



How to stop Junk Food Marketing to Children:

Option consommateurs
And presented at
Coalition Québécoise sur la problématique du poids

November 2010



Option consommateurs

MISSION

Option consommateurs is a not-for-profit association whose mission is to promote and defend the rights and interests of consumers and ensure that they are respected.

HISTORY

Option consommateurs has been in existence since 1983. It arose from the Mouvement des associations coopératives d'économie familiale (ACEF), more particularly, the ACEF of Montreal. In 1999, it merged with the Association des consommateurs du Québec (ACQ), which had a similar mission for over 50 years.

PRINCIPAL ACTIVITIES

The Options consommateurs team consists of 30 employees who work in five different departments: Budgeting, Energy Efficiency, Legal Affairs, Press Room, and Research and Representation. Over the years, Option consommateurs has developed special expertise in the areas of financial services, health, agri-food, energy, travel, access to justice, commercial practices, personal indebtedness, and the protection of privacy. Every year, we reach 7,000–10,000 consumers directly, give numerous interviews to the media, sit on working groups and boards of directors, carry out large-scale projects with key partners, and produce research reports, policy papers and buyers' guides, including the annual Toy Guide on behalf of Protégez-vous magazine.

MEMBERSHIP

Option consommateurs is active on many fronts: doing research, organizing class action suits, and applying pressure on companies and government authorities. You can help us do more for you by becoming a member of Option consommateurs at www.option-consommateurs.org/en/.

OPTION CONSOMMATEURS

Main office

2120, rue Sherbrooke Est, bureau 303

Montréal (Québec) H2K 1C3

Téléphone : (514) 598-7288

Télécopieur : (514) 598-8511

info@option-consommateurs.org

Ottawa office

1, rue Nicholas, bur. 1210

Ottawa (Ontario) K1N 7B7

Telephone: +1 (613) 244-2111

Fax: +1 (613) 244-5777

About the Collaborative Action on Childhood Obesity

Production of this report has been made possible through a financial contribution from Health Canada, through the Canadian Partnership Against Cancer, the Public Health Agency of Canada, and the Heart and Stroke Foundation. The views expressed herein represent the views of the **Collaborative Action on Childhood Obesity** and do not necessarily represent the views of the project funders.

This Coalition is part of CLASP (Coalitions Linking Action and Science for Prevention) of the Canadian Partnership Against Cancer. The program of activities titled 'Collaborative Action on Childhood Obesity' (CACO) will be carried out from October 2009 through March 2012.

The CACO project is made up of six national, provincial, and territorial partners who bring to the project expertise in regards to policy, research, prevention/promotion, and clinical practice:

- **Chronic Disease Prevention Alliance of Canada**
- **Childhood Obesity Foundation**
- **University of Ottawa**
- **Heart and Stroke Foundation of Quebec**
- **Quebec Coalition on Weight-Related Problems**
- **Government of the Northwest Territories**

The objective of this Coalition is to reverse the growing trend of obesity in children by reducing the consumption of sugar-sweetened beverages (SSB) and time spent by youths in front of TV and computer screens. The CACO project aims at making low nutritional value food less seductive and less accessible, while increasing the presence of healthy alternatives in children's environments. In partnership with three northern First Nations communities, land based health strategies are also being developed to reduce the prevalence of obesity and obesity related diseases.

Within the CACO project, the Quebec Coalition on Weight-Related Problems (Weight Coalition) plays a knowledge transfer role with the five other partner organizations, especially on advertising directed to children. Quebec has had a law prohibiting advertising directed at children since the beginning of the 1980's and the Weight Coalition has filed several complaints under this law. It has a great deal of experience on this subject and is an important ally for other Canadian provinces wishing to implement similar regulatory measures. As part of the project on preventing child obesity, Coalition Poids mandated Option consommateurs to produce a functioning legal analysis of consumer ombudsmen in Sweden and Norway. The objective of the present study is to analyse the powers of oversight of ombudsmen in these two countries, to present two or three case studies of involvement of the ombudsmen and, the possible application of this model to Canada.

About the Quebec Coalition on Weight-Related Problems

Created in 2006 and sponsored by the Association pour la santé publique du Québec since 2008, the Quebec Coalition on Weight-Related Problems is working toward the adoption of specific public policies in regard to weight related issues. It acts within three strategic areas (agri-food industry, sociocultural and built environment) to foster the development of environments that enable healthy choices and prevent weight related issues.

Foreword

In 2008, Option consommateurs conducted a study on advertising directed at children in order to identify the most effective ways to protect children from the effects. As part of this study we examined the existence of consumer ombudsmen in Sweden (*Konsumentombudsmannen*) and Norway (*Forbrukerombudet*). The 2008 study was limited due to resource constraints, Option consommateurs then recommends that further study be accomplished to clarify the functions of consumer ombudsmen, in Norway and in Sweden, to explore if these models could be implemented in Quebec or even Canada.

Lately, the Public Health Agency of Canada has started to consider the challenge of the commercialization of food and drinks towards children on the ground of World Health Organization recommendations. The WHO recommends that governments should play a central role in developing and implementing policies as well as in monitoring the marketplace. In such case, consumer ombudsmen could provide an interesting development.

Finally, we also analyse potential modifications of the *Competition Act*, as a way to limit advertising directed at children. Our analysis was based on two private members' bills brought forward by the New Democratic Party MP Peter Julian. **C-414**, in (2007) and **C-324**, (February 2009)

The objective of the present study is to analyse the powers of ombudsmen in Sweden and Norway in terms of surveillance, to present two or three case studies in which they had to intervene as well as the possible application of this model to Canada.

In summary, to stimulate reflection on this subject, we have proposed the following steps:

- 1) Literature review and case studies on ombudsmen in Norway and Sweden
- 2) Legal analysis of the powers and responsibilities of ombudsmen as well as possible amendments to the *Competition Act*.
- 3) Analysis of the definitions of “healthy food” and “unhealthy food” and their possible application to Canada
- 4) Interviews with experts (Canadian and international)
- 5) Reports in English and in French

TABLE OF CONTENTS

OPTION CONSOMMATEURS.....	II
FOREWORD.....	IV
TABLE OF CONTENTS.....	VI
RÉSUMÉ EXÉCUTIF ET RECOMMANDATIONS.....	1
EXECUTIVE SUMMARY AND RECOMMENDATIONS.....	2
CHAPTER 1: BAN ON ADVERTISING DIRECTED AT CHILDREN.....	3
1.3 TWO SCENARIOS FOR PROHIBITING ADVERTISING TO CHILDREN.....	6
<i>Scenario 1: Overall ban on marketing directed at children.....</i>	6
<i>Scenario 2: Partial ban on creating advertising directed at children.....</i>	8
Scenario 2: definition of healthy and unhealthy food.....	8
<i>Beyond advertising, why do we need definitions?.....</i>	9
<i>Types of definitions.....</i>	10
<i>Conclusion.....</i>	14
CHAPTER 2: CONSUMER MEDIATORS: PROTECTING CHILDREN AND CONSUMERS.....	17
2.1 CASE STUDY: CONSUMER OMBUDSMAN AND THE MARKET COUNCIL IN NORWAY.....	17
2.1.1 <i>Enforcement powers.....</i>	18
2.1.2 <i>Marketing directed at children and minors.....</i>	19
2.1.3 <i>The Broadcasting Act.....</i>	20
2.1.5 <i>Consumer ombudsman and the Market Council in Practice.....</i>	21
2.1.6 <i>Analysis.....</i>	22
2.2 CASE STUDY: THE SWEDISH CONSUMER AGENCY.....	23
2.2.1 <i>Law enforcement.....</i>	23
2.2.2 <i>KO support.....</i>	24
2.2.3 <i>Group action.....</i>	24
2.2.4 <i>Advertising concerning children and young people.....</i>	25
2.2.5 <i>Analysis.....</i>	26
FINALLY, THE OMBUDSMAN CAN LEVY FINES AND INITIATE LAWSUITS BEFORE THE MARKET COURT. IN VERY IMPORTANT CASES, HE CAN ALSO REPRESENT THE CONSUMER AND PAY FOR HIS LEGAL FEES.	26
2.3 CASE STUDY: THE SWEDISH CHILDREN’S OMBUDSMAN.....	27
2.3.1 <i>Background.....</i>	27
2.3.2 <i>Work on a general level.....</i>	28
2.3.3 <i>Changes in legislation and a national strategy.....</i>	28
2.3.4 <i>A Stronger Children’s Ombudsman.....</i>	28
2.3.5 <i>Analysis.....</i>	29
2.4 LITERATURE REVIEW: OMBUDSMEN/CONSUMER MEDIATORS.....	30
2.4.1 <i>Results.....</i>	30
Principles Underlying the Creation of the Consumer Ombudsman.....	30
Use of Women and Children in Advertising under Swedish Law.....	30
The Ombudsman’s Role in Class Action Suits.....	31
National Laws in the European Community.....	31
Non-specific Literature on Advertising Food and Drinks targeted at Children.....	32
2.4.2 <i>Finland: The Ombudsman to the Rescue of Consumers.....</i>	34
2.4.3 <i>The Swedish National Commission on Consumer Litigation.....</i>	35
CONCLUSION.....	36
BIBLIOGRAPHY.....	I

Résumé exécutif et recommandations

L'augmentation fulgurante des maladies chroniques et de l'obésité nous oblige à prendre des mesures pour faire face à ce fléau qui affecte la société dans son ensemble. De plus en plus d'études tendent à démontrer un lien de causalité entre l'exposition des enfants à la publicité et les problèmes de poids dans cette population.

De nombreux pays ont mis en place des lois visant à minimiser l'exposition des mineurs aux publicités à but commercial. Au Canada, le Québec est la seule province à s'être doté de ce type d'outils juridiques. Le Canada pourrait emboîter le pas avec la modification de certaines lois. Deux scénarios sont alors envisageables. D'une part, une interdiction générale de tous types de publicité destinée aux enfants. D'autre part, une interdiction partielle de publicité destinée aux enfants qui ne concernerait que certains aliments et marques. Si privilégié, ce scénario nécessiterait que le Canada se dote d'une définition d'aliment sain et d'aliment malsain, condition *sine qua non* à la mise en place de ce type de politique publique.

Au-delà de l'existence de telles lois, plusieurs pays nordiques ont des Ombudsman de consommateurs qui agissent à plusieurs niveaux. Ils s'assurent notamment que l'interdiction de publicité destinée aux enfants est respectée (en Norvège et en Suède, par exemple). Outre l'intérêt associé à de telles structures, il ressort clairement de notre étude que la valeur de ces Ombudsman équivaut à la qualité et à la pertinence des lois qu'ils sont chargés de faire appliquer. Dans une telle optique, la création d'un Ombudsman de consommateurs pour le Canada ne pourrait précéder la mise en place soit : d'une loi spécifique destinée à protéger les consommateurs (i.e. Loi sur la protection du consommateur au Québec ou *Marketing Control Act* en Norvège), soit par les modifications de la **Loi sur les aliments et les drogues** et/ou de la **Loi sur la concurrence**, pour y inclure des dispositions empêchant la publicité destinée aux enfants.

Recommandation 1 : Option consommateurs recommande de mettre en place des mesures ciblées pour améliorer les comportements alimentaires et la santé des Canadiens, notamment les enfants.

Recommandation 2 : Plus spécifiquement, Option consommateurs croit que le gouvernement devrait s'assurer que les enfants ne sont pas exposés à des messages publicitaires faisant la promotion d'aliments malsains (fortement caloriques et faiblement nutritifs qui sont riches en sucre, gras, sel et les marques qui leur sont associées)

Recommandation 3 : Pour y arriver, Option consommateurs recommande de mettre en place une de ces deux alternatives :

- 1) Légiférer sur une « interdiction générale de faire de la publicité destinée aux enfants »
- 2) Légiférer sur une « interdiction partielle de faire de la publicité destinée aux enfants »

Si la **recommandation 3b** est retenue, les recommandations suivantes s'ajoutent :

Recommandation 4 : Option consommateurs recommande au gouvernement du Canada de définir une catégorie « d'aliments sains » et « d'aliments malsains » en prenant en compte les enjeux soulevés dans ce rapport. Et

Recommandation 5 : Option consommateurs recommande au gouvernement du Canada de créer un groupe de travail multipartite qui aura pour seul mandat de conseiller le gouvernement sur les possibilités de définition « d'aliments sains » et « d'aliments malsains ».

Executive summary and recommendations

The staggering increase in chronic diseases and obesity forces us to take measures to face this scourge which affects society as a whole. More and more studies have demonstrated a causal link between exposing children to advertising and weight problems in the same population.

