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Advertisers, toymakers, and candy companies are in a cold sweat all over Europe. Sweden took the helm of the European Union ("EU") as President in January 2001, and is expected to press for an EU-wide ban on television advertising to children. Will the ban pass? Should the ban pass?

Calls for tighter restrictions on television advertising abound in Europe. Currently, alcohol, drugs, cars, and even fatty foods will soon come under scrutiny to determine whether commercials for such products should be banned.[1] Concerns run to fraud and the glamorization of dangerous activities. But the issue most hotly debated at present is the proposed ban on television advertising aimed at children.

Although European advertisers have cause for concern, the ban faces serious hurdles from EU member states who view such a ban as detrimental to free cross-border trade or impractical to enforce. Sweden may only be able to procure the restrictions necessary to close several loopholes in its current ban. Nevertheless, if the ban does pass, it could send children out of the frying pan and into the fire. If marketers are barred from television, they may instead choose to infiltrate the classroom, where children are more likely to believe what they hear and are unable to choose not to listen. Thus, if a ban is enacted, regulation of children's advertising should also govern corporate sponsorship of schools.

This Comment first presents a brief history of European policy governing children's television advertising in Europe and lists the current regula-

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[1] *See* Brian Wheeler, *Image Guardians*, MARKETING WK., Sept. 30, 1999, at 29.

tions in the various EU member states, ranging from Britain's deferential guidelines to Sweden's draconian stance. The next two sections examine arguments both for and against the ban. Impassioned consumer advocates decry television advertising to children as preying upon young impressionable minds; indignant industry groups marshal arguments such as the increasing sophistication of children and the freedom of commercial speech. Finally, after forecasting a doubtful future for the proposed absolute ban on children's television across Europe, this Comment concludes that a watchful eye should still be kept over advertisers to children, particularly in light of the increase in commercialism in the European classroom.

I. THE ROOTS OF EUROPEAN POLICY

On October 3, 1989, the EU issued the Directive "Television without Frontiers." Article 16 pertains specifically to television advertising aimed at children:

> Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:
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> a. it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
>
> b. it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
>
> c. it shall not exploit the special trust minors place in parents, teachers, or other persons;
>
> d. it shall not unreasonably show minors in dangerous situations.[2]

Generally, the idea behind this Directive was to provide the regulatory framework necessary for freedom of broadcasting; in regards to children, the Directive sought to limit the potentially harmful effects of unregulated broadcasting. Article 16 of "Television without Frontiers" had four objectives: (1) safeguard diversity of information and opinion by ensuring freedom of broadcast, (2) protect children from moral, mental or physical detriment, (3) maintain broadcasters' commitment to provide educational and entertaining programming, and (4) preserve program quality.[3]

Looking at the European Commission's (hereinafter "EC" or "Commission") discussions at the proposal stage of this directive, the Commission appeared in favor of rather heavy-handed regulation of advertising to children. At this early stage, the Commission "sought to limit broadcast advertising to prevent advertisers from displacing the informational, educational, cultural, and entertainment functions of television." The Commission called upon special standards to govern advertising to children in order to prevent advertisements to unduly influence youth. Further, the Commis-

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[2] Daniel E. Frank, *Regulating Television Advertising in the European Community and the United States: Preventing Harm to Children*, 1992 U. CHI. LEGAL F. 399, 400 (1992).
[3] *Id.* at 401.

sion urged "systematic consumer education" to equip children to understand and critically evaluate advertisements.

The Economic and Social Committee added their feedback to the deliberations, approving the terms of the directive but doubting their practical application. The provisions were so vague as to give rise to problems of enforcement. Thus, the Committee specifically advocated banning commercial interruptions during children's programs and prohibiting war toy advertisements.[4]

The Committee's suggestions reflected several European nations' existing regulations. Greece, for example, had already had such a law prohibiting the advertisement of toy weapons on the books for two years. Greece had even gone a step further to ban all toy commercials between the hours of 7 and 10 p.m. Naturally, European toy manufacturers were swift to decry this measure as Greece's protectionist attempt to block toy manufacturers, the vast majority of whom were not Greek. In 1994, Toy Industries of Europe ("TIE") lodged a complaint against Greece, arguing that the ban infringed the Treaty of Rome, which provides for the free movement of goods and services between member states of the EU. TIE claimed Greece's ban conflicted with the whole purpose of the EU, which was to promote a single market and remove barriers to trade.[5]

The complaint languished for five years while the European Commissioners evidenced fundamental differences of opinion. Commissioner Mario Monti disparaged Greece's national regulations as mere hindrances to cross-border goods and services. Commission President Jacques Santer, on the other hand, took the tack that these regulations were a matter of principle, depending on what sort of society each member state desired to create. Monti won a small victory when he framed the debate as whether the infringement complaint against Greece should be based on Article 30 (obstacles to the free movement of goods) or Article 59 (obstacles to the free movement of services).[6]

TIE again lodged a complaint in 1997 with the EU Ombudsman. TIE protested the Swedish total ban on television advertising aimed at children, the Belgian prohibition of commercials during and surrounding children's programs and the Irish regulations against advertisements during pre-school programming.[7]

TIE did not prevail. Five years later in August of 1999, the majority of the outgoing EC voted to dismiss these complaints, claiming ban was "pro-

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[4] *See id.* at 401-402, n. 17.

[5] *See AA Urges Brussels to Rethink Greek Ban on Toy Advertising*, MARKETING WK., Aug. 5, 1999, at 11.

[6] *See Single Market in the EU: Stalling on Infringements*, BUS. EUR., July 1, 1998, at 6.

[7] *See* Darran Gardner, *Toy Makers Vow to Fight If EU Bans Advertising*, THE SUNDAY HERALD (Glasgow), Aug. 22, 1999, at 6, *available in* LEXIS, News Library, Sunday Herald File.

portionate" and not an excessive measure to prevent exposure of children to commercial pressure.[8] Presumably, the vote was close—the previous month, Greece had lost its appeal for the TIE's action to be dropped by just one vote.[9] However, since the EC's vote came a mere month before the replacement of most members, the Advertising Association immediately made plans to ask the new EC to review the decision.[10] This was a well-advised move, considering the incoming Commissioner was Frits Bolkestijn, a liberal former businessman from Holland who has been known to oppose the Greek ban.[11]

The issue remains alive and well in the minds of the EU's ruling body. The EC launched a continent-wide study of television advertising aimed at children in January 2000. According to EC official Aviva Silver, the purpose of the study is to inform any necessary revisions to the current EU rules.[12]

II. CURRENT REGULATIONS

Currently, the EU member states oversee the advertising industry in different ways. The United Kingdom's advertising industry engages in rather vigorous self-regulation. The Advertising Standards Authority is the largest, most active and best-financed self-regulatory system in the world. It is aided by quasi-governmental agencies which serve as various checkpoints for advertising.[13] First, the guidelines disseminated by Britain's Independent Television Commission ("ITC") states that advertisements must not (a) harm children, (b) take advantage of their credulity, (c) lead children to believe they will be inferior without the product, or (d) exhort children to pester parents.[14] Second, the Broadcast Advertising Clearance Center checks for concealed red flags in the commercials before they are aired. Third, individual television companies scrutinize the ads before airing. Apparently, the system works—in 1998, less than 0.5% of complaints to the ITC concerned children's advertising.[15]

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[8] *See AA Urges Brussels, supra* note 5, at 11.

