Undermining Parental Authority, Unethical Advertising and the Accountability of Self-Regulation: ThomasCook.ca as a Fable

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Undermining Parental Authority, Unethical Advertising and the Accountability of Self-Regulation: ThomasCook.ca as a Fable

By Nachshon Goltz¹ and Peter Neufeld²

Abstract

This paper demonstrates the shortcomings of Advertising Standards Canada, the Canadian self-regulatory body overseeing advertising to children. It uses a case study initiated by a complaint regarding a parental undermining advertisement. Advertising Standards Canada failure to address this complaint illustrate the greater need for Canada to move away from self-regulation in children advertising to a less de-centralized regulatory regime. This move is increasingly important due to the unprecedented rise in electronic marketing and its ability to use stealth advertising and collect information from its child consumers.

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1. Introduction

In her book, 'Born to Buy', sociologist Juliet Schor observed from extensive interviews with U.S. marketing executives that the formula for advertising children’s products from the 1920s through the post-war era was to convince mothers (the “gatekeepers”) that the advertised product was beneficial for the child.\(^3\) However, Schor notes that the gatekeeper model collapsed in the 1980s, and that current marketing strategies aim to undermine parental authority in the name of “kid power”. Advertisers that once depicted mothers as loving and wise, now depict parents as “neglectful, incompetent, abusive, invisible, or embarrassing.”\(^4\) These ads represent authority figures as “laughable,” and convey the message that the only one capable of understanding children is the corporate sponsor.\(^5\) This new marketing strategy for targeting the so-called “tweens” market is referred to as “gatecrashing.”\(^6\) Joel Bakan, professor at the University of British Columbia Faculty of Law, argued that corporations are “programmed to put their missions of creating wealth for their owners above everything else, and to view anything and everything – nature, human beings, children, the planet – as opportunities to exploit for profit”.\(^7\)

When the first co-author of this paper told his 11 years old daughter about this parental authority undermining, she came back to with ThomasCook.ca advertising aired, among others, during the show ”It’s a Spongebob Christmas”, portraying a child describing his latest family vacation and concluding with the observation: 'Mom, It’s a no brainer' with regard to booking a family vacation at ThomasCook.ca.

This paper documents the steps taken after this discussion and ultimately demonstrates the shortcomings of the Canadian self-regulatory bodies overseeing advertising to children. The case study shows the greater need for Canada to move away from self-regulation in children advertising to a less de-centralized regulatory regime. This is increasingly important due to the unprecedented rise in electronic

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\(^3\) Schor at 16.
\(^4\) Id.
\(^5\) Id, at 54-55, 180.
\(^7\) Joel Bakan, The Corporation - The pathological Pursuit of Profit and Power, Canada (Penguin), 2003.
marketing and its ability to use stealth advertising and collect information from its child consumers.

The paper will first review previous research about the psychological impact of advertising on children. The paper will subsequently highlight the failure of self-regulation in children advertising. It will then follow the steps taken after the complaint made to Advertising Standards Canada ("ASC") regarding ThomasCook.ca by examining the response from ASC Council and Canada’s current regulatory framework for children advertising. The paper will conclude by highlighting the failures of the current regulatory framework and by recommending that Canada will move away from the current framework of decentralization.
2. The Psychological Effects of Advertising on Children: A Review of Previous Research

The word “advertising” comes from the Latin word “advertere,” which means to “direct one’s attention toward.”¹⁸ According to Jean Baudrillard,⁹ advertising is increasingly becoming part of normal human expression and consequently giving it a sense of superficiality:

Today what we are experiencing is the absorption of all virtual modes of expression into that of advertising. All original cultural forms, all determined languages are absorbed in advertising because it has no depth, it is instantaneous and instantaneously forgotten. Triumph of superficial form, of the smallest common denominator of all signification, degree zero of meaning, triumph of entropy over all possible tropes. The lowest form of energy of the sign.

