda, the implementation of the electronic communications and privacy Directive and Viviane Reding, the Commissioner for Justice, Fundamental Rights and Citizenship is responsible for the revision of the Data Protection Directive.

Neelie Kroes recognized the value of online advertising. As a growing market and one that delivers many benefits to European citizens, online advertising is very important and targeted advertising is a particularly important part of this market.

She emphasized the importance of online advertising for the development of the World Wide Web and the fact that internet users can benefit from online advertising in a range of ways:

- to get access to services free at the point of use
- to get advertising from a more diverse range of sources
- the advertising experience is amongst the most sophisticated available in terms of convenience, relevance, depth of information and so on.

She also said we need to make sure that users feel they have the effective possibility to choose whether they want to be tracked and profiled or not.

Neelie Kroes trusts self-regulation for the implementation and enforcement of the ePrivacy Directive & said the self-regulation framework should include at least the following four elements:

- effective transparency: users should be provided with clear notice about any targeting activity that is taking place;
- consent: an appropriate form of affirmation on the part of the user that he or she accepts to be subject to targeting;
- a user-friendly solution: possibly based on browser settings;
- effective enforcement. It is essential that industry's self-regulation system includes clear & simple complaint handling, reliable third-party compliance auditing and effective sanctioning mechanisms.

To see full speech, click [here](#)

Source: *European Commission*

#### **EU takes UK to court over online data protection**

The European Commission announced on September 30th that it had decided to refer the United Kingdom to the EU's Court of Justice for not fully implementing EU rules on the confidentiality of electronic communications such as e-mail or internet browsing. The Commission previously requested the UK authorities in October 2009 to amend their rules to comply with EU law.

The Commission considers that UK law does not comply with EU rules on consent to interception and on enforcement by supervisory authorities. The EU rules in question are laid down in the ePrivacy Directive and the Data Protection Directive.

The infringement procedure was opened in April 2009, following complaints from UK internet users notably with regard to targeted advertising based on analysis of users' internet traffic.

In April 2008, the UK fixed operator, BT, admitted that it had tested a behavioural advertising technology known as 'Phorm' in 2006 and 2007 without informing customers involved in the trial. BT carried out a new, invitation-based, trial of the technology in October-December 2008. BT's trials resulted in a number of complaints to the UK data protection authority - the Information Commissioner's Office (ICO) and to the UK police.

Source: *European Commission*

#### **European Commission postpones the revision of the General Data Protection Directive**

In 2010, the European Commission organised a public consultation on the EU Data Protection Framework to gather stakeholders' views on the possible revision of the Data Protection Directive.

Viviane Reding, Commissioner in charge of Justice, Fundamental Rights and Citizenship had scheduled to present a proposition for a revision of the Data protection Directive mid-November 2010.

However, several European data protection authorities urged the European Commission not to rush through the revision and requested additional time in order to address the impact of this revision and challenges to personal data protection.

The European Commission said that the proposition is finally scheduled for mid-2011.

Source: *CNIL*



#### **European Commission launches a public consultation on the implementation of the Directive on electronic commerce**

In mid-August, the European Commission opened a public consultation in order to gather different stakeholders' opinions on the implementation of the Directive on electronic commerce.

Electronic commerce constitutes an important means to promote cross-border trade, improving the accessibility of Europe's population to more varied, better quality products and exerting greater price competition in the online and offline world.

However, 10 years after the adoption of the "directive concerning certain legal aspects of information society services and, in particular, electronic commerce" the so-called Electronic Commerce Directive, the development of retail electronic commerce remains limited to less than 2% of European total retail trade.

The European Commission wishes to study in detail the various reasons for the limited take-off of electronic commerce:

1. Level of development of information society services
2. Administrative cooperation between Member States
3. Contractual restrictions on cross-border on-line sales
4. Cross-border on-line commercial communications
5. Development of on-line press services
6. Development of on-line pharmacy services
7. Resolution of on-line disputes

Interested stakeholders need to answer to the consultation by the 15th of October.

For more information, click [here](#)

Source: *European Commission*

### Consumers driving the digital uptake

In 2010, IAB Europe asked McKinsey & Company to deliver an independent assessment of the consumer surplus of digital services financed by online advertising. The assessment was based on a review of secondary research and on original conjoint-based market research estimates of users' benefits from 16 ad-funded Web services. This research was designed and conducted in the course of Spring 2010 in six major countries: France, Germany, the UK, Spain, Russia, and Italy.

The key finding is that user benefits from Web services are large "very significantly larger than the advertising revenues earned from providing those services, and very significantly larger, too, than any disturbance linked to advertising and privacy issues." Scaling this finding to the existing broadband population of the IAB Europe countries as well as the US, the estimated consumer service surplus is about a 100 billion for 2010, or more than three times current revenue from ad-based services.

The report also states that while the majority of users face advertising and privacy issues, the value they obtain from using Web services, separate from the value of access, is six times larger than the value they are willing to expend to avoid advertising disturbance and privacy risks in 2010. In practical terms, for each euro an Internet user is willing to spend to limit privacy and advertising disturbance, the user gets a value of six Euros from using current ad-funded Web application services.

