

G-Regs™

Spain – Self-Regulatory Code for advertising toys to children



Full title of Code

Self-Regulatory Code for Toys Advertising aimed at Children (Dec 2015)

CAPIJ - Código de Autorregulación de la Publicidad Infantil de Juguetes

In force: 01/01/2016

INTRODUCTION

Children live in an information society and advertising is a normal part of their daily lives. Minors, like all other citizens, have a right to be informed about products they are interested in. However, they make up an audience of limited capacity to assess/ evaluate the information they receive. In this context, it is important that parents, teachers, channels of communications, consumer associations, entertainment content providers, government bodies, and advertisers encourage the development of the critical understanding of media messages, contributing to the promotion / development of responsible advertising. This Code is set in the framework of the strategy for the protection of children – an initiative set in motion by/ that has been carried out by the Spanish Association of Toy Manufacturers (AEFJ¹) since 1993, whose objective is to promote the right of toy companies to carry out commercial communications and to free competition, safeguarding the interests of children. More than three decades has elapsed since the AEFJ and UCE² signed the first self-regulatory code of advertising in Spain, The Code of Ethics for Advertising to Children (*el Código Deontológico para la Publicidad Infantil*), to which the following consumer associations subsequently signed up to: ASGECO³, ATR⁴, AUC⁵, CECU⁶, FUCI⁷, HISPACOO⁸ and UNAE⁹. In this period there have been socio-cultural, technological and communicative changes which have had legal implications and a regulatory impact on the advertising and promotion of toys, which needed updating in this document.

This Advertising Code for Children's Toys is an updated compendium of existing ethical standards affecting commercial communications aimed at children. The articles have taken account / observed the technical and economic transformations of television, reflected in the improvements to the content and design of messages and advertising formats in this medium. Similarly, they have covered the challenges raised to commercial communication by the emergence of new media and formats, with special focus on the arrival of new technologies (those that use telecommunications, computing and

¹ Asociación Española de Fabricantes de Juguetes

² Unión de Consumidores de España – Consumers Union of Spain

³ Asociación General de Consumidores – General Association of Consumers

⁴ Asociación de Telespectadores y Radioyentes – Association of TV viewers and Radio listeners

⁵ Asociación de Usuarios de la Comunicación - Association of Media Users

⁶ Confederación de Consumidores y Usuarios – Confederation of Consumers and Users

⁷ Federación de Usuarios - Consumidores Independientes - Federation of Independent Users and Consumers

⁸ Confederación Española de Cooperativas de Consumidores y Usuarios - Spanish Confederation of Consumer and User Cooperatives

⁹ Federación Unión Nacional de Consumidores y Amas de Hogar de España - Spanish National Union Federation of Consumers and Housewives

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audiovisual applications or a combination, such as multimedia) and their widespread use. It has also been taken on board/ understood that as a form of public communication, advertising is a crucial means of distribution (a distributor of essential meaning). Therefore, it stands as central/ core for the building of great/ exalted societies and the decline of serious social problems.

From all of these assumptions, the AEFJ has initiated the development of this Sectoral Code (CAPIJ - *Código de Autorregulación de la Publicidad Infantil de Juguetes*), with the aim of establishing a set of rules that will guide adhering toy companies in the development, implementation and dissemination of advertising messages aimed at children. CAPIJ is in line with the principles of the ICC (International Chamber of Commerce) Code¹⁰, Compendium of ICC rules on children and young people and marketing dated 01/04/2003, TIE (Toy Industries of Europe) Code - European Code for Advertising Toys to children, and the ICTI (The International Council of Toy Industries) Guiding Principles for Advertising and Marketing Communication to Children.

In the first instance, companies adhering to this Code reaffirm – as expected – their commitment to respect general advertising legislation, as well as legal provisions concerning the protection of minors, regardless of the channel or media used to disseminate the advertising.

Likewise, the companies adhering to this Code undertake to respect in their commercial communication aimed at children, the rules contained in this Code, whereby the scope of the legal obligations applicable to the advertising and promotion of toys aimed at children is made explicit and broadened, for the benefit of the general interest, of consumers and the market.

SCOPE OF APPLICATION

The scope of this Code is restricted to the advertising of toys to children:

- A) The term “advertising” means any form of communication carried out by a public or private, natural or legal person in the exercise of a commercial, industrial, craft or professional activity, designed to promote, directly or indirectly the contracting (sale) of movable or immovable property/ goods, services, rights and duties/ obligations. Also, any type of message issued on behalf of third-parties to promote / encourage certain attitudes or behaviours amongst children will be regarded as advertising.

Messages devoted to self-promotion will also be considered as “advertising”, subject to the criteria set out in these rules. Advertising broadcast through any fixed or mobile, electronic, technological or online support/ medium shall be subject to the same principles as the rest of advertising, with due regard to the rules developed on account of the special characteristics of unconventional media. The rules of this Code do not apply to the labelling or packaging of these products, which is governed by the applicable law.

