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Overview of Complaints in Advertising and Minors in Self-Regulation (1998-2018)

Panorámica de las reclamaciones en publicidad y menores en *Autocontrol* (1998-2018)

This article offers an overview of all complaints filed with the *Association for Self-Regulation of Commercial Communication* (Autocontrol) on advertising and children during the last twenty years (1998-2018). There has been a sample of 68 cases. Through a quantitative and qualitative methodology the complaints have been analyzed in relation to the type of advertising complaint, the arguments on which they have based, what measures have been carried out by *Autocontrol* and who are the main complainant and complaint.

KEY WORDS: children, Advertising self-regulation (ASR), regulation, advertising.

Este artículo ofrece un panorama general de todas las reclamaciones presentadas ante la Asociación para la *Autorregulación de la Comunicación Comercial* (*Autocontrol*) sobre publicidad y menores durante los últimos veinte años (1998-2018). Se ha contado con una muestra de 68 casos. Mediante una metodología cuantitativa y cualitativa se han analizado las reclamaciones con relación a qué tipo de publicidad es la más reclamada ajustándose a la normativa de autorregulación, con qué argumentos se han fundamentado, qué medidas se han llevado a cabo por parte de *Autocontrol* y quiénes son los principales reclamantes y reclamados.

PALABRAS CLAVE: menores, normativa, autorregulación, publicidad.

1. Introduction and State of Play

This article analyses the complaints about advertising directed at minors filed with the Association for the Self-Regulation of Commercial Communication over the last two decades (1998-2018). The aim is to find out which type of advertising is most in demand in accordance with the self-regulation rules, with what arguments they have been based, what measures have been carried out by the Self-Regulation and who are the main complainants and respondents.

It also provides an overview of which sectors are most affected by self-regulatory rules on advertising to minors. Also, a diachronic radiography of the complaints during two decades is collected around this target public.

The Self-Regulation database has been used to identify complaints and the main self-regulation rules regarding the types of advertising that are not permitted and which, in turn, affect minors have been used as a search criterion.

In order to carry out our work, the main studies on this subject have been reviewed according to the following criteria: works related to advertising self-regulation in general, research focused on advertising self-regulation and minors, studies focused on advertising self-regulation in minors and specific sectors, and works focused on the analysis of resolutions of advertising self-regulation systems such as Self-Regulation.

With regard to studies on advertising self-regulation in general, the studies by Verbruggen (2012; 2011), Harker (1998), Burleton (1982), Harker and Harker (2002) and Boddewyn (1988; 1989; 1992) focusing on self-regulatory bodies as advertising supervisory authorities are noteworthy. At the national level, authors such as Fernando Magarzo (2011) and Patiño Alves (2007) analyse self-regulation from a normative viewpoint and other related figures. Other researchers such as Feenestra and González Esteban (2017) study the functioning of the Spanish self-regulation system in terms of independence, transparency and participation. Martín Llaguno and Hernández Ruiz (2009) criticise the excess of self-regulation in our country, while other works compare the Spanish self-regulation system with that of other countries such as the United States (Medina and An, 2012), the United Kingdom (Muela Molina and Perelló Oliver, 2014) and Portugal (Estrela and Loureiro, 2013) showing the common points and weaknesses of the systems with a critical and constructive vision.

Lievens (2018) highlights the protection of minors in the digital environment in the systems of self-regulation, co-regulation and legislation, highlighting the need to identify the responsibilities of the different actors in the advertising field. Along the same lines, Macenaite (2016) analyses and reflects on the self-regulation initiatives adopted by the industry to protect the privacy of children on the Internet, highlighting the strengths and weaknesses of the system. Other authors such as Verdoodt, Lambrecht and Lievens (2016) make an X-ray of the European self-regulation rules in the matter of minors while Martínez Pastor, Vizcaíno, Serrano Maillo and Nicolás Ojeda (2017) make a normative overview of advertising limited to the national scope.

There is also research on self-regulation in advertising and on minors linked to certain sectors such as food or toys. Examples of this are the works of Huizinga and Kruse (2016), Jensen and Ronit (2015), Hawkes and Harris (2011) that analyse the risk of inappropriate food advertising; or the research of Martínez Pastor, Gaona and Nicolás Ojeda (2017), Martínez Pastor and Nicolás Ojeda (2016) and Martínez Pastor, Nicolás Ojeda and Gaona (2014) focused on the application of the self-regulation rules of toys in television advertising of toys.