In order to overcome this burden, numerous countries have put laws into place which aim to minimize the exposure of minors to commercial marketing. In Canada, Quebec is the only province to have similar legal tools in place. Canada could follow such leadership by modifying certain laws. Two scenarios are thus conceivable. On the one hand, an overall ban on all types of commercial marketing directed at children. On the other hand, a partial ban on marketing directed at children which would only apply to certain foods and brands. If preferred, this scenario would require Canada to provide a definition of healthy food and unhealthy food, a *sine qua non* condition for establishing this type of public policy.

Beyond the existence of such laws, several northern countries have consumer Ombudsmen who act on several levels. They ensure above all that the ban on marketing directed at children is respected (in Norway and in Sweden, for example). In addition to the interest associated with such structures, it clearly emerges from our study that the value of these Ombudsmen are tantamount to the quality and relevancy of the laws that they are in charge of applying. From this perspective, the creation of a consumer Ombudsman for Canada could not precede either establishing a law specifically intended to protect consumers (i.e. : the *Consumer Protection Act* in Quebec or *Marketing Control Act* in Norway) or modifying the *Food and Drugs Act* and/or to the *Competition Act* to include provisions preventing marketing directed at children.

Recommendation 1: Option consommateurs recommends instituting measures aimed at improving dietary behaviors and the health of Canadians, mainly children.

Recommendation 2: More specifically, Option consommateurs believes that government should ensure that children are not exposed to advertising messages promoting unhealthy foods (high calorie and low nutritional value which are rich in sugar, fat, salt and brands which are associated with these.)

Recommendation 3: In order to do so, Option consommateurs recommends adoption of one of two alternative measures:

- a. Legislate an « overall ban on marketing directed at children »
- b. Legislate a « partial ban on marketing directed at children »

If **Recommendation 3b** is chosen, the following recommendation needs to be apply:

Recommendation 4: Option consommateurs recommends that the Government of Canada define the two categories «healthy foods» and «unhealthy foods» based on the issues raised in this report. And

Recommendation 5: Option consommateurs recommends that the Government of Canada create a multiparty working group which will have the sole mandate to advise the government on the possible definitions of «healthy food» and «unhealthy food».

Chapter 1: Ban on advertising directed at children

Today, « the intensity and frequency of children's current exposure to commercial messages is unprecedented »¹. According to the English psychologist Aric Sigman, in the last decade children spend 40% more of their time. Other studies have demonstrated that the probability of children gaining weight or becoming obese increases with the time children spent in front of the television², as young people are spending close to 40 hours a week interacting with the various media: television, movies, video games, computer games, radio and print.³ Researchers from the Australian Institute of Health and Welfare believe that type 2 diabetes, which is associated with life style e.g. diet and physical activity) will overtake nicotine addiction as the main cause of the rise in health costs in men between now and 2023⁴.

Doubtless, excessive TV-watching, poor nutrition habits and sedentary lifestyles are closely related, but it is more difficult to explain the mechanisms which link obesity to the consumption of electronic media. However, studies on the influence of unhealthy food advertising on dietary behaviour, in young people, are increasingly popular. Moreover, as the World Health Organization (WHO) has remarked:

The majority of foods and food products promoted are energy dense, high fat, sugar and/or high salt, and in sharp contrast to national and international dietary guidelines (...) Promotion of unprocessed foods, such as fruit and vegetables, wholegrain and milk is found to be almost zero⁵.

Currently, the most important scientific review on the subject, the *Review of Research on the Effects of Food Promotion to Children*, was commissioned by the Food Standard Agency (a UK government agency)⁶. The authors of the study concluded that the effects of marketing targeted at children are observable and asked governments to think about preventive action. In addition, the authors note:

1. There is a lot of food advertising to children.
2. The advertised diet is less healthy than the recommended one.
3. Children enjoy and engage with food promotion.
4. Food promotion is having an effect, particularly on children's preferences, purchase behaviour and consumption.
5. This effect is independent of other factors and operates at both a brand and category level⁷.

¹ Linn, Susan E. 2004. « Food Marketing to Children in the Context of a Marketing Maelstrom ». *Journal of Public Health Policy*, Vol 25, no 3/4. page 367.

² Utter, Jennifer *et al.* 2006. « Associations between television viewing and consumption of commonly advertised foods among New Zealand children and young adolescents ». *Public Health Nutrition*, Vol 9. page 606.

³ Linn, Susan E. *Op cit.*

⁴ Australian Institute of Health and Welfare. 2010. *Australia's Health 2010*. [Online] <http://www.aihw.gov.au/publications/aus/ah10/ah10.pdf> (accessed 22 June 2010).

⁵ Cairns, Georgia *et al.* 2009. *The Extent, Nature and Effects of Food Promotion to Children: A Review of the Evidence to December 2008*. [Online] http://www.who.int/dietphysicalactivity/Evidence_Update_2009.pdf (accessed 6 July 2010).

⁶ Hatings G. *et al.* 2003. *Review of Research on the Effects of Food Promotion to Children*. [Online] <http://www.food.gov.uk/multimedia/pdfs/foodpromotiontochildren1.pdf> (accessed 22 June 2010).

⁷ *Ibid.* page 3.

1.1. Halt marketing of unhealthy food and drinks to children to reach public health objectives

Legislators have numerous avenues to slow down the world obesity epidemic and the significant increase in chronic diseases associated with it. One way to protect children is by restricting marketing practices for drinks and food targeted at them. According to Sonia Livingstone, Director of the Department of Media and Communication of the prestigious London School of Economics:

Currently, policy considerations appear to be shifting from restricting exposure to promotions (i.e. preventing viewing) towards media literacy (i.e. undermining the effect of viewing), though whether this can be as effective, particularly for children most vulnerable to the promotion of unhealthy foods remains uncertain⁸.

While developing young peoples' critical abilities to resist the advertising is important, reducing the exposure of young people to advertising promoting unhealthy food constitutes a preventive measure. In fact, as Mary Story and Simone French report:

Numerous studies have documented that children under 8 years of age are developmentally unable to understand the intent of advertisements and accept advertising claims as factual. The intense marketing of high fat, high sugar foods to young children can be viewed as exploitation because they do not understand that commercials are designed to sell products and do not have the ability to comprehend or evaluate advertising⁹.

We have highlighted two strategies to minimize the exposure of young people to advertising promoting unhealthy food. The first, that we have named «overall ban on advertising directed at children», is inspired by the approach accepted, among others, by Quebec. The second, «partial ban on creating advertising intended for children» is only concerned with food and commercial brands associated with it and is the UK approach.

⁸ Livingstone, Sonia. 2004. *A Commentary on the Research Evidence Regarding the Effects of Food Promotion on Children*. [Online] [http://www.aeforum.org/aeforum.nsf/b6f532dc08e2a32e80256c5100355eab/b93638508054578380256eda0059182a/\\$FILE/appendix1Ofcom%20SoniaLivingstone.pdf](http://www.aeforum.org/aeforum.nsf/b6f532dc08e2a32e80256c5100355eab/b93638508054578380256eda0059182a/$FILE/appendix1Ofcom%20SoniaLivingstone.pdf) (accessed 6 July 2010).

⁹ Story, Mary and Simone French. 2004. *International Journal of Behavioral Nutrition and Physical Activity* no 3. [Online] <http://www.ijbnpa.org/content/1/1/3> (accessed 6 July 2010)

1.2. Towards a legal ban on unhealthy food and drink advertising aimed at children

In Canada, advertisement is defined in two ways:

Food and Drugs Act

“advertisement” includes any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic or device”
[Food and Drugs Act, section 2]

Consumer Packaging and Labelling Act:

“advertise” means make any representation to the public by any means whatever, other than a label, for the purpose of promoting directly or indirectly the sale of a product”
[Consumer Packaging and Labelling Act, section 2]

Canadian legislation already contains some bans regarding advertising. For example, the *Food and Drugs Act* and the *Tobacco Act* prohibit some advertising in order to protect the public interest.

Example 1) The *Food and Drug Act* contains a clause which aims to limit certain types of advertising concerning diseases deemed to be incurable.

Section 3 paragraph 1: **Prohibited Advertising**

No person shall advertise any food, drug, cosmetic or device to the general public as a treatment, preventative or cure for any of the diseases, disorders or abnormal physical states referred to in Schedule A.

Schedule A enumerates a list of diseases deemed to be incurable. Section 3 of the *Food and Drugs Act* was presented for the first time in 1934 and its objective was to:

1. *prevent fraud;*
2. *prohibit advertisements to the public respecting treatments for conditions where no treatments existed;*
3. *prohibit the advertisement of treatments where self treatment was not considered safe; and*
4. *encourage people to seek medical attention for serious conditions.*

Example 2) The *Tobacco Act* includes a general provision banning advertising on tobacco products:

Section 22, paragraph 1: **Advertising**

22. (1) Subject to this section, no person shall promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element of one or that evokes a tobacco product or a brand element.

More specifically, paragraph 3 of section 22 – **Lifestyle Advertising** states:

Subsection (2) does not apply to lifestyle advertising or advertising that could be construed on reasonable grounds to be appealing to young persons.

1.3 Two scenarios for prohibiting advertising to children

In order to respond to issues rose earlier and in order to protect children, we propose two distinct scenarios. The first is an overall ban on marketing directed at children and the second is a partial ban on marketing directed at children, which requires, formulating normative definitions of 'healthy and unhealthy food'.

Scenario 1: Overall ban on marketing directed at children

The first scenario is general and consists of banning all types of marketing directed at children and is largely inspired by the Quebec approach. In 2007, the New Democratic Party Member of Parliament Peter Julian proposed a Private bill Members' (Bill C-414)¹⁰ similar to the Quebec legislation.

There are clauses on advertising already to be found in the *Food and Drugs Act*. We believe that it is possible to amend the *Food and Drug Act* by adding the following paragraphs to **section 3 (1)**:

No person shall advertise any food, drug, cosmetic or device, or advertise for any packaging or brands thereof, to children under the age of 13.

To determine if an advertising message is intended or not for a public under the age of 13, the context of the presentation must be considered, namely:

- a) the nature of the food, the packaging and the brand;*
- b) the manner in which the advertising message is presented;*
- c) the moment or the place where it appears.*

It is not to be presumed from the fact that an advertising message that is found within a printed form intended for a public of 13 years of age and older or intended for both a public under the age of 13 and 13 years of age and older, or that it is diffused during a listening period intended for a public of 13 years of age and older or intended for both a public under the age of 13 and 13 years of age and older, that the advertising message is not intended for a public under the age of 13.

An overall ban on advertising aimed at children would require amendments to the *Competition Act*. We are quoting the main sections of the proposed Private Member's Bill. .

First and foremost, it is necessary to add the following paragraph after section 52 (1.2) of the *Competition Act*.

For the purposes of subsection (1), advertising or promotion directed at persons under thirteen years of age, as determined in accordance with subsection 74.011(2) and (3), is deemed to be a recklessly made representation that is false or misleading in a material respect.

¹⁰ House of Commons of Canada. 2007. « Bill C-414 » [Online]
<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3085024&Language=f&Mode=1&File=14>

In addition, add the following after article 74.01:

74.011 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, directs any advertising or promotion, for commercial purposes, at persons under thirteen years of age.

(2) Whether advertising or promotion is directed at persons under thirteen years of age shall be determined by taking into consideration its context, including

- (a) the nature and intended purpose of the product or the business interest it promotes;*
- (b) the manner in which the advertising or promotion is presented;*
- (c) the time and place it is presented.*

(3) The fact that advertising or promotion is presented in the following manner does not by itself establish that it is not directed at persons under thirteen years of age:

- (a) in printed material intended for persons thirteen years of age or over;*
- (b) in a broadcast during air time intended for persons thirteen years of age or over; or*
- (c) in any manner intended both for persons under thirteen years of age and for persons thirteen years of age or over.*

Scenario 2: Partial ban on creating advertising directed at children

As in the previous scenario, a partial ban on advertising directed at children would require amendments to the *Food and Drug Act* by adding the following paragraphs to **section 4(1)**

No person shall advertise any unhealthy food or advertise for any packaging or brands thereof, to children under the age of 13.

To determine if an advertising message is intended or not for a public under the age of 13, the context of the presentation must be considered, namely:

- a) the nature of the food, the packaging and the brand;*
- b) the manner in which the advertising message is presented;*
- c) the moment or the place where it appears.*

It is not to be presumed from the fact that an advertising message that is found within a printed form intended for a public of 13 years of age and older or intended for both a public under the age of 13 and 13 years of age and older, or that it is diffused during a listening period intended for a public of 13 years of age and older or intended for both a public under the age of 13 and 13 years of age and older, that the advertising message is not intended for a public under the age of 13.

While introducing amendments to the law is relatively simple, implementation would be much more difficult. The partial ban scenario requires that that we define what we mean by healthy and unhealthy food. The issues surrounding such a definition are explored in the following section.