- B) “Advertising to children” for the purposes of this Code is that which is addressed/ directed to or reaches an audience primarily made up of children under 15 years of age. However, in between this range, two different age groups shall be identified: up to 7 years old and 7-14 years old, from which the first age group (up to 7) will require particular attention and caution, which consequently, will be subject to stricter application of the criteria set out throughout this document. An advertisement will be considered to be directed to children included in the age groups or ranges referenced above, according mainly to the following criteria:

¹⁰ Consolidated ICC Code of Advertising and Marketing Communication Practice

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- i) The type of product being promoted: advertising addressed/ directed to children up to 7 years old and under 15 years old is taken to mean advertising that objectively (*) promotes a product primarily intended for an audience of such an age range. (*) measured/ rated by DYM Panel or Homescan¹¹
 - ii) The design of the advertisement: an advertisement shall be deemed to be addressed/ directed to children under 7 and under 15 years of age when designed in such a way that the content, language and/or images are particularly suited to raise the attention or interest of the audience of that age range.
 - iii) The circumstances in which the dissemination of the advertisement message is carried out: advertising addressed/ directed to children up to 7 years old or under 15 years old is considered to be that which is disseminated either in a medium or media, objectively (***) and mainly targeted at an audience of such an age, or by means of general communication media when it is inserted in time slots, programming blocks, sections or spaces aimed at children up to 7 or under 15 years old or with a significant audience of children up to 7 or under 15 years old.
Any audience that exceeds 20% of the relative weight of children in the total Spanish population (i.e. under 15 yrs of age) shall be understood to be a "significant audience".¹²
(**) assessed by Kantar Media

- C) Toys are understood to be those products designed or intended, exclusively or not (in whole or in part), for use in play by children under 14 years of age. The products listed in Annex I shall not be regarded/ interpreted as toys, nor: electronic equipment, personal computers, game consoles, used to access interactive software and their associated peripherals, unless the electronic equipment or the associated peripherals are specifically designed for and targeted at children and have a play value on their own, such as specially designed personal computers, key boards, joy sticks or steering wheels.

ETHICAL STANDARDS

I. Principle of Legality

1. The advertising of toys to children shall comply with current legislation, whatever its content, means of dissemination (medium/ channel) or form taken. Likewise, the advertising must be decent, honest and truthful, under the terms in which these principles have been developed by the AUTOCONTROL Advertising Code of Conduct (also known as Autocontrol's (General) Code of Advertising Practice¹³).

II. Principle of Loyalty (Fairness / Fair Dealing)

¹¹ measured by Dym Panel, a market research company, or Homescan, a consumer's panel developed by Nielsen

¹² Autocontrol have confirmed that the determination of the "significant audience" needs to be calculated in relation to the percentage of the audience of the television program, and not to absolute figures/numbers of the Spanish population. The correct interpretation would be to determine, out of the total audience of a certain program, the percentage of children audience (i.e. if there is a children audience of 250,000 out of a total audience of 500,000, the percentage of the children audience is 50%). In that case, the audience of children (50%) would exceed the "significant audience" as defined by the Code, because it exceeds more than a 20% the relative weight of children in the total Spanish population.

¹³ <http://www.autocontrol.es/pdfs/Code%20of%20Advertising%20Practice%20English%20Version.pdf>

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2. The advertising of toys to children shall comply with the requirements of good faith and good business practices, whatever its content, medium, or form taken.

III. The presentation of products

3. Special precautions shall be taken in the carrying out and dissemination of toy advertising directed at children in order to ensure that the written, audio and visual presentations do not mislead (the consumer) as to the characteristics of the product being promoted or its performance. Such characteristics can include certain features, whose number is not intended to be restrictive, (i.e. non-exhaustive list), on the size, performance/ operation, colour, sound and durability (lifespan).

4. The presentation of toy advertising should not mislead about the benefits arising from the use of/ derived from using the product. This includes, although the list is by no means exhaustive: the acquisition of strength, status, popularity, growth, ability and intelligence.

5. Toy advertising must not mislead children by suggesting that the promoted product possesses particular/ special characteristics, when all similar products possess such characteristics.

6. Computer graphic techniques used in toy advertising must avoid creating false expectations for the target children of the advertisement, by making them think that the real toy has the same characteristics as the toy or the character that appears in the animated fiction.

The term "animated fiction" means a representation through any computer graphic/ design technique of an image similar to the promoted toy or a part or accessory of the same.

All necessary measures will need to be taken in order that the advert truthfully reflects the actual performance/ capabilities of the product as well as its different elements and components.

The use of animated fiction images must be carried out in such a way that the child can clearly distinguish the real images of the toys from the fictional (animated) ones. Also animated fiction will be indicated/ identified by the relevant overlay (caption/ graphic).

Real images of the toy and images of animated fiction can only be used simultaneously in the same scene in exceptional circumstances, but in that case the advertiser must take extra precautions/ care so that the child can clearly differentiate between the real toy and the fictional ones and so as not to mislead on the actual characteristics and capabilities of the toy. To this end, under no circumstances should the real toy images interact with the animated images of the same. In these cases, the presence of animated fiction elements must also be indicated/ identified via the relevant overlay (caption/ graphic), for example: "*contains elements of animated fiction*" (*contiene elementos de ficción animada*).

7. In those advertisements in which static (in movement) toys¹⁴ are shown, necessary precautions/ steps will need to be taken so that it is clearly evident/ appreciable that such movement is produced by the mechanical contribution of a hand or similar.

¹⁴ Toys that can't move on their own – as opposed to battery operated, remote control or radio controlled toys (*teledirigido*). So what they're saying here is that when depicting "static" toys in movement - a toy car moving along a track, for example - you have to show the hand that's pushing it, rather than making it look as if it's moving on its own, which could be misleading.

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8. Toys which require assembly (need to be put together) must indicate/ specify this characteristic. A toy will be regarded as requiring assembly when it can (only) carry out its primary function as a result of an assembling process.

Also, in the advertising of toys to children it will be necessary to present the products with a clear and straightforward reference to their actual size. The guarantee to avoid misleading them in such a way is to introduce a scene in the advertisement in which children appear playing with the promoted product.