In this context, Stephen Kline¹⁰ summarizes the shift in children’s play. He notes that marketing has become the dominant consideration in the design of children’s character and settings of shows in which these characters appear. Kline reveals that the education received from kid’s television shows has become dominated with underlying corporate incentives and is using the imagination of children to realize these incentives.

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¹⁰ Kline, Stephen, Limits To The Imagination: Marketing And Children’s Culture, In ANGUS, IAN & JHALLY, SUT (Eds.), CULTURAL POLITICS IN CONTEMPORARY AMERICA, NEW YORK: ROUTLEDGE, 1989, pp. 299-316, at 311.
According to Sandra L. Calvert, advertisers have recently begun to experiment with new techniques. One such technique is stealth advertising, in which marketers attempt to conceal the intent of an ad. The theory behind the new technique is that advertising is most effective when consumers do not recognize it as advertising. If consumers’ “guards” are down, they will be more open to persuasive arguments about the product. Using this approach, marketers try to blur the line between the advertisement and the content.

Marketers who practice stealth advertising embed products within a program’s content, use so-called viral (word-of-mouth) marketing, enable children to interact with online characters who promote specific brands, disguise advertisements as video news releases, and collect information from youth at online sites. All these practices are designed to create or enhance branded environment that foster loyalty.

Similarly, marketers also use product placement in gaming. Traditional console games cannot be changed, making them an expensive venue for product placement. But online games, which can be updated frequently, are more suited for product placement.

To appeal to this now extensive gaming audience, advertisers have developed adver-games, online video games with a subtle or overt commercial message where the use of product placement is common. In adver-games, marketers not only ensure that users’ eyes are on the embedded advertisement, but also know how long the user is engaged with the brand and can track the user’s exact behavior.

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12 E. Gardner, “Understanding the Net’s Toughest Costumer,” Internet World 6, no. 3 (2000).
17 Id.
18 Eisenberg et al, supra note 13.
Products marketed online are subject to no time limits. Indeed, some of the online children’s websites are built around specific products, such as the silly rabbit from Trix cereal. This means that the majority of the time that children play on these sites can be devoted to advertising. These adver-games encourage children to play with products in a fun, enjoyable context. Moreover, products that are banned from television advertisements, such as smoking tobacco, have migrated to their new online home.

One key area in research on the effect of advertising on children has been analysis of age-based changes in children’s ability to understand the intent of commercial messages. Before they reach the age of eight, children believe that the purpose of commercials is to help them in their purchasing decisions; they are unaware that commercials are designed to persuade them to buy specific products. The shifts that take place in children’s understanding of commercial intent are best explained using theories of cognitive development.

Developmental psychologists, as well as researchers in communication and marketing, often apply three stages of Jean Piaget’s theory of cognitive development to explain age-based differences in how children comprehend television content. Piaget organizes these stages as 1) preoperational thought, 2) concrete operational thought, and 3) formal operational thought. During the stage of preoperational thought, roughly from age two to age seven, young children are perceptually bound and focused on properties such as how a product looks. Young children also use animistic thinking, believing that imaginary events and characters can be real.

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For instance, during the Christmas season, television is flooded with commercials that foster an interest in the toys that Santa will bring in his sleigh pulled by flying reindeer. Young children “buy in” to these fantasies and the consumer culture they represent. Preoperational modes of thought put young children at a distinct disadvantage in understanding commercial intent and are therefore unable to make informed decisions about requests and purchases of products. ²⁴

With the advent of concrete operational thought, between age seven and age eleven, children begin to understand their world more realistically. They understand, for example, that perceptual manipulations do not change the underlying properties of objects. More important, they begin to go beyond the information given in a commercial and grasp that the intent of the advertisers is to sell products. By the stage of formal operational thought, about age twelve and upward, adolescents can reason abstractly and understand the motives of advertisers even to the point of growing cynical about advertising.