Scenario 2: definition of healthy and unhealthy food

The debate surrounding the definition of healthy and unhealthy food is not new. But, such a definition is necessary if we wish to limit children's exposure to unhealthy food. In essence two approaches are noteworthy. The first is that no "bad" food exists, but rather individuals' diets that should be questioned. It is an approach which makes consumers responsible for their own choices. In contrast, the second approach aims to define certain types of food as being 'unhealthy', The responsibility then lies with food processors' and distributors. .

The debate surrounding the definition of healthy and unhealthy food has consequences and involves important economic interests. Out of the eight hundred million dollars spent on television advertising in Quebec, one hundred and thirty million are for food products (putting them in third place)¹¹. The discussion of definitions of unhealthy/healthy food closely concerns the world of advertising. It is also worth noting that Jean-Philippe Laperrière of the *Groupe de recherché media santé* has *estimated* that in 2008 83% of commercials shown while children watch TV were unhealthy.

Numerous countries have put in place legislation or approved programs to limit or reduce the exposure of minors and children to advertising messages promoting unhealthy food (Denmark, United Kingdom, New Zealand, Malaysia and South Korea while Brazil and Chile are developing

¹¹ Conseil des directeurs des médias du Québec. 2010. *Guide annuel des médias 2010*. [Online] http://www.cdmq.ca/contenus/Outils-media/Guide-media-2010/12-16_GAM2010_Bilan.aspx (accessed 6 July 2010)

such policies).. Therefore, they have had to define the food and types of restaurants which would be prohibited from advertising specifically to children.

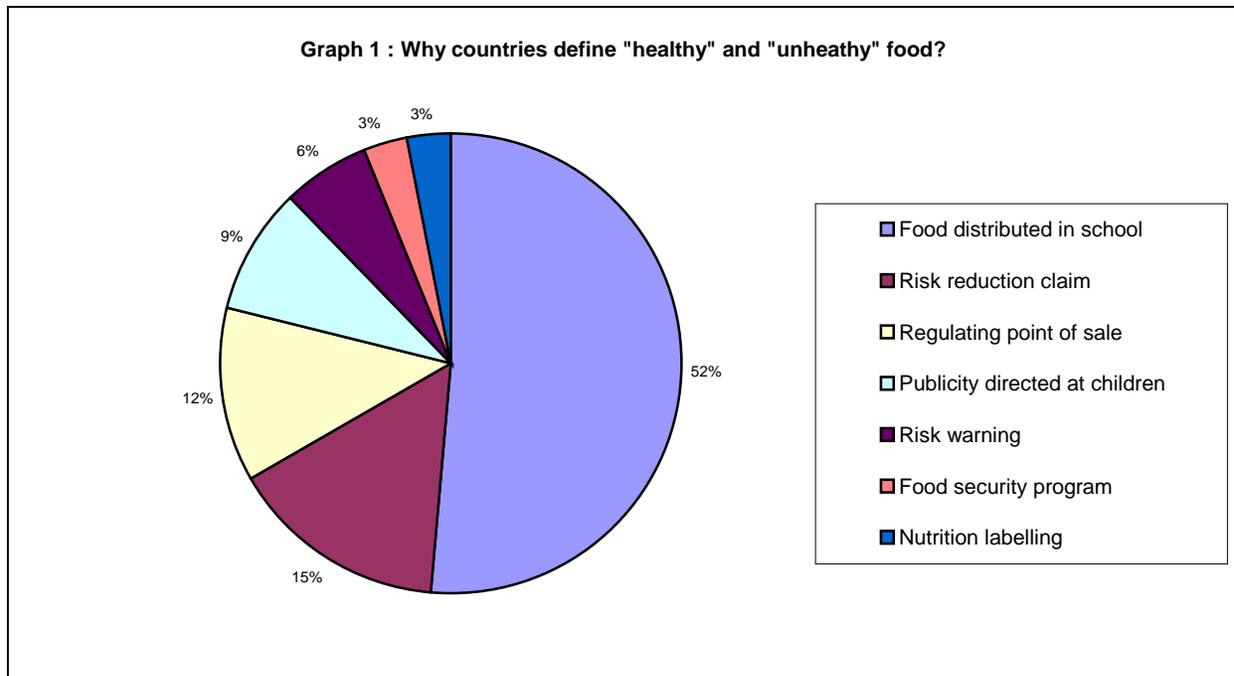
Beyond advertising. why do we need definitions?

While there are several initiatives for defining the nutritional quality of food, applications many apply to public programs. We note some examples below:

- *The first concerns enrichment or fortification. It can be applied (voluntarily or not) to basic produce (salt, flour, sugar) or to processed food. Here is an application which takes a look at the composition of food products. As it stands, enrichment is often indissociable from health claims and some countries do not allow the latter except on food that has been categorized as healthy.*
- *The second application concerns the labelling of food. It serves to inform consumers of the nutritional value of food. In addition to the nutritional value chart, other types of labelling can be used, namely, logos or symbols at sale points, warnings or health claims on products*
- *The third application of such a definition is to better restrict and orient the reformulation of products or the development of new, healthier products. Such a definition would serve as a guide for the industry.*
- *The fourth aims to restrict food distributed in public spaces such as hospitals or schools or even food distributed in the context of food safety initiatives, like Food Stamps¹².*

Many countries have formulated definitions of healthy and unhealthy food within such a context. It is important to note that the large majority of the definitions already in place or are in the course of being developed internationally, aim to restrict the distribution of foods in the school systems.

¹² Social Security Administration. 2008. *Food Stamps Facts* [Online] <http://www.ssa.gov/pubs/10101.html> (accessed 22 June 2010).



(Inspired by Hawkes, 2009: pages 15-19)

Types of definitions

In order to define the healthy or unhealthy quality of food, different approaches are possible. Each of these has its particular advantages and disadvantages. Furthermore, legislators are caught between efficiency requirements on the one hand (the need for a fairly simple processes), and scientific rigour on the other. They are also operating in the field of nutritional science, which is constantly evolving and has controversial aspects.

We will now examine the different types of definitions by describing the main approaches and methodologies that are in use and the differences between them. In each case, we will cite examples from Canada and abroad to illustrate the issues.

Food or nutrition based definition

The definition of healthy or unhealthy food is in reference to other foods (for example fruits and vegetables as compared to cakes and cookies) or based on nutritional content standards (quantity of fat, sugar and salt). Standards based on nutritional content have the advantage of being clear and objective and help to reduce the intake of fat, sugar and salt. But those based on food are considered simpler and more likely to increase the intake of healthy foods such as fruits and vegetables. Generally, food based strategy is divided into three or four categories¹³ (i.e. eat regularly, occasionally or rarely). The illustration, shown below, from the Government of Quebec's « La vision de la saine alimentation », follows this approach¹⁴.

¹³ Zannat Reza. 2009. *Defining 'Healthy' Foods. Environmental Scan of the Situation in Canada*. 41 pages.

¹⁴ Gouvernement du Québec. 2010. « Vision de la saine alimentation » [Online]

<http://msssa4.msss.gouv.qc.ca/fr/document/publication.nsf/4b1768b3f849519c852568fd0061480d/62c2cf260b418eab852576e400736b7b?OpenDocument>



In Quebec, the trends followed by the policy « Going the Healthy Route in school »¹⁵ are mainly based on foods rather than on nutrients. Using « Canada's Food Guide »¹⁶, certain foods are favored and the aim is to eliminate sweet drinks, fried foods and snacks containing high levels of sugar. However, a criteria based on nutrients was added to the list: it' suggested avoiding foods containing saturated or hydrogenated fats.

The United Kingdom's policy on school meals is an example of the two ways of addressing healthy and unhealthy foods¹⁷. First, in order to enjoy the benefits of the two methods, it established the mandatory nutritional content for every lunch served in the cafeteria. Secondly, it set up a system to calculate the nutritional value per portion (minimal quantities of minerals and vitamins as well as maximal levels of fat, sugar and salt were laid down). Finally, it provided certain guidelines on foods that should be served more or less regularly. At least two portions of fruits and vegetables were to be served per day, no more than two fried items per week, no candy, were required in order to meet the objectives of the program. .

It's worth noting that the United Kingdom's *School Meals Review Panel* came to the following conclusions:

- *Nutrient-based standards are clear and objective, and can help to reduce intakes of fat sugar and salt, but may not increase intakes of fruit, vegetables and food containing other essential nutrients.*
- *Food-based standards are simple and transparent, can help to increase intakes of fruit, vegetables and oily fish, and are useful when working towards nutrient-based standards, but may not be sufficiently comprehensive to impact on intakes of fat, salt and sugar*¹⁸.

¹⁵ Ministère de l'Éducation, du Loisir et du Sport. 2007. *Pour un virage santé à l'école* [Online] <http://www.mels.gouv.qc.ca/sections/viragesante/pdf/virageSante.pdf> (accessed 22 June 2010).

¹⁶ Santé Canada. 2007. *Bien manger avec le Guide alimentaire canadien* [Online] <http://www.hc-sc.gc.ca/fn-an/food-guide-aliment/index-fra.php> (accessed 22 June 2010).

¹⁷ Santé Canada. 2007. *Bien manger avec le Guide alimentaire canadien* [Online] <http://www.hc-sc.gc.ca/fn-an/food-guide-aliment/index-fra.php> (accessed 22 June 2010).

¹⁸ School Food trust. 2008. *A guide to introducing the Government's food-based and nutrient-based standards for school lunches* [Online] http://www.schoolfoodtrust.org.uk/UploadDocs/Library/Documents/sft_nutrition_guide_aug08.pdf (accessed 22 June 2010).

They chose a combination of the two approaches in order to obtain the benefits of both and limit the impact of their weaknesses.

Voluntary or Mandatory Implementation

When devising policies on definition of health and unhealthy food some countries choose voluntary measures while others prefer the mandatory approach.

In Canada, British-Columbia, Saskatchewan, New-Brunswick and Nova Scotia favored the implementation of mandatory rules for their dietary policies to be applied in schools and establishments for children. Alberta, Manitoba, Ontario, Quebec and Newfoundland opted for a voluntary approach aiming to change nutrition habits in their populations. For example, in its program entitled *Nourishing Minds*¹⁹, Saskatchewan requires primary schools to distribute healthy meals (breakfast, lunch and snack). Quebec, in its program *Pour un virage santé dans les écoles : Politique cadre pour une saine alimentation et un mode de vie physiquement actif* helps schools make «health-choices» by prompting them to serve balanced meals (one portion of vegetables, cereals, fruits, milk), according to the the recommendations of Canada's Food Guide.

At the international level, the examples of Sweden and Finland are especially interesting. Since 1989, Sweden has implemented a voluntary labeling system, the *Green Keyhole*²⁰, used by the entire food industry that uses a single symbol to show the healthiest options within different food groups. The standards defining healthy foods were first specified by the *Swedish National Food Administration*. The producers are then responsible to ensure that the products which are labeled the *Green Keyhole* follow the guidelines.

Finland chose to establish a mandatory labeling system in which foods with high levels of salt are pointed out for the consumers. The law defines the quantities of salt that will permit a product to be labeled as «low in salt» or «highly salted»²¹. Following the implementation of this law, many products disappeared from the market. Producers feared that some of their products labeled as «highly salted», would be ignored developed new ones with lower levels of sodium.

Across-the-Board Standards or Categories

The standards for defining healthy and unhealthy foods could either be across-the-board, and applicable to all, or, conversely be specific to certain categories of food.

Definitions made within food categories are the most common. According to this system, each category must have its own definitions of healthy or unhealthy food. For example, in the Swedish labeling system, the maximum amount of fat contained in a food product considered healthy can vary: tolerance thresholds are lower for milk then for cheese or meat. A soup or frozen dinner may contain much more salt then dry pasta. Finally, the numbers of food categories vary

¹⁹ Saskatchewan Ministry of Education. 2009. *Nourishing Minds: Eat Well, Learn Well, Live Well* [Online] <http://www.education.gov.sk.ca/nourishing-minds/> (accessed 22 June 2010).

²⁰ Livsmedelsverket (National Food Administration – Sweden). 2010. *The Keyhole Symbol* [Online] <http://www.slv.se/en-gb/Group1/Food-and-Nutrition/Keyhole-symbol/> (accessed 22 June 2010).

²¹ National Institute for Health and Welfare. 2009. *Finland's experience in salt reduction* [Online] http://ec.europa.eu/health/nutrition_physical_activity/docs/ev20091021_pietinen_en.pdf (accessed 22 June 2010) and Finnish Food Safety Authority. No date. *Nutrition and health claims* [Online] http://www.evira.fi/portal/en/food/control_and_entrepreneurs/nutrition_and_health_claims/nutrition_claims/ (accessed 22 June 2010).

significantly from one system to another: the Swedish system contains 25 categories, the Danish 10 and in Singapore, 62.