9. The risk of misleading the consumer which can occur in each one of the situations mentioned above cannot be negated / offset by the mere introduction of an overlay (caption/ graphic) in which it is stated that this is an "animated fiction", or where applicable, drawing special attention to the actual size of the product (for example: "Doll Size - 20cm"; "*Tamaño de la muñeca 20 cm*"). Rather, the advertiser must take appropriate measures to ensure that all images and audio used in the advertisement are not likely to mislead the child audience in the way outlined above.

10. Toy advertisements aimed at children must avoid presentations that scare them. Neither must descriptions of gratuitous violence nor aggressive presentations be used.

IV. Information on the Products

11. Toy adverts aimed at children shall clearly establish what the product includes and excludes. For example, these adverts will have to clearly state whether or not essential components for the use and enjoyment of the toy are included: for example, batteries or any other technological device (USB port, internet access, mp3...)

In the event of presenting toys from a given set or collection it should clearly point out to which toy set/ collection the product belongs¹⁵. Likewise, it must be clearly stated whether the advertised toy includes the items appearing in the commercial / advertising spot, such as dolls and cars.

12. The presentations and the use of the product must be demonstrated in a manner that can be repeated by the child for whom the product is intended.

13. The amount of products presented must be within reasonable levels to respond to/ meet the situation described.

14. In the event that a toy advert aimed at children makes it necessary to provide any additional information, this must be expressed in a language understandable for the younger (underage) audience and in a clear, legible and prominent way. To this end, if that additional information is provided through an overlay (caption/ graphic), care should be taken over the size of the indications/ signs, the contrast with the background, and in the case of audio-visual media adverts, the time spent on screen (the display time on screen).

15. Claims based on newness / novelty can only be used when a significant innovation (breakthrough has been made) exists for the product. Likewise, the term "new / Nuevo" cannot be used for toys belonging to previous campaigns.

¹⁵ So when showing products from a given set or collection, care should be given to clearly specifying which products go with each different toy

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V. Marketing/ Sales Pressure

16. Toy advertising must not directly exhort/ encourage (*lit.* make a direct appeal to) children to purchase the advertised product nor encourage them to ask or persuade their parents or other people to purchase the products advertised. Neither should these adverts suggest / imply that a parent or adult who purchases a product for a child is a better, more intelligent, or more generous parent or adult than one who does not (do so).

Likewise, the use of product placement in children's programmes is prohibited.

17. The advertising of toys aimed at children must not urge/ push them to get the advertised product, neither creating a feeling of urgency or exclusivity, nor resorting to terms likely to generate such a feeling of urgency or exclusivity, such as "now - *ahora*" or "just/ only - *sólo*".

18. In toy advertisements aimed at a child audience the benefits attributed to a product must be intrinsic/ inherent to its use. Advertising must not give the impression that acquiring the product will give the child higher acceptance among his/her friends. Conversely, nor should it imply that not acquiring or using a product will lead to rejection of the child among his/her peers. Advertisements must not suggest that the purchase and use of the product will provide the user with the prestige, skills/ abilities and special qualities belonging to the people appearing in the advertisement.

19. The prices of the toys must be displayed clearly and specifically via an overlay (caption/ graphic) when the Retail Price (*Precio de Venta al Público* - P.V.P.) exceeds the following bands: +50€, +150€, +300€. In every case, adverts in which the price is displayed must comply with the fundamental requirements of national legislation, particularly consumer protection regulations. Price minimization enticements (*lit.* reductionisms) must not be used such as "just/ only - *sólo*") or "no more than - *nada más*").

VI. Endorsement and Promotion via characters/ personalities and programmes

20. Under no circumstances must toy advertising exploit the special trust children place in parents, teachers or other persons. Hence, personalities/ characters with a high degree of popularity among children must not participate or appear in toy advertising aimed at children, such as, for example, children's TV presenters, characters – real or fictional – from movies or fiction series, sportspeople (i.e. *sports stars*) especially well-known and admired by children and others.

The aim of this provision is to prevent the presence or testimonial (endorsement) of people and personalities well-known and admired by children in adverts aimed at them from exercising undue influence over them, in such a way that they may be encouraged/ propelled to request the purchase of the product advertised, not so much for their own characteristics, but rather simply due to the testimonial or endorsement (if relevant) from the person appearing in the advert.

Advertising of licensed toys shall be governed by these same rules. To this end, licensed toys are taken to mean those that incorporate into their business / trade name, the name of characters – real or fictional – who enjoy a high degree of popularity or prestige/ standing among children.

For the purposes of the preceding paragraphs, the following must be taken into account:

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A) Notwithstanding the aforesaid prohibition, toy advertising aimed at children may show personalities/ characters who enjoy a high degree of popularity among children - including children's programmes, films, and TV series in which they appear - if the promoted toy is directly linked/ connected with these personalities or with a distinctive feature of them. In particular, it is considered that a direct link/connection exists in the case of licensed toys.

However, the personality with a high degree of popularity among children cannot appear prescribing (use of) the toy, implying that he/she likes it or (be shown) interacting with it.

B) Notwithstanding the aforesaid prohibition, where a direct relationship/ link exists between the personality and a marketing activity consisting of the direct delivery/ provision of a gift (freebie), the gift may be shown/ displayed.

In particular, in the advertisements aimed at children that present/ run promotions involving the direct delivery of a DVD¹⁶ or equivalent hardware/ physical media (i.e. CD-Rom), images that reproduce in part the content of the DVD or equivalent hardware, may also be shown, even if the images show or feature personalities who enjoy / with a high degree of popularity among children.