Building on Piaget’s theory, Deborah John²⁵ constructed a three-tiered model of consumer socialization: the perceptual stage (roughly age three to seven); the analytical stage (roughly age seven to eleven); and the reflective stage (roughly age eleven to sixteen). The perceptual stage is characterized by “perceptual boundness” as children focus on single dimensions of objects and events, thereby limiting their decision-making skills as informed consumers. During the analytical stage, as children gain the ability to analyze products according to more than one dimension at a time, their knowledge of advertiser techniques and brands becomes much more sophisticated. During the reflective stage, a mature understanding of products and marketing practices results in a relatively sophisticated knowledge of products and advertiser intent. Even so, all children can be influenced to purchase certain products if the products are made attractive enough to consumers.²⁶

²⁶ Id.
Integrating a variety of different theoretical perspectives, Patti Valkenburg and Joanne Cantor advanced a developmental model of how children become consumers. In the first stage (birth to two years), toddlers and infants have desires and preferences, but they are not yet true consumers because they are not yet truly goal-directed in their product choices. During the second stage (two to five years), preschoolers nag and negotiate, asking for and even demanding certain products. At this point in their development, young children do not understand the persuasive intent of commercials; they focus on the attractive qualities of products and cannot keep their minds off the products for long. These developmental characteristics make them extremely vulnerable to commercial advertisements. By the end of this stage, children replace whining and throwing tantrums to get a desired product with more effective negotiation.

In early elementary school (five to eight years), children reach the stage of adventure and first purchases. They begin to make clearer distinctions between what is real and what is imaginary, their attention spans are longer, and they make their first purchases outside the company of their parents. In the final stage (eight to twelve years), elementary school children are attuned to their peer groups’ opinions. Their critical skills to assess products emerge, and their understanding of others’ emotions improves considerably.

In the later years of this stage, interest shifts from toys to more adult-like products, such as music, sports equipment and gadgets. Although children’s consumer behaviors continue to develop during adolescence, the foundation is laid in these early years with a progression from simple wants and desires to a search to fulfill those desires to making independent choices and purchases to evaluating the product and its competition.27

27 P. Valkenburg and J. Cantor, supra note 24.
Fewer theories address the ways in which commercial messages influence children in interactive media exchange. Research on how children learn from interactive media builds on developmental theories such as those of Jean Piaget and Lev Vygotsky, both of whom argued that knowledge is constructed through interactions between the knower and the known.

Although such interactions do occur as children view television and film, including advertisements, they are different in the newer interactive technologies, which allow for greater user control and interchanges. Interactive technologies are based on dialogue and turn-taking – a child takes a turn, then a computer responds and takes a turn, then the child takes a turn again. In essence, a conversation is taking place in which each response made by a child leads to potentially different content being shared.

Learning takes place through contingent replies, responsiveness to the user, and turn-taking, tools that can enhance learning in any kind of interaction, whether human or simulated with intelligent artificial agents. The nature of the conversation that can take place, however, depends on the child’s developmental level. For instance, children under age eight may well believe that they are really interacting with branded characters while older youth understand the differences between what is real and what is imaginary.

Because interactive media incorporate and build on a child’s actions, they have an edge over traditional media like television in tailoring their message. In particular, an interactive medium is “smart” and can potentially take into account each learner’s knowledge base and adapt the message accordingly. In an interactive medium, advertisers can transmit their message effectively by responding explicitly to the user’s developmental level and knowledge base – a distinct advantage when marketers are trying to persuade a child or adolescent to buy a product, particularly given the varying knowledge bases during the childhood years.

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28 Supra note 22.
31 Id.
The surreptitious presentation of messages about products in online forums can also tap into children’s implicit memory, which involves learning without conscious awareness.\textsuperscript{32} For example, embedding a marketed product into entertaining content creates favorable attitudes about that product without the user even being aware.\textsuperscript{33}

The trend toward increased advertising online makes children more vulnerable to marketing. Once a television viewer watches an advertisement, that viewer must act on the message if a product purchase is to occur. That action can involve multiple steps: requesting the product from a parent, pulling it from a shelf while shopping with a parent, and making a purchase. The delay between seeing an advertisement and being in a store where the product can be purchased is also a potential disruption to a purchase.

