

Advertising

Directed at Children
under 13 Years of Age

Guide to the Application of Sections 248 and 249
Consumer Protection Act

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under 13 Years of Age

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Consumer Protection Act

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that was current on September 10, 2012.**

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Use of the masculine form in this document
refers to both men and women.

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Who should use this guide?

In Québec, the Consumer Protection Act prohibits commercial advertising directed at children under 13 years of age.

References

*Sections 1, 218, 248,
249, 252, 277, 278,
282 and 283
of the Consumer
Protection Act.*

*Sections 87 to 91 of the
Regulation Respecting
the Application
of the Consumer
Protection Act.*

With that as its basis, this guide clarifies the ground rules contained in the Consumer Protection Act that must be taken into account when determining whether advertising targets children and whether it is prohibited. It also outlines exemptions provided for in the Regulation Respecting the Application of the Consumer Protection Act.

The guide is intended for merchants, businesses, lawyers and anyone working in the advertising or media sectors. It can also help parents and individuals who interact with children by providing them with a clearer understanding of the scope of the legislative provisions applicable in Québec, thereby enabling them to better protect children.

In this document, the word “child” refers to persons under 13 years of age.

The ban and its scope

What the Act states

“Section 248. Subject to what is provided in the regulations, no person may make use of commercial advertising directed at persons under thirteen years of age.”

Reference

Sections 1 m)
and 252
of the Consumer
Protection Act.

Who is affected by the ban?

The ban applies to all merchants: Those who request the promotion of goods or services as well as those involved in the advertising process.

The ban also applies to persons who design, distribute, publish or broadcast the advertisement and persons who request the advertisement's design, distribution, publication or broadcast. The Act defines these individuals as “advertisers.”

Reference

Section 1 h)
of the Consumer
Protection Act.

What is commercial advertising?

The goal of commercial advertising is to promote:

- goods or services offered for sale or rental;
- an organization having one or more activities consisting of the sale or rental of goods or services.

What formats and media are targeted?

All formats and media are targeted when they are used to distribute or broadcast commercial advertising. Examples include:

- radio;
- television;
- the web;
- mobile phones;
- printed materials such as newspapers, magazines and flyers;
- signage;
- promotional items.

Since the Act's interpretation is constantly evolving, new formats and media that emerge as a result of changes in advertising practices and technologies are also affected.

How to determine whether commercial advertising is directed at children

What the Act states

“Section 249. To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of:

- a) the nature and intended purpose of the goods advertised;
- b) the manner of presenting such advertisement;
- c) the time and place it is shown.

The fact that such advertisement may be contained in printed matter intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over, or that it may be broadcast during air time intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over does not create a presumption that it is not directed at persons under thirteen years of age.”

Reference

Section 218
of the Consumer
Protection Act.

The Consumer Protection Act prohibits advertising that targets children. To determine whether advertising is directed at them, the Act stipulates that it is necessary to take into account the context of the advertisement's presentation and the impression it gives.

The Act also provides three criteria that correspond to the following questions:

- For whom are the advertised goods or services intended? Do they appeal to children?
- Is the advertisement designed to attract the attention of children?
- Are children targeted by the advertisement or exposed to it? Are they present at the time and place it appears or is broadcast?

An overall analysis of advertisements that takes the relationship between these three criteria into account is essential since each criterion, when considered separately, is not decisive in itself. Therefore, an advertisement that is broadcast and intended for adults could still be considered as advertising aimed at children when all the criteria are assessed.

Criterion A: For whom are the advertised goods and services intended? Do they appeal to children?

It is important to determine whether the advertised goods or services are intended for children and the appeal that such goods and services have for them. The goods or services may:

- be essentially intended for children and therefore appeal to them (toys or candy, for instance);
- greatly appeal to children without being exclusively intended for them (an amusement park or video game console, for instance);
- not particularly appeal to children (cleaning products or financial services, for instance).