The report covers the following themes:

- 1) The larger-than-expected, and growing, consumer surplus of ad-funded Internet services
- 2) Free ad-funded services generate the bulk of consumer surplus
- 3) Advertising and privacy issues carry relatively little weight as compared to the value of free, ad-based, online services

To see full report, click [here](#)

Source: *IAB*

Obesity

Global



### OECD releases the "Obesity and the Economics of Prevention" book

On 23 September, the Organisation for Economic Co-operation and Development officially released the "Obesity and the Economics of Prevention" book. It will be one of the inputs into the forthcoming meeting of OECD Health Ministers on 7- 8 October 2010.

The book is an attempt to explore the broader scope of the potential contribution of economics to the design of effective, efficient and equitable approaches to chronic disease prevention, with a focus on diseases linked to unhealthy diets, sedentary lifestyles and obesity. The book presents a wealth of data and analyses carried out by the OECD with the aim of supporting the development of policies for tackling obesity and preventing chronic diseases by its member countries. Some of these analyses were designed and undertaken in close partnership with the World Health Organisation.

The book has two chapters dedicated to Self-regulation in Food advertising:

- 1) Regulation of Food Advertising to Children: the UK Experience  
Ofcom, the UK independent regulator joined forces with Government and relevant organisations to elaborate a package of measures to regulate food advertising to children.  
The impact of the restrictions made is:
  - A significant reduction of children under 16 exposed to HFSS advertising
  - An enhanced protection for children and parents by appropriate revisions to advertising content standards
  - Avoided disproportionate impacts on the revenue of broadcasters
  - Avoided intrusive regulation of advertising during adult airtime
- 2) The Case for Self-Regulation in Food Advertising  
The World Federation of Advertisers developed a vision for effective policy response to public health concerns relating to food advertising to children.
  - Best practice promotion (through "pledge programmes")
  - Individual corporate food marketing communications policies
  - Industry-wide self-regulatory codes for food marketing
  - National self-regulatory frameworks
  - National/regional regulatory frameworks

To see the book click [here](#)

Source: RAC, Organisation for Economic Co-operation and Development

## ► EU

### European Commission publishes report on "Obesity" Platform evaluation

EACA is a member of the European Platform on Diet, Physical Activity and Health set up in 2005 with the purpose of creating a forum for actors at European level who can commit their membership to engage in concrete actions to tackle the problem of overweight and obesity.

On 12 July, the European Commission published an external evaluation report of the first five years of the EU platform with two case studies on Advertising and Marketing to Children and on Reformulation.

The evaluation recognizes that industry's commitments on advertising/marketing and reformulation "are having an impact and are likely to be playing a part in efforts to combat obesity and overweight in Europe, though it is too early to say to what extent." It also mentions the split between industry who is satisfied by the EU Platform and NGO members.

The evaluation suggests as priorities:

1. focus on the content and the relevance of commitments
2. ensuring more cross-sectoral collaboration
3. focus on under-represented areas such as education
4. improving the monitoring system
5. comprehensive assessment of the effectiveness
6. balanced and transparent communication strategy
7. strengthening ties with the Member States

To see the full Report, click [here](#)

Source: European Commission

### European Commission says ban on advertising junk food to children is not needed

Health and Consumer policy Commissioner John Dalli has rejected any move for the EU to impose restrictions on the advertising and marketing of foods high in fat, sugar or salt to children.

On 23 of July, Dalli replied to a written question from MEP Daciana Octavia Sârbu (Romanian Socialist). The MEP had asked about toys sold with fast-food products for children. She argued that in contrast to efforts being made in the EU to raise public awareness of the importance of a healthy lifestyle, fast-food companies are carrying out aggressive marketing campaigns targeted at children such as selling fast-food products with a toy.

The MEP questions were:

- 1) Will the Commission assess, from the point of view of ethics and social responsibility, the child-oriented marketing techniques that are promoted by fast-food outlets?
- 2) Is the Commission considering the possibility of banning offers that include toys with fast food?
- 3) "Does the Commission believe that the advertising of products for children should be subject to more stringent rules, also with regard to the need to promote a healthy lifestyle, which includes a healthy diet?"

Dalli replied: "Advertising restrictions are not necessary as long as the industry is committed to responsible advertising. Industry should develop codes of conduct and public authorities should support these initiatives and intervene only if self-regulation is not effective."

The Commissioner went on to say that the EU's Audiovisual Media Services Directive supports the self-regulatory approach to food advertising for children. Member States must encourage audiovisual media service providers to develop codes of conduct in audiovisual commercial communications to children in terms of foods high in fat, salt and sugar, he said.

Dalli noted that television networks and other audiovisual media service providers joined Member States for a special workshop on codes of conduct in December 2009 and that the exercise will be continued at another on 25 October.

The European Commission is also aware that some of the broadcasters developed strategies to promote healthy diet and healthy lifestyles among children.