By contrast, newer interactive interfaces involve a user directly in the content; actions can range from clicking on a television icon to transport a child directly to a website where he can purchase the advertised product,\textsuperscript{34} to having a cell phone elicit purchase-oriented behaviors.\textsuperscript{35} In newer technologies, the distinctions between the commercial and program content can be blurred in a seamless presentation. The time between being exposed to the product and purchasing it can also be greatly diminished. These changes have major implications for children, who are more vulnerable to commercial messages than adults are.

In a key study demonstrating the developmental advance during middle childhood, Robertson and Rossiter\textsuperscript{36} questioned first-, third-, and fifth-grade boys about their understanding of commercials. Only half of the first-grade boys understood the persuasive intent of commercials, as against 87 percent of third graders and 99 percent of fifth graders.\textsuperscript{37}

\begin{thebibliography}{99}
\bibitem{34} T. Tarpley, “Children, the Internet, and other New technologies,” in Handbook of Children and the Media, edited by D. Singer and J. Singer (Thousand Oaks, Calif.:Sage, 2001).
\bibitem{37} Id.
\end{thebibliography}
Aitkin\textsuperscript{38} found that when parents denied children’s requests for products, children who were heavy viewers argued about the purchase 21 percent of the time, while light viewers argued only 9 percent of the time.\textsuperscript{39}

In one effective consumer education program created by Roberts\textsuperscript{40} and several colleagues, fourth, sixth, and eighth graders viewed either The Six Billion $$$ Sell or control film. Children who viewed the treatment film, which taught advertising techniques, were more skeptical about advertisements immediately after viewing the film and were more sophisticated in understanding and applying advertising techniques one week later. The researchers found similar, though somewhat less strong, effects for second, third, and fifth graders who viewed 'Seeing through Commercials' compared with students who viewed a control film.\textsuperscript{41}

In 2004, the American Psychological Association’s task force Report on Advertising and Children concluded the following:

"[T]he evidence points directly to one fundamental concern: that advertising targeting children below the ages of 7-8 years is inherently unfair because it capitalizes on younger children’s inability to attribute persuasive intent to advertising. As a result of this limitation, children below this age comprehend the information contained in television commercials uncritically, accepting most advertising claims and appeals as truthful, accurate, and unbiased."

The Hastings report on food advertising to children\textsuperscript{43} also canvassed child development literature. In its review of evidence concerning the development of “cognitive defenses,” the report found that around age eight, children begin to respond more knowledgeably to advertising.\textsuperscript{44} However, the report noted that children’s ability to retrieve and process information is still developing between the ages of eight and twelve.\textsuperscript{45}

\textsuperscript{39} Id.
\textsuperscript{41} Id.
\textsuperscript{42} WILCOX ET AL., supra note 22 (in Canada’s Advertising Ban), at 7.
\textsuperscript{43} HASTINGS ET AL., supra note 2 (in Canada’s Advertising Ban), at 23.
\textsuperscript{44} Id. at 35-36.
\textsuperscript{45} Id. at 36.
In contrast, for adults, the recognition that a certain portion of television content is commercial advertising triggers a cognitive filter that takes into account the unique perspective of the ad sponsor, its intent to persuade, its bias, and the need for the viewer to apply different interpretative strategies. Children, by the very nature of their immature cognitive development, are deprived of this cognitive defense when targeted by commercial advertisements.

Fleras noted that while advertisements once provided product information to consumers, pitches now focus on creating an emotional connection between the product or brand and the consumer. This is achieved by using imagery that has little obvious connection to the product’s qualities. By not making verifiable (and therefore, falsifiable) claims that are clearly subject to regulatory scrutiny, this shift in approach could allow advertisers to partially or completely remove advertising from the oversight of traditional statutory controls on misleading advertising if those controls are narrowly interpreted.