In that case, during the playing/ reproduction of such scenes/ segments, it may not make any reference - whether directly or indirectly - to the advertised product, nor may it appear on screen. Once these scenes are over, and with a clearly defined separation, the advertised product may be shown and its characteristics described, but never using the image or voice of personalities with a high degree of popularity among children.

C) The aforesaid prohibition shall not apply to those fictional characters created specifically for advertising/ marketing purposes related to the promoted product, and which are therefore well known among children solely as a result of their participation in the advertising for that product.

D) Without prejudice to the above mentioned and, in any event, real or fictional personalities / people who enjoy a high degree of popularity among children may participate in educational initiatives sponsored or promoted by toy companies with the specific aim of promoting healthy and civil (amicable) habits among children. In these educational initiatives a particular / special reference to the name or logo of the company sponsoring or promoting the campaign may appear.

E) Tele-promotions of toys cannot be carried out during programmes aimed at children under 15 years of age or where a significant proportion of the audience is made up of children under 15 years old. The purpose is to prevent these types of advertising messages exploiting the special trust that children place in the presenters and fictional characters who participate in such programmes, as well as children confusing or not clearly distinguishing advertising content from editorial content and programming.

Notwithstanding the above, presenters or fictional characters who participate in children's programmes may appear within these programmes, in clearly differentiated and distinct educational segments (slots/ spots) or "moments", with the specific aim of promoting healthy and civil habits among children. In these educational segments/ slots a special reference to the name and logo of the company promoting or financing the campaign may be made.

¹⁶ This is referring to a gift of a DVD of a children's programme with the purchase of a particular toy
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VII. Identification of the Advertising

21. Toy advertisements aimed at children must be clearly separated from the programmes. Situations, scenarios or styles evocative / reminiscent of the programmes must not be used in a way so that the children mix up or cannot clearly distinguish the advertising contents of the programming. Advertisements must not refer to themselves as "programmes / *programas*". Expressions such as "News Flash / News Summary - *avance informativa*", and the use of people who normally present new programmes and other programmes must not be used in advertising so as not to confuse the child on the commercial nature of advertising.

VIII. Comparative Presentations

22. Comparative presentations must be shown in a way so that children clearly understand them, supported by adequate and valid justifications. So, comparative advertising must provide real (true/ factual) information. The comparisons must not misrepresent other products or earlier versions of the same products.

IX. Promotions, Draws, Competitions and Children's Clubs

23. The advertising message that includes a promotion must be designed in such a way that, besides conveying/ relaying the promotional incentive of the message, it clearly shows the advertised product. The terms "gift - *de regalo*" or "Free - *gratis*" cannot be used when it is an item that is always included with the toy on sale or it is an indispensable accessory for performing the toy's principal function¹⁷.

24. The essential conditions (basic t&c's) of the promotional offer must be expressed / stated in the advertising in a clear and simple manner, so that they are easily legible and understandable for children.

25. Promotional draws included in toy adverts must not create / trigger unrealistic expectations on the chances of winning or on the prize that can be obtained.

Therefore:

- 1) The prizes should be clearly indicated (stated/ defined), clearly setting out the number of prizes, the type of draw held, and the duration of the promotion...
- 2) Advertising should not be misleading as to the "chance / possibility" of winning a prize.
- 3) The prizes awarded must be suitable for a younger audience (i.e. children)

26. In order to avoid misleading children, reference can only be made in toy advertising to children's clubs if the following requirements are met:

- 1) Interactivity: The child must perform/ commit some act (a specific action) which constitutes a wilful joining of the club¹⁸ and receive something in return.
- 2) Continuity: A continuous/ ongoing relationship must exist between the club and the child member, on the basis for example of regular newsletters and activities.
- 3) Exclusivity: The benefits and activities derived from belonging to the club must be exclusive to their members and not merely the result of the purchase of a particular product.

X. Security / Safety

¹⁷ i.e. the toy will not function without it

¹⁸ Membership of or incorporation into the club

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27. Adverts or commercial communications must not show / depict adults or children in unsafe situations or in acts which are harmful to themselves or others. Thus, for example, when the advertising of toys includes scenes (shots/ footage) of sports activities (such as cycling or skateboarding) the people shown carrying out such activities must be provided with the appropriate safety equipment.

28. The commercial communication of toys must avoid scenes (shots), images, or messages that encourage the dangerous or inappropriate use of the advertised product, especially in those cases in which the behaviour can be easily replicated/ copied by the children or when products are shown which are accessible / available to them.

29. The advertising of toys must not encourage children to enter strange places or converse with strangers.

30. Adverts for children's products must show them using products appropriate for their age. For example, young children cannot be shown with toys which are only safe for older children.

31. Adults must be shown supervising children when the products or activities so require it.

32. Adults must always be shown/ appear accompanying children in public places when the products or activities are liable to endanger/ jeopardise their safety.

XI. Education and Civil Values

33. Toy advertising to children shall not show under any circumstances inappropriate sexual scenes, neither obscene language nor scenes that refer to addictive behaviour, nor promotes discrimination based on any grounds: ethnic origin, disability, gender... (*also sex, racial origin, nationality, religion or belief, age or sexual orientation*)

34. As a general rule, toy advertising messages shall avoid showing gender bias in presentations of (that feature) boys and girls.

35. Toy advertisements shall avoid the specific and direct use of the bodies of women or men, or parts of the body as mere objects unconnected to the product to be promoted.

XII. Data Protection

36. Companies adhering to this Code undertake to comply with the legislation on personal data protection and the (related) implementing regulations.

37. The personal data of children under 14 years of age cannot be processed without the express consent of parents or guardians.

The personal data of children over 14 years of age may be processed with their consent, except in those cases where the law requires the assistance of parents or guardians in the provision of such data¹⁹.

