

# Res Publica

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The papers published in this issue of Res Publica are four of twelve papers given at a workshop on *The Psychology & Ethics of New Marketing*, hosted by the Centre for Applied Philosophy & Public Ethics (CAPPE) at the University of Melbourne on 6th-7th August 2007.

The convenors of the workshop were Cordelia Fine (CAPPE, University of Melbourne and Australian National University), Jeanette Kennett (CAPPE, Australian National University) and Steve Matthews (CAPPE and School of Humanities and Social Sciences, Charles Sturt University) and Paul Harrison (Deakin Business School, Deakin University).

The workshop was funded by GovNet (CivilStream) and by an ARC Discovery grant awarded to Jeanette Kennett and Neil Levy, and we are very grateful for that financial assistance.

New forms of marketing make use of previously non-commercial contexts, and often the persuasive intentions of the advertiser (or agent) are not revealed. For example, a product may be implicitly marketed by a friend (buzzing),

in a TV programme or movie or by an actor or writer (product placement), by a celebrity or socially influential individual (product seeding), on web-blog sites (brand blogging), by an action group (evangelist marketing), personal email (viral marketing), on-line game, or interactive website (advergaming). Marketing techniques are evolving fast, leaving research and policy behind.

In a two day workshop, participants from philosophy, psychology, marketing and consumer advocacy came together to discuss concerns that arise from new marketing techniques, including issues of disclosure and transparency, the blurring of commercial and non-commercial content; the merging of marketing, entertainment, community and culture, the degradation of values, and the limits of our psychological capacities to resist marketing messages.

Full versions of all four articles in this issue will soon be available on the Res Publica website at <http://www.cappe.edu.au/publications/res-publica.htm>.

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## Marketing, Intimacy and Vulnerability

by Jeanette Kennett and Steve Matthews

Jeanette Kennett and Steve Matthews take a look at the insidious growth of undercover marketing, and the particularly damaging effects it can have when directed at children.

**W**hat happens if we wake up one day and we find out that virtually all of our relationships...between us and our fellow human beings are commercial; we find out that virtually every relationship we have is a commercially arbitrated relationship with our fellow human being. Can civilisation survive on that narrow definition of how we interact with each other?—Jeremy Rifkin

John is standing in a hotel bar when Natasha approaches him. After some small talk she places ten dollars in his hand saying “why don’t you buy some drinks—make them Absolut vodkas—I’ll be right back”. Feeling pleased with himself, John purchases the drinks, and then settles into a comfortable chair. Natasha soon returns, and they begin to chat about the best places to drink. Natasha then shifts the discussion to Absolut vodka. This is something she and her friends always drink, she says. “There are so many flavours now, and it works so well with lime and soda.”

If Natasha plays her part well John won’t realise that, unfortunately, it wasn’t his good looks that grabbed her attention. Natasha is an agent for a company that promotes products through undercover marketing techniques. In fact John is simply the latest target for Natasha of hundreds that month. Single guys in bars are fair game for the marketing sting: approach the target, buy him a drink, talk it up, move on to the next customer. Apart from the fact that Natasha hardly touched her drink, John has no reason to be suspicious of her motives. From his point of view, it’s been a pleasant social encounter, he’s feeling good about himself, and after all, the vodka really was quite fine.

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Undercover marketing, as the name suggests, is a form of marketing in which a person is exposed favourably to a product or service, and yet this marketing event is not revealed as a piece of advertising; rather, what is really taking place is covered up. It is covered up precisely because the marketing message will be more effective if it is presented as a piece of friendly advice, a social encounter, rather than the commercially motivated activity that it really is.

Ordinary life settings are being utilised by marketing companies in ever-increasing ways, as mainstream methods of advertising lose their effectiveness. How pervasive is this? We don't know; by its very nature undercover marketing is hidden. We do know that the mainstream advertising budgets of product manufacturers are diminishing, and this is because their research shows that mainstream marketing techniques are becoming progressively less effective. Our town-spaces, our air-waves, our newspapers, even the internet, are awash with advertising. Within this flood, new technologies, such as digital video, now make it possible for people to avoid annoying ads. In particular, tech-savvy teenagers, equipped with computers and iPods are switching away from contexts which hitherto had provided the fertile grounds for marketing activities. Producers of goods and services now realise that their mainstream marketing budgets are no longer cost effective, and so they are well-motivated to find new and imaginative methods to break through the firewall of marketing resistance and into our social spaces where peer-to-peer communication about products is vastly more effective than traditional market-oriented spaces.

Sometimes these social spaces are very intimate to say the least. Indeed, for all you know, even your best friend has been flogging products to you. This sounds far-fetched, except that there is plenty of evidence that, for some people at least, it is true. Rob Walker, a writer for the *New York Times Magazine*, did extensive research on undercover marketing, and he noted many such cases where our intimate spaces have been hijacked for the purposes of advertising. He wrote of one volunteer, Gabriella, that

*she took [some Al Fresco sausages] to a friend's house for dinner and (she reported back) "explained to her how the sausage comes in six delicious flavors". Talking to another friend whom she had already converted into an Al Fresco customer, she noted that the product is "not just for barbecues" and would be good at breakfast too. She even wrote to a local priest known for his interest in Italian food, suggesting a recipe for Tuscan white-*

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very nature undercover  
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*bean soup that included Al Fresco sausage. The priest wrote back to say he'd give it a try.*

That was in 2004. Even back then the marketing firms had recruited thousands of participants for some of their promotions. The US company BzzAgent had

60,000 agents on its books; another company Tremor had recruited an astonishing 240,000 teenagers. Since then the marketing firms have grown in size, and number. In Australia there is evidence of similar activities. In 2003 it was reported that a company, Love PR, had what it called the F2F army, a group of agents sent out each week to bars, shopping centres and other public spaces to approach potential clients in one-on-one encounters of the Absolut vodka type we considered above. The effectiveness of these undercover promotions is not confirmed just by the re-direction of marketing budgets towards word-of-mouth techniques; there is direct evidence that they work. For example, the first campaign by BzzAgent took a minor work, *The Frog King*, by first time novelist Adam Davies, and sold an estimated year's worth of product in three months. Another book, *The Art of Shen Ku*, also promoted by BzzAgent, sold two and a half times its original printing a year after first publication, "a near miracle for a backlist title" according to Linda Tischler writer for *Fastcompany Magazine*.

Now it might be argued that undercover marketing is simply another routine departure from traditional ways of advertising, just a new form of product placement. But as Jonathan Ressler—an advocate of undercover marketing—explains,

*People are always saying "I know product placement—that's when people put stuff in movies." Well yes, kind of; that's definitely traditional product placement. But real life product placement is, just that, placing stuff in movies but the movie is actually your life.*

Ressler hits the nail on the head. In normal advertising contexts, even product placement cases, we know that we are viewing an advertisement, and we are therefore availed of the appropriate knowledge and tools to evaluate what is going on. However, undercover marketing does indeed situate the 'viewer' as a participant within the 'advertisement' itself, and what is more a participant who does not know their true role. In this sense, undercover marketing is quite reminiscent of *The Truman Show*, a film about a man whose entire life is a construction for a reality television show. Everyone, including his 'friends' and 'family', are actors. All of his close and cherished 'relationships' are inventions for the purposes of commerce.

By definition almost, what enables a sham relationship to proceed is its deception. *The Truman Show* works only if its main character and victim Truman Burbank makes choices that allow his invented society to continue to facilitate the running of his falsely constructed life. This requires very tight controls over the nature and scope of the disclosures from those around him. These disclosures are a means to the single purpose of maintaining ratings for *The Truman Show*; ultimately then a commercial purpose. Likewise, though on a less grand scale, disclosures between a marketer and her target must also aim at creating buzz around a product. Moreover, the importance of not disclosing the true nature of an undercover marketer's activities, is the risk that the intimacy of the transaction, the thing that makes doing commerce there so effective, would be fatally undermined.

In undercover marketing there are three key differences to traditional marketing techniques. Undercover marketing crosses the boundary from a commercial context to a

social one; it targets a specific individual or set of individuals, such as a person in a bar, rather than a generic group; and it involves deliberate non-disclosure of the real intent of the communication. Now we don't object to some cases of boundary-crossing and targeting. After all, apart from (perhaps) an aesthetic objection, the appearance of products in books and films seems harmless enough, and we should expect as perfectly

rational, advertisements for specific types of products to be present in demographically appropriate areas, e.g., stockfeed in farming areas. We do, however, think that a failure to disclose one's marketing intention is morally objectionable when it enables the marketer to utilise an intimate space in order to render as vulnerable the target of the message. We think that undercover marketing takes advantage of the trust and openness that intimacy delivers, and in doing so it undermines and corrupts those values. Furthermore, it by-passes our ordinary capacities for scrutiny of products, and in so doing disables (temporarily) the checks and balances normally in play when we find ourselves in a traditional marketing environment that is transparent.