[9] *See EU Toymakers Not Amused by Greek Ad Ban*, NAT'L POST (formerly FIN. POST) (Toronto), July 7, 1999, at C11.

[10] *See* Jeremy Slater, *EC Lets Stand Toy Ad Ban*, ADVERTISING AGE INT'L SUPP., Aug. 1, 1999, at 1.

[11] *See id.*

[12] *See* Peter Ford, *Europe Puts Mute on Kid Ads*, THE CHRISTIAN SCI. MONITOR (Paris), Dec. 16, 1999, at 1.

[13] *See* Ross D. Petty, *Advertising Law and Social Issues: The Global Perspective*, 17 SUFFOLK TRANSNAT'L L. REV. 309, 320 (1994).

[14] *See* Allyson Stewart-Allen, *Rules for Reaching Euro Kids Are Changing*, MARKETING NEWS, June 7, 1999, at 10, *available in* LEXIS, News Library, Marketing News File.

[15] *See* David McCall, *Plan to Ban Children's TV Ads is an Age-old Mistake*, MARKETING WK., Sept. 2, 1999, at 14.

In other European countries, the regulation of the advertising industry is a mixed picture. The Scandinavian countries established the consumer ombudsman to replace self-regulation nearly twenty years ago. The ombudsman receives complaints and resolves or litigates them.[16] In Germany, advertising law authorizes private causes of action to control misleading advertising, much like the United States' Lanham Act.[17] Italy, in contrast to Germany, seeks to protect competitors—not consumers—by its advertising law and thus favors self-regulation. France and Belgium follow the German model much more closely than Italian advertising law.[18]

The regulation of television advertising to children also varies by country. In Austria, there is a ban on advertisements during children's programs before 8:15 p.m. Belgium bans advertisements five minutes before and after commercial-free programs for children under 12. Denmark Culture Minister Elsebeth Gerner Nielsen has stated she would like to see Denmark follow Sweden's lead with a ban to take effect in 2001, since she believes advertising denies children the chance to develop into responsible consumers. Finland mandates that children in commercials may not talk about the product and can only appear in a "passive role" in advertisements for sweets. Germany allows no advertisement breaks in children's programs and no corporate sponsorship of children's programs.[19] Greece's ban runs to toy commercials between 7 and 10 p.m. and all war toy advertisements.

The situation in Poland is in flux. In March 1999, the Parliament voted to ban radio and television advertisements to children.[20] Nevertheless, President Aleksander Kwasniewski vetoed the measure.[21] When the bill returned to the Parliament for further consultation, it was defeated by a majority of 44. Most likely Polish lawmakers were concerned that a ban might injure Poland's commercial media industry, which is still in its infant stages and has grown by 60% over the past five years. Further, the Polish Parliament did not want large multinational advertisers such as McDonald's to turn to the markets of other Eastern European countries.[22]

Sweden and Norway's regulations are the most draconian: a 24-hour ban on advertisements aimed at children under twelve as well as an absolute ban on all advertisements during and immediately before and after children's programs. Now Sweden wants to spread its mission of protecting children to all of Europe. According to Ann-Christin Nykvist, the Swedish Under-Secretary for Culture, the push for an all-Europe ban is motivated by

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[16] *See* Petty, *supra* note 13, at 317.
[17] *See id.* at 319.
[18] *See id.*
[19] *See* James Geary, *Childhood's End?*, TIME (Int'l Ed.), Aug. 2, 1999, at 36, *available in* LEXIS, News Library, Time File.
[20] *See Media in Poland*, BUS. E. EUR., Mar. 15, 1999, at 8.
[21] *See EU Toymakers*, *supra* note 9, at C11.
[22] *See Poland Votes to Keep Advertising to Kids*, MEDIA WK., May 21, 1999, at 8.

a belief in the ban's popularity among parents in other countries. Furthermore, Sweden believes the more liberal rules in other European countries violate the "Television Without Frontiers" Directive, particularly where it calls for advertising to be "readily recognizable as such." Lars Marn, deputy director of the media division of the Swedish Culture Ministry, claims that any advertising aimed at children who are too young to understand the concept of advertising runs afoul of the EU Directive.[23]

Sweden may also have an interest in promoting a continent-wide ban in order to prevent satellite broadcasters in other parts of Europe from dodging Sweden's laws, as they did in the *De Agostini* decision.[24] In *De Agostini*, the European Court of Justice permitted advertisers to circumvent the Swedish ban via satellite broadcasts of children's television from Britain.[25] Axel Edling, the Swedish Consumer Ombudsman who is responsible for enforcing the ban, acknowledges that satellite television's ability to defy Swedish law is a proverbial thorn in his side—a problem that would indeed be eased by an EU-wide ban.[26]

The Swedish ban has yielded some surprising results. Sweden's advertising agencies do not seem very troubled by the ban. Bjorn Larsson, president of a large Swedish advertising agency, claims the ban has had little effect since it does nothing but codify existing regulations.[27] Research indicates that nearly 90% of Swedish advertising professionals actually back the ban since they recognize that children do not understand the commercial nature and purpose of advertising.[28] In response to the ban, businesses have become more creative in their public relations. PR agencies have learned to tread carefully in this area since most Swedes are passionate in their support of the ban on advertising to children.[29]

But the ban has had its effects. Nordic channels such as Sweden's Modern Times Group and SBS Broadcasting have steadily migrated from Scandinavia to the United Kingdom and have obtained British satellite li-

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[23] *See* Ford, *supra* note 12, at 1.

[24] *See* Roger Harrabin, *A Commercial Break for Parents*, THE INDEP. (London), Sept. 8, 1998, at 19.

[25] *See* Joined cases C-34/95, C-35/95 and C-36/95. Konsumentenombudsmannen (KO) v. De Agostini (Svenska) Forlag AB (C-34/95) and Konsumentenombudsmannen (KO) v. TV-Shop I Sverige AB (C-35/95 and C-36/95) (E.C.J. July 9, 1997), *available at* 1997 ECJ Celex Lexis 7506.