Less copious are the studies relating to the analysis of the resolutions of advertising self-regulatory systems such as Self-Regulation. Among the works that have addressed these lines is that of Perelló Oliver and Muela Molina (2017), which includes an analysis of the complaints submitted during the 2010-2015 period in all sectors in order to highlight the weaknesses of the self-regulation system. In this line, the study by Medina and An (2012) analyses the resolutions of Self-Regulation for the years 2005-2009 without discriminating

against any sector. Other authors focus on resolutions related to women as Pérez Marín (2011), and there are few works that analyze the resolutions of Self-Regulation relating to minors among which we find the studies of Martínez Pastor, Gaona and Nicolás Ojeda (2017) that analyse cases claimed in advertising and toys, or the works of Pérez-Ugena and Coromina, Martínez Pastor and Perales Albert (2011) and Maroño Gargallo (2010) regarding the resolutions of minors and the PAOS Code.

These works evidence and justify the current interest in knowing and analyzing the resolutions of Self-Regulation related to minors and to continue research on the subject of minors and self-regulation. Before going into the subject of this research, it is worth explaining how the self-monitoring works and the main self-regulation rules directly linked to minors.

2. Self-monitoring: regulations and operation of complaints about minors

Advertising is one of the most regulated and self-regulated communications with the aim of protecting the consumer, both as a target and potential audience, as the most vulnerable part, as well as promoting fair competition in the market (De la Cuesta Rute, 2002) and encouraging a legal, honest and responsible form of advertising in the market (Tato Plaza, 2005; Fernando Magarzo, 2008). The legal norms that focus on the limits in relation to illicit publicity (Art. 3, Law 34/1988, of 11 November, General of Publicity) are limited around the values and rights of the Constitution, the target public, women and minors, the subliminal, deceptive, unfair and aggressive message, and the type of product or service, by means of specific norms. The protection bodies are the legal system and the system of self-regulation. The legal rules are binding and obligatory for all those affected and all the agents involved (Gómez Montero and Lema Devesa, 2010). While self-regulatory rules are mainly governed by the Self-Regulation Advertising Code of Conduct (the Self-Regulation Code) and sectoral codes, as well as by the voluntary nature of compliance with these codes by those who adhere to them.

Companies, advertisers and advertising agencies voluntarily and expressly adhere to self-regulation, approve ethical or deontological codes of conduct for the group itself, which they undertake to comply with, and adopt appropriate mechanisms for monitoring compliance with the codes. In addition, members who do not comply are penalized. This prevents the administration from regulating or enforcing judgments faster and harder than if the industry were not self-regulating.

The main self-regulatory codes that protect minors are the following: the Self-Regulation Code, which is based on the International Code of Advertising Practice of the International Chamber of Commerce (ICC, 1996) and, the codes that regulate the media and the sectors (Martínez Pastor, Vizcaíno Laorga, Serrano Maillo and Nicolás Ojeda, 2017). In the Self-Regulation Code the rules correspond to the basic principles that all advertising messages must respect, such as the principle of legality, which means that the law and the Constitution must be respected, not to abuse good faith, not to discriminate, not to incite violence or not to incite unsafe or dangerous practices, among others; the principle of authenticity, which requires that advertising must be identifiable or; the principle of truthfulness, which implies

that advertising must never be misleading, as well as rules on certain forms and techniques of advertising, such as comparative, aggressive advertising, etc. (Martínez Pastor, 2010; Bel Mallén and Corredoira and Alfonso, 2003; Santaella López, 2003). According to our subject of analysis, the reference standard of the Self-Regulation Codes is Standard 28:

> Advertising to children should be extremely cautious. It should not exploit the natural naivety, immaturity, inexperience or credulity of children or adolescents, nor abuse their sense of loyalty. Advertising addressed to children or adolescents, or which is likely to influence them, shall not contain statements or visual presentations which may be mentally, morally or physically harmful to them. Special care will be taken to ensure that advertisements do not mislead or deceive children as to the actual size, value, nature, durability and performance of the advertised product. If the use of other items is required for their correct use (e.g. batteries) or to achieve the described or shown result (e.g. paint) this must be explicitly stated. Advertisements should not overestimate the skill level or age limit of children in order to enjoy or use the products.

Among the codes that regulate the media, the most important are the Code of Ethics for Online Confidence, which dedicates its Title V to the "Protection of Minors" in terms of the way advertising messages are presented, content and the collection of personal data from minors, and the Self-Regulation Code for Television Content and Children, which deals with the time restriction for content and advertising that is not appropriate for children and young people.