We think that a useful comparison can be made here to the case of marketing to children, in which the targeting of children for commercial purposes is abusive precisely because it seeks to exploit their vulnerabilities as cognitively limited beings. In other words, the moral wrongness attaching to this form of marketing is made possible through the exploitation of an inherent vulnerability, just

as the moral wrongness of undercover marketing occurs when agents exploit an intimate connection and thereby *make* the target vulnerable. As we will see later there are even cases of undercover marketing involving children, and so in such cases children are encouraged to see the new marketing techniques as normal behaviour. Using children as agents in undercover marketing is thus doubly bad, for it takes their under-developed sense of morally appropriate relationships and tacitly supports deceptive marketing practices for personal or commercial gain. That is, it regards children's developing sense of intimate relationships as legitimate vehicles for deceptive conduct for personal gain, at a point where children ought to be learning that our intimate relationships are essentially characterised by honesty and goodwill. It is worth adding that its normalisation of these exploitative practices, aside from the moral obnoxiousness just noted, also looks to be self-undermining: the exploitation of a developing sense of intimacy provides a barrier to learning the true value of its associated moral emotions. In other words, marketing that seeks to exploit intimacy will in the end destroy that intimacy. It seems, then, that this form of marketing will in the end fail in its own terms.

Marketing to children is big business, and getting bigger. In the US, for example, marketing to children is the fastest growing area of advertising. As Tom Glaister, a writer for ConsumerAffairs.Com, notes "in 1990 around \$100 million was spent on advertising targeted at kids on television and just a decade later that number was up more than twenty times to over \$2 billion". It is common practice now for companies manufacturing children's products to employ psychologists whose brief it is to determine the most effective ways to separate them, and their parents, from their money. As Lucy Hughes, vice president for *Initiative Media* says, "The more insight you have about the consumer, the more creative you'll be in your marketing strategy. So, if it takes a psychologist ... yeah, we want one of those on our staff."

Of course one does not need to be a psychologist to realise that children are less suspicious, easily swayed by offers of toys or gifts that accompany products, and less able to exercise self control. As the philosopher Gerald Dworkin writes:

*[Children] lack some of the emotional and cognitive capacities to make fully rational decisions. It is an empirical question to just what extent children have an adequate conception of their own present and future interests, but there is not much doubt that there are many deficiencies. For example, it is very difficult for children to defer gratification.*

Children in varying degrees below the age of about 12 exhibit failures of reflection, failures to calculate the consequences—both causal and moral—of their actions,

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## *Undercover marketing regards children's developing sense of intimate relationships as legitimate vehicles for deceptive conduct for personal gain*

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and failures to recognise the commercial intentions of advertisers. All of these limitations are known by marketing firms and they take advantage of them. In recent years companies have more frequently targeted schools and day care centres with their promotions, 'free gift' programs, and through associations with famous cartoon names and characters, especially in fast food and toy lines. (In 2007 the proliferation of Shrek-emblazoned merchandise has been particularly noteworthy.) Another example we came across recently was the 'Frosted Flakes' maths book. Tom Glaister was asked to help a friend's 11 year-old son with his homework. The maths book had been given out for free and contained problems with product placement. For example: "Will is saving his allowance to buy a pair of Nike shoes that cost \$68.25. If Will earns \$3.25 per week, how many weeks will Will need to save?" Glaister:

*As Danny, a bright kid, pencilled in 21 weeks, I flicked through the pages of the book in horror; Subsequent questions invited us to calculate the grams of fat in a Burger King Whopper; followed by some geometry questions involving an Oreo cookie, at which point the textbook helpfully reminded us that "the best-selling packaged cookie in the world is the Oreo cookie".*

On a different front advertisers well understand the psychology of pester power, the ability of persistent children to cause their parents to cave in to the demand for a commercial product. Indeed, a US study by *Initiative Media* was designed precisely to work out what the most effective strategies are in getting a child to successfully nag his parents. The purpose of the study was not to help parents cope with nagging children, but to lift market share by helping children nag more effectively. The media company analysed the levels of persistence required for parents to give in, and the style of nagging that is most effective. There were no real surprises here. Although mere repeated entreaties to buy risked getting a parent offside and angry, they were statistically more effective than not trying at all. However, the most effective strategy seemed to be to combine persistence with claims that the product will improve the child's health or education, and especially claims that the child will be socially isolated if they do not have the product. The response to the research was therefore to design ads displaying the importance, or quality of a product, with specific repeatable phrases; to present ads containing short narrative sequences of successful nagging children; and to create ads depicting children without the product as losers in the eyes of their peers.

The responses by some marketers to criticisms of their practices are revealing. Typical of what they *say* are responses that indicate either a lack of understanding or a lack of appreciation of the moral significance of what is at stake. For instance, when asked about the Initiative

study, Lucy Hughes commented,

*Somebody asked me, "Lucy, is that ethical? You're essentially manipulating these children." Well, yeah, is it ethical? I don't know. But our role is to move product, and if we know you move products with a certain creative execution, placed in a certain type of media vehicle, then we've done our job.*

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## *The effect is to contaminate their developing sense of what is morally valuable about their close personal relationships*

And typical of what some producers and marketers *do* indicates a sometimes cynical attitude towards the moral aspects of advertising to children. An example type here are the many bandaid responses to objections to marketing junk food to increasingly less active and increasingly less slim children. One instance of this type of response was the infamous Cadbury 'Get Active' program, a chocolate bar voucher system in the UK. Children there were able to accrue tokens from chocolate bars which could then be swapped for sports equipment. The Food Commission calculated that one basketball costing 10 pounds required the purchase of chocolate bars costing 70 pounds, i.e., about 170 chocolate bars. At 40,000 calories, a ten year-old, they worked out, would have to play basketball for 90 hours to burn it all off.

So, our argument is that in both the undercover case and the case of children, marketers rely on the vulnerability of a target in order to be effective advertisers. The responses of the marketers themselves indicate either a lack of awareness of the moral issues that are in play, or a surface understanding of them as revealed by practices like that of Cadbury above. Now we do not object to all advertising to children. Our position is that it ought to take place with a proper recognition of the ways in which children are susceptible or at-risk. They may become victims directly if they are persuaded to obtain products that are not good for them; they may become victims indirectly if they are trained to become persons who view commerce and personal gain ahead of valuable social relationships—pester power ads seem to have this effect.

Perhaps it will be objected that manipulating children as happens in marketing is no worse than something that already takes place—don't we already trick children into doing a variety of things? If I promise my child we will visit the park if he does his homework, am I any better than a marketing person who promises he can have a fast food hamburger if he nags his parents? Well, in fact there are two fundamental morally relevant differences in the cases. When a parent acts paternalistically (with

justification) she prevents the child from doing what he wants because such prevention is in the best interests of the child. Forcibly holding back a child about to run across a busy road is one of many obvious such cases of justified paternalism. In the homework case good study habits may need to be kick-started, even perhaps via the questionable method of bribery, yet the ultimate aim is a good one. The second difference focuses on exposing children to a technique in which using others is viewed as a normal activity. Training a child to treat a parent as a means to obtain a material good is training that child to view the parent as a mere vehicle for getting this material possession.

In researching this issue one of the most disturbing practices we came across was one which combined marketing to children with undercover marketing. For in making the practice of undercover marketing appear normal to a child the effect is to contaminate their developing sense of what is morally valuable about their close personal relationships.

In 2001, marketing executives of the company Hasbro were deciding which campaign to use in the release of their new hand held video game POX. Since a theme of the game involved the release of a virus by aliens into the human population the marketing group thought it might be thematically appropriate to use a viral marketing technique. (Viral marketing is a form of word-of-mouth marketing similar to undercover marketing.) The program involved months of detective work in which Hasbro operatives went to schools, video arcades and skateboard parks in the Chicago area in their quest to discover the 'coolest' kids in the 8-13 year-old range, what they called 'alpha pups'. They would ask a boy who he thought was the coolest kid around. The answer might come back "Mick is the coolest"; then they would go to Mick and ask him. And so on. Eventually they would find a child who said "I am the coolest". Once enough such children were found they were invited to Hasbro headquarters and placed in a room with a two-way mirror. Then the voice of a narrator blasted through the PA: "Mankind's only hope is to enlist a secret army of the world's most skilled hand-held game players...you are the first humans chosen to be POX special agents." These children were then given an intensive workshop on how to work the game. They were given free copies of the game, a backpack, and sent out to buzz the product to friends and acquaintances. Their mission was to create as much hype surrounding the product as possible, but all in secret; they were to take the idea of being a secret agent seriously.

The issue of central moral concern in the case of children performing

undercover marketing is that it normalises a practice that is morally indefensible. Impressionable pre-teens coming to see their relationships as fair game for commerce makes development of their moral sensitivities in this area problematic to say the least. In undercover marketing to friends we have noted that the values of intimacy are disabled and corrupted. Children have not yet fully internalised the importance of the values intrinsic to their close relationships, and so exposure to a practice that is utterly at odds with those values places at risk their proper development in this area. There is already a sense that many areas of life are under threat from over-commodification. The commodification of our relationships at such a young age takes this threat to new heights.

We do not object to marketing in its proper place, which respects our capacities to make informed choices, and which respects areas of life that hitherto have been properly free of commercial imperatives. However, marketers more and more are crossing over into our intimate social spaces, setting up colonial outposts even in the minds of children, whose desires for their products are corrupting the ways they see each other and their parents. In this essay we have identified the increasing ineffectiveness of mainstream advertising as a reason why advertisers are seeking out alternative new marketing techniques. It is not surprising that marketers, though at this point still constrained by the law, will nevertheless seek the path of least resistance in their desire to increase market share. And the path of least resistance is one that involves injecting a product message into those who cannot even know this is what is happening to them, or those who are too young to be able to know or care. In either case it is the vulnerable who are being taken advantage of.