The fact that an advertisement concerns goods or services that do not particularly appeal to children does not necessarily mean that it is allowed. The two other criteria must also be taken into account.

Example of an ad for goods and services intended for children

A company is marketing Spirals cereal, which contains red licorice twists. The product is essentially intended for children.

The company puts a game online where children play the role of Spirob, the elf representing the product. The elf has to find his way in a world where he derives energy with each mouthful of cereal. This advertisement would be prohibited.

Criterion B: Is the message designed to attract the attention of children?

The overall impression given by the advertisement needs to be taken into account and the way it is designed must be examined to determine if it makes the ad appealing to children.

Attention should be paid to certain factors. For example:

- a level of language commonly used by children;
- subjects linked to fantasy, magic, mystery, suspense, adventure or virtual worlds;
- characters who are children or have childlike voices, heroes, animals and imaginary, fantasy or virtual creatures;
- situations that play on the parent-child relationship or another authority-based relationship between a child and an adult in an particularly insistent or idealized manner;
- music, songs or jingles that are especially appealing to children;
- spectacular media techniques: sound, colour, special effects, cartoons or 3D animation.

The fact that an advertisement or advertising method appears to target adults does not mean that the advertisement is intended exclusively for them. Following an analysis of the two other criteria, an advertisement that attracts the attention of children can still be considered as advertising directed at children even though it seems to target adults because of its verbal or written content. That may be the case if the product advertised appeals to children.

Example of advertising designed to attract the attention of children

The Freza dairy company sells strawberry flavoured milk. It has designed a colouring book that displays the company's products and contains discount coupons for buying each product. Although the colouring book is labelled "for parents," it is distributed to children at a day camp.

The company claims its advertisement is intended for adults, but the product (strawberry flavoured milk) and the advertisement's design (a colouring book containing discount coupons) appeal to children. This advertisement would be prohibited.

Criterion C: Are children targeted by the advertisement or exposed to it?

The proportion of children that make up the audience or that might be reached by an advertisement needs to be assessed. Are they present when it appears or is broadcast? Are they present where it appears or is broadcast?

All media must be taken into account. For instance, a website section falls under the media category. The place can also be associated with a physical space such as a shopping centre, restaurant, school, daycare centre, festival location, etc.

An advertisement that is broadcast or that appears in a place where both adults and children are present can still be considered as being directed at children if an analysis of the two other criteria leads to the conclusion that the advertisement is also intended for children.

Example of advertising that reaches children

The manufacturer of Sculpto modeling clay sets up a tent at a festival and invites children to use the clay by imitating what the mascot does. This advertisement would be prohibited in an area reserved solely for children.

Tools exist to assess the proportion of children who are exposed to an advertisement. The tools vary depending on the media. They are used primarily to assess the ratings of television and radio advertisements and the distribution of printed or online advertisements.

Appendix II provides an example of assessing the proportion of children exposed to an advertisement on television. The example explains how to determine the percentage of the audience that is composed of children under thirteen years of age when the televised advertisement is broadcast.

The relationship between the three criteria: basic principles to keep in mind

The relationship between the three criteria is what determines whether an advertisement is directed at children.

An advertisement can be prohibited depending on the appeal that the goods or services advertised have for children. To reach a conclusion, the ad's design must be considered in order to determine if it might appeal to children and if the time and place the advertisement is shown make it possible to reach children.

The general context of the advertisement's presentation must always be considered as well. To determine whether or not the advertisement is prohibited, the overall impression it gives must also be taken into account.

Criterion A

Goods or services essentially intended for children and that therefore appeal to them.

Ex.: certain video games, toys or candy primarily consumed by children.

Goods or services that are particularly appealing to children without being intended exclusively for them.

Ex.: certain desserts, fast foods, amusement parks, video game consoles.

Goods or services that are not particularly appealing to children.

Ex.: cleaning products, meat, financial products, alcoholic beverages, certain types of clothing.

Criteria B and C

The ad must not:

- be designed in a way that appeals to children;
- be broadcast or distributed in a place where or at a time when children are normally reached.