Also noteworthy are the sector codes subscribed to and promoted by product and service associations in certain sectors and whose application has been entrusted by the industry to Self-Regulation as an independent advertising self-regulation body: the Self-Regulation Code of Advertising to Children and Toys (2015) and the Self-Regulation Code of Food and Drink Advertising to Children, Obesity Prevention and Health (PAOS).

There are also other self-regulation codes, which although they do not target minors, do consider that they can be the recipients of advertising messages, and therefore emphasize the special care that advertising must take if it can be seen by minors, due to their special vulnerability and credulity. These are the Wine Self-Regulation Code, the Advertising Self-Regulation Code of the Spanish Federation of Spirits (FEBE) and the Advertising Self-Regulation Code of Spanish Brewers. To these we can also add, the Code of Conduct on Marketing Communications for Gambling Activities and the Guidelines for Good Advertising Practice for Interactive Software Products that especially protect minors as the target of the advertised products.

3. Objectives and Assumptions

The main objective of the present work is to know in which main aspects the claims of Self-Regulation are based to estimate or to reject the cases of publicity and minors. To do this, it is necessary to know what type of advertising is most demanded in Self-Regulation regarding minors, what arguments are based on the resolutions, what self-regulation regulations are applied and what decisions have been made by the Self-Regulation Juries.

As secondary objectives, it is established to find out who the complainants and respondents are and the most affected sectors of these resolutions.

The starting hypothesis is that most of the cases claimed about advertising and minors are usually unsuccessful, either because the claimant's deontological argument does not comply with the regulations, or because of a lax interpretation of the regulations. In addition, the Standard that is always applied is the self-regulation code for advertising in Standard 18 concerning minors and the sectoral codes concerning toys.

4. Methodology

The sample of analysis corresponding to the resolutions processed in Self-Regulation is identified and the data obtained is analysed to meet the objective of this work.

The procedure used to locate cases of advertising and minors in the Spanish context in the last twenty years (1998-2018) has been the database of resolutions of the Self-Regulation Jury. This database has been used for the selection of case studies since Self-Regulation is the body where most advertising cases are settled, generating a greater "jurisprudence" than that of the ordinary courts, due to its speed and low cost compared to ordinary justice. The following criteria have been used to limit the search for cases in the Self-Regulation database for advertising products and services in a specific period of time:

- Product and/or advertised service whose target is: children and toys, products and services.
- Period and scope of the sample: 1 January 1998 to 1 January 2018, Spain.
- Target of the ads: minors.
- Type of advertising: the items that are present in the self-regulation rules of advertising and minors have been selected following the studies of Martínez Pastor, Vizcaíno Laorga, Serrano Maillo and Nicolás Ojeda (2017), Martínez Pastor, Gaona and Nicolás Ojeda (2017), Verdoodt, Lambrecht and Lievens (2016) and the self-regulation rules indicated above. These types were identified on the basis of these criteria:

  – Product placement.
  – Undercover.
  – Deceitful (in all its manifestations).
  – Interpretation of "to" phrases...
  – Children and minors.
  – Interpretation of advertising and expressions.
  – Discriminatory advertising.
  – Advertising promotion.
  – Public health.
  – Use of small fonts.

In compiling the cases, both the resolutions and the opinions of the Self-Regulation Jury have been taken into account. It should be noted that one of the defining features of those

decisions is that both parties, the applicant and the defendant, are not always members of Self-Regulation, so that the opinions given, where one of the parties is not a member, may freely be disregarded, whereas in decisions where both parties are members of Self-Regulation they must be complied with. It should also be noted that for the selection of cases, those that were duplicated in the search when the Section and the Plenary of the Jury had the same resolution have not been counted. It is also important to understand that once the Jury of the section has a resolution it communicates it to the parties and if one is not satisfied it can request an appeal to the Plenary of the Jury with other members of the Jury. Another point to note is that of the cases located we have only taken into account the self-regulation codes that apply, since it should be remembered that the Self-Regulation Jury only has competence to apply the self-regulation regulations and never the law because their application is only possible in the ordinary courts.

The universe is made up of 1756 resolutions and, applying the above items, we find 73 cases. Once the duplicated cases have been reviewed and those whose recipients of the claimed advertising were not children but adults have been discarded, the final sample is 68 cases obtained from the Self-Regulation database on advertising and minors.