Of course it is not in itself harmful that children should want toys, fast food and new designer clothes, or that there should be some amount of product placement outside the traditional commercial arena. This is all partly a matter of degree, but in recent years we have reached a threshold point where the marketing message pervades all others, where social communication is progressively accompanied or even mediated via some commercial 'leitmotif'. And the worry here is that these practices are encroaching on our social spaces gradually,

and in a way that makes them impossible to monitor, for after all, this is marketing that is covert by its very nature. The metaphor of the boiled frog is often alluded to in contexts where gradual erosion of an important good leads finally to its fatal loss. Place a frog in boiling water and it will jump out; but gradually bring it to the boil and it will die because

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its thermal senses are only attuned to sudden shifts. Marketing that gradually works its way into our intimate social spaces in the ways described here may lead in the end to a social world in which, as Rifkin notes, nearly all our relationships are commercially arbitrated ones. That narrow definition of how we interact with each other is surely devoid of the values we regard as essential to the nature of a morally literate society.

**Sources used in the preparation of this article include:**

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# Marketing Medicine—the failure of self-regulation

by Michael Johnston and Gordon Renouf

Michael Johnston and George Renouf of consumer advocacy group *Choice* reveal the remarkable creativity and effectiveness of pharmaceutical marketing in Australia. They argue that its effects can be harmful, and that the current self-regulatory framework does not adequately prevent or discourage these.

1.

## Introduction

Pharmaceuticals are big business. In 2006, global sales of pharmaceuticals were US\$643 billion and had grown, on average, 10% per annum since 1999. Nearly 50% of sales are made by the 10 biggest pharmaceutical companies. Australia represents about 1% of the world market for pharmaceuticals with turnover of \$17 billion, including about \$4 billion in exports.

Developing new drugs and moving them through various stages of clinical trials before they can be brought to market is expensive. But once a medicine is on the market the ongoing manufacturing costs are relatively low. Pharmaceutical companies also spend large amounts of money on marketing their medicines. Little information is available on the actual amount pharmaceutical companies spend on marketing but some estimates suggest that it is more than they spend on research and development. The Commonwealth Government's Pharmaceutical Industry Action Agenda 2001 discussion paper estimates that 35% of the price of a drug pays for marketing, twice what is spent on research and development.

Pharmaceutical companies have a strong incentive to market their drugs aggressively. A company holds a patent over a medicine for a limited period before generic versions of the drug can be manufactured by lower-cost producers. Like any business pharmaceutical companies will want to generate the highest possible turnover for their product. During the patent period their ability to generate sales without price competition from generics is greatest because they have a monopoly on manufacture and distribution. Marketing of pharmaceuticals to consumers, doctors and pharmacists is an important way in which companies stimulate demand and generate this turnover.

## 2. Why should we be concerned about pharmaceutical marketing?

When correctly prescribed, pharmaceuticals provide enormous benefits to consumers. The pharmaceutical industry has provided valuable medicines to the world



which have contributed to increasing life expectancy and improved health outcomes. However, used incorrectly or inappropriately, pharmaceuticals have the potential to cause significant harm. As consumers, we want those entrusted with our health to prescribe medicines based on the best independent information available. Pharmaceutical marketing is intended to increase the use of a particular medicine or promote its use over an alternative. This may not be in the best interests of consumers, particularly where that marketing is unethical or inaccurate.

In Australia, the commonwealth government subsidises the cost of approximately 2,500 prescription medicines through the Pharmaceutical Benefits Scheme (PBS). The PBS ensures that Australian consumers have access to the drugs they need at an affordable price. PBS-listed medicines are currently available to consumers for a copayment of \$30.70 for general patients and \$4.90 for people with healthcare cards.

Similar pharmaceutical subsidy schemes operate in a number of OECD countries. However, in the US, where there is no PBS type structure and where the price of pharmaceuticals is largely determined by the market, prices, on average, are a staggering 160% higher than in Australia.

In 2006-07, the cost of the PBS to the commonwealth government was \$6.2 billion. The cost of the PBS has increased at an average of 10.5% per annum since 1997-98 and is forecast to continue to grow rapidly as the population ages. The government has sought to mitigate this cost by increasing patient copayments. While it has been argued that some level of copayment is necessary as a disincentive for inappropriate use, there is some evidence that the current copayment amounts act as a barrier to access to needed medicines for some consumers. Inappropriate use of medicines increases the cost of the PBS, wastes taxpayers' money, and makes further rises in the copayment more likely. As taxpayers and consumers, we have a strong interest in ensuring the PBS is subsidising only the appropriate use of medicines.

### 3. Regulation of pharmaceutical marketing

In Australia, pharmaceutical marketing is regulated in a number of ways. *The Therapeutic Goods Act 1989* prohibits direct-to-consumer advertising (DTCA) that names the drug for all prescription medicines and some medicines which can be obtained over the counter at a pharmacy. However, these drugs may be marketed to medical professionals subject to the other forms of regulation discussed below. Other non-prescription medicines can be marketed directly to consumers.

Pharmaceutical advertising and marketing is subject to the prohibitions on misleading or deceptive conduct and false or misleading representations in sections 52 and 53 of the *Trade Practices Act 1974* (TPA). If a company engages in this conduct, a court may order it to cease the conduct and correct the representation but cannot impose a fine. The court may also award damages to a person who suffers loss from the conduct. There have been some cases taken under the TPA mainly involving one pharmaceutical company taking action against another.

In addition, advertising of medicines is covered by a number of self-regulatory schemes which are administered by industry bodies. Action taken under the self-regulatory mechanisms does not prevent action under the other forms of regulation.

#### Self-regulation of advertising of prescription-only medicines

Advertising of prescription-only medicines to medical practitioners is regulated by the Medicines Australia (MA) Code of Conduct. MA is the peak body for the pharmaceutical industry in Australia. Not all pharmaceutical companies are members of MA but all companies, member and non-member, are required to comply with the Code as a condition of approval to market drugs in Australia.

The Code requires pharmaceutical companies to ensure that all promotional information and claims made about their drugs are balanced, accurate, correct, fully supported by data and not misleading. It also stipulates what types of interactions are allowed between pharmaceutical companies and medical professionals. This includes:

- entertainment: "interactions between companies and healthcare professionals must not include entertainment...an exception to this requirement is that educational meetings of two or more days' duration may include a modest opportunity for unstructured and individual recreational activities at the delegate's own expense";
- hospitality: the hospitality must be secondary to the educational content and the company must not pay for family to attend; and
- travel: economy or business airfare can be covered by the company as well as the accommodation, but not for the healthcare professional's family.

The Code was first established in 1960 and has been revised several times. In 2006, the Australian Competition and Consumer Commission (ACCC) authorised version 15 of the Code on the condition that members of MA provide a report every six months on how much they spent on educational seminars. MA objected to this clause and sought review of the ACCC's decision from the Australian Competition Tribunal. The Tribunal affirmed the ACCC's decision in August 2007. MA must make the first report publicly available by March 2008.

This additional condition has been welcomed by *Choice* and others and will do much to increase the transparency of pharmaceutical companies' expenditure on 'educating' doctors. However, disclosure will not solve the problem of bias arising from 'education' from drug companies. Seminars are just one way in which pharmaceutical companies influence doctors. There also needs to be greater transparency, and in many cases prohibition, for other insidious mechanisms pharmaceutical companies use to promote drugs.

The enforcement of the Code operates in two ways. Firstly, the Code of Conduct Committee adjudicates complaints made about promotion. In 2006-07 there were 42 complaints made to the Committee. Half of the complaints were lodged by healthcare professionals and competitor companies.

The Code also operates through the Monitoring Committee. Its role is to monitor advertisements already in the public arena, make recommendations, and refer any possible breaches to the Code of Conduct Committee. In 2006-07, the Monitoring Committee considered 2,723 items, including 2,128 invitations to company-sponsored educational meetings, 103 websites, and 173 advertisements. Although it did identify a number of matters which concerned it sufficiently to seek further information from the relevant company, it did not refer any possible breaches to the Code of Conduct Committee.

The major weakness of the Code is the ineffective sanctions which are unlikely to deter repeat breaches of the Code. The maximum fine that can be imposed is \$200,000. The 2007 Code of Conduct Annual Report showed that the average fine imposed in that year was \$47,750. A pharmaceutical company is likely to find that displaying a misleading advertisement and then, in the unlikely event that they are detected, being fined less than \$200,000 for breaching the Code is financially justifiable. The advertisement may be in the public domain for months before a breach is found and the exposure and

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*the exposure and subsequent revenue generated are likely to be considerably greater than the fine*

subsequent revenue generated are likely to be considerably greater than the fine.