38. Under no circumstances may data be collected from the child regarding information about any other member of the family group/ unit (household), or about its

¹⁹ This provision mirrors Art. 13(1) of Royal Decree 1720/2007 approving the Regulation implementing Organic Law 15/1999 on the protection of personal data. (Art. 13: Consent for the processing of data of minors)

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characteristics, such as data relating to the professional activity of the parents, financial information, sociological or any other such data, without the consent of the persons to whom such data refer. However, data regarding the identity and address of the father, mother or guardian may be collected for the sole purpose of obtaining the authorisation set out in the previous subsection.²⁰

39. When processing refers to the data of minors, the information aimed at them shall be expressed in a language that is easily understood by them²¹.

40. The data controller is responsible for setting up the procedures that guarantee that the age of the minor and authenticity of the consent given by the parents, guardians or legal representatives have been effectively checked²².

XIII. Advertising of Toys via the Internet, new technologies and new advertising forms

41. Adverts in non-conventional media, like the Internet, as well as hybrid forms of commercial communication and new forms of advertising (advergaming, infotainment...) remain regulated by the same principles that apply for advertising in general.

However, taking into account the special characteristics of these non-conventional media and hybrid formulations, as well as the technological developments that they are experiencing, the Monitoring Committee of this Code will adapt and develop specific obligations deriving from these principles to the non-conventional media and hybrid formulations, particularly in relation to the presentation and information of products.

Meanwhile, in any case, advertisers must take special precautions in the carrying out and dissemination of toy adverts aimed at children under 15 years of age in these media and hybrid formulations, in order to ensure that the written, audio and visual presentations are not misleading about the characteristics of the product or its performance.

Moreover, and in general, any format must clearly indicate its commercial nature, and understanding that in these cases it is the child who makes the proactive decision to visit / view a brand, will have to encourage the supervision by adults, under no circumstances, encouraging the purchase of the product or service via verbal formulas or other. In all cases, the contents must be presented in an objective manner, without stereotypes, prejudice and violence.

42. In all cases, toy advertising to children in electronic distance communications media must identify and separate (via identification mechanisms) content solely intended for adults²³.

Whenever apps or games are used for commercial communication, it is advisable to include the recommended age of the recipient. Where appropriate / as the case may be, the classification used will be the one established by the self-regulatory codes intended

²⁰ This provisions mirrors Art. 13(2) of Royal Decree 1720/2007 approving the Regulation implementing Organic Law 15/1999 on the protection of personal data. (Art. 13: Consent for the processing of data of minors)

²¹ Mirrors Art. 13(3) RD 1720/2007.

²² Mirrors Art. 13(4) RD 1720/2007.

²³ Mirrors Art. 34(a) The Confianza Online Ethical Code

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for that/ such purpose to which the advertiser is bound, or failing that, the PEGI Code²⁴ (Pan European Game Information – PEGI²⁵).

43. Sites of toy companies and toy products must not give children the opportunity of buying a product on the website.

44. Companies adhering to this Code must establish mechanisms that ensure that children under 14 years of age have obtained consent from their parents or guardians before making information on-line available.

a) Parents or guardians may object to receiving advertisements or information requested by the children under their care / for which they are responsible, by informing the data controller through a system that secures their identity.²⁶

b) In addition to respecting the option of the parents to limit the collection of such data online, the entities adhering to this code will limit the use of data provided by children for the sole purpose of promoting, selling, or delivering products or services aimed at children.²⁷

c) Under no circumstances may data relating to children be transferred without the prior consent of the parents or guardians.²⁸

45. Companies adhering to this Code must offer parents or guardians information about how to protect the privacy of their child or ward online, as well as providing them with mechanisms for exercising their right to access, correct, delete, and oppose (object to), and identify the purpose of that data. Age verification / monitoring mechanisms must be established to prevent free (unimpeded) access to inappropriate content.²⁹

46. Companies adhering to this Code must support any effort / initiative made by other organizations to help inform parents or guardians of how to protect the privacy of their child or ward online, including information about access control tools and software for parents, which prevent children from sharing their name, address, and other personal data without their consent.³⁰

47. The sending of advertising via email or other equivalent means of individual communication to children by the advertiser will not be permitted when not explicitly requested or authorized by the recipient. The prior authorization, referred to above, is considered to be such / to have been granted when, at the time data is collected, the recipient has been properly informed of the possibility of being sent advertising through these means and has given their consent. In particular, this consent is understood to have been acquired/ obtained through a procedure of voluntary inclusion (opt-in) lists, though

²⁴ Code of Conduct for the European Interactive Software Industry regarding Age Rating Labelling, Promotion and Advertising of Interactive Software Products and Maintenance of Safe Online Gameplay.

²⁵ Pan European Game Information (PEGI) is a European video game content rating system established to help European consumers make informed decisions on buying computer games with logos on games' boxes. The PEGI system is now used in more than thirty countries and is based on a code of conduct, a set of rules to which every publisher using the PEGI system is contractually committed. PEGI has five age categories: 3;7;12;16;18.

²⁶ Mirrors Art. 36(3) The Confianza Online Ethical Code – Art. 36: processing data of Minors

²⁷ Mirrors Art. 36(4) The Confianza Online Ethical Code

²⁸ Mirrors Art. 36(5) The Confianza Online Ethical Code

²⁹ Mirrors Art. 36(6) The Confianza Online Ethical Code

³⁰ Mirrors Art. 36(7) The Confianza Online Ethical Code

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other practices guaranteeing the provision of consent are also acceptable /equally admissible.³¹

Where the sending/ receipt of advertising has been authorized, a means to object to the processing of children's data for marketing purposes must be offered in every case, by means of a free and simple procedure, both at the moment of collecting the data of the children and in each one of the commercial communications which are addressed to them.