However, certain countries or regions prefer defining across-the-board standards for all foods. The American *Food and Drug Administration*²² specifies the maximum quantity of fat and sodium and the minimal amounts of beneficial nutrients that a food must contain in order to be able to use health or risk reduction claims, without any consideration for the type of food. According to this system, a vegetable oil could hardly ever be labeled as healthy.

Global Rating or Threshold

To distinguish healthy from unhealthy foods, certain minimum thresholds are often established for vitamins and other beneficial nutrients and a maximum for fat, salt and sugar content. A food that does not meet one or many of those requirements will not be labeled as healthy.

Certain approaches favor a rating system that is more subtle and more complex than the threshold system. The *Food Standards Code*²³ is a legislative regime common to both Australia and New-Zealand that supervises health claims applied to food products. According to this system, a nutritional profile is established regarding each food product by attributing points for its basic composition (amount of calories, fat, salt and sugar) and then for other elements that can improve it (presence of fruits, vegetables, nuts, proteins, fibers, etc.).

Based on portion or 100 Grams

The evaluation of a food product's health benefits and the comparison between different products requires that a unit of reference be specified. In order to make comparisons easier, 100g portions are often used. Some approaches, such as the American *Food and Drug Administration*'s rules on health claims, maintain a « per portion » reference (often in conjunction with the 100g unit). The portion reference is closer to the consumer's experience, while the 100g reference facilitates the comparison between similar products.

²² Food Drug Administration. 2008. *Appendix B: Additional Requirements for Nutrient Content Claims* [Online] <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/ucm064916.htm> (accessed 22 June 2010).

²³ Food Standards Australia New-Zealand. No date. *Calculating method for determining foods eligible to make health claims – Nutrient Profiling Calculator* [Online] http://www.foodstandards.gov.au/srcfiles/method%20to%20determine%20eligibility%20_final_.pdf (accessed 22 June 2010).

Conclusion

The first scenario implies a modification to both the *Food and Drugs Act* and the *Competition Act*. Even if it requires amendments to both laws, it remains a simple procedure. Indeed, an overall ban on marketing that targets children does not require debates on the definition of healthy or unhealthy foods and would consider any type of marketing directed at children as illegal. Such a scenario is broader, but it also shields children better from advertisements concerning food, but also from brands marketing and promotions on non-food items (telephones, toys, video games, etc.). According to the World Health Organization's technical committee: *Forum on Marketing of Food and Non-Alcoholic Beverages to Children*, this type of scenario is:

The broadest approach of all and is based on children's right to a commercial-free environment. It prohibits promotional marketing of any products specifically to children, following models such as those being tried in Quebec (see section 3.3.3) and parts of Scandinavia. This would be concordant with the United Nations Convention on the Rights of the Child and with consumer protection legislation operating in many countries. It provides a degree of equity between different industrial sectors, but consideration needs to be given to issues such as "positive" marketing which encourages healthy behaviour. It was recognized that this approach may not be a realistic option for many countries. It also requires acceptance by more players, including the media and communication industries²⁴.

From a statutory point of view, the second scenario requires only a modification of the *Food and Drugs Act*. However, it's much more complicated to implement because this option depends on a very important and litigious first step, the definition of healthy and unhealthy food. According to the same WTO report:

This option only seeks to restrict the promotion of the specific foods and beverages that are considered detrimental to children's diets. The implementation of this option requires clear identification of products that cannot be promoted, using methods such as nutrient profiling. This approach could act as an incentive for the food industry to develop healthier products²⁵.

Regardless of the scenario adopted, the Office of Consumer Affairs (in scenario 1) or the Canadian Food Inspection Agency (in scenario 2) will have to establish guidelines for the industry that explains what is an advertising message targeted at children, as well as the time and place where such a commercial would be considered to be aimed at children because the viewing public would be largely children under the age of thirteen (See box on the following page for a model developed in Quebec by the Consumer Protection Agency)

This short summary of the different approaches to defining healthy and unhealthy food illustrates the complexity of the issues at stake. No option is perfect. However, this should not prevent the government from being active. In fact, we note that many countries are proactive on this subject. Practices from elsewhere in the world or even from the provinces could encourage Canada to

²⁴ Organisation mondiale de la santé. 2006. *Marketing of food and non-alcoholic beverages to children : report of a WHO forum and technical meeting* [Online]

<http://www.who.int/dietphysicalactivity/publications/Oslo%20meeting%20layout%2027%20NOVEMBER.pdf>

²⁵ *Ibid.*

adopt its own distinct methodology. This would allow a better supervision of the different food-related public health initiatives.

Recommendation 1: Option consommateurs recommends instituting measures aimed at improving dietary behaviors and the health of Canadians, mainly children.

Recommendation 2: More specifically, Option consommateurs believes that government should ensure that children are not exposed to advertising messages promoting unhealthy foods (high calorie and low nutritional value which are rich in sugar, fat, salt and brands which are associated with these.)

Recommendation 3: In order to do so, Option consommateurs recommends adoption of one of two alternative measures:

- a. Legislate an « overall ban on marketing directed at children »
- b. Legislate a « partial ban on marketing directed at children »

If **Recommendation 3b** is chosen, the following recommendation needs to be apply:

Recommendation 4: Option consommateurs recommends that the Government of Canada define the two categories «healthy foods» and «unhealthy foods» based on the issues raised in this report. And

Recommendation 5: Option consommateurs recommends that the Government of Canada create a multiparty working group which will have the sole mandate to advise the government on the possible definitions of «healthy food» and «unhealthy food».

Box 1: Québec's Ban on Marketing Directed at Children

Quebec is the only jurisdiction in North America that has taken measures to ban marketing directed to people under the age of 13. The statutes allowing this ban are sections 248 and 249 of the *Consumer Protection Act* (C.P.A.).

Advertising for persons under 13.

248. Subject to what is provided in the regulations, no person may make use of commercial advertising directed at persons under thirteen years of age.

Criteria of intent.

249. To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of

- (a) the nature and intended purpose of the goods advertised;*
- (b) the manner of presenting such advertisement;*
- (c) the time and place it is shown.*

Presumption.

The fact that such advertisement may be contained in printed matter intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over, or that it may be broadcast during air time intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over does not create a presumption that it is not directed at persons under thirteen years of age.

Section 249 mentions that, in order to define if a message is directed to people under the age of thirteen, one must take into account the nature of the advertised good, the manner in which it's presented as well as the time and place where it appears. To clarify these issues, the Consumer Protection Agency published a Technical guide for sections 248 and 249.

Chapter 2: Consumer Mediators: Protecting Children and Consumers

More and more countries are setting up mediators (commissioners, ombudsmen, etc.) whose mandates are to monitor the interests of consumers, to protect them and to receive their complaints. The Option Consommateurs study in 2007-2008 demonstrated that two countries were pioneers in setting up such administrative structures: Sweden and Norway. Not only did they implement laws governing marketing to children, they also allocated sufficient resources to apply them properly. We undertook to research and develop case studies on these two countries and conduct a literature review to determine if Canada could set up its own Ombudsman. Each case study consists of an analysis of the legal framework, and a review of some cases pursued by the Ombudsman. Each case study will be followed by a short analysis.

2.1 Case study: Consumer Ombudsman and the Market Council in Norway²⁶

The Consumer Ombudsman (CO) is an independent administrative body with a mandate to oversee commercial practices and it seeks to exert influence on traders to observe the regulatory framework. Therefore, the CO administers the *Marketing Control Act* (MCA) as well as certain parts of the regulatory framework governing advertising in broadcasting. The CO and the Market Council have authority to issue decisions banning unlawful marketing and unfair contract terms in standard contracts when deemed necessary in the interests of consumers. The CO considers cases upon complaints from consumers and traders, but will also at his own initiative look at marketing practices²⁷.

The *Marketing Control Act* covers (under a 2009 amendment) all advertisements directed at Norwegian consumers, regardless of the medium. How the *Marketing Control Act* is to be applied is determined by the Market Council (*Markedsrådet*), which also acts as the “court of appeal” for the CO’s cases. The CO therefore takes the Market Council’s practice as its basis in areas where relevant cases arise. The *Marketing Control Act* includes provisions for marketing and for unfair terms in consumer standard contracts²⁸.

Chapter 7 of the Act establishes the institutions of the Consumer Ombudsman and the Market Council to enforce the act. Under **section 32** of the Act:

The Consumer Ombudsman and the Market Council shall monitor compliance with the provisions of this Act, with the exception of Chapter 6.

The Consumer Ombudsman shall be appointed for a fixed term by the King during a cabinet meeting.

The Market Council shall consist of a chairperson, a deputy chairperson and seven members, all with personal deputies, all of whom shall be appointed by the King. The term of office of the members shall be four years. The Market Council is quorate when the chairperson or deputy chairperson and at least four other members or deputy

²⁶ Forbrukerombudet. 2002. Consumer policy and institutions in Norway. *The Consumer Ombudsman and Market Council*. [Online] <http://www.forbrukerombudet.no/index.gan?id=491&subid=0> (accessed 22 June 2010)

²⁷ European Union. 2009. Consumer policy and institutions in Norway. [Online] http://ec.europa.eu/consumers/overview/country_profile/NO_web_country_profile.pdf, para 1.2 (accessed 22 June 2010)

²⁸ Forbrukerombudet. 1999. Guidelines on the Consumer Ombudsman’s Practice. *Marketing in relation to Children and Young People* [Online] http://www.forbrukerombudet.no/asset/509/1/509_1.doc, para 1 (accessed 22 June 2010)

members are present. Decisions shall be made by ordinary majority voting. In the event of a tied vote, the chairperson's vote shall be decisive.

The area of responsibility of the Consumer Ombudsman is being established by **section 34**:

The Consumer Ombudsman shall monitor compliance with the provisions in chapters 1 to 5 of this Act and regulations issued pursuant to this Act. The Consumer Ombudsman shall additionally carry out such monitoring as is assigned to the Consumer Ombudsman by other rules and regulations.

The Consumer Ombudsman shall carry out monitoring pursuant to the above provisions based on the consideration of the interests of consumers. Monitoring pursuant to section 2, second paragraph, shall nevertheless be based on the consideration of equality between the sexes, with a particular emphasis on how women are portrayed. Monitoring pursuant to section 10 and the related regulations shall be based on the consideration that consumers must be able to obtain information in the market and easily compare prices.

2.1.1 Enforcement powers

A basic principle in the enforcement is that the Ombudsman shall seek to obtain voluntary agreements through negotiations with traders or organizations representing traders. This will usually imply a request from the CO that the action, whether it concerns a marketing practice or a term applied in a standard contract challenged, will not be repeated. If no voluntary solution is reached, the Consumer Ombudsman may submit the case to the Market Council, which is a "court of law" in that field.²⁹

On the subject of contract terms the CO may conduct negotiations with sectors within trade and industry to establish agreements on the requirements for contract terms for use within those sectors. The CO also publishes "guidelines" on his interpretation of the sections of the act, e.g. in respect to requirements for marketing to children, price indications, etc. The Market Council has authority to issue decisions banning unlawful marketing and unfair contract terms in standard contracts when deemed necessary in the interests of consumers. The CO may lay down such prohibitions. If deemed necessary to prevent damage from actions, The CO may also take matters of principle to the Market Council, even when there is no dispute with a trader concerned.

The CO is, furthermore, provided with the authority to require cessation of commercial practices by Norwegian traders, when such actions have implications that conflict with the collective interests of consumers in another EEA State. This competence was established through the implementation of the EU Directive on injunctions for the protection of consumers' interests.³⁰

The *Marketing Control Act* and the institutions in this field correspond to similar institutions and legislation in the other Nordic countries (the Nordic model). A particular feature of the Norwegian Act is the ban on sex discrimination in publicity and marketing³¹.

²⁹ European Union. 2009. Consumer policy and institutions in Norway. [Online] http://ec.europa.eu/consumers/overview/country_profile/NO_web_country_profile.pdf, para 2.1.1 (accessed 22 June 2010)

³⁰ Ibid at para 2.3

³¹ Ibid at para 2.1.1

Section 35 of the *Marketing Control Act* establishes a framework for the processing of cases by CO. It states:

The Consumer Ombudsman shall, at his own initiative, or in response to requests by third parties, seek to influence traders to comply with the provisions that the Ombudsman is to monitor pursuant to section 34, including by negotiating with the traders or their organisations.

If the Consumer Ombudsman concludes that an act contravenes the provisions mentioned in section 34, he shall seek to persuade the trader to enter into a voluntary settlement to terminate the practice. The same shall apply in relation to the terms and conditions mentioned in chapter 5. The Consumer Ombudsman may require the trader to provide written confirmation that the infringement will cease.