To be an effective deterrent a fine must exceed the profit to be gained from a violation taking into account the likelihood of detection and a fine being imposed. In 2006-07, Pfizer Australia was fined a total of \$250,000 for three violations of the Code. In 2005-06, Pfizer Australia had revenue of \$1.1 billion and an after-tax profit of \$62 million from pharmaceutical sales. In that year it spent \$285 million on marketing and advertising. Fines of \$250,000 will not have much of an effect on an organisation of that size.

#### **Self-regulation of advertising of non-prescription medicines**

There are three self-regulatory codes which cover the advertising of non-prescription medicines. This includes over-the-counter (OTC) medicines and complementary medicines, most of which can be advertised directly to consumers and medical practitioners. There is a restriction on DTCA that names the drug for some medicines which are available from the pharmacy without a prescription but which must be dispensed by a pharmacist.

All advertisements and generic information about therapeutic goods directed to the public, including OTC and complementary medicines, must comply with the Therapeutic Goods Advertising Code. The Code requires that an advertisement for a therapeutic good must not, amongst other things:

- be likely to create unrealistic expectations of the product's effectiveness, or exploit consumers lack of knowledge;
- bring about fear or distress or be likely to lead persons to believe that they are suffering from a serious ailment; and
- suggest that the product is infallible, unailing, magical, miraculous, or that it is a certain cure.

Complaints about advertisements directed to the public can be made to the Therapeutic Goods Advertising Code Council. The complaint is considered by the Complaints Resolution Panel which can request a company to withdraw an advertisement or take corrective action but does not have the power to enforce these requests or impose penalties. If the company does not comply with the request, the Panel can recommend that the Secretary of the Department of Health and Ageing order an advertiser to withdraw, correct or not repeat a misrepresentation. Where necessary, the TGA can take action to remove the product from the market. The major weakness of the Code is that there are no penalties and there is very little disincentive against breaching the Code.

Complaints about non-prescription pharmaceutical advertising directed to medical professionals are handled

by two other industry bodies. If they relate to non-prescription pharmaceuticals they can be made to the Australian Self-Medication Industry and if they relate to complementary medicines they go to the Complementary Healthcare Council. There is little information available on the effectiveness of these two self-regulatory mechanisms.

#### **4. Forms of pharmaceutical marketing in Australia**

Pharmaceutical companies in Australia have employed some innovative strategies to market their medicines. They have found ways to circumvent the prohibition on DTCA and increase awareness of their medicines among consumers. Direct brand-name marketing to medical practitioners and pharmacists is permitted, but the commercial motive of pharmaceutical companies raises questions about the independence of the information provided.

##### **Marketing to consumers**

In its 2001 report, the Council of Australian Governments' National Competition Review of Drugs, Poisons and Controlled Substances Legislation considered the restrictions on DTCA for prescription medicines in Australia and said:

*[The ban] is intended to promote and protect human health by ensuring that the use of medicines is based on objective, expert advice. In particular, the medicines selected need to be appropriate for the individual consumer and the condition(s) from which that consumer is suffering.*

Most governments have recognised the potential harm in treating pharmaceuticals like an ordinary product with a low risk of harm (such as laundry detergent) and/or where the consumer has a high likelihood of possessing the skills to assess the value of the product in their circumstances (such as clothing). DTCA that names prescription medicines is prohibited in all OECD countries except the United States and New Zealand.

The prohibition on that type of DTCA has not deterred pharmaceutical companies from employing other sophisticated marketing strategies to increase awareness of their drugs among consumers, including:

- sponsoring research, conferences and patient groups;
- media releases which blur the boundaries between reporting medical news and drug advertising; and
- experimenting with gimmicks such as money-back guarantees for prescription drugs.

Some of these activities could be considered 'disease mongering', which has been defined as "widening the boundaries of treatable illness in order to expand markets for those who sell and deliver treatments". For example, pharmaceutical companies have raised concern about certain conditions and prompted otherwise healthy people

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to seek treatment. Moynihan provides the example of alliances between drug company staff, doctors and consumer groups, which have appeared in many disease categories. He says:

*Ostensibly engaged in raising public awareness about underdiagnosed and undertreated problems, these alliances tend to promote a view of their particular condition as widespread, serious and treatable. Because these "disease awareness" campaigns are commonly linked to companies' marketing strategies, they operate to expand markets for new pharmaceutical products. Alternative approaches ... are played down or ignored.*

It is important that people are aware of health risks and symptoms which would indicate they should seek medical attention. However, pharmaceutical companies or alliances in which they are involved are not the best source of this information.

Patient (or illness) groups have also developed relationships with pharmaceutical companies because it may provide funding which is otherwise difficult to obtain through fund-raising and other means. For example, Roche recently assisted Kidney Health Australia by sponsoring a brochure on kidney disease. This publication stated that kidney disease is very likely to cause renal anaemia. Roche has developed a drug called Mircera, which has not yet been approved for use in Australia, to treat renal anaemia. The drug is no more or less effective than similar drugs currently on the market but is more convenient because it does not need to be taken as often. While it is possible that Roche provided the sponsorship for purely altruistic reasons, it raises the question as to whether they have more commercial reasons, and compromises the independence of the information provided.

Pharmaceutical companies have also used gimmicks which may appeal to the public or raise public awareness of their medicine. For example, in 2006, Bayer Healthcare offered a money-back guarantee for its drug Levitra,

which is used to treat erectile dysfunction. The offer was advertised to the public without mentioning the brand name. This is a marketing gimmick used in a range of industries but which is entirely inappropriate for the pharmaceutical industry. Prescription medicines should be prescribed by a medical professional, based on clinical need and not the availability of a money-back guarantee.

Choice made a complaint to MA about the marketing of Levitra. The Code of Conduct committee subsequently required Bayer to withdraw the advertisement, send a corrective letter and print a corrective advertisement. This imposes some cost on Bayer but is an extremely small sanction given the exposure Bayer would have received for Levitra. For Bayer, it was probably worth it.

### **Marketing to doctors**

Pharmaceutical companies market their products to medical practitioners through representatives that regularly visit doctors to promote medicines, and by advertising in doctors' publications and medical prescribing software. They also conduct educational seminars which may do more than merely inform. Doctors are the key targets of pharmaceutical marketing in Australia as "they are the decision makers because of their power to prescribe".

A recent study found that while many medical practitioners acknowledge that pharmaceutical representatives and advertising can affect the prescribing behaviour of other doctors, most denied that it had any effect on them. Other studies confirm pharmaceutical companies' reach. Campbell and others surveyed 3,167 physicians in six specialties and found that 94% of physicians reported some relationship with the pharmaceutical industry. Most of the relationships involved receiving food (83%) or drug samples (78%). Moynihan believes:

*The ties between doctors and drug companies fundamentally compromise public trust in the profession and constitute a costly threat to public health.*

Representatives employed by drug companies visit doctors from all specialties (including general practice) in surgeries and hospitals. The representatives promote drugs and offer gifts, trips to conferences and 'educational seminars'. The Code of Conduct now limits some of the more extravagant gifts such as holidays, but pharmaceutical companies are still able to provide smaller gifts such as pens and note pads. Despite their seeming triviality, there is significant evidence that these gifts of negligible value can influence the behaviour of medical practitioners, perhaps more than large gifts.

A further concern is the quality of the information provided by pharmaceutical representatives. While the activities of drug representatives are supposed to comply with the MA Code of Conduct, it is difficult to regulate exchanges which are conducted behind closed doors. A 1995 study in the US found that 11% of claims by pharmaceutical

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*It is important that people are aware of health risks and symptoms which would indicate they should seek medical attention. However, pharmaceutical companies ... are not the best source of this information*

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*[Pharmaceutical companies] have the ability to monitor the impact of representatives' visits on individual doctors' prescribing practices*

companies' representatives speaking at hospital meetings were inaccurate and that all those inaccurate statements were positive about the drug. Some suggest that pharmaceutical representatives are an important source of information for medical practitioners. However, the representative's motive to increase sales is in direct conflict with the need to provide accurate unbiased information. Alternative systems are available to provide doctors with unbiased advice and information about medicines, including the small number of independent 'detailers' employed by the National Prescribing Service in Australia and a similar more extensive system operating in New Zealand. In New Zealand, a system of independent pharmaceutical information has evolved managed by the Independent Practitioners Associations (similar to Australia's Divisions of General Practice).

A survey of general practitioners by consumer watchdog, *Which?*, found that GPs in the United Kingdom see 4.2 pharmaceutical representatives per month and receive five promotional mailings per week. One GP in the study recorded 31 contacts from 22 companies in one month. While no similar study has been conducted in Australia, the practice of representatives visiting doctors appears to operate on a similar scale. This promotional activity is putting further pressure on GPs' time. If the information they receive is not independent or even reliable, it is not an effective use of their time.

In many cases companies have the ability to monitor the impact of representatives' visits on individual doctors' prescribing practices. In the US, pharmaceutical companies develop detailed records on individual doctors' prescribing habits by collating information purchased from a range of sources, including the American Medical Association. This enables them to monitor change in prescribing habits over time and to identify which doctors deliver the best returns on investment. The Australian Medical Association also has a list of doctors which it sells to pharmaceutical companies. This does not include the level of detail of the American list but pharmaceutical companies may be able to compile information from other sources, including pharmacies.