When the messages are sent via email, it must consist of the inclusion of an email address or other valid email address where it is possible to object to the processing of children's data. It is prohibited to send messages which do not include this address.

In addition, those advertisers that use email messages or other equivalent means of individual communication for advertising purposes must clearly inform the recipient, in each of the communications they make, about the possibility of declining to receive further offers and provide a simple mechanism and easily accessible through which the user can exercise their right to withdraw their consent. In every case, advertising messages sent via email or other equivalent means of individual communication must be identified as such, and should identify the natural or legal person on whose behalf the communication is made.

48. When there are premium rate services (additional cost services) which go directly to the advertiser, such services and its advertising must comply with the regulations governing its use. Thus the express consent of an adult will be required and the advertiser must establish appropriate mechanisms to make sure of / verify this condition. In all cases, recipients will be informed of such costs before accessing the service or message, in a clear and legible way, with lettering adequate for viewing, and must have a reasonable and sufficient period of time to disconnect from the service without incurring charges.

49³². Offers must be identified in such a way that the recipient may recognize them as offers³³. Under no circumstances may direct contractual offers (direct offers for sale/purchase) be sent to children. The company must clearly inform of the terms and conditions of the offers and promotions, ensuring that they are easily identifiable and accessible for the user. When sales offers, sales discounts and/or sales promotions are made, at the very least the user must be informed of the following:

- a) Previous and current price
- b) Discount percentage
- c) Term
- d) Terms and conditions of application.

50. Toy advertising to children in electronic distance communications media must respect the industrial and intellectual property rights of third parties other than the advertiser. In particular, on the Internet, introducing hidden names (meta names) into source code that

³¹ Mirrors Art. 9(1&2) The Confianza Online Ethical Code - Article 9 - Advertising Sent Via Email Messages or Other Equivalent Means of Individual Communication.

³² The article only prohibits direct contractual offers (those which directly contain the buying process).

The article differentiates between two kinds of offers:

- Direct contractual offers which cannot be sent to children
- Promotional offers which should be recognized as offers by children and must include info referenced a-d.

³³ The offers must be identified in such a way that those who receive them can recognise them as offers – as per Art. 6(3) Confianza Online Ethical Code – Information to the Recipient

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coincide with brands, labels, or the names of businesses or services and whose use and ownership is not authorized³⁴.

51. Groups, children's online clubs, bulletin boards, forums, or chatrooms may not be used to send online advertisements, except if in the latter case (chatrooms) previous consent has been obtained from the moderator of the space; or, alternatively, from the service provider; or it complies with the rules for admission of advertising established for that group, forum, chatroom, or the like/ similar.³⁵

52. The advertising of toys on the World Wide Web may not impede the free and normal browsing of the internet by children. In particular, the advertising messages received by a user while browsing a website must allow them to leave the advertising message at any time or remove it from their screen, in a clear and simple way, and return to the webpage of origin from which the user first accessed the advertising message.³⁶

53³⁷. Sponsorship shall mean any contribution made by a public or private entity /company to the financing of websites or other services provided via electronic distance communications media (electronic means of distance communication) with the aim of promoting their name, brand, image, activities, or products. Websites or services sponsored by AEFJ members must comply with the following requirements:

a) Editorial content may not, under any circumstances, be influenced by the sponsor in any form that contravenes the editorial responsibility and editorial independence of the owner of the site or service.

b) They must be clearly identified as such, and include the name, logo, brand, services or other signs of the sponsor at the beginning (header/ top of webpage) or the end (footer/ bottom of webpage) of the website or service, or at both points

c) (*marked as (d) in Spanish text*) Also, the sponsor may be identified by the above mentioned means in the development of (throughout) the sponsored site or service, on the condition that this is done sporadically and without making it harder to read/follow.

54. Before accessing sites³⁸ that allow the sharing of experiences between users, they must read and accept rules/ standards of conduct that must include, at least, the following principles/ values:

a) Do not use rude language.

b) Do not make offensive comments or that infringe/ violate personal dignity.

c) Do not carry out surreptitious advertising of products or services.

d) Do not encourage behaviours and/ or attitudes contrary to existing legislation.

55. Advertising of toys can only be carried out on social networks in which technical tools are provided which ensure on the one hand that children under 14 years of age can only access them with parental consent, and on the other, that ensure no public accessibility to the profiles of such children.

If advertising specifically aimed at children under 14 years of age is carried out on social networks, they must ensure exclusive access to these children, restricting access to children over 14 years of age.

³⁴ Mirrors Art. 8(1) Confianza Online Code – Art. 8: Unfair Competition and Respect for Industrial and Intellectual Property Rights

³⁵ Mirrors Art. 11(1) Confianza Online Code – Art. 11: Advertising in Newsgroups, Forums, or Chatrooms and the Like

³⁶ Mirrors Art. 12(2) Confianza Online Code – Art. 12: Online Advertising

³⁷ Mirrors Art. 13 Confianza Online Code – Art. 13: Sponsorship

³⁸ Referring to online sites (blogs, review sites, etc.) where users can ask each other questions about the toys/products, or review them after purchasing them

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56. Websites promoting toys must comply with the obligations regarding the use of cookies under Article 22 of Law 34/2002 of 11 July on Information Society Services and Electronic Commerce, following its amendment by Royal Decree-Law 13/2012 of 30th March, and General Telecommunications Law 9/2014 of 9th May.