[26] *See* John Tylee, *Sweden Declares Plan to Extend Kids' Ad Ban*, CAMPAIGN, Nov. 26, 1999, at 4, *available in* LEXIS, News Library, Campaign File.

[27] *See* Richard Tomkins, *Selling to a Captivated Market*, FIN. TIMES (London), Apr. 20, 1999, at 14.

[28] *See* Harrabin, *supra* note 24, at 19.

[29] *See* Lexie Goddard, *It's Time to Look for a New Channel*, PR WK., Sept. 3, 1999, at 1, *available in* LEXIS, News Library, PR Week File.

censes, as the British rules are much less strict.[30] Toy prices in Sweden rose 50% after it curtailed advertising to children.[31]

Nevertheless, Sweden's ban may actually be less rigid than it appears. First, advertisements for children's products are still allowed on television as long as they are not obviously directed at children. For example, McDonald's, the world's largest advertiser to children, ducks the ban by portraying itself as a family restaurant in Swedish advertisements. Second, certain advertisements like fantasy cartoon commercials featuring generic names like "Macrestaurant" fall outside the purview of Swedish law.[32]

Third, in the recent *De Agostini* decision, the European Court of Justice held that satellite broadcasts of children's television from Britain are subject to the United Kingdom's more permissive rules, not Sweden's.[33] In *De Agostini*, the Swedish commercial court sought an answer from the Court of Justice regarding the Swedish Consumer Ombudsman's applications for injunctions against the defendant advertisers. These advertisers were actually Swedish companies who were penetrating the Swedish market by advertising to children during programs beamed in from the United Kingdom. The issue was whether the advertisements were subject to Sweden's law or those of the United Kingdom. The Court of Justice held that although Sweden could take action against the defendants on the basis of general advertising rules for consumer protection, the Swedish Ombudsman could not enjoin such advertisers on the basis of Sweden's total ban on children's advertising.[34]

Still, Sweden sees victory ahead, citing Swedish Culture Minister Ulvskog's successful recruitment of her European colleagues at the European Cultural Council in Brussels. Ulvskog had originally floated the idea of a ban on children's television advertising prior to the Council and was met with apathy; however, at the November 1999 meeting of European culture ministers, half the ministers expressed sympathy for her position.[35]

III. ARGUMENTS FOR A EUROPE-WIDE BAN

The most obvious argument opposing children's advertising is a moral one. Swedish consumer ombudsman Edling depicts advertising aimed at children as exploitation of very small consumers. Since children lack experience and maturity, it is unethical to direct commercially-biased mes-

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[30] *See Denmark Considers Children's Advertising Ban*, SCREEN DIG., July 1, 1999, at 1.

[31] *See* Harriet Green, *Admen Start to Sell Themselves*, THE DAILY TELEGRAPH (London), Oct. 15, 1999, at 23.

[32] *See* Harrabin, *supra* note 24, at 19.

[33] *See* Amaryllis Verhoven, *Case Law: De Agostini & TV Shop*, 3 COLUM. J. EUR. L. 479 (1997-1998).

[34] *See id.* at 480.

[35] *See* Ford, *supra* note 12, at 1.

sages at them.[36] Research at Texas A & M University supports Edling's view, showing that young children tend to trust advertising messages much more than adults; only at the age of eleven or twelve does a child start to build up doubts and defenses in response to advertising.[37] Another study demonstrated that nine-year-olds, after watching a commercial, ignored their established product preferences and opted for the advertised product.[38]

Current European lobbyists such as the Advertising Association argue that Sweden's ban is anti-competitive because by denying children the opportunity to see television commercials, the ban favors products already in the market. Seeking to defuse that argument, supporters of the ban claim that if the ban were EU-wide, it would level the playing field. Another blow to the protectionist argument is that if Greece's ban was aimed to curtail outside competition, Greece has cut off its nose to spite its face. Since the enactment of the ban, Greek toymakers' inventory turnover has decreased 40%.[39] Even worse, Greek television producers can no longer afford to produce original programs and have been forced to import cheap children's programming from overseas.[40]

Naturally, backers of the ban also celebrate the EC's decision this past August not to investigate further the Greek ban on toy advertising on television. The closing of the case has the backers celebrating and the opponents running scared. Opponents of the ban fear other EU states will take this is as a sign of legitimacy and pursue similar strategies.[41]

The ban on tobacco advertising has become increasingly draconian in both Europe and the United States; a ban on advertising to children may follow suit.[42] What brought down the tobacco industry's advertising is precisely what is proposed here: an EU Directive against certain types of advertising. Although initially many sniffed at the tobacco ban as unlikely, five years later the ban was enacted.[43] Ironically, advertisers of tobacco defended themselves by pointing to the advertising's ineffectiveness; but authorities were not convinced and proceeded to ban tobacco advertising.[44] An Adviser to TIE recalls that tobacco advertising fell victim to the domino

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[36] *See* Tomkins, *supra* note 27, at 14.

[37] *See id.*

[38] *See* Nick Higham, *Industry Divided Over Prospect of Ban on Children's Advertising*, MARKETING WK., July 8, 1999, at 17.

[39] *See* Gardner, *supra* note 7, at 6.

[40] *See* David Cohen, *Toy Story*, NEW SCIENTIST, Oct. 30, 1999, at 38.

[41] *See* Slater, *supra* note 10, at 1.

[42] For more specific information on the terms of the tobacco advertising ban in Europe, EC Directive 98/43, passed in July 1998, see *UK Government: Tobacco Advertising to End by December*, M2 PRESSWIRE, June 17, 1999, at 1, *available in* LEXIS, News Library, M2PressWire File.

[43] *See* Stefano Hatfield, *I'm Sindy, Buy Me*, THE TIMES (London), Aug. 13, 1999, at Features.

[44] *See* John Morrish, *They Want Your Children*, THE INDEP. (London), Jan. 9, 2000, at 25.

effect. One EU member after another enacted restrictions on tobacco advertising where previously there were none.[45] Therefore, advertisers targeting children should best beware.