The ad is allowed if:

- it is not designed to appeal to children;
- it is not broadcast or distributed in a place where or at a time when children in particular are normally reached.

The ad is allowed. However, if the company sells children's products, attention must be paid to the ad's design. The design should not be appealing to children if they essentially comprise the audience when and where the ad is broadcast or distributed.

Generally speaking, an advertisement runs more risk of being considered as directed at children:

- the more the goods or services might appeal to them;
- the more childlike the advertisement's design is;
- the more the place or means of broadcast or distribution is likely to increase the odds of reaching children.

**Do the goods or services target children?
Do they appeal to them?**

		Yes, they are primarily aimed at children and appeal to them.	They are aimed at the whole family but, yes, they do have a strong appeal for children.	No, they are aimed at teenagers and adults and do not appeal to children.
Are children exposed to the ad?	Yes, the advertising format or medium used allows for reaching children.	Advertisement prohibited	Advertisement prohibited if the message is designed to arouse the interest of children.	Advertisement allowed provided that the message is not designed to arouse the interest of children.
	The advertising format or medium used allows for reaching people other than children.	Advertisement prohibited if the message is designed to arouse the interest of children.	Advertisement allowed provided that the message is not designed to arouse the interest of children.	Advertisement allowed

Example of prohibited advertising

The Rappido Company is advertising a remote-controlled toy car like one seen in an animated film. The advertisement is broadcast on Saturday morning on a TV channel for children during a cartoon program. The ad is in animated film format and shows a young boy who is thrilled to be operating his high-speed car. This ad would be prohibited.

A look at some forms of advertising

Logos and mascots

The use of a logo or mascot to represent goods, services, an organization or company constitutes an advertisement.

As with any advertisement, the logo or mascot must be analyzed using the three criteria to determine whether it is commercial advertising aimed at children.

Sponsorships

The mention of a sponsorship – financial support or material provided in exchange for visibility – is considered advertising. Like other ads, the message it conveys must be analyzed based on the three criteria to determine if it is aimed at children.

The sponsor of an activity for children or families whose products are primarily intended for children or appeal to them cannot, during the event:

- present the message in a childlike way or in a manner that would arouse the interest of children;
- use a logo or mascot.

However, the sponsor can discreetly mention a name that does not draw children's attention. For example: "This event is sponsored by [mention of the name]."

Example of sponsorship

The XY Food Lovers Company, a distributor of fruit candy (a product that appeals to children), sponsors a children's make-up activity at a shopping centre. The company advertises its sponsorship with a reference to its name: "This event is sponsored by XY Food Lovers." The advertisement is allowed.

The ad would be prohibited if the sponsor were represented by the company mascot or logo. It would also be prohibited if the children were invited to watch a video capsule that raved about the taste of the candy.

Educational advertising

Educational or lifestyle advertising, which seeks to bring about changes in attitude or behaviour in the interest of the person for whom the ad is intended or for the benefit of society, is permitted under certain conditions.

It must be intended to ensure the child's training and development, especially by promoting a healthy lifestyle and responsible behaviour, notably by encouraging the child to exercise caution or getting him to react in a way that will ensure his safety in case of danger.

Lifestyle or educational advertising must not:

- be used to circumvent the ban, for example by encouraging children to buy a specific brand or product;
- make it possible to identify a particular product or brand;
- contain a commercial message or be associated with such a message;
- include the logo of a sponsor that is a commercial enterprise whose products appeal to children. However, the sponsor may be identified by the discreet mention of a name that does not draw attention.

Example of lifestyle advertising

The Sure-Bike organization prepares an ad to encourage children to wear bicycle helmets. The ad's sponsor, the Daily Cycle Company, manufactures decorative bicycle handles and is identified by the phrase: "Daily Cycle is a proud sponsor of this campaign." This ad would be permitted.

The ad would be prohibited if it invited children to wear a Noggin brand helmet. It would also be prohibited if it included the logo of the Daily Cycle Company, whose product appeals to children.