57. Warnings (or instructions/ advisories) which determine the decision to purchase the toy, such as those that specify the minimum and maximum age of the users, as well as other warnings contained in Annex V of Royal Decree 1205/2011, of 26th August, on the safety of toys³⁹, must be clearly visible and legible to the consumer before purchase on the online sales sites for toys, when so required under the provisions of Royal Decree 1205/2011, of 26 August, on the safety of toys.

APPLICABLE STANDARDS OF THE CODE

I. Association with the Code

1. Member companies of AEFJ⁴⁰ that have expressly stated their adherence to the “Code for Toy Advertising aimed at Children” undertake / are committed to respect the standards it includes in their advertising.
2. Adhering (participating/ affiliated) companies shall sign a document of accession to this Code that reflects the commitment / undertaking, by the very fact/ mere act of such adherence/ subscription, to respect the Code's stipulations in their advertising activities, as well as to abide by and immediately comply with the content of the resolutions that the AUTOCONTROL Advertising Jury may issue to settle claims submitted in relation to the Code.
3. The list of signatory/ adhering companies to the Code herein and the composition of the Monitoring Committee will be made public.

II. Code compliance control

1. A posteriori Code compliance control. (i.e. *monitoring and retrospective compliance*)

1. Compliance control of the standards contained in the Code will be performed by the Autocontrol Advertising Jury, which will deal with resolving potential claims/ complaints related to any commercial communications of companies that have agreed to abide by the Code and which infringe its standards.
2. In this regard, the companies abiding by the AEFJ Self-Regulatory Code undertake to register potential complaints against advertising of other affiliated companies in the first instance, and prior to bringing the case before Court, to the Advertising Jury, as well as to scrupulously and immediately observe and comply with the content of the decisions the Advertising Jury may issue in regard to the claims/ complaints related to the Code with which they are presented, either ceasing to disseminate the affected commercial communication or applying the necessary modifications.

2. Extra-judicial settlements of claims / complaints and disputes

1. Apart from the companies that adhere to the Code, the following bodies may also file complaints before the Advertising Jury for infringement of the standards contained in the Code herein: AEFJ itself, consumer associations, Autocontrol, Public Administrations, any company or business or professional association and consumers themselves, as well as

³⁹ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2011-14252

⁴⁰ Spanish Toy Manufacturer's Association - *Asociación Española de Jugueteros*

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the Monitoring Committee, at its own initiative or the request of an individual consumer, or other persons, entities or groups not provided for in this regard.

2. To apply the Code effectively and to process and settle potential claims / complaints of infringement submitted by the adhered companies, the Autocontrol Advertising Jury will be governed by the principles of impartiality, transparency, contradiction, effectiveness, legality, freedom of choice and consumers' right to representation established in Recommendation 98/257/EC of the European Commission, and will proceed pursuant to the provisions of its Regulations. The Jury will settle the claims presented in view of the ethical standards contained in the AEFJ Self-Regulatory Code, explaining in each case whether or not the standards have been infringed.

3. In their resolutions/ decisions, the Jury will determine which party or parties will be responsible for satisfying the administrative costs that result from processing the claim filed before Autocontrol. All the fees accrued before Autocontrol during the course of proceedings shall be imposed on the party which has seen all their contentions rejected/ turned down. If the acceptance or refusal is partial (i.e. decision is partially upheld / not-upheld; in the case of a split decision), each party bears its own costs, while the fees and administrative costs mentioned above would be halved. Consumers, consumer associations, and the Monitoring Committee of the Code shall be exempt from payment of such fees and administrative expenses/ costs, for whom the processing and resolution of claims /complaints raised or made will be free. For the adhering companies of this Code who are also members of Autocontrol, rates which to this end the Association has provided for its members will be applied to them.

4. Decisions issued by the Advertising Jury as a consequence of applying the Code herein will be immediately communicated to the interested parties for their compliance, as well as to AEFJ. Subsequently / afterwards, the decisions will be published on the website or any other means belonging to Autocontrol and AEFJ.

3. Prior Consultation / Pre-clearance (Copy Advice Procedures)

1. In order to ensure the compliance of their advertising to this AEFJ Self-Regulatory Code, the companies that have agreed to abide by it, undertake to send all toy advertisements to the Autocontrol Technical Office (Copy Advice team), for prior examination (preliminary review) through the confidential and binding prior consultation (pre-clearance) or "Copy Advice" system. The Technical Office will respond to these consultations within three working days of the request.

2. In addition, companies adhering to this Code may send any other pieces of advertising aimed at minors to Autocontrol's Technical Office (Copy Advice Team), for prior examination through the voluntary, confidential and non-binding pre-clearance or "copy advice" system, in those cases in which doubt exists as to their alignment / suitability to this Code. The Technical Office will respond to these consultations within three working days of the request.

3. Applicants will supply the Autocontrol Technical Office with as much information about the subject matter of the advertising as required for the pre-clearance report or "copy advice".

4. In the event of disagreement with the result of the preclearance report (i.e. content of copy advice) issued by the Autocontrol Technical Office, the advertiser may voluntarily request the Jury to review the case, who, in accordance with its Regulations (i.e. procedural rules) and in view of the preclearance report (copy advice) issued by the Technical Office, as well as the arguments and documents presented by the advertiser, will decide whether to confirm or reject its content. The Jury's decision will always be binding. The section of the Jury which takes part in this review will refrain from participating in the procedure that

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would pass before the Jury in the event a complaint is filed against the advertising in question⁴¹.

5. The companies adhering to the AEFJ Self-Regulatory Code shall refrain from using the content of the pre-clearance or copy advice, or the fact it was requested, for advertising purposes. However, they may present such prior consultations to the Courts, administrative authorities and Autocontrol Jury in case of any disputes.