Television is acknowledged as one of the most powerful and popular forms of media for children. Supporters of the ban cite statistics such as an online poll in which 59% of British children would choose television over any other medium.[46] Advertisers, fully aware of this, may thus choose television as their primary medium to reach young children.[47]

To those opponents of the ban who argue that advertising revenue encourages the production of quality children's programs, top European television executive Richard Eyre has observed quite the opposite effect. As former head of European broadcasting giant RTL Group[48] and former Chief Executive of British programmer ITV Network Ltd., Eyre has noted that there may be an adverse correlation between the portion of its funding that a public broadcaster receives from advertising revenue and the likelihood that broadcaster will produce factual children's and cultural programs.[49]

With the decrease of quality time between parents and children, children are more prone to use "pester power" to manipulate parents into buying whatever the children want; unscrupulous advertisers may be preying upon such power. Pester power is a widely-discussed topic in the United Kingdom. The BBC aired a documentary on November 3, 1999, entitled "Getting Older Younger" that described the recent trend of children maturing faster than generations past. The film depicted advertisers and marketers as culpable for filling children's heads with ideas and images too complex and adult for them to handle. According to the documentary, advertisers are curtailing the child's era of play and innocence and forcing children to grow up faster. Without this crucial playtime, the documentary warns, children will fail to grow up to be stable and happy.[50]

Pester power is particularly dangerous in the hands of advertisers. The European Director of Marketing for advertising giant Saatchi and Saatchi openly exulted in children's susceptibility to advertising and pester power: "Quite often we can exploit [children's affinity for advertising] and get them actually pestering their parents for products."[51] Pester power can bring about woeful results. The manager of Birmingham's Consumer

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[45] *See* Slater, *supra* note 10, at 1.

[46] *See* Harriet Marsh, *Children's Choice*, MARKETING, July 15, 1999, at 27.

[47] *See id.*

[48] *See* Bill McIntosh, *Why RTL's Pan-European Dream Is Just Not Working*, THE INDEPENDENT (London), Mar. 22, 2001, at 19.

[49] *See* Tony Ball, *The Adman Cometh*, THE GUARDIAN (London), Aug 19, 1999, at 17.

[50] *See Admen at School Steal the Minds of Children*, THE EXPRESS ON SUNDAY, Oct. 31, 1999, at 1.

[51] *See* Graham Keeley, *How TV Ads Pander to Tiny Pester Power*, WESTERN DAILY PRESS (Bristol), Oct. 1999, at 10, *available at* 1999 WL 246862172.

Credit Service describes family budgets devastated by overspending, driven by pressure from advertisements.[52] An English father pointed to the Swedish ban in an editorial letter to the local paper and wished for the same in England, claiming that "parents have enough pressures without the pervasive suggestion of advertising."[53]

In the United Kingdom, Chancellor Gordon Brown has acknowledged the plight of parents and children in the face of prevalent advertising. Chancellor Brown paints the holiday advertising blitz as detrimental to children—namely, it demoralizes the have-not children who watch toy and gift commercials in the knowledge that they can never have such things: "I think it is an unfair society that is endlessly pushing these TV adverts on young people." Advertisers fear that these sentiments from government officials portend the weakening of the Labour party's stance against the Swedish ban.[54]

Other adults have chimed in with their concerns over advertising. A recent survey of nearly a thousand British adults by the Chartered Institute of Marketing raised eyebrows when it found that adults feel that advertisements exert more influence over children than parents or teachers. When asked what is the most important factor in influencing children's desires, advertising garnered 36% of the vote, while parents and school made a feeble showing at 17% and 8%, respectively. Three-fourths of those surveyed also believed that the laws of the United Kingdom governing advertising to children should be strengthened, with a full 62% believing advertising to children should be restricted.[55]

Marketer Miles Hanson attributes the potency of pester power to the culture of modern family life. The increasing rate of divorce, single parenthood and working women mean that even very young children have more and more direct input into family purchasing decisions. The oft-absent parent may feel guilty and therefore more indulgent of the child's whims. Moreover, the child has greater access to media and technology in the home since television and the Internet may serve as a substitute babysitter.[56]

Support for the ban also comes from various corners. Environmentalists dislike how advertisements make early consumers out of children be-

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[52] *See* Jenny Hudson, *Will Banning Toy Ads Stop "Pester Power"?*, SUNDAY MERCURY (Birmingham), Sept. 26, 1999, at 18, *available at* 1999 WL 2187357.

[53] *Letters: Your Views*, COVENTRY EVENING TELEGRAPH, Dec. 24, 1999, at 8, *available in* LEXIS, News Library.

[54] *See IPA Fears Change in Government Ad Policy*, CAMPAIGN, Dec. 1, 2000, at 4, *available at* 2000 WL 9855498. However, proponents of advertising to children cling to hope in light of the traditionally pro-advertising stance of the Trade and Industry department and the Culture, Media and Sport department—government departments that oversee advertising and broadcasting, respectively.

[55] *See* Cordelia Brabbs, *Will Kids Be Cut Off from Ads?*, MARKETING, Nov. 30, 2000, at 22.

[56] *See* Virginia Matthews, *Yielding to the Pressure of Pester Power*, FIN. TIMES (London), Aug. 17, 1999, at 8.

cause consumption often harms the environment. Those who encourage healthy diets for everyone would delight in the downfall of children's advertisers, most of whom peddle sweets and soda instead of vegetables and vitamins.[57] Consumers International, a watchdog organization based in London, conducted a study that found that 95% of commercials aimed at children on British television pushed foods that were high in fat, sugar or salt.[58] Regulatory bodies are also pitching in: the United Kingdom's nascent Food Standards Agency, established in 2000, is drawing up plans to implement new codes for food advertising aimed at children.[59]

IV. ARGUMENTS AGAINST A EUROPE-WIDE BAN

Organizations, ranging from advertising industry groups to the Tories in British Parliament, find a ban on children's television quixotic in today's day and age. With the explosion of commerce, children should know about choices that exist in the marketplace; thus, a ban on advertising to youth would be irresponsible treatment of children within a modern free society. Advertising is a fact of life for which children should be prepared for, not shielded from. Raising children without any exposure to advertising could backfire, resulting in a generation gullible about advertising and willing to

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[57] *See* Higham, *supra* note 38, at 17.

[58] Consumers International has expressed much concern over other facets of children's advertising beyond nutrition. For example, it singles out three types of advertising to children as the most worrisome. First, it disparages cartoon or other fictitious characters as unfair advertising devices since they may prey upon children's affection and loyalty to such characters, thus blurring the line between programming and advertisements. It also warns that the all-too-fluid transition from show to commercial break, sponsorship of children's programs, and other similar ploys may likewise cause children to view advertisements with the same credulity as the scheduled programming.

The watchdog organization has released a raft of recommendations for the regulation of the advertising industry, whether via self-regulation or statutory, including:

- Independence and impartiality.
- Fully transparent decision-making process.
- Adequate consumer representation.
- A majority of non-industry interests in decision-making bodies.
- Pre-screening and monitoring of advertisements to ensure compliance with regulations.
- Openness to consumer complaints, with the burden of proof on the advertiser.
- Power to enforce decisions and demand appropriate redress.
- Cooperation at the international level.

See A Spoonful of Sugar, *at* http://www.consumersinternational.org/campaigns/tvads (last visited Nov. 9, 2000).

