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Responsible marketing to children

Foreword

Marketing to children is one of the most problematic areas of marketing. Children on the one level are highly acquisitive, strongly-opinionated influencers who are uniquely receptive to effective marketing. They can however sometimes lack the appropriate degree of objective sophistication to form broader, well-considered judgements. Because of this they are often uniquely vulnerable to suspect influences and inappropriate messages. Put simply, they can be sold things with their full and enthusiastic personal consent which are, in fact, entirely inappropriate for them. In these cases, if the ability of their parents to assess and evaluate marketing messages on their behalf is equally deficient, serious ethical – not to say moral – issues may arise.

There are now Europe-wide legal rules about marketing practices which target specifically-disadvantaged consumers and which offer protection against activities which can legally be defined as 'unfair'. The position of marketing to children is much less legally-defined and much more morally ambiguous.

It is, for example, entirely legal for an organisation founded on the premise of the sexual availability of females with a product portfolio which includes hard-core pornographic online/tv channels and a range of softcore, top-shelf magazines to develop seemingly innocuous branded clothing or stationery targeted squarely at pre-teen girls based on precisely the same brand promise. Legal, yes. But is it appropriate? Or would banning the sale of this specific genus of bunny imagery to children be a legislative step too far?

This is a complex stakeholder environment: what of the role of retailers that stock such clothing? What about the parents who gladly buy it? What is the position of the general public? Could the more alarmist elements of the press develop a rational case to support the statement that marketers, retailers and parents form a confederacy of dunces who fail to protect our children from inappropriate marketing initiatives? One of the reasons there are no straightforward answers is that views from parents and authorities often wildly differ about what acceptable levels of marketing to children are. This discrepancy is not necessarily solved by a stronger regulatory environment. One person's 'responsible Governmental intervention' is another's 'intrusive nanny state'.

For marketers in their day-to-day activities, the important issue is to have awareness of the inherent ambiguities when marketing to children, have a strong understanding of the legal and regulatory environment, and ensure they work in ways that respect the sensitive nature of the subject. Whilst doing so, marketers need to balance the needs and wants of individual freedoms, and find creative ways to reach audiences that do not cause objections from the majority of observers. It's also necessary, we would argue, to possess a degree of moral acuity to enable parents and guardians to judge for themselves what is and is not appropriate.



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Leave those kids alone? Responsible marketing to children

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SECTION ONE

Key issues

The children's market is valuable. The market research specialist Childwise estimates that children in the UK spend £4.2bn annually, an increase from £3.9bn in 2005. ⁱ The Family and Parenting Institute (FPI) states that under-18s in the UK spend £12 billion of their own money each year. The FPI also estimates that children see between 20,000 and 40,000 adverts a year, across different media. ⁱⁱ

The regulatory environment has been noticeably tightened over the past few years. The advertising of pejoratively-named 'junk food' was banned in 2007, a regulation most marketers working in food and drink are familiar with and have understanding of. Less well-known are elements of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs); details of which make technically illegal some

practices which are still commonly engaged in. As this paper explores, it's arguably impossible to control all marketing to children; so a best practice guide for self-regulatory purposes is desirable.

The Institute is producing this brief overview of the subject in order to help members be aware of the arguments, alerted to the relevant national and international laws, and be in a position to evaluate objectively any marketing they do that comes within the sphere, perceived or otherwise, of marketing to children.

“Children see between 20,000 and 40,000 adverts a year, across different media”



SECTION TWO

The self-regulatory environment

The Committee of Advertising Practice code and Broadcast code (CAP and BCAP) have specific sections on advertising to children, defined as individuals under 16. Certain products cannot be advertised at all, and others cannot be advertised during children's programmes. The codes also address general areas of including, forbidding advertising that:

- Makes children feel unpopular or belittled for not buying a product.
- Exaggerates a product's performance or misleads.
- Encourages children to use pester power.
- Undermines parental authority.

“The way children respond to advertising depends on various factors including age, social group and experience”

However, the codes make allowance for the fact that the way children respond to advertising depends on various factors including their age, social groups and experience, and advise marketers that they should not assume that 'children' are a single group.