Exceptions: Advertising that may qualify for an exemption

The Regulation Respecting the Application of the Consumer Protection Act provides for three exceptions to the ban on commercial advertising directed at children. However, the advertisement must meet the stipulated conditions in order to qualify for an exemption.

Exception 1: Advertising in a children's magazine

Commercial advertising aimed at children in a children's magazine is possible under the following conditions:

- the magazine or insert containing the advertisement is intended for children;
- the magazine or insert is offered for sale or inserted in a publication offered for sale;
- the magazine or insert is published at least every three months.

Exception 2: Advertising for a children's entertainment event

Commercial advertising aimed at children is permitted when the ad announces an entertainment event for children, such as a sporting event, theatre performance, television program, film screening, concert, comedy or radio show, etc.

Other than announcing the show, the ad may not contain a commercial advertisement such as:

- the logo of another company whose products are for children (however, a discreet reference that includes the company's name would be allowed);
- an illustration showing spin-offs or promotional products offered for sale.

Reference

Section 88
of the Regulation
Respecting the
Application
of the Consumer
Protection Act.

Reference

Section 89
of the Regulation
Respecting the
Application of
the Consumer
Protection Act.

Example of advertising for a program or show directed at children

There is a poster for the Happy Hubbub Theatre announcing a children's show. The ad is permitted if the theatre's sponsor, Toyplay 3003, a company that sells toys, is identified solely by a mention of its name: "The show is sponsored by Toyplay 3003."

This ad is prohibited if it:

- includes the Toyplay 3003 company logo, since its products appeal to children;
- presents an illustration of toys sold by the company;
- includes a purchase offer for a Happy Hubbub Theatre t-shirt.

Exception 3: Store windows, displays, containers, packaging and labels

Advertising via a store window, display, container, packaging or label – or the message that appears on it – can be designed to target children.

On the other hand, this advertising must not, among other things:

- serve as an advertising format to advertise other products aimed at children in an attempt to circumvent the ban;
- directly incite a child to buy goods or services;
- encourage the child to urge another person to buy goods or services or to seek information about them.

Example of packaging that constitutes advertising

The Great Wheat company sells cereal. Its colourful packaging portrays a world full of elves and princesses. This advertising would be permitted.

The advertisement would be prohibited if the message "Ask Mom to buy you the most fun-filled cereal in the world!" appeared on the cereal box.

References

Sections 90 and 91
of the Regulation
Respecting the
Application
of the Consumer
Protection Act.

Additional conditions that advertisements must meet to be covered by an exception

For an advertisement to be exempted from the ban, it must meet the conditions provided for by the Regulation as well as the specific conditions of each exception.

An affirmative answer to one of the following questions indicates that a condition has not been met.

Does the advertisement:

- a) exaggerate the nature, characteristics, performance or duration of a product or service?
- b) minimize the degree of skill, strength or dexterity or the age necessary to use goods or services?
- c) use:
 - superlative to describe the characteristics of the goods or services?
 - a diminutive to indicate their cost?
- d) establish a comparison between the goods or services advertised and another product?
- e) directly incite a child to buy or to urge another person to buy goods or services or to seek information about them?
- f) portray reprehensible social or family lifestyles?
- g) advertise goods or services that, because of their nature, quality or ordinary use, should not be used by children?
- h) advertise a drug or patent medicine?
- i) advertise a vitamin?
- j) portray a person behaving carelessly?
- k) present goods or services in a way that suggests improper or dangerous use?

Reference
 Section 91
 of the Regulation
 Respecting the
 Application
 of the Consumer
 Protection Act.

- l) portray a person or character known to children to promote goods or services:
 - who appears in a publication or program aimed at children?
 - who is not a participant in the show for children that is being advertised?
 (A character created expressly to promote goods or services may be used solely for advertising those good or services.)
- m) use an animated cartoon process even though the advertisement does not promote a children’s cartoon show?
- n) use a comic strip even though the advertisement does not promote children’s comics?
- o) suggest that:
 - owning the product gives the child an advantage over other children his age?
 - not having the product puts the child at a disadvantage?
- p) advertise goods in such a way that the child is falsely led to believe that for the regular price of the goods, he can get other goods that are not being advertised?