Pharmaceutical companies print advertisements in publications, such as *Australian Doctor* and *Medical Observer* which are aimed at prescribers, mainly general practitioners. General practitioners receive these newspapers free of charge without asking for them but are able to opt out. Advertisements in the newspapers are required to conform to the MA Code of Conduct.

*Choice* undertook some analysis of advertisements appearing in *Australian Doctor* and *Medical Observer* over the financial year 2005-06. In that year both publications included about 1,200 pages of advertisements for pharmaceuticals, of which around 85% was for prescription medicines.

*Choice* found there was a high correlation between the level of advertising for a drug and the level of PBS expenditure on that drug. The cause of this association could be advertising leading to increasing prescribing. Causation could run in the opposite direction—large sales could lead to increased advertising by providing the revenue to pay for it. It is also possible that both causes operate at the same time in a cycle.

Regardless of the direction of causation, it is the newer, more expensive drugs that are advertised the most in medical newspapers. Newer drugs are not, however, necessarily more effective than older products, including those off patent.

An important finding was that 72% of advertisements use some form of emotional appeal, for example smiling people or cartoon characters. In particular some advertisements used images to present a highly optimistic view of the effects of the drug. For example, an advertisement for an arthritis drug features a healthy middle-aged woman riding a bicycle with a similarly healthy middle-aged man pushing the bicycle. For most arthritis sufferers, the drug would not be effective enough to enable them to ride or push a bicycle without pain. This advertisement is at best inaccurate and at worst misleading.

Let us now turn our attention to medical software. The computer has replaced the script pad and there are several different software programs that GPs can use to prescribe drugs. As a result of commonwealth government subsidies to encourage the use of information technology by doctors, at least 90% of general practitioners now use prescribing software. In theory this may benefit consumers by allowing GPs to more readily identify interactions between medicines, although there is no evidence that this is so. In Australia, the most commonly used prescribing software is Medical Director. It is cheaper than the alternatives because it is subsidised by paid advertisements which flash on the screen while the GP is navigating the system.

There are warranted concerns about such programs. Harvey and others analysed pharmaceutical advertisements in Medical Director and found that:

*the advertising viewer displayed 79 different advertisements for 41 prescription pharmaceutical products marketed by 17 companies.*

Furthermore, the authors' analysis suggested that 95% of advertisements appeared noncompliant with one or more of the provisions of the MA Code of Conduct. The Code

of Conduct Monitoring Committee has not specifically looked at this area of pharmaceutical marketing.

Drug representatives can be very persuasive sellers but doctors are more likely to trust their colleagues. Pharmaceutical companies have recognised this and are now employing medical practitioners as ‘opinion leaders’ to deliver ‘educational’ sessions on various conditions. It is important that doctors draw on the knowledge of their colleagues and, in particular, experts in their field, however, this should be done in an independent setting. In many areas in medicine there are a wide range of views. Drug companies usually support opinion leaders whose views are likely to increase sales of their drugs. Consequently, the information provided in sessions sponsored by pharmaceutical companies is no less biased than if it was provided by a pharmaceutical sales representative, but may be more influential. *Choice* believes this practice should be prohibited.

#### **Marketing to pharmacists**

Marketing of pharmaceuticals to pharmacists is also permitted in Australia. However, pharmacists are not able to prescribe drugs and cannot dispense prescription drugs to a patient without a doctor’s prescription. This means they are not targeted by pharmaceutical companies to the same extent as doctors. However, some pharmacists have complained about aggressive marketing by pharmaceutical representatives. There is also some evidence that generic pharmaceutical manufacturers offer finance, generous discounting arrangements and sales training to pharmacists, presumably to encourage them to offer the generic version of a drug when it is available. *Choice* strongly supports the greater use of generic medicines where they deliver equivalent health outcomes but is concerned about the lack of transparency about these arrangements.

#### **5. The way forward**

The discussion above shows that pharmaceutical companies seek to promote their drugs in innovative ways. The current self-regulatory mechanisms are ineffective. In particular, the maximum penalty for breaches of the MA Code of Conduct is insignificant when compared with the significant profits that can be generated while a marketing campaign is in circulation. It does little to discourage unethical marketing practices. MA lacks the appropriate level of independence to be an impartial regulator of pharmaceutical marketing.

Pharmaceutical companies employ a range of strategies to increase public awareness and demand for prescription medicines, despite the ban on DTCA in Australia. They also use various means to promote their medicines to medical professionals under the guise of ‘education’. This information is not independent, is intended to increase the sale of pharmaceuticals and cannot be considered truly educational.

The implications for consumers and taxpayers from inappropriate and unnecessary use of medicines caused by pharmaceutical marketing are unacceptable. Independent sources of information about medicines are urgently needed to protect consumers and ensure appropriate use of medicines. *Choice* supports the following reforms.

1. Real enforcement of the information/educational requirement in marketing, including:
  - an independent body to monitor the industry and handle complaints;
  - higher penalties, possibly linked to marketing budgets or turnover, to discourage breaches; and
  - the power for immediate enforcement action to stop or correct biased information in advertising.
2. A prohibition on gifts, large or small, to medical practitioners.
3. A prohibition on the use of medical practitioners in educational seminars.
4. A system of independent drug detailers to provide information and education about pharmaceuticals to doctors. An extension to this reform could involve pooling drug company marketing budgets to fund unbiased information about new and current drugs.

As noted above, one of the main drivers for forms of marketing that are not in consumers’ interests is the need or opportunity to maximise profits from a drug within its patent period. Alternatives to the patent system which maintain strong or even create stronger incentives for innovation in response to medical need have been suggested. While it is outside the scope of this paper to describe or evaluate those proposals, the point is that the commonly held belief that we need to produce strong revenues for pharmaceutical companies to support needed research is not sustainable.

*The paper is based in part on research by Viola Korzcak. Thanks to Peter Mansfield for comments and suggestions. The views and any errors are of course the responsibility of the authors.*

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# Vulnerable Minds?

## The consumer unconscious and the ethics of marketing to children

by Cordelia Fine

If, as it seems, even fully-rational adults are susceptible to the wiles of clever marketing, then perhaps children aren't as especially vulnerable as we previously thought. But are they otherwise at greater risk? Here Cordelia Fine argues that the pernicious effect of many common marketing techniques on the unconscious minds of children is still a legitimate cause for concern.

**D**ebate concerning the ethics of marketing to children usually focuses on the age at which children acquire an acceptable degree of 'marketing literacy'. That is, at what age can children recognise marketing messages, understand their persuasive intent, and thus base their consumer preferences and behaviours on a critical and reasoned evaluation of those messages? On one side of this debate are those researchers and commentators who argue that to market to younger children is inherently unfair, because they do not yet enjoy an adult capacity to rationally evaluate marketing messages. As the American Psychological Association Task Force on Advertising and Children put it:

*Because young children lack the cognitive skills and abilities of older children and adults, they do not comprehend commercial messages in the same way as do more mature audiences, and, hence, are uniquely susceptible to advertising influence.*

But to those who critique the idea that children require protection from marketing, this reflects an unjustifiably patronising view of childhood capacities. For example, Catharine Lumby and Duncan Fine, in their recent book *Why TV is Good for Kids*, suggest that:

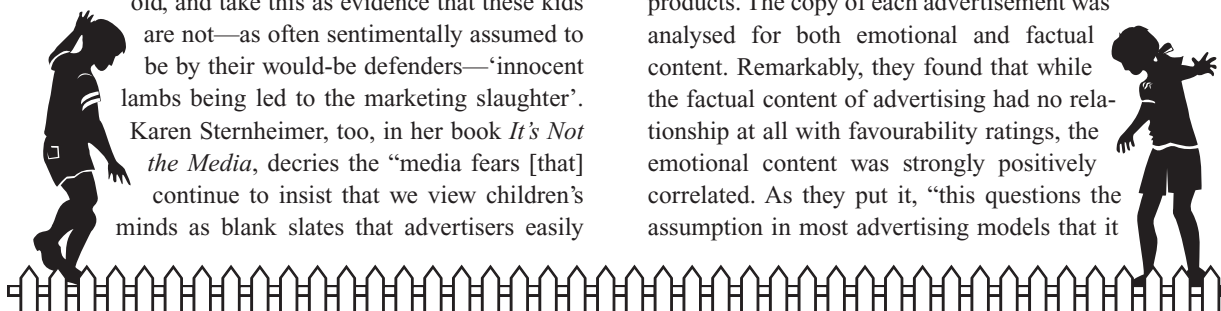
*[t]o claim that children are entirely helpless and absolutely open to manipulation in such a wholesale way is actually to strip them of agency and, in a sense, to divest them of a level of humanity.*

Lumby and Fine note that children can be cynical and distrustful of advertising from as young as eight years old, and take this as evidence that these kids are not—as often sentimentally assumed to be by their would-be defenders—'innocent lambs being led to the marketing slaughter'. Karen Sternheimer, too, in her book *It's Not the Media*, decries the "media fears [that] continue to insist that we view children's minds as blank slates that advertisers easily

manipulate". Rather, she argues, there is evidence that children as young as six can be critical of adverts—and certainly all children by the age of eight are sceptical. Finally, Sternheimer, Lumby and Fine all offer reassurance to the parents of preschoolers that this group tend not even to recall advertisements they have seen; the implication being that very young children cannot, therefore, be lastingly influenced.