[59] *See* Brabbs, *supra* note 55, at 22.

believe whatever they are told.[60] Moreover, opponents of the ban argue, children are savvier than the ban gives them credit for.[61]

A University of Michigan study bolsters the view of the modern child as more sophisticated than previous generations. Now, children's exposure to social interaction is widely varied at a young age due to the rise of day care and the increasing rarity of nuclear families. The study shows that by the age of five or six children have a substantial understanding of the concept of deception, which is at the heart of most concerns about advertising. England's University of Exeter also studied children's understanding of advertising, focusing on whether they realize the difference between advertisements and television programs. Sixty-six four- to eight-year-olds watched two kinds of commercials: one in which a face cream was praised because it made users beautiful and one in which a face cream was touted as giving users hideous spots. While the four- and five-year-olds could not see anything wrong with the second commercial, eight-year-olds were much the wiser and condemned the second as unrealistic and out of line with advertising principles.[62]

The ban could curtail consumer choice and choke off the quality children's programming funded by advertising. Children's advertising within the EU produces a net income of 240 million euros a year to member states; of this income, 95% is used to fund home production or television rights for children's programs.[63] Michael Forte, the head of children's programming at Carlton Television in Britain, concurs that any ban would strike a great blow to British television and calls it a "disaster." Without advertising revenue, Forte says, original programming would dry up; in fact, ITV would probably give up making children's programs altogether.[64] The projections by the deputy controller of children's programs at Granada Television, Patrick Titley, are even more grim. Since many commercials aimed at children are aired during popular prime time shows, the ban would affect all television programming and not just children's shows.[65] Such dire predictions have proved true in Greece. Children's television programming in Greece dwindled down to nothing after the ban because the ban left Greek television producers without a vital source of funding.[66] After the ban took force in 1993, Greek television stations lost approximately 45 million dollars in revenue. Thus, Greek broadcasters could only afford cheap, poor-

[60] *See* Pat Anderson, *Child's Play*, MARKETING WK., Sept. 9, 1999, at 47, *available at* 1999 WL 8313659.
[61] *See* Higham, *supra* note 38, at 17.
[62] *See* Cohen, *supra* note 40, at 38.
[63] *See Sweden Seeks Extension to Child Advertising Bans*, NORDIC BUS. REP., June 14, 1999, at 1, *available at* 1999 WL 10322989.
[64] *See* Gardner, *supra* note 7, at 6.
[65] *See id.*
[66] *See id.*

quality cartoons from overseas.[67] Since 1994, the Advertising Association has observed a 30% drop in investment in Greek children's programming.[68]

The Tories, the conservative party in Great Britain, have seized upon this issue as another example of the EU throwing its weight around. Shadow Culture Secretary Peter Ainsworth calls Sweden's proposal "patronizing, bossy, and politically correct" and urged Culture Secretary Chris Smith to staunchly resist Sweden's efforts.[69] The Shadow Trade and Industry Secretary, Angela Browning, stated:

> If other countries want to ban the advertising of toys, sweets, salt or sugar that is entirely up to them. But we don't want to find Britain drawn into such a directive. We need a light-touch approach to regulation. We don't want the EU to encroach on the usual rules on advertising on the grounds of political correctness.[70]

The Tories suspect that Labour is siding with the Swedes because in early 1999, Labour voiced concern over television's impact on children. Not to mention that Labour member Tony Blair has been emphasizing the benefits of EU membership as part of his campaign to have Britain join the single currency.[71] Partisan politics aside, for the most part the British government does not seem to see a need for a pan-European ban. While the British government does see some merit to regulating children's advertising on television, Broadcasting Minister Janet Anderson has declared that the Government does not intend to impose such a ban: "This is a matter that should be left to individual member states."[72]

Both Sweden and Greece's bans may be mere protectionism, an attempt by Swedish and Greek domestic industries to squelch outside competition from other European countries. By blocking children's access to television advertisements, the Swedish ban favors products already in the Swedish market and is thus anti-competitive.[73] The Swedish ban may indeed be the Swedish government's capitulation to pressure from Swedish commercial broadcasters who complain that they face unfair competition from overseas broadcasters such as the London-based Nickelodeon.[74] Greece's ban on toy television commercials has caught flak even from those outside the toy and broadcasting industries, including London publication

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[67] *See* Cohen, *supra* note 40, at 38.

[68] *See* Anna Griffiths, *Advertising a Threat to Our Children?*, CAMPAIGN, Aug. 27, 1999, at 30, *available at* 1999 WL 8349730.

[69] *See* Trevor Mason, *BBC Urged to Chase Quality, Not Ratings*, PRESS ASS'N NEWSFILE, Oct. 29, 1999, at Parliamentary News sec., *available in* LEXIS, News Library.

[70] *Tories Attack EU Ban on Children's Ads*, CAMPAIGN, Oct. 22, 1999, at 1, *available at* 1999 WL 8350259.

[71] *See id.*

[72] *Government to Fight EU Plan to Ban Ads Targeted at Children*, CAMPAIGN, Nov. 12, 1999, at 7, *available at* 1999 WL 8350495.

[73] *See* Harrabin, *supra* note 24, at 19.

[74] *See* Higham, *supra* note 38, at 17.

the *Financial Times*. The *Times* has disparaged Greece's ban as "more to protect Greek toymakers than Greek children."[75] This cry of protectionism is not a mere knee-jerk reaction by disgruntled marketers. Many of the legal restrictions on marketing practices in European countries were originally designed to help businesses by curtailing competition. Ironically, such limits actually hamper businesses' marketing efforts by rendering it nearly impossible to follow a unitary marketing strategy.[76]

Taking a more principled tack, some allege that a Europe-wide ban would be curbing freedom of speech—namely, freedom of commercial speech.[77] But Sweden defends its acts as necessary in this area. Swedish Under-Secretary for Culture Nykvist maintains that Sweden is traditionally a country with liberal laws governing censorship; however, the laws must be strict when advertisements prey upon vulnerable children to make them consumers at an early age.[78] Nonetheless, proponents of this view characterize commercial speech as the "voice of the free enterprise system and the foundation of an independent media."[79] Chairman of the International Chamber of Commerce of Germany Ludger Staby even testified before the EU that advertising bans stifle growth, put jobs in jeopardy and strike a blow at free choice.[80] Detractors of the ban also claim that an EU-wide advertising restriction would impair the free movement of goods and services within a single market, thus defeating one of the original objectives of the EU.[81]

Some dismiss Sweden's moral stance on the ban as rubbish. True, Sweden is generally known to be a socially regulated society and a welfare state with a wide reach—but this ban is overstepping its bounds.[82] Rupert Howell of the Institute of Practitioners in Advertising tags Sweden's ban as pure hypocrisy. Sweden may be on high moral ground regarding children's advertising on television, but Sweden has refused to back a European ban on exporting hard-core pornography.[83] Even the Swedish government's own research has failed to find substantial evidence that advertising affects children's material values, nutrition and eating habits.[84]

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[75] Tomkins, *supra* note 27, at 14.