As the APA task force observed:

“[A]dvertising to children avoids any appeal to the rational. Emphasizing instead that ads are entertainment and ‘enjoyable for their own sake,’ as opposed to providing any real consumer information…The most common persuasive strategy employed in advertising to children is to associate the product with fun and happiness, rather than to provide any factual product-related information…[For example, commercials aimed at children might show] Ronald McDonald dancing and singing, and smiling in McDonald’s restaurants without any mention of the actual food [or images of] Tony the Tiger, Cap’n Crunch…to help children identify the products.”

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46 Id. at 9.
47 Id. at 6-7.
49 Wilcox et al., supra note 22, at 23 (in Canada’s advertising ban).
The Media Awareness Network reports\(^{50}\) that after fourteen-year old Jenna took the “Ultimate Personality Test” on Tickle’s predecessor, emode.com,\(^{51}\) she was told that she values her image, so Emode recommended that she visit e-diets, one of their advertisers, to “prep her body for success”.

According to Steeves,\(^{52}\) Barbie.com site uses children’s emotional connection to Barbie by creating a false sense of friendship between the child and doll. This is evident by the website offering the child to have a ‘telephone call’ with Barbie for $1.99.\(^{53}\)

Through interacting with a product in a web environment, children learn to “trust” brands like Barbie and consider them their “friends.”\(^{54}\) However, these virtual friends go beyond recommending product; they become role models for the child to emulate, in effect embedding the product right into the girl’s identity. For example, when girls visit the “Hanging out with Hilary Duff” page on Barbie.com, they can listen to an interview with Duff in which she discusses makeup, clothes and Barbie. But the most interesting part of the interview for our purposes is how Duff talks about Barbie as if she is a real person:

> “I was the biggest Barbie fan when I was younger, and I still admit I love Barbie. I just think that she’s so pretty, and she’s so motivated. She’s had a lot of jobs. I think she’s a really good, positive role model for young girls to look up to…And I always looked up to Barbie when I was younger, and I think that she’s such an inspiring, cool, hip, and trendy role model for girls to look up to, so I’m very excited. And she loves pink – just like me!”.\(^{55}\)

From the qualitative research in this study\(^{56}\) and on reviewing other studies, it appears that children and teens see the online world as an extension of the offline world, rather than as a separate space with different rules.\(^{57}\)

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55 Barbie.everythinggirl.com/activities/btv/Hilary/fall/.
56 All in the Data Family: Children’s Privacy Online at 13.
The business model chosen by children’s websites has not backed away from collection of children’s personal information but has, perversely, greatly increased it. Under the “new” model, companies make the websites into a virtual playground in appearance and a market research firm in function. The website then tailors the website’s appearance to the profile they build of the child based on the registration information supplied (age, gender, location) and link it to progress through the site. Advertisers then pay for brand exposure in the virtual playground by either sponsoring certain games or having brands or products worked into the content of the site in an overt, or covert, way. This model is deemed “immersive advertising”.

According to Steeves, the aim of these websites is to collect personal information from children so as to improve the corporation’s targeted advertising strategies. This consequently assaults the “democratic thinking in the child – potentially reducing the next generation to “brand sheep”. They manipulate the social relationship of the child and reduces the role of the internet from a constructive learning tool for children.

The conclusion that much of the advertising that is paying for behavioral marketing is for products that are inappropriate for teens and children (as selling the products is restricted by law to adults) was also made in the “Fair Game?” report of the U.K. National Consumers Council. The report found that of 70 advertisements displayed on children’s websites, 9% were for online gambling, 6% for credit or loans, 4% for online dating, 3% for elective (eye) surgery, and 3% for car insurance.

