

BCAP Direct Exhortation Consultation: Individual responses

1 – Mearns FM

"Advertisements must not directly exhort children to buy or hire a product or service, nor directly encourage them to persuade their parents or others to buy or hire the advertised product or service for them."

Question: "Do you agree to the proposed amendments to rule 5.9?
If you disagree, please explain why."

The above is the statement to which you are requesting the change and while I do **write to agree with the change in wording**, I would have liked to see more evidence around the facts that children have been receiving, or influenced their parents to buy products based on advertising.

Again are we are being influenced by the minority in our society who seem to be driven by their children in today's world whereas it should be the parents and indeed Board members of any Company involved in advertising practices who should be leading by example.

That said you will always have the minority who seem to cause the biggest fuss so good luck with your amendment.

2 – Play Therapy UK

Our response to this consultation is to fully support the proposed change.

We represent just over 1000 Play Therapists - see <http://www.playtherapyregister.org.uk> and <http://www.playtherapy.org.uk> who work with children aged 4 to 12.

Some work as independent practitioners and advertise their services. We will be informing them about the change of this rule.

3 – Unity FM

The underlying purpose of the existing clause is to stop children pestering their parents to buy products. The changes to the existing clause will violate this principle. The subtle differences in the wording employed below are mere semantics – the intention from the advertisers is clear: get kids to pester their parents.

The existing clause should remain.

4 – The DMA

Information about The DMA (UK) Ltd

The Direct Marketing Association (UK) Limited (DMA) is Europe's largest trade association in the marketing and communications sector, with approximately 900 corporate members and positioned in the top 5% of UK trade associations by income.

The total value of direct marketing to the UK economy was estimated to be £9.1 billion in 2011. This comprises three separate figures; £4.3 billion on expenditure on direct marketing media and activities, £1.1 billion on goods and services brought in by companies to enable the undertaking of direct marketing activity and £3.7 billion on the spending of people employed in the industry as consumers (Putting a Price on Direct Marketing The DMA July 2012).

The DMA represents both advertisers, who market their products using direct marketing techniques, and specialist suppliers of direct marketing services to those advertisers - for example, advertising agencies, outsourced contact centres etc.

The DMA also administers the Mailing Preference Service, the Telephone Preference Service and the Fax Preference Service. On behalf of its membership, the DMA promotes best practice, through its Direct Marketing Code of Practice, in order to maintain and enhance consumers' trust and confidence in the direct marketing industry.

The Direct Marketing Commission is an independent body that monitors industry compliance. Please visit our website www.dma.org.uk for further information about us.

Question: Do you agree to the proposed amendments to rule 5.9? If you disagree, please explain why.

The DMA agrees that the proposed changes to rule 5.9 are necessary in order to ensure that the rule is consistent with the maximum harmonisation requirements of the Consumer Protection from Unfair Trading Regulations 2008 and is in line with the provisions of the Audiovisual Media Services Directive.

5 – Bauer Media Group

Bauer Media are supportive of the proposed changes to rule 5.9. Whilst we only envisage a limited number of clients may want to take advantage of the amendment, it is beneficial for them to have the flexibility to do so. We also understand your desire to introduce consistency with the maximum harmonisation requirements imposed by the Consumer Protection from Unfair Trading Regulations 2008.

6 - Mothers' Union

Mothers' Union is pleased to respond to the BCAP rule 5.9 Consultation.

The area of commercialisation and its impact on children is an area which Mothers' Union has a long standing interest and voice in. Mothers' Union firmly believes that children should be valued as children, not consumers. Yet we know that marketers target children's natural inexperience in order to reach the 'household purse'. Giving children the message that they are what they own, rather than valuing them for who they are, can negatively affect their wellbeing.

Mothers' Union launched the Bye Buy Childhood campaign in August 2010 to challenge the commercialisation and sexualisation of childhood. The objectives of this campaign are to:

- Challenge children and their families to think about their consumer habits and to empower families to manage the commercial world
- Engage with the commercial world to encourage responsible advertising and retail practices
- Influence government to take action on the issue.