The conditions that must be met vary depending on the type of advertising. An advertisement cannot fall within the exceptions if it does not meet the specified conditions.

Advertisement	Conditions to be met
Ad in a children’s magazine	All
Ad for a children’s entertainment event	All
Store windows, displays, containers, packaging and labels	All, except h), i), l), m) and n)

Consequences of non-compliance with the Act

OPC response measures

The OPC may respond in the following three ways to anyone who is in violation of the Act in question:

- send the offender a notice as a reminder of the rules governing commercial advertising directed at children;
- negotiate a voluntary undertaking with the offender in which he undertakes to change his business practices. The OPC may take legal action against those who fail to meet their commitment;
- file a criminal lawsuit against the offender.

References

Sections 277, 278, 282 and 283 of the Consumer Protection Act.

Fines

Any stakeholder involved in a commercial process (from the request to create an advertisement to its distribution, including its design) may be accused of not complying with the legislation in force. Per indictment, that person is liable to:

- a fine ranging from \$600 to \$15,000 (in the case of a natural person);
- a fine ranging from \$2,000 to \$100,000 (in the case of a legal person).

The representative of a legal person (a company president or administrator, for example) who had knowledge of the offence is deemed to be a party to the offence and is liable to the penalty that applies to a natural person.

A person who assists or incites another person to commit an offence, or who advises that person to do so, is also liable to these penalties.

In the case of a repeat offence, the amount of the fines is doubled.

If you are concerned that your advertisement does not comply with the Act, please do not hesitate to contact the OPC for more information.

Additional information

You can contact the OPC (Office de la protection du consommateur) for more information about the ban on commercial advertising directed at children.

www.opc.gouv.qc.ca

Montréal	514 253-6556
Québec City	418 643-1484
Trois-Rivières	819 371-6400
Saguenay	418 695-8427
Gatineau	819 772-3016
Sherbrooke	819 820-3694
Saint-Jérôme	450 569-7585
Elsewhere in Québec and Canada	1 888 672-2556

Appendix I: Text of the Act and Regulation

The following sections pertain to advertising directed at children.

Consumer Protection Act

1. In this Act, unless the context indicates otherwise,

- h) “advertisement” means a message designed to promote goods, services or an organization in Québec;
- m) “advertiser” means a person who prepares, publishes or broadcasts an advertisement or who causes an advertisement to be prepared, published or broadcast;

218. To determine whether or not a representation constitutes a prohibited practice, the general impression it gives, and, as the case may be, the literal meaning of the terms used therein must be taken into account.

248. Subject to what is provided in the regulations, no person may make use of commercial advertising directed at persons under thirteen years of age.

249. To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of

- a) the nature and intended purpose of the goods advertised;
- b) the manner of presenting such advertisement;
- c) the time and place it is shown.

The fact that such advertisement may be contained in printed matter intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over, or that it may be broadcast during air time intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over does not create a presumption that it is not directed at persons under thirteen years of age.

252. For the purposes of sections 231, 246, 247, 247.1, 248 and 250, “to advertise” or “to make use of advertising” means to prepare, utilize, distribute, publish or broadcast an advertisement, or to cause it to be distributed, published or broadcast.

277. Every person who

- a) contravenes this Act or any regulation;
- b) gives false information to the Minister, the president or any person empowered to make an investigation under this Act;
- c) hinders the application of this Act or of any regulation;
- d) does not comply with a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1;
- e) disobeys a decision of the president;
- f) being subject to an order of the court under section 288, omits or refuses to comply with such order,

is guilty of an offence.