Alex Bogusky, widely credited with having invented viral marketing, in 2009 was named Adweek's Creative Director of the Decade. Yet, at the relatively young age of forty-seven, Bogusky surprised everyone when, after penning a scathing manifesto against kid marketing – calling it "destructive" practice that has no "redeeming value" – he abruptly quit the industry. Children are "incapable of protecting and defending themselves from a message that probably doesn't have their very best interest at heart," Bogusky stated, and because it is "the duty of adults in society…to protect…children," they should demand that corporations and marketers stop "spending billions to influence our innocent and defenseless offspring."^61

Kid marketing wiz Martin Lindstrom is similarly concerned. According to him, children's constant and deepening exposure to marketing is leading to a "disaster in terms of kids and their future." He notes that the unhealthy attributes of marketing lead children to expect that their entire social setting can be customized to their comfort, and that a non-customized setting will lead to impatience. Lindstrom also believes that the pre-fabricated play options that children now enjoy and the subsequent decrease in time spent engaging in social outdoor activities will lead to a destruction in the creative imaginations of children.^62

Schor^63 contends that the lack of regulation in children advertising has consequently abled corporations to “infiltrated the core activities and institutions of childhood”. She is concerned that this prevalence of advertising in schools and lack of conventional play has reduced the capability of today’s children to “thrive socially, intellectually, even spiritually.”

^62 Childhood Under Siege, pp. 51, Interview with Martin Lindstrom.
^63 Id., at 13.
One clue to the marketing mentality is industry language. The marketing industry commonly refers to the competitive nature of the business as, “It’s a war out there.” Those whom ads are directed are “targets.” When money is committed to an ad campaign it is referred to as “going against the target.” Printed materials are called “collateral.” Impromptu interviews with consumers are “intercepts.” The industry is heavily into the metaphor of biological warfare, as in the terms “viral marketing” and “sending out a virus.” Other conventions include “converting [a kid] into a user” (a phrase from drug culture), delivering the “eyeballs,” and becoming “top of mind.” There’s not much doubt about who’s winning this war either. When Nickelodeon tells its advertisers that it “owns kids aged 2-12,” the boast is closer to the mark than most of us realize.  

3. The Failure of Self-Regulation in Children’s Advertising

Blakeney and Barnes, examining the structure of self-regulation in the advertising and media industries in Australia, concludes that "By its own standard, self-regulation by the media and advertiser associations lacks both responsibility and credibility".

Fried assess whether the Children's Advertising Review Unit of the Council of Better Business Bureaus ("CARU") actions had an impact on advertisers' behavior, through subsequent advertisements compliance with the guideline violations raised by the Centre for Science in the Public Interest ("CSPI") and conclude that "The success rate claimed by CARU, and therefore the effectiveness of the process itself, cannot be substantiated".

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64 Id.
67 http://www.ascreviews.org/category/caru/about_caru/ ("CARU is the children's arm of the advertising industry's self-regulation program and evaluates child-directed advertising and promotional material in all media to advance truthfulness, accuracy and consistency with its Self-Regulatory Program for Children's Advertising and relevant laws").
68 http://cspinet.org/about/index.html ("The Center for Science in the Public Interest (CSPI) is a consumer advocacy organization whose twin missions are to conduct innovative research and advocacy programs in health and nutrition, and to provide consumers with current, useful information about their health and well-being").
An example of the change of time in advertisement to children regulation can be inferred from the Federal Trade Commission investigations, at the end of the 1970s, regarding practices in children’s advertising, and its result: advocating a ban on advertising sugared products to kids, as well as an end to commercials aimed at children under age eight.\textsuperscript{69}

Today, such a stance seems almost inconceivable, given the tremendous growth in political influence enjoyed by media corporations and food processors. Philip Morris gave more than $9 million in soft money to the two political parties between 1995 and 2002 ($7.8 million of it went to Republicans). AOL Time Warner gave more than $4 million (nearly equally divided). Disney contributed $3.6 million. Coca-Cola gave $2.3 million (mostly to the Republicans). The U.S. Sugar Corporation is also among the top “Double Givers.” Two decades of corporate monies have eroded the regulatory, legislative, and judicial environment, making it far harder to protect children.\textsuperscript{70}

\section*{4. Children Advertising Case Study: ThomasCook.ca}

The observation discussed above about the ThomasCook.ca commercial provoked a research of Canada’s regulatory framework for advertising. The relevant governmental regulatory entities, the Competition Bureau of Canada and the Canadian Radio and Television Commission, pointed in one direction: Advertising Standards Canada (“ASC”), a national advertising self-regulatory body that among other administers the Canadian Code of Advertising Standards and the Broadcast Code for Advertising to Children. ASC is the only address in the case of unethical advertising in general, and unethical advertising to children in particular.