If no voluntary settlement is reached, or if the conditions in section 36 are satisfied, the Consumer Ombudsman may submit the case to the Market Council for a decision. In cases as described in section 37, the Consumer Ombudsman may himself make decisions prohibiting unlawful acts or unfair contract terms and conditions.

The Consumer Ombudsman may submit to the Market Council cases involving matters of principle related to infringement of [...] Broadcasting Act. This shall apply even if a voluntary settlement has been reached.

The power of the CO to make decisions is set out in **section 37**.

Under **section 39** the Consumer Ombudsman and the Market Council may make individual decisions to impose:

- (a) a prohibition pursuant to section 40,*
 - (b) an order pursuant to section 41,*
 - (c) an enforcement penalty pursuant to section 42,*
 - (d) an infringement penalty pursuant to section 43.*
- Decisions of the Market Council shall not be appealable.*

2.1.2 Marketing directed at children and minors

The *Marketing Control Act* covers all marketing that is directed at the Norwegian market. It applies to advertising in every medium, including marketing on television and radio and the Internet. Under **section 1**:

The Act relates to the control of marketing, commercial practices and contract terms and conditions in consumer relations, and requires traders to follow good business practice in their transactions with one another.

The **2009 Act** introduced more definite laws on advertising at children. **Chapter 4** of the Act focuses particularly on special provisions relating to the protection of children.

Section 19 General provision:

When a commercial practice is directed at children, or may be seen or heard by children, particular care shall be exercised with regard to the impressionability, lack of experience and natural credulity of children.

In the assessment of whether a commercial practice contravenes provisions in or introduced pursuant to this Act, account shall be taken of age, development and other factors that make children particularly vulnerable.

Section 20 Unfair commercial practices affecting children:

In the assessment of whether a commercial practice is unfair pursuant to section 6, emphasis shall be given to whether the commercial practice is directed especially at children. Even if the commercial practice is not directed especially at children, emphasis shall be given to whether the practice, by virtue of its nature or the product, is likely to influence children, and to whether the trader can be expected to foresee the particular vulnerability of children to the practice.

It shall be prohibited to include in advertising direct exhortations to children to purchase advertised products or to persuade their parents or other adults to buy the advertised products for them.

Section 21 Special provisions relating to good marketing practice toward children:

In an assessment pursuant to section 2 of marketing directed at children, emphasis shall be given to, among other things, whether the marketing:

- (a) encourages breaches of the law, dangerous behaviour or breaches of ordinary safety norms,*
- (b) plays on social insecurity, a bad conscience or poor self-confidence,*
- (c) employs frightening means or is likely to cause fear or anxiety, or*
- (d) employs aggressive means like violence, sexuality or drugs.*

The definition of “children and young people” is minors up to the age of 18. The Consumer Ombudsman does not operate with any clear boundaries when it comes to designating what age the term “child” covers, but the younger the target group of the advertisement the stricter the ruling..

2.1.3 The Broadcasting Act

The *Broadcasting Act* of December 4 1992 with corresponding regulations contains special rules that apply to television and radio commercials and their relationship to children and young people³². A recent report from the Norwegian Directorate for Health and Social Affairs stated that: « It has been made clear that advertising bans work »³³. While the advertiser is responsible

³² Norway Ministry of Culture. 2005. *Act no.127 of 4 December 1992 relating to broadcasting* [Online] <http://www.regjeringen.no/en/dep/kkd/Documents/acts-and-regulations/reglement/2005/broadcasting-act-.html?id=420612> (accessed 22 June 2010)

³³ Norwegian Directorate for Health and Social Affairs. 2008. *European Network on reducing marketing pressure on children*. [Online] http://www.helsedirektoratet.no/vp/multimedia/archive/00044/Final_report_first_m_44659a.pdf (accessed 22 June 2010).

for ensuring that the commercial complies with the *Marketing Control Act*, the broadcasting regulations are directed at the broadcasting company³⁴.

The Broadcasting Act includes two provisions concerning children. In **Chapter 3 Advertising, sponsorship etc** paragraph two of **section 3.1**, it states that:

Advertisements may not be broadcast in connection with children's programmes, nor may advertisements be specifically directed at children.

Section 2-7 Protection of minors:

The King may issue regulations to prohibit the transmission of television programmes which may seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

The King may issue regulations to the effect that television programmes containing scenes or items which may impair the physical, emotional or moral development of minors shall only be transmitted in periods when minors will not normally see or hear such broadcasts, and concerning other technical measures that prevent minors from seeing or hearing the broadcasts. The King may issue regulations requiring an acoustic and visual warning to be given when such programmes are broadcast in unencoded form.

2.1.5 Consumer ombudsman and the Market Council in Practice³⁵

« Market Council case 17/93 Consumer Ombudsman vs. TV 2 AS and Nordisk Kellogg AS »

The above-mentioned case is whether Nordisk Kellogg could be prohibited from using a commercial for Kellogg's Smacks on television. The CO considered the commercial to be specifically directed at children and therefore in conflict with the Broadcasting Act, s. 2-1, paragraph 2. If it was found to be in breach of this law, the CO decided that the commercial would also be in conflict with the MCA, s. 1, paragraph 1.

The commercial showed two children eating breakfast in a garden. The children clap their hands and stretch them out to the frog on the box of Smacks in front of them. The frog jumps out, pours Smacks into a bowl and flies off together with the children on the back of a large white bird to a castle. Here, a princess conjures up a gift for each of the children before they fly off home again. Once back in the garden, the frog hops back into the box.

A majority of the Market Council concluded that the commercial had to be regarded as specifically directed at children. The Council considered that the prohibition against directing television commercials specifically at children contained such a strong provision for the protection of the consumer that a breach of the provision also had to be seen as unfair according to the MCA, s. 1, paragraph 1. A prohibition order was therefore also placed on the advertiser.³⁶

³⁴ Forbrukerombudet. 2009. *The Marketing Control Act in Norway*. [Online] <http://www.forbrukerombudet.no/index.gan?id=11039810> para 3.4 (accessed 22 June 2010)

³⁵ For more case, see "Consumer Ombudsman guidelines". 1999. *Marketing in relation to children and young people*. [Online] http://www.forbrukerombudet.no/asset/509/1/509_1.doc (accessed 22 June 2010)

³⁶ Forbrukerombudet. 2009. *The Marketing Control Act in Norway*. [Online]

2.1.6 Analysis

The Consumer Ombudsman and the Market Council are both responsible for the application of the *Market Control Act*, with consideration for the consumers' interests. Their functions are complementary. First the Ombudsman can act as a mediator between the consumers and a business. He seeks to obtain a voluntary agreement between the two parties. Also, the Ombudsman can take the initiative if he feels that the law for which he is responsible is not being correctly enforced. He can contact the business and order it to comply with the rules. Under certain circumstances, he can even force compliance. Finally, the Ombudsman can publish « interpretation guidelines » for its law. The Council chiefly acts as an appellate court for cases relating to the Consumer Ombudsman.

Incidentally, it is the Consumer Ombudsman that keeps a close watch on advertisements aimed at children. The Norwegian laws have not designated any particular age to describe a child. Therefore, anyone under the age of 18 will be considered a child. However, the Ombudsman will be more lenient toward commercial practices destined to an older audience.

2.2 Case study: The Swedish Consumer Agency

The Swedish Consumer Agency is a state agency whose mandate is to safeguard consumer interests. About 120 people work at the agency with different types of consumer issues including product safety, and services, commercial advertising and contract conditions, household finances and consumer-related issues for the disabled and the environmental issues. It also trains municipal consumer advisers as well as budget and debt advisers. In addition, it monitors consumer interests within the EU.³⁷

Recently, Sweden introduced a new regime for the public funding of organizations devoted to consumer issues including new criteria for defining consumer organizations eligible for funding. Since 2008 the Swedish Consumer Agency is responsible for administering public monies for core and project funding for consumers' rights organizations³⁸.

The government and the parliament together set consumer policies and provide direction for the working of the Swedish Consumer Agency. The overall objective of Swedish consumer policy is that: « Consumers have the power and possibility to make active choices » while the Agency's overall objective is: « Aware and secure consumers ». ³⁹

2.2.1 Law enforcement

The Swedish Consumer Agency is headed by a Director General who is also the Consumer Ombudsman, KO (Konsumentombudsmannen). The Agency/Consumer Ombudsman is responsible for the enforcement of consumer legislation and to pursue legal action in the consumer interest.

The Swedish Consumer Agency/Consumer Ombudsman can take measures against:

- *misleading advertising and other types of marketing;*
- *unfair contract terms;*
- *incorrect price information;*
- *dangerous products and services.*

The Consumer Ombudsman may either bring an action against a trader in the Market court or to issue an information or prohibition order. If the trader accepts and signs an information or a prohibition order it has same effect as a judgment rendered by a court. These orders are always combined with a fine. In severe cases the Consumer ombudsman may ask the Market court to issue a market disruption fee⁴⁰. This has been established by the *Marketing Act* (SFS 1995:450) where **section 21** states that:

³⁷Konsument verket. 2010. *About the Swedish Consumer Agency*. [Online]

<http://www.konsumentverket.se/otherlanguages/English/About-the-Swedish-Consumer-Agency/> (accessed 28 June 2010)

³⁸ European Union. 2009. Consumer policy and institutions in Sweden

http://ec.europa.eu/consumers/empowerment/docs/SV_web_country_profile.pdf, para 2.2 (accessed 28 June 2010)

³⁹ Konsument verket. 2010. *About the Swedish Consumer Agency*. [Online]

<http://www.konsumentverket.se/otherlanguages/English/About-the-Swedish-Consumer-Agency/> (accessed 28 June 2010)

⁴⁰European Union. 2009. Consumer policy and institutions in Sweden. [Online]

http://ec.europa.eu/consumers/empowerment/docs/SV_web_country_profile.pdf, (accessed 28 June 2010)

In cases which are not of great importance the Consumer Ombudsman may issue an order concerning:

- 1. prohibition referred to in Sections 14 or 17 (prohibition orders), or*
- 2. order referred to in Section 15 (information orders).*

The order shall be issued subject to a default fine.

In order to be valid the businessman shall approve the order immediately or within a certain period. If the order has been approved it applies as a judgment of the court which has entered into final force.

An approval made after the prescribed time does not apply.

Also under **Section 38:**

Actions concerning prohibition or orders under Sections 14, 15 or 17 are instituted in the Stockholm City Court. Such an action may be instituted by:

- 1. the Consumer Ombudsman*
- 2. a businessman affected by the marketing, and*
- 3. an association of consumers, businessmen, wage or salary earners.*

An interim decision under Section 20 is issued by the court where proceedings under the first paragraph are pending.

2.2.2 KO support

The Consumer Ombudsman (KO) may also decide to represent a consumer in court against a trader. This is known as 'KO support'. KO will only support a consumer under certain circumstances. The dispute should either be significant for the application of the law, i.e. to clarify the legal situation within a certain area, or the dispute should be in the consumer interest, i.e. concerns a large number of consumers. When the KO supports a consumer in a dispute, the state covers the consumer's legal expenses⁴¹. The KO determines if a dispute is suitable for KO support when a consumer submits an application.⁴²

2.2.3 Group action

The Consumer Ombudsman may also represent a group of consumers in a group action. Sweden has allowed litigation by public sector groups and public organizations but not by groups of private citizens and only in the Labor Court and the Market Court, for many years. Claims for damages by groups of individuals members were not permitted.⁴³ In 2003, a radical new change in the rules on group actions took effect. The New Swedish Act on Group Proceedings (SFS 2002:599) covered group actions in the general courts and its use was not restricted to any

⁴¹ *Ibid.*

⁴² Konsumentverket. 2010. *This is how you apply KO support*. [Online] <http://www.konsumentverket.se/otherlanguages/English/This-is-how-you-apply-for-KO-support/> (accessed 28 June 2010)

⁴³ The KO could bring "group actions" at the Public Complaints Board regarding consumer issues., however the Public Complaints Board is not a court.

particular areas of law. All three forms of group action – private, public, and organization – were permitted.⁴⁴

Section 1:

In this Act, group action means an action that a plaintiff brings as the representative of several persons with legal effects for them, although they are not parties to the case. A group action may be instituted as a private group action, an organization action or a public group action.

Group means the persons for whom the plaintiff brings the action.

2.2.4 Advertising concerning children and young people

Section 4 of the *Marketing Act*, holds that commercial advertising to children on television are is unfair. A violation of this provision leads to prohibition, is subject to a default fine, and in certain cases a market disruption charge.

Sanctions may be applied to advertisers, advertising agencies, advertising film producers and also the broadcasting programme company.⁴⁵

Under **Chapter 7, section 4** of the *Radio and Television Act*:

Commercial advertising in a television broadcast may not be designed to attract the attention of children under 12 years of age.

Individuals or characters who play a prominent role in programmes which are primarily addressed to children under 12 years of age may not appear in commercial advertising in a television broadcast.