In the foreground of this debate, then, is discussion of the extent to which children have the necessary cognitive capacities to recognise advertising, understand its purpose, and critically and rationally evaluate it. Yet this focus seems misplaced when we consider evidence that it is not through rationally assessable claims about products that marketing works most effectively, but through the linking of products or brands with rewarding stimuli, experiences or emotions. For example, Robert Heath, David Brandt and Agnes Nairn discuss the case of Andrex toilet tissue in the UK, which for over thirty years has used in its marketing a Labrador puppy that gambols adorably amidst reams of toilet paper. Curiously, although it is perceived to be of no better quality than its nearest rival, Kleenex, Andrex enjoys as much as three times the market share, despite its high price tag. This suggests that it is the emotional appeal of the puppy that is behind Andrex's marketing success, rather than any factual claims made about the product.

To explore this further, Heath and colleagues looked at the effectiveness of over forty TV advertisements, in terms of the extent to which they were successful in increasing favourability ratings for the advertised products. The copy of each advertisement was analysed for both emotional and factual content. Remarkably, they found that while the factual content of advertising had no relationship at all with favourability ratings, the emotional content was strongly positively correlated. As they put it, "this questions the assumption in most advertising models that it



is the communication of the factual message that gives advertising its persuasive power”.

The reason for the persuasiveness of emotional content in advertisements, they argued, stems from what is known as ‘implicit learning’. This is an automatic and unintentional process by which associations are built and reinforced over time, independently of the need for attention or even awareness. Thus a product or brand linked with rewarding images or feelings can acquire an implicit emotional appeal, potentially independently of any rational evaluation of claims that are explicitly made about the product. In contrast to the way that we can be aware of explicitly learning a piece of factual information about a brand, we have no awareness of this learning process. In addition, what is implicitly learned cannot be easily introspectively accessed or articulated, although we may become aware of a positive ‘gut feeling’ about a product.

It seems, then, that even adults may sometimes base their consumer judgements, not on their considered conclusions having rationally evaluated a marketing message, but on implicitly learned emotional associations with brands and products. Given this, the focus on children’s ability to rationally evaluate the claims of advertisers, in discussions about the ethics of marketing to them, begins to seem misplaced. After all, it appears that what is persuasive about marketing messages are not the claims but the emotional appeals. The ability to understand that advertisers have self-serving interests in their portrayal of products seems a cognitively different challenge than the ability to guard against manipulation of consumer preferences through implicitly learned emotional associations.

This begins to seem like an even more important distinction when we consider how children are appealed to as consumers. When much-loved characters ‘endorse’ products through TV programme or movie tie-ins, there is nothing remotely ‘rational’ about the preschooler’s desire for the endorsed yoghurt. Other new marketing strategies targeted at children also seem well-placed to co-opt positive feelings and experiences to brands, by linking them with enjoyable games (such as advergames and puzzles), product placement on popular TV shows and movies, via viral marketing through friends, celebrity seeding or through community sponsorship. Such methods generally do not even involve making any explicit claims about the products for the child consumer to evaluate. Nor is a child’s lack of any memory for an advertisement any sort of guarantee that he has not been influenced by it.

It’s also well known that marketers invest heavily in research to learn about what is likely to push the right buttons with children. As Sternheimer describes:

*By talking with kids within market research, advertisers learn about the power struggles many children feel between themselves and their parents and reflect this back in their ad campaigns ...”*

Unlike those pesky, paternalist parents, advertisers

*are some of the only people who want to learn about children’s fantasies and beliefs before making decisions about them.*

For example, kids often fantasise about triumphing over adults, and marketers exploit this desire by linking it with their products. Describing three television ads for high-sugar foods targeted at kids, Sternheimer notes how “[a]ll of these commercials feature the victory of youth over authority, a reverse of the typical social order ...” A defender of the practice of marketing to kids, she then continues:

*The linkage with snack food is almost incidental; rather than attempting to sell the product, each ad communicates a re-balance of power and a major shift of control.*

In fact, such ‘incidental’ linking is not about listening to children’s desires and then empowering them by reflecting their fantasies back to them, but rather, a technique for generating beneficial implicit learning about the product.

It seems, then, that marketing frequently persuades via non-rational means. Moreover, new marketing techniques targeted at children (and also old marketing techniques) appear to be likely to persuade by way of implicit emotional learning. So perhaps it is not surprising that a growing body of evidence suggests that marketing savvy children are, in fact, no less influenced by marketing than are children who are more naïve consumers.

For example, the recent report *Watching, Wanting and Wellbeing*, authored by Agnes Nairn and colleagues, surveyed over 500 British

school-children aged 9 to 13. Replicating the results of similar studies, they found that children who watch more TV are more materialistic. However, a self-reported belief in the claims of advertisements contributed nothing to this effect. In other words—contrary to what both sides of the debate about the ethics of marketing to kids would presumably predict—understanding the nature of advertising does not make the link between media exposure and increased materialism any weaker.

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## *Understanding the nature of advertising does not make the link between media exposure and increased materialism any weaker*

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While this study looked at general TV viewing, other research looking specifically at the effects of advertising also supports the idea that marketing literacy makes no difference to the extent to which children are influenced. Sonia Livingstone and Ellen Helsper recently reviewed fifty research studies looking at the extent to which children's food choices are influenced by television advertising. They found that across all these studies the older children, despite being presumably more marketing literate, were no less influenced than the younger children. (In fact, they actually found that the older children were rather *more* influenced.)

Likewise, older children were found to be more vulnerable than younger children in a recent study by Victoria Mallinckrodt and Dick Mizerski, who explored the effects of a Froot Loop advergaming on school-children's preferences for Froot Loops over other cereals and food products. They found an increased preference for Froot Loops after playing the game in the older group of 7-8 year olds, but not the younger group. Indeed, children varied in the extent to which they understood the persuasive intent behind this new form of marketing, yet even taking this into account yielded no evidence that more 'marketing savvy' children were less affected by the game. Similarly, looking at the effects of another (relatively) new marketing technique, Susan Auty and Charlie Lewis explored how product placement of Pepsi Cola in a movie clip affected children's choice of Pepsi versus Coke, compared with children who watched a clip without product placement. Seeing a branded clip increased the likelihood of choosing Pepsi over Coke soon after watching the film—and it did so as much in their older group of 11-12 year olds as in the younger 6-7 year old group.

In summary, it seems that the ability to recognise a marketing message, criticise it, and express scepticism towards it is of little import when it comes to actually remaining resistant to that message where it actually counts: that is, in the expression of consumer choices and preferences. Within the framework of the debate about the ethics of marketing to children, this is a surprising conclusion. It is traditionally, after all, assumed that marketing literacy protects against persuasive influence. But in light of the previous discussion regarding the power of implicit emotional learning, these data are in fact much as we might expect.

So perhaps we need to think about the ethics of marketing to children in a different way—and to start asking at what age children are capable of resisting implicit levels of influence. Clearly, even adults can be vulnerable to

this form of persuasion. The psychological literature suggests, however, that we do have a limited capacity to control for these sorts of manipulations. To do so requires that we: be aware of the marketing message; have an understanding of how it may implicitly affect our preferences; have the ability to adjust (more-or-less) for this unwanted influence; and have the attentional resources available to do so. This is a long list of cognitive requirements. It is plausible that the adult consumer will fail to control for implicit influences much of the time—because she fails to consciously notice the marketing message, thinks herself invulnerable to its influence, adjusts too little, or doesn't adjust at all because her attention is directed elsewhere. Moreover, the sheer volume of marketing messages to which we are daily exposed (and recall that we do not have to be consciously aware of the marketing in order for it to influence us) suggests that our consumer desires will regularly be manipulated without us realising it (as social cognitive psychologist John Bargh recently argued). And it is at least plausible to suppose that children will be relatively more likely than adults to falter at any of these stages of resistance. Children's attentional resources are presumably more rapidly depleted, and they may also be less motivated to be 'rational' consumers since they may be less concerned about the future costs of poor consumer decisions (such as negative consequences for health or finances).

Furthermore, even in the case where the adult consumer appears to have successfully over-ridden an implicit preference for a particular product, it seems that she still may be vulnerable to choosing the explicitly non-preferred product or consumer behaviour in non-ideal circumstances. A recent study contrasted about hundred people's self-reported preferences for branded versus generic products with their implicit 'preferences' (using a computerised measure sensitive to the relative positivity implicitly associated with the two types of products). They found that while only a third of the sample explicitly reported preferring brands, 85% preferred them to generics at an implicit level. We can only speculate why some consumers show this dissociation between their explicit and implicit preferences, but a plausible explanation is that their self-reported views stem from their rational considerations about the two types of product (generics are better value because with brands you are paying for the marketing as well as the product, for

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*Implicit preferences stem from the success of ... marketing at the implicit level*

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*Whether or not you trust the message is, in fact, unimportant*

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example), while their implicit preferences stem from the success of that marketing at the implicit level.

The researchers then offered their participants a choice of two gift baskets, of equal monetary value. One was made up of branded products—the other, of equivalent generics. When given plenty of time to make their choice, most of the participants acted in line with their self-reported preferences. Yet given the same choice under time pressure, nearly two thirds of the consumers went against their explicitly avowed consumer beliefs and chose according to their implicit preference.