Under the Broadcast Code for Advertising to Children, Children (persons under 12 years of age)\textsuperscript{71} advertising is defined as “any paid commercial message that is carried in or immediately adjacent to a children's program. Children's advertising also

\textsuperscript{69}Id, at 28-29.
\textsuperscript{70}Id.
includes any commercial message that is determined by the broadcaster as being directed to children and is carried in or immediately adjacent to any other program.”.  

Clause 11 of the Children's code titled 'social values' states that "Children's advertising must not encourage or portray a range of values that are inconsistent with the moral, ethical or legal standards of contemporary Canadian society".  

In response to a complaint in this case, ASC strongly rejected the notion that ThomasCook.ca ad is children advertising. According to ASC: “[Family vacations are] not a child directed message because it does not promote a product for which children form a substantial part of the market as users.” The evidence, however, differs from the views of ASC. A research asking parents and children about children consumption choices, concluded that: "the percentage influence that children have is 36% in holiday destination". Moreover, the fact that a child is presenting the ad at the time it is aired indicates the importance of children as consumers, at least in the eyes of the advertiser.  

In light of the evidence presented to it, ASC responded with the following:  

Even if it can be argued that children form a substantial part of the market as users of travel services, in ASC’s evaluation, the message was not presented in a manner that was directed primarily to children. While the commercial contained elements that may appeal to children, such as the young boy describing his last family vacation, we did not evaluate the commercial as being presented in a manner that was directed primarily to children. In fact, the audio described features that are of particular importance to parents (and not to children), such as that Thomas Cook guarantees the lowest prices, with up to $500 in extra perks, including free seat selection. Finally, the last frame of the commercial contained a super of terms and conditions geared specifically to the purchaser of travel packages.  

In addition, we contacted the broadcaster, CORUS Entertainment, and learned that the commercial was not aired during or immediately adjacent to a children’s program. The commercial was scheduled during G (General) rated programs, which the broadcaster considers are for a broader audience, such as families watching together. The holiday

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72 Id., section 1(a).  
73 Id.  
74 John Hall, et al, INFLUENCE OF CHILDREN ON FAMILY CONSUMER DECISION MAKING European Advances in Consumer Research Volume 2, 1995, Pages 45-53; See also Kuo-Ching Wang et al, Who is the decision-maker: the parents or the child in group package tours?: "Results indicated that family has a tendency to make a joint decision in problem recognition and the final decision stages"Tourism Management, Volume 25, Issue 2, April 2004, Pages 183–194;  
75 Email to the Co-Auther dated January 31, 2013 from Janet Feasby, Vice President, Standards at ASC.
program, *It’s a Spongebob Christmas*, during which you saw the commercial, was rated G by the broadcaster.76

Regarding your comment that the commercial was carried in or immediately adjacent to children’s programming, under the *Children’s Code* a "children's program" refers to a program that is directed to the under-12 audience, as defined by the broadcaster.” ASC understands from the broadcaster that this program was geared for family viewing – not exclusively children.77

In its reply, the ASC overlooked the fact that even if the programs during which the ad was aired, including *Sponge Bob Square Pants*, are rated G, they are clearly carried in or immediately adjacent to a children's program. Moreover, the ASC is legitimizing the use of inappropriate words "Mom, its a no brainer" during family rated shows, meaning, if the family is watching it together, it is ok to undermine parental authority.

5. **Regulatory Framework: Advertising Standards Canada**

The ASC operates a complaints-based system for the enforcement of its codes, which is reviewed by the ASC and its Consumer Response Councils. If a preliminary determination raises a potential Children’s Code violation, the advertiser will be notified in writing. The complaint is then referred to a Council, which reviews the complaint and determines whether there has been a violation of the Children’s Code based on a majority vote. If the advertisement offends the Children’s Code, the ASC will request that the advertiser amend the offending advertisement or withdraw it. Failure to comply may result in the ASC requesting the media’s support in no longer exhibiting the advertisement or publicly declaring the advertiser to be found in breach of the Children’s Code.