Specific restrictions include low-alcohol drinks, vitamins, slimming products, medicines and lotteries. For the full information on the CAP and BCAP codes see page 22.

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SECTION THREE

UK and international legislation

Under the Consumer Protection Regulations (2008) (CPRs) it is illegal to include in an advertisement 'a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.' ⁱⁱⁱ This is one of the specific 31 banned practices introduced under the regulations, and the Institute believes that where this is in principle a desirable amendment to consumer law, there are circumstances where this is not appropriate (see Section five.)

Under earlier consumer law, the direct advertising of 'junk food' to children has been illegal since 2007. Junk food is defined as 'food high in fat, sugar or salt' (HFSS) or 'food with little or no nutritional value'. This is based on a nutrient profiling model ^{iv} developed by the Food Standards Agency (FSA). It is interesting that the second widely-used definition of 'junk food' allows, for example, plenty of foods to escape the definition when high in fat and salt but with the addition of protein. ^v It would also technically leave water in the junk food category. Regarding the first definition, some commentators have questioned the validity or benefits of defining junk food at all; is foie gras at 80% a 'junk food', for instance, or is cheese a similarly 'junk food'? Most nutritionists will argue in favour of a balanced diet that includes

some fat, sugars and salt but which is dominated by fruit, vegetables and a third wholemeal, starchy carbohydrate basis to the diet. Some fat is vital to the diet, and a difference between saturated and unsaturated fats needs to be noted. Obesity is not just caused by diet; exercise is important too. All these factors cause problems for the 'demonisation' of 'junk food' and marketers need to be aware of the complexities of the definitions. The specific piece of legislation was introduced as a direct result of concerns about childhood obesity, which have increased steadily over the last 20 years; in 2004 it was estimated that 14% of boys and 17% of girls aged two to 15 were obese. ^{vi}

Digital marketing has until very recently been covered far less stringently than offline marketing. The amendments to the CAP and BCAP codes, which came into force in March 2011, mean that communications and images online are now covered by the codes. ^{vii}

The European Advertising Standards Alliance has published best practice guidelines but it makes no reference to marketing to children. There is a view held by some observers and practitioners that policing the internet for marketing to children is 'almost

impossible', despite the review of the CAP and BCAP code. ^{viii} Age controls on websites, for example, are regarded as 'inadequate'. It is questionable whether codes on marketing to children can ever be fully regulated. With this in mind, it becomes even more important for marketers not only to know where the line is drawn, but to consider their individual responsibilities when their activities may be considered as marketing to children.

Outside the UK, it is illegal to advertise commercially to children in Norway and Sweden, defined as immediately before, during and after a programme primarily aimed at children under 12, regardless of the product advertised. ^{ix} These countries provide interesting case studies for academics wanting to prove, or disprove, proposed links between advertising and childhood obesity or between advertising and materialism.

Marketers in all countries also need to know about the Children's Online Privacy Protection Act (COPPA), the US law that states that it is illegal for electronic communications to be sent directly to a minor's inbox. The reason that this is vital to be aware of is that the law does not just apply to e-mails originating from the USA, but to e-mails originating from anywhere

in the world. In other words, ignorance of US law does not protect marketers operating internationally. The take-out from this is that marketers need to ensure they know the age of all names contained on databases, if there is any possibility of e-mail messages reaching US addresses. Bearing in mind the previous paragraph about Norway and Sweden, it also becomes necessary to ensure you know the ages of all names on databases held if there's a chance of your e-mails or mobile messages reaching these countries too.

"It is questionable whether codes on marketing to children can, or should, ever be fully regulated"

In Europe, the Unfair Commercial Practices Directive (UCPD) covers all EU countries and over-writes previously existing consumer law in individual EU member countries. The UCPD is the basis of the CPRs in the UK and so also explicitly makes 'direct exhortation' to children illegal. ^x

For the purposes of this paper, a child is defined as an individual under 16 years old.



SECTION FOUR

Ethics

The ethics of marketing to children are complex. At one end of the spectrum is the view that children are an acceptable market to approach. By restricting marketing to children, you remove fundamental rights of the child to know about things that interest them. It's also regarded as important to educate children in how marketing and advertising operates, so that as adults they will have an informed and less naïve view of advertising. If we shield children from the effects of marketing, are we bringing them up in an artificial bubble that evades market realities and makes them less able to deal with such realities in later life?