[76] *See* John Rothchild, *Protecting the Digital Consumer: The Limits of Cyberspace Utopianism*, 74 IND. L.J. 893, 989 (1999).

[77] *See* Tomkins, *supra* note 27, at 14.

[78] *See* Harrabin, *supra* note 24, at 19.

[79] Richard M. Corner, *Free Flow of Commercial Speech Essential to World Market*, LEGAL BACKGROUNDER, Aug. 20, 1999, at 31, *available in* LEXIS, News Library.

[80] *See* Jon Rees, *Swedes Seek European Toy Ads Ban*, SUNDAY BUS. (London), May 2, 1999, at 13, *available in* LEXIS, News Library.

[81] *See* Gardner, *supra* note 7, at 6.

[82] *See* Conor Dignam, *Ethics Will Be Key in Battling EU-Led Children's Ad Ban*, MARKETING, Apr. 22, 1999, at 1.

[83] *See* Rees, *supra* note 80, at 13.

[84] *See* Griffiths, *supra* note 68, at 30.

Marketers also contend that children will see advertisements anyway, in shop windows, on the Internet, etc.[85] Where would the ban draw the line? Would it also target any sort of marketing directed at children? The BBC's Teletubbies is one of the most successful properties with a very extensive marketing program including a vast array of merchandising and licensed tie-ins.[86] Would the ban bar the production of a Tinky-Winky doll as well?

Television advertising may just be a scapegoat; last year's hottest toys, the Furby and the yo-yo, were never advertised anywhere. Playground or peer pressure may be much more powerful than television advertising.[87] Furthermore, children have always wanted the toys other children have, regardless of advertising. Age-old neighbor envy and word of mouth are more likely culprits than television commercials.[88]

In downplaying "pester power," marketers claim that it is just an emotive term for something that has been going on between parents and children for thousands of years. Children have forever been nagging parents for what they cannot have, according to Lionel Stanbrook of the Advertising Association. Television has not necessarily upped the ante in this age-old game; television advertising is just another element in the constant negotiation process between parents and children.[89] The Advertising Association formalized its contention that television commercials do not intensify pester power in its comparative study between Sweden and Spain, where children's commercials have been authorized for over forty years. In Sweden, 9% of parents reported pester problems, whereas only 7% of Spanish parents noted pester power.[90] Besides, who says parents are upset? According to a study conducted by CIA Media Network, 80% of parents do not object to advertisements aimed at children.

As in all debates, the battle of statistics has been waged by both parties—both supporters and detractors of the ban have cited surveys and studies to bolster their respective positions. In this case, the same survey has been wielded by both sides of the debate, with the creator of the statistics championing the cause of those against the ban. Dr. Erling Bjurstrom of the Institute for Working Life in Sweden conducted a study used by the Swedish government to justify its ban. However, at a conference hosted by the UK Advertising Association, Dr. Bjurstrom claimed that his study had been misconstrued as demonstrating that all children under age 12 were incapable of understanding the nature of advertising. In fact, his findings were

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[85] *See* McCall, *supra* note 15, at 14.
[86] *See* Marsh, *supra* note 46, at 27.
[87] *See* Higham, *supra* note 38, at 17.
[88] *See* Hatfield, *supra* note 43, at Features.
[89] *See* Tomkins, *supra* note 27, at 14.
[90] *See Broadcasting: Television Advertising Has No Major Impact on Children*, EUR. REP., Jan. 6, 2000, at 1.

that children under age 12 might not understand it, but that did not establish that children could not distinguish between programming and advertisements. Furthermore, the study found that even some adults are unable to understand advertising.[91]

The *De Agostini* decision also delivered a blow to Sweden's ban. *De Agostini* held that the EU's "Television without Frontiers" Directive precludes application of the Swedish rules on advertising directed at children to advertisements broadcast from another member state.[92] Thus, even Swedish businesses have been able to duck the ban by running commercials on channels beamed into Sweden from the United Kingdom.

Although supporters of the ban may charge avaricious and evilly-motivated marketers with the extraordinary rate of growth of advertising to children, studies have pointed the finger elsewhere. James McNeal of Texas A & M University has tracked spending on children's advertising as increasing 15 to 20 percent a year for the past six or seven years. McNeal attributes this to the growing spending power of children, due in part to parents giving children more pocket money and spending more on children. He also points to the rise of "filiarchy," or the growth of children's power within the family. Because this generation's parents are disenchanted with government, educational and religious institutions, they have a gloomy outlook on what society will bring their children. Therefore, the parents feel moved to give their children the best start they can in order to equip them for a hard world.[93] Hence, McNeal would probably conclude that parents are self-motivated to buy—not driven to buy by the whines or wheedling of children that is sparked by the greedy glut of television commercials aimed at children. Taking a similar approach, toy industry officials also place the burden of protecting children on parents. According to Sarah Mooney of toy giant Hasbro, blocking children from seeing commercials is no solution: "You can't keep children in a vacuum, you just have to learn to say no to them."[94]

The advertising industry's coalition released a study alleging serious enforcement problems of such a ban. The University of North London examined the advertising regulations in Great Britain, Holland, Spain and Sweden. The study concluded that if the EU tried to revise the "Television without Frontiers" Directive in 2001, it would be hard-pressed to form common rules.[95] Research found that television markets in the EU member states were in different stages of development; for example, Spain's television market was in the infant stages, but the United Kingdom and Holland

[91] *See* Brabbs, *supra* note 55, at 22.
[92] *See* Verhoven, *supra* note 33, at 480.
[93] *See* Tomkins, *supra* note 27, at 14.
[94] Brabbs, *supra* note 55, at 22.
[95] *See Children's Ads Law Must Stay National, New Research Says*, CAMPAIGN, June 11, 1999, at 8.

had a high penetration of cable and satellite television.[96] Not only that, but with such a wide variety of cultures among EU member states, standards governing taste, decency, immorality and harmfulness were hardly likely to be uniform throughout the EU. Cultural differences would render an EU-wide policy regarding advertising to children virtually impossible.[97]

In a country such as Britain, whose advertising industry is governed by self-regulation, marketers have the support of the Independent Television Commission ("ITC"). The ITC favors self-regulation by the advertising industry similar to the United Kingdom's current framework instead of a complete ban. The head of the European Association of Advertising Agencies concurs and claims that all members of the Association abide by the International Chamber of Commerce's International Code of Advertising Practice, which explicitly prohibits the use of pester power in advertising.[98] The Advertising Council is also making substantial steps toward establishing a self-regulatory structure to govern advertising to children in hopes of beating lawmakers to the punch.[99]

The hue and cry against a possible Europe-wide ban has been loudest from Great Britain. Businessmen, admen, and even some parents protest Sweden's proposal. The Institute of Practitioners in Advertising managed to organize a debate over Sweden's motion in the House of the Commons.[100] Even more telling, the conservative party members of Parliament have launched an attack against a Europe-wide ban, disparaging Sweden's proposal as a "classic example" of unnecessary regulation out of the distant seat of the EU.[101]

Given that the United Kingdom has the highest level of children's advertising in Europe,[102] the United Kingdom's vehemence is not surprising. Another explanation of the passion in Britain to fight the ban is the long history of commercial television in the United Kingdom. Both the United States and United Kingdom have had commercial television for decades and find television advertising to children less troublesome than Sweden;[103]

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[96] *See Broadcasting: Unease Over Restrictions on Advertising for Children*, EUR. REP., June 9, 1999, at 1, *available in* LEXIS, News Library.