Similarly, Hofmann and colleagues discovered that implicit attitudes can have striking influence on how much candy people eat. When people are mentally refreshed, their consumption of M&M's is correlated with their reported views on the importance of restraining eating, and is unrelated to their implicit attitudes towards the confectionary. However, when people have been mentally depleted by a demanding cognitive task (see Neil Levy's explanation of the phenomenon of 'ego depletion', in this issue), they eat M&M's at a rate proportional to their implicit feelings towards the chocolate.

Thus it seems that we can hold both explicit and implicit consumer attitudes, these may be differently affected by our consumer experiences (including marketing literacy training), and therefore we dissociate. In particular, even though self-reported consumer attitudes may reveal distrust or criticism of marketing messages, those messages may nonetheless be working at an implicit level. In line with this idea, a recent study looking at the effectiveness of public service announcements found evidence that anti-marijuana ads had the intended effect on implicit attitudes in young adults (that is, made them more negative towards marijuana smoking), but an effect opposite to that intended on explicit attitudes. Furthermore, when we are mentally tired or under pressure, our consumer behaviour may fall in line with what we implicitly 'want', rather than what we would consciously prefer. Again, children may be more likely to behave in line with implicit, rather than explicit preferences because their attentional resources are more readily depleted, or because they are more likely to act without reflection.

There are other strategies, too, that adults may develop in order to resist consumer urges that may be less available to child consumers. Some adults may avoid media (such as magazines or commercial television) or places (such as shopping centres) so as to avoid the manipulation of their consumer preferences. To the extent that children's culture has become commercialised, together with the peer pressure children are under to 'keep up' with what is

cool, this may be a less realistic option. The child who wants to avoid implicit influence through marketing can't see the latest movie for kids (with its numerous product tie-ins), or watch the TV shows all her friends watch (which contain product placement), or play the online advergame her friends are playing, or read the magazine all her friends read, or participate in any school sports sponsored by a fast food company, or even take part in class-work involving educational materials provided by corporations.

So what can we say now about the ethics of marketing to children? It seems clear that to focus only on children's burgeoning abilities to recognise and critically evaluate marketing messages is to overlook evidence that marketing often persuades independently of our rational capacities. After all, it is one thing to be able to report that advertisements require some distrustful attention. But it is quite another thing to recognise that marketing messages can nonetheless influence your implicit feelings about a product. Whether or not you trust the message is, in fact, unimportant. What matters is whether you realise that your 'gut feeling' about the product has been manipulated and that it is this that you can no longer trust. This analysis of the effects of marketing suggests that true 'marketing literacy' entails abilities rather different to those usually discussed. It requires a sophisticated meta-cognitive understanding of how marketing can influence our consumer attitudes without us even realising, a certain level of competency in adjusting for this bias as we consider what we think of a product, and the attentional resources to do so when required. This

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*Adult consumers are not the cool and rational evaluators of marketing messages that we might like to think we are*

would seem to be a significantly more demanding series of cognitive process than simply being able to recognise and critically evaluate a marketing message—and this may go some way to explaining why marketing literacy, understood in the traditional way, appears to afford children no protection from the influence of marketing.

So are concerns about the increasing volume of marketing targeted at children based on a 'sentimentalised caricature of children and childhood', as Karen Sternheimer has put it? Or is it an ethically indefensible practice? It's becoming clear that adult consumers are not the cool and rational evaluators of marketing messages that we might like to think we are. (We may even require some protection ourselves from marketing practices, in as much as they can work on us in ways that offer no chance to rationally resist them even if we want to.) But what also

seems likely is that children—who have not yet attained adult levels of reflective resources, meta-cognitive insight, or motivation to resist persuasion—will be even more vulnerable to manipulation by marketing.

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# Ego-depletion and marketing: Better out than in?

by Neil Levy

Amidst escalating worry about the rise of neuromarketing and the internal manipulation of consumers, Neil Levy argues that this debate may be diverting our attentions from the more damaging effects that come with the pervasive manipulation of our external environment.

When philosophers and others worry about how people can be manipulated, they usually focus internally, on the conscious and unconscious processes that go on inside people's heads. They focus on such internal goings-on in two ways: they worry about manipulations which affect people's brains—much more than they worry about manipulations that affect their environment—and they look for ways to (a) prevent these internal manipulations and (b) strengthen people's internal resources. There is good reason, sometimes, to worry about internal manipulations and there are often good reasons to help people build internal resources. But the most effective and practicable manipulations of behaviour—including buying behaviour—are most likely to be external manipulations; and the most effective ways of strengthening self-control are likely to involve structuring the environment to facilitate it. In this short paper, I shall argue that focusing on internal goings-on carries risks: risks of allowing marketers free reign to manipulate just where they are most likely to be effective, and of distracting attention from ways of resisting marketing pressures that are low-tech but effective.

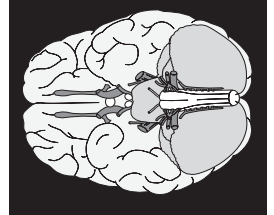
Let me begin by very briefly recounting two recent experiments focusing on mind and behaviour. The first experiment examined the effects of the hormone oxytocin on people's behaviour. It was found by Kosfield et al that administering the hormone (via a nasal spray) increased people's trusting behaviour, as measured by their willingness to cooperate in a bargaining game in which cooperation carries the risk of loss. The second study was an imaging experiment, comparing the brains of subjects drinking Coke and Pepsi, with and without the knowledge of which brands they were drinking. When subjects were ignorant of the brands, only the ventromedial prefrontal

cortex was active. But when the brands were identified, subjects exhibited additional—dorsolateral prefrontal and hippocampal—responses to Coke alone.

Now, it is not so much the content of these experiments that interest me here as the responses to them. In their book *Affluenza*, Clive Hamilton and Richard Denniss label the Coke experiment 'disturbing'. It shows, they conclude, that "We have not so much been brainwashed into drinking Coca-Cola: we have had our brains rewired to want it". Now Hamilton and Denniss are surely right in thinking that due largely to Coke's effective advertising and cultural saturation strategy, the company has been successful in getting people to make the association between the drink and a host of other things which are in fact unrelated to it. But the *fMRI results* do not tell us that. What does tell us that? Well, largely people's behaviour; their verbal behaviour as well as their buying behaviour. What the *fMRI results* tell us that is that people have memories and visual percepts associated with Coke. Surely, though, we didn't need neuroscience to tell us that (suppose that people failed to experience hippocampal activation in the experiment. What would we conclude? Well, probably that the equipment was faulty). Now, I am not saying that we can't learn new and surprising things from neuroscience. I am saying that we should not be impressed with images of brains *just because* they are images of brains. The internal is not privileged. If anything, it is the other way round: we look to behaviour to validate neuroscience, not the other way round.

Worries expressed over the oxytocin experiment are better founded. Some people have expressed the worry that oxytocin might be used to bolster trust in speakers at political rallies. It's easy to see how this worry might be extended to a sales context. Trust will greatly facilitate

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the job of a salesperson. But notice that salespeople already engage in activities designed to facilitate trust (and do so by way of releasing oxytocin, though of course salespeople do not think of it this way). Here's an example from a sales handbook: tell the customer that the product they're looking at is somehow defective or unsuitable for them. Since they think that if you're trying to sell to them no matter what, you will tell them that the product is good, they will trust you. Now lead them to the product you want them to buy. Here's another technique, which suggests itself once we know that oxytocin facilitates trust: stimulate it. For instance, have kittens around, or pictures of kittens.

My claim is that these entirely environmental manipulations should be just as disturbing to us as those which are internal. Yet people continue to believe that neuroscience has a special and especially intimate ability to peer into the soul, or at least its closest secular continuer. Consider, here, another experiment. Weisberg and colleagues gave subjects, both scientists and laypeople, explanations of events and facts that were deliberately designed to be obviously flawed. They found that both groups of subjects could identify faulty explanations. Yet when the subjects were given the same explanations peppered with neuroscientific jargon, their critical abilities left them, and they took bad explanations for good. We think brain science is especially good science, and are credulous toward it. Perhaps this is because the science is new; I think, though, that part of the explanation is that brain science is an internal science. Because it looks at what is going on inside, it is taken to have far greater depth than mere psychology. Once again, I am not saying that brain science is *not* good science. I think it is still in its infancy, but its results are already very exciting. I only want to say that we ought not to be dazzled by it, or to overlook the other ways we learn about, and control, human behaviour.

Now, what has this got to do with marketing? Recently, there has been a great deal of talk, and worry about, neuromarketing. Neuromarketing would apply the methods of neuroscience to moving products. For instance, rather than ask focus groups what they think of a product, we could place them in fMRI machines and measure their neural responses to products. Why do that? Well, perhaps subjects are not always honest: they may tell people what they think they want to hear, rather than what they really believe. Or perhaps even subjects who are trying to be honest are unable to be sure what they think of a product. They may be deaf to the signals that intimate that their infatuation with a new drink is likely to be short-lived (or whatever the case may be). By peering directly into brains, the hope of some (and the fear of others) is that we could cut through this messiness. We could focus directly on signals of pleasure in subjects, for instance, avoiding worries about insincerity. We could know more about subjects than they know about themselves. In

that way, we could very finely attune products and marketing campaigns to target audiences and their desires, thus making products well nigh irresistible.