At the other end is the view that because minors are not yet in a position to make responsible decisions for themselves, they should not be targeted. Any advertising that is designed to appeal to children should therefore be aimed squarely at the adult and not the child.

This summary is complicated by the differing views of individuals, society norms, and children's own views. For some people, current legislation does not do enough to protect children. (See Case study on page 10). Views also differ on how best to develop a health agenda and to what extent any findings are applied, either legislatively or in self-regulatory terms. Is it appropriate, for example, that the UK Government has invited companies such as McDonald's and Mars, not predominantly known for marketing products designed to improve nutritional intake, to be part of the Change4Life programme? Or is doing so an even-handed approach, acknowledging that omitting such major players in the UK food and drink economy is unhelpful? Most nutritionists would agree that chocolate, for example, as part of a balanced diet can be regarded as an energy-giving treat, and should not be pejoratively dismissed as unhealthy in a blanket way.

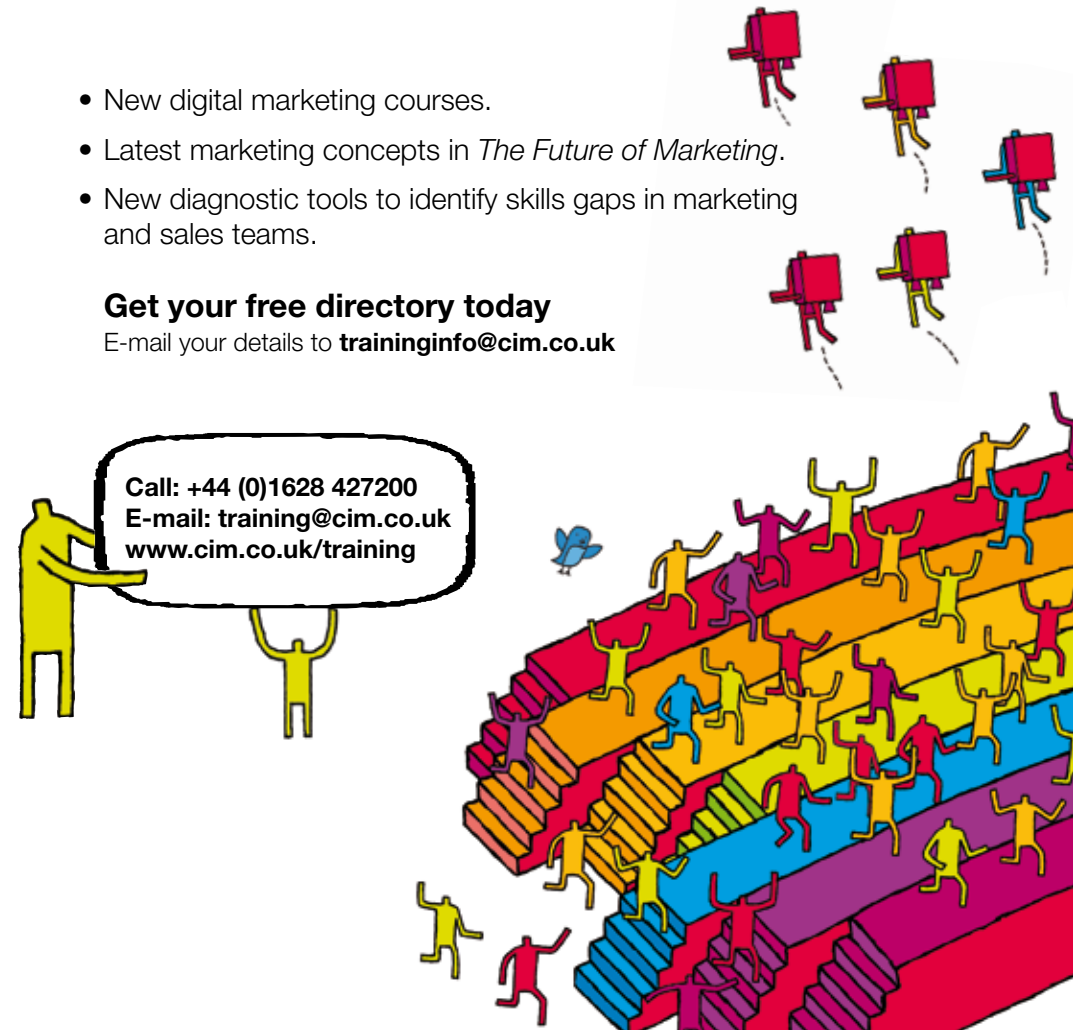
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CASE STUDY