278. A person convicted of an offence constituting a prohibited practice or an offence under paragraph b, c, d, e or f of section 277 is liable

- a) in the case of a natural person, to a fine of \$600 to \$15,000;
- b) in the case of a legal person, to a fine of \$2,000 to \$100,000.

For a second or subsequent conviction, the offender is liable to a fine with minimum and maximum limits twice as high as those prescribed in subparagraph a or b, as the case may be.

282. Where a legal person is guilty of an offence against this Act or any regulation, every director or representative of such legal person who had knowledge of the said offence is deemed to be a party to the offence and is liable to the penalty provided for in section 278 or 279 for a natural person, unless he establishes to the satisfaction of the court that he did not acquiesce in the commission of such offence.

283. Every person who performs or omits to perform an act in view of aiding a person to commit an offence against this Act or a regulation or who advises, encourages or incites a person to commit an offence is himself guilty of the offence and is liable to the same penalty.

Regulation Respecting the Application of the Consumer Protection Act

- 87.** For the purposes of this Division, the word “child” means a person under 13 years of age.
- 88.** An advertisement directed at children is exempt from the application of section 248 of the Act, under the following conditions:
- a) it must appear in a magazine or insert directed at children;
 - b) the magazine or insert must be for sale or inserted in a publication which is for sale;
 - c) the magazine or insert must be published at intervals of not more than 3 months; and
 - d) the advertisement must meet the requirements of section 91.
- 89.** An advertisement directed at children is exempt from the application of section 248 of the Act if its purpose is to announce a programme or show directed at them, provided that advertisement is in conformity with the requirements of section 91.
- 90.** An advertisement directed at children is exempt from the application of section 248 of the Act, if it is constituted by a store window, a display, a container, a wrapping or a label or if it appears thereon, provided that the requirements of paragraphs a to g, j, k, o and p of section 91 are met.
- 91.** For the purposes of applying sections 88, 89 and 90, an advertisement directed at children may not:
- a) exaggerate the nature, characteristics, performance or duration of goods or services;
 - b) minimize the degree of skill, strength or dexterity or the age necessary to use goods or services;
 - c) use a superlative to describe the characteristics of goods or services or a diminutive to indicate their cost;
 - d) use a comparative or establish a comparison with the goods or services advertised;
 - e) directly incite a child to buy or to urge another person to buy goods or services or to seek information about them;

- f) portray reprehensible social or family lifestyles;
- g) advertise goods or services that, because of their nature, quality or ordinary use, should not be used by children;
- h) advertise a drug or patent medicine;
- i) advertise a vitamin in liquid, powdered or tablet form;
- j) portray a person acting in an imprudent manner;
- k) portray goods or services in a way that suggests an improper or dangerous use thereof;
- l) portray a person or character known to children to promote goods or services, except:
 - i. in the case of an artist, actor or professional announcer who does not appear in a publication or programme directed at children;
 - ii. in the case provided for in section 89 where he is illustrated as a participant in a show directed at children.

For the purposes of this paragraph, a character created expressly to advertise goods or services is not considered a character known to children if it is used for advertising alone;

- m) use an animated cartoon process except to advertise a cartoon show directed at children;
- n) use a comic strip except to advertise a comic book direct at children;
- o) suggest that owning or using a product will develop in a child a physical, social or psychological advantage over other children of his age, or that being without the product will have the opposite effect;
- p) advertise goods in a manner misleading a child into thinking that, for the regular price of those goods, he can obtain goods other than those advertised.

Appendix II: Example of an assessment of the proportion of children exposed to advertising broadcast during a TV show