While related more to the complaint than children’s advertising per se, Clause 14 of the Canadian Code of Advertising Standards, [emphasis added]:

> Advertisements shall not:
>
> (a) **condone any form of personal discrimination**, including that based upon race, national origin, religion, sex or age;

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76 Id.
77 Id.
(b) appear in a realistic manner to exploit, condone or incite violence; nor appear to condone, or directly encourage, bullying; nor directly encourage, or exhibit obvious indifference to, unlawful behaviour;

c) demean, denigrate or disparage one or more identifiable persons, group of persons, firms, organizations, industrial or commercial activities, professions, entities, products or services, or attempt to bring it or them into public contempt or ridicule;

d) undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.

According to Janet Feasby, Vice President, Standards at ASC, "ASC receives very few complaints about advertising directed to children. Between 2009 and 2012, two complaints under Clause 12 (Advertising to Children) were upheld about two radio commercials". ASC publish only complaints that are not rejected and refuses to disclose complaints that were not pursued.

While it is true that since 1974, the Canadian Radio-Television and Telecommunication Commission (CRTC) has typically required its private television broadcast licensees to comply with ASC’s Children’s Code during their seven-year licensing period, there is no evidence on record that the CRTC has ever considered violations of the Children’s Code to determine whether a license should be renewed,

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78 Email to the author dated Jan 29, 2013 [on file].
Upheld Complaints - Q2 2011, Clause 1: Accuracy and Clarity, Clause 12: Advertising to Children: A radio commercial invited children between the ages of 6 and 17 to call the advertiser if they wanted to be on the Disney Channel or in a television program. If they were one of the first 200 callers, they could become the next superstar. The complainant alleged that the commercial was misleading. The clear impression conveyed to Council by the commercial was that children ages 6-17 were invited to audition for a chance to appear on the Disney Channel or in a television program. In reality, the advertised event was an information session about the John Robert Powers acting school and not an audition at all. Council, therefore, found that the commercial was misleading and also exploited children’s credulity and lack of experience.

Upheld Complaints - Q2 2010, Clause 12: Advertising to Children, In a radio commercial directed to children between the ages of 6 and 17 the advertiser claimed the first 100 children who texted “star at 2121” on their mobile phones could be become the next superstar. The complainant alleged that the commercial was inappropriate for children. The overall impression conveyed by this commercial was that children could become stars on a children’s television channel if they were one of the first 100 to send mobile text messages to a certain telephone number. To Council, this exploited a child’s credulity and lack of experience, contrary to the Code.

79 Id.

revoked, or subjected to additional terms. If it did, the CRTC would likely only do so for clear, persistent, or egregious violations.\textsuperscript{81}

Feasby added that “to ASC, the colloquial expression “it’s a no brainer” as used in this commercial means that the decision to book a Thomas Cook Kids First Family Vacation is easy to make and requires little effort, and we could not conclude that the statement was made in a condescending or disrespectful manner”.\textsuperscript{82}

6. Conclusion

It should be clear that a re-examination of Canada’s current decentralized regulatory framework for children advertising is in order. Previous research on the psychological impact of advertising on children illustrate the detrimental effects its possesses on the child’s psyche, intellectual ability, social capacity, and creativity. What’s more, the unprecedented rise in electronic marketing has propelled the growth of stealth advertising, a method that purports to imbue their child-oriented websites with covert marketing of the corporation’s products. This leads to perverse incentives for corporations and the transformation of the internet into a destructive force for child development.

The ThomasCook.ca case study furthers the case for rethinking self-regulation. The apparent views of the ASC contradict previous research and implies their tolerance for marketing that undermines parental authority.


\textsuperscript{82}Email to the author dated February 5, 2013 [on file].