Playboy and Clothing

WH Smith attracted media attention in 2005 for selling Playboy-branded stationery that was designed to appeal to school children. Other companies such as Debenhams and Argos also sold Playboy products but the particular charge laid at WH Smith's door was the fact that these particular products were targeted at children, especially young girls.

At the time, WH Smith argued "that the stationery is being sold as a popular fashion range and that the image is not inappropriate in any way." The company also claimed that "many youngsters do not know what the image stands for". WH Smith stopped selling the stationery nearly four years later, in early 2009.

"The product does not sexualise the child, but the signifier of the brand does"

WH Smith's statement is not without credibility: it is arguable that stationery in itself cannot sexualise children, as opponents to

the product have claimed. Playboy clothing in children's sizes has also been criticised for sexualising young girls, but here again the arguments are not black-and-white. An opinion on the Netmums site, for instance, points out that if the clothes themselves are not 'slutty' (the article in question being a 'not particularly adult' vest top), then the Playboy brand in itself is not sexualising the child. Other views expressed include that of a parent whose daughter was unaware of what the Playboy brand stood for until it was pointed out to her, and then she decided not to wear it as she felt it was 'degrading'.

In the Playboy case, the key is context and the use of signifiers. The stationery and the vest top do not in themselves sexualise children, but the signifier of the Playboy brand is sexual. Marketers wanting to avoid the minefield of whether something might be perceived as sexualising children can apply the concept of signifiers to help see more clearly the appropriateness or otherwise of a product or message.

More explicit allegations of sexualising children arose when some clothing retailers sold padded

bras and thongs in school sizes. Companies such as Primark, Asda, BHS, Argos and Tesco removed the products from sale after extensive media coverage. Children's interest groups and politicians of all parties supported the removal of such lines, with the view frequently expressed that it was surprising that otherwise responsible companies were stocking such products in the first place. However, what may seem a reasonable Government intervention to some is regarded as intrusive by others. When a school in Somerset advised primary school children not to wear thongs, some parents commented that the advice was 'unbelievable' and that schools 'already lay down enough rules'.

A certain level of responsibility should be taken by parents as to what their children are allowed or not allowed to have. Marketers' responsibilities extend so far, but there is a need for parents to exercise judgement; just as they would be expected to do for alcohol, gambling, and other areas that are acceptably marketed to adults, but not to children.

Sources

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Anon (2009) Playboy stationery written off, *Sky News*, 11 February. [online] Available from: <http://news.sky.com/skynews/Home/UK-News/WH-Smith-Playboy-Stationery-Gets-Pulled/Article/200902215220212> [Accessed 27 April 2011]

Anon (2010) Padded bikini for girls withdrawn, *BBC News*, 14 April. [online] Available from: <http://news.bbc.co.uk/1/hi/uk/8619329.stm> [Accessed 27 April 2011]

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SECTION FOUR Ethics

The take-out from these examples is that marketers need to exercise more self-restraint if we are not to have more legislation imposed on us. In the case study the padded underwear was not against the law; but that was no reason, most observers would agree, for believing it was acceptable to market it. Argos allegedly defended the decision to stock g-strings and padded bras by stating that ‘it was the underwear children wanted’.^{xi} A more proactive, responsible and considered approach from the marketing community will reduce the chances of such situations occurring in future.