The analysis sheet is designed from the following variables: case in which the parties involved (complainant and challenged), the sector, the reason for the complaint, the applied codes of ethics, the applied deontological foundations and, the resolution appear. This analysis is based on a work already begun in the study by Martínez Pastor, Gaona and Nicolás Ojeda (2017) which analysed only the cases of advertising and toys, while in this research it is extended to all sectors whose target audience is minors over two decades (1998-2018).

5. Results

5.1. Complainants

There are four types of complainants: individuals, associations, public entities and private companies.

Associations are the most active subjects, accounting for 51.47 % (n = 35) of the total over the last 20 years, followed by public bodies 30.88 % (n = = 21) and, to a lesser extent, private individuals, with 11.76 % (n = 8) and private companies 5.8 % (n = 4).

The associations claiming most for adjusted advertising represent 51.47 % (n = 35) of the total number of complainants. The most representative are, first of all, the Commission for Monitoring Children's Advertising, with 51.4 % (n = 18) and made up of the Spanish Agency for Consumer Affairs, Food Safety and Nutrition (AECOSAN), the National Commission for Markets and Competition (CNMC), the Spanish Advertisers' Association (AEA), the Association of Communication Users (AUC) and the General Association of Consumers (ASGECO) in accordance with the Self-Regulation Code of Children's Advertising for Toys (CAPJ). Followed by the Communication Users Association (AUC) with 37.1 % (n = 13) of the total cases claimed by associations. And thirdly, the Union of Consumers of the Valencian Community has a relevant activity with 11.4 (n = 4) of the complaints filed in the last twenty years. This is because the EACP has set up a monitoring committee to evaluate the

application of the Code and, in the event of a breach of the rules contained in it, they may lodge complaints, as is the case in the cases identified. In the case of the AUC and the Union of Consumers of the Valencian Community, these are associations whose objectives are to defend the interests of citizens and report cases of non-compliance with the rules.

In the case of public entities (30.88 %, n = 21 of the total sample) they are the second most likely to complain to the Self-Regulation for possible infringements. In this case the most active entities are the Consell de L'Audiovisual de Catalunya (CAC) (71.4 %, n = 15), followed by the Secretary of State for Telecommunications and the Information Society (SETSI) (9.5 %, n = 2), the Children's Ombudsman of the Community of Madrid (4.7 %, n = 1) and others (14.2 %, n = 3). However, it is noteworthy that the last two public bodies have been very active in this area and that the ACC has only complained during 1999 and 2000 and there has been no further activity by this body at other times.

Individuals are not very active in demanding advertising despite the means available to them, which are free of charge. The first claim is from the year 2000 (n = 1) and subsequently there are three cases claimed during 2016. The low activity of the citizens stands out, although their absence may be due to the fact that they do not know that it is a free service for any citizen accessing from the Self-Regulation website and that in the claim they use some deontological or normative argument so that it can be processed.

Private companies only make a complaint against the Section that has urged them to cease or rectify any part of their claims by a public association, individual or company. This is the case of El Corte Inglés or Carrefour, who, having been sued by the Union of Consumers of the Community for discriminatory advertising in their Christmas catalogues and having been found to be right by the Jury, made an appeal against the Self-Regulation Jury Section without any success.

5.2. The Sector

The sectors that were claimed during the analysed period, according to Infoadex's classification, are the following: sports and leisure (58.82 %; n=40), distribution and catering (25 %; n=17), food (4.40 %; n=3), culture, education and media (4.40 %; n=3), home (4.41 %; n=3), telecommunications and internet and textiles (1.47 %; n=1) and clothing (1.47 %; n=1). These sectors correspond to products or services such as: children's restaurants (food); films (culture, education and media); toys (sports and leisure); department stores (distribution and catering); karaoke (home); applications (telecommunications and internet and textiles) and clothing (clothing).

Toys, according to the study by Martínez Pastor and Nicolás Ojeda (2016), are the most complained about product category and specifically table games (30 %; n = 12), followed by dolls and accessories (22,50 %; n = 9), action figures (12,50 %; n = 5) and constructions (10 %; n = 4).

5.3. Reasons for Complaints

The reasons for complaints are various, but in most cases reference is made to the Standards of the Code of Advertising Conduct for Self-Regulation relating to respect for the value

of advertising (Standard 1), legality and the Constitution (Standard 2); interpretation of advertisements (Standard 3); good faith (Standard 4); discriminatory advertising (Standard 10); misleading advertising (Standard 14) and advertising directed at children and adolescents (Standard 28).

