

A child in advertising, a child as a recipient of advertising – selected legal aspects

ABSTRACT

The elaboration has been devoted to the issue of advertising addressed at children and advertising with participation of children. Due to the multithreading of the problem, only selected legal issues in the subject matter have been covered with considerations. The binding legal provisions regarding the title issue have been analysed, as well as propositions of amendments thereof have been addressed.

KEYWORDS: *advertisement, children, advertising addressed at children, advertising with participation of children*

Introduction

The publication concerns the issue of advertising with participation of children and advertising addressed at children. This issue is extremely important and complex. Due to its multithreading, reflections presented herein shall solely refer to the selected legal aspects in the subject matter. In the Polish Dictionary (Szkilądz, Bik, Pakosz, Szkilądz, 1989, pp. 38–39) the concept of advertising is understood as “distribution of information on goods, advantages thereof, value, places and possibilities of purchasing, praising someone, recommending something in the press, on the radio and television”. Advertising is aimed at presenting a given

product as best as possible so that as many customers as possible are interested in buying it (functions of advertising, see: Nowińska, 2002, pp. 28–32). Children are the consumers, who are the most prone to advertising and who can impact decision making processes of the family related to buying given goods (Walotek-Ściańska, 2010, p. 91). The article is aimed at explaining legal regulations related to the title issue and attempting assessment thereof.

Research method

The basic method used in the work is the dogmatic-legal method. Also the comparative-legal method has been used to a small extent.

International regulations

The subject matter is unknown neither to the domestic, nor to the Union legislator. In compliance with Article 11 par. 3 of the European Convention on Transfrontier Television of 5 May 1989 (OJ of 1995, no. 32, item 160) “advertising and tele-shopping addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities”. In Article 9 par. 1 section g of the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (<https://eur-lex.europa.eu/legal-content/PL/ALL/?uri=celex:32010L0013>, access: 21.06.2019) it has been indicated that “audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore, they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations”.

Here, it is worth noticing that some European states have introduced in their legislation more specific provisions regarding advertising addressed at

children and advertising with the use of minors than the provisions of the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 ([http://orka.sejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/\\$file/PET_20170103_d10.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/$file/PET_20170103_d10.pdf), access: 21.06.2019). In Great Britain it is forbidden to present minors in advertising for products or services, which they could not purchase on their own. Children cannot appear in any advertising when there is no relation between the advertised product and the child and when the child makes statements, they do not understand ([http://orka.sejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/\\$file/PET_20170103_d10.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/$file/PET_20170103_d10.pdf), access: 21.06.2019). Children acting in advertising are expected to behave in an appropriate manner, which can be suggestive for their peers (Stefanicki, 2009, p. 472). In Belgium a complete ban on children acting in advertising has been introduced (Stefanicki, <http://www.madredziecko.com/articles/show/1/16/51/>, access: 21.06.2019). Furthermore, it has been banned to broadcast commercials during programmes for minors, which last shorter than 30 minutes ([http://orka.sejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/\\$file/PET_20170103_d10.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/$file/PET_20170103_d10.pdf), access: 21.06.2019). Whereas, the Greek legislator banned broadcasting toy commercials between 07:00 a.m. and 10:00 p.m. In France and in Italy it is unacceptable to use the image of children in advertising. Commercials addressed at children cannot be broadcasted in France between 02:00 p.m. and 05:00 p.m. In Germany commercials addressed at children cannot appear between commercials for so-called controversial products, e.g. condoms. Whereas, Norway and Sweden banned advertising addressed at minors below 12 years of age ([http://orka.sejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/\\$file/PET_20170103_d10.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/$file/PET_20170103_d10.pdf), access: 21.06.2019).

Domestic regulations

The domestic legislator considers advertising addressed at children in many normative acts, among others, in the Act on Radio and Television Broadcasting (consolidated text, Journal of Laws of 2019, item 361, hereinafter referred to as the ARTB), the Pharmaceutical Act (consolidated

text, Journal of Laws of 2019, item 499, hereinafter referred to as the PA), the Act on Counteracting Unfair Market Practices (consolidated text, Journal of Laws of 2017, item 2070, hereinafter referred to as the ACUMP), the Act on Combating Unfair Competition (consolidated text, Journal of Laws of 2019, item 1010, hereinafter referred to as the ACUC; see Olszewski, 2008, p. 224).