Following the first phase of the Bye Buy Childhood campaign, Mothers' Union's Chief Executive, Reg Bailey CBE, was commissioned by the Government, in 2010, to carry out an independent review into the issue, resulting in the Letting Children be Children Report, an Independent Review of the Commercialisation and Sexualisation of Childhood.

We are pleased to note that Reg Bailey will also be responding to this consultation, but in particular think it is important to flag up the progress made on the Bailey recommendations including the creation of the ParentPort website (which directs complaints to the appropriate regulator for each industry such as Ofcom for television) and the tightening of a number of industry guidelines for example on the television watershed, on outdoor advertising and on the retail of men's lifestyle magazines. These meaningful changes, resulting from the Bailey Review, have enabled the UK to remain at the forefront of best practice.

Mothers' Union continues to run the Bye Buy Childhood campaign and will release new research in September 2014 sharing the opinions and experiences of parents, as well as highlighting changes in their concerns since 2010.

Proposal to amend BCAP rule 5.9

The consultation document states that the wording of rule 5.9 goes further than the requirements of the provision that the rule is designed to reflect, i.e. it goes further than the highest protection provided for by the combination of prohibited practice 28 and Article 9(g) which it is subject to.

Mothers' Union strongly believes that where children, child welfare or the impact of something on children is under consideration or being provided for, it is important that the very best level of care is provided, going above and beyond the minimum.

We would question why the need to amend BCAP rule 5.9 has been raised at this point in time? While we agree that the principle of clarity is important, we do not believe that the proposed change would result in clarity in practice. Furthermore, the provisions of the Audiovisual Media Services Directive allow in several instances the freedom for member

states to lay down more detailed or stricter rules as necessary for their jurisdiction while ensuring that they are consistent with the general principles of European Union Law. In particular with regards to advertising, clause (83) states:

“In order to ensure that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards and that the Member States must maintain the right to set more detailed or stricter rules and in certain circumstances to lay down different conditions for television broadcasters under their jurisdiction.”

We would encourage BCAP to place the UK at the forefront of good practice and to show that it is possible to go beyond the minimum in order to protect children.

Regression

Rule 1.1 at the outset of the BCAP rules states that, “Advertisements must reflect the spirit, not merely the letter, of the Code.” We believe that by introducing the proposed new wording it will be possible for advertisers to adhere to the letter of the code, but in doing so will be avoiding the spirit of the code which we believe is holistic and comprehensive protection for children. We believe that the proposed new wording will undermine the spirit of the rules, and furthermore in practice it will be difficult to define the proposed words and any resulting definitions will be blurred.

The proposed new wording represents a regressive step, and diminishes the work that has been done to protect against pester power. Pester power is a wide ranging concern. The House of Lords have recently held the second reading of the Consumer Rights Bill. Whilst this was not responding directly to the proposed changes to BCAP rule 5.9, Baroness Bakewell raised a particularly salient point for the BCAP consultation when talking about payday loan advertising.

“Children are exposed to payday loan adverts on a daily basis. These adverts do not flag up the penalties for non-repayment and give the impression that money is readily available, just for the asking. Anyone who has children will have suffered at some stage from the “I want” syndrome, especially in the weeks running up to Christmas. This can cause enormous stress to families struggling to make ends meet. By allowing children to think it is easy for their parents to get access to cash, the adverts are encouraging children to pester their parents to take out high levels of debt. It is exploiting children to reach parents, and this manipulative tactic must be discouraged.”

While speaking to the problem of payday loan advertisements, which is not the focus of this consultation, Baroness Bakewell’s argument highlights the fact that adverts, whether aimed at children or not, do encourage children to pester their parents and highlights some of the problems that this causes.

The Letting Children be Children Report highlighted the persistence with which children ask for things and how it impacts on parents.

“It is also clear that the persistence with which children ask for things is another influence (Phoenix, 2011). Children and young people freely acknowledge their use of ‘pester power’: Nearly a third (32 per cent) of children in the omnibus survey for the Review say that if they really want something and they know their parents do not want them to buy it, they will

always keep on asking until their parents let them have it. More than half (52 per cent) say they sometimes do this and only 15 percent said they never do.”