The second key point on which the ethics of marketing hangs is the concept of ‘pester power’. This refers to children’s abilities to nag their parents into buying something that they want, and to continue to do so until the parent gives in and buys it. The argument against marketing to children is that if the child does not know about the product, they will not exercise pester power in

order to get it. Marketing to children therefore makes life harder for socially disadvantaged families. Ann Sutherland and Beth Thompson’s book *Kidfluence* further divides pester power into ‘persistence’ and ‘importance’. Nagging until the parent gives in is persistence nagging; importance nagging is perhaps more effective, as it emotionally connects with the parent’s desire to ‘provide the best for their children and plays on guilt they may have about not having enough time for their children’.^{xii} The effect of marketing on individual children can therefore be socially and emotionally negative, and on parents too. Under the CPRs, for an advertiser to encourage pester power is illegal.

“We need to exercise more self-restraint if we are not to have more legislation”



SECTION FIVE

Setting reasonable limits

The National Consumer Council's publication 'Watching, wanting and wellbeing: exploring the links' indicates that children who spend a lot of time watching TV, playing on the computer and engaging with adverts are more materialistic than children who engage in other activities.^{xiii} Notably, the effects are 'particularly striking', according to the FPI, 'in areas of relative deprivation compared to children growing up in more affluent areas.' The publication also suggests that materialistic children 'tend to do less well at school and are less likely to help around the house.'^{xiv}

The UK Government's Children's Plan^{xv} has noted these concerns and has commissioned a report on the effects of commercialisation on children.^{xvi} Whilst the Institute supports ongoing research into this area, we would like to draw the distinction between 'watching TV' or 'playing on the computer' versus 'engaging with adverts'. The areas are separate, but lumped together in the above research. If it is found that children are more materialistic from watching TV and playing computer games, that is a very different conclusion from extrapolating the inclusion of 'engaging with adverts' and thus linking the materialism with the viewing of adverts.

It's also questionable whether this is in itself a bad thing. Isolating children from adverts could be worse for their mental development in the long run: they will be less aware of how to distinguish information from advertisement in later life, and less able to select which messages to respond to and which to disregard. The Institute welcomes more research in this area when these objective considerations are taken into account.

Arguably, children will be reached anyway. Many teenagers, for instance, know how to access websites that don't come under parental controls; then discuss them with peers. It's probably no longer technically possible to restrict what messages children and teenagers see. However, this should not be used as an excuse to remove restrictions altogether or give up on the reasonable desire to protect children from messages that could potentially harm their physical or mental health. Defining what is acceptable is harder: there are significant grey areas for marketing to children. The Institute would like to see clarification on some of the interpretative aspects of the CPRs. For example, 'direct exhortation to children' is banned, as is to 'persuade their parents or other adults to buy'. However, it's not difficult

to begin to think of advertising that would fall foul of this, but which the majority of people would not see as something that should be banned. Marketing for zoos, aquariums, and educational sites such as the Science Museum or the National History Museum routinely use marketing that is designed to appeal directly to children, and/or to encourage their parents to take them. This is a good thing; it's important to attract children, engage their interest and create an appetite for knowledge. Banning direct appeals to children in a blanket way is neither desirable nor useful, and so we believe the CPRs need to be amended in the light of this.

Regarding the sexualisation of children, in December 2010 Children's Minister Sarah Teather asked Reg Bailey of the Mother's Union to conduct an independent review into the commercialisation and sexualisation of children. This review has recently been published and the Institute supports the majority of its conclusions.^{xvii}

The Byron Report^{xviii}, published in 2008, quoted earlier research arguing that children are often confused by the blurring between 'advertising' and 'content' – in other words, they can find it difficult to distinguish between when they are being given information, and when they are being sold to. 'Children tend to believe content on sites that include advertising and ... children are confused by the blurring of advertising and content' However, 'the small amount of research that has been done shows that young people seem very good at ignoring advertising. They often show considerable cynicism about it and are critical of mainstream advertising.'^{xix}

"Children can be confused by the blurring between 'advertising' and 'content'"

CASE STUDY

Stealth marketing

A recent spate of marketing agencies using networks of minors to promote products on social networking sites has focused attention on the use of stealth marketing to children.

Children have been offered financial incentives to promote products such as soft drinks, chocolates and processed cheese products. The media attention has been on the fact that the promoted products often tend to be unhealthy or 'junk foods', and that the stealth marketing is therefore a way of evading the laws banning marketing junk food directly to children.

"Companies need to ensure that messages make their commercial origins clear"

However, the promotion of any products to children is illegal, unless it is clear that the message has commercial origin.