Moreover under **Section 7b**:

Notwithstanding the provisions of Section 7 and Section 7 a, religious services or programmes primarily addressed to children under twelve years of age may not be interrupted by advertising.

Consumer Ombudsman is responsible for compliance with some of the provisions. Under **Chapter 9, section 2**:

[...] the provisions regarding commercial advertising in Chapter 7, Sections 3 and 4, and the first and third paragraphs of Section 10, are to be monitored by the Consumer Ombudsman. [...]

⁴⁴ Lindblom, Henrick. 2008. *National report: Group Litigation in Sweden, update paper sections 2.5 and 3*. [Online] http://www.law.stanford.edu/library/globalclassaction/PDF/Sweden_Update_paper_Nov%20-08.pdf, (accessed 28 June 2010)

⁴⁵ *Consumer Ombudsman's Interpretative Advice on the Prohibition of Commercial Advertising to Children on Television* [Online] http://www.aeforum.org/reg_env/sweden_1.pdf p.1 (accessed 28 June 2010)

2.2.5. Analysis

The function of the Consumer Ombudsman in Sweden is similar to that of Norway. The Ombudsman is also the general manager of the Consumer Agency. His/her mandate is to ensure that Sweden's consumers are both « informed and protected consumers ».

Both Ombudsmen are responsible for enforcing the law related to commercial practices: the *Marketing Act*. They must make sure that certain sections of the *Radio and Television Act* are respected, for example the ban on advertisements directed to children under 12 years old only. Sanctions be imposed on the business who paid for the commercial, the advertising agency and the media that broadcasted it in contravention of the law.

Finally, the Ombudsman can levy fines and initiate lawsuits before the Market Court. In very important cases, he can also represent the consumer and pay for his legal fees.

2.3 Case study: The Swedish Children's Ombudsman⁴⁶

In Sweden, children and young people up to the age of 18 have their own ombudsman. The Children's Ombudsman is appointed by the Swedish Government for a term of six years. The current Ombudsman, Fredrik Malmberg, was appointed in November 2008 and is in charge of the Office of the Children's Ombudsman.

The Ombudsman's main duty is to promote the rights and interests of children and young people as set forth in the *United Nations Convention on the Rights of the Child* (the CRC).

The agency monitors the implementation of the CRC in Sweden. For instance the Ombudsman submits bills for legislative changes to the Swedish Government and promotes the application of the CRC in the work of government agencies, municipalities and county councils. The agency also disseminates information on the Convention.

A key duty of the Children's Ombudsman is to participate in public debate, promote public interest regarding key issues, and influence the attitudes of decision-makers and the public. However, the Ombudsman does not supervise other authorities and, by law, may not interfere in individual cases.

In order to find out their views and opinions the Ombudsman maintains regular contact with children and young people. The Ombudsman visits children in schools and youth clubs, and children can get in touch with the Ombudsman by letter, phone and through his website. Twice a year the Ombudsman obtains the responses of a number of "contact classes" to a questionnaire survey. The Children's Ombudsman also has several children's councils and one youth council.

Each year the Children's Ombudsman submits a report to the Government. This report addresses the situation of children and young people in Sweden, for example their opportunities and problems.

2.3.1 Background⁴⁷

Sweden's first Children's Ombudsman was appointed on July 1, 1993. The issue of appointing a special spokesman for children and young people had been discussed in Sweden's Parliament on a number of occasions through the 1980s and into the early 1990s.

Several Bills put before Parliament had called attention to the fact that children had no representative of their own who could invoke the law to safeguard their interests. The Norwegian Children's Ombudsman was often cited as a good example of such an office. Various voluntary organizations also actively promoted the appointment of a Children's Ombudsman. This led to the creation of a commission by the government to study the question. The Commission recommended that Sweden appoint a Children's Ombudsman with the task of safeguarding and promoting in the community the rights, needs and interests of children and young people. A majority of the official comments submitted supported the Commission's proposals, and in a Bill

⁴⁶ Barnombudsmannen. 2010. *About the Ombudsman for Children in Sweden*. [Online] <http://www.barnombudsmannen.se/Adfinity.aspx?pageid=7043> (accessed 28 June 2010)

⁴⁷ Barnombudsmannen. 2010. *Background*. [Online] <http://www.barnombudsmannen.se/Adfinity.aspx?pageid=89> (accessed 28 June 2010)

(1992/93:173), the Government proposed that an Office of the Children's Ombudsman be set up.

One of the main debates during this time was whether the work of the Children's Ombudsman should be at a general level, or whether he or she should become involved in individual cases. One of the arguments against the Children's Ombudsman's involvement in individual cases was the risk that the tasks of the Children's Ombudsman might come into conflict with the work of the Parliamentary Ombudsmen, or other government agencies.

2.3.2 Work on a general level

The Bill emphasized that setting up an Office of the Children's Ombudsman must not result in any reduction in the responsibilities of the municipal authorities or the supervisory authorities. Neither should the Children's Ombudsman take over work done in this field by the voluntary organizations. The main task of the Children's Ombudsman would be the overall monitoring of children's and young people's issues, as set forth in the CRC and Swedish legislation.

The Swedish Parliament approved the appointment of a Children's Ombudsman, and the *Children's Ombudsman Act (1993:335)* came into effect on July 1 1993. Under the provisions of the Act, the work of the Children's Ombudsman should be general in nature, and include information and opinion-forming activities on matters concerning the rights and needs of children and young people. The Children's Ombudsman should not focus on individual cases.

2.3.3 Changes in legislation and a national strategy

In 1993, the Government appointed Louise Sylwander as Sweden's first Children's Ombudsman. She also became head of the newly-formed Office of the Children's Ombudsman. In the 1990s the Children's Ombudsman addressed a series of issues, not least issues related to the influence of children and young people, and to children at risk. The Children's Ombudsman was instrumental in having one of the basic principles of the CRC, Article 3 (the best interest of the child), written into the *Parental Code*, the *Aliens Act* and the *Social Services Act*, as a central paragraph.

In March 1999, the Swedish Parliament unanimously approved a national strategy to implement the CRC. The starting point for this strategy was that the spirit and intentions of the CRC should be given consideration in all decision-making concerning children in the country's municipal and county authorities and in government agencies. An assignment of three years' duration gave the Children's Ombudsman a key part to play in this work.

On July 1, 2002 the work of promoting the introduction of the CRC in government agencies and municipal and county authorities was made one of the Children's Ombudsman's permanent tasks.

2.3.4 A Stronger Children's Ombudsman

The *Children's Ombudsman Act* was modified on July 1, 2002, nine years to the day after the Office was set up. These changes in the legislation strengthened the mandate and authority of the Office of the Children's Ombudsman. Statutory provisions now regulate a greater part of the Children's Ombudsman's activities. Thus, decisions on the work of the Children's Ombudsman are passed by Parliament instead of being made by the Government.

The Children's Ombudsman is now empowered to request from individual government agencies and municipal and country authorities information about what they are doing in their activities to ensure compliance with the CRC. Furthermore, the Children's Ombudsman is also empowered to summon government agencies and municipal and county authorities for discussions.

2.3.5 Analysis

Sweden has signed and ratified the *United Nations Convention on the Rights of the Child*. Sweden set up a Children's Ombudsman as part of the implementation of the Convention. The mandate of the office would be a passive one: to influence the population and the authorities, participate in the public debates, promote the rights of children. The agency was given a passive mandate as lawmakers feared that various authorities, schools or even parents would lose their sense of responsibility. In 2002, the law was modernized and the office was given more powers including the right to summon government officials and to ask for reports on how they make sure that the Convention is being applied.

2.4 Literature review: Ombudsmen/Consumer Mediators

We conducted a literature review on ombudsmen to better understand the following these case studies as, we wished to understand how these organizations were perceived. We have listed the articles found in the *LexisNexis* and *Westlaw* databases for legal articles and *Eureka* for newspaper articles.

For each database the following keywords were used:

1. ombudsman & consommation & (Norvège | Suède | Finlande)
2. médiateur & consommation & (Norvège | Suède | Finlande)
3. publicité & enfants & (Norvège | Suède | Finlande)
4. commercialisation & (aliments | boissons) & enfants & (Norvège | Suède | Finlande)
5. consumer & ombudsman & (Norway | Sweden | Finland)
6. consumer & mediator & (Norway | Sweden | Finland)
7. (publicity | advertis*) & child* & (Norway | Sweden | Finland)
8. marketing & (food | drink) & (Norway | Sweden | Finland)

2.4.1 Results

We selected and analyzed 16 articles in total: nine scientific articles and seven from newspapers. Two of the scientific articles provided interesting material and we chose to study them more thoroughly (see section 2.4.2 for the article « *Finlande : L'ombudsman au secours des consommateurs* » and 2.4.3 for « *La Commission nationale des litiges de consommation de Suède* »).

Principles Underlying the Creation of the Consumer Ombudsman

In a 1974 article, Hans Stenberg mentioned the guidelines followed by the Swedish Consumer Ombudsman. (The office had been created three years earlier). He described the Ombudsman as an administrative entity without coercive powers, whose mandate was to negotiate with business in order to solve the kinds of problems usually encountered by consumers. If the negotiations failed, he/she could pursue the case further before the Market Court. The Ombudsman is very accessible to consumers as there are no required procedures for approaching him or her. Offices open to the public all day and are open on Thursday evenings). He/she publicizes his activities through frequent media conferences and the, publication of a newsletter. He/she can advise consumers on a one-to—one basis and even initiate investigations.

Use of Women and Children in Advertising under Swedish Law

Since 1976, the Swedish Consumer Ombudsman has tried to restrain the abuse of the female body in advertising, but to no avail. The *Marketing Act* is meant to protect consumers and therefore has no provision to outlaw discrimination against women

However, television commercials aimed at children are governed by general rules banning misleading representation. As children are less critical and more impressionable than adults, the interpretation of these general rules is stricter in the case of advertising to a vulnerable audience. Television commercials aimed at children under the age of 12 are banned (chap. 7, section 4 *Radio and Television Act*).

A brief article published in *Le Soir* described the Swedish rules on advertising aimed at children thus: « Sweden is the best example of consumer protection since it has banned commercials aiming at children under the age of twelve since 1991. It has also banned all kinds of direct marketing aimed at young people under 16. Advertisements for alcohol and tobacco are also severely restricted. The Consumer Ombudsman has the responsibility to oversee that these rules are followed. Finally, fines can be levied against businesses that infringe these rules. Fines are proportional to the amount of sales generated »⁴⁸.

The Ombudsman's Role in Class Action Suits

Norwegian or Swedish Consumer Ombudsmen can act as class action group representatives. This provision was introduced in Sweden and Norway in 2001 and 2005 respectively. Both systems operate under the « opt-in » model: potential members are NOT included in the group by default. They must apply and notify the courts in order to become a member. Norwegian law also allows an « opt-out » model when individual actions are of little value so that individuals would not pursue them and no specific issues would be raised. Both systems impose costs on the losing party: the loser group's representative has to bear the costs, which acts as a deterrent against frivolous actions.

National Laws in the European Community

In 1997, the European Court of Justice rendered a judgment on the *Television without borders* directive in the *Konsumentombudsmannen (KO) v. De Agostini (Svenska) Förlag AB and TV-Shop i Sverige AB* cases. Both concerned commercials directed at children, broadcast from the United Kingdom and aired on Swedish television⁴⁹. The directive specified that programs broadcast « from a member state and destined for another member state must respect the legislation of the originating State. The recipient state cannot impose restrictions for issues governed by the directive »⁵⁰. The Court considered that a « member State can sanction an advertiser for a misleading commercial emanating from another member State; it cannot do it simply because it is directed at children »⁵¹.

Following this ruling and because of Sweden's incapacity to use sanctions against the United Kingdom's broadcasters, the country tried to have a law similar to its own adopted at the European level. Many sources mention this attempt.

Marie-Françoise Masson, « La publicité télévisée divise l'Europe .ENFANCE. La Suède, présidente de l'Union européenne jusqu'en juillet, incite les Quinze à s'inspirer de sa propre législation, qui interdit la publicité télévisée destinée aux enfants. La Commission européenne s'y oppose » In *La Croix*, Wednesday 23th of May 2001, p.9.

⁴⁸ Hermine Bokhorst and Jean-François Munster, « Le débat mûrit, lentement, sur l'opportunité d'une législation pour protéger les jeunes consommateurs » dans *Le Soir*, 6 décembre 2003.