The provision of Article 16b par. 2 of the Act on Radio and Television Broadcasting has significant meaning (see, among others: Ciupa, 2002, *Legalis*), on the grounds of which it is forbidden to broadcast commercials, which:

- directly exhort minors to buy advertised products or services,
- encourage minors to persuade their parents or others to purchase the goods or services being advertised,
- exploit the trust minors place in parents and other persons,
- unreasonably show minors in dangerous situations,
- have a hidden impact on subconsciousness.

It is also worth paying attention to section 4 of par. 3 of Article 16b of the ARTB, in compliance with which commercial communications (and thus, also advertising) cannot threaten psychological, physical or moral development of minors. The indicated regulations included in the Act on Radio and Television Broadcasting result from the implementation by the Polish legislator of the aforementioned Article 9 par. 1 section g of the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on Audiovisual Media Services (Wojciechowski, 2014, *Legalis*, commentary to Article 16b of the ARTB, line no. 16). It is also worth paying attention to par. 3a of Article 16b of the ARTB, in which it has been indicated that “programmes for children should not be accompanied with commercial communications regarding groceries or beverages including ingredients presence of which in excessive quantities in everyday diet is not recommended”. Undoubtedly, this type of solution is aimed at protecting minors’ health.

In the Act on Combating Unfair Competition we can also find provisions which refer to advertising addressed at children. In Article 16 par. 1 section 3 of the ACUC the legislator consider the non-factual advertising, which constitutes an act of unfair competition. The aim of this provision

is to protect children from negative consequences of advertising (Dudzik, Skubisz, 2019, commentary to Article 16 of the ACUC, line no. 175 and 184. Broadly on advertising as an act of unfair competition, see: Ślęzak, 2011). In compliance with contents thereof “an act of unfair competition in the scope of advertising comprises, in particular: (...) advertising referring to customers’ feelings by causing fear, exploiting superstitions or gullibility of children”. The legislator does not introduce a total ban on broadcasting commercials addressed at children, however, he “bans (...) for example, exploiting in advertising features of children, such as: naivety, gullibility, a lack of criticism, experience and knowledge of children as purchasers of goods and services” (Dudzik, Skubisz, 2019, commentary to Article 16 of ACUC, line no. 181). Gullibility of children referred to in the quoted provision is understood as “a certain set of features that can be attributed to children, comprising their sensitivity, a lack of criticism and life experience, belief in provided information or trust in opinions passed by parents or tutors” (Dudzik, Nowińska, Skubisz, 2014, p. 533). It is also crucial that on the grounds of the analysed provision, a factual presumption was adopted pursuant to which the gullibility refers to each child being a recipient of commercial communications. Therefore, in order to benefit from the protection guaranteed by the legislator in the specified scope, it is solely necessary to prove that the given advertising message is addressed at minors (Dudzik, Nowińska, Skubisz, 2014, p. 533). It is worth underlining that the analysed provisions concern all children and thus, individuals, who have not yet reached the age of majority (Dudzik, Nowińska, Skubisz, 2014, p. 534; for more details see: Tischner, 2012, p. 238 and next).

A typical example of advertising that exploits gullibility of minors comprises a commercial communication, which directly calls the minor to buy the advertised product, as well as an advertising message, which calls to persuade parents to purchase a given product. This type of commercial communications manipulate minors’ behaviours by:

- using the minor’s inability to actually assess the advertising,
- creating the minor’s imagination (Dudzik, Skubisz, 2019, commentary to Article 16 of the ACUC, line no. 182).

Another example of non-factual advertising using the gullibility of children is an advertisement in which advertised goods e.g. toys are purposefully beautified (Dudzik, Skubisz, 2019, commentary to Article 16 of the ACUC, line no. 182).

Another legal act with which the legislator protects minors from negative consequences of advertising constitutes the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism (consolidated text, Journal of Laws of 2018, item 2137, as amended). Article 13¹ par. 1 sections 1 and 2 of the Act bans addressing beer advertising at minors, as well as portraying minors in advertising of this type of products. In the doctrine it is indicated that while assessing, if a given advertising is addressed at children, two crucial elements should be taken into consideration: advertising carrier and the contents of the commercial communication. Furthermore, it was noted that while advertising beer, the Recommendation of the Council of the European Union 2001/458/EC on the drinking of alcohol by young people, in particular children and adolescents, should be considered. Taking the above into consideration, it should be indicated that beer advertising should not use colours or motives such as, e.g. graffiti style, which are typical for young people's culture. Minors or their idols should not act in advertising promoting beer (Harasimiuk, 2011, pp. 256–257 and literature given therein).