Source: European Parliament

## ► UK

### Evaluation of UK advertising restrictions on HFSS foods

On 26 July, Ofcom, the independent regulator and competition authority for the UK communications industries, published its final review of the UK high fat, sugar, salt Food (HFSS) Advertising Restrictions. The report assesses the effectiveness of the UK rules restricting HFSS food and drink product advertising to children under 16, agreed in 2006 and phased in between April 2007 and January 2009.

The principal aim of the Ofcom rules was "to reduce the exposure of children to HFSS advertising, as a means of reducing opportunities to persuade children to demand and consume HFSS products." HFSS products were defined on the basis of the nutrient profile model developed by the UK Food Standards Agency (FSA).

Ofcom carried out an interim review of the rules in 2008, before the final phase of restrictions came into force. The key findings of the 2008 review were that, during 2007/8, children under 16 saw around 34% less HFSS advertising than in 2005, with younger children (4-9 years olds) seeing 39% less and older children (10-15 year olds) seeing 28% less.

The final review looks at data from 2009, following the implementation of the final phase of restrictions (a ban

on all HFSS advertising on children's channels) and compares it with data for 2005 (prior to the introduction of the restrictions).

To see full report, click [here](#)

Source: *Ofcom*

## Spain

### Spain proposes extending food SR code to age 14

On 3 September, the Spanish government adopted a proposal for a Law spearheaded by Health Minister Trinidad Jiménez on Food Safety and Nutrition.

As far as advertising is concerned, the draft law contains two key provisions:

1. schools should be commercial-free environments;
2. the self-regulatory code applicable to food and beverage advertising to children since 2005 (PAOS Code) should be extended to cover children under 15.

The proposal calls for voluntary measures, to be agreed by industry and public authorities, to achieve these objectives.

The PAOS Code currently counts 36 signatories representing, according to the Ministry of Health, 94.29% of food and beverage TV advertising spend aimed at children in Spain. Among other things, it forbids the use of celebrities and licensed characters in food and beverage advertising to children.

The legislative proposal, of which food advertising provisions are only a minor element, will now need to be passed through Parliament to become law.

For more information, click [here](#)

Source: *Agencia Española de Seguridad Alimentaria y Nutrición*

## Pharmaceuticals



### European Commission answers parliamentary question on dissemination of information of prescription drugs via Facebook

MEP Corinne Lepage (French Liberal) addressed a question to the European Commission regarding the page dedicated to Astra Zeneca's prescription drug Inexium on Facebook.

Corinne Lepage points out in her question that the content is in French which implies that a European public is being addressed and that it promotes the product as it mentions that 'Inexium is by far the most effective PPI (Proton Pump Inhibitors)'.

She also refers to the fact that the Directive on medicinal products for human use prohibits the advertising to the general public of medicinal products which are available on medical prescription only and to a recent ruling from the European Court of Justice which states that 'dissemination by a third party of information about a medicinal product... may be regarded as advertising... even though the third party in question is acting on his own initiative and completely independently'.

Mr Dalli, the Health & Consumer Commissioner, answered that:

- On the basis of the ruling of the European Court of Justice in Case C-421/07, the Commission understands that dissemination of information about a medicinal product on online social networking sites may be considered as advertising, even if it is carried out by a third party independently of the manufacturer and seller of the product. Therefore, whatever is the source of the information, a third party or the manufacturer or marketing authorisation holder, the current ban of advertising to the general public of prescription-only medicinal products applies.
- The European Commission's proposal on information to patients adopted in December 2008, prior to the abovementioned ruling, aims at providing a framework for the provision of non-promotional information by marketing authorisation holders about their prescription-only medicines to the general public, while ensuring that the legislative framework continues to prohibit direct-to-consumer advertising of prescription-only medicines. Therefore, if the information about the medicinal product is provided by the marketing authorisation holder through the online social networking site Facebook, the Commission proposal would be applicable and provides requirements for this diffusion. On the contrary, if the information is provided by a third party, then no specific requirements would be foreseen by the new legislative proposals.
- The current provisions of the Directive on medicinal products on the advertising of medicinal products subject to prescription apply irrespective of the means used to disseminate information.

The European Commission's proposal on information to patients is currently being discussed in the European Parliament and could potentially help cover the existing grey areas. It will be voted on in plenary in December and it looks like the Rapporteur Christofer Fjellner (Swedish Conservative) is in a position to gain the Parliament's support. Whether the Parliament & the European Commission will get Member States to endorse this proposal is still an open question.

Source: *European Parliament*

## Tobacco

### European Commission launches public consultation on revision of tobacco products Directive

On 24 of September, the European Commission launched a public consultation on the revision of the Tobacco Products Directive. The Commission invites all stakeholders to give their input on the different policy



options and to comment on possible measures to improve awareness of the dangers of tobacco use, increase motivation to quit and discourage initiative of smoking.

The Commission aims to facilitate the functioning of the internal market in the tobacco products sector while ensuring a high level of protection to public health.

Consumer information on tobacco products is questioned. The European Commission is asking relevant stakeholders and civil society their opinion on current packaging and willing for modification.

The Commission invites all stakeholders to comment before the 19th of November.

For more information, click [here](#)

*Source: European Commission*