[97] *See Sweden Seeks Extension to Child Advertising Bans*, NORDIC BUS. REP., June 14, 1999, at 1.

[98] *See* Geary, *supra* note 19, at 36.

[99] *See* Chris Rivituso, *Ad Council to Approve Code*, WARSAW BUS J., July 19, 1999, at News sec. For more about self-regulation of the advertising industry in general, see ADVERTISING SELF-REGULATION IN EUROPE, also known as the "Blue Book," published by the European Advertising Standards Alliance and available to order online at http://ww.easa-alliance.org/bluebook.html (last visited Nov. 9, 2000).

[100] *See Digest*, MARKETING WK., July 15, 1999, Media sec., at 13.

[101] *See Tories Attack EU Ban*, *supra* note 70, at 1.

[102] *See Spoonful of Sugar*, *supra* note 58.

[103] In the mid-1970s, American psychologists did push for a ban on toy advertising on television on the basis of a contemporary study that found that 96% of 5 to 6-year-olds, 85% of 8

Sweden, on the other hand, has had terrestrial commercial television only since 1992.[104] Of course, it is also Great Britain who expects the greatest financial impact from the ban. The United Kingdom's commercial channels would stand to lose over £70 million in advertising revenue if all advertising to children were barred from television.[105]

V. WILL THE BAN PASS?

There is some reason to believe the ban will pass. The ban on tobacco advertising, passed primarily to protect children, has paved the way for a ban on children's television advertising. The recent EC ruling supporting Greece's strict policy against children's advertising may be a harbinger of things to come for the rest of the EU. Furthermore, the outcome of the ban in Sweden may indicate that a ban might not yield such draconian results after all; sensing this, perhaps opponents of the ban may lay down their arms and bow to the inevitable regulation. Finally, in a move toward pan-European marketing regulation, the EU has hinted at plans to harmonize the rules governing cross-border promotions within Europe. If advertising laws within Europe are made uniform, all EU member countries may be subject to the more conservative laws of Sweden and Denmark.[106]

On the other hand, many believe the ban will not pass. For one, it is not just the advertisers and manufacturers who target children that are concerned about the ban. Since Sweden's proposed ban could also affect the use of children in commercials and the airtime of commercials featuring children, marketers and manufacturers of adult products like cars are pushing to defeat the ban. For example, the advertising agency for Peugeot has expressed anxiety that the Swedish ban could result in dangerous fall-out for the auto industry: "It would set a very dangerous precedent. Banning would then be seen as an option in the regulator's arsenal."[107] The joint efforts of the adult and children's industries could topple Sweden's proposal, as the advertising and marketing lobby is quite powerful in Europe.

Most observers appear to believe that the EU member states are unlikely to rally around Sweden enough to pass restrictions on advertising to children, let alone pass an absolute ban.[108] The Tory opposition has insisted that the British government will oppose the proposed pan-European ban because it sees the ban as more "unnecessary regulation" from the

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to 9-year-olds, and 62% of 11 to 12-year-olds did not fully understand the purpose of television advertising. Nonetheless, advertisers managed to persuade the FTC against such a ban. *See* Cohen, *supra* note 40, at 38.

[104] *See* Tomkins, supra note 27, at 14.

[105] *See* McCall, supra note 15, at 14.

[106] *See* James Curtis, *Should These Ads Be Banned?*, MARKETING, Mar. 23, 2000, at 1.

[107] *Id.* at 1.

[108] *See* Higham, *supra* note 38, at 17.

EU.[109] Others assuage fears that cross-border harmonization of laws within the EU would spell stricter regulation; in fact, the single market ideology of the EU may be a boon to marketers. While the morass of different marketing laws before the formation of the EU rendered pan-European promotions impossible, now the market is far simpler for companies to conduct advertising campaigns. The EU harmonization movement also may work to the benefit of advertisers because such country-specific laws like Greece's toy ban may be legislative quirks that will be smoothed out by pan-European legislation.[110] In other words, macro regulation does not tolerate extremes very well and tends to settle somewhere in the middle; hence, a measure as radical as an all-out ban is unlikely. Finally, Sweden has once before tried to toughen up an EU directive on advertising and failed.[111] In fact, Sweden was outvoted 14 to 1 in the 1996 debate before the EC.[112] If Sweden succeeds at all, it may have to settle for forcing compliance by foreign broadcasters with Swedish advertising law.[113]

Sweden appears to be taking stock of its campaign for a continental ban. Instead of bursting out of the gate from the first day of its EU presidency in 2001, sources in Sweden say the country is more likely to wait until autumn of that year.[114] The next review of European broadcasting law is slated for the fall of 2001, by which time Sweden expects that a study on the effect of advertising on children should be completed.[115] Sweden may wait even longer to press the issue. Hans Sand, the head of the Swedish government's cultural delegation to the EU, fears that waging a war against children's advertising on television during Sweden's presidency might be counterproductive.[116] Nevertheless, Sweden shows no sign of backing down from the fight. Sweden's Minister of Culture Ulvskog formally declared it will use its EU presidency to promote the prohibition of all television advertising in the EU to children under age fourteen.[117]

VI. SHOULD THE BAN PASS?

Considering the aggressive expansion of television advertising to children, it may be wise not to give advertisers who target children free rein over the airwaves. Television advertising to children is becoming more as-

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[109] *See Government to Fight*, *supra* note 72, at 7.

[110] *See* Curtis, *supra* note 106, at 1.

[111] *See* Rees, *supra* note 80, at 13.

[112] *See* Mary Nokavich, *The Playground Pound*, THE GUARDIAN (London), Nov. 3, 1999, at 1.

[113] *See* Goddard, *supra* note 29, at 1.

[114] *See Sweden Increases Pressure for a TV Ad Ban*, MARKETING WK., Nov. 25, 1999, News sec., at 9.