Quite rigorous solutions in the subject scope were adopted by the legislator in the Pharmaceutical Act. In Article 53 par. 3 of the Pharmaceutical Act, it was indicated that "advertising of a medicinal product cannot be addressed at children or include any element, which is addressed at them". Irrespective of doubts in the doctrine with regard to the interpretation on the grounds of the referred Act of the concept of "Children", one should agree with those representatives of science, who indicate that the quoted provision refers to all minors and thus, individuals who are under 18 years of age (Grzybczyk, 2018, commentary to Article 53 of the Pharmaceutical Law, line no. 36). As noticed by K. Grzybczyk the aim of Article 53 par. 3 of the Pharmaceutical Law "is to protect children from coaxing communications persuading to purchase a given product, since they are not equipped with developed

“protective” mechanisms against this type of communications” (Grzybczyk, 2018, commentary to Article 53 of the Pharmaceutical Law, line no. 36). With regard to the Pharmaceutical Act it is worth remembering that a ban on portraying children in advertising of pharmaceutical products was binding until 2002. In the binding act this type of ban is missing. It is only banned to solely address advertising of medicinal products at children. As was indicated in the literature we deal with advertising addressed at children, when it uses elements of fantasy, fairy tales etc. (Grzybczyk, 2018, commentary to Article 53 of the Pharmaceutical Act, line no. 37-38).

The Act on Counteracting Unfair Market Practices also includes norms regarding advertising addressed at children. Article 9 section 5 of the ACUMP stipulates that “unfair market practices in any circumstances are the following aggressive market practices: including in advertising a direct call to children to purchase advertised products or to persuade parents or other adults to buy them the advertised products”. This type of practices are banned by the law. However, pursuant to the referred provision, there are certain interpretation doubts. As far as an explicit communication “buy” should be interpreted as a direct call to purchase the advertised product, suggestions regarding purchasing a given good raise doubts as to this type of interpretation (Wiewiórowska-Domagalska, Kunkiel-Kryńska, 2019, commentary to Article 9 of the ACUMP, topic no. 32 and 35). The observation of authors, who indicate that in making this type of assessments, one should each time study circumstances accompanying suggestions included in the advertising, in particular: linguistics, placement of advertising and the type of advertised product, is accurate (Wiewiórowska-Domagalska, Kunkiel-Kryńska, 2019, commentary to Article 9 of the ACUMP, topic no. 36; see: Tischner, 2012, p. 243).

Despite the aforementioned normative acts, also the Code of Advertising Ethics of 19 January 2018 (<https://www.radareklamy.pl/pe%C5%82natre%C5%9B%C4%87-ker>. access: 21.06.2019), includes many provisions referring to the advertising addressed at children and young persons. On the grounds thereof it should be indicated that advertising addressed at children and young persons:

- cannot suggest that the advertised product is available to everyone (irrespective of held funds); it is inadmissible to, for instance, purposefully use words such as “few” in improper context (Article 22 of the Code),
- cannot include contents, which pose a threat to the security or health (Article 23 of the Code),
- cannot be misleading, using the natural gullibility of children and young people and their lack of experience (Article 24 of the Code),
- have to take into account the development degree of children and young persons, as well as cannot pose a threat to their psychological, physical and moral development (Article 25 of the Code),
- cannot give a message that using or having the advertising product shall guarantee to children and young people a psychological or social advantage over other persons not having the product (Article 26 of the Code),
- cannot question the authority of parents or persons taking legal care of children (Article 27 of the Code),
- should not be misleading with regard to: the value, image, size, durability and nature of the advertised product (Article 28 of the Code),
- cannot include orders so that children or young people persuade adults to purchase a given product (Article 29 of the Code),
- have to, if supported with safety reasons, include information regarding the age group of persons at whom the advertised product is addressed (Article 30 of the Code).

Furthermore, this type of requirements also refer to advertising not directly addressed at children, however, of which children are recipients due to the placement of advertising e.g. commercials broadcasted in cinemas before cartoons (Article 32 of the Code).