There is widespread recognition as to the pervasiveness of marketing, and Mothers' Union's concern is that the proposed changes, particularly the introduction of the word 'persuade', mark a backwards step.

In response to the specific changes proposed in the consultation document:

1. 'To use the word 'persuade' in the place of 'encourage'

The word 'encourage' appears in both the old 5.9 wording, and also the proposed new wording.

However, we think it is the word 'ask' that will be substituted by the word 'persuade' under the proposed change. Mothers' Union is concerned that the consultation document is not clear at this point and may have caused confusion as to the proposed change being suggested here.

With regards to the substance of the change, we feel that changing the word 'ask' to 'persuade' would diminish the protections currently offered by the rule. While this distinction may be made in theory, in practice it would be very hard to judge when a child is 'asking' rather than 'persuading', and the effect on the parent, guardian or other person is likely to be the same.

The spirit of the current regulation is that a child should not be manipulated to put pressure on their parent, guardian or other persons to buy something for them. We fear that the reality of this change in wording would erode the protection, as a stronger word such as 'persuade' would in theory cover less scenarios than 'asking' and would, we believe, permit and encourage more marketing towards children.

We believe that an advert that may comply with the revised ruling would still in practice result in a child putting pressure on their parent, guardian or another person regarding that product which is what the rule is designed to protect against.

2. Addition of the word 'directly'

Mothers' Union believes that the addition of the word 'directly' will weaken the current rule and will enable advertisers to indirectly put pressure on children.

The Advertising Standards Authority (ASA) state that they have an “ongoing commitment to protecting children from harmful or inappropriate material. While the Bailey Review highlights the effectiveness of the ASA and the wider advertising self-regulatory system it also provides interesting ideas on how we can do things better. We will respond to the recommendations to ensure parental concerns are heard and we continue to place protection of children at the heart of our work.”

We have flagged this statement as we believe that it is vital that the protection of children is placed at the heart of this discussion. We do not see that the proposed wording change to rule 5.9 places the protection of children and the heart of the rules, rather it seeks to make life easier for advertisers.

3. Addition of the word 'hire'

Although we do not agree with the proposed changes as outlined above for the benefits of consistency, Mothers' Union does not have any objection to the addition of the word hire to rule 5.9.

Conclusion

In conclusion, we would urge the Broadcasting Committee of Advertising Practice to leave the current wording of rule 5.9 as it is.

The proposed changes would not strengthen the protection for children, rather the result of seeking to harmonise the wording would weaken the current rule as applied in practice and would result in weakening the spirit of the code.

Furthermore, the proposed changes would diminish the ability of the United Kingdom to be seen as a leader in this area, undermining the successes of the Bailey recommendations.

7 – The Walt Disney Company

The Walt Disney Company Limited (“Disney”) is pleased to submit these comments in response to the Broadcast Committee of Advertising Practice (“BCAP”) request for comments on proposed revisions to Rule 5.9. Disney applauds the leadership demonstrated by BCAP in ensuring that the BCAP Code is proportionate and consistent with the Consumer Protection from Unfair Trading Regulations 2008 (“CPRs”) and the EU Unfair Commercial Practice Directive 2005/29/EC (“UCPD”). Disney appreciates this opportunity to comment and welcomes BCAP’s commitment to complying with the Directive’s maximum harmonisation requirements through an iterative, collaborative process.

Disney strongly supports BCAP’s proposed revisions to Rule 5.9. In particular, Disney welcomes the reasonable and practical distinction BCAP has drawn; namely, allowing advertisements that may encourage children to have their parents (guardians or others) enquire rather than directly exhort a purchase. This embraces BCAP’s and Disney’s shared goal of involving parents in their children’s media consumption and resulting behaviours. Disney also appreciates BCAP’s recognition that the current Rule 5.9 could be read to impose a stricter standard than that imposed by the law provided by the CPRs prohibited practice 28.