⁴⁹ On peut lire les raisons de l'avocat général Online : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61995C0034:FR:HTML> (accessed 15 June 2010)

⁵⁰ Cour de Justice de l'Union Européenne, *Communiqué de presse n°45/97*, 9 juillet 1997, Online. <http://curia.europa.eu/fr/actu/communiqués/cp97/cp9745fr.htm> (accessed 15 June 2010)

⁵¹ *Ibid.*

François Brune, « La nécessaire réglementation de la publicité : De l'enfant-roi à l'enfant-proie », In *Le Monde Diplomatique*, september 1st 2004, p.3.
Corinna Hawkes, *Marketing Food to Children: Changes in the Global Reglementary Environment 2004-2006*, World Health Organization, 2007, p. 60. En ligne : http://www.who.int/dietphysicalactivity/regulatory_environment_CHawkes07.pdf

Non-specific Literature on Advertising Food and Drinks targeted at Children

The World Health Organisation (WHO) ordered a review of the scientific literature about advertisements for food products targeted at children⁵². This type of marketing is the most important of all categories of advertising directed at children.

Content analysis research finds that the majority of foods and food products promoted are energy dense, high fat, sugar and/or high salt, and in sharp contrast to national and international dietary guidelines. Sugar-sweetened breakfast cereals, soft-drinks, confectionary and savoury snacks are the most frequently advertised categories, with fast-food promotion continuing to gain marketing share. Promotion of unprocessed foods, such as fruit and vegetables, wholegrain and milk is found to be almost zero.

Limited trend analysis data suggests that there is a shift of marketing spend from TV advertising to other forms of promotion, although TV advertising remains the most dominant medium to date. As well as growth in promotion through emerging promotional platforms, such as the Internet, viral marketing by SMS (short messaging service) and more interactive competitions, games and membership, there is evidence of increasingly sophisticated integrated marketing strategies. [...]

The research also recognizes that in addition to explicit child-targeted marketing, children are exposed to a great deal of food promotion through generic medium such as mainstream TV, on-pack promotions and sponsorships.

The WHO is also interested in the recent modifications to the rules governing the marketing of food products targeting children⁵³. We examine the self-regulation codes formulated by industry, the legislative initiatives by governments and the activities of consumer associations. The actions of the governments of Sweden and Norway within the European context are also discussed.

Legal action against food advertisers is rare – and just as rarely an accepted part of the compliance process. The Consumer Ombudsman systems in Finland and Sweden are exceptions. The recently published guidelines on Children and Foodstuffs Marketing in Finland analyse many of the cases brought to the Consumer Ombudsmen and the Market Court over past years. In one example from 2005, the Consumer Ombudsman ruled against an advertisement for fruit-flavoured curds which “consisted almost entirely

⁵² Cairns, Georgia et al. 2009. « The Extent, Nature and Effects of Food Promotion to Children: A Review of the Evidence to December 2008 », World Health Organization. [Online] http://www.who.int/dietphysicalactivity/Evidence_Update_2009.pdf (accessed 15 June 2010)

⁵³ Hawkes, Corinna. 2007. « Marketing Food to Children: Changes in the Global Reglementary Environment 2004-2006 », World Health Organization. [Online] http://www.who.int/dietphysicalactivity/regulatory_environment_CHawkes07.pdf (accessed 15 June 2010)

of a presentation of the collector's series that was offered as a free gift with the product", because advertisements predominantly emphasizing a collector's series that interest children are against the guidelines. In Sweden, where advertising to children under the age of 12 years is banned, the Swedish Consumer Agency Ombudsman filed a complaint with the Market Court against an advertisement for a sweetened fruit-spread in 2005. The Ombudsman stated that the advertisement targeted children and encouraged pester power, and the product, despite not being nutritious, was portrayed as though it could be eaten every day. The advertiser contested the complaint, but the Market Ethical Court ruled in favour of the Ombudsman.

In June 2004, the Swedish umbrella organization of consumer associations - Sveriges Konsumentråd - lobbied the Swedish candidates for the forthcoming European Parliament elections to promote the request for a EU-wide ban on TV advertising to children, based on the model of the existing Swedish ban.

2.4.2 Finland: The Ombudsman to the Rescue of Consumers⁵⁴

Summary

In 1978 Finland enacted consumer protection legislation. Its goal was to readjust the balance between consumers and commercial interests which were progressively favoring the latter. Consumer policy issues are the responsibility of the Minister of Commerce and Industry. Many other agencies are involved: with the Consumer Ombudsman's office, there is a consumer watchdog representing the legal interests of consumers, the Consumer Commission which examines consumers' requests for compensation in individual cases, the Market Tribunal, which has special jurisdiction over marketing and contractual clauses and the Consumer Administration whose main task is to promote product safety and consumer information.

The Consumer Ombudsman is an independent authority, whose main task is to monitor advertising and contractual clauses. He/she has the discretionary powers to act in a legal capacity for individual consumers. He/she also informs government about emerging consumer protection issues. The Ombudsman's relationship to industry is confined mainly on communicating information relating to good business practices and negotiations with different companies. In case of failure of the non-coercive approach, the Ombudsman can pursue the case before the Market Tribunal or refer it to a prosecutor.

Each year, the Ombudsman receives 1300 written requests from consumers and he/she can choose to investigate. . The Ombudsman usually deals with cases of price-display, marketing allegations relating to the environment or health (jointly with the general management of Health and Social Affairs). Finally, Ombudsmen of the Scandinavian countries work closely together and have jointly formulated on TV commercials.

⁵⁴ Erik MICKWITZ, « Finlande : L'ombudsman au secours des consommateurs », *Revue de la concurrence et de la consommation*, n° 67, Mai-juin 1992, pp. 9-11.

2.4.3 The Swedish National Commission on Consumer Litigation

Summary

In 1968, Sweden created the Commission on Consumer litigation as an independent public agency, under the aegis of the Interior Ministry. Prior to 1968, there were no laws on consumer protection. Its mandate consists of solving consumer disputes quickly and inexpensively. The Commission is divided into 12 departments, specialized in litigation concerning different goods or services. The Commission hires judges, jurists and experts from consumer associations, the National Consumer Protection Administration and various professional organizations notably from banking and insurance. The Commission is assisted by a Council headed by the president of the Commission. The Consumer Ombudsman and the director of the Swedish Commerce Federation are members of the council.

The powers of the Commission are set by decree and by certain sections of the law governing administrative procedures. The most important function of the Commission is dispute resolution. To a minor extent, the Commission also trains and assists local consumer advisors who mediate conflicts and inform consumers and merchants about Commission.

Unless similar case has been settled by an ordinary judgment, the Commission will not intervene on consumer disputes. Complaints are submitted only in writing and no witnesses are called. It also will not hear cases where claims are less than a minimum amount: from 30 to 115 euros, depending on the department.

According to the Swedish law on consumer protection, a dissatisfied consumer has to give notice quickly to the merchant who then has to rectify the problems brought to his attention. If a settlement doesn't occur, the consumer can submit his case to the Commission. The procedure is free for both parties.

Since 1991, the Commission has been conducting an experimental project on collective action brought before it by the Consumer Ombudsman. . In 1997, a case was heard in an average of 3.8 months.

Judgments rendered by the Commission are merely recommendations and therefore are not binding and cannot be appealed. Most businesses comply with the decisions. If the merchant refuses to comply, the consumer can pursue him through the legal system. About 45% of decisions rendered were favorable to the consumers. Merchants complied in 70% of cases. This high rate is explained partly by the fact that professional associations ask their members to comply, businesses that fail to do so get negative publicity.

The banking department of the Commission founded in 1990 has led the way in modifying industry practice. The number of decisions favorable to the consumers has consistently declined and the rate of membership to the Commission is now of 90%, which illustrates that banks have learned from the decisions rendered by the Commission.

Conclusion

Several lessons emerge from the literature review. First, Ombudsmen have very broad remits, ranging much further than oversight of advertisement targeting children and extend to specific laws protecting children and youth. The duties consist of monitoring business practices and the market at large. The task of the Swedish Ombudsman is to be vigilant about:

- *misleading advertising and other types of marketing,*
- *unfair contract terms,*
- *incorrect price information and,*
- *dangerous products and services.*

This assignment is linked to specific laws protecting consumers and youth. Such Ombudsman cannot be implemented if such laws with specific sections regarding advertising are not in place.

For example, we discussed the case of a decision by the Finnish Ombudsman in 2005 about a commercial emphasizing a «free toy gift» attached to a product for sale. This measure was interpreted as advertisement targeting children. A similar practice would also be banned in Quebec (see the 2009 Burger King case where they admitted having targeted children by offering gift figurines) because of Section **232** of the *Consumer Protection Act*:

Emphasis on premium.

232. No merchant, manufacturer or advertiser may, by any means whatever, put greater emphasis, in an advertisement, on a premium than on the goods or services offered.

Another interesting case is that of the Swedish Ombudsman's decision about a food product that was advertised as one that could be eaten regularly even though it was proven to be unhealthy. This type of publicity was deemed misleading by the Ombudsman and later confirmed by the Market Ethics Tribunal. Many laws in Canada and Quebec prevent misleading advertising, the *Food and Drugs Act* for example mentions in **section 5**:

Deception, etc., regarding food

5. (1) No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

The *Competition Act* also explicitly states in **section 52**:

False or misleading representations

52. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

Finally, the *Consumer Protection Act* states in **section 219**:

False representations.

219. No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.

However, according to our research, Canadian and Quebec jurisprudence do not show any examples of false or misleading allegations about unhealthy foods presented as being part of a healthy and balanced diet.

Regarding the powers and the mandate of the Finnish Ombudsman, the 1974 article seemed quite pessimistic about his/her capacity to protect consumers efficiently. Nonetheless, in Sweden, which has a similar system without coercive powers, the Ombudsman plays an important role and most economic players comply with his/her decisions.

Despite limited powers, ombudsmen/consumer mediators are still able to fulfill their mandates. The capacity to take initiatives, the open structures and the possibility to sue before the courts in case of non-compliance to Ombudsman's decisions seem to be favorable to consumers.

Sweden's consumer protection system is unique even within the EU. In fact, broadcasters have to comply with the laws of the country where the broadcast originates and not where it is disseminated. In Canada, the situation is different because there is no such «television without borders » directive. For example, in Quebec, where advertising that targets children is controlled, such commercials are banned, regardless of where the broadcaster is located. According to Thierry Bourgoignie, professor at the Legal Science Department of UQAM:

*As soon as the Consumer Protection Act is considered imperative or a law of public order, its sections apply to all practices taking place on the whole territory of Quebec; section 248 therefore applies to all messages broadcasted in Quebec, no matter where it originates from*⁵⁵.

Nevertheless, Thierry Bourgoignie continues: « Such is the answer in law. Effectively, it would be difficult for the CPA (Consumer Protection Agency) to enforce this ban. But this is a factual consideration that must not take precedence over the rule. » Thus Quebec would gain if Canada banned advertisement targeting children, if only for legal compliance issues. It's in this state of mind that Sweden tried to adopt a law banning publicity targeting children during its turn as president of the European Union in 2001.

⁵⁵ Cited in Laperrière, Jean-Philippe. 2009. Analyse comparative de la forme des messages publicitaires pouvant s'adresser aux enfants. [Online] http://www.grms.uqam.ca/upload/files/memoire-de-recherche/ER_R_pub_enfants_JPL.pdf, pp 22-23.