[115] *See id.*

[116] *See id.*

[117] *See* Tylee, *supra* note 26, at 4.

sertive and pervasive. The quantity of advertising aimed at children in the United Kingdom has grown 500% over the last ten years.[118] This increase is most likely due to the recent sharp increase in children's spending power and influence within the family as well as children's exposure to media.[119] Self-regulation—like the United Kingdom's various checkpoints and safeguards—seems a relatively good model for regulation of advertising to children, while an absolute ban could face enforcement problems and actually worsen the situation.

If an absolute ban passes, children may be even more at risk for exploitation by corporations. Although businesses may simply revise their marketing strategies to include point-of-purchase gimmicks and Internet advertising, they may also respond by getting creative and sneaky to avoid regulations, spawning even more insidious types of advertising to children. Toy advertisers could take a cue from tobacco, which has found a myriad of ways to maintain healthy sales and a high profile despite the ban.[120]

Corporate sponsorship within schools is one example of a worrisome marketing tactic. The focus of marketers may indeed be moving from the living room to the classroom. Cause-related marketing campaigns, such as retailers sponsoring Computers for Schools programs and cereal companies publishing books on nutrition for use in schools, are on the rise.[121] In fact, approximately 85% of Great Britain's 32,000 schools have experienced some form of commercial activity within the classroom. With the rise of expensive high technology, educators predict the trend will only continue.[122]

Other examples of corporate sponsorship within schools is Procter & Gamble's Sunny Delight, which is offering branded support of children's athletic activities by hosting an in-school three-on-three basketball program. News International and Walkers Crisps has organized a Books for Schools promotion in which consumers collect coupons from papers and snack bags in exchange for free books for the school; this promotion has the backing of the Department of Education. One of the most popular programs is Jazzy-Books, which provides curricular material featuring advertisements on the cover and a few inside pages. Jazzybooks has earned the endorsement of the National Confederation of Parent Teacher Associations ("NCPTA") in Great Britain.[123] Another promotional campaign that has earned the stamp

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[118] *See* Griffiths, *supra* note 68, at 30.

[119] *See Pressure Grows to Curb Advertising to Children*, IRISH TIMES, Apr. 23, 1999, at 70.

[120] *See* Oliver Swanton, *Does the Butt Stop Here?*, THE INDEPENDENT (London), Oct. 17, 1999, at 1.

[121] *See* Stewart-Allen, *supra* note 14, at 10.

[122] *See* Keeley, *supra* note 51, at 10.

[123] *See* Harriet Marsh, *Analysis: Useful Lessons in Targeting Pupils*, MARKETING, June 5, 1997, *available in* LEXIS, News Library. Jazzybooks may attribute the support of the

of approval from the NCPTA is The Primary Bag and The Secondary Bag. These are "goodie bags," stuffed with free samples pre-approved by the NCPTA and distributed to students ages five and above.[124]

These programs may sound benign; but when corporations sponsor curricular materials, a dangerous commercial message may be subtly woven into the educational message. Furthermore, children may mistake the appearance of a corporate logo on a book cover or on a hallway banner as the school's blanket endorsement of the product.

Although JazzyBooks may blur the line between commercialism and education, it is a tame version of the infiltration corporations can achieve by sponsoring educational materials.[125] Some U.S. businesses are introducing curricular materials that loudly smack of corporate propaganda. Exxon distributes to schools a video on the Valdez spill that downplays its ecological impact (and naturally fails to mention who exactly was responsible for the spill.) Chevron's civics or science lesson reminds students they will be able to vote soon and make "important decisions" about global warming—an event which Chevron dismisses as "incomplete science."[126]

Yet another cause for concern is schools selling access to students to be market research guinea pigs. London-based Youth Research Group treats the classroom as a market research laboratory and gives the schools free Internet access and software in exchange for use of the students as fo-

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NCPTA to its agreement to conform to the guidelines set out by the National Consumer Council for socially responsible firms targeting students via educational material. According to these guidelines, companies should make sure that:

- "Material offers educational value and is relevant to the curriculum.
- [Materials] give a balanced and objective view of the issue. This means acknowledging the existence of alternative views, distinguishing between factual and statements and opinions and making the sponsor's market interest clear.
- Material is only developed after consultation with teachers and after a test for its educational value using pupils in the target group.
- Material does not include sales and promotional messages. This means no explicit branding, no messages playing on children's fears or lack of experience, no purely promotional material and no claims of superiority, unless backed by documentary evidence. Use of slogans and logos should be limited to those necessary to identify the sponsor.
- The project does not include sponsored gifts, awards, voucher schemes and other promotional/marketing activities.
- No unsolicited marketing messages are sent to pupils.
- Materials avoid stereotypes. This means the project must be free from politically incorrect statements.
- All material and activities are fully labeled by the sponsor. This means identifying the target market and including a description of all pre-launch consultation and testing."

[124] *See* Ken Gofton, *Building Up a Class Act*, MARKETING, Sep. 9, 1993, at 1.

[125] *See* Rob Gray, *Perils of Sending Brands to School*, MARKETING, Apr. 22, 1999, at 1.

[126] John F. Borowski, *Schools with a Slant*, N.Y. TIMES, Aug. 21, 1999, at A13, Col. 1.

cus groups and survey subjects. Some 21,000 children have been subjected to the Group's practices, allowing the Group to sell its studies to everyone from television producers to clothing manufacturers.[127]

Corporate sponsorship of schools can be a symbiotic relationship that is beneficial to both parties. Money goes to the school and good public relations goes to the corporation; corporations also benefit from an opportunity to give back to the community—not to mention priceless credibility via association with trusted teachers. But when commercialism invades the school curriculum, corporations may dangerously twist the facts and deceive students.

The EU should be just as concerned about corporate sponsorship in schools as it is about television advertising directed at children. At least with television, children have the option of changing the channel or walking away. But within the classroom, children are even more captive to corporate pitches, especially if they come disguised as corporate-sponsored curricular materials. The EC has evidenced some concern about this, directing a study to be done on both "sponsoring at schools" and television advertising to children.[128] However, the EC has also come out in support of corporate sponsorship of schools. The EC recently issued a report stating that certain types of corporate advertising would "open schools to the economic world."[129] Such an argument can be a slippery slope and mere commissioned studies and reports are not enough. Individual schools and local governments should be vigilant about this form of advertising.

Although the EU should not permit advertisers to children to run amok on the potent marketing tool that is television, the EU should not implement an absolute ban all over Europe. To do so could simply divert a dangerous flow to the schoolyard.

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[127] *See* Geary, *supra* note 19, at 36.

[128] *See* European Parliament, Committee on Economic and Monetary Affairs and Industrial Policy, *Resolution on the Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee on the Follow-Up to the Green Paper on Commercial Communications in the Internal Market*, OFFICIAL J., Apr. 14, 1999, at 130.

[129] Geary, *supra* note 19, at 36.