BCAP’s proposed revisions to Rule 5.9 better facilitate dialogue between children and their parents. Disney greatly values this candid dialogue, and believes such openness best ensures parents are involved in their children’s viewing and consumer habits. The parent-child relationship is key to the development of responsible digital citizenship; this relationship is better protected when children are encouraged to discuss issues and purchases with their parents. Disney appreciates BCAP’s recognition of this important aspect of children’s media consumption.

Disney also takes note of the importance of allowing children the right to participate in certain decisions about them, as expressed by in Article 24 of the EU Charter of Fundamental Rights, as follows:

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. **They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.**
2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.
3. **Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.**

The EU’s Article 29 Data Protection Working Party has likewise noted that “Children gradually become capable of contributing to decisions made about them. As they grow, they should participate more regularly about the exercise of their rights, including those relating to data protection.”

Disney Encourages BCAP to Include in Rule 5.9 the Important Clause “*by exploiting their inexperience or credulity,*” as codified in the AVMS Directive and elsewhere.

Disney strongly urges BCAP to incorporate into Rule 5.9 the important clarifying language from Article 16 of Directive 89/552/EEC and Article 9(g) of the Audiovisual Media Services Directive (“AVMS Directive”) which is cross-referred in Paragraph 28 of Annex 1 of the UCPD: “by exploiting their inexperience or credulity,” such that Rule 5.9 would read:

*“Advertisements must not directly exhort children to buy or hire a product or service by **exploiting their inexperience or credulity**, nor directly encourage them to persuade their parents or others to buy or hire the advertised product or service for them. (Emphasis added.)”*

This clause provides significant protection for children against marketing efforts that deliberately exploit children’s innocence. Disney strongly believes children are better protected through the inclusion of this language.

Furthermore, this language must be included in Rule 5.9 to ensure the lawfulness of the rule. As the BCAP Rule 5.9 Request for Consultation states, “It is BCAP’s view that Union law includes UCPD, so the UK is not lawfully able to maintain restrictions on advertising directed at children which go beyond the highest protection provided for by the combination of prohibited practice 28 and Article 9(g).” The absence of the clause regarding the exploitation of children’s “inexperience or credulity” arguably constitutes a material change from Article 9(g) of the AVMS Directive. In omitting this clause, the proposed Rule 5.9 may impose a stricter standard than that imposed by the AVMS Directive. The additional element of dishonest practice should be required in determining a marketing effort violates Rule 5.9.

The UK Office of Fair Trading (“OFT”) issued Principles for Online and App-Based Games (“the Principles”) in January 2014. Notably, Principle 6 provides:

“Games should not include practices that are aggressive, or which otherwise have the potential to exploit a child’s inherent inexperience, vulnerability or credulity or to place undue influence or pressure on a child to make a purchase. The younger a child is, the greater the likely impact those practices will have, and the language, presentation, design and structure of the game should take account of that.”

Thus, OFT recognized the import of this clause regarding manipulative marketing practices against children. It is significant that OFT issued the Principles after comment from and consultation with dozens of stakeholders. Indeed, OFT exchanged views on the Principles with the UK’s international consumer enforcement counterparts; OFT had discussions on a European level with Member States through the Consumer Protection Cooperation Network, and on a broader international level through the International Consumer Protection and Enforcement Network. OFT developed the Principles “to allow them to be applied by other enforcement agencies when interpreting their own domestic consumer protection law.” OFT found “significant agreement that the Principles strike a suitable balance and have helped to achieve consistency ... in compliance and enforcement strategies.” Indeed, the UK Information Commissioner made specific reference to the Principles in his recent guidance on Privacy in Mobile Apps, stating that these Principles outline “how an app-based game can better fulfil the requirements of the relevant consumer protection laws.” This demonstrates the significance that should be accorded to the Principles’ inclusion of the clause related to children’s inexperience, vulnerability or credulity.