The important limitations in broadcasting commercials are also discussed in the document entitled “The Chart of the Rules for Approving for Broadcasting Commercials Addressed at Children” drawn up at the initiative of CANAL+

CYFROWY and respected by it. It is worth indicating that the theme for undertaking this type of initiative constituted too general provisions regarding advertising addressed at children allowing varied interpretation thereof. This document refers to broadcasting commercials addressed at children under 7 years of age (<https://docplayer.pl/2876832-Karta-zasad-przyjmowania-do-emisji-reklam-adresowanych-dodzieci-warszawa-czerwiec-2004-r.html>. access: 21.06.2019). It is worth noticing, for example Chapter II par. 2 of the Charter stipulating that “1) Advertising questioning respect to people or treating animals as objects is unacceptable. 2) Advertising suggesting a relationship between having a product and a social position or gaining an advantage over others is unacceptable”. This document also includes regulations regarding participation of children in advertising. In Chapter II par. 5 of the Charter it was indicated that “1) Participation of children in advertising is permitted only if: a) a product or its function justifies presenting it with a participation of a child, b) harmony is preserved between the product and the development phase of a child. 2) The transmitter has the right to refuse broadcasting commercials with regard to which there are justified suspicions that they had been produced with a psychological or physical detriment to children acting therein. 3) Participation of a child in advertising of products, advertising of which is limited, is forbidden.” (<https://docplayer.pl/2876832-Karta-zasad-przyjmowania-do-emisji-reklam-adresowanych-dodzieci-warszawa-czerwiec-2004-r.html>. access: 21. 06.2019).

Propositions of amendments

It is worth paying attention to the opinion of the Sejm Committee of Culture and Media of 20 July 2016, in which it was indicated that “advertising with children’s participation constitutes a hidden emotional blackmail addressed at an adult consumer - (usually) a parent. Such action is deemed by the Committee as unacceptable and illegal. Certainly, out of concern for the good of little recipients and at the same time, protagonists of advertisements, messages with children’s participation must be created within law, ethics, common sense and with a consideration of their developmental and emotional

conditions". On the grounds thereof on 22 September 2016 a desideratum was submitted to the Minister of Culture and National Heritage on limiting advertising with a participation of minors and advertising addressed at them together with an application for presenting complex solutions to these issues (Report of the National Broadcasting Council on operations in 2018, 2019, p. 30, http://www.krrit.gov.pl/Data/Files/_public/Portals/0/sprawozdania/spr-2018/sprawozdanie-2018---projekt-z-28.05_iii_korekta.pdf. access: 21.06.2019). The petitioners claimed that advertising constitutes a type of manipulation, which affects the development of both, children and young people by "promoting a consumer lifestyle", and moreover, that it "especially disturbs minds in the formative period, since a child is not able to rationally assess transmitted contents and properly verify their needs" (Desideratum no. 10, 2016, p. 1, [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/pet_d10/\\$file/pet_d10.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/pet_d10/$file/pet_d10.pdf). access: 21.06.2019).

While analysing the submitted petition both, representatives of the Ombudsman for Children and representatives of the National Broadcasting Council underlined the necessity of introducing new legal solutions regulating the issue of advertising with regard to minors. The subjectivity of a child, the advertising-related risk of treating a child as an object and the problem related to publication of the child's image were referred (Desideratum no. 10, 2016, p. 1, [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/pet_d10/\\$file/pet_d10.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/pet_d10/$file/pet_d10.pdf). access: 21.06.2019).

The Committee of Culture and Media responded positively to the presented petition. It indicated that legal regulations concerning advertising with regard to children should be based on the priority principle – the best interest of the child. As it accurately pointed out, provisions in this scope must be formulated in a clear manner so that it is impossible to circumvent them. It also underlined that the Polish government is at a disposal of instruments that allow establishing solutions to all problems presented in the petition (Desideratum no. 10, 2016, p. 2, [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/pet_d10/\\$file/pet_d10.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/pet_d10/$file/pet_d10.pdf). access 21.06.2019).

The desideratum no. 10, referred to above, was also addressed by the Ombudsman for Children, who underlined that "the considered petition