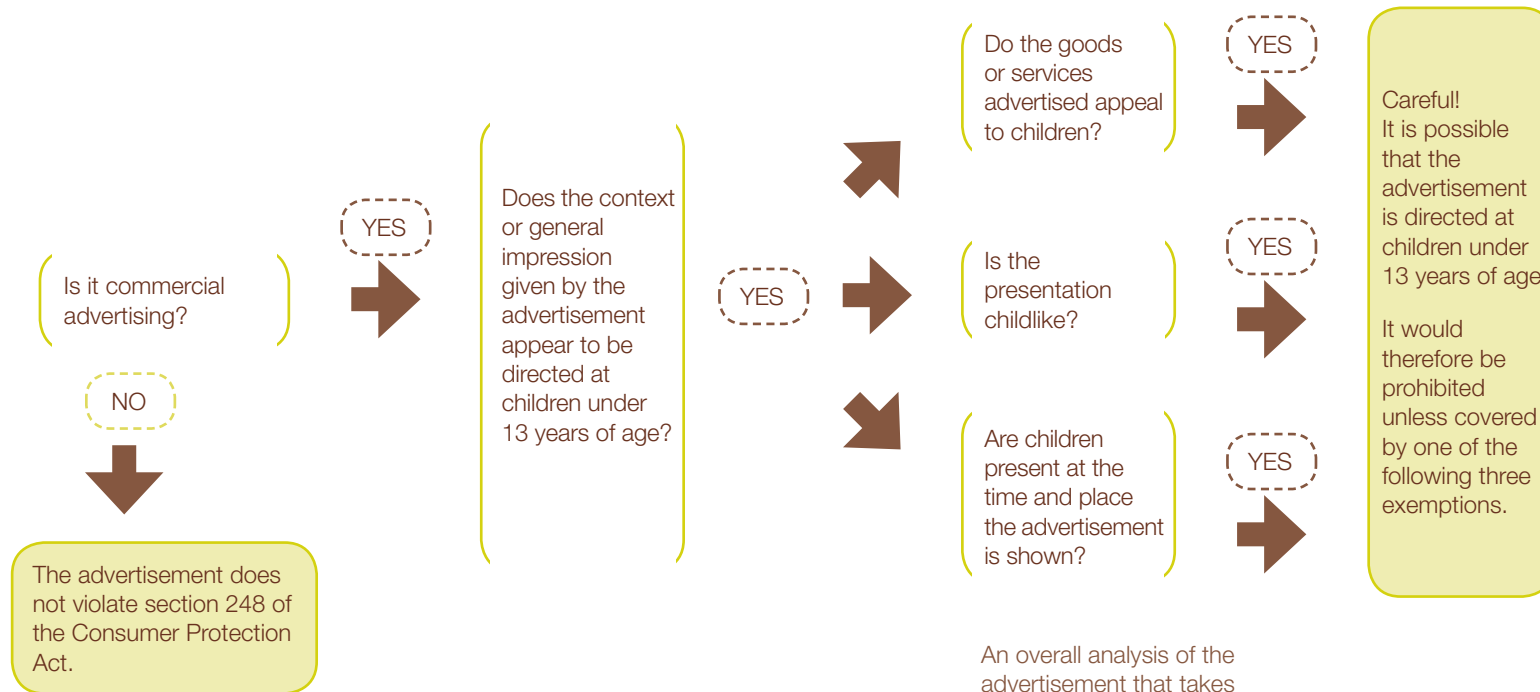
To determine if an advertisement is directed at children, the percentage of the audience consisting of children under 13 years of age at the time the advertisement is broadcast on television as well as the other two criteria must be assessed.

	Product essentially directed at children	Product with strong appeal for children	Product with no appeal for children
Program with over 15% of viewership composed of children	Advertisement Prohibited	Advertisement prohibited if the message is designed to arouse the interest of children.	Advertisement allowed provided that the message is not designed to arouse the interest of children.
Program with up to 15% of viewership composed of children	Advertisement prohibited if the message is designed to arouse the interest of children.	Advertisement allowed provided that the message is not designed to arouse the interest of children.	Advertisement allowed

In some cases, the threshold used may be lower than 15%. For example, if the advertisement makes it possible to reach a large number of children, the 15% threshold is no longer appropriate. For instance, an advertisement could be regarded as being directed at children even though children make up only 10% of the audience if the show's viewership is very high and the product and presentation appeal to children.