This is one of the amendments to consumer law made under the CPRs and also applies to such areas as viral marketing: companies need to ensure it's clear that viral messages

make their commercial origins clear (regardless of whether they are aiming to reach children or not).

In the companies' defence, the agencies stated that teenage 'brand ambassadors' were told to make it clear they were being paid to promote brands, and must also have verbal parental consent to take part. However, one agency's website gave children advice on how to 'make sure it doesn't sound too rehearsed' and to 'look for natural opportunities to drop it into the conversation'. This is where strict observance of the law crosses into less ethical territory.

Marketing to children needs to be assessed against perception: if the targeted child perceives that the peer is expressing their own opinion, regardless of whether the letter of the law has been followed, then it is arguable that the marketing is unethical.

Principal source
Walsh, K. and Dowling, K. (2010) Children paid to plug junk food on Facebook and Bebo. Sunday Times, Sunday 14 February. Available from: http://technology.timesonline.co.uk/tol/news/tech_and_web/the_web/article7026293.ece [Accessed 27 April 2011]



SECTION SIX

Partisan involvement

Companies such as Mars, PepsiCo, Nestlé and Coca-Cola have been invited by the UK Government to become partners in the Change4Life and other government social marketing initiatives. In return for funding, the participating brands will feature on the Change4Life website.

There are pros and cons to this approach. Health Minister Andrew Lansley wants to see more of the cost for social marketing campaigns being absorbed by private companies rather than the public purse, and this is to be applauded. The risk comes where the power of the message and the brand is potentially diluted by some of the partners. The intention is to be pragmatic about the use of processed foods or those that are higher in fat, sugar or salt, rather than 'stigmatising' such foods with pejorative terms like 'junk food'. In response to the questions raised about inviting private companies on board, Lansley stated that "we are more likely to have an impact on the people we most want to impact on if, when they are contemplating buying carbonated drinks, buying sweets or buying crisps, they don't feel that

they've somehow gone outside the framework of responsibility for their health." Lansley went on to argue that it's possible to "eat a bag of crisps, to eat a Mars bar, to drink a carbonated soft drink but do it in moderation, understanding your overall diet and lifestyle, understanding what your energy balance is between calories in and calories out."

On the other hand, it could be argued that by taking part in campaigns such as Change4Life, companies are evading the restrictions placed on directly marketing to children and finding other ways to reach customers. Paying the Government for some exposure and validation instead of paying for an advertising campaign benefits the company in two ways: it potentially costs less, and is legitimised by its Government approval. ^{xx}

"Marketing to children is acceptable when it meets a set of reasonable criteria"

SECTION SEVEN

The Institute's view

The Institute argues that marketing to children is acceptable when it meets the following criteria:

1. Does not promote a product that is, or is widely believed to be, bad for a minor's physical or mental health.
2. Does not sexualise, or is not perceived to sexualise, minors.
3. Does not bombard children or parents with repeated messages.
4. Does not make a product seem to enhance qualities that it does not actually do, or create situations where a child cannot distinguish between puffery and reality.
5. Does not conceal a commercial message as a view of non-commercial organisations or individuals; and does not engage in stealth marketing where peers would reasonably regard the view as that of the child rather than the company, even if the child has stated they are taking part in a project and have parental consent.
6. Does not intentionally mislead.
7. Applies reasonable objectivity in grey areas.
8. Where there is any doubt, promotes the product or service to the adult and not the minor.

Point four is designed to prevent the advertising of products that might

suggest health benefits, for example, that have not been proven. As with marketing to adults, some advertising can create fictional environments that children can identify as 'unreal' without believing that the product contains the effects advertised (toys that turn into animated Transformers, for instance, are acceptable: no child or adult would think that this actually happens when you buy the product).

Point six would cover areas such as, a product designed to appeal to a parent by claiming it contains 'all your child's vitamin C' for the day, whilst also being packed with sugar and preservatives, thus creating a misleading impression of benefits.

With the variance in views about what constitutes 'acceptable' marketing to children, the Institute's advice is to err on the side of caution and pursue marketing that is primarily directed to the parent, not the child. It's advisable to be cautious on marketing that is designed to appeal directly to children, and avoid it altogether with products that could be seen as unhealthy or of questionable benefit; and to bear in mind the ban on direct exhortation to children and the ban on encouraging children to ask their parents to buy for them.