III. Monitoring Committee

1. In addition, a Monitoring Committee of this Code is created, with a mixed composition, made up of a representative from the Spanish Agency of Consumer Affairs, Food Safety, and Nutrition (AECOSAN - *Agencia Española de Consumo, Seguridad Alimentaria y Nutrición*) – which will hold the presidency of the Committee – three representatives from the Spanish Toy Manufacturers Association (AEFJ - *Asociación Española de Jugueteros*), a representative of Autocontrol, with the right to speak but not to vote, which shall carry out the secretarial duties of the Committee.

In addition to a representative from the National Authority for Markets and Competition (CNMC - *Comisión Nacional de los Mercados y la Competencia*), three representatives from State-level Consumer and User Associations registered in the State Register of Consumer Associations, and a representative from the Spanish Advertisers Association (AEA - *Asociación de Empresas Anunciantes*) shall be invited to form part of / join the Committee.

2. The functions of the Monitoring Committee will be:

- a) Periodically evaluate the application of the Code.
- b) Make proposals to the AEFJ it deems necessary to improve and revise the Code, and become acquainted with the draft amendments to the content of the Code when AEFJ undertakes its revision.
- c) Become acquainted with on a regular basis the results of the Code compliance reports presented by Autocontrol.
- d) In all those cases in which it is deemed that a violation of the rules contained in the Code has occurred, it may decide to submit the complaints to the Autocontrol Advertising Jury.

3. Frequency of meetings

The Monitoring Committee shall meet twice a year and when requested by any of the signatories.

ENTRY INTO FORCE

This Self-Regulatory Code for the advertising of toys aimed at Children shall enter into force on the 1st January 2016.

LIST OF STANDARDS AND GUIDELINES THAT INSPIRED THIS CODE

1. Law 34/1988 of 11 November, on General Advertising
 2. Act 3/1991, of 10 January, on Unfair Competition
 3. Organic Law 3/2007 on effective equality between men and women
 4. Organic Law 1/2004 of 28 December on comprehensive protection measures against gender-based violence
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⁴¹ i.e. where the requester disagrees with Copy Advice opinion and calls for a review, those members of the Jury who had prior knowledge of the review should abstain from the process.

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5. Law 34/2002, of 11th July, on Information Society Services and E-Commerce
 6. Law 7/2010, of 31st March, on audiovisual communication services
 7. Organic Law 15/1999, of December 13, on Personal Data Protection
 8. Royal Legislative Decree 1/2007, of 16 November approving the revised text of the General Law on the Protection of Consumers and Users and other supplementary laws.
 9. Interpretative criteria document for TV advertising and minors.
 10. Reports from the Monitoring Committee of Children's Advertising
 11. Resolutions from Autocontrol Advertising Jury relating to Children's advertising
 12. Rationale used by Autocontrol in copy advice; compiled in the annual report.
 13. Co-regulation Code for advertising on food and beverages aimed at children, obesity prevention and health (Food and Beverages Advertising for children - PAOS Code)
 14. Guidelines on Best Practices in Advertising on Interactive Software Products from the former Spanish Association of Distributors and Entertainment Software Editors (AEDES), current Spanish Videogames Association (AEVI - Asociación Española de Videojuegos) (2005). Videogames advertising.
 15. European codes related to advertising and children from the various member associations of EASA.
 16. EACA Ethical Guidelines for Advertising and Children, 2002.
 17. TIE, European Code for Advertising Toys to children.
 18. Code of International Chamber of Commerce. Department of Policy and Business Practices. ICC Guidelines on Marketing and Advertising Using Electronic Media, de 25/10/2004
 19. Code of International Chamber of Commerce. Compendium of ICC rules on children and young people and marketing, de 01/04/2003.
 20. Confianza Online Ethical Code
 21. ICC Internet Marketing Code, 2nd April, 1998
 22. Children's Online Privacy Protection Act of 1998 (COPPA) - which is a United States federal law - whose last version was dated 20th Oct. 1999.
 23. Guidelines for Interactive Electronic Media - included in the Self-Regulatory Guidelines for Children's Advertising - produced by Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus (CBBB)
 24. ICTI (International Council of Toy Industries) - Guiding Principles for Advertising and Marketing Communication to Children⁴²

ANNEX I

LIST OF PRODUCTS THAT ARE NOT CONSIDERED AS TOYS WITHIN THE MEANING OF THIS CODE

1. Christmas decorations
2. Detailed scale models for adult collectors
3. Equipment intended to be used collectively in playgrounds.
4. Sports equipment
5. Aquatic equipment intended to be used in deep water
6. Folk dolls and decorative dolls and other similar articles for adult collectors
7. 'Professional' toys installed in public places (shopping centres, stations, etc.)
8. Puzzles with more than 500 pieces or without picture, intended for specialists
9. Air guns and air pistols
10. Fireworks, including percussion caps (1)
11. Slings and catapults
12. Sets of darts with metallic points

⁴² <http://www.toy-icti.org/info/communications-to-children.html>

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13. Electric ovens, irons or other functional products operated at a nominal voltage exceeding 24 volts
 14. Products containing heating elements intended for use under the supervision of an adult in a teaching context
 15. Vehicles with combustion engines
 16. Toy steam engines
 17. Bicycles designed for sport or for travel on the public highway
 18. Video toys that can be connected to a video screen, operated at a nominal voltage exceeding 24 volts
 19. Babies' dummies
 20. Faithful reproductions of real fire arms
 21. Fashion jewellery for children
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