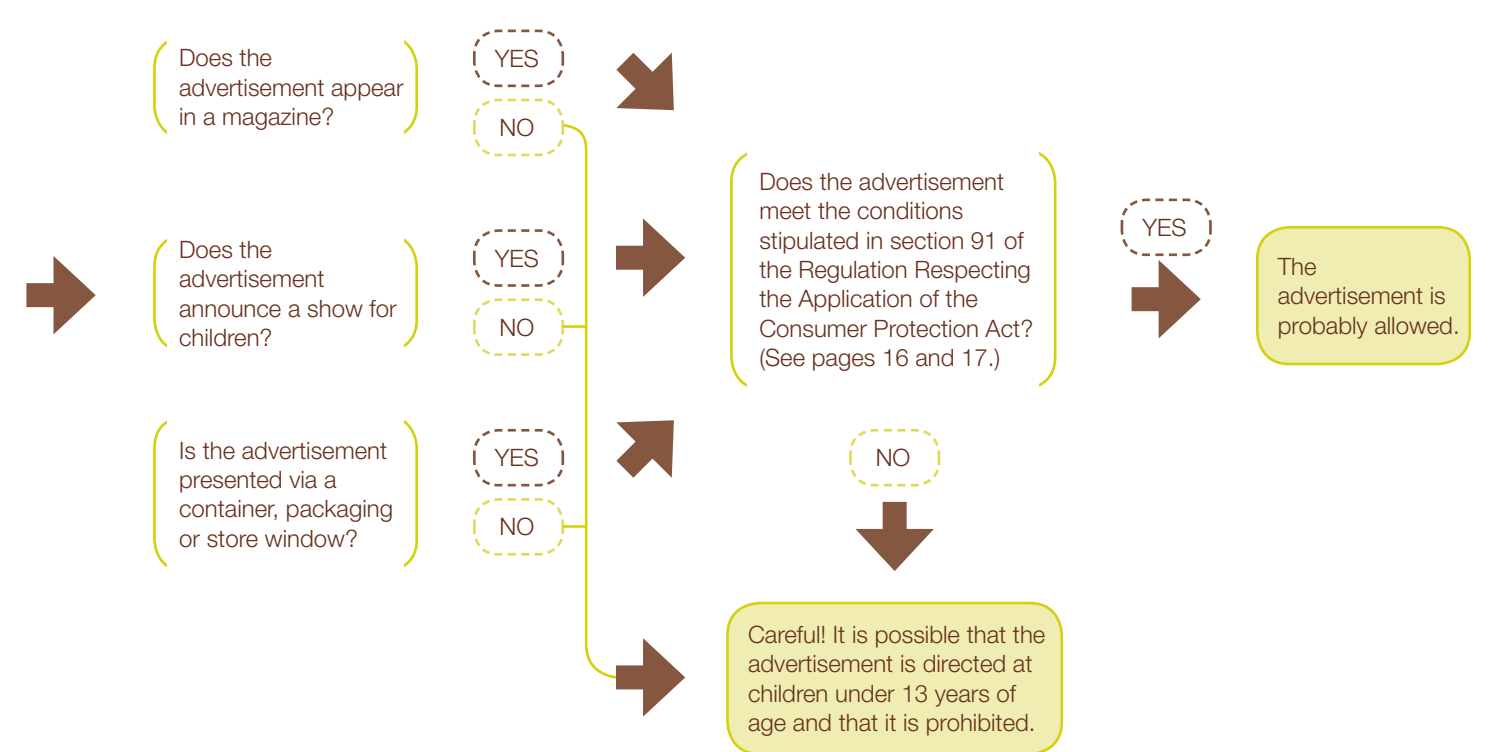
Appendix III: Questions to determine if an advertisement is directed at children

Determining if the advertisement is directed at children under 13 years of age



An overall analysis of the advertisement that takes the relationship between these three criteria into account is essential since each criterion, when considered separately, is not decisive in itself.

Determining if the advertisement is covered by the exemptions provided for in the Act



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Québec 