SECTION EIGHT

Final thoughts

The majority of marketers exercise caution when it comes to marketing to children. Most marketers want to see the self-regulatory environment that we currently have continue in a form that is recognisably the one we have today.

The implementation of the CPRs on 'direct exhortation to children' needs revising in the light of the exceptions outlined above, and we would like to see this enacted. Where, for example, a zoo or a museum wants to appeal directly to children, this should be regarded as a good thing and not included in a blanket ban.

For marketers concerned about the ethics and legality of their marketing in terms of

reach to children, the checklist in section seven can be used as a 'ready reckoner'. Where uncertain, check the details of the regulations listed below and err on the side of caution. Personal responsibility is needed in areas such as ensuring data lists include the age of recipients to prove that marketing messages are not unknowingly sent to minors, particularly in countries where this is specified as illegal.

A final rule of thumb is to see the marketing from the point of view of the parent or guardian of the minor who is being reached. This view would prevent the marketing of inappropriate products and services as seen in the case studies.

“The majority of marketers exercise caution when it comes to marketing to children”

Specific laws and regulations to be aware of:

- Consumer Protection from Unfair Trading Regulations (UK implementation of the UCPD).
- CAP and BCAP codes, and their extension to websites as of 1 March 2011.
- COPPA (Children's Online Privacy Protection Act).

Links to the details of all the Acts and Directives are in References on page 22.

SECTION NINE

Practical points

- Ensure you know the age of all contacts on databases. It's illegal to send e-mails to minors in the US, and illegal to market to children entirely in Norway and Sweden, so you need to ensure no e-mails reach minors (in the US) or any marketing messages reach minors (in Norway and Sweden). It's the responsibility of the marketer in the originating country to ensure that these restrictions are met.
- The direct advertising of 'junk food' to children in the UK is illegal. Junk food is variously defined as 'food high in fat, sugar or salt' or 'food with little or no nutritional value'.



Further information

Consumer Protection from Unfair Trading Regulations

[online] <http://www.legislation.gov.uk/uksi/2008/1277/contents/made>
[Accessed July 2011]

Children's Online Privacy Protection Act (COPPA)

[online] <http://business.ftc.gov/privacy-and-security/children%E2%80%99s-online-privacy> [Accessed July 2011]

Section 5 of the CAP and BCAP codes

- Committee of Advertising Practice codes [online]- <http://www.cap.org.uk/The-Codes/CAP-Code.aspx> [Accessed July 2011]
- Broadcast CAP code [online] - <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx> [Accessed July 2011]
- Remit extended to cover websites March 2011 [online] <http://www.cap.org.uk/Media-Centre/2010/Extending-the-Digital-remit-of-the-CAP-Code.aspx> [Accessed July 2011]

The Unfair Commercial Practices Directive

makes specific references to children on pages L 149/25 and L 149/37
[online] - http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/L_149/L_14920050611en00220039.pdf [Accessed July 2011]

The European Advertising Standards Alliance best practice guidelines

[online] - <http://www.easa-alliance.org/About-EASA/EASA-projects/Best-Practice-Recommendations/page.aspx/162> [Accessed July 2011]

A new report from Consumer Focus

highlights where it believes children are not adequately protected by existing legislation or industry self-regulation.

- Consumer Focus (2010) A tangled web: marketing to children, [online] - <http://www.consumerfocus.org.uk/publications/a-tangled-web> [Accessed July 2010]

An earlier paper

No marketer is an island: Marketing and the law is available as a free pdf at <http://www.cim.co.uk/resources/marketinglaw/mktnglaw.aspx>.

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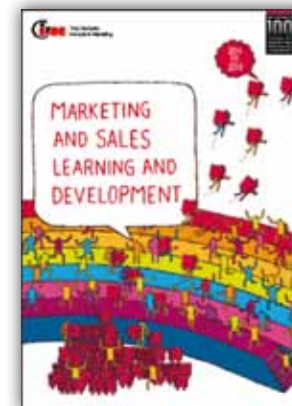
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