The qualification concerning a child's inexperience or credulity is widely recognized as an important criterion in a number of different contexts, including the AVMS Directive and the very recent UK Government consultation on the Principles for Online and App-Based Games. For this reason and for consistency, this important and accepted criterion should be reflected by BCAP by amending Rule 5.9. to include the words **by exploiting their inexperience or credulity**.

Alternatively, BCAP should explain why this language has been omitted from Rule 5.9.

Conclusion

Disney deeply appreciates BCAP's continuing efforts to ensure that children can watch television and listen to the radio in a protected environment. Disney welcomes BCAP's proposed revisions to Rule 5.9 to ensure the BCAP Code is clear, proportionate and consistent with the law. Disney strongly recommends BCAP further amend Rule 5.9 to include the clause, "by exploiting their inexperience or credulity," to ensure complete compliance with Article 9(g) of the AVMS Directive.

Disney looks forward to engaging further with BCAP on these important issues.

8 – Reg Bailey

As Chief Executive of Mothers' Union, commercialisation and its impact on children is an area with which I have long engaged. Mothers' Union has responded separately to this consultation based on the experience gained during the long running Bye Buy Childhood campaign which aims to challenge children and their families to think about their consumer habits and to empower families to manage the commercial world as well as engaging with the commercial world to encourage responsible advertising and retail practices.

Following the launch of Bye Buy Childhood, in 2010, you will be aware that I was asked by the Government to carry out a review into the issue, resulting in the 'Letting Children be Children Report', an Independent Review of the Commercialisation and Sexualisation of Childhood. Your own Chairman, James Best, was a "critical friend" in this review.

The review resulted in a number of recommendations, and much progress has been made in implementing them. In May 2013 the UK Government published its 'stock-take' of the steps taken since my Review.

Significant steps taken include:

- The introduction of free parental controls and filters by BT, Sky, TalkTalk and Virgin Media which could be activated by parents at any time.
- The removal of exemptions to the Video Recordings Act, meaning that music, sports, religious and educational videos are now age-rated if they are likely to be unsuitable for children.
- Filtering of wi-fi internet in public places.
- The creation of a new website, ParentPort, which directs complaints to the appropriate regulator for each industry such as Ofcom for television.
- The tightening of a number of industry guidelines for example on the television watershed, on outdoor advertising and on the retail of men's lifestyle magazines.

I was very pleased to see these important changes, and it has been my hope that they will have a positive impact on the amount, and suitability, of advertising, marketing and media that children are exposed to, as well as better equipping families to get their voices heard.

I am disappointed to see the proposed changes to BCAP rule 5.9. Following my review I was pleased to see from the many responses offering bold solutions to its recommendations, such as the Advertising Standards Authority's (ASA) recognition and provision that 'advertising rules surrounding children are deliberately strict', as well as the 'tighter line' promised by ASA when considering complaints about 'sexualised imagery' in outdoor advertising where children are likely to see it. In the review I said that we should not 'accept a timid approach when there is obvious goodwill to draw on and concrete examples from different business sectors and regulators of changes that are already being made', and I continue to believe that it is only by being bold with the measures that are taken to protect children that we will continue to make real progress and put the UK at the forefront of leading the way.

It seems to me that the proposed changes to the BCAP rule 5.9 mark a step backwards from an accepted rule and will, I believe, have a negative impact in practice. The proposed new wording will make it possible for advertisers to adhere to the letter of the code, but in doing so will be avoiding the spirit of the code which offers a greater protection for children and also their parents, guardians or other adults from pestering power.

My review highlighted the prevalence of pester power, with just over a third of children questioned as part of the review (32%) saying that if they really wanted something and knew their parents did not want them to buy it, they would always keep on asking until their parents let them have it. More than half (52%) of those we spoke to said they sometimes did this with only 15% saying they never did. The proposed new wording undermines the progress that has begun to be made against pester power and the intention that a child should not be manipulated to put pressure on their parent, guardian or other persons to buy something for them.

I do not believe that the proposed changes would result in the best protections for children and families against advertising targeted towards children, and am concerned that this would be a backwards step.

I strongly oppose this change.