I do not think we can rule out the possibility that these methods could prove useful to marketers. But I think there is very good reason to be skeptical, for the moment and for the foreseeable future. First, consider dishonesty. I see no reason to deny that subjects might not exhibit neural signals of, say, pleasure, which they can attempt verbally to dissimulate. fMRIs might be a way of detecting such signals. It's a pretty expensive way, though, and others that are cheaper are available. We can observe subjects' behaviour covertly; we can measure physical responses (psychophysiology is probably a more reliable guide of arousal than fMRI). In any case, we can rest assured that most subjects attempt to be honest most of the time. Similar points apply to ambivalence. For the moment, at least, verbal response and overt behaviour is a much better indicator of how subjects are feeling than are brain scans.

For the most, I suspect, neuromarketing will prove an expensive waste of time. It is also, and much worse, risky—not in itself, but insofar as it diverts attention from external ways of manipulating behaviour that are more effective, and therefore far more in need of regulation. These ways of manipulating behaviour build on the techniques that marketers have been using for many decades now, of controlling consumption by controlling space. They work, they are scientifically validated, and they are likely to be refined in the future. We don't worry about them because they focus on the environment around us, rather than on our brains. But we ought to be more concerned about them than the internal manipulations which might, one day, prove practicable.

First, let me mention some of the techniques that marketers use today to encourage consumption (that is, to encourage people to buy more than they need, as well as to shift their buying preferences). It has long been known that how goods are positioned affects consumer behaviour. Putting the most popular goods in the middle of aisles maximises exposure to the products—if they are placed at the ends, people may grab them and head to the checkouts without passing the products they did not intend to buy. Similarly, essentials are often placed at the back of the shop to increase traffic past non-essential goods. Products may be ordered in terms of price, with more expensive goods placed where they will be encountered earlier. The result is that cheaper goods are perceived as good buys, in comparison with more

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*this distinction between the agent and her environment is both philosophically suspect and practically dangerous*

expensive goods. More counter-intuitively, pricing in multiple lots can encourage greater buying, and once the buying pattern is established, it tends to be maintained.

Now, marketers might tell you that all these techniques are merely designed to expand consumer choice. By making consumers walk past goods, they are made aware of their existence. Special offers give people choices to buy in multiple lots, thus expanding their options. It should be admitted that these responses have some degree of plausibility. Certainly, these techniques don't look particularly threatening. Unlike internal manipulations, they leave the agent, with her powers of resistance and choice, unaffected. I believe that this distinction between the agent and her environment is both philosophically suspect and practically dangerous. Let me now tell you about some techniques currently being explored to encourage consumption behaviour which work on agential powers *from the outside*. These techniques build on a well-established paradigm in social psychology called the ego-depletion hypothesis.

The ego-depletion hypothesis is, roughly, this: willpower is a limited resource, which we draw upon to resist temptation. That is, when we judge that we ought to act in some way, but are tempted to act in a way that conflicts with our judgment, we draw upon our willpower to overcome temptation. All too commonly, of course, we fail to act as we judge we ought to in these kind of circumstances: we continue to smoke when we judge that we ought to give up; we eat or drink more than we believe we ought to; we spend more than we think we should. But sometimes, in what seems to be exactly the same circumstances, we manage to bring our actions into line with our judgments. Moreover, some people seem to be better at this than others. What explains our success at getting ourselves to do what we judge we ought, when we succeed? And what explains why some people are better at this than others? We often answer this question with just the word 'willpower'. Proponents of the ego-depletion hypothesis say that we are exactly right.

Willpower, they argue, is resource-like inasmuch as we use it, we use it up (that is what the word 'depletion' means in ego-depletion). Of course, we don't use it up permanently, just until we get an opportunity to replenish it. What replenishes it is rest. This is sometimes referred to as the muscle model of self-control. How much we can lift at anyone time depends upon the state of our muscles. Muscular strength is used up in the short term: if I have just done 20 push-ups, I find it very difficult to do more. But this strength returns with rest. Moreover, muscular strength increases with us; similarly, proponents of ego-depletion suggest that willpower can increase with regular exercise.

Let me briefly sketch the evidence for the ego-depletion hypothesis. It comes from a large set of studies. In these studies, subjects are divided into two groups. One group is assigned a self-control task, which involves resisting a desire; the control group is instead given a tiring task which does not require self-control to anything like the same extent. For instance, in a typical study the first group was ushered into a room filled with the smell of freshly-baked cookies, which were laid out on plates in full view.

The subjects were told that they were to participate in a study on taste perception; one group of subjects would eat the cookies and another would eat radishes. They, they were told, were the radish group. They were then presented with plates of radishes, and left with instructions to eat several of them. The experimenters withdrew and covertly observed the subjects. They were

observed to sniff and even handle the cookies, but despite the fact that they thought they were unobserved, all of them dutifully ate radishes and not the cookies. Meanwhile, the control group performed a task that did not require self-control, but which was tiring—a typical task was performing a series of three digit multiplications on paper.

Subjects from both groups were then tested on a common task, which does require self-control. Typical tests include squeezing a handgrip for as long as possible, persisting at an unsolvable anagram task, or keeping one's hand immersed in icy water. Subjects who have previously performed a self-control task—resisting the cookies, or watching a funny video while keeping a completely straight face—perform worse at the common task than do subjects in the control group, inasmuch as they persist at the task for a significantly shorter time. Moreover, their lack of self-control carries over to more naturalistic settings. For instance, dieters who are ego-depleted eat more after the tests than do non-dieters.

What apparently happens is that the subjects in the ego-depletion group—those that had a self-control task prior to the common task—have less willpower to draw on than subjects who have been given a different, yet tiring, task. How ego-depletion works, precisely, is still rather mysterious. But these experiments strongly suggest that willpower is a discrete resource; that is, a resource separate from and independent of, others (tiring tasks don't cause ego-depletion; only self-control tasks do—and self-control tasks are apparently not experienced as tiring). In fact, so far as I can tell, ego-depletion has no phenomenology at all, at least in the short-term (there are studies reporting greater fatigue after the second task, but that is after the effects of ego-depletion have already manifested; that is, after the damage has been done). So

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there are no warning signs that signal to us that our willpower is low.

That makes ego-depletion a phenomenon ripe for exploitation by those who would encourage us to consume more. If you want to make someone buy a product that they desire, but which they prefer, all things considered, not to purchase, you ought to ensure that their self-control resources are depleted when they confront the option of purchasing it. This can be done by requiring potential purchasers to engage in self-control tasks, which deplete their resources, before they are presented with the option of purchasing. This seems to be relatively easy to ensure: simply expose them to many opportunities to consume. We can expect them to find it progressively more difficult to resist repeated temptations. Now, it may be that marketers are already doing just this, though they don't—quite—conceptualise what they're doing in these terms. Think of a shopping mall. Already these are intentionally designed to maximise consumer's exposure to temptations (escalators are positioned so that rather than just riding from one floor to the next, we are required to continually walk around, thus ensuring we pass shops on the way; similarly popular shops may be located so that we are forced to pass speciality shops on the way). Once the ego-depletion hypothesis is deployed by marketeers, we can expect a more precisely targeted use of the strategy. One possibility is to ensure that consumers are exposed to low value but tempting items—e.g. chocolate bars—early, to ensure that when they are exposed to high-value items later, their self-control resources are at a low-ebb. Sellers of large consumer items might find it profitable to get into retailing confectionery as a side-line; credit card companies might find arrangements with such retailers profitable as well.

To my knowledge, no one has tested the hypothesis that repeated shopping opportunities are ego-depleting, all by themselves. However psychologists have tested whether ego-depletion affects the propensity to consume, as well as whether it affects subjects' evaluation of consumer items. Ego-depleted subjects are more willing to buy, and will pay higher prices, at least in the laboratory. Marketers seeking ways to control our behaviour are far more likely to use this kind of technique than to resort to the use of more invasive techniques. They can structure the environment to produce the behaviour they want, and they can do so more effectively in this manner than they can using the tools of neuroscience. Most people are not as worried about this kind of manipulation as they are about neuroscientific technologies. But the differences are not important. Both manipulate behaviour, and they do so for purposes that are not those of the people who are manipulated. Both can result in changes in beliefs, and in the actions which express those beliefs. The way in which these alterations come about doesn't seem to

matter, from a moral, or a political, point of view. If there are good reasons to be concerned about the first, there are equally good reasons to care about the second as well.

The kind of concern we see with regard to neuroscientific results, the kind of concern exemplified in responses to the Coca Cola experiment, are misplaced. There is no reason to think that because we can point to internal goings on that autonomy is more threatened than by external goings-on. Once we know how such goings-on can help to manipulate people, we should expect to see them deployed. In response, we should demand control of our environments, a control informed by the best science. One payoff might be our coming to see many current advertising practices as a kind of mental pollution, just as threatening to our autonomy as the kind of subliminal advertising widely feared, and just as ripe for political control.

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