touches on the very important problem related to, on the one hand, protection of the image and the best interest of the child as an actor in advertising, and on the other hand, addressing at the youngest advertising messages with a significant impact, violating the delicate construction of not yet developed psyche of a young person". The Ombudsman noticed that minors often understand advertising directly and thus, are at a risk of negative consequences related to commercial communications. Thus, he accurately stated that these individuals require providing them with special protection from this type of threats. Moreover, the Ombudsman addressed the problem related to portraying children in advertising. He pointed out the often tiring work of children at an advertising shoot, as well as using their image. He stated that minors acting in commercials are at a higher risk of criticism and social ridicule, which can have negative effects on their psyche. The Ombudsman for Children also noticed the importance of the problem related to the participation of children in advertising of products solely for adults. He noticed that the activity of minors in this type of undertakings, which are predominantly aimed at a commercial success often violates one of the basic principles, that is, the best interest of a child. The Ombudsman indicated that despite the binding legislation (among others, the Act on Combating Unfair Competition and the Act on Radio and Television Broadcasting) includes regulations concerning protection of children from negative effects of commercials, this protection is not sufficient. He rightly noticed that in the analysed issue, the priority meaning should be attributed to the dignity of a child and their subjectivity. In the Ombudsman's opinion, due to the fact that minors are individuals at the highest risk of being exploited and many times devoid of the possibility to protect themselves effectively, the legislator should provide them with special protection. The Ombudsman positively commented on various types of undertakings aimed at increasing the protection of minors in the so-called "media space". At the same time, he indicated that while "establishing legal solutions in the aforementioned scope (...) one should take into account all aspects of introduced limitations so as not to cause a ban on the broadcast of valuable materials, for the best interest of a child

e.g. social campaigns” (speech of the Ombudsman for Children given to the Minister of Culture and National Heritage, Piotr Gliński, 2016, p. 1–3, http://brpd.gov.pl/sites/default/files/wyst_2016_11_25_glinski.pdf. access: 21.06.2019).

Postulates presented in the desideratum no. 10 were approved by the Ministry of Culture and National Heritage. The Ministry agreed with the aforementioned comments of the Ombudsman for Children and members of the National Broadcasting Council. It underlined that currently we have too many advertisements addressed at children with a significant impact, which can affect the psyche of the youngest. Furthermore, the Ministry is seriously alarmed with the children’s participation in advertising addressed not only at minors, but also adults. In the Ministry’s opinion “a child becomes (...) an object, whose best interest and dignity are not taken into consideration, when a marketing success of a given company comes into play”. It was also underlined that minors often act in commercials unaware of related consequences. In the Ministry’s opinion currently binding legal regulations do not provide “a complex protection” to minors in the discussed scope. Unfortunately, advertisers, as well as parents often do not respect rights of the minors. Thus, the Ministry believes that the issue of advertising addressed at children and children’s participation in advertising should be dwelt on and for this purpose, it proposes a discussion of advertisers and entities dealing with protecting children’s rights. It is to result in drawing up an amendment to the Act on Radio and Television Broadcasting ([http://orkasejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/\\$file/PET_20170103_d10.pdf](http://orkasejm.gov.pl/opinie8.nsf/nazwa/PET_20170103_d10/$file/PET_20170103_d10.pdf). access: 21.06.2019).

It is worth adding that the Union of Associations Advertising Council drew up a draft of the *A Chart of Protecting the Child’s Image in Advertising (Karta ochrony wizerunku dziecka w reklamie)*, presented to the National Broadcasting Council. While analysing the draft, the Council noticed that it constitutes a kind of elaboration on the provisions of Article 16b par. 2 sections 1–5 and par. 3a, and Article 18 par. 3–5 of the Act on Radio and Television Broadcasting (Report of the National Broadcasting Council on operations in 2018, 2019, p. 30, http://www.krrit.gov.pl/Data/Files/_public/

Portals/0/sprawozdania/spr-2018/sprawozdanie-2018---projekt-z-28.05_iii_korekta.pdf. access: 21. 06.2019).

By the way, it is also worth mentioning the Opinion (2012/C 351/02) of the European Economic and Social Committee on a framework for advertising aimed at young people and children (own-initiative opinion) (OJ of the EU, C.2012.351.6, <https://www.prawo.pl/akty/dz-u-ue-c-2012-351-6,68255799.html>. access: 21.06.2019). As has been indicated “the aim of this opinion is to contribute to the information and discussions on the potential development, at Community level, of legislative or other measures to protect children and young people from certain types of advertising that use children improperly or target them in a harmful way, or expose them by any means to messages that could harm their sound physical, mental or moral development”. The opinion includes many significant recommendations, among which, one should enumerate the following:

- “advertising which wrongfully uses children for purposes unrelated to matters which directly concern them in an affront to human dignity and their physical and mental integrity and should be banned” (section 1.3 of the opinion),
- “the EESC considers that Community-level harmonisation is needed to ensure a universal ban on advertising that makes undue and improper use of images of children in areas not directly linked to them” (section 3.2 of the opinion),
- “The EESC considers that special emphasis must be placed on empowering, informing and educating children, from a very young age, about the proper use of information technologies and about how to interpret advertising messages. These subjects should be included in school curricula at all levels. Parents should also be equipped to help their children to interpret advertising messages.” (section 1.7 of the opinion),
- “The EESC calls on advertisers and sponsors, using both self-regulation and co-regulation initiatives (not only those already adopted but also ones to be promoted) to adopt and apply the highest levels of protection of children’s rights and to see that they are enforced.” (section 1.9 of the

opinion) (<https://www.prawo.pl/akty/dz-u-ue-c-2012-351-6,68255799.html>. access: 21.06.2019).

Summary

The issue of advertising with children's participation, as well as the impact of advertising on children, as has been attempted to present herein, is complex and multithreaded. As rightly noticed by the representatives of the doctrine, while assessing the impact of advertising on a child one should take into consideration the child's age. Depending on the degree of development, the impact of a given commercial communication shall be different in the case of recipients being youngsters and teenagers (Malarewicz, 2009, p. 184).

The introduction of a complete ban on advertising addressed at minors should be assessed negatively. As rightly noticed by B. Olszewski "multiplication of (...) bans could only aggravate the problem of legal protection of a child – consumer from advertising (...) it would be a step back due to the common tendencies aimed at extending freedom in the scope of information and advertising" (Olszewski, 2008, p. 232). This type of a ban would infringe the principle of proportionality and the ban on discrimination (Stefanicki, 2009, p. 458). Furthermore, one should take into consideration the fact that "advertising constitutes a basic marketing instrument and can also have an important function in taking by the child as a consumer market choices, provided that within the large-scale education they are prepared to reasonably receive this medium" (Stefanicki, 2009, p. 473). The postulate of introducing an obligatory consumer education in schools (section 1.7 of the EESC opinion, <https://www.prawo.pl/akty/dz-u-ue-c-2012-351-6,68255799.html>. access: 21.06.2019; Olszewski, 2008, p. 233; Stefanicki, 2009, pp. 470–471) should also be considered as justified. Finally, the postulate made by the representatives of the doctrine to tighten sanctions for not adhering to the provisions regarding broadcasting commercials aimed at children (Olszewski, 2008, p. 235) should also be considered as justified. Moreover, one should agree with B. Olszewski that the binding legal provisions in the analysed scope include too many unspecific terms allowing a wide margin

of freedom in interpretation, which should be changed in consecutive amendments described in the elaboration on acts (Olszewski, 2008, p. 235).

The issue of children's participation in advertising is also problematic. Personally, I am against the introduction of a complete ban on portraying children in advertising (similarly as Stefanicki, 2009, p. 473). However, I believe that before admitting a child to participate in advertising, it would be necessary to introduce obligatory meetings of the child's parents and the child with a psychologist. This type of visits should be guaranteed by the advertiser interested in the minor. Conversations with a psychologist would allow determining, if the child is aware of their participation in advertising, if they express willingness to act therein, as well as if they understand the message of the advertisement.

In the end, it should be indicated that harmonisation of provisions regarding advertising with children's participation and advertising addressed at children and young people in whole Europe is undoubtedly desirable. As rightly noticed by the EESC: "The market for advertising and marketing in Europe is highly competitive, is dependent on the whims of fashion and is particularly vulnerable to the effects of the economic and financial crises. Major differences in national regulations in the field of advertising can not only influence results, but can also form a barrier to its growth in the internal market and be a source of discrimination and less fair competition. In particular, advertising aimed at children and young people is booming, but the significant differences in national regulations and divergent requirements mean that advertising agencies do not operate on a level playing field; this leads to higher costs as a result of having to adapt their campaigns to meet different legal obligations and requirements. These differences also encourage agencies to adopt less scrupulous competitive practices, in an attempt to circumvent these problems and win market share. Legislative harmonisation that imposes similar conditions across Europe, completing the internal market in this area, could make a significant contribution to creating a more transparent market in which all advertising agencies are able to carry out their business on the basis of their skills and capabilities with the aim of meeting consumer demand effectively, rather than taking advantage of differences in national legislation, to the detriment of healthy and fair

competition.” (section 7.1 of the opinion, <https://www.prawo.pl/akty/dz-u-ue-c-2012-351-6,68255799.html>. access: 21.06.2019).

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