Bibliography

Chapter 1

- Australian Institute of Health and Welfare. 2010. « Australia's Health 2010 ». [Online]
<http://www.aihw.gov.au/publications/aus/ah10/ah10.pdf>
- Cairns, Georgia et al. 2009. « The Extent, Nature and Effects of Food Promotion to Children: A Review of the Evidence to December 2008 ». World Health Organization. [Online]
http://www.who.int/dietphysicalactivity/Evidence_Update_2009.pdf
- Chambre des communes du Canada. 2007. « Projet de loi C-414 » [Online]
<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3085024&Language=f&Mode=1&File=14>
- Conseil des directeurs médias du Québec. 2010. « Guide annuel des médias 2010 ». [Online]
http://www.cdmq.ca/contenus/Outils-media/Guide-media-2010/12-16_GAM2010_Bilan.aspx
- Finnish Food Safety Authority. No date. « Nutrition and health claims » [Online]
http://www.evira.fi/portal/en/food/control_and_entrepreneurs/nutrition_and_health_claims/nutrition_claims (accessed 22 June 2010)
- Food Drug Administration. 2008. « Appendix B : Additional Requirements for Nutrient Content Claims ». [Online]
<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/ucm064916.htm> (accessed 22 June 2010)
- Food Standards Australia New-Zealand. No date. « Calculating method for determining foods eligible to make health claims – Nutrient Profiling Calculator ». [Online]
<http://www.foodstandards.gov.au/srcfiles/method%20to%20determine%20eligibility%20final.pdf> (accessed 22 June 2010)
- Gouvernement du Québec. 2010. « Vision de la saine alimentation » [Online]
<http://msssa4.msss.gouv.qc.ca/fr/document/publication.nsf/4b1768b3f849519c852568fd0061480d/62c2cf260b418eab852576e400736b7b?OpenDocument>
- Hatings G. et al. 2003. « Review of Research on the Effects of Food Promotion to Children ». [Online] <http://www.food.gov.uk/multimedia/pdfs/foodpromotiontochildren1.pdf>
- Linn, Susan E. 2004. « Food Marketing to Children in the Context of a Marketing Maelstrom ». *Journal of Public Health Policy*, Vol 25, no 3/4. p 367.
- Livingstone, Sonia. 2004. « A Commentary on the Research Evidence Regarding the Effects of Food Promotion on Children ». [Online]
[http://www.aeforum.org/aeforum.nsf/b6f532dc08e2a32e80256c5100355eab/b93638508054578380256eda0059182a/\\$FILE/appendix1Ofcom%20SoniaLivingstone.pdf](http://www.aeforum.org/aeforum.nsf/b6f532dc08e2a32e80256c5100355eab/b93638508054578380256eda0059182a/$FILE/appendix1Ofcom%20SoniaLivingstone.pdf)
- Livsmedelsverket (National Food Administration – Sweden). 2010. « The Keyhole Symbol ». [Online] <http://www.slv.se/en-gb/Group1/Food-and-Nutrition/Keyhole-symbol/> (accessed 22 June 2010)

- Ministère de l'Éducation, du Loisir et du Sport. 2007. « Pour un virage santé à l'école ». [Online] <http://www.mels.gouv.qc.ca/sections/viragesante/pdf/virageSante.pdf> (accessed 22 June 2010)
- National Institute for Health and Welfare. 2009. « Finland's experience in salt reduction ». [Online] http://ec.europa.eu/health/nutrition_physical_activity/docs/ev20091021_pietinen_en.pdf (accessed 22 June 2010)
- Organisation mondiale de la santé. 2006. « Marketing of food and non-alcoholic beverages to children: report of a WHO forum and technical meeting » [Online] <http://www.who.int/dietphysicalactivity/publications/Oslo%20meeting%20layout%2027%20NOVEMBER.pdf> (accessed 22 June 2010)
- Santé Canada. 2007. « Bien manger avec le Guide alimentaire canadien ». [Online] <http://www.hc-sc.gc.ca/fn-an/food-guide-aliment/index-fra.php> (accessed 22 June 2010)
- Santé Canada. 2009. « L'annexe A de la loi sur les aliments et les drogues » [Online] http://www.hc-sc.gc.ca/dhp-mpps/prodpharma/activit/sci-consult/fda-lad-a/sched-ann_a_background-contexte-fra.php (accessed June 2010)
- Saskatchewan Ministry of Education. 2009. « Nourishing Minds: Eat Well, Learn Well, Live Well ». [Online] <http://www.education.gov.sk.ca/nourishing-minds/> (accessed 22 June 2010)
- School Food trust. 2008. « A guide to introducing the Government's food-based and nutrient-based standards for school lunches ». [Online] http://www.schoolfoodtrust.org.uk/UploadDocs/Library/Documents/sft_nutrition_guide_aug08.pdf (accessed 22 June 2010)
- School Food trust. 2009. « The nutrient base standard ». [Online] <http://www.schoolfoodtrust.org.uk/the-standards/the-nutrient-based-standards/14-nutrient-based-standards-for-school-lunches> (accessed 22 June 2010)
- Story, Mary and Simone French. 2004. *International Journal of Behavioral Nutrition and Physical Activity* no 3. [Online] <http://www.ijbnpa.org/content/1/1/3> (accessed 6 July 2010)
- Social Security Administration. 2008. « Food Stamps Facts ». [Online] <http://www.ssa.gov/pubs/10101.html> (accessed 22 June 2010)
- Utter, Jennifer *et al.* 2006. « Associations between television viewing and consumption of commonly advertised foods among New Zealand children and young adolescents ». *Public Health Nutrition*, Vol 9. pp 606-612.
- Zannat Reza. 2009. « Defining 'Healthy' Foods. Environmental Scan of the Situation in Canada ».

Chapter 2

- Barnombudsmannen. 2010. *About the Ombudsman for Children in Sweden*. [Online] <http://www.barnombudsmannen.se/Adfinity.aspx?pageid=7043> (accessed 28 June 2010)
- Barnombudsmannen. 2010. *Background*. [Online] <http://www.barnombudsmannen.se/Adfinity.aspx?pageid=89> (accessed 28 June 2010)
- Bokhorst, Hermine et Jean-François Munster, « Le débat mûrit, lentement, sur l'opportunité d'un législation pour protéger les jeunes consommateurs » dans *Le Soir*, 6 décembre 2003.
- Brune, François. « La nécessaire réglementation de la publicité : De l'enfant-roi à l'enfant-proie » dans *Le Monde Diplomatique*, 1er septembre 2004, p.3.
- Cairns, Georgia et al. 2009. *The Extent, Nature and Effects of Food Promotion to Children: A Review of the Evidence to December 2008* [Online] http://www.who.int/dietphysicalactivity/Evidence_Update_2009.pdf
- Consumer Ombudsman guidelines. 1999. *Marketing in relation to children and young people*. [Online] http://www.forbrukerombudet.no/asset/509/1/509_1.doc (accessed 22 June 2010)
- Cour de Justice de l'Union Européenne. 1997. Press release n°45/97 [Online] <http://curia.europa.eu/fr/actu/communiqués/cp97/cp9745fr.htm>
- European Union. 2009. *Consumer policy and institutions in Norway*. [Online] http://ec.europa.eu/consumers/overview/country_profile/NO_web_country_profile.pdf (accessed 22 June 2010)
- European Union. 2009. *Consumer policy and institutions in Sweden* http://ec.europa.eu/consumers/empowerment/docs/SV_web_country_profile.pdf (accessed 28 June 2010)
- Fairgrieve, Duncan and Geraint Howells. 2009. *Collective Redress Procedures – European Debates*, ICLQ, vol. 58, April 2009, pp. 379-409.
- Forbrukerombudet (The Consumer Ombudsman) <http://www.forbrukerombudet.no> (accessed 22 June 2010)
- Forbrukerombudet. 1999. *Guidelines on the Consumer Ombudsman's Practice : Marketing in relation to Children and Young People* [Online] http://www.forbrukerombudet.no/asset/509/1/509_1.doc (accessed 22 June 2010)
- Forbrukerombudet. 2002. *Consumer policy and institutions in Norway. The Consumer Ombudsman and Market Council*. [Online] <http://www.forbrukerombudet.no/index.gan?id=491&subid=0> (accessed 22 June 2010)
- Forbrukerombudet. 2009. *The Marketing Control Act in Norway* [Online] <http://www.forbrukerombudet.no/index.gan?id=11039810> (accessed 22 June 2010)

- Hawkes, Corinna. 2007. *Marketing Food to Children: Changes in the Global Reglementary Environment 2004-2006*, World Health Organization [Online]
http://www.who.int/dietphysicalactivity/regulatory_environment_CHawkes07.pdf
- Kagerman, Britta Ahnmé. 1999. « La Commission nationale des litiges de consommation de Suède », In *Revue européenne de droit de la consommation*, 1999, pp. 377-390.
- Konsument verket. 2010. *This is how you apply KO support*. [Online]
<http://www.konsumentverket.se/otherlanguages/English/This-is-how-you-apply-for-KO-support/>
- Konsument verket. 2010. *About the Swedish Consumer Agency*. [Online]
<http://www.konsumentverket.se/otherlanguages/English/About-the-Swedish-Consumer-Agency/> (accessed 28 June 2010)
- Levin, Marianne. « L'utilisation des femmes et des enfants dans la publicité en droit suédois », *Gazette du Palais*, 22 novembre 2001 n° 326.
- Lindblom, Henrick. 2008. *National report: Group Litigation in Sweden, update paper sections 2.5 and 3*. [Online]
http://www.law.stanford.edu/library/globalclassaction/PDF/Sweden_Update_paper_Nov%20-08.pdf (accessed 28 June 2010)
- Masson, Marie-Françoise. « La publicité télévisée divise l'Europe .ENFANCE . La Suède, présidente de l'Union européenne jusqu'en juillet, incite les Quinze à s'inspirer de sa propre législation, qui interdit la publicité télévisée destinée aux enfants. La Commission européenne s'y oppose » In *La Croix*, Wednesday 23 may 2001, p.9.
- Mickwitz, Erik. « Finlande : L'ombudsman au secours des consommateurs », In *Revue de la concurrence et de la consommation*, n° 67, May-June 1992, pp. 9-11.
- Norway Ministry of Culture. 2005. *Act no.127 of 4 December 1992 relating to broadcasting* [Online] <http://www.regjeringen.no/en/dep/kkd/Documents/acts-and-regulations/reglement/2005/broadcasting-act-.html?id=420612> (accessed 22 June 2010)
- Norwegian Directorate for Health and Social Affairs. 2008. *European Network on reducing marketing pressure on children*. [Online]
http://www.helsedirektoratet.no/vp/multimedia/archive/00044/Final_report_first_m_44659a.pdf (accessed 22 June 2010)
- Stenberg, Hans. « L'Ombudsman suédois pour les consommateurs », *Revue internationale de droit comparé*, vol. 26, no. 3 (1994), pp. 577-581.
- Sweden Consumer Ombudsman. 1998. *Consumer Ombudsman's Interpretative Advice on the Prohibition of Commercial Advertising to Children on Television* [Online]
http://www.aeforum.org/reg_env/sweden_1.pdf (accessed 28 June 2010)

More info on chapter 2

- Advertising Education Forum. 2005. *Sweden*. [Online] http://www.aeforum.org/reg_env/sweden.html (accessed 22 June 2010)
- Allmänna Reklamationsnämnden. 2009. *ARN- The National Board for Consumer Complaints (Sweden)* [Online] <http://www.arn.se/Other-languages/English/> (accessed 15 June 2010)
- Commission of the European Communities. 2001. *Commission Recommendation of 4 April 2001 on the principles for out-of-court bodies involved*. [Online] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:109:0056:0061:EN:PDF> (accessed 22 June 2010)
- Commission of the European Communities. 2008. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. [Online] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:EN:PDF> (accessed 22 June 2010)
- Council of Europe/ ERICarts. 2009. *Compendium of Cultural policies and Trends in Europe: Sweden* [Online] http://www.culturalpolicies.net/down/sweden_042009.pdf (accessed 15 June 2010)
- EUR-Lex. 61995C0034 Conclusions de l'avocat général Jacobs présentées le 17 septembre 1996 [Online] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61995C0034:FR:HTML>
- European Chambers of Commerce and Alternative Resolution of Commercial Disputes (Sweden). No date. *Chamber of commerce involved and other institutions associated with the chamber of commerce system*. [Online] <http://www.ftc.gov/bcp/altdisresolution/comments/skehan.pdf> (accessed 22 June 2010)
- European Network of Ombudsmen for Children. 2004. *Ombudsman in Sweden* [Online] <http://www2.ombudsmen.org/Ombudsmen/Sweden/SwedenOmb.htm> (accessed 15 June 2010)
- Institute for Local-self Reliance. 2009. *Ban on Advertising to Children*. [Online] <http://www.newrules.org/information/rules/curbing-commercialization-public-space/ban-advertising-children-norway> (accessed 22 June 2010)
- Konsument Verket. 2005. *Consumers in Sweden* [Online] http://www.konsumentverket.se/Global/Konsumentverket.se/Best%C3%A4lla%20och%20adda%20ner/Broschyrer/Dokument/kis_engelska_06.pdf (accessed 22 June 2010)
- Mitchener, Brandon. 2001. *Sweden Pushes Its Ban on Children's Ads* [Online] <http://www.commondreams.org/headlines01/0529-05.htm> (accessed 15 June 2010)
- Roan, Dan. 2002. *Showing the way: Sweden has the toughest consumer laws in the world*. In BBC news [Online] http://news.bbc.co.uk/2/hi/programmes/working_lunch/1987326.stm (accessed 22 June 2010)

Ruskin, Gary. 1999. *Swedish Consumer Ombudsman on TV advertising to children* [Online] <http://lists.essential.org/commercial-alert/msg00028.html> (accessed 22 June 2010)

Swedish Code of Statutes. 2002. *Group Proceedings Act* [Online] <http://www.regeringen.se/content/1/c6/02/77/67/bcbe1f4f.pdf> (accessed 15 June 2010)

The Swedish Radio and TV Authority. No date. *The Radio and Television Act (1996: 844)* [Online] http://www.rtv.se/_upload/uk/download/rtvact.pdf (accessed 22 June 2010)

World Intellectual Property Organization. 1995. *Sweden: The Marketing Act* [Online] http://www.wipo.int/clea/en/text_html.jsp?lang=EN&id=3635#pop00000 (accessed 22 June 2010)