The most common way is to refer to the principle of legality (42.56 %; n = 29), Standard 2 of the Self-Regulation Code, because in the vast majority it expresses the infringement of some precept and, therefore, of legality in general terms. Secondly, the most repeated Standard in these resolutions are those relating to the protection of children and adolescents (26.47 %; n = 18), Standard 8 of the Self-Regulation Code, followed by misleading advertising (19.11 %; n = 13) for using prescribers or confusing animation that may generate deception in minors. The cases in which the principle of discriminatory advertising is infringed are noteworthy (13.23 %; n = 9), while the principles of good faith (11.76 %; n = 8), interpretation of advertisements (2.94 %; n = 1) and the value of advertising (2.94 %; n = 1) are less frequent.

In addition to these general grounds for complaints, in the case of toys there are recurrent cases where complaints are made: animated fiction in advertisements which may mislead children as to the toy advertised; the use of prescribers who abuse the confidence children may have in them; the misuse of toy sizes which may not be true to their dimensions; and the unnecessary and exaggerated use of violence and dangers which are not suitable for children.

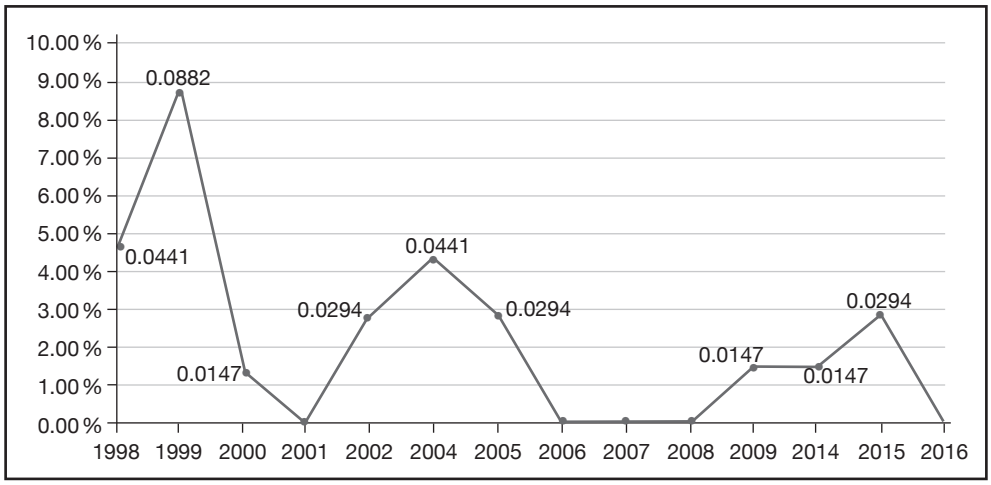
5.4. Applied Codes of Conduct and Standards

The main self-regulation codes used in cases of self-monitoring are the Self-Regulation Advertising Code of Conduct (100 %; n = 68) in all cases; the Self-Regulation Code of Children's Advertising for Toys (17,64 %; n = 12) followed by the Self-Regulation Code on Television Content and Children (2,41 %; n = 2) and the Code of Ethics for Online Trust (2,41 %; n = 2). It is striking that the self-regulation code for children's toy advertising is used so little in the sample's resolutions, as well as the low use of the trusted online ethical code when there is currently a lot of online advertising and almost no use in this sample.

5.5. The Resolution

Of the 68 cases, 56 % (n = 38) complained to the Self-Regulation Jury Section and 44 % (n = 30) filed an appeal to the Plenary. Of the total cases, 50 % (n = 34) were dismissed and 50 % (n = 34) were estimated. It is noteworthy that of these complaints analysed, the Plenary (44 %; n = 30) always agrees with the Section and no different resolution has been found. Of the rejected cases, 41.1 % (n = 28), Self-Regulation urged them to rectify the advertisement (60.71 %; n = 17) or to cease it (39.28 %; n = 11). It should be noted that during the selected period (2008-2018) the claims do not respond to an increase or decrease but their path is not linear and there is only a peak between 1998 and 1999 without understanding the reason.

Table 1. Resolutions on toys.



Author's own elaboration from the Self-Regulation databases

6. Conclusions and Discussion

First of all, we must indicate that our starting hypothesis is null and void since 50 % of the complaints are estimated and the other 50 % of the cases the Jury does not believe that any deontological rule is infringed. However, the data collected in the analysis provide a detailed description that goes beyond recognizing whether much or little is complained about or whether decisions are estimated to one extent or another. This description is based on the recognition of the most widely used rules for establishing the resolutions of the cases studied, such as the Self-Regulation Advertising Code of Conduct, present in all resolutions, the Self-Regulation Code for Advertising of Toys for Children, and the Self-Regulation Code for Television Content and Children, although this applies only in two cases where advertising is broadcast during reinforced hours that are not suitable for minors.

The analysis has allowed us to identify that in the digital environment there are few resolutions compared to those affecting media such as television or radio. This influences the scarce use of the ethical code of trust for the digital media, which is very striking, since as Martinez Pastor, Vizcaino Laorga, Serrano Maillo and Nicolas Ojeda (2017) point out, the increase in advertising activity and its modes in social networks conditions new scenarios and roles of the minor before advertising, he/she is not only an active or passive spectator but has become a producer of commercial content.

It is important to highlight the participation of associations that defend the interests of users and consumers and public entities, which are the subjects that most complain to Self-Regulation, as stated by Perelló Oliver and Muela Molina (2017) and Medina and An (2012). On the other hand, the scarce participation of individuals before Self-Regulation is striking, although on many occasions these are claims that cannot be estimated because they are

not based on any rule of the Self-Regulation's Code of Advertising Conduct or lack any deontological argument.

Also striking is the low volume of misleading toy advertising complaints in the last decade compared to previous years. We believe that one explanation for this could be the increase in the number of so-called Copy Advice in recent years, which may be reducing the number of complaints compared to previous decades (Martínez Pastor, Gaona and Nicolás Ojeda, 2017). The Self-Regulation Copy Advice service, although a non-binding prior consultation check, is a requirement based on the Common Principles of Best Practice of the European Advertising Standards Alliance (EASA) (Self-Regulation). A professional practice has been generated by which the advertiser, either at its own request or at the request of the agency or the media, checks before the broadcast of the advertisement whether it complies with the regulations. For example, in 2015 there were 1,947 copy advices from toy advertising spots and since its constitution 188,550 consultations have been carried out. However, we must not forget that this service is confidential, voluntary and non-binding, except in the sector codes that provide for it, and only a brief report or opinion of a confidential nature is issued to guide the advertiser if the ad complies with the rule. Copy advice is usually requested at the creative stage by the company, agency or media. Generally it is a script, storyboard or animation of it to Self-Regulation to avoid expenses if changes have to be made. However, an ad that has passed Copy Advice, and has been positive, can be complained about because the final implementation of the piece is different from that delivered to Copy Advice and therefore does not fit what it originally intended.

In the area of toys, and in relation to resolutions, there are recurrent issues associated in some cases with certain products, such as the use of confusing animation, the use of prescribers and discrimination in advertising. These issues have already been addressed in previous studies by Martínez Pastor, Gaona and Nicolás Ojeda (2017) and Martínez Pastor and Nicolás Ojeda (2016), which identify potential infringements of advertising of toys broadcast on television during different Christmas periods. With regard to animation, it is striking that, although we understand that the resolutions of the Sections and the Plenary are correctly in line with self-regulation standards, we consider that a reflection on the role played by the recipients in this process should be reconsidered. We believe that the toy sector, industry and Self-Regulation should continue to be on the alert for this type of practice. We must ask ourselves if a child is really capable of differentiating clearly between animated fiction and the real image that refers to the product, or at least as clearly as an adult can. For this reason, it is important that the differentiation is made very clearly for the child. In these cases the animated fiction is not associated with a specific toy, although in this exhibition it has been linked to dolls and action figures. In relation to the prescribers the deontological foundations always indicate that a famous character should not urge the purchase of a toy or suggest the purchase of it for the innocence of the child to believe that it is better because it is advertised by a famous character (Case Karaoke Up Dance, 2004).

Finally, with regard to gender discrimination, most of the cases found are associated with Christmas catalogues in which the associations claim that the department stores intentionally differentiate between genders. In these decisions, the ethical grounds for discrimination were argued in this way: "an analysis of an advertising catalogue as a whole, in which the sum and overall union of all the images used allowed a clear division and differentiation within the

catalogue between the toys intended for boys and those other toys intended for girls" (Case: Christmas Toys Catalogue, 2015).

Following the results obtained, we consider it interesting to direct this line of work towards comparative studies between countries that study European regulations and thus broaden knowledge about the role of the actors involved, the regulations applied, the arguments and the sectors and products on which the resolutions are applied on a more current and less